

Act on the Transnational Transfer of Sentenced Persons

(Act No. 66 of June 12, 2002)

Table of Contents

- Chapter I General Provisions (Articles 1 to 4)
- Chapter II Incoming Transfer (Articles 5 to 27)
- Chapter III Outgoing Transfer (Articles 28 to 38)
- Chapter IV Miscellaneous Provisions (Articles 39 to 47)
- Supplementary Provisions

Chapter I General Provisions

(Purpose)

Article 1 Concerning a Japanese National, etc. being held in prison in a foreign state as the means of enforcing a final and binding decision imposing a Foreign Punishment rendered in a foreign state, or a foreign national being held in prison as the means of enforcing a final and binding decision imposing imprisonment with required labor or imprisonment rendered in Japan, this Act provides for the matters necessary for cooperation in the enforcement of the final and binding decision imposing a Foreign Punishment to which the Japanese National, etc. is subject, and of the final and binding decision imposing imprisonment with required labor or imprisonment to which the foreign national is subject, in light of the importance of facilitating the reformation and rehabilitation of sentenced persons and their smooth reintegration into society by cooperating in enforcement of the final and binding decision in their country of origin through international cooperation, and in order to comply with treaties and conventions that Japan has concluded, providing for transfer of sentenced persons and cooperation in the enforcement of final and binding decisions (hereinafter simply referred to as "Treaties").

(Definitions)

Article 2 In this Act, the meanings of the terms set forth in the following items are as prescribed respectively in those items:

- (i) "Foreign Punishment" means any punishment under the laws and regulations of a foreign state comparable to imprisonment with required labor or imprisonment;
- (ii) "Cooperatively Enforced Punishment" means a Foreign Punishment enforced by Japan to cooperate in the enforcement of a final and binding

- decision with regard to an Offense Resulting in an Incoming Transfer;
- (iii) "Japanese National, etc." means a person who has Japanese nationality or who is a special permanent resident (hereinafter referred to as a "Special Permanent Resident") as stipulated in the Special Act on the Immigration Control of, Inter Alia, Those Who Have Lost Japanese Nationality Pursuant to the Treaty of Peace with Japan (Act No. 71 of 1991);
 - (iv) "Citizen, etc. of a Contracting State" means a person who has nationality in a foreign state that is a contracting party to the Treaties (hereinafter referred to as a "Contracting State"), or a person whom the Contracting State deems to be a citizen based on the Treaties.
 - (v) "Incoming Transfer" means cooperating in the enforcement of a final and binding decision, upon the extradition of a Japanese National, etc. being held in prison in a Contracting State as the means of enforcing a final and binding decision imposing a Foreign Punishment rendered in the Contracting State, from the Contracting State to Japan, based on the Treaties.
 - (vi) "Outgoing Transfer" means entrusting a Contracting State with cooperation in the enforcement of a final and binding decision, upon the extradition of a Citizen, etc. of the Contracting State being held in prison in Japan as the means of enforcing a final and binding decision imposing imprisonment with required labor or imprisonment rendered in Japan, from Japan to the Contracting State, based on the Treaties.
 - (vii) "Sentencing State" means a Contracting State from which Japan is to request an Incoming Transfer, a Contracting State from which Japan has requested an Incoming Transfer, or a Contracting State that has requested that Japan accept an Incoming Transfer.
 - (viii) "Administering State" means a Contracting State from which Japan is to request an Outgoing Transfer, a Contracting State from which Japan has requested an Outgoing Transfer, or a Contracting State that has requested that Japan accept an Outgoing Transfer.
 - (ix) "Incoming Sentenced Person" means a Japanese National, etc. being held in prison in a Sentencing State as the means of enforcing a final and binding decision imposing a Foreign Punishment rendered in the Sentencing State, and a Japanese National, etc. who has been extradited to Japan for an Incoming Transfer and the cooperation in the enforcement of the final and binding decision imposing the Foreign Punishment has not been completed.
 - (x) "Outgoing Sentenced Person" means a Citizen, etc. of a Contracting State being held in prison in Japan as the means of enforcing a final and binding decision imposing imprisonment with required labor or imprisonment rendered in Japan, and a Citizen, etc. of a Contracting State who has been extradited to the Contracting State for an Outgoing Transfer and the cooperation in the enforcement of the final and binding decision imposing

- imprisonment with required labor or imprisonment has not been completed.
- (xi) "Offense Resulting in an Incoming Transfer" means the offense that is found to have been committed by the Incoming Sentenced Person in the final and binding decision imposing a Foreign Punishment regarded as the subject of the cooperation in the enforcement in the Incoming Transfer.
- (xii) "Offense Resulting in an Outgoing Transfer" means the offense that is found to have been committed by the Outgoing Sentenced Person in the final and binding decision imposing imprisonment with required labor or imprisonment regarded as the subject of the cooperation in the enforcement in the Outgoing Transfer.

(Sending or Receiving of Requests)

Article 3 The Minister of Foreign Affairs is to send or receive requests for Incoming Transfers and Outgoing Transfers, as well as documents and notices between Japan and Contracting States required for compliance with the Treaties; provided, however, that in cases of emergency or other extraordinary circumstances, the Minister of Justice is to send or receive the above-mentioned requests and documents if the Minister of Foreign Affairs agrees.

(Measures by the Minister of Foreign Affairs upon Receiving a Request)

Article 4 Upon receiving a request for an Incoming Transfer or an Outgoing Transfer from a Contracting State, the Minister of Foreign Affairs must send the written request, with the related documents and the opinion of the Minister of Foreign Affairs attached, to the Minister of Justice.

