

# **ARRANGEMENT BETWEEN THE JUSTICE AUTHORITIES OF TAIWAN AND THE AUTHORITIES OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND ON THE TRANSFER OF SENTENCED PERSONS**

The Justice Authorities of Taiwan and the Authorities of the United Kingdom of Great Britain and Northern Ireland, (hereinafter referred to as the "Authorities");

Taking into consideration developments in international prisoner transfer arrangements;

Have decided as follows:

## **1. DEFINITIONS**

For the purposes of this Arrangement:

- (a) "sentence" means any punishment or measure involving deprivation of liberty ordered by a court in the territory from which a sentenced person may be, or has been, transferred for a determinate or life sentence on account of a criminal offence;
- (b) "judgment" means a decision or order of a court imposing a sentence;

- (c) “sentenced person” means a person who is required to be detained in a prison or any other institution in the territory of the transferring authorities from which that person may be, or has been, transferred by virtue of a judgment made by a court of that territory on account of a criminal offence;
- (d) “transferring authorities” means the persons with the authority to act in an official capacity in respect of the territory from which the sentenced person may be, or has been, transferred;
- (e) “receiving authorities” means the persons with the authority to act in an official capacity in respect of the territory to which the sentenced person may be, or has been, transferred; and
- (f) “close ties” means:
  - (i) in relation to the United Kingdom, an individual from the United Kingdom, who is recognised as a British passport holder who has the right of abode in the United Kingdom or any person whose transfer the United Kingdom considers appropriate having regard to any close ties which that person has with the United Kingdom;
  - (ii) in relation to Taiwan, an individual from Taiwan, who is recognised as a Taiwanese passport holder and is in possession of ‘Household Registration’ in Taiwan.

## **2. GENERAL PRINCIPLES**

1. The Authorities will afford each other the widest measure of cooperation in respect of the transfer of sentenced persons in accordance with the provisions of this Arrangement.
2. Where the Authorities approve and in accordance with the provisions of this Arrangement, a sentenced person may be transferred from the territory of the transferring authorities to the territory of the receiving authorities with the sentenced person's consent in order for the sentenced person to continue serving the sentence imposed by a court in the territory from which the sentenced person is transferred.
3. The transfer of sentenced persons may be requested by either the transferring authorities or the receiving authorities.
4. The Authorities may enter into additional arrangements governing the implementation of this Arrangement.

## **3. CONDITIONS FOR TRANSFER**

Sentenced persons may be transferred under this Arrangement only on the following provisos:

- (a) the sentenced person has close ties to the territory of the receiving authorities for the purposes of this Arrangement;
- (b) the sentenced person consents to the transfer as set out in 6(1);

- (c) the judgment is final and no other legal proceedings relating to the offence or any other offence committed by the sentenced person are pending in the territory of the transferring authorities;
- (d) the acts or omissions for which the sentence has been imposed constitute a criminal offence according to the law of the territory of the receiving authorities;
- (e) the sentenced person has still at least 12 months of the sentence to serve at the time the request for transfer is received; in exceptional cases, the Authorities may approve a transfer even if the sentenced person has less than 12 months of the sentence to serve; and
- (f) the Authorities approve the transfer in accordance with their legal and other requirements.

#### **4. REQUESTS AND REPLIES**

1. Requests for transfer and replies will be made in writing through official channels to the relevant authorities either in English or Chinese with a translation into the other language.
2. For the purpose of 4(1) above, the Authorities will inform each other via an exchange of letters of the authorities which have been designated to make and receive applications for transfer.

#### **5. PROCEDURES FOR TRANSFER**

1. If the receiving authorities request the transfer of a sentenced person, they will provide the following information, where available, to the transferring authorities with the written request for transfer:

- (a) the name, date and place of birth of the sentenced person;
- (b) the location of the sentenced person; and
- (c) the permanent address of the sentenced person in the territory of the receiving authorities.

2. If the transferring authorities request the transfer of a sentenced person or, having received a request to transfer under 5(1) above are prepared, in principle, to consider the request for transfer of a sentenced person, they will inform the receiving authorities in writing, and provide the following information:

- (a) the name, date and place of birth of the sentenced person;
- (b) the location of the sentenced person;
- (c) if available, the permanent address of the sentenced person in the territory of the receiving authorities;
- (d) a statement of the facts upon which the conviction and sentence were based;
- (e) the nature, duration and date of commencement 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 the sentenced person is entitled on account of work done, good behaviour, detention or other reasons;

- (f) a copy of the judgment and information about the law on which it is based; and
- (g) if available, any other additional information, including medical or custodial reports on the sentenced person, which may be of significance for the sentenced person's transfer and for the continued enforcement of the sentence.

3. If the receiving authorities, having considered the information which the transferring authorities have provided, are willing to proceed with the transfer, they will inform the transferring authorities in writing, and provide the following information:

- (a) a statement indicating that the sentenced person has relevant ties to the territory of the receiving authorities for the purposes of this Arrangement;
- (b) a copy of the relevant law of the territory of the receiving authorities which provides that the acts or omissions on account of which the sentence has been imposed in the territory of the transferring authorities constitute a criminal offence according to the law of the territory of the receiving authorities;
- (c) a statement of the effect, in relation to the sentenced person, of any law or regulation relating to that person's detention in the territory of the receiving

authorities after that person's transfer, including a statement, if applicable, of 9(3) of this Arrangement upon that person's transfer; and

(d) a statement of any outstanding charges, convictions or criminal investigations in respect of the sentenced person.

