

法規名稱：ARRANGEMENT BETWEEN THE TAIPEI LIAISON OFFICE IN THE REPUBLIC OF SOUTH AFRICA AND THE SOUTH AFRICAN LIAISON OFFICE IN TAIPEI ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

簽訂日期：民國 102 年 07 月 24 日

生效日期：民國 103 年 11 月 28 日

The Taipei Liaison Office in the Republic of South Africa and the South African Liaison Office in Taipei(“ hereinafter jointly referred to as “ the Parties ” and in the singular as “ a Party ”);

DESIRING to improve the effectiveness of the law enforcement authorities in the investigation, prosecution and prevention of crime through co-operation and mutual legal assistance in criminal matters;

NOTING that the domestic laws applicable in the jurisdictions of the Parties provide for international mutual legal assistance;

HAVE REACHED the following understandings:

Article 1

Competent Authorities and Co-operation

- (1) The Competent Authorities responsible for the implementation of this Arrangement will be -
 - (a) on behalf of the Taipei Liaison Office in the Republic of South Africa, the Ministry of Justice;
 - (b) on behalf of the South African Liaison Office in Taipei, the Department of Justice and Constitutional Development.
- (2) The Competent Authorities will use their best efforts to co-operate in accordance with the provisions of this Arrangement, acting in their respective jurisdictions and subject to the applicable domestic law.

Article 2

Areas of Co-operations

- (1) The Competent Authorities will endeavour to promote the development of co-operation in the criminal investigation and prosecution of crimes committed within the respective jurisdictions in the following areas:
 - (a) Taking the testimony or statements of persons;
 - (b) providing documents, records and articles of evidence;
 - (c) locating or identifying persons;
 - (d) serving documents;
 - (e) executing requests for searches and seizures for the purpose of securing evidence; and

- (f) any other form of assistance not prohibited by the domestic law applicable to the Parties.
- (2) This Arrangement does not apply to extradition.

Article 3

Requests for Assistance

- (1) A request for assistance must be made in writing, but the requested Competent Authority may accept a request directly or in another form in emergency situations. In such a case, the request must be confirmed in writing within ten (10) days thereafter unless the requested Competent Authority of the requested Party agrees otherwise.
- (2) The request must include -
 - (a) the name of the authority conducting the investigation, prosecution, or proceeding to which the request relates;
 - (b) a description of the subject matter and nature of the investigation, prosecution or proceeding, including the specific criminal offences which relate to the matter;
 - (c) a description of the evidence, information or other assistance sought; and
 - (d) a statement of the purpose for which the evidence, information or other assistance is sought.
- (3) To the extent necessary and possible, a request must also include -
 - (a) information on the identity and location of any person from whom evidence is sought;
 - (b) 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;
 - (c) information on the identity and whereabouts of a person to be located;
 - (d) a precise description of the place or person to be searched and of the articles to be seized;
 - (e) a description of the manner in which any testimony or statement is to be taken and recorded;
 - (f) a list of questions to be asked of a witness;
 - (g) a description of any particular procedure to be followed in executing the request;
 - (h) information as to the allowances and expenses to which a person asked to appear in the jurisdiction applicable to the requested Competent Authority will be entitled;
 - (i) any requirements for confidentiality and the reasons therefore;
 - (j) a judicial order or court order, as may be applicable, or a certified copy thereof, which is to be enforced and a statement that such order is final; and
 - (k) any other information which may be brought to the attention of the requested Competent Authority to

facilitate its execution of the request.