Chapter II Incoming Transfer

(Implementation of an Incoming Transfer)

Article 5 An Incoming Transfer may be implemented except in any of the following cases:

- (i) when the Incoming Sentenced Person does not give consent;
- (ii) when the Incoming Sentenced Person is under 14 years of age;
- (iii) if a conduct related to the Offense Resulting in the Incoming Transfer were committed in Japan, and when the conduct would not constitute an offense for which imprisonment or a heavier punishment could be imposed under the laws and regulations of Japan;
- (iv) when a criminal case related to the Offense Resulting in the Incoming Transfer is pending in a Japanese court; or when a verdict of not guilty rendered in a Japanese court has become final and binding in the case; or when a sentence by a Japanese court to imprisonment or a heavier punishment has been enforced in whole or in part, or it has not been

determined that the sentence does not have to be enforced in whole.

(Confirmation of Consent)

Article 6 An official set forth in any of the items below is to confirm the consent of an Incoming Sentenced Person as stipulated in item (i) of the preceding Article. In this case, the official is to have the Incoming Sentenced Person sign and seal an official document containing the items related to the provisions of Articles 16 and 17 and other items specified by Ordinance of the Ministry of Justice in front of the official.

- (i) Japanese ambassadors, ministers or consuls authorized by the Minister of Justice, or officials designated by them, stationed in foreign states;
- (ii) officials designated by the Minister of Justice.

(Measures by the Minister of Justice)

Article 7 (1) When a Sentencing State requests an Incoming Transfer, if the Minister of Justice finds the situation not to fall under any of the items of Article 5 and finds it appropriate to accept the request, the Minister of Justice must send the related documents to the Chief Prosecutor of the Tokyo District Public Prosecutors Office and order the Chief Prosecutor to apply to the Tokyo District Court for an examination as to whether the situation falls under the case where an Incoming Transfer may be implemented.

(2) When the Sentencing State does not request the Incoming Transfer, if the Minister of Justice finds the situation not to fall under any of the items of Article 5 and finds it appropriate to request that the Sentencing State implement an Incoming Transfer, the preceding paragraph also applies.

(3) When the Minister of Justice intends to give an order to apply for an examination pursuant to the provisions of the preceding paragraph, the Minister of Justice must obtain the opinion of the Minister of Foreign Affairs in advance.

(Application for Examination)

Article 8 (1) A public prosecutor of the Tokyo District Public Prosecutors Office must, when an order provided for in paragraph (1) or (2) of the preceding paragraph is made, promptly apply to the Tokyo District Court for an examination as to whether the situation falls under the case where an Incoming Transfer may be implemented.

(2) The application for an examination provided for in the preceding paragraph must be made in writing, with related documents attached thereto.

(Examination by the Tokyo District Court)

Article 9 When the Tokyo District Court receives the application for an

examination provided for in the preceding Article, it is to promptly begin its examination and render a decision.

(Decision of the Tokyo District Court)

Article 10 (1) The Tokyo District Court must, on the basis of the results of the examination under the preceding Article, render its decision according to the following classifications:

- (i) when the application for the examination is unlawful, a decision to dismiss the application;
- (ii) when the situation falls under the case where an Incoming Transfer cannot be implemented, a decision to that effect;
- (iii) when the situation falls under the case where an Incoming Transfer may be implemented, a decision to that effect.

(2) When the Tokyo District Court renders its decision as prescribed in the preceding paragraph, it must promptly serve a public prosecutor of the Tokyo District Public Prosecutors Office with a certified copy of the written judgment and return the related documents.

(Submission of a Certified Copy of the Written Judgment to the Minister of Justice)

Article 11 When a public prosecutor of the Tokyo District Public Prosecutors Office is served with a certified copy of a written judgment, as prescribed in paragraph (2) of the preceding Article, the Chief Prosecutor of the Tokyo District Public Prosecutors Office must promptly submit the certified copy along with the related documents to the Minister of Justice.

(Request to a Sentencing State for an Incoming Transfer)

Article 12 If no request for the Incoming Transfer has been made by the Sentencing State, and when a decision provided for in Article 10, paragraph (1), item (iii) is rendered and the Minister of Justice finds it appropriate, the Minister of Justice may make a request to the Sentencing State for an Incoming Transfer.

(Order for an Incoming Transfer by the Minister of Justice)

Article 13 If a request for an Incoming Transfer has been made by a Sentencing State and a decision provided for in Article 10, paragraph (1), item (iii) is rendered, or if a request for an Incoming Transfer has been made to a Sentencing State pursuant to the provisions of the preceding Article and the Sentencing State notifies Japan of its acceptance of such request, the Minister of Justice must order the Chief Prosecutor of the Tokyo District Public Prosecutors Office to implement the Incoming Transfer with regard to the

request; provided, however, that this does not apply when the Minister of Justice finds it inappropriate to order the Incoming Transfer.

(Notice to the Incoming Sentenced Person)

Article 14 When the Minister of Justice makes a request for an Incoming Transfer to a Sentencing State pursuant to the provisions of Article 12, and orders an Incoming Transfer pursuant to the provisions of the preceding Article, the Minister of Justice must notify the Incoming Sentenced Person to that effect in writing. The same applies when the Minister of Justice decides not to implement the Incoming Transfer, either if the request has been made by the Sentencing State or if the Minister of Justice has confirmed based on the provisions of Article 6 that the Incoming Sentenced Person gives consent.

(Form of the Order for Incoming Transfer)

Article 15 (1) The order provided for in Article 13 must be made in writing, with certified copies of the related documents attached thereto.
(2) The written order prescribed in the preceding paragraph must contain the full name and age of the Incoming Sentenced Person, the name of the Sentencing State, the name of the Offense Resulting in the Incoming Transfer, the term of the Foreign Punishment, the date and place of extradition, and the penal institution to which the Incoming Sentenced Person is to be physically escorted, and must bear the name and seal of the Minister of Justice.

