

法規名稱：Agreement between the Taipei Cultural and Economic Delegation and the Trade Office of Swiss Industries on the Transfer of Sentenced Persons

簽訂日期：民國 109 年 12 月 11 日

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The Taipei Cultural and Economic Delegation and the Trade Office of Swiss Industries,

desiring to provide sentenced persons the opportunity to serve the sentence imposed on them in their native environment, with a view to facilitating their successful reintegration into society;

have agreed as follows:

ARTICLE 1 - PURPOSE

A sentenced person may be transferred from the transferring territory to the receiving territory in accordance with the provisions of this Agreement in order to serve the sentence imposed on him or her by the courts of the transferring territory.

ARTICLE 2 - DEFINITIONS

For the purposes of this Agreement:

- a) "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;
- b) "sentenced person" means a person who has been convicted of a criminal offence by a final judgment of a court of the transferring territory and has been detained or is required to be detained in the prisons of the transferring territory;
- c) "judgment" means a decision or order of a court imposing a sentence;
- d) “ territory ” means the territory in which the laws on international mutual assistance in criminal matters administered by the competent justice authorities are applied;
- e) "transferring territory" means the territory by whose courts the sentence was imposed and from whose territory the sentenced person may be, or has been, transferred;
- f) "receiving territory" means the territory to which the sentenced person may be, or has been, transferred in order to serve the sentence;
- g) “ authority ” , “ transferring authority ” , “ receiving authority ” means the justice authorities competent with regard to the transfer of sentenced persons. The Taipei

Cultural and Economic Delegation and the Trade Office of Swiss Industries inform each other of the name or names of the authorities responsible for performing functions envisaged in this Agreement, as well as of any changes in the name or contact information of such authority or authorities.

ARTICLE 3 - CONDITIONS FOR TRANSFER

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

- a) the sentenced person is a passport holder of the receiving territory;
- b) the judgment is final and no other legal proceedings relating to the offence or any other criminal offence are under investigation or at trial in the transferring territory;
- c) the transferring territory, the receiving territory and the sentenced person or, where in view of his or her age or his or her physical or mental condition considered necessary by the law of one of the two territories, his or her legal representative, all agree to the transfer;
- d) 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 territory, or would constitute such essential elements of a criminal offence if committed in the area of application of the laws of the receiving territory; and
- e) at the time the request for transfer is received, the sentenced person has at least one year of the sentence to serve; in exceptional cases, the transferring and the receiving territory can approve a transfer if the person has less than one year of the sentence to serve.

ARTICLE 4 - NOTIFICATION WITH A VIEW TO A POSSIBLE TRANSFER

1. A sentenced person to whom this Agreement may apply shall be informed by the transferring or the receiving authority of the substance of this Agreement.
2. If a sentenced person wishes to be transferred, he or she may express such wish to either authority that shall promptly inform the other authority.

ARTICLE 5 - PROCEDURE FOR TRANSFER

1. Either authority may make a request for transfer to the other authority.
2. Requests for transfer shall be made in writing and shall include:
 - a) the full name, gender, nationality and date of birth of the sentenced person; and
 - b) the place of birth and current address of the sentenced person, and the permanent address in the receiving

- territory, if available.
3. If the receiving authority, having considered the information which the transferring authority has provided, is prepared, in principle, to consider the request for transfer of the sentenced person, the transferring authority shall provide the receiving authority with the following information:
 - a) a statement of the facts upon which the conviction and sentence were based;
 - b) a certified copy of all convictions concerning the sentenced person and the laws on which they are based;
 - c) the nature, duration and date of commencement of the sentence, the termination date of the sentence, the length of time already served by the sentenced person and any remission to which he or she is entitled on account of pre-trial confinement, good behaviour or other reasons;
 - d) a declaration containing the consent of the sentenced person or, where in view of his or her age or his or her physical or mental condition considered necessary by the law of one of the two territories, his or her legal representative; and
 - e) whenever appropriate, any medical or social reports on the sentenced person, information about his or her treatment in the transferring territory, and any recommendation for his or her further treatment in the receiving territory.
 4. The receiving authority, if requested by the transferring authority, shall provide a copy of the relevant law of the receiving territory which provides that the acts or omissions on account of which the sentence has been imposed by the courts of the transferring territory constitute a criminal offence according to the law of the receiving territory, or would constitute a criminal offence if committed on its territory.
 5. Either authority may ask to be provided with any relevant information, documents or statements mentioned above before making a request for transfer or taking a decision on whether or not to agree to the transfer.
 6. The requested authority shall promptly inform the requesting authority of its decision whether or not to agree to the requested transfer.
 7. The authorities may communicate directly with each other.

