

Act on the Transnational Transfer of Sentenced Persons

(Act No. 66 of June 12, 2002)

Chapter I General Provisions

(Purpose)

Article 1 In the case of a Japanese national, etc. who is rendered a final and binding decision in a foreign state and is detained in execution of the sentence, or a foreign national who is sentenced to imprisonment with or without work in a final and binding decision in Japan and is detained in Japan in execution of the sentence, this act shall provide for necessary matters concerning assistance in execution of the final and binding decision of the foreign punishment to which the Japanese national, etc. has been rendered, and assistance in execution of the final and binding decision of imprisonment with or without work to which the foreign national has been rendered; this being in light of the importance of facilitating the reformation and rehabilitation of the sentenced person and his or her smooth re-entry into society, and in order to comply with the Council of Europe's Convention on the Transfer of Sentenced Persons (hereinafter referred to as "the Convention").

(Definitions)

Article 2 In this act, the meanings of the terms listed in the following items shall be as prescribed respectively in those items:

- (i) "Foreign punishment" means any punishment under the laws of a foreign state, comparable to imprisonment with or without work.
- (ii) "Assistance punishment" means a foreign punishment executed by Japan as assistance in the execution of a final and binding decision with regard to the offense that is the premise of an incoming transfer.
- (iii) "Japanese national, etc." means a person who has the nationality of Japan or is a special permanent resident (hereinafter referred to as a "special permanent resident") stipulated in the Special Act on the Immigration Control of, Inter Alia, Those Who Have Lost Japanese Nationality on the Basis of the Treaty of Peace with Japan (Act No. 71 of 1991).
- (iv) "National, etc. of a member state" means a person who has the nationality of a foreign state that has entered into the Convention (hereinafter referred to as a

- "member state"), or a person whom the member state deems to be a national for the purposes of the Convention.
- (v) "Incoming transfer" means the provision of assistance in the execution of a final and binding decision, upon the surrender by a member state of a Japanese national, etc. upon whom a final and binding decision of foreign punishment has been rendered by the member state and who is being detained in the execution, based on the Convention.
 - (vi) "Outgoing transfer" means the entrusting to a member state of assistance in the execution of a final and binding decision, upon the surrender by Japan to the member state of a national, etc. of the member state, to whom a final and binding decision of imprisonment with or without work has been rendered in Japan and who is being detained in the execution, based on the Convention.
 - (vii) "Sentencing state" means a member state from which Japan is to request an incoming transfer, a member state from which Japan has requested an incoming transfer, or a member state that has requested that Japan accept an incoming transfer.
 - (viii) "Administering state" means a member state from which Japan is to request an outgoing transfer, a member state from which Japan has requested an outgoing transfer, or a member state that has requested that Japan accept an outgoing transfer.
 - (ix) "Incoming sentenced person" means a Japanese national, etc. upon whom a final and binding decision of foreign punishment has been rendered and who is being detained in the execution, and who, until assistance in the execution of the final and binding decision of foreign punishment is completed, is surrendered to Japan for an incoming transfer.
 - (x) "Outgoing sentenced person" means a national, etc. of a member state upon whom a final and binding decision of imprisonment with or without work has been rendered and who is being detained in Japan in the execution, and who, until assistance in the execution of the final and binding decision of imprisonment with or without work is completed, is surrendered to the member state for an outgoing transfer.
 - (xi) "Offense that is the premise of an incoming transfer" means an offense that is deemed to have been committed by the incoming sentenced person in a final and binding decision of foreign punishment regarded as the subject of assistance in the execution of the decision in the incoming transfer.
 - (xii) "Offense that is the premise of an outgoing transfer" means an offense that is deemed to have been committed by the outgoing sentenced person in a final and

binding decision of imprisonment with or without work regarded as the subject of assistance in the execution of the decision in the outgoing transfer.

(Issuance of requests)

Article 3 The Minister of Foreign Affairs shall forward and receive requests for incoming transfers and outgoing transfers, as well as documents and notices between Japan and member states required for compliance with the Convention; provided, however, that the Minister of Justice shall forward and receive the above-mentioned documents if the Minister of Foreign Affairs agrees, in cases of emergency or other extraordinary circumstances.

(Actions 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 member state, the Minister of Foreign Affairs shall forward the written request and the related documents, with his or her opinion attached, to the Minister of Justice.

Chapter II Incoming Transfer

(Implementation of an incoming transfer)

Article 5 An incoming transfer may be implemented except when falling under one 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) When the act constituting the offense that is the premise of the incoming transfer would not constitute an offense for which punishment of imprisonment without work or a heavier penalty could be imposed under the laws of Japan if the act were committed in Japan;
- (iv) When a criminal case related to the act constituting the offense that is the premise of the incoming transfer is pending in a Japanese court; or when a verdict of not guilty has become final and binding in the case; or when a sentence by a Japanese court to imprisonment without work or a heavier penalty has been executed in whole or in part, or it has not been determined that the sentence does not have to be executed in whole.

