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International Transfer of Prisoners (Thailand) Regulations 2002

Statutory Rules 2002 No. 4¹

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I, PETER JOHN HOLLINGWORTH, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *International Transfer of Prisoners Act 1997*.

Dated - 3 OCT 2002 2002

PETER HOLLINGWORTH
 Governor-General

By His Excellency's Command

CHRISTOPHER MARTIN ELLISON
 Minister for Justice and Customs

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- 1 Name of Regulations**
 These Regulations are the *International Transfer of Prisoners (Thailand) Regulations 2002*.
- 2 Commencement**
 These Regulations commence on gazettal.
- 3 Definitions**
Act means the *International Transfer of Prisoners Act 1997*.
Agreement means the Agreement between the Government of Australia and the Government of the Kingdom of Thailand on the Transfer of Offenders and Co-operation in the Enforcement of Penal Sentences, done at Hanoi on 26 July 2001, a copy of the English text of which is set out in Schedule 1.
- 4 Declaration of Thailand as a transfer country**
 Thailand is declared to be a transfer country.
- 5 Application of the Act**
 The Act applies to Thailand, subject to the Agreement.

**Schedule 1 Agreement between the
Government of Australia and
the Government of the
Kingdom of Thailand on the
Transfer of Offenders and
Co-operation in the
Enforcement of Penal
Sentences**
(regulation 3)

AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA
AND THE GOVERNMENT OF THE KINGDOM OF THAILAND ON
THE TRANSFER OF OFFENDERS AND CO-OPERATION IN THE
ENFORCEMENT OF PENAL SENTENCES

The Government of the Kingdom of Thailand and the Government
of Australia;

Taking into consideration the laws and regulations in force
regarding law enforcement of the Parties and the desirability of
enhancing their co-operative efforts in law enforcement and the
administration of justice;

Desiring to co-operate in the enforcement of penal sentences;

Desiring to facilitate the successful reintegration and rehabilitation
of offenders into society; and

Considering that these objectives should be fulfilled by giving
offenders who are deprived of their liberty as a result of their commission
of a criminal offence the opportunity to serve their sentences within their
own society;

Have agreed as follows:

ARTICLE 1
DEFINITIONS

For the purpose of this Agreements:

- (a) “transferring State” means the Party from which the offender may be, or has been transferred;
- (b) “receiving State” means the Party to which the offender may be, or has been transferred;
- (c) “offender” means a person who is required to be detained in a prison, a hospital or any other institution in the transferring State by virtue of an order made by a court in the course of the exercise of its criminal jurisdiction, and also applies to an offender who has been released on parole;
- (d) “sentence” means any punishment or measure involving deprivation of liberty ordered by a court for a limited or unlimited period of time in the course of the exercise of its criminal jurisdiction.

ARTICLE 2
GENERAL PRINCIPLES

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

ARTICLE 3
SCOPE OF APPLICATION

The application of this Agreement shall be subject to the following conditions, namely that:

- (a) 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 State or would constitute such elements of a criminal offence if committed on its territory. This requirement may be waived in a particular case if both Parties agree and to the extent permitted by the domestic law of the transferring State;

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- (b) the offender is a national of the receiving State;
 - (c) the offender was not sentenced in respect of an offence under the law of Thailand:
 - (i) against the internal or external security of the State;
 - (ii) against the Monarch, his Consort or his sons or daughters; or
 - (iii) against legislation protecting national art treasures;
 - (d) the sentence imposed on the offender is one of imprisonment, confinement or any other form of deprivation of liberty in any institution:
 - (i) for life;
 - (ii) for an indeterminate period on account of mental incapacity; 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) an offender may not be transferred unless he has served in the transferring State any minimum period of imprisonment, confinement or deprivation of liberty stipulated by the law of the transferring State;
 - (f) the judgment is final and no further or other legal proceedings relating to the offence or any other offence are pending in the transferring State;
 - (g) the transferring and receiving States and the offender all agree to the transfer; provided that, where in view of his age or physical or mental condition either Party considers it necessary, the offender's consent may be given by a person entitled to act on his behalf.

