

**[ DOJ DEPARTMENT CIRCULAR NO. 90, December 06, 2010 ]**

**PRESCRIBING RULES IN THE IMPLEMENTATION OF THE TRANSFER OF SENTENCED PERSONS AGREEMENTS**

Wherea, Section 11, Article II of the 1987 Constitution declares that the State values the dignity of every human person and guarantees full respect for human rights;

Whereas, the Government of the Republic of the Philippines aims at promoting the universally recognized principles of human rights as well as developing international mutual cooperation in the field of criminal justice and social reintegration of sentenced persons into the mainstream of society;

Whereas, transfer of Sentenced Persons Agreements (TSPAs) facilitate the successful reintegration of sentenced persons into society and ensure their effective rehabilitation as they are afforded the opportunity to serve their sentences in the country of their nationality;

Whereas, the Government of the Republic of the Philippines entered into TSPAs with the Governments of Canada, Hong Kong Special Administrative Region (HKSAR), Spain and Thailand, and intends to conclude similar agreements with other interested countries;

Whereas, there is a need to issue rules that will govern the implementation of the TSPAs;

Now, therefore, pursuant to the provisions of existing laws, the Department of Justice, as the Central Authority for the Philippines in the implementation of TSPAs, hereby adopts the following rules, which shall govern in the implementation of the TSPAs:

**I. Preliminary Provisions**

Section 1. *Definition of Terms.* - As used in this Circular, the following terms shall mean:

a) "*Administering State*" means the State to which the sentenced person may be, or has been, transferred;

b) "*Central Authority*" means the Department of Justice, representing the Government of the Republic of the Philippines, or its foreign counterpart as designated by the Treaty Partner;

c) "*Department*" means the Department of Justice;

d) "*Legal Staff*" means the Office of the Chief State Counsel of the Department of Justice;

- e) "*Minor*" means a person under the age of eighteen (18);
- f) "*Secretary*" means the Secretary of the Department of Justice or his or her duly designated representative;
- g) "*Sentence*" means any punishment or measure involving deprivation of liberty ordered by a court of the sentencing State on account of a criminal offenses;
- h) "*Sentenced Person*" means the person on whom a punishment or measure involving deprivation of liberty has been imposed on account of a criminal offense;
- i) "*Sentencing State*" means the State in which the sentences was imposed on the person who may be subject to transfer;
- j) "*Treaty Partner*" means the government or the State which has a Treaty on Sentenced Persons Agreement (TSPA) in force with the government of the Republic of the Philippines;
- k) "*Treaty*" means the Treaty on the Transfer of Sentenced Persons or TSPA; and
- l) "*Turn-Over*" means the formal transfer or handing-over of the sentenced person from the sentencing State to the Administering State or receiving State.

Section 2. *General Principles.* - The following principles are adopted:

- a) Punishment or measure involving imprisonment or other forms of deprivation of liberty imposed by a sentencing State on Filipino nationals may be served in the prison facilities of the Philippines as administering State.
- b) Punishment or measure involving deprivation of liberty imposed in the Philippines on foreign nationals may be served in the prison facilities of the administering State.
- c) Transfer may be requested either by the sentencing State or administering State.
- d) A transfer shall be effected only upon the consent of the sentencing State, administering State and sentenced person.

Section 3. *Conditions for Transfer.* - A request for transfer shall be subject to the following conditions:

- a) The acts or omissions on account of which the sentence has been imposed are punishable in the administering State, or would constitute a criminal offense if committed in its territory, although the definition thereof may not be identical;
- b) The sentenced person is a national of the administering State;
- c) The judgment is final and no other legal proceedings relating to the offense or any other offense are pending in the sentencing State;
- d) The transfer is consented to by the sentencing State, administering State and the sentenced person;
- e) The part of the sentence still to be served at the time of the receipt of the request for transfer by the administering State is at least one (1) year. In exceptional cases, as determined by both the sentencing and administering States,

a request may be accepted even if part of the sentence still to be served is less than one (1) year; and

f) The sentenced person has satisfied payment of fines, court costs, civil indemnities and/or pecuniary sanctions of all kinds for which he or she is liable under the terms of the sentence, or has provided sufficient security to ensure payment thereof to the satisfaction of the sentencing State.