Article 4

Execution of Requests

- (1) The requested Competent Authority must endeavour to execute all requests promptly and fully.
- (2) The requesting Competent Authority must be notified immediately of any circumstances hampering the execution of the request or causing considerable delay in its execution.
- (3) If the execution of the request does not fall within the competence of the requested Competent Authority, it must promptly notify the requesting Competent Authority accordingly.
- (4) The requested Competent Authority may request such further information as it deems necessary to duly execute the request.
- (5) If the requested Competent Authority considers that the immediate execution of the request may hamper criminal prosecution, other proceedings or investigations being carried out in the relevant jurisdiction, it may suspend the execution of the request or allow the execution under conditions which were set as necessary after consultations with the requesting Competent Authority. If the requesting Competent Authority agrees to receive assistance under the suggested conditions, it must comply with these conditions.
- (6) On the receipt of the applications made by the requesting Competent Authority, the requested Competent Authority must endeavour to ensure the confidentiality of the fact that the request was made, its contents and annexed documents, as well as the fact of providing assistance. If it is not possible to execute the request without preserving its confidentiality, the requested Competent Authority will inform the requesting Competent Authority accordingly, after which the latter may decide as to whether it will be acceptable to execute the request under such conditions.
- (7) The requested Competent Authority must, at its earliest convenience, inform the requesting Competent Authority about the results of the execution of the request.

Article 5

Refusal of Assistance

- (1) Envisaged assistance undertaken in terms of this Arrangement may be refused wholly or partially, if the requested Competent Authority deems the execution of the request to be detrimental to the security, public order or other essential interests of the jurisdiction represented by it, or deems it to be in conflict with the domestic law or international obligations applicable to such jurisdiction.

- (2) Assistance may be refused by the requested Competent Authority if the act in relation to which the request was forwarded is not punishable under the domestic law applicable to the jurisdiction represented by it.
- (3) Assistance may also be refused if execution of the request imposes an excessive burden on the resources of the requested Competent Authority.
- (4) Should it be possible, the requested Competent Authority may before taking a decision to refuse the assistance requested in accordance with sub-Articles (1), (2) and (3), consult with the requesting Competent Authority in order to establish whether the assistance may be granted on the conditions which the requested Competent Authority may impose. If the requesting Competent Authority agrees to receive assistance under the suggested conditions, it must comply with these conditions.
- (5) The requesting Competent Authority should be notified in writing about full or partial refusal to execute the request together with an explanation of the reasons for such refusal.

Article 6

Limitations Relating to the Use of Information, Documents and Personal Data

- (1) Each Competent Authority must endeavour to ensure the confidentiality of information, documents and personal data received from the other Competent Authority, if they are restricted or the other Competent Authority disapproves of its disclosure. The degree of such a restriction is to be determined by the providing Competent Authority.
- (2) Information, documents and personal data received in accordance with this Arrangement are not to be used without the consent of the providing Competent Authority for purposes other than those for which they were requested and provided.
- (3) In order to share information, documents and personal data received by a Competent Authority in accordance with this Arrangement with a third party, the prior consent of the providing Competent Authority is required.

Article 7

Communications

The Competent Authorities responsible for the implementation of this Arrangement referred to in Article 1 may directly communicate or consult with each other.

Article 8

Expenses

Ordinary expenses incurred in processing a request in terms of this Arrangement must be borne by the requested Competent Authority, unless otherwise agreed upon between the Competent Authorities. Should the request involve high or extraordinary expenses, the Parties must consult with each other in order to establish the terms and conditions under which the request is to be processed, and the way in which the expenses are to be borne.

Article 9

Language

The Competent Authorities, in the course of their co-operation in accordance with this Arrangement must use English or Chinese as the medium of communication.

Article 10

Consultation

The Parties may consult on any matter arising from the implementation or interpretation of this Arrangement.

Article 11

Entry into Effect and Termination

- (1) This Arrangement will enter into effect on the date on which the Parties have informed each other that they have complied with their domestic legal procedures, the effective date being the date of the last notification.
- (2) This Arrangement will apply to any request presented after its entry into effect even if the relevant offences occurred before its entry into effect.
- (3) This Arrangement may be terminated by either Party by giving at least six (6) months' written notification in advance to the other Party of such intention.

Article 12

Amendment

This Arrangement may be amended by mutual consent between the Parties by means of an exchange of Notes.

SIGNED at Pretoria on this 24 day of July , 2013 in duplicate in the Chinese and English languages, all texts being equally authentic.

Mr Pei-Yung Hsu
Representative

FOR THE TAIPEI LIAISON

Mr Nicolaas Sauer Schoombie
Representative

FOR THE SOUTH AFRICAN

OFFICE IN THE REPUBLIC
OF SOUTH AFRICA

LIAISON OFFICE IN TAIPEI