(Confirmation of consent)

Article 6 An official specified below shall confirm the consent of the incoming sentenced person as stipulated in item (i) of Article 5. The incoming sentenced person shall appear before the official to sign and seal an official document containing the items related to the provisions of Articles 16 and 17 and other items specified by a Ministry of Justice ordinance.

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

(Actions by the Minister of Justice)

Article 7 (1) When a sentencing state requests an incoming transfer, if the request does not fall under any of the items of Article 5 and the Minister of Justice finds it appropriate to accept the request, he or she shall forward 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 case is one in which an incoming transfer can be implemented.

(2) When the sentencing state does not request the incoming transfer, the same procedures shall apply when the Minister of Justice finds that the request does not fall under any of the items of Article 5 and finds it appropriate to request that the sentencing state implement an incoming transfer.

(3) When the Minister of Justice intends to order the prosecutor to apply for an examination pursuant to the provisions of the preceding paragraph, he or she shall 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 shall, when an order provided for in paragraph (1) or (2) of Article 7 is made, promptly apply to the Tokyo District Court for an examination as to whether the case is one in which an incoming transfer can be implemented.

(2) The application prescribed in the preceding paragraph shall be made in writing, accompanied by related documents.

(Examination by the Tokyo District Court)

Article 9 When the Tokyo District Court receives the application provided for in Article 8, it shall promptly begin its examination and render a decision.

(Decision of the Tokyo District Court)

Article 10 (1) The Tokyo District Court shall, on the basis of the results of the examination prescribed in Article 9, render its decision in the following manner:

- (i) When the application for examination is not made in conformity with the requirements of law, a decision to dismiss the application;
- (ii) When the case is one in which an incoming transfer cannot be implemented, a decision to that effect;
- (iii) When the case is one in which an incoming transfer can be implemented, a decision to that effect.

(2) When the Tokyo District Court renders its decision as prescribed in the preceding paragraph, it shall promptly serve a public prosecutor of the Tokyo District Public Prosecutors Office with a transcript of the written decision and return the related documents that were submitted by him or her.

(Submission of a transcript 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 transcript of a written judgment prepared as prescribed in paragraph (2) of Article 10, the Chief Prosecutor of the Tokyo District Public Prosecutors Office shall promptly submit the transcript and the related documents to the Minister of Justice.

(Request to a sentencing state for an incoming transfer)

Article 12 When the Minister of Justice deems it appropriate, in the case of a decision rendered as provided in item (iii) of paragraph (1) of Article 10, he or she may make a request for an incoming transfer to the sentencing state if a request for the incoming transfer has not yet been made by the sentencing state.

(Order for an incoming transfer by the Minister of Justice)

Article 13 When a decision provided for in item (iii) of paragraph (1) of Article 10 is rendered in a case where a request for an incoming transfer has been made by a sentencing state, or when a sentencing state notifies Japan of its acceptance of such a request by Japan as provided for in Article 12, the Minister of Justice shall order the Chief Prosecutor of the Tokyo District Public Prosecutors Office to implement the incoming transfer; provided, however, that this shall not apply to cases where the Minister of Justice deems 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 as provided for in Article 12 or orders implementation of the incoming transfer as provided for in Article 13, he or she shall notify the incoming sentenced person in writing. The same shall apply when the Minister of Justice decides not to implement the incoming transfer, either where the request for the incoming transfer was made by the sentencing state or where the Minister of Justice has confirmed pursuant to the provisions of Article 6 that the sentenced person does consent.

(Form of the order for incoming transfer)

Article 15 (1) The order provided for in Article 13 shall be made in writing, accompanied by transcripts of the related documents.

(2) The written order prescribed in the preceding paragraph shall contain the full name of the incoming sentenced person, his or her age, the name of the sentencing state, the offense that is the premise of the incoming transfer, the term of the foreign punishment, the date and place of surrender and the penal institution where the incoming sentenced person is to be taken, and shall bear the name and seal of the Minister of Justice.

(Method of execution of assistance punishment)

Article 16 (1) When an incoming sentenced person is surrendered by a sentencing state pursuant to the order provided for in Article 13, assistance in the execution of a final and binding decision of foreign punishment with regard to the offense that is the premise of the incoming transfer shall be implemented, by executing the type of assistance punishment listed in the following items, in accordance with the classifications of the foreign punishment rendered in the final and binding decision:

(i) When the foreign punishment is comparable to imprisonment with work, the incoming sentenced person is to be detained 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 detained 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 that is the premise of the incoming transfer, they shall be executed as a single instance of assistance punishment. In this case, when all of the foreign punishments are comparable to imprisonment with work, assistance punishment as prescribed in item (i) of the preceding paragraph shall

apply, and when any of the foreign punishments is not comparable to imprisonment with work, assistance punishment as prescribed in item (ii) of the preceding paragraph shall apply.