4. If the transferring authorities are willing to proceed with the transfer, they will provide the receiving authorities with their written approval of the provisions of the transfer.
5. Where the transfer is approved, the Authorities will make arrangements for the transfer of the sentenced person. Transfer of the sentenced person by the receiving authorities from the transferring authorities will occur on an approved date and at an approved place.
6. If either the transferring authorities or the receiving authorities decide not to approve the transfer, they will inform the other of its decision in writing.

## **6. CONSENT AND ITS VERIFICATION**

1. The transferring authorities will ensure that the person is required to give consent to the transfer in accordance with 3(b) of this Arrangement, does so voluntarily and with full knowledge of the legal consequences. The procedure for giving such consent will be governed by the law of the transferring authorities.

2. The transferring authorities will afford an opportunity to the receiving authorities to verify that the consent of the sentenced person is given voluntarily and with the full knowledge of the legal consequences of transfer.

## **7. EFFECT OF TRANSFER FOR THE TRANSFERRING AUTHORITIES**

1. The taking into charge of the sentenced person by the receiving authorities will have the effect of suspending the enforcement of the sentence by the transferring authorities.
2. The remaining period of the sentence which has not been served in the transferring authorities will be considered served if the receiving authorities consider enforcement of the sentence to have been completed.

## **8. RETENTION OF JURISDICTION**

The transferring authorities will retain exclusive jurisdiction for the revision or cancellation of the judgment and sentence.

## **9. CONTINUED ENFORCEMENT OF SENTENCE**

1. The receiving authorities will enforce the sentence as if the sentence had been imposed in their territory.
2. The continued enforcement of the sentence after transfer will be governed by the laws and procedures of the territory of the



receiving authorities, including those providing for the conditions of detention and those providing for release.

3. If the sentence is by its nature or duration incompatible with the law of the territory of the receiving authorities, those authorities may, with the approval of the transferring authorities prior to transfer, adapt the sentence to the punishment or measure prescribed by their own law for a similar offence.
4. When adapting the sentence, the receiving authorities will be bound by the findings of fact, insofar as they appear from any opinion, conviction, judgment, or sentence imposed in the territory of the transferring authorities.
5. The adapted sentence will, as far as possible, correspond with the sentence imposed in the territory of the transferring authorities and will not be less than the maximum penalty provided for similar offences under the law of the territory of the receiving authorities. The adapted sentence will not, however, aggravate, by its nature or duration, the sanction imposed in the territory of the transferring authorities, nor exceed the maximum penalty prescribed by the law of the territory of the receiving authorities.
6. When adapting the sentence, the receiving authorities may not convert a sanction involving deprivation of liberty to a pecuniary sanction.
7. The receiving authorities will modify or terminate enforcement of the sentence as soon as they are informed of any decision by the transferring authorities to pardon the sentenced person,

or of any other decision or measure by those authorities that results in termination or reduction of the sentence.

8. The receiving authorities will provide the following information to the transferring authorities in relation to the continued enforcement of the sentence:
  - (a) when the sentence has been completed or conditional release is granted;
  - (b) if the sentenced person has escaped from custody before the sentence has been completed; and
  - (c) if the sentenced person is unable to complete the sentence for any reason.

## **10. RIGHTS OF SENTENCED PERSONS**

1. A sentenced person may express to either the transferring authorities or the receiving authorities an interest in being transferred under this Arrangement.
2. A sentenced person whose transfer is requested under this Arrangement will:
  - (a) be informed by the transferring authorities of the substance of this Arrangement; and
  - (b) have the provisions of the transfer explained in writing in the sentenced person's own language.

## **11. TREATMENT OF SENTENCED PERSONS**

The Authorities will treat all sentenced persons transferred under this Arrangement with respect to their right to life and their protection against torture and cruel, inhuman or degrading treatment or punishment.

## **12. EXPENSES**

The expenses incurred in relation to the transfer of the sentenced person will be borne by the receiving authorities except if there is an arrangement between the Authorities.

## **13. TRANSIT OF SENTENCED PERSONS**

If either of the Authorities transfers a sentenced person to or from any third territory, the other Authorities will co-operate in facilitating the transit of such a sentenced person through its territory. The Authorities intending to make such a transfer will give advance notice to the other Authorities of such transit. This is without prejudice to the right of the Authorities to refuse to grant transit in a particular case.

## **14. TERRITORIAL APPLICATION**

This Arrangement will apply:

- (a) in relation to the United Kingdom, the territory of the United Kingdom of Great Britain and Northern Ireland and the Isle of Man; and to any other territory for the international relations of which the United Kingdom is responsible and to which this Arrangement will have

been extended by mutual arrangement between the Authorities by exchange of notes; and

(b) in relation to Taiwan, to the territory of Taiwan.

## **15. TEMPORAL APPLICATION**

This Arrangement will be applicable to the transfer of sentenced persons who have been sentenced either before or after the coming into operation of this Arrangement.

## **16. SETTLEMENT OF DISPUTES**

Any dispute regarding the interpretation or application of this Arrangement will be resolved by consultations between the Authorities and will not be referred to any domestic or international tribunal or third party for settlement.

## **17. FINAL PROVISIONS**

1. This Arrangement will come into effect on the date of the last signature.
2. Either of the Authorities may terminate this Arrangement at any time by written notification to the other Authorities. Such termination will become effective on the expiration of a six month period after the date of receipt of notification.
3. Notwithstanding any termination, this Arrangement, and any assurances or commitments given pursuant to it, will continue to have effect to the enforcement of sentences of sentenced

persons who have been transferred under this Arrangement  
before the date on which such termination takes effect.

The foregoing represents the arrangements approved by the Authorities.

Signed in duplicate in the Chinese and in the English languages, both texts being equally valid.

**FOR THE JUSTICE  
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**FOR THE AUTHORITIES  
OF THE UNITED  
KINGDOM OF GREAT  
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