

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 Mongolia concerning Transfer of Sentenced Persons will enter into force on 19 August 2016.

AGREEMENT BETWEEN THE GOVERNMENT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION OF
THE PEOPLE'S REPUBLIC OF CHINA AND THE
GOVERNMENT OF MONGOLIA CONCERNING TRANSFER
OF SENTENCED PERSONS

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AGREEMENT BETWEEN

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

AND

THE GOVERNMENT OF MONGOLIA

CONCERNING

**TRANSFER OF
SENTENCED PERSONS**

AGREEMENT BETWEEN THE GOVERNMENT OF THE
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OF SENTENCED PERSONS

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

Agreeing on the necessity of mutual cooperation in the administration of justice, and

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

Have agreed as follows:

ARTICLE 1

DEFINITIONS

For the purposes of this Agreement:

- (a) "transferring Party" means the Party from which the sentenced person may be, or has been transferred;
- (b) "receiving Party" means the Party to which the sentenced person may be, or has been transferred;
- (c) "sentenced person" means any person who has been sentenced by a court in the jurisdiction of the transferring Party;
- (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 jurisdiction of the transferring Party to the jurisdiction of the receiving Party in accordance with the provisions of this Agreement in order to serve the sentence imposed on him.

ARTICLE 3

CENTRAL AUTHORITY

- (1) The Central Authorities of the Parties shall process requests for transfer in accordance with the provisions of this Agreement.
- (2) The Central Authority for the Hong Kong Special Administrative Region shall be the Secretary for Justice or his duly authorised officer. The Central Authority for Mongolia shall be the Ministry of Justice of Mongolia or an officer duly authorised by the Minister for Justice of Mongolia. Either Party may change its Central Authority in which case it shall notify the other of the change.
- (3) The Central Authorities may communicate directly with each other for the purposes of this Agreement.

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ARTICLE 4

CONDITIONS FOR TRANSFER

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

- (a) the acts or omissions 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 the Hong Kong Special Administrative Region;
- (c) where Mongolia is the receiving Party the sentenced person is a national of Mongolia;
- (d) at the time of the receipt of the request for transfer the sentenced person still has at least six months of the sentence to serve;
- (e) the judgment is final and no further proceedings relating to the offence or any other offence are pending in the transferring Party; and
- (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 Party considers it

necessary, the sentenced person's consent may be given by a person entitled to act on his behalf.

ARTICLE 5

PROCEDURE FOR TRANSFER

- (1) The Parties shall endeavour to inform sentenced persons of their right to transfer under this Agreement.
- (2) A request for transfer may be made by the transferring Party or the receiving 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) Requests and replies shall be made in writing without delay.
- (4) Where a request for transfer has been made the transferring Party shall provide the receiving Party with the following information:
 - (a) the name, date and place of birth of the sentenced person;
 - (b) a statement of the facts upon which the conviction and sentence were based and a statement of the relevant law creating the offence;

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- (c) the termination date of the sentence, if applicable, and the length of time already served by the sentenced person including any pre-trial detention and any remissions to which he is entitled on account of work done, good behaviour or other reasons;
 - (d) a copy of the judgment, or certificate of conviction and sentence; and
 - (e) information on the nature, duration and date of commencement of the sentence.
- (5) The transferring Party shall provide, whenever appropriate, any medical or social reports on the sentenced person, information about his treatment in the transferring Party and any recommendations for further treatment.
- (6) Either Party shall, as far as possible, provide the other 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.
- (7) Prior to the transfer, 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, 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 legal consequences thereof.
- (8) 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 within the

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jurisdiction of the transferring Party agreed upon by both Parties.

- (9) A sentenced person shall be informed, in writing, of any action and decision taken by either Party on the request.

ARTICLE 6

RETENTION OF JURISDICTION

The transferring Party shall retain jurisdiction for the review of convictions and sentences imposed by its courts.

ARTICLE 7

PARDON OR AMNESTY

Either of the Parties may grant pardon or amnesty to the sentenced person in accordance with its Constitution or other laws.

ARTICLE 8

CONTINUED ENFORCEMENT OF SENTENCE

- (1) Subject to paragraph (5), the receiving Party shall enforce the sentence as if the sentence had the same duration or termination date as advised by the

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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 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) 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.
- (5) The receiving Party shall modify or terminate enforcement of the sentence as soon as it is informed of any decision by the transferring Party in accordance with Articles 6 and 7 of this Agreement to pardon the sentenced person, or of any other decision or measure of the transferring Party that results in cancellation or reduction of the sentence.
- (6) The receiving Party shall inform the transferring Party:

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- (a) when the sentenced person is discharged;
- (b) if the sentenced person is granted conditional release;
- (c) if the sentenced person has died or escaped from custody before enforcement of the sentence has been completed; or
- (d) of any other information in relation to the enforcement of the sentence if the transferring Party so requests.

ARTICLE 9

TRANSIT OF SENTENCED PERSON

If either Party transfers a sentenced person to or from another jurisdiction, the other Party shall, subject to its law, co-operate in facilitating the transit through its territory of such a sentenced person. The Party intending to make such a transfer shall give advance notice to the other Party of such transit.

ARTICLE 10

LANGUAGE AND EXPENSES

- (1) Requests for transfer and accompanying documents pursuant to this Agreement shall be in the English language and, if requested, accompanied by a translation into an official language of the receiving Party.

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- (2) Any expenses incurred in relation to the transfer shall be borne by the sentenced person. If the receiving Party pays the costs on behalf of the sentenced person, it may seek to recover all or part of the costs of transfer from the sentenced person in accordance with its laws and regulations. Any expenses incurred in relation to the continued enforcement of the sentence after transfer shall be borne by the receiving Party.

ARTICLE 11

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 12

ENTRY INTO FORCE, AMENDMENT AND
TERMINATION

- (1) Each Party shall notify the other Party in writing of the completion of its internal procedures required for entry into force of this Agreement. This Agreement shall enter into force thirty days after the date of the later of two notifications.
- (2) This Agreement may be amended upon the mutual written agreement of the Parties. Such amendment

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shall enter into force in accordance with the provisions set forth in paragraph (1).

- (3) Either Party may terminate this Agreement by notice in writing to the other at any time. Termination shall take effect six months after the day on which notice is given. Requests which have been received prior to termination of the Agreement shall nevertheless be processed in accordance with the terms of the Agreement as if the Agreement was still in force.

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

Done in duplicate at Hong Kong, this first day of February, Two thousand and sixteen in the Chinese, English and Mongolian languages, each text being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

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

FOR THE GOVERNMENT OF MONGOLIA:




