

The Transfer of Sentenced Persons Agreement

The Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and Spain concerning Transfer of Sentenced Persons will enter into force on 5 July 2013.

AGREEMENT BETWEEN
THE HONG KONG
SPECIAL ADMINISTRATIVE REGION OF THE
PEOPLE'S REPUBLIC OF CHINA
AND
SPAIN
CONCERNING
TRANSFER 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 by the Central People's Government of the People's Republic of China to conclude this Agreement with the Government of Spain,

The Hong Kong Special Administrative Region and Spain, hereinafter referred to as the Parties,

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) "sentencing Party" means the Party in which the sentence was imposed on the person who may be, or has been, transferred;
- (b) "administering Party" means the Party to which the sentenced person may be, or has been, transferred in order to serve his sentence;
- (c) "sentenced person" means a person who is required to serve a sentence or other measure involving deprivation of liberty in a prison, a hospital or any other institution in the jurisdiction of the sentencing 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 sentencing Party to the administering Party in accordance with the provisions of this Agreement in order to serve the sentence imposed on him.

ARTICLE 3

CENTRAL AUTHORITIES

- (1) Each Party shall designate a Central Authority which shall be responsible for processing requests for transfer in accordance with the provisions of this Agreement.
- (2) The Central Authority for the Hong Kong Special Administrative Region is the Secretary for Justice or an officer authorised by the Secretary for Justice. The Central Authority for Spain is the Ministry for Justice.
- (3) Either Party may change its Central Authority in which case it shall notify the other Party of the change.
- (4) The Central Authorities shall transmit requests for transfer directly in accordance with the provisions of this Agreement.

ARTICLE 4

CONDITIONS FOR TRANSFER

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

- (a) if the acts or omissions on account of which the sentence has been imposed constitute a criminal offence according to the law of the administering Party or would constitute a criminal offence if committed on its territory, although the definition of the offence may not be identical;
- (b) where the Hong Kong Special Administrative Region is the administering Party, the sentenced person is a permanent resident of, or has close ties with, the Hong Kong Special Administrative Region;

- (c) where Spain is the administering Party, the sentenced person is a national of Spain within the meaning of the Spanish Civil Code;
- (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;
 - (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 sentencing Party;
- (f) the transfer is consented to by the sentenced person, or where in view of his age or physical or mental condition, either Party considers it necessary, by a person legally entitled to act on his behalf; and
- (g) the sentencing and administering Parties agree to the transfer.

ARTICLE 5

PROCEDURE FOR TRANSFER

- (1) The Parties shall endeavour to inform sentenced persons of the possibility of transfer under this Agreement.
- (2) If the sentenced person wishes to be transferred, he may express such a wish to the sentencing Party or the administering Party, which shall consider such an expressed wish against the criteria set out in Article 4, before deciding whether to make a request to the other Party for transfer.

(3) If a transfer is requested, the sentencing Party, if it agrees, shall provide the following documents to the administering Party:

- (a) a certified copy of the judgment and the law on which it is based;
- (b) a statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission, and any other factor relevant to the enforcement of the sentence;
- (c) a declaration containing the consent to the transfer as referred to in Article 4(f); and
- (d) whenever appropriate, any medical or social reports on the sentenced person, information about his treatment in the sentencing Party, and any recommendation for his further treatment in the administering Party.

(4) The administering Party, if requested by the sentencing Party, shall furnish it with:

- (a) a document or statement indicating that the sentenced person is a permanent resident of, or has close ties with, the Hong Kong Special Administrative Region, or a national of Spain, as the case may be; and
- (b) a copy of the relevant law of the administering Party which provides that the acts or omissions on account of which the sentence has been imposed in the sentencing Party constitute a criminal offence according to the law of the administering Party, or would constitute a criminal offence if committed on its territory.

(5) Either Party shall, as far as possible, provide the other Party, if it so requests, with any relevant information, documents or statements after a request has been made, for the purpose of taking a decision on the transfer.

(6) The sentencing Party shall afford an opportunity to the administering Party, if the administering Party so desires, to verify

through an official designated by the administering 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.

(7) Delivery of the sentenced person by the authorities of the sentencing Party to those of the administering Party shall occur on a date and at a place within the jurisdiction of the sentencing Party agreed upon by both Parties.

ARTICLE 6

CONTINUED ENFORCEMENT OF SENTENCE

(1) The administering Party shall continue the enforcement of the sentence and shall be bound by the duration of the sentence as determined by the sentencing Party.

(2) The continued enforcement of the sentence after transfer shall be governed by the laws and procedures of the administering Party.

(3) If the sentence is by its nature or duration incompatible with the law of the administering 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 sentencing Party in terms of nature or duration.

(4) The administering Party may, if a sentenced person would be a juvenile according to its law, treat the sentenced person as a juvenile regardless of his status under the law of the sentencing Party.

(5) The administering Party shall inform the sentencing 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.
- (6) The administering Party shall, if the sentencing Party so requests, provide any information requested in relation to the enforcement of the sentence.

ARTICLE 7

RETENTION OF JURISDICTION

The sentencing Party shall have exclusive jurisdiction in respect of proceedings of any kind, the purpose of which is to review the conviction or the sentence imposed.

ARTICLE 8

PARDON OR COMMUTATION

Each Party may grant pardon or commutation of a sentence in accordance with its laws.

ARTICLE 9

REDUCTION OF SENTENCE OR TERMINATION OF ENFORCEMENT

The administering Party shall reduce the sentence or terminate enforcement of the sentence as soon as it is informed of any decision by the sentencing Party in accordance with Articles 7 or 8 of this Agreement.

ARTICLE 10

TRANSIT OF SENTENCED PERSON

If either Party transfers a sentenced person to or from another jurisdiction, the other Party shall, subject to its law, cooperate 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 11

LANGUAGES

Requests for transfer and accompanying documents addressed to the Hong Kong Special Administrative Region shall be submitted in, or accompanied by a translation into, Chinese or English. Requests for transfer and accompanying documents addressed to Spain shall be submitted in, or accompanied by a translation into, Spanish.

ARTICLE 12

EXPENSES

Any costs incurred in the application of this Agreement shall be borne by the administering Party, except costs incurred exclusively in the territory of the sentencing Party.

ARTICLE 13

EXEMPTION FROM AUTHENTICATION

For the purpose of application of this Agreement, documents and translations drafted or certified by the courts or any other competent authority of either Party shall be admitted in proceedings without any form of authentication.

ARTICLE 14

CONSULTATION

The Central Authorities of the Parties may consult with each other to promote the most effective use of this Agreement and agree upon such practical measures as may be necessary to facilitate the implementation of the Agreement.

ARTICLE 15

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 16

APPLICATION

This Agreement shall be applicable to any request presented after the entry into force of the Agreement even if the sentence was imposed before that date.

ARTICLE 17

ENTRY INTO FORCE AND TERMINATION

(1) This Agreement shall enter into force thirty days after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of the Agreement have been complied with.

(2) Each of the Parties may terminate this Agreement at any time by giving notice to the other. In that event the Agreement shall cease to have effect ninety days after the date on which notice is received by the other Party.

In witness whereof the undersigned have signed this Agreement

Done in duplicate in Madrid, this Fifteenth day of November, Two thousand and Twelve, in the Chinese, English and Spanish languages, each text being equally authentic.



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



FOR SPAIN