(Method of Enforcing Cooperatively Enforced Punishments)

Article 16 (1) When an Incoming Sentenced Person is extradited from a Sentencing State pursuant to the order provided for in Article 13, cooperation is to be provided in the enforcement of the final and binding decision imposing a Foreign Punishment with regard to the Offense Resulting in the Incoming Transfer, by enforcing the type of Cooperatively Enforced Punishment set forth in the following items, in accordance with the classification of the Foreign Punishment rendered in the final and binding decision with regard to the Offense Resulting in the Incoming Transfer set forth in those items:

- (i) when the Foreign Punishment is comparable to imprisonment with required labor, the Incoming Sentenced Person is to be held in a penal institution and made to engage in designated work.
 - (ii) when the Foreign Punishment is not comparable to the case provided for in the preceding item, the Incoming Sentenced Person is to be held in a penal institution.
- (2) When there are two or more Foreign Punishments rendered in a final and binding decision with regard to the Offense Resulting in the Incoming Transfer, they are enforced as a single instance of Cooperatively Enforced Punishment.

In this case, when all of the Foreign Punishments are comparable to imprisonment with required labor, the type of Cooperatively Enforced Punishment set forth in item (i) of the preceding paragraph applies, and when any of the Foreign Punishments is not comparable to imprisonment with required labor, the type of Cooperatively Enforced Punishment set forth in item (ii) of the preceding paragraph applies.

(Term of Cooperatively Enforced Punishment)

Article 17 (1) The term of Cooperatively Enforced Punishment is to, in accordance with the classification of the Foreign Punishment rendered in the final and binding decision with regard to the Offense Resulting in the Incoming Transfer set forth in the following items, be the term set forth in those items:

- (i) when the Foreign Punishment (or, if there are two or more punishments, either of them) is a life sentence, a life sentence.
- (ii) when the Foreign Punishment does not fall under the case set forth in the preceding item, the term listed in the following item (a) or (b), in accordance with the classification of the number of days ss(excluding the number of days for which the Incoming Sentenced Person is deemed not to have been held in prison in the Sentencing State as the means of enforcing the sentence) set forth in the following item (a) or (b) from the date on which the enforcement of the Foreign Punishment commenced in the Sentencing State (the earliest date if there are two or more dates; the same applies hereinafter) to the last day of the term for which the Incoming Sentenced Person may be held in prison.
 - (a) when it exceeds the number of days from the date on which the enforcement of the Foreign Punishment commenced in the Sentencing State to the date on which 30 years is due to elapse, then the number of days until the date on which 30 years is due to elapse.
 - (b) when it does not exceed the number of days from the date on which the enforcement of the Foreign Punishment commenced in the Sentencing State to the date on which 30 years is due to elapse, then the number of days until the last day.

(2) In the application of the preceding paragraph, when the Foreign Punishment with regard to the Cooperatively Enforced Punishment (all of them if there are two or more) was rendered when the Incoming Sentenced Person was under 20 years of age, "30 years" in item (ii) of the preceding paragraph is deemed to be replaced with "20 years".

(Calculation of the Term of Cooperatively Enforced Punishment)

Article 18 (1) The term of Cooperatively Enforced Punishment is calculated from the date on which the time in Japan corresponding to midnight of the date on

which the enforcement of the Foreign Punishment rendered in the final and binding decision with regard to the Offense Resulting in the Incoming Transfer commenced in the Sentencing State (the earliest date if there are two dates or more) falls.

- (2) The number of days for which the Incoming Sentenced Person is deemed not to have been held in prison in the Sentencing State as the means of enforcing the Foreign Punishment rendered in the final and binding decision with regard to the Offense Resulting in the Incoming Transfer, and the number of days for which the Incoming Sentenced Person is not held in prison after the extradition of the Incoming Sentenced Person from the Sentencing State in compliance with the order provided for in Article 13 are not included in the term of Cooperatively Enforced Punishment.

(Issuance of a Writ of Commitment for Incoming Transfer)

- Article 19 (1) When the order provided for in Article 13 is made, a public prosecutor of the Tokyo District Public Prosecutors Office must issue a writ of commitment for incoming transfer.
- (2) The writ of commitment for incoming transfer prescribed in the preceding paragraph must contain the items set forth in Article 15, paragraph (2), and bear the name and seal of the public prosecutor of the Tokyo District Public Prosecutors Office.
 - (3) The writ of commitment for incoming transfer prescribed in paragraph (1) is to have the same effect as a writ of physical escort, and the warden of the penal institution or other official of the penal institution designated by the warden enforces the writ under the direction of a public prosecutor of the Tokyo District Public Prosecutors Office.
 - (4) The provisions of the first sentence of Article 73, paragraph (1) and Article 74 in the Code of Criminal Procedure (Act No. 131 of 1948) apply mutatis mutandis to the enforcement of the writ of commitment for incoming transfer prescribed in paragraph (1). In this case, the term "a defendant" in those provisions is deemed to be replaced with "an Incoming Sentenced Person provided for in Article 2, item (ix) of the Act on the Transnational Transfer of Sentenced Persons"; the term "the writ of physical escort" in the first sentence of Article 73, paragraph (1) and the term "a writ of physical escort or detention warrant" in Article 74 of the same Code are deemed to be replaced with "a writ of commitment for incoming transfer prescribed in Article 19, paragraph (1) of the Act on the Transnational Transfer of Sentenced Persons"; and the term "a court and other places" in the first sentence of Article 73, paragraph (1) of the same Code is deemed to be replaced with "a penal institution".

