
AGREEMENT ON MUTUAL LEGAL ASSISTANCE
IN CRIMINAL MATTERS

BETWEEN

THE TAIPEI ECONOMIC AND CULTURAL REPRESENTATIVE OFFICE
IN THE UNITED STATES

AND

THE AMERICAN INSTITUTE IN TAIWAN

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The Taipei Economic and Cultural Representative Office
in the United States

and

The American Institute in Taiwan,

Desiring to improve the effective cooperation of the law enforcement authorities of the territories represented by either Party through mutual legal assistance in criminal matters on the basis of mutual respect, reciprocity, and mutual benefit,

Have agreed as follows:

Article 1

General Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:

- (1) The term "AIT" means the American Institute in Taiwan, a nonprofit corporation incorporated under the laws of the District of Columbia pursuant to the Taiwan Relations Act of April 10, 1979, Public Law 96-8 (22 U.S.C. §§ 3301 et seq.);
- (2) The term "TECRO" means the Taipei Economic and Cultural Representative Office in the United States, an instrumentality established by the Taiwan authorities; and
- (3) The terms "Party" or "Parties" refer to AIT and/or TECRO.

Article 2

Scope of Assistance

1. The Parties shall provide mutual assistance through the relevant authorities of the territories they represent, in accordance with the provisions of this Agreement, in connection with the investigation, prosecution, and prevention of offenses, and in proceedings related to criminal matters.

2. Assistance shall include:

- (1) taking the testimony or statements of persons;
- (2) providing documents, records, and articles of evidence;
- (3) locating or identifying persons;
- (4) serving documents;
- (5) transferring persons in custody for testimony or other purposes;
- (6) executing requests for searches and seizures;
- (7) assisting in proceedings related to immobilization and forfeiture of assets, restitution, or collection of fines; and
- (8) any other form of assistance not contrary to the laws of the territory represented by the Requested Party.

3. Except as otherwise provided in this Agreement, assistance shall be provided without regard to whether the conduct that is the subject of the investigation, prosecution, or proceeding in the territory represented by the Requesting Party would constitute an offense under the laws of the territory represented by the Requested Party.

4. This Agreement is intended solely for mutual legal assistance between the Parties. The provisions of this Agreement shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

Article 3

Designated Representatives

1. Each Party shall designate a Designated Representative to make and receive requests pursuant to this Agreement.

2. For AIT, the Designated Representative shall be the Attorney General of the territory represented by AIT or a person designated by the Attorney General. For TECRO, the Designated Representative shall be the Minister of Justice of the territory represented by TECRO or a person designated by the Minister of Justice.

3. The Designated Representatives shall communicate directly with one another for the purposes of this Agreement, except that any transfer of funds under this Agreement from one Party to the other shall be made between AIT and TECRO in accordance with the provisions of paragraphs 4 and 5.

4. Any transfer of funds to AIT under this Agreement shall be made to AIT by TECRO in U.S. dollars. Payments shall be sent to:

Deputy Managing Director
American Institute in Taiwan.
1700 N. Moore Street, Suite 1700
Arlington, VA 22209
Telephone Number: (703) 525-8474
Facsimile Number: (703) 841-1385

Any transfer of funds to TECRO under this Agreement shall be made to the Coordination Council for North American Affairs by AIT in New Taiwan dollars or U.S. dollars. Payments shall be sent to:

Secretary General
Coordination Council for North American Affairs
133 Po-Ai Road
Taipei, Taiwan 100
Telephone Number: 02-2311-6970
Facsimile Number: 02-2382-2651

5. Any request for transfer of funds under this Agreement and any transfer of funds under this Agreement must be accompanied by supporting documentation identifying the specific activities and costs involved.

Article 4

Limitations on Assistance

1. The Designated Representative for the Requested Party may deny assistance if:

- (1) the request relates to an offense under military law that would not be an offense under ordinary criminal law;
- (2) the execution of the request would prejudice the security, public order, or similar essential interests of the territory represented by the Requested Party;
- (3) the request is not made in conformity with the Agreement; or
- (4) the request is made pursuant to Article 15 and relates to conduct which, if committed in the territory represented by the Requested Party, would not be an offense in that territory.

2. Before denying assistance pursuant to this Article, the Designated Representative for the Requested Party shall consult with the Designated Representative for the Requesting Party to consider whether assistance can be given subject to such conditions as it deems necessary. If the Designated Representative for the Requesting Party accepts assistance subject to these conditions, authorities of the territory represented by it shall comply with the conditions.