(Term of assistance punishment)

Article 17 (1) The term of assistance punishment shall, corresponding to the classifications of the foreign punishment rendered in the final and binding decision with regard to the offense that is the premise of the incoming transfer, be the term listed in the following items:

- (i) Life, when the foreign punishment (or, if there are two or more punishments, either of them) is imprisonment for life.
- (ii) The term listed in the following item (a) or (b) corresponding to the classification of the number of days (excluding the number of days the incoming sentenced person was not detained in the sentencing state in the execution of the sentence) from the date (the earliest date if there are two or more dates; hereinafter the same) on which the execution of the foreign punishment commenced in the sentencing state to the date on which the term of the foreign punishment is due to expire, when the foreign punishment does not fall within the case provided for in the preceding item.
 - (a) When the term of the foreign punishment exceeds 30 years from the date on which the execution of the foreign punishment commenced in the sentencing state, then the number of days until the day on which 30 years is due to elapse.
 - (b) When the term of the foreign punishment does not exceed 30 years from the date on which the execution of the foreign punishment commenced in the sentencing state, then the number of days until the final date of the sentence.

(2) In the application of the preceding paragraph, when the foreign punishment (any 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, shall be deemed to be replaced with "15 years".

(Calculation of the term of assistance punishment)

Article 18 (1) The term of assistance punishment shall run from the date encompassing the time in Japan corresponding to midnight of the date (the earliest date if there are two dates or more) on which the execution of the foreign punishment rendered in the final and binding decision with regard to the offense that is the premise of the incoming transfer commenced in the sentencing state.

(2) The days for which the sentenced person is deemed not to have been detained in the sentencing state in the execution of the foreign punishment rendered in the final and binding decision with regard to the offense that is the premise of the incoming transfer, and days not spent in actual confinement after the surrender of the incoming sentenced person from the sentencing state in compliance with the order provided for in Article 13, shall not be included in the term of assistance punishment.

(Issuance of a writ of commitment for an 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 shall issue a writ of commitment for an incoming transfer.

(2) The writ of commitment for an incoming transfer prescribed in the preceding paragraph shall contain the items listed in paragraph (2) of Article 15, and bear the name and seal of the public prosecutor of the Tokyo District Public Prosecutors Office.

(3) The writ of commitment for an incoming transfer prescribed in paragraph (1) above shall have the same effect as a subpoena, and the warden or other designated official of the penal institution shall execute the writ under the direction of a public prosecutor of the Tokyo District Public Prosecutors Office.

(4) The provisions of the first sentence of paragraph (1) of Article 73 and Article 74 in the Code of Criminal Procedure (Act No. 131 of 1948) shall be applied mutatis mutandis to the execution of the writ of commitment for an incoming transfer prescribed in paragraph (1) above. In this case, the term "a defendant" in the provisions shall be deemed to be replaced with "an incoming sentenced person as defined in item (ix) of Article 2 of the Act on the Transnational Transfer of Sentenced Persons"; "the subpoena" prescribed in the first sentence of paragraph (1) of Article 73 and "a subpoena or detention warrant" prescribed in Article 74 of the same code shall be deemed to be replaced with "a writ of commitment for an incoming transfer prescribed in paragraph (1) of Article 19 of the Act on the Transnational Transfer of Sentenced Persons"; and "a court and other places" in the first sentence of paragraph (1) of Article 73 of the same code shall be deemed to be replaced with "a penal institution".

(Direction of execution of assistance punishment)

Article 20 (1) The execution of assistance punishment shall be directed by a public prosecutor of the Tokyo District Public Prosecutors Office.

(2) The execution prescribed in the preceding paragraph shall be directed in writing and the written document shall be accompanied by a transcript of the document prescribed in paragraph (1) of Article 15 and transcripts of related documents.

