

# Agreement

## Transfer of Sentenced Persons

The Agreement for the Transfer of Sentenced Persons between the Government of Hong Kong and the Government of the United States of America entered into force on 17 April 1999.

**AGREEMENT BETWEEN THE GOVERNMENT OF  
HONG KONG AND THE GOVERNMENT OF  
THE UNITED STATES OF AMERICA  
FOR THE TRANSFER OF SENTENCED PERSONS**

The Government of Hong Kong, having been duly authorised to conclude this agreement by the sovereign government which is responsible for the foreign affairs relating to Hong Kong, and the Government of the United States of America,

Desiring to cooperate fully in the transfer of sentenced persons by enabling such persons to serve sentences of imprisonment, confinement, or other form of deprivation of liberty in the jurisdiction of which they are citizens, nationals, or permanent residents, thereby facilitating their successful reintegration 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 sentenced person may be, or has been, transferred;
- (b) “receiving Party” means the Party to whose jurisdiction the sentenced person may be, or has been, transferred;
- (c) “sentence” means any punishment or measure involving deprivation of liberty ordered by a court for a limited or unlimited period of time on account of a criminal offence;
- (d) “sentenced person” means any person who has been sentenced by a court in the jurisdiction of the transferring Party;
- (e) “permanent resident” means a permanent resident of Hong Kong;
- (f) “citizen or national” means a citizen or national of the United States of America.

**ARTICLE 2**

**GENERAL PRINCIPLES**

- (1) This Agreement shall apply to the United States of America, its territories and possessions, and with respect to Hong Kong, Hong Kong Island, Kowloon and the New Territories.
- (2) 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 or her by the transferring Party.

## **ARTICLE 3**

### **CENTRAL AUTHORITIES**

- (1) Each Party shall designate a Central Authority to implement the provisions of this Agreement.
- (2) The Central Authority for the United States of America shall be the Attorney General. The Central Authority for Hong Kong shall be the Attorney General. Either party may change its Central Authority, in which case it shall notify the other of the change.

## **ARTICLE 4**

### **CONDITIONS FOR TRANSFER**

- (1) A sentenced person may be transferred only on the following conditions:
  - (a) the acts or omissions for which the sentence has been imposed would constitute a criminal offence under the laws of the receiving Party; provided, however, that this condition shall not be interpreted to require that the offence described in the laws of both Parties be identical with respect to matters that do not affect the essential nature of the offence;
  - (b) where Hong Kong is the receiving Party, the sentenced person is a permanent resident of Hong Kong;
  - (c) where the United States of America is the receiving Party, the sentenced person is a citizen or national of the United States of America;
  - (d) at the time the request for transfer is received, the sentenced person has at least one year of the sentence to serve, or is serving an indeterminate or life sentence;
  - (e) the judgment is final, and no further proceedings relating to the offence are pending within the jurisdiction of the transferring Party;
  - (f) the transferring and receiving Parties and the sentenced person all agree to the transfer, provided that, where in view of the age or physical or mental condition of the sentenced person, either Party considers it necessary, the sentenced person's consent may be given by the sentenced person's legal representative;
  - (g) when the United States of America is the transferring Party, and when the sentenced person has been sentenced by the courts pursuant to the laws of a State of the United States of America, the consent of the authorities of the State, as well as the consent of the federal authorities, shall be required for the transfer.
- (2) In exceptional cases, the Parties may agree to a transfer even if the time to be served by the sentenced person is less than that specified in paragraph 1(d) of this Article.

## **ARTICLE 5**

### **VERIFICATION OF CONSENT**

- (1) Each Party shall ensure that the person who gives consent to the transfer as required by Article 4(1)(f) does so voluntarily and with knowledge of the consequences thereof.
- (2) The transferring Party shall permit an official designated by the receiving Party personally to verify, prior to the transfer, that the sentenced person's consent to the transfer in accordance with Article 4(1)(f) is given voluntarily and with knowledge of the consequences thereof.