3. If the Designated Representative for the Requested Party denies assistance, it shall inform the Designated Representative for the Requesting Party of the reasons for the denial.

Article 5

Form and Contents of Requests

1. A request for assistance shall be in writing except that the Designated Representative for the Requested Party may accept a request in another form in an emergency situation. In any such case, the request shall be confirmed in writing within ten days thereafter unless the Designated Representative for the Requested Party agrees otherwise. The request shall be in the language used in the territory represented by the Requested Party unless otherwise agreed.

2. The request shall include the following:

- (1) the name of the authority conducting the investigation, prosecution, or proceeding to which the request relates;
- (2) a description of the subject matter and nature of the investigation, prosecution, or proceeding, including the specific criminal offenses that relate to the matter and any punishment that might be imposed for each offense;
- (3) a description of the evidence, information, or other assistance sought; and
- (4) a statement of the purpose for which the evidence, information, or other assistance is sought.

3. To the extent necessary and possible, a request shall also include:

- (1) information on the identity and location of any person from whom evidence is sought;
- (2) information on the identity and location of a person to be served, that person's relationship to the proceedings, and the manner in which service is to be made;
- (3) information on the identity and whereabouts of a person to be located;
- (4) a precise description of the place or person to be searched and of the articles to be seized;

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- (5) a description of the manner in which any testimony or statement is to be taken and recorded;
 - (6) a list of questions to be asked of a witness;
 - (7) a description of any particular procedure to be followed in executing the request;
 - (8) information as to the allowances and expenses to which a person asked to appear in the territory represented by the Requesting Party will be entitled; and
 - (9) any other information that may be brought to the attention of the Designated Representative for the Requested Party to facilitate its execution of the request.

4. If the Designated Representative for the Requested Party considers the contents contained in the request not sufficient to enable the request to be dealt with, it may request additional information.

5. No form of certification or authentication will be required for a request for assistance or its supporting documents.

Article 6

Execution of Requests

1. The Designated Representative for the Requested Party shall promptly execute the request or, when appropriate, shall transmit it to the relevant authority for execution. The competent authorities of the territory represented by the Requested Party shall do everything in their power to execute the request.

2. The Designated Representative for the Requested Party shall make all necessary arrangements for and meet the costs of the representation of the Requesting Party in the territory represented by the Requested Party in any proceedings arising out of a request for assistance.

3. Requests shall be executed in accordance with the procedures provided for by the laws of the territory represented by the Requested Party. The method of execution specified in the request shall be followed except insofar as it is contrary to the laws of the territory represented by the Requested Party.

4. If the Designated Representative for the Requested Party determines that execution of a request would interfere with an ongoing criminal investigation, prosecution, or proceeding in the territory represented by the Requested Party, it may postpone execution, or make execution subject to conditions determined necessary after consultations with the Designated Representative for the Requesting Party. If the Designated Representative for the Requesting Party accepts the assistance subject to the conditions, authorities in the territory represented by it shall comply with the conditions.

5. The relevant authorities of the territory represented by the Designated Representative for the Requested Party shall use their best efforts to keep confidential a request and its contents if such confidentiality is requested by the Designated Representative for the Requesting Party. If the request cannot be executed without breaching such confidentiality, the Designated Representative for the Requested Party shall so inform the Designated Representative for the Requesting Party, which shall then determine whether the request should nevertheless be executed.

6. The Designated Representative for the Requested Party shall respond to reasonable inquiries by the Designated Representative for the Requesting Party on progress toward execution of the request.

7. The Designated Representative for the Requested Party shall promptly inform the Designated Representative for the Requesting Party of the outcome of the execution of the request. If the request is denied, the Designated Representative for the Requested Party shall inform the Designated Representative for the Requesting Party of the reasons for the denial.

Article 7

Costs

1. The authorities of the territory represented by the Requested Party shall pay the costs relating to the execution of the request, but the authorities of the territory represented by the Requesting Party shall bear:

- (1) the allowances or expenses for the travel of persons under Articles 11 and 12 of this Agreement in accordance with the regulations of the territory represented by the Requesting Party;
- (2) the allowances or expenses for persons to travel to and from and stay in the territory represented by the Requested Party under Article 9(3) of this Agreement;
- (3) the expenses and fees of experts; and
- (4) the costs of translation, interpretation, and transcription.