(Application of the Penal Code)

Article 21 A person upon whom the assistance punishment prescribed in item (i) of paragraph (1) of Article 16 is to be executed shall be regarded as a person upon whom imprisonment with work is to be executed; a person upon whom the assistance punishment prescribed in item (ii) of the same paragraph is to be executed shall be regarded as a person upon whom imprisonment without work is to be executed; the assistance punishment prescribed in item (i) of the same paragraph shall be regarded as imprisonment with work; the assistance punishment in item (ii) of the same paragraph shall be regarded as imprisonment without work; and the following provisions shall apply for the purpose of execution of the assistance punishment: Article 22, Article 24, Article 28, Article 29, Article 31 to Article 33 and paragraph (1) of Article 34 of the Penal Code (Act No. 45 of 1907), Article 474, Article 480 to Article 482, Article 484 to Article 489, Article 502 to Article 504 and Article 507 of the Code of Criminal Procedure, paragraph (1) of Article 2, paragraph (1) of Article 27, Article 56, Article 57 and Article 61 of the Juvenile Act (Act No. 168 of 1948), Article 1, Article 2, Article 4 to Article 9, paragraph (1) of Article 10, Article 10-2, Article 13, paragraphs (1), (4) and (5) of Article 14, Article 14-2 to Article 16, paragraph (2) of Article 17, Article 17-2 and Article 17-4 to Article 17-6 of the Juvenile Training Schools Act (Act No. 169 of 1948) and Article 3, paragraph (2) of Article 4, Article 11 to Article 14, Article 16, Article 23 to Article 30, Article 33, paragraph (1) of Article 34, Article 35 to Article 40, Article 48, paragraph (1) of Article 49, Article 50, Article 51, paragraphs (2) and (3) of Article 52, paragraphs (2) and (3) of Article 53, paragraph (2) of Article 54, Article 55 to Article 58, Article 60 to Article 65, Article 75 to Article 77, Article 82, Article 84 to Article 88 and Article 91 to Article 98 of the Offenders Rehabilitation Act (Act No. 88 of 2007). In such a case, the "one-third" in Article 28 of the Penal Code shall be "one-third (including the number of days an incoming sentenced person has been detained in the execution of the foreign punishment as defined in item (i) of Article 2 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 that is the premise of the incoming transfer as defined in item (xi) of Article 2 in the same act (hereinafter referred to as the "offense that is the premise of the incoming transfer") in a sentencing state as defined in item (vii) of Article 2 in the same act (hereinafter

referred to as the "sentencing state")); "10 years" shall be "10 years (including the number of days an incoming sentenced person has been detained in the execution of the foreign punishment rendered in the final and binding decision with regard to the offense that is the premise of the incoming transfer in the sentencing state)"; "after a sentence has become final and binding" in Article 32 in the same code shall be "after the surrender by a sentencing state in accordance with the order prescribed in Article 13 of the Act on the Transnational Transfer of Sentenced Persons"; "two or more" and "the greatest among the punishments" in Article 474 of the Code for Criminal Procedure shall be "assistance punishment as defined in item (ii) of Article 2 of the Act on the Transnational Transfer of Sentenced Persons (hereinafter referred to as the "assistance punishment")"; "the other punishment" in the same Article shall be "the principal punishment"; "the public prosecutors office responding to the court that has rendered the punishment" in Article 480 and Article 482 in the same code shall be "the Tokyo District Public Prosecutors Office"; "category of punishment" in Article 487 in the same code shall be "types of assistance punishment"; "a person upon whom a decision is to be executed" in Article 502 in the same code shall be "a person upon whom the assistance punishment is to be executed"; "the court that rendered such decision" in the same Article shall be "the Tokyo District Court"; and "a judgment of guilty has become final and binding against an individual in the course of execution of a protective measure" in paragraph (1) of Article 27 of the Juvenile Act and "a sentence of imprisonment with or without work, or of penal detention has become final and binding in the course of execution of a protective measure" in Article 57 in the same code shall be "a person with regard to whom assistance punishment as defined in item (ii) of Article 2 of the Act on the Transnational Transfer of Sentenced Persons is to be executed and who is currently undergoing a protective measure"; additional technicalities requiring alternative readings in connection with the application of these provisions shall be determined by a Cabinet order.

(Special provision on parole)

Article 22 Parole may be granted to an incoming sentenced person upon whom a foreign punishment (all punishments if there are two or more) in a final and binding decision with regard to the offense that is the premise of the incoming transfer was rendered when he or she was under 20 years of age, after the lapse of the following periods (including the number of days the sentenced person was detained in the sentencing state in the execution of the foreign punishment):

(i) Seven years in the case of assistance punishment for life;

- (ii) Three years in the case of assistance punishment with a definite term of more than ten years;
- (iii) One year and eight months in the case of assistance punishment with a definite term of more than five years, not more than ten years;
- (iv) One third of the term in the case of assistance punishment with a definite term of five years or less.

(Special provision on the reporting obligation of the warden)

Article 23 In cases where the direction prescribed in paragraph (1) of Article 20 is implemented, when the incoming sentenced person has already served the term specified in Article 28 of the Penal Code applied by the provision of Article 21 of this act, or when the term specified in Article 22 of this act has already passed, the warden of the penal institution shall promptly report as such to the regional parole board.

