

## **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 Republic of Korea concerning Transfer of Sentenced Persons will enter into force on 13 June 2014.

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

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

AGREEMENT BETWEEN THE GOVERNMENT OF THE  
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The Government of the Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong Special Administrative Region") and the Government of the Republic of Korea (hereinafter referred to as the "Parties"),

Recognising that the Government of the Hong Kong Special Administrative Region has been duly authorised to conclude this Agreement by the Central People's Government of the People's Republic of China,

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 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) "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, unlimited or indeterminate period of time in the course of the exercise of its criminal jurisdiction.

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**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 that person.

**Article 3**

**CENTRAL AUTHORITIES**

1. The Central Authorities designated by the respective Parties shall process requests for transfer in accordance with the provisions of this Agreement.

2. The Central Authorities for this Agreement are as follows:

(a) for the Government of the Hong Kong Special Administrative Region, the Secretary for Justice or an officer authorised by the Secretary for Justice; and

(b) for the Government of the Republic of Korea, the Minister of Justice or an officer authorised by the Minister of Justice.

Either Party may change its Central Authority in which case it shall notify the other of the change.

3. The Parties shall communicate with each other through the Consulate General of the Republic of Korea in the Hong Kong Special Administrative Region, except in cases of urgency or other extraordinary circumstances.

**Article 4**

**CONDITIONS FOR TRANSFER**

1. A sentenced person may be transferred only on the following

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conditions:

- (a) the acts or omissions on account of which the sentence has been imposed would constitute a criminal offence under the law of the receiving Party. However, this condition shall not be interpreted to require that the offence described in the laws of the Parties be identical with respect to matters that do not affect the essential nature of the offence;
- (b) where the Government of the Republic of Korea is the receiving Party, the sentenced person is a national of the Republic of Korea;
- (c) where the Government of the Hong Kong Special Administrative Region is the receiving Party, the sentenced person is a permanent resident of the Hong Kong Special Administrative Region;
- (d) the sentence imposed on the sentenced person is one of imprisonment, confinement or any other form of deprivation of liberty:
  - (i) for life;
  - (ii) for an indeterminate period; 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 transferring Party;
- (f) the transferring Party and the receiving Party both agree to the transfer; and
- (g) the transfer is consented to in writing by the sentenced person, or by the person's legal representative when either Party considers it necessary in view of the person's age or physical or mental condition.

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)(iii) 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)(g) does so voluntarily and with full knowledge of the consequences.
2. 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 sentenced person's consent to the transfer in accordance with Article 4(1)(g) is given voluntarily and with full knowledge of the consequences.

**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 in the transferring Party.
2. The transferring Party shall no longer 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 endeavour to inform sentenced persons to whom this Agreement may apply of the substance of this Agreement.
2. A request for transfer may be made by the transferring Party or the receiving Party to the other Party. If the sentenced person wishes

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to be transferred, that person 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. A requested Party shall promptly inform the other Party in writing of its decision whether to agree to the request for transfer.

4. Requests for transfer shall be in writing and include the following information:

- (a) the name, date and place of birth of the sentenced person;
- (b) a statement indicating the nationality or residence status of the sentenced person; and
- (c) the location and permanent address of the sentenced person, if available.

5. 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 a copy of the relevant law which provides that the acts or omissions on account of which the sentence has been imposed in the transferring Party constitute an 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 that person is entitled on account of work done, good behavior, pre-trial confinement or other reasons; and
- (c) a copy of the certificate of conviction and sentence.

6. 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

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shall advise the transferring Party whether it intends to adapt the sentence in accordance with Article 9(3).

7. 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.

8. 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**  
**RETENTION OF JURISDICTION**

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

**Article 9**  
**CONTINUED ENFORCEMENT OF SENTENCE**

1. Subject to paragraph 5 of this Article, the receiving Party shall enforce the sentence as if the sentence had the same duration or termination date as advised by the transferring Party and had been imposed in the receiving Party.

2. The continued enforcement of the sentence after transfer shall be governed by the law and procedures of the receiving Party, including those governing conditions for service of imprisonment, confinement or other forms of deprivation of liberty, and those providing for the reduction of the term of imprisonment, confinement or other forms of deprivation of liberty by parole, conditional release, remission or otherwise.



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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 that person's 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 Article 8 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:  
(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.

7. The receiving Party shall, if the transferring Party so requests, provide any information requested in relation to the enforcement of the sentence.

**Article 10**  
**TRANSIT OF SENTENCED PERSONS**

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.

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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. Requests for transfer and accompanying documents shall be submitted in, or accompanied by a translation into, an official language of the receiving Party.
2. The receiving Party shall bear the following expenses:
  - (a) the transfer of the sentenced person, except the expenses incurred exclusively in the jurisdiction of the transferring Party; and
  - (b) the continued enforcement of the sentence after transfer.
3. Paragraph 2 of this Article shall not prevent the receiving Party from requiring the sentenced person to bear the expenses of transfer.

**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 entry into

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force of this Agreement.

Article 14  
FINAL PROVISIONS

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 (30) days after the date of the later of two notifications.


2. Either Party may terminate this Agreement at any time by giving notice in writing to the other. In that event, this Agreement shall cease to have effect on the ninetieth (90th) day after the date on which such notice is given. Termination of this Agreement shall not affect transfer proceedings commenced prior to the notification of termination.

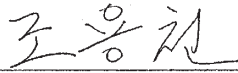
IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Hong Kong, this twenty-eighth day of May, two thousand and thirteen, in the Chinese, Korean and English languages, each text being equally authentic.

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

FOR THE GOVERNMENT OF  
THE REPUBLIC OF KOREA

  
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