2. If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the Designated Representatives for the Parties shall consult to determine the terms and conditions under which the request can be executed.

Article 8

Limitations on Use

1. The Designated Representative for the Requested Party may request that the authorities of the territory represented by the Requesting Party not use any information or evidence obtained under this Agreement in any investigation, prosecution, or proceeding other than that described in the request without the prior consent of the Designated Representative for the Requested Party. In such cases, the authorities of the territory represented by the Requesting Party shall comply with the conditions.

2. The Designated Representative for the Requested Party may request that information or evidence furnished under this Agreement be kept confidential or be used only subject to terms and conditions it may specify. If the Designated Representative for the Requesting Party accepts the information or evidence subject to such conditions, the relevant authorities of the territory represented by the Requesting Party shall use their best efforts to comply with the conditions.

3. Nothing in this Article shall preclude the use or disclosure of information to the extent that there is an obligation to do so for the territory represented by AIT under that territory's Constitution or for the territory represented by TECRO under that territory's Constitution or law in a criminal prosecution. The Designated Representative for the Requesting Party shall notify the Designated Representative for the Requested Party in advance of any such proposed disclosure.

4. Information or evidence that has been made public in the territory represented by the Requesting Party in accordance with paragraphs 1, 2, or 3 may thereafter be used for any purpose.

Article 9

Testimony or Evidence in the Territory Represented by the Requested Party

1. A person in the territory represented by the Requested Party from whom evidence is requested pursuant to this Agreement shall be compelled, if necessary, to appear and testify or produce items, including documents, records, and articles of evidence. A person who gives false testimony, either orally or in writing, in execution of a request, shall be subject to prosecution and punishment in the territory represented by the Requested Party in accordance with the criminal laws of that territory.

2. Upon request, the Designated Representative for the Requested Party shall furnish information in advance about the date and place of the taking of the testimony or evidence pursuant to this Article.

3. The authorities of the territory represented by the Requested Party shall permit the presence of such persons as specified in the request during the execution of the request, and shall allow such persons to pose questions to the person giving the testimony or evidence and to make a verbatim transcript in a manner agreed to by the authorities of the territory represented by the Requested Party.

4. If the person referred to in paragraph 1 asserts a claim of immunity, incapacity, or privilege under the laws of the territory represented by the Requesting Party, the evidence, including all items requested, shall nonetheless be taken and the claim made known to the Designated Representative for the Requesting Party for resolution by the authorities of that territory.

5. Evidence produced in the territory represented by the Requested Party pursuant to this Article or that is the subject of testimony taken under this Article may be authenticated by a declaration, including, in the case of business records, authentication in the manner indicated in Form A appended to this Agreement. Documents authenticated by Form A shall be admissible in evidence in courts in the territory represented by the Requesting Party.

Article 10

Records of the Territories Represented by the Parties

1. The Designated Representative for the Requested Party shall provide the Designated Representative for the Requesting Party with copies of publicly available records, including documents or information in any form, in the possession of departments and agencies of the authorities of the territory represented by the Requested Party.

2. The Designated Representative for the Requested Party may provide copies of any documents, records, or information which are in the possession of a department or agency of the authorities of the territory represented by that Party, but which are not publicly available, to the same extent and under the same conditions as such copies would be available to the law enforcement or judicial authorities of the territory represented by the Requested Party. The Designated Representative for the Requested Party may in its discretion deny a request pursuant to this paragraph entirely or in part.

3. Records produced pursuant to this Article may be authenticated by the person in charge of maintaining them through the use of Form B appended to this Agreement. No further authentication shall be necessary. Documents authenticated under this paragraph shall be admissible in evidence in courts in the territory represented by the Requesting Party.

Article 11

Transfer of Persons in Custody

1. A person in the custody of the authorities of the territory represented by the Requested Party whose presence in the territory represented by the Requesting Party is sought for purposes of assistance under this Agreement may be transferred from the territory represented by the Requested Party to the territory represented by the Requesting Party for that purpose if the person consents and if the Designated Representatives for both Parties agree.

2. A person in the custody of the authorities of the territory represented by the Requesting Party whose presence in the territory represented by the Requested Party is sought for purposes of assistance under this Agreement may be transferred from the territory represented by the Requesting Party to the territory represented by the Requested Party if the person consents and if the Designated Representatives for both Parties agree.