(Special provision on expiration of the parole term)

- Article 24 (1) If an incoming sentenced person has been paroled as provided for in Article 22 with regard to assistance punishment for life and 10 years have passed since the parole without rescission, he or she shall be regarded as having served the term of assistance punishment.
- (2) If an incoming sentenced person has been paroled as provided for in Article 22 and the same length of time as the time served in the assistance punishment with a definite term before parole, or the term of the assistance punishment, has passed since the parole without rescission (including the number of days the incoming sentenced person was detained in the sentencing state in the execution of the foreign punishment rendered in a final and binding decision with regard to the offense that is the premise of the incoming transfer), he or she shall be regarded as having served the term of the assistance punishment as of the end of the shorter of the two periods mentioned above; provided, however, that this shall not apply to an assistance punishment with a term of less than 3 years.

(Reduction/remission of assistance punishment)

Article 25 (1) The National Offenders Rehabilitation Commission may make a recommendation to the Minister of Justice for the reduction or remission of execution of assistance punishment against an incoming sentenced person.

- (2) When the recommendation prescribed in the preceding paragraph has been made, the Minister of Justice may reduce or remit the execution of the assistance punishment against the incoming sentenced person.
- (3) When the Minister of Justice has reduced or remitted the execution of assistance punishment prescribed in the preceding paragraph, he or she shall issue to the incoming sentenced person a certificate of reduction of execution of assistance punishment or a certificate of remission of execution of assistance punishment.
- (4) The provisions in Article 11 of the Pardon Act (Act No. 20 of 1947) and Article 90 of the Offenders Rehabilitation Act shall be applied mutatis mutandis to the reduction or remission of execution of assistance punishment. In such a case, the "judgment of conviction being rendered" in Article 11 of the Pardon Act shall be deemed to be replaced with "the order prescribed in Article 13 of the Act on the Transnational Transfer of Sentenced Persons"; "general pardon, special pardon, commutation of sentence, remission of execution of sentence or restoration of rights" shall be deemed to be replaced with "reduction or remission of execution of assistance punishment pursuant to paragraph (2) of Article 25 in the same act"; "the recommendation under the preceding Article" in paragraph (1) of Article 90 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 shall be deemed to be replaced with "recommendation provided for in paragraph (1) of Article 25 of the Act on the Transnational Transfer of Sentenced Persons".

(Actions by the Minister of Justice upon receipt of a notice of inability to execute the final and binding decision of foreign punishment)

- Article 26 (1) When there is notice from a sentencing state that the final and binding decision of foreign punishment with regard to an offense that is the premise of an incoming transfer (all of them if there are two or more) has been rescinded or its execution has otherwise become impossible in the sentencing state, the Minister of Justice shall 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 concerned.
- (2) When the order of release prescribed in the preceding paragraph is issued, a public prosecutor of the Tokyo District Public Prosecutors Office shall immediately release the incoming sentenced person concerned.
 - (3) Except as provided in paragraph (1) above, when there is notice from a sentencing state that the type of foreign punishment rendered in the final and binding decision with regard to the offense that is the premise of an incoming transfer, or the final

date deemed for detention of the incoming sentenced person in the sentencing state has been changed due to commutation of the punishment or for other reasons, the type of assistance punishment and its term shall 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 shall promptly notify the sentencing state if the status of the incoming sentenced person falls under either of the following items:

- (i) The incoming sentenced person has served out the assistance punishment or has been deemed not to be subject to its further execution;
- (ii) The incoming sentenced person dies before he or she has served out the execution of the assistance punishment or has escaped from custody.

Chapter III Outgoing Transfer

(Implementation of an outgoing transfer)

Article 28 An outgoing transfer may be implemented except when falling under any of the following cases:

- (i) When the outgoing sentenced person does not give consent;
- (ii) When the act constituting the offense that is the premise of the outgoing transfer would not constitute an offense under the laws of the administering state if the act were committed in the administering state;
- (iii) Regarding the offense that is the premise of the outgoing transfer, when the request provided for in Article 350 of the Code of Criminal Procedure; or in a criminal case related to the act constituting the offense that is the premise of the outgoing transfer when a demand for recovery of the right of appeal or application for a retrial or a procedure for extraordinary appeal to the court of last resort, is pending in a Japanese court;
- (iv) Regarding the offense that is the premise of the outgoing transfer, when an application for special pardon has been filed or a petition for such pardon has been made and the procedures have not been completed; or regarding imprisonment with or without work rendered in a final and binding decision with regard to the offense that is the premise of the outgoing transfer, when an application for commutation or remission of the execution of the punishment has been filed or a petition has been made and the procedures have not been completed;
- (v) When a fine, confiscation or collection of equivalent value is imposed in a final and binding decision in addition to imprisonment with or without work with regard to

the offense that is the premise of the outgoing transfer, and its execution has not been completed or it has not been determined that the outgoing sentenced person is not subject to that execution;

- (vi) When a criminal case regarding an offense other than the offense that is the premise for the outgoing transfer is pending in a Japanese court; or regarding the case, the outgoing sentenced person has been sentenced to punishment by a Japanese court for such offense and the execution of the sentence has not been completed, or it has not been determined that the outgoing sentenced person is not subject to the execution of the sentence.