(Directions for the Enforcement of Cooperatively Enforced Punishments)

Article 20 (1) The enforcement of Cooperatively Enforced Punishments is directed by a public prosecutor of the Tokyo District Public Prosecutors Office.
(2) The enforcement prescribed in the preceding paragraph must be directed in writing, with a certified copy of the document prescribed in Article 15, paragraph (1) and certified copies of the related documents attached thereto.

(Application of the Penal Code)

Article 21 With regard to the enforcement of the Cooperatively Enforced Punishment, a person upon whom the Cooperatively Enforced Punishment prescribed in Article 16, paragraph (1), item (i) is to be enforced is deemed to be a person who has been sentenced to imprisonment with required labor; a person upon whom the Cooperatively Enforced Punishment t prescribed in item (ii) of the same paragraph is to be enforced is deemed to be a person who has been sentenced to imprisonment; the Cooperatively Enforced Punishment prescribed in item (i) of the same paragraph is deemed to be imprisonment with required labor; the Cooperatively Enforced Punishment in item (ii) of the same paragraph is deemed to be imprisonment; and the following provisions apply: Article 22, Article 24, Article 28, Article 29, Articles 31 to 33 and Article 34, paragraph (1) of the Penal Code (Act No. 45 of 1907); Article 474, Articles 480 to 482, Articles 484 to 489, Articles 502 to 504 and Article 507 of the Code of Criminal Procedure; Article 2, paragraph (1), Article 27, paragraph (1), Article 56, Article 57 and Article 61 of the Juvenile Act (Act No. 168 of 1948); and Article 3, Article 4, paragraph (2), Articles 11 to 14, Article 16, Articles 23 to 30, Article 33, Article 34, paragraph (1), Articles 35 to 40, Article 48, Article 49, paragraph (1), Article 50, paragraph (1), Article 51, Article 52, paragraphs (2) and (3), Article 53, paragraphs (2) and (3), Article 54, paragraph (2), Articles 55 to 58, Articles 60 to 65-4, Articles 75 to 77, Article 82, Articles 84 to 88, and Articles 91 to 98 of the Offenders Rehabilitation Act (Act No. 88 of 2007). In this case, the term "one-third" in Article 28 of the Penal Code is deemed to be replaced with "one-third (including the number of days for which an Incoming Sentenced Person is deemed to have been held in prison as the means of enforcing the Foreign Punishment provided for in Article 2, item (i) of the Act on the Transnational Transfer of Sentenced Persons (hereinafter referred to as the "Foreign Punishment") rendered in the final and binding decision with regard to the Offense Resulting in the Incoming Transfer provided for in Article 2, item (xi) of the same Act (hereinafter referred to as the "Offense Resulting in the Incoming Transfer") in a Sentencing State provided for in Article 2, item (vii) of the same Act (hereinafter referred to as the "Sentencing State"))"; the term "10 years" is deemed to be replaced with "10 years (including the number of days for which an Incoming Sentenced Person is deemed to have been held in prison as the means of enforcing the Foreign

Punishment rendered in the final and binding decision with regard to the Offense Resulting in the Incoming Transfer in the Sentencing State); the term "after a sentence has become final and binding" in Article 32 of the same Code is deemed to be replaced with "after the extradition from a Sentencing State in accordance with the order prescribed in Article 13 of the Act on the Transnational Transfer of Sentenced Persons"; the term "two or more" in Article 474 of the Code of Criminal Procedure is deemed to be replaced with "Cooperatively Enforced Punishment provided for in Article 2, item (ii) of the Act on the Transnational Transfer of Sentenced Persons (hereinafter referred to as the "Cooperatively Enforced Punishment)"; the terms "the heaviest sentence" and "a heavier sentence" in the same Article are deemed to be replaced with "the Cooperatively Enforced Punishment", the term "the other sentences" in the same Article is deemed to be replaced with "the principal punishment"; the term "the public prosecutor's office which corresponds to the sentencing court" in Article 480 and Article 482 of the same Code is deemed to be replaced with "the Tokyo District Public Prosecutors Office"; the term "category of the sentence" in Article 487 of the same Code is deemed to be replaced with "types of Cooperatively Enforced Punishment"; the term "a person subject to the execution of a decision" in Article 502 in the same Code is deemed to be replaced with "a person upon whom the Cooperatively Enforced Punishment is to be enforced"; the term "the court that rendered such decision" in the same Article is deemed to be replaced with "the Tokyo District Court"; and the term "a criminal conviction against a person for whom protective measures are in place becomes final and binding" in Article 27, paragraph (1) of the Juvenile Act and the term "a sentence of imprisonment with or without work, or misdemeanor imprisonment without work becomes final and binding in the course of execution of a protective measure" in Article 57 in the same Act are deemed to be replaced with "a person upon whom the Cooperatively Enforced Punishment provided for in Article 2, item (ii) of the Act on the Transnational Transfer of Sentenced Persons is to be enforced is currently in the course of execution of a protective measure"; any other necessary technical replacement of terms in connection with the application of these provisions is determined by Cabinet Order.

(Special Provisions on Parole)

Article 22 Parole may be granted to an Incoming Sentenced Person upon whom a Foreign Punishment with regard to the Cooperatively Enforced Punishment (all punishments if there are two or more) was rendered when the Incoming Sentenced Person was under 20 years of age, after the lapse of the following periods (including the number of days the Incoming Sentenced Person is deemed to have been held in prison in the Sentencing State as the means of

enforcing the Foreign Punishment):

- (i) seven years in the case of a Cooperatively Enforced Punishment for life;
- (ii) one-third of the term in the case of a Cooperatively Enforced Punishment with a definite term.