3. For purposes of this Article:

- (1) the authorities of the territory represented by the receiving Party shall have the authority and the obligation to keep the person transferred in custody unless otherwise authorized by the authorities of the territory represented by the sending Party;
- (2) the authorities of the territory represented by the receiving Party shall return the person transferred to custody in the territory represented by the sending Party within 30 days of the transfer or as soon as circumstances permit or as otherwise agreed by both Designated Representatives;
- (3) the authorities of the territory represented by the receiving Party shall not require the authorities of the territory represented by the sending Party to initiate extradition proceedings for the return of the person transferred; and

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- (4) the person transferred shall receive credit for service of the sentence imposed in the territory represented by the sending Party for time served in custody in the territory represented by the receiving Party.

Article 12

Testimony in the Territory Represented by the Requesting Party

1. When the Designated Representative for the Requesting Party requests the appearance of a person in the territory represented by the Requesting Party, the Designated Representative for the Requested Party shall invite the person to appear before the appropriate authority in the territory represented by the Requesting Party. The Designated Representative for the Requesting Party shall indicate the extent to which the expenses will be paid. The Designated Representative for the Requested Party shall promptly inform the Designated Representative for the Requesting Party of the response of the person.

2. The Designated Representative for the Requested Party may request the Designated Representative for the Requesting Party to make a commitment that a person who has been asked to be present in the territory represented by the Requesting Party according to this Article not be prosecuted, detained, subject to service of process, or subject to any other restriction of personal liberty, for any acts or omissions or convictions which preceded such person's entry into the territory represented by the Requesting Party, and that such person shall not be obliged to give evidence or assist in any investigation, prosecution, or proceeding other than that to which the request relates, except with the prior consent of the Designated Representative for the Requested Party and such person. The person whose presence is requested may decline to comply with the request if the Designated Representative for the Requesting Party does not grant such assurances.

3. The safe conduct provided for by this Article shall cease seven days after the Designated Representative for the Requesting Party has notified the Designated Representative for the Requested Party that the person's presence is no longer required, or when the person, having left the territory represented by the Requesting Party, voluntarily returns. The Designated Representative for the Requesting Party may, in its discretion, extend this period up to fifteen days if it determines that there is good cause to do so.

Article 13

Location or Identification of Persons or Items

If the Designated Representative for the Requesting Party seeks the location or identity of persons or items in the territory represented by the Requested Party, the authorities of the territory represented by the Requested Party shall use their best efforts to ascertain the location or identity.

Article 14

Service of Documents

1. The authorities of the territory represented by the Requested Party shall use their best efforts to effect service of any document relating, in whole or in part, to any request for assistance made by the Designated Representative for the Requesting Party under the provisions of this Agreement.

2. The Designated Representative for the Requesting Party shall transmit any request for the service of a document requiring the appearance of a person before an authority in the territory represented by the Requesting Party a reasonable time before the scheduled appearance.

3. The Designated Representative for the Requested Party shall return a proof of service in the manner specified in the request.

Article 15

Search and Seizure

1. The Designated Representative for the Requested Party shall obtain the execution of a request for the search, seizure, and delivery of any item to the Designated Representative for the Requesting Party if the request includes the information justifying such action under the laws of the territory represented by the Requested Party.

2. Upon request, every person who has custody of a seized item shall certify, through the use of Form C appended to this Agreement, the continuity of custody, the identity of the item, and the integrity of its condition. No further certification shall be required. The certificate shall be admissible in evidence in courts in the territory represented by the Requesting Party.

3. The Designated Representative for the Requested Party may require that the Designated Representative for the Requesting Party agree to the terms and conditions deemed necessary to protect third party interests in the item to be transferred.

Article 16

Return of Items

The Designated Representative for the Requested Party may require that the Designated Representative for the Requesting Party return any items, including documents, records, or articles of evidence, furnished to it in execution of a request under this Agreement as soon as possible.

Article 17

Assistance in Forfeiture Proceedings

1. If the Designated Representative for one Party becomes aware of proceeds or instrumentalities of offenses which are located in the territory represented by the other Party and may be forfeitable or otherwise subject to seizure under the laws of the territory represented by that Party, it may so inform the Designated Representative for the other Party. If the relevant authorities of the territory represented by that other Party have the necessary authority over forfeiture or seizure, the Designated Representative for that other Party may present this information to the authorities of the territory represented by that Party for a determination whether any action is appropriate. These authorities shall issue their decision in accordance with the laws of their territory, and shall, through their Designated Representative, report to the Designated Representative for the other Party on the action taken.

