

(Unofficial Translation)

ARRANGEMENT BETWEEN
THE GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION

AND

THE GOVERNMENT OF THE MACAU
SPECIAL ADMINISTRATIVE REGION

ON

THE TRANSFER OF SENTENCED PERSONS

Representatives of the Government of the Macau Special Administrative Region and the Government of the Hong Kong Special Administrative Region (hereinafter referred to as the “Parties”).

Through consultations in accordance with Article 95 of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China and Article 93 of the Basic Law of the Macau Special Administrative Region of the People’s Republic of China.

Have agreed as follows on the arrangement concerning mutual co-operation in the transfer of sentenced persons with a view to facilitating their integration into society.

ARTICLE 1

DEFINITIONS

For the purposes of this Arrangement:

- (1) “transferring Party” means the Party from whose jurisdiction the sentenced person may be, or has been transferred;
- (2) “receiving Party” means the Party to whose jurisdiction the sentenced person may be, or has been, transferred;

- (3) sentence” means any punishment or measure involving deprivation of liberty ordered by a court for a limited, unlimited or unfixed period of time in the course of the exercise of its criminal jurisdiction;
- (4) “sentenced person” 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 to serve a sentence.

ARTICLE 2

GENERAL PRINCIPLES

A sentenced person may be transferred from the jurisdiction of one Party to the jurisdiction of the other Party in accordance with the provisions of this Arrangement in order to serve the sentence imposed on him.

ARTICLE 3

LIAISON AUTHORITIES

1. The Liaison Authorities of the Parties shall process requests for transfer in accordance with the provisions of this Arrangement.
2. The Liaison Authority for the Macau Special Administrative Region shall be the Secretariat for Administration and Justice. The Liaison Authority for the Hong Kong Special Administrative Region shall be the Department of Justice. Either Party may change its Liaison Authority in which case it shall notify the other of the change.
3. The Liaison Authorities of the Parties may communicate directly with each other for the purposes of this Arrangement.

ARTICLE 4

CONDITIONS FOR TRANSFER

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

- (1) the conduct 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;
- (2) where the sentenced person is a permanent resident of or has close ties with the receiving Party;
- (3) the judgment is determinate or final, and no further proceedings relating to the offence or any other offence are pending in the jurisdiction of the transferring Party;
- (4) the sentence imposed on the sentenced person is:
 - (i) for a limited period of which at least six months remains to be served at the time of the request for transfer, provided that in exceptional cases, the Parties may still seek a transfer through consultations;
 - (ii) for an indeterminate period;
 - (iii) for an unfixed period.
- (5) 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 lawful agent.

ARTICLE 5

PROCEDURE FOR TRANSFER

1. The Parties shall endeavour to inform sentenced persons that they may apply for transfer under this Arrangement. If a sentenced person wishes to be transferred, he may express such a wish to either Party.

2. A request for transfer may be made in writing by the transferring Party or the receiving Party to the other Party. The transferring Party or the receiving Party shall consider the wish of the sentenced person against the criteria set out in Article 4 of this Arrangement before deciding whether to request a transfer.

3. Where a request for transfer has been made, the transferring Party shall provide the receiving Party with the following information:
 - (1) personal particulars of the sentenced person, including his name, sex, names of parents, date and place of birth. If the sentenced person has a place of abode in the receiving Party's territory, the address of such a place should also be included;
 - (2) an authenticated copy of the judgment or a copy of the certificate of conviction and sentence;
 - (3) the termination date of the sentence, if applicable, and the length of time already served by the sentenced person and any remissions to which he or she is entitled on account of work done, good behaviour, pre-trial confinement or other reasons;
 - (4) a statement of the facts upon which the conviction and sentence were based and a statement of the law providing for the relevant offence;
 - (5) a declaration made by the sentenced person or his lawful agent stating consent to the transfer;
 - (6) documentary proof showing or a declaration stating that the sentenced person is a permanent resident of the receiving Party, or information indicating that the sentenced person has close ties with the receiving Party.

4. Either Party of this Arrangement 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 sentenced person's consent to the transfer in accordance with Article 4(5) of this Arrangement is given voluntarily and with full knowledge of the consequences thereof.
6. 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 jurisdiction of the transferring Party agreed by both Parties.

ARTICLE 6

RETENTION OF JURISDICTION

The transferring Party shall retain jurisdiction for ruling on any appeal lodged for a retrial regarding the judgment, or for the review of convictions and sentences imposed by its courts.

ARTICLE 7

PROCEDURE FOR ENFORCEMENT OF SENTENCE

1. 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.
2. Subject to paragraph 3 of this Article, the receiving Party shall, when enforcing the sentence, be bound by the duration or termination date of the sentence imposed by the transferring Party.

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. In this connection, the Liaison Authority of the receiving Party shall inform the transferring Party of the proposed adaptation of the sentence before deciding whether to agree to the transfer.
4. When adapting the sentence, the appropriate authorities of the receiving Party shall be bound by the facts stated in the judgment of the court of the transferring Party. The adapted sentence shall be no severer than that imposed by the transferring Party in terms of nature or duration. A sentence of deprivation of liberty shall not be converted into one of deprivation of property or of any other forms not involving deprivation of liberty.
5. 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 status under the law of the transferring Party.
6. The receiving Party shall forthwith modify or terminate the enforcement of the sentence after it has been informed of any decision by the transferring Party in accordance with Article 6 of this Arrangement 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.
7. The receiving Party shall inform the transferring Party:
 - (1) when the sentenced person is discharged;
 - (2) if the sentenced person is granted conditional release; or
 - (3) if the sentenced person has escaped from custody before enforcement of the sentence has been completed.
8. The receiving Party shall, if the transferring Party so requests, provide any other information requested in relation to the enforcement of the sentence.

ARTICLE 8

TRANSIT OF SENTENCED PERSON

If either Party intends to transfer a sentenced person to or from the jurisdiction of a third Party, the other Party may 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 9

LANGUAGE

A request for transfer submitted pursuant to this Arrangement and all other relevant documents and information that should be provided shall be in, or translated into, an official language of the receiving Party.

ARTICLE 10

EXPENSES

1. Except those incurred entirely on the part of the transferring Party, the expenses incurred in the transfer of the sentenced person or in the continued enforcement of the sentence after the transfer shall be borne by the receiving Party.
2. The receiving Party may seek to recover all or part of the cost of transfer from the transferred person.

ARTICLE 11

ENTRY INTO FORCE

This Arrangement 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 Arrangement have been complied with.

ARTICLE 12

APPLICATION

This Arrangement shall also be applicable to the enforcement of sentences imposed before the entry into force of this Arrangement.

ARTICLE 13

UNILATERAL TERMINATION

1. Either Party may terminate this Arrangement at any time by giving notice in writing to the other. In that event, this Arrangement shall cease to have effect three months after the date of the receipt of the notice.
2. This Arrangement, even if it is terminated under paragraph 1 of this Article, shall continue to be applicable to the enforcement of the sentences imposed on the transferred persons before this Arrangement has ceased to have effect.

ARTICLE 14

SETTLEMENT OF DISPUTES

Any dispute arising out of the interpretation, application or implementation of this Arrangement shall be resolved by the Liaison Authorities of the Parties through consultations.

Done in duplicate at Hong Kong on 25 May 2005 in the Chinese language.
The English translation of this Arrangement is attached for reference.