(Special Provisions on the Notifying Obligation of the Warden of the Penal Institution)

Article 23 When the direction prescribed in Article 20, paragraph (1) is implemented, and if the Incoming Sentenced Person has already served the term set forth in Article 28 of the Penal Code applied pursuant to the provisions of Article 21 of this Act or the term set forth in Article 22 of this Act, the warden of the penal institution must promptly notify the Regional Parole Board as such.

(Special Provisions on Expiration of the Parole Term)

- Article 24 (1) If an Incoming Sentenced Person as provided for in Article 22 has been paroled with regard to the Cooperatively Enforced Punishment for life, and 10 years have passed since the parole without rescission, it is regarded that the enforcement of the Cooperatively Enforced Punishment has been completed.
- (2) If an Incoming Sentenced Person as provided for in Article 22 has been paroled with regard to the Cooperatively Enforced Punishment with a definite term, and the same length of time as the term for which the Cooperatively Enforced Punishment is enforced before parole (including the number of days for which the Incoming Sentenced Person is deemed to have been held in prison in the Sentencing State as the means of enforcing the Foreign Punishment rendered in a final and binding decision with regard to the Offense Resulting in the Incoming Transfer) or the term of the Cooperatively Enforced Punishment has passed since the parole without rescission, it is regarded that the enforcement of the Cooperatively Enforced Punishment has been completed as of the end of the shorter of the two terms mentioned above.

(Mitigation of the Enforcement of Cooperatively Enforced Punishments)

- Article 25 (1) The National Offenders Rehabilitation Commission may submit a proposal to the Minister of Justice for the mitigation or exemption of the enforcement of the Cooperatively Enforced Punishment against an Incoming Sentenced Person.
- (2) When the proposal prescribed in the preceding paragraph has been submitted, the Minister of Justice may mitigate or exempt the enforcement of the Cooperatively Enforced Punishment against the Incoming Sentenced Person.
- (3) When the Minister of Justice has mitigated or exempted the enforcement of

the Cooperatively Enforced Punishment pursuant to the provisions of the preceding paragraph, the Minister must issue a certificate of mitigation of the enforcement of the Cooperatively Enforced Punishment or a certificate of exemption of the enforcement of the Cooperatively Enforced Punishment to the Incoming Sentenced Person.

- (4) The provisions in Article 11 of the Pardon Act (Act No. 20 of 1947) and Article 90 of the Offenders Rehabilitation Act apply mutatis mutandis to the mitigation or exemption of the enforcement of a Cooperatively Enforced Punishment. In this case, the term "judgment of conviction being rendered" in Article 11 of the Pardon Act is deemed to be replaced with "the order prescribed in Article 13 of the Act on the Transnational Transfer of Sentenced Persons"; the term "general pardon, special pardon, commutation of sentence, remission of execution of sentence or restoration of rights" is deemed to be replaced with "mitigation or exemption of the enforcement of a Cooperatively Enforced Punishment under Article 25, paragraph (2) in the same Act"; the terms "the recommendation under the preceding Article" in Article 90, paragraph (1) of the Offenders Rehabilitation Act, and "the recommendation for a special pardon, commutation of sentence or remission of execution of the sentence" in paragraph (2) of the same Article are deemed to be replaced with "proposal provided for in Article 25, paragraph (1) of the Act on the Transnational Transfer of Sentenced Persons".

(Measures by the Minister of Justice upon Receiving a Notice of Inability to Enforce the Final and Binding Decision Imposing a Foreign Punishment)
Article 26 (1) When there is notice from a Sentencing State that the final and binding decision imposing a Foreign Punishment with regard to an Offense Resulting in an Incoming Transfer (all of them if there are two or more) has been rescinded or its enforcement has otherwise become impossible in the Sentencing State, the Minister of Justice must revoke the order prescribed in Article 13 and order the Chief Prosecutor of the Tokyo District Public Prosecutors Office to release the Incoming Sentenced Person.

- (2) When the order of release under the preceding paragraph is issued, a public prosecutor of the Tokyo District Public Prosecutors Office must immediately release the Incoming Sentenced Person.
- (3) Except as provided in paragraph (1), when there is a notice from a Sentencing State that the type of the Foreign Punishment rendered in the final and binding decision with regard to the Offense Resulting in an Incoming Transfer, or the last day of the term for which the Incoming Sentenced Person may be held in prison in the Sentencing State is to be changed due to commutation or for other reasons, the type of the Cooperatively Enforced Punishment and its term are to be changed as provided for in Articles 16 and 17, based on the

notice.

(Notice to the Sentencing State)

Article 27 The Minister of Justice must promptly notify the Sentencing State if the status of the Incoming Sentenced Person falls under any of the following items:

- (i) the enforcement of the Cooperatively Enforced Punishment has been completed, or the Incoming Sentenced Person is not subject to its further enforcement;
- (ii) the Incoming Sentenced Person dies before the enforcement of the Cooperatively Enforced Punishment has been completed, or has escaped from custody.

Chapter III Outgoing Transfer

(Implementation of an Outgoing Transfer)

Article 28 An Outgoing Transfer may be implemented except in any of the following cases:

- (i) when the Outgoing Sentenced Person does not give consent;
- (ii) if a conduct related to the Offense Resulting in the Outgoing Transfer were committed in the Administering State, and when the conduct would not constitute an offense under the laws and regulations of the Administering State;
- (iii) when, regarding the Offense Resulting in the Outgoing Transfer, the request provided for in Article 350 of the Code of Criminal Procedure; or, regarding a criminal case related to the Offense Resulting in the Outgoing Transfer, a request to restore the appeal right or request for a retrial or procedures for an extraordinary appeal to the court of last resort is pending in a Japanese court;
- (iv) when, regarding the Offense Resulting in the Outgoing Transfer, an application or a petition for a pardon has been made and the procedures have not yet been completed; or when, regarding imprisonment with required labor or imprisonment rendered in a final and binding decision with regard to the Offense Resulting in the Outgoing Transfer, an application or a petition for commutation or exemption of the enforcement of the punishment has been made and the procedures have not yet been completed;
- (v) when a fine, confiscation or collection of equivalent value is imposed cumulatively in a final and binding decision imposing imprisonment with required labor or imprisonment with regard to the Offense Resulting in the Outgoing Transfer, and if its enforcement has not been completed nor has it been determined that the Outgoing Sentenced Person is not subject to that

enforcement;