Section 4. *Nationality of the Sentenced Person.* - The nationality of the sentenced person, whether the term refers to citizenship or habitual residence shall be determined by the administering State and in accordance with its laws.

To prove his or her nationality, the sentenced person shall submit the following documents:

a) Original or certified true copy of his or her birth certificate, issued by the proper office or agency and, if issued abroad, with due authentication by the Embassy or Consular Office concerned;

b) Original or certified true copy of the birth certificate of his or her parent or parents, issued by the proper office or agency and, if issued abroad, with due authentication by the Embassy or Consular Office concerned;

c) Original copy or certified true copy of his or her passport;

d) Authenticated copy of the specific provisions of the civil law of the administering State upon which the nationality of the sentenced person is based; and

e) Such other documents which may be requested by the sentencing State to prove his or her nationality.

Section 5. *Consent of the Sentenced Person.* - a) The desire of the sentenced person to be transferred must be expressly stated in a duly subscribed affidavit, stating therein his or her willingness to be transferred under the terms and conditions stated in the TSPA; that he or she is aware of the legal consequences involved in the transfer; and that his or her consent is freely given.

In case of the incapacity of the sentenced person, the consent may be given by his or her legal representative.

b) Where the Philippines is the sentencing State, the Secretary of Justice, through the Legal Staff, shall take steps to verify that the consent of the sentenced person is given voluntarily and with full knowledge of the consequences thereof.

Upon request, the Department of Justice, through the Legal Staff, in coordination with the Department of Foreign Affairs, shall afford the Treaty Partner an opportunity to verify through its embassy or consular official/s in the country, that the consent of the sentenced person is given voluntarily and with full knowledge of the consequences of such transfer.

c) Where the Philippines is the administering State, the Department of Justice shall request the Department of Foreign Affairs to verify, through the Philippine Embassy or Consulate in the sentencing State, that the sentenced Filipino national gave his or her consent voluntarily and with full knowledge of the consequences thereof.

Section 6. *Central Authorities.* - a) The Central Authority for Philippines is the Department of Justice. The Treaty Partner's Central Authority shall be that which is designated in the applicable TSPA or as communicated to the Department of Justice.

b) The Legal Staff shall assist the Secretary in the evaluation of requests for transfer.

c) A request for transfer shall be made in writing and submitted with the documentary requirements provided under the applicable TSPA.

d) The request for transfer and the reply to such request shall be transmitted through diplomatic channels. All other communications shall be conveyed directly to the Central Authority of either State.

e) The decision taken on the request for transfer pursuant to the applicable TSPA shall be notified without delay to the Treaty Partner.

Section 7. *Language.* - All documents submitted in regard to the request for transfer shall be in English language.

## II. The Philippines as Sentencing State

Section 8. *Request; By whom made; Supporting documents; Requirements.* - a) A sentenced person, or in case of his or her incapacity, his or her duly authorized representative, may file the request for transfer with the Department of Justice, Department of Foreign Affairs, or with the Embassy or Consulate of his or her country of nationality. In the latter case, the Embassy or Consulate concerned shall forward the application to the Department of Foreign Affairs, which shall in turn, forward the same to the Department of Justice.

b) Upon receipt of the request for transfer, the Legal Staff shall conduct the preliminary evaluation based on the applicable TSPA.

c) the request for transfer, which shall be under oath, shall set forth the following;

- i. The complete name (first name, middle name, surname) and aliases, if any, of the sentenced person; if the application is filed by the duly authorized representative of the sentenced person, the latter must likewise set forth his or her complete name and the reason for filing the application on behalf of the sentenced person;
- ii. The date and place of birth of the sentenced person;
- iii. Nationality of the sentenced person and proof thereof;
- iv. The consent of the sentenced person as stated in Section 5 hereof;
- v. Place of confinement;
- vi. A statement of the facts of the offense committed and upon which the sentence was based; and
- vii. A statement of the duration of the sentence, the specific dates of the commencement and/or termination of sentence or deprivation of liberty imposed.

In addition, the following documents shall be submitted:

a) Original copy or certified true copy of the court's judgment or decision;