ARTICLE 6 - VERIFICATION OF CONSENT

1. The transferring authority shall ensure that the person required to give consent in accordance with Article 5 paragraph 3(d) consents to the transfer voluntarily and with full knowledge of the legal consequences thereof. The procedure of giving such consent shall be governed by the law of the transferring territory.
2. The transferring authority shall afford an opportunity to the

receiving authority, if the receiving authority so desires, to verify through an official designated by the receiving authority, prior to the transfer, that the necessary consent of the sentenced person or, under the conditions of Article 5 paragraph 3(d), his or her legal representative, has been given voluntarily and with full knowledge of the legal consequences thereof.

ARTICLE 7 - EXECUTION OF TRANSFER

Any transfer of the sentenced person shall be executed on a date, at a place and in manners agreed upon by both authorities.

ARTICLE 8 - EFFECT OF TRANSFER IN THE TRANSFERRING TERRITORY

1. The taking into charge of the sentenced person by the receiving authority shall have the effect of suspending the enforcement of the sentence in the transferring territory.
2. The transferring territory may no longer enforce the sentence if the receiving territory considers enforcement of the sentence to have been completed.

ARTICLE 9 - EFFECT OF TRANSFER IN THE RECEIVING TERRITORY AND CONTINUED ENFORCEMENT

1. The sentence shall be enforced as if it had been imposed in the receiving territory. If it is by nature or duration incompatible with the law of the receiving territory, the competent authorities of the receiving territory may, with the approval of the competent authorities of the transferring territory prior to transfer, adapt it in accordance with the sentence prescribed by their own law for a similar offence. When adapting the sentence, the competent authorities of the receiving territory shall be bound by the findings of fact, insofar as they appear from any conviction, judgment, or sentence imposed by the courts of the transferring territory.
2. The adapted sentence shall, as far as possible, correspond with the sentence imposed in the transferring territory. It shall not aggravate, by its nature or duration, the sanction imposed in the transferring territory, nor exceed the maximum penalty prescribed by the law of the receiving territory. The imposed sentence cannot be transformed into the death penalty. A sanction involving deprivation of liberty may not be converted into a pecuniary sanction.
3. Prior to the transfer, the receiving authority shall submit the decision, indicating the sentence, to the transferring authority.
4. The receiving territory shall reduce or terminate execution of the sentence as soon as it is informed of any decision by the transferring territory to pardon the sentenced person, or of any other decision or measure of the transferring

territory that results in reduction or cancellation of the sentence.

5. The continued enforcement of the sentence after transfer shall be governed by the laws and procedures of the receiving territory, and the latter alone shall be competent to take all appropriate decisions, including those providing for the conditions of detention and those providing for release.
6. The receiving authority shall provide the following information to the transferring authority concerning the execution of the sentence:
 - a) when the sentence has been completed;
 - b) if the sentenced person is granted conditional release;
 - c) if the sentenced person has escaped from custody, or if the sentenced person is unable to serve the sentence completely for any reason, before the sentence has been served completely; or
 - d) if the transferring authority requests, a special report.

ARTICLE 10 - REVIEW OF JUDGMENT; AMNESTY, PARDON OR REMISSION

1. The transferring territory alone is entitled the right to decide on any application for review of the judgment.
2. With the consent of the transferring territory, the sentenced person received to serve a sentence within the receiving territory may be granted amnesty, pardon or remission of the sentence according to the laws of the receiving territory.

ARTICLE 11 - LANGUAGE

Documents transmitted according to this Agreement shall be accompanied by a translation into the language of the authority to which they are addressed. The latter specifies the language in each case.

ARTICLE 12 - EXPENSES

The expenses incurred in relation to the transfer of the sentenced person shall be borne by the receiving territory except costs incurred exclusively in the transferring territory, unless the authorities decide otherwise.

ARTICLE 13 - TRANSIT OF SENTENCED PERSONS

If either authority transfers or receives a sentenced person to or from any third territory, the other authority shall, subject to its law, cooperate in facilitating the transit of such a sentenced person through its territory. The authority intending to make such a transfer shall give advance notice to the other authority of such transit.

ARTICLE 14 - CONSULTATION

The authorities may consult with each other concerning the

interpretation, application or implementation of this Agreement, generally or with respect to a specific case.

ARTICLE 15 - FINAL PROVISIONS

1. This Agreement shall enter into force on the date of the last signature.
2. This Agreement can be applied to the enforcement of sentences imposed either before or after its coming into effect.
3. Either the Taipei Cultural and Economic Delegation, or the Trade Office of Swiss Industries may terminate this Agreement at any time by giving notice in writing to the other. Termination shall take effect six months following the date of receipt of such notification. Termination of this Agreement shall not affect the transfer proceeding commenced prior to the termination.

In witness whereof the undersigned, being duly authorized thereto, have signed this Agreement.

Done in duplicate in English.

For the Taipei Cultural
and Economic
Delegation

Wei-Feng Huang

(Signature)

11.12.2020 Bern

(date)/(location)

For the Trade Office of
Swiss Industries

Reto Renggli

(Signature)

13.11.2020 Taipei

(date)/(location)