

Title Enforcement Rules of the Transfer of Sentenced Persons Act

Promulgated on July 26, 2013

- Article 1 These Rules are enacted pursuant to the provisions of Article 24 of the Transfer of Sentenced Persons Act (hereinafter referred to as the “Act”).
- Article 2 The authorities granting the agreement provided in subparagraphs 1 and 6 of Article 4 and in subparagraph 1 and 4 of Article 18 of the Act shall be the competent authority of the Transferring State and the Ministry of Justice (hereinafter referred to as “MOJ”) of the Republic of China (hereinafter referred to as “ROC”).
The agreement specified in the preceding Paragraph shall be in writing.
The agreement specified in the preceding Paragraph may be transmitted by telefax or any other device if necessary, and the original written agreement shall be delivered within one (1) month of the said transmission.
- Article 3 The written consent of the sentenced person or his/her legal representative provided in subparagraph 5 of Article 4 and subparagraph 3 of Article 18 of the Act shall contain the following particulars:
the offense(s) committed and the sentence duration of the sentenced person.
the intent to serve the sentence in the ROC.
understanding and acceptance of the legal effect of the transfer.
The written consent specified in the preceding Paragraph shall be signed by the sentenced person or his/her representative.
- Article 4 The official(s) appointed by the MOJ or the delegated agency shall give notification of the transfer and confirm the consent, pursuant to Article 5 of the Act, to the sentenced person and his/her legal representative. The said official(s) shall also complete the consent form for the transfer or other supporting documents, both signed by the sentenced person, his/her legal representative and the official(s) appointed by the MOJ or the delegated agency.
In case of obvious difficulty in giving such notification and confirming the consent specified in the preceding paragraph, they may be done by using audio and video devices. The original copies of the consent form or other supporting documents specified in the preceding Paragraph shall be submitted later.
- Article 5 In case the sentenced person requests assistance pursuant to Paragraph 3 of Article 5 of the Act, the official(s) specified in Paragraph 1 of the same article shall confirm the scope and purpose of the dossier inspection requested, and assist the sentenced person to ask the Transferring State for permission for the dossier inspection to obtain relevant material pursuant to the laws of the Transferring State.
In case such dossier inspection specified in the preceding paragraph has to be paid for, the official(s) shall tell the sentenced person to make the payment pursuant to the laws of the Transferring State.
In the event of the sentenced person’s failure to inspect the dossier attributable to the laws of the Transferring State, the transferring procedure of the sentenced person under the Act shall not be affected.
- Article 6 In determining whether it is appropriate or not to receive the sentenced person pursuant to Article 6 and Paragraph 1 of Article 11 of the Act, and to repatriate the sentenced person pursuant to Article 20, the following factors shall be taken into consideration: the laws of the ROC and the Transferring State, humanitarianism, national security, public order, corrective effects and the intention of the sentenced person.
- Article 7 The MOJ may convene a meeting, request written documents by letter or use

other appropriate ways to consult with the relevant authorities for the purpose of deciding on receiving of the sentenced person specified in the preceding Article. If the opinions provided by the relevant authorities concern national defense or other national security secrets and ought to be kept in secrecy, all related documents shall be kept confidential.

- Article 8 The prosecutors in charge shall specify and explain the following particulars while submitting a written application pursuant to Article 6 of the Act:
the name, date of birth, numbers of identification documents, household address of the sentenced person being received, and the correctional facility; his/her legal representative's name, domicile or residence if the sentenced person being received has one.
the name of the court of the Transferring State which made the judgment.
the sentence and the date of the final judgment of imprisonment imposed by the court of the Transferring State.
the offense(s) committed by the sentenced person being received and the facts of the offense(s) found by the court of the Transferring State.
the penal provision(s) applied to the sentenced person being received in the Transferring State and the corresponding penal provision(s) in the ROC.
The sentence imposed by the court of the Transferring State and its conversion to a commensurate penalty pursuant to Article 9 of the Act shall be specified in the application form.
The attached documents specified in Paragraph 1 shall have Chinese translations if they are in foreign languages.
The documents, which have the same effect as the judgments specified in Article 6 of the Act pursuant to the laws of the Transferring State, are considered as the judgments specified in Article 6 of the Act.
If the application under Article 6 of the Act does not comply with legal formality and the noncompliance is correctable, the court may order the prosecutor to make such correction within a designated period of time.
- Article 9 The court may order the prosecutor to state his/her opinions before the court if necessary.
- Article 10 The prosecutor may withdraw his application in writing before the court makes its ruling under Paragraph 1, 2 of the Article 8 of the Act.
- Article 11 The maximum punishment and the minimum punishment specified in Article 9 of the Act shall mean the maximum basic punishment and the minimum basic punishment respectively under the laws of the ROC. Reasons for increasing or decreasing the punishments shall exclude those specified in the General Provisions of the Criminal Code of the ROC. The said reasons specified in the preceding Paragraph shall be exclusively based the facts recognized by the courts of the Transferring State.
- Article 12 The written consent of the sentenced person or his/her legal representative specified in Paragraph 3 of Article 18 of the Act ought to be accompanied with translations which can be understood by the sentenced person.
- Article 13 The notification as specified in Article 19 of the Act shall be made in the language understood by the sentenced person and his/her legal representative whenever possible.
- Article 14 The governing prosecutors office specified in Article 20 of the Act shall be the district prosecutors office where the correctional facility of the sentenced person is located.
- Article 15 When making the determination concerning the repatriation of the sentenced person under Article 6, the MOJ shall convene a meeting to be attended by

representatives of the relevant authorities; it may also invite experts and scholars for consultation.

If the opinions provided by the relevant authorities concern national defense or other national security secrets and ought to be kept in secrecy, all related documents shall be kept confidential.

Article 16 The Rules shall enter into force on July 23, 2013.