

Agreement

The Transfer of Offenders and on Co-operation in the Enforcement of Penal Sentences Agreement

The Agreement on the Transfer of Offenders and on Co-operation in the Enforcement of Penal Sentences between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Kingdom of Thailand entered into force on 9 August 2000.

**AGREEMENT
BETWEEN
THE GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION OF THE
PEOPLE'S REPUBLIC OF CHINA
AND
THE GOVERNMENT OF THE KINGDOM OF THAILAND
ON THE TRANSFER OF OFFENDERS AND ON CO-OPERATION
IN THE ENFORCEMENT OF PENAL SENTENCES**

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 the Kingdom of Thailand, hereinafter referred to as ("the Parties");

Taking into consideration the laws and regulations in force regarding law enforcement of the Parties and the desirability of enhancing their co-operative efforts in law enforcement and the administration of justice;

Desiring to co-operate in the enforcement of penal sentences; and

Desiring to facilitate the successful reintegration of offenders into society;

Have agreed as follows:

ARTICLE 1

DEFINITIONS

For the purposes of this Agreement:

- (a) "transferring Party" means the Party from whose jurisdiction the offender may be, or has been, transferred;

- (b) “receiving Party” means the Party to whose jurisdiction the offender may be, or has been, transferred;
- (c) “offender” 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 by virtue of an order made by a court in the course of the exercise of its criminal jurisdiction, but does not include a fugitive offender;
- (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

An offender sentenced in the jurisdiction of one Party may be transferred to the jurisdiction of the other Party in accordance with the provisions of this Agreement in order to serve the sentence imposed on him.

ARTICLE 3

CONDITIONS FOR TRANSFER

An offender may be transferred only on the following conditions:

- (a) the acts or omissions on account of which the sentence has been imposed constitute the essential elements of a criminal offence according to the law of the receiving Party or would constitute such elements of a criminal offence if committed within its jurisdiction;
- (b) where the Hong Kong Special Administrative Region is the receiving Party the offender is a permanent resident of the Hong Kong Special Administrative Region; where Thailand is the receiving Party the offender is a national of Thailand;

- (c) the offender was not sentenced in respect of an offence under the law of Thailand:
 - (i) against the internal or external security of the State;
 - (ii) against the Monarch, his Consort or his sons or daughters; or
 - (iii) against legislation protecting national art treasures.
- (d) the sentence imposed on the offender 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) an offender may not be transferred unless he has served in the jurisdiction of the transferring Party any minimum period of imprisonment, confinement or any other form of deprivation of liberty stipulated by the law of the transferring Party;
- (f) the judgment is final and no further or other legal proceedings relating to the offence or any other offence are pending in the transferring Party;
- (g) the transferring and receiving Parties and the offender all agree to the transfer; provided that, where in view of his age or physical or mental condition either Party considers it necessary, the offender's consent may be given by a person entitled to act on his behalf.

ARTICLE 4

PROCEDURE FOR TRANSFER

- (1) Both Parties shall endeavour to inform such persons as are within the scope of the present Agreement of the substance of the Agreement.
- (2) Every transfer under this Agreement shall be commenced by a written request from the receiving Party to the transferring Party. If the transferring Party approves the request, it shall so inform the receiving Party and initiate procedures to effectuate the transfer. Such requests and communications shall be conveyed through such authorities as may be notified from time to time by one Party to the other.
- (3) The transferring Party shall provide the receiving Party with the following information:
 - (a) a statement of the facts upon which the sentence was based;
 - (b) the termination date of the sentence, the length of time already served by the offender and any credits or remissions to which he is entitled on account of work done, good behaviour, pretrial confinement or other reasons;
 - (c) a certified copy of all judgments and sentences concerning the offender from the date of his detention in the jurisdiction of the transferring Party, and a statement of the relevant law on which they are based;
 - (d) any other additional information requested by the receiving Party.
- (4) 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.
- (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 offender's consent to the transfer in accordance with Article 3(g) of this Agreement is given voluntarily and with full knowledge of the

legal consequences thereof.

- (6) Delivery of the offender by the authorities of the transferring Party to those of the receiving Party shall occur on a date at a place within the jurisdiction of the transferring Party agreed upon by both Parties.

ARTICLE 5

RETENTION OF JURISDICTION

In respect of sentences to be enforced pursuant to this Agreement, the transferring Party shall retain exclusive jurisdiction regarding the judgments of its courts, the sentences imposed by them, and any procedures for revision, modification or cancellation of those judgments and sentences.

ARTICLE 6

PROCEDURE FOR ENFORCEMENT OF SENTENCE

- (1) In enforcing a sentence the receiving Party shall, subject to paragraph (3) of this Article, be bound by the legal nature and duration of the sentence as determined by the transferring 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) No sentence of deprivation of liberty shall be enforced by the receiving Party in such a way as to extend it beyond the period specified in the sentence of the court of the transferring Party.

Such enforcement shall as far as possible correspond with the sentence imposed in the jurisdiction of the transferring Party.

- (4) If the transferring party revises, modifies or cancels the judgment or sentence pursuant to Article 5 of this Agreement or otherwise reduces, commutes or terminates the sentence, the receiving Party shall upon being notified of the decision give effect thereto in accordance with this Article.
- (5) The receiving Party may treat under its law relating to juveniles any offender so categorized under its law regardless of his status under the law of the transferring Party.
- (6) The receiving Party shall provide information to the transferring Party concerning the enforcement of the sentence:
 - (a) if the offender is granted conditional release and when he is discharged on completion of the sentence;
 - (b) if the offender has escaped from custody before enforcement of the sentence has been completed; or
 - (c) if the transferring Party requests a report.

ARTICLE 7

TRANSIT OF OFFENDERS

If either Party transfers an offender from any third jurisdiction, the other Party shall co-operate in facilitating the transit through its jurisdiction of such an offender. The Party intending to make such a transfer shall give advance notice to the other Party of such transit.

ARTICLE 8

EXPENSES

The expenses incurred in the transfer of the offender or in the continued enforcement of the sentence after transfer shall be borne by the receiving Party. The receiving Party may, however, seek to recover all or

part of the cost of transfer from the offender.

ARTICLE 9

SETTLEMENT OF DISPUTES

Any dispute arising out of the interpretation, application or implementation of this Agreement shall be resolved by the Parties through diplomatic channels.

ARTICLE 10

FINAL PROVISIONS

- (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 this Agreement have been complied with.
- (2) Either Party may terminate this Agreement at any time by giving notice to the other. In that event the Agreement shall cease to have effect three months after the date of receipt of the notice.

IN WITNESS WHEREOF, the undersigned being duly authorised thereto by their respective Governments, have signed the present Agreement.

DONE at the Hong Kong Special Administrative Region, this twenty-fifth day of April in the year of two thousand A.D. (B.E. 2543), in duplicate, in the Chinese, English and Thai languages, each text being equally authentic.

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

Regina Ip

For the Government of the Kingdom
of Thailand

Rathakit Manathat