(Notification of the contents of the Convention)

Article 29 When the decision of imprisonment with or without work rendered to a national, etc. of a member state held in a penal institution becomes final and binding, the warden of the penal institution shall promptly notify the sentenced person of the important contents of the provisions of the Convention. The same shall apply to the case when a national, etc. of a member state is sentenced to imprisonment with or without work and is taken to a penal institution for execution of the sentence pursuant to a final and binding decision.

(Notice to the outgoing sentenced person)

Article 30 If an outgoing sentenced person makes an application for an outgoing transfer, and Japan, based on the Convention, has given notice to the state that is to be the administering state for the outgoing sentenced person, the Minister of Justice shall 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 item (i) of Article 28, he or she shall sign and seal an official document containing the items specified in a Ministry of Justice ordinance witnessed by the warden or other designated official of the penal institution where he or she 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 shall 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, or a public official designated by a member state requests an interview with

an outgoing sentenced person to verify whether or not the sentenced person consents to the outgoing transfer under the Convention, the warden of the penal institution shall honor the request.

- (2) The interview shall be conducted within the limits permitted by laws and regulations.

(Request for an outgoing transfer to an administering state)

Article 33 (1) When the Minister of Justice does not find the situation to fall under any of the items in Article 28 and deems it otherwise appropriate, he or she may make a request for an outgoing transfer to the administering state.

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

(Decision of an outgoing transfer by the Minister of Justice)

Article 34 (1) When an administering state requests an outgoing transfer, and the Minister of Justice does not find the situation to fall under any of the items in Article 28, or when an administering state notifies Japan of its acceptance if Japan has requested an outgoing transfer pursuant to the provisions of paragraph (1) of Article 33, the Minister of Justice shall make the decision to implement the outgoing transfer; provided, however, that this shall not apply to cases where the Minister of Justice deems it inappropriate to implement the outgoing transfer.

- (2) When the Minister of Justice makes the decision set forth in the preceding paragraph, he or she shall order the warden of the penal institution where the outgoing sentenced person is being held to surrender the sentenced person.
- (3) When the Minister of Justice decides not to implement the outgoing transfer pursuant to the provisions of the proviso in paragraph (1) above, he or she shall 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 as provided for in paragraph (1) of Article 33 and orders the surrender of the sentenced person pursuant to the provisions of paragraph (2) of Article 34, he or she shall notify the outgoing sentenced person in writing. The same shall apply when the Minister of Justice decides not to implement an outgoing transfer, either where the request for the outgoing transfer was made by the

administering state or where the Minister of Justice has confirmed pursuant to the provisions of paragraph (1) of Article 31 that the sentenced person does consent.

(Mutatis mutandis application to implementation of an outgoing transfer)

Article 36 The provisions of paragraphs (1), (3) and (4) of Article 16, paragraph (1) of Article 19, paragraph (1) of Article 20 and Article 21 of the Extradition Act (Act No. 68 of 1953) shall be applied mutatis mutandis to the surrender of an outgoing sentenced person to an administering state pursuant to the order provided for in paragraph (2) of Article 34. In this case, the following terms shall be deemed as follows: "the order of surrender provided for in paragraph (1) of Article 14" in paragraph 1 of Article 16 of the Extradition Act and "the direction for surrender of a fugitive as provided for in paragraph (1) or (5) of Article 17" in paragraph (1) of Article 20 in the same act shall be deemed to be replaced with "the order provided for in paragraph (2) of Article 34 of the Act on the Transnational Transfer of Sentenced Persons"; "the full name of the fugitive, the name of the offense for which extradition is requested, the name of the requesting state, the place of surrender, the time limit of surrender and the date of issue" in paragraph (4) of Article 16 in the same act shall be deemed to be replaced with "the full name, age and nationality of the outgoing sentenced person provided for in item (x) of Article 2 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 item (viii) of Article 2 in the same act (hereinafter referred to as the "administering state") , the name of the offense that is the premise of the outgoing transfer provided for in item (xii) of Article 2 in the same act, the name and term of punishment imposed, and the date and place of surrender"; "paragraph (3) of Article 16" in paragraph (1) of Article 19 in the same act shall be deemed to be replaced with "paragraph (3) of Article 16 of the Extradition Act applied mutatis mutandis by the provisions of Article 36 of the Act on the Transnational Transfer of Sentenced Persons"; "the requesting state" in paragraph (1) of Article 19, paragraph (1) of Article 20, and Article 21 in the same act shall be deemed to be replaced with "the administering state"; "the fugitive" in paragraph (1) of Article 20 in the same act shall be deemed to be replaced with "the outgoing sentenced person"; "paragraph (1) of Article 20" and "the fugitive" in Article 21 in the same act shall be deemed to be replaced with "paragraph (1) of Article 20 of the Extradition Act 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 execution of imprisonment with or without work when an outgoing transfer is implemented)