2. The Designated Representatives for the Parties shall assist each other to the extent permitted by the respective laws of the territories represented by them in proceedings relating to the forfeiture of the proceeds and instrumentalities of offenses, restitution to the victims of crime, and the collection of fines imposed as sentences in criminal prosecutions. This may include action to immobilize temporarily the proceeds or instrumentalities pending further proceedings.

3. Proceeds or instrumentalities of offenses shall be disposed of in accordance with the laws of the territories represented by the Parties. Either Party may transfer all or part of such assets, or the proceeds of their sale, to the other Party, to the extent permitted by the laws of the territory represented by the transferring Party and upon such terms as it deems appropriate.

Article 18

Compatibility with Other Agreements

Assistance and procedures set forth in this Agreement shall not prevent either of the Parties or their Designated Representatives from granting assistance to the other Party through the provisions of other applicable agreements, or through the provisions of the laws applicable in the territory represented by it. The Parties may also provide assistance pursuant to any arrangement, agreement, or practice which may be applicable.

Article 19

Consultation

The Designated Representatives for the Parties shall consult, at times mutually agreed to by them, to promote the most effective use of this Agreement. The Designated Representatives may also agree on such practical measures as may be necessary to facilitate the implementation of this Agreement.

Article 20

Entry into Force; Termination

1. This Agreement shall enter into force on the date of the final signature hereafter.

2. Either Party may terminate this Agreement by means of written notice to the other Party. Termination shall take effect six months following the date of receipt of such notification.

3. This Agreement applies to any request presented after its entry into force even if the relevant offenses occurred before this Agreement enters into force.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Agreement.

DONE at Washington, DC in duplicate, in the Chinese and English languages, both texts being equally authentic, this 26th day of the March month of the year two thousand and two.

FOR THE TAIPEI ECONOMIC
AND CULTURAL REPRESENTATIVE
OFFICE IN THE UNITED STATES:

NAME: 程建

TITLE: REPRESENTATIVE

DATE: MARCH 26, 2002

FOR THE AMERICAN INSTITUTE
IN TAIWAN:

NAME: Richard C. Bush

TITLE: Chairman

DATE: 26 March 2002

Form A
CERTIFICATE OF AUTHENTICITY OF BUSINESS RECORDS

I, _____ *[name]* _____, declare on penalty of criminal punishment for false

statement or declaration that I am employed by _____ *[name of business from which documents are*

sought] _____ and that my title is _____ *[title]* _____. I further state that each of

the records attached hereto is the original or a duplicate of the original record in the

custody of _____ *[name of business from which documents are sought]* _____.

I further state that:

- A) such records were made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;
- B) such records were kept in the course of a regularly conducted business activity;
- C) the business activity made such records as a regular practice; and
- D) if any such record is not the original, it is a duplicate of the original.

_____ *[signature]* _____ _____ *[date]* _____

Sworn to or affirmed orally before me, _____ *[name]* _____, a judicial officer,
this _____ day of _____, 20____.

Form B

CERTIFICATE OF AUTHENTICITY OF FOREIGN PUBLIC DOCUMENTS

I, _____[name]_____, declare on penalty of criminal punishment for false statement or declaration that my position with the Authority of _____[territory]_____ is _____[title]_____ and that in that position I am authorized by the law of _____[territory]_____ to declare that the documents attached and described below are true and accurate copies of original records which are recorded or filed in _____[name of office or agency]_____, which is an office or agency of _____[territory]_____.

Description of Documents:

_____[signature]_____

_____[title]_____

_____[date]_____

Form C

CERTIFICATE WITH RESPECT TO SEIZED ARTICLES

I, _____^[name]_____, declare on penalty of criminal punishment for false statement or declaration that my position with the Authority of _____^[territory]_____ is _____^[title]_____. I received custody of the articles listed below from _____^[name of person]_____ on _____^[date]_____, at _____^[place]_____ in the same condition as when I received them (or, if different, as noted below).

Description of Articles:

Changes in condition while in my custody:

_____^[signature]_____

_____^[title]_____

_____^[place]_____

_____^[date]_____

Seal