(vi) when a criminal case related to an offense other than the Offense Resulting in the Outgoing Transfer is pending in a Japanese court; or regarding the case, if the Outgoing Sentenced Person has been sentenced to punishment by a Japanese court for such offense and the enforcement of the sentence has not been completed, nor has it been determined that the Outgoing Sentenced Person is not subject to the enforcement.

(Notification of the Contents of Treaties)

Article 29 When the decision of imprisonment with required labor or imprisonment rendered to a Citizen, etc. of a Contracting State held in a penal institution becomes final and binding, the warden of the penal institution must promptly notify the sentenced person of the material contents of the provisions of Treaties. The same applies when a decision of imprisonment with required labor or imprisonment is rendered to a Citizen, etc. of a Contracting State and the Citizen, etc. of the Contracting State is taken to a penal institution for the enforcement of the final and binding decision.

(Notice to the Outgoing Sentenced Person)

Article 30 If an Outgoing Sentenced Person submits a proposal for an Outgoing Transfer, and, based on Treaties, if Japan has given notice to the state that is to be the Administering State for the Outgoing Sentenced Person, the Minister of Justice must notify the Outgoing Sentenced Person to that effect in writing.

(Consent of the Outgoing Sentenced Person)

Article 31 (1) When the Outgoing Sentenced Person consents pursuant to Article 28, item (i), the Outgoing Sentenced Person must sign and seal an official document containing the items specified by Ordinance of the Ministry of Justice in the presence of the warden or other official designated by the warden of the penal institution where the Outgoing Sentenced Person is being held.
(2) When the Outgoing Sentenced Person signs and seals the document set forth in the preceding paragraph, the warden of the penal institution must promptly submit the document to the Minister of Justice.

(Interview for Confirmation of Consent)

Article 32 (1) When an ambassador, minister, consul or official in charge of a consular mission of a Contracting State, or a government employee of the Contracting State designated by the Contracting State requests an interview with an Outgoing Sentenced Person to confirm whether or not the Outgoing Sentenced Person consents to the Outgoing Transfer based on the Treaties, the warden of the penal institution must honor the request.

(2) The interview prescribed in the preceding paragraph is to be conducted within the limits permitted by laws and regulations.

(Request to an Administering State for an Outgoing Transfer)

Article 33 (1) When the Minister of Justice does not find the situation to fall under any of the items of Article 28 and finds it otherwise appropriate, the Minister of Justice may make a request to the Administering State for an Outgoing Transfer.

(2) When the Minister of Justice intends to make the request set forth in the preceding paragraph, the Minister of Justice must obtain the opinion of the Minister of Foreign Affairs in advance.

(Decision of an Outgoing Transfer by the Minister of Justice)

Article 34 (1) If a request for an Outgoing Transfer has been made by an Administering State and the Minister of Justice does not find the situation to fall under any of the items of Article 28, or if a request for an Outgoing Transfer has been made to an Administering State pursuant to the provisions of paragraph (1) of the preceding Article and the Administering State notifies Japan of its acceptance of such request, the Minister of Justice must make the decision to implement the Outgoing Transfer; provided, however, that this does not apply when the Minister of Justice finds it inappropriate to implement the Outgoing Transfer.

(2) When the Minister of Justice makes the decision set forth in the preceding paragraph, the Minister of Justice must order the warden of the penal institution where the Outgoing Sentenced Person is being held to extradite the Outgoing Sentenced Person with regard to the decision.

(3) When the Minister of Justice decides not to implement the Outgoing Transfer pursuant to the provisions of the proviso in paragraph (1), the Minister of Justice must consult with the Minister of Foreign Affairs in advance.

(Notice to the Outgoing Sentenced Person)

Article 35 When the Minister of Justice makes a request for an Outgoing Transfer to an Administering State pursuant to the provisions of Article 33, paragraph (1), and orders an extradition pursuant to the provisions of paragraph (2) of the preceding Article, the Minister of Justice must notify the Outgoing Sentenced Person to that effect in writing. The same applies when the Minister of Justice decides not to implement the Outgoing Transfer, either if the request has been made by the Administering State or if the Outgoing Sentenced Person has given consent based on the provisions of Article 31, paragraph (1).

(Mutatis Mutandis Application to Implementation of an Outgoing Transfer)