Article 37 The execution of a sentence of imprisonment with or without work rendered in a final and binding decision with regard to the offense that is the premise of the outgoing transfer shall be deemed to have been completed on the date encompassing the time in Japan corresponding to midnight of the date on which the assistance in the execution is completed in the administering state.

(Notice to the administering state)

Article 38 If either of the following situations arises after the outgoing sentenced person has been surrendered to the administering state according to the order provided for in paragraph (2) of Article 34, the Minister of Justice shall immediately notify the administering state:

- (i) Inability to execute the final and binding decision to imprisonment with or without work with regard to the offense that is the premise of the outgoing transfer by virtue of a request provided for in Article 350 of the Code of Criminal Procedure, a demand for recovery of the right of appeal, application for a retrial, extraordinary appeal to the court of last resort or a procedure for the petition provided for in Article 502 in the same code, or when the type of punishment or the final date until which the outgoing sentenced person may be detained has been changed.
- (ii) Regarding the offense that is the premise of the outgoing transfer, when a general pardon, special pardon or commutation by a Cabinet order is granted, or, regarding imprisonment with or without work rendered in a final and binding decision with regard to the offense that is the premise of the outgoing transfer, when commutation or remission of execution of the punishment is implemented.

Chapter IV Miscellaneous Provisions

(Extradition of the incoming sentenced person)

Article 39 (1) The Minister of Justice may order the warden of the penal institution where an incoming sentenced person is detained to surrender the sentenced person to the sentencing state (hereinafter in this Article referred to as "extradition") if, regarding the incoming sentenced person (excluding any sentenced person who is on parole pursuant to Article 28 of the Penal Code applied by Article 21 of this act or pursuant to the provisions of Article 22 of this act) surrendered by the sentencing state pursuant to the order provided for in Article 13, the sentenced person is to appear for a retrial of the final and binding decision of foreign punishment with

regard to the offense that is the premise of the incoming transfer, or other unavoidable circumstances are deemed to exist, and the sentencing state requests the surrender.

- (2) When the Minister of Justice has ordered the extradition set forth in the preceding paragraph, the Minister of Justice shall notify the incoming sentenced person in writing.
- (3) When the extradition is implemented pursuant to the order provided for in paragraph (1) above, the assistance in the execution of the final and binding decision of the foreign punishment with regard to the offense that is the premise of the incoming transfer shall be deemed to have been completed.
- (4) The provisions of paragraphs (1), (3) and (4) of Article 16, paragraph (1) of Article 19, paragraph (1) of Article 20 and Article 21 of the Extradition Act shall be applied *mutatis mutandis* to the implementation of extradition pursuant to the order provided for in paragraph (1) above. The following terms shall be deemed to be replaced as follows: "the order of surrender provided for in paragraph (1) of Article 14" in paragraph (1) of Article 16 in the same act and the "direction for surrender of a fugitive as provided for in paragraph (1) or (5) of Article 17" in paragraph (1) of Article 20 in the same act shall be deemed to be replaced with "the order provided for in paragraph (1) of Article 39 of the Act on the Transnational Transfer of Sentenced Persons"; "the full name of the fugitive, the name of the offense for which extradition is requested, the name of the requesting state, the place of surrender, the time limit of surrender and the date of issue" in paragraph (4) of Article 16 in the same act shall be deemed to be replaced with "the full name and age of the incoming sentenced person as defined in item (ix) of Article 2 of the Act on the Transnational Transfer of Sentenced Persons (hereinafter referred to as the "incoming sentenced person"), the name of the sentencing state as defined in item (vii) of Article 2 of the same act (hereinafter referred to as the "sentencing state"), the name of the offense that is the premise of the incoming transfer as defined in item (xi) of Article 2 of the same act, the term of the foreign punishment imposed, and the date and place of surrender"; "paragraph (3) of Article 16" in paragraph (1) of Article 19 in the same act shall be deemed to be replaced with "paragraph (3) of Article 16 of the Extradition Act applied *mutatis mutandis* by the provisions of paragraph (4) of Article 39 of the Act on the Transnational Transfer of Sentenced Persons"; "the requesting state" in paragraph (1) of Article 19, paragraph (1) of Article 20, and Article 21 in the same act shall be deemed to be replaced with "the sentencing state"; "the fugitive" in paragraph (1) of Article 20 in the same act shall be deemed to be replaced with "the incoming sentenced person"; "paragraph (1) of Article 20" and "the fugitive" in Article 21 in the

same act shall be deemed to be replaced with "paragraph (1) of Article 20 of the Extradition Act applied mutatis mutandis by the provisions of paragraph (4) of Article 39 of the Act on the Transnational Transfer of Sentenced Persons" and the "incoming sentenced person", respectively.)