## **ARTICLE 6**

### **EFFECT OF TRANSFER FOR TRANSFERRING PARTY**

- (1) The taking into charge of the sentenced person by the authorities of the receiving Party shall have the effect of suspending the enforcement of the sentence by the authorities in the transferring Party.
- (2) The transferring Party shall not enforce the sentence if the receiving Party considers enforcement of the sentence to have been completed.

## **ARTICLE 7**

### **PROCEDURES FOR TRANSFER**

- (1) The Parties shall inform sentenced persons of their right to transfer under this Agreement. If a sentenced person wishes to be transferred, he or she may express such a wish to either Party which shall so inform the other Party in writing.
- (2) A request for transfer may be made by the transferring Party or the receiving Party to the other Party. Each Party shall promptly inform the other Party of its decision whether to agree to a request for transfer.
- (3) Requests for transfer shall be in writing and shall include the following information:
  - (a) the name, date and place of birth of the sentenced person;
  - (b) a statement indicating the citizenship, nationality, or residence status of the sentenced person;  
and
  - (c) the location of the sentenced person and permanent address, if available.
- (4) Where a request for transfer has been made, the transferring Party shall, to the extent practicable, provide the receiving Party with the following information in writing:
  - (a) a statement of the facts upon which the conviction and sentence were based and the text of the legal provisions creating the offence;
  - (b) the nature and duration of the sentence, the termination date of the sentence, if applicable, and the length of time already served by the sentenced person and any remission to which he or she is entitled on account of work done, good behaviour, pre-trial confinement or other reasons;
  - (c) a copy of the certificate or record of conviction and sentence.

- (5) Either Party shall, to the extent practicable, 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 to agree to the transfer. In this regard, the receiving Party shall advise the transferring Party whether it intends to adapt the sentence in accordance with Article 8(3).
- (6) 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 within the jurisdiction of the transferring Party agreed upon by both Parties.
- (7) The Parties shall inform the sentenced person in writing of any action taken by the transferring Party or the receiving Party under the preceding paragraphs of this Article.

## **ARTICLE 8**

### **CONTINUED ENFORCEMENT OF SENTENCE**

- (1) The receiving Party shall enforce the sentence as if the sentence had been imposed in the receiving Party or adapt the sentence under the conditions set forth in paragraph 3 of this Article.
- (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. When adapting the sentence, the appropriate authorities of the Receiving Party shall be bound by the findings of fact, insofar as they appear from any opinion, conviction, judgment, or sentence imposed in the transferring Party. The adapted sentence shall be no more severe 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 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, if the transferring Party so requests, provide any information requested in relation to the enforcement of the sentence. Either Party may, at any time, request a special report on the status of the enforcement of an individual sentence.

## **ARTICLE 9**

### **RETENTION OF JURISDICTION**

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

## **ARTICLE 10**

### **TRANSIT OF SENTENCED PERSONS**

If either Party transfers a sentenced person from another jurisdiction, the other Party shall 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**

### **LANGUAGE AND EXPENSES**

- (1) Written communications between the Parties shall be in an official language of the Party to which the communication is addressed.
- (2) Any expenses incurred in relation to the transfer of the sentenced person or the continued enforcement of the sentence after transfer shall be borne by the receiving Party, except costs incurred by the transferring Party exclusively within the jurisdiction of the transferring Party. The receiving Party may, however, seek to recover all or part of the costs of transfer from the sentenced person.

## **ARTICLE 12**

### **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 13**

### **APPLICATION**

This Agreement shall be applicable to the transfer of sentenced persons who have been sentenced either before or after the entry into force of this Agreement.

## **ARTICLE 14**

### **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 completed.

- (2) Either Party may terminate this Agreement at any time by giving notice to the other in writing. In that event, this 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 Hong Kong in duplicate, on this fifteenth day of April in the year of 1997, in the English and Chinese languages, each text being equally authentic.

For the Government of Hong Kong:

For the Government of the  
United States of America:

Peter LAI

Richard BOUCHER