Article 36 The provisions of Article 16, paragraphs (1), (3) and (4), Article 19, paragraph (1), Article 20, paragraph (1) and Article 21 of the Act of Extradition (Act No. 68 of 1953) apply mutatis mutandis to cases of extraditing an Outgoing Sentenced Person to an Administering State pursuant to the order provided for in Article 34, paragraph (2). In this case, the term "the order of surrender as provided for in paragraph (1) of Article 14" in Article 16, paragraph (1) of the Act of Extradition and the term "the order to surrender the fugitive as provided for in paragraph (1) or (5) of Article 17" in Article 20, paragraph (1) of the same Act are deemed to be replaced with "the order provided for in Article 34, paragraph (2) of the Act on the Transnational Transfer of Sentenced Persons"; the term "the full name of the fugitive, the requested offense, the requesting country, the place of surrender, the time limit of surrender and the date of issuance" in Article 16, paragraph (4) of the same Act is deemed to be replaced with "the full name, age and nationality of the Outgoing Sentenced Person provided for in Article 2, item (x) of the Act on the Transnational Transfer of Sentenced Persons (hereinafter referred to as the "Outgoing Sentenced Person"), the name of the Administering State in Article 2, item (viii) of the same Act (hereinafter referred to as the "Administering State"), the name of the Offense Resulting in the Outgoing Transfer provided for in Article 2, item (xii) of the same Act, the name and term of punishment imposed, and the date and place of extradition"; the term "paragraph (3) of Article 16" in Article 19, paragraph (1) of the same Act is deemed to be replaced with "Article 16, paragraph (3) of the Act of Extradition applied mutatis mutandis by the provisions of Article 36 of the Act on the Transnational Transfer of Sentenced Persons"; the term "the requesting country" in Article 19, paragraph (1), Article 20, paragraph (1) and Article 21 of the same Act is deemed to be replaced with "the Administering State"; the term "the fugitive" in Article 20, paragraph (1) of the same Act is deemed to be replaced with "the Outgoing Sentenced Person"; the term "paragraph (1) of Article 20" and "the fugitive" in Article 21 of the same Act are deemed to be replaced with "Article 20, paragraph (1) of the Act of Extradition applied mutatis mutandis by the provisions of Article 36 of the Act on the Transnational Transfer of Sentenced Persons" and "the Outgoing Sentenced Person", respectively.

(Completion of Enforcement of Imprisonment with Required Labor or Imprisonment When an Outgoing Transfer Is Implemented)

Article 37 The enforcement of imprisonment with required labor or imprisonment rendered in a final and binding decision with regard to the Offense Resulting in the Outgoing Transfer is deemed to have been completed

on the date on which the time in Japan corresponding to midnight of the date on which the cooperation in the enforcement is completed in the Administering State falls.

(Notice to the Administering State)

Article 38 If either of the following situations arises after the Outgoing Sentenced Person has been extradited to the Administering State pursuant to the order provided for in Article 34, paragraph (2), the Minister of Justice must immediately notify the Administering State to that effect:

- (i) when it is unable to enforce the final and binding decision imposing imprisonment with required labor or imprisonment with regard to the Offense Resulting in the Outgoing Transfer by virtue of a request provided for in Article 350 of the Code of Criminal Procedure, a restoration of appeal right, retrial, extraordinary appeal to the court of last resort, or procedures for the objection provided for in Article 502 in the same Code, or if the type of punishment or the last day of the term for which the Outgoing Sentenced Person may be held in prison has been changed.
- (ii) regarding the Offense Resulting in the Outgoing Transfer, when a general pardon, special pardon or commutation by Cabinet Order is granted, or, regarding imprisonment with required labor or imprisonment rendered in a final and binding decision with regard to the Offense Resulting in the Outgoing Transfer, when commutation or exemption of the enforcement of the punishment is implemented.

Chapter IV Miscellaneous Provisions

(Sending Back of the Incoming Sentenced Person)

Article 39 (1) Regarding an Incoming Sentenced Person extradited from the Sentencing State pursuant to the order provided for in Article 13 (excluding any Incoming Sentenced Person who is on parole pursuant to Article 28 of the Penal Code applied by the provisions of Article 21 of this Act or pursuant to the provisions of Article 22 of this Act), the Minister of Justice may order the warden of the penal institution where the Incoming Sentenced Person is held to extradite the Incoming Sentenced Person to the Sentencing State (hereinafter in this Article referred to as "sending back"), if the Incoming Sentenced Person is to appear for a retrial of the final and binding decision imposing a Foreign Punishment with regard to the Offense Resulting in the Incoming Transfer, or other unavoidable circumstances are found to exist, and if the Sentencing State requests the extradition.

(2) When the Minister of Justice has ordered the sending back pursuant to the provisions of the preceding paragraph, the Minister of Justice must notify the

Incoming Sentenced Person to that effect in writing.

- (3) When the sending back is implemented pursuant to the order provided for in paragraph (1), the cooperation in the enforcement of the final and binding decision imposing the Foreign Punishment with regard to the Offense Resulting in the Incoming Transfer is deemed to have been completed.
- (4) The provisions of Article 16, paragraphs (1), (3) and (4), Article 19, paragraph (1), Article 20, paragraph (1) and Article 21 of the Act of Extradition apply mutatis mutandis to cases of implementing sending back pursuant to the order provided for in paragraph (1) above. In this case, the term "the order of surrender provided for in paragraph (1) of Article 14" in Article 16, paragraph (1) in the same Act and the term "order to surrender of the fugitive as provided for in paragraph (1) or (5) of Article 17" in Article 20, paragraph (1) in the same Act are deemed to be replaced with "the order provided for in Article 39, paragraph (1) of the Act on the Transnational Transfer of Sentenced Persons"; the term "the full name of the fugitive, the requested offense, the requesting country, the place of surrender, the time limit of surrender and the date of issuance" in Article 16, paragraph (4) in the same Act is deemed to be replaced with "the full name and age of the Incoming Sentenced Person provided for in Article 2, item (ix) of the Act on the Transnational Transfer of Sentenced Persons (hereinafter referred to as the "Incoming Sentenced Person"), the name of the Sentencing State provided for in Article 2, item (vii) of the same Act (hereinafter referred to as the "Sentencing State"), the name of the Offense Resulting in the Incoming Transfer provided for in Article 2, item (xi) of the same Act, the term of the Foreign Punishment provided for in Article 2, item (i) of the same Act, and the date and place of extradition"; the term "paragraph (3) of Article 16" in Article 19, paragraph (1) in the same Act is deemed to be replaced with "Article 16, paragraph (3) of the Act of Extradition applied mutatis mutandis by the provisions of Article 39, paragraph (4) of the Act on the Transnational Transfer of Sentenced Persons"; the term "the requesting country" in Article 19, paragraph (1), Article 20, paragraph (1), and Article 21 in the same Act is deemed to be replaced with "the Sentencing State"; the term "the fugitive" in Article 20, paragraph (1) in the same Act is deemed to be replaced with "the Incoming Sentenced Person"; the terms "paragraph (1) of Article 20" and "the fugitive" in Article 21 in the same Act are deemed to be replaced with "Article 20, paragraph (1) of the Act of Extradition applied mutatis mutandis by the provisions of Article 39, paragraph (4) of the Act on the Transnational Transfer of Sentenced Persons" and "the Incoming Sentenced Person", respectively.