ARTICLE 4 PROCEDURE FOR TRANSFER

- (1) Both Parties shall endeavour to inform such persons as are within the scope of the present Agreement of the substance of the Agreement.
- (2) Every transfer under this Agreement shall be commenced through diplomatic channels by a written request from the receiving State to the transferring State. The transferring State

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- shall inform the receiving State of its decision through diplomatic channels and, if it approves the request, initiate procedures to effectuate the transfer.
- (3) The transferring State shall provide the receiving State with the following information:
- (a) a statement of the facts upon which the sentence was based;
 - (b) the termination date of the sentence, the length of time already served by the offender and any credits to which he is entitled including on account of good behaviour, pre-trial confinement or other reasons;
 - (c) a certified copy of all judgments and sentences concerning the offender from the date of his detention in the transferring State, and the law on which they are based;
 - (d) any other additional information requested by the receiving State.
- (4) Either Party 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 State shall afford an opportunity to the receiving State, if the receiving State so desires, to verify through an official designated by the receiving State, prior to the transfer, that the offender's consent to the transfer in accordance with Article 3 (g) of this Agreement is given voluntarily and with full knowledge of the consequences thereof.
- (6) Delivery of the offender by the authorities of the transferring State to those of the receiving State shall occur on a date and at a place within the transferring State as agreed upon by both Parties.
- (7) Each Party shall designate a competent authority to administer the requests for transfer for the purposes of this Agreement.

ARTICLE 5
RETENTION OF JURISDICTION

In respect of sentences to be enforced pursuant to this Agreement, the transferring State shall retain exclusive jurisdiction regarding the judgments of its courts, the sentences imposed by them, and any procedures for revision, modification or cancellation of those judgments and sentences.

ARTICLE 6
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 State, 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 State shall be bound by the legal nature and duration of the sentence as determined by the transferring State.
- (3) No sentence of deprivation of liberty shall be enforced by the receiving State in such a way as to extend it beyond the period specified in the sentence of the court of the transferring State. Such enforcement shall as far as possible correspond with the sentence imposed in the transferring State.
- (4) If the transferring State revises, modifies or cancels the judgment or sentence pursuant to Article 5 of this Agreement or otherwise reduces, commutes or terminates the sentence, the receiving State shall upon being notified of the decision give effect thereto in accordance with this Article.
- (5) The receiving State may treat under its law relating to juveniles any offender so categorised under its law regardless of his status under the law of the transferring State.

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- (6) The receiving State shall provide information to the transferring State concerning the enforcement of the sentence:
- (a) if the offender is granted conditional release and when he is discharged on completion of the sentence;
 - (b) if the offender has escaped from custody before enforcement of the sentence has been completed; or
 - (c) if the transferring State requests a report.

ARTICLE 7 TRANSIT OF OFFENDERS

If either Party transfers an offender from any third State, the other Party shall co-operate in facilitating the transit through its territory of such an offender. The Party intending to make such a transfer shall give advance notice to the other Party of such transit.

ARTICLE 8 EXPENSES

The expenses incurred in the transfer of the offender or in the continued enforcement of the sentence after transfer shall be borne by the receiving State. The receiving State may, however, seek to recover all or part of the cost of transfer from the prisoner.

ARTICLE 9 TERRITORIAL APPLICATION

This Agreement shall apply:

- (a) In relation to Australia, to all Australian States and Territories;
- (b) In relation to Thailand, to the Kingdom of Thailand.

ARTICLE 10 TEMPORAL APPLICATION

This Agreement shall be applicable to the enforcement of sentence imposed either before or after its entry into force.

ARTICLE 11
SETTLEMENT OF DISPUTES

Any dispute arising out of the interpretation, application or implementation of this Agreement shall be resolved by the Parties through diplomatic channels.

ARTICLE 12
FINAL PROVISIONS

- (1) This Agreement shall be subject to ratification and shall enter into force on the date on which instruments of ratification are exchanged. This exchange of instruments shall take place at Canberra as soon as possible.
- (2) The present Agreement shall remain in force for five years from the date upon which it enters into force. Thereafter, the Agreement shall continue in force until six months from the date upon which either Party gives written notice to the other Party of its intention to terminate it.

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

DONE at Hanoi, this 26th day of July 2001 in duplicate, in the English and Thai languages, each text being equally authentic.

For the Government of Australia

For the Government of
the Kingdom of Thailand

Alexander Downer

S. Sathirathai

Note

1. Notified in the *Commonwealth of Australia Gazette* on L 2002.

11 October