(Detention in the administering state)

Article 40 Regarding a sentenced person prescribed below who was surrendered to an administering state pursuant to an order provided for in paragraph (2) of Article 34, and upon whom imprisonment with or without work imposed in a final and binding decision with regard to the offense that is the premise of the outgoing transfer is to be executed in Japan, the term during which the sentenced person has been detained as assistance in the execution of the final and binding decision in the administering state shall be deemed to have been served as the execution of imprisonment with or without work.

(i) A sentenced person who is surrendered from the administering state in order to appear for a retrial of the final and binding decision of imprisonment with or without work with regard to the offense that is the premise of the outgoing transfer.

(ii) A sentenced person who is not under detention, probation or other equivalent measure in relation to assistance in the execution of a final and binding decision of imprisonment with or without work with regard to the offense that is the premise of the outgoing transfer in the administering state, due to the sentenced person's escape from custody or other causes.

(Special provision on the proviso in Article 5 of the Penal Code)

Article 41 When a Japanese national, etc. surrendered by 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 that is the premise of the incoming transfer for which the national was prosecuted after the surrender, the execution of that punishment shall be remitted notwithstanding the provisions of the proviso in Article 5 of the Penal Code.

(Special provision on escape from custody)

Article 42 An incoming sentenced person who is held in a penal institution as provided for in Article 16 is deemed to be a sentenced inmate detained in the execution of a decision, and the provisions of Article 97, Article 98 and Article 102 of the Penal Code

(limited to the parts in Article 97 and Article 98 regarding an attempted offense) shall apply.

(Costs of an incoming transfer)

Article 43 An incoming sentenced person surrendered by a sentencing state pursuant to an order provided for in Article 13 shall bear the costs incurred in escorting the sentenced person to Japan and the costs of his or her transportation. When it is evident that the incoming sentenced person is unable to pay the full amount because of indigence, the Minister of Justice may remit the whole or part of the costs pursuant to the provisions of a Cabinet order.

(Special provision 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 shall be deemed to have landed in Japan upon receipt of the stamp of permission to land pursuant to the provisions of paragraph (1) of Article 9 of the Immigration Control and Refugee Recognition Act (Cabinet Order No. 319 of 1951, hereinafter referred to as the "Immigration Control Act").

(2) When a written deportation order provided for in paragraph (5) of Article 47, paragraph (9) of Article 48 or paragraph (6) of Article 49 of the Immigration Control Act has been issued to an outgoing sentenced person who has left Japan pursuant to an order provided for in paragraph (2) of Article 34, he or she shall be deemed to have been deported from Japan by a written deportation order with regard to the application of items (v)-2, (ix) and (x) of paragraph (1) of Article 5 of the Immigration Control Act. In this case, the "deportation" in item (ix) of paragraph (1) of Article 5 of the same act shall be deemed to be replaced with "departure".

(Rules of the Supreme Court)

Article 45 In addition to those matters provided for in this act, necessary procedural rules concerning examination by the Tokyo District Court shall be prescribed by the Rules of the Supreme Court.

(Actions by the Minister of Justice concerning approval for transit of a person through Japan)

Article 46 (1) The Minister of Justice, upon a request made by a foreign state through diplomatic channels, may give approval for transit through the territory of Japan, of a person to whom a final and binding decision of foreign punishment has been

rendered in the foreign state or another foreign state, for assistance in its execution, except in either of the following circumstances:

- (i) When the act constituting the offense in the final and binding decision in the foreign state would not constitute an offense under Japanese laws and regulations if the act were committed in Japan;
 - (ii) When the person subject to the final and binding decision in the foreign state is a Japanese citizen.
- (2) The Minister of Justice shall approve the transit of a person upon whom a final and binding decision of foreign punishment has been rendered when a request for approval as prescribed in the preceding paragraph is made by a member state based on the Convention, except in those cases stipulated in the items of the same paragraph.
- (3) The Minister of Justice shall consult with the Minister of Foreign Affairs before deciding whether to give the approval provided for in paragraph (1) above.

(Detailed regulations for enforcement)

Article 47 In addition to those matters provided for in this act, procedures for the enforcement of this act and other detailed regulations necessary for its execution shall be prescribed by a Ministry of Justice ordinance.