(Holding in Prison in the Administering State)

Article 40 Regarding a sentenced person set forth below who was extradited to

an Administering State pursuant to an order provided for in Article 34, paragraph (2), and upon whom imprisonment with required labor or imprisonment rendered in a final and binding decision with regard to the Offense Resulting in the Outgoing Transfer is to be enforced in Japan, the term for which the sentenced person has been held in prison in the Administering State as the means of cooperating in the enforcement of the final and binding decision is deemed to have been served as the enforcement of the imprisonment with required labor or imprisonment.

(i) a sentenced person who is extradited from the Administering State in order to appear for a retrial of the final and binding decision imposing imprisonment with required labor or imprisonment with regard to the Offense Resulting in the Outgoing Transfer.

(ii) a sentenced person who is not able to be held in prison, under probation or other equivalent measure as the means of cooperating in the enforcement of a final and binding decision imposing imprisonment with required labor or imprisonment with regard to the Offense Resulting in the Outgoing Transfer in the Administering State, due to the sentenced person's escape from custody or other causes.

(Special Provisions on the Proviso in Article 5 of the Penal Code)

Article 41 When a Japanese National, etc. extradited from a Sentencing State pursuant to an order provided for in Article 13 is sentenced to punishment in a criminal case with regard to the Offense Resulting in the Incoming Transfer for which the prosecution was instituted after the extradition, the enforcement of that punishment is to be exempted notwithstanding the provisions of the proviso in Article 5 of the Penal Code.

(Special Provisions on Escape from Custody)

Article 42 An Incoming Sentenced Person who is held in a penal institution pursuant to the provisions of Article 16 is deemed to be a sentenced person held in prison pursuant to the enforcement of a decision, and the provisions of Article 97, Article 98, or Article 102 (limited to the parts in Article 97 and Article 98 regarding an attempted offense) of the Penal Code apply.

(Costs of an Incoming Transfer)

Article 43 An Incoming Sentenced Person extradited from a Sentencing State pursuant to an order provided for in Article 13 is to bear the costs of the transportation with regard to the Incoming Sentenced Person that Japan has expensed among the costs incurred in escorting the Incoming Sentenced Person from the Sentencing State to Japan; provided, however, that when it is evident that the Incoming Sentenced Person is indigent and therefore unable to pay

the full amount, the Minister of Justice may waive the whole or part of the costs as specified by Cabinet Order.

(Special Provisions on the Immigration Control and Refugee Recognition Act)

- Article 44 (1) A Special Permanent Resident landing in Japan pursuant to an order provided for in Article 13 is deemed to have landed in Japan with the stamp of permission to land under Article 9, paragraph (1) of the Immigration Control and Refugee Recognition Act (Cabinet Order No. 319 of 1951, hereinafter referred to as the "Immigration Control Act").
- (2) If a written deportation order has been issued pursuant to the provisions of Article 47, paragraph (5), Article 48, paragraph (9), or Article 49, paragraph (6) of the Immigration Control Act to an Outgoing Sentenced Person who has left Japan pursuant to an order provided for in Article 34, paragraph (2) of this Act, the Outgoing Sentenced Person is deemed to have been deported from Japan pursuant to the written deportation order, with regard to the application of Article 5, paragraph (1), items (v-2), (ix) and (x) of the Immigration Control Act. In this case, the term "deportation" in Article 5, paragraph (1), item (ix) of the same Act is deemed to be replaced with "departure".

(Rules of the Supreme Court)

- Article 45 Beyond those matters provided for in this Act, necessary procedural rules concerning examination by the Tokyo District Court are prescribed by the Rules of the Supreme Court.

(Measures by the Minister of Justice Concerning the Approval of Transportation through Japanese Territory)

- Article 46 (1) The Minister of Justice, upon a request made by a foreign state through diplomatic channels, may approve the request that the authorities of the foreign state escort a person, to whom a final and binding decision imposing a Foreign Punishment has been rendered in the foreign state or another foreign state, through the territory of Japan for cooperation in its enforcement, except in any of the following circumstances:
- (i) if a conduct related to the offense in the final and binding decision imposing the Foreign Punishment were committed in Japan, and when the conduct would not constitute an offense under the laws and regulations of Japan;
 - (ii) when the person subject to the final and binding decision imposing the Foreign Punishment is a Japanese citizen.
- (2) With regard to a person to whom a final and binding decision imposing a Foreign Punishment has been rendered, when a request for approval provided for in the preceding paragraph is made by a Contracting State based on Treaties, the Minister of Justice must approve the request except in any of the

following cases provided for in the items of the same paragraph.

- (3) The Minister of Justice must consult with the Minister of Foreign Affairs before deciding whether to give the approval provided for in paragraph (1).

(Detailed Regulations for Enforcement)

Article 47 Unless otherwise specially provided for in this Act, procedures for the implementation of this Act and other detailed regulations necessary for its enforcement are specified by Ordinance of the Ministry of Justice.