

駐美國台北經濟文化代表處

與

美國在台協會

間之

刑事司法互助協定

## 目次

第一條·····	用詞定義
第二條·····	協助之範圍
第三條·····	受指定之代表
第四條·····	協助之限制
第五條·····	請求之形式及內容
第六條·····	請求之執行
第七條·····	費用
第八條·····	用途之限制
第九條·····	受請求方所屬領土內之證言或證據
第十條·····	雙方所屬領土內之紀錄
第十一條·····	解送受拘禁人
第十二條·····	在請求方所屬領土內作證
第十三條·····	人或證物之所在或其辨識
第十四條·····	送達文件
第十五條·····	搜索及扣押
第十六條·····	返還證物
第十七條·····	沒收程序之協助
第十八條·····	與其他協定之關係
第十九條·····	諮商
第二十條·····	生效；終止

駐美國台北經濟文化代表處與美國在台協會基於相互尊重、互惠與共同利益，藉由刑事事務之司法互助，以增進雙方所屬領土內執法機關有效之合作，同意訂立下列條款：

## 第一條

### 用詞定義

1、除另有規定外，本協定所用名詞定義如下：

（1）所稱”TECRO”係指駐美國台北經濟文化代表處，乃由台灣當局所設立之駐美機構；且

（2）所稱”AIT”係指美國在台協會，乃依一九七九年四月十日之台灣關係法、九六—八公法（22U.S.C 第三三〇一條以下），在哥倫比亞特區法令規定之下，組織設立之非營利法人。

（3）所稱“締約之一方”或“締約雙方”係指駐美國台北經濟文化代表處及／或美國在台協會。

## 第二條

### 協助之範圍

1 締約雙方應經由其所屬領土內之相關主管機關，依本協定之規定，提供有關調查、追訴、犯罪防制及相關刑事司法程序中之相互協助。

2 協助應包括：

- (1) 取得證言或陳述；
- (2) 提供供證之文件、紀錄及物品；
- (3) 確定關係人之所在或確認其身分；
- (4) 送達文件；
- (5) 為作證或其他目的而解送受拘禁人；
- (6) 執行搜索及扣押之請求；
- (7) 協助凍結及沒收資產、歸還補償、罰金之執行程序；
- (8) 不違反受請求方所屬領土內法律之任何形式之協助。

3 在請求方所屬領土內受調查、追訴或進行司法程序之行為，不論依受請求方所屬領土內之法律規定是否構成犯罪，除本協定另有規定外，都應提供協助。

4 本協定係僅供締約雙方間司法互助之用，並不因而使私人得以獲取、隱匿、排除證據或阻礙執行請求之權利。

### 第三條

#### 受指定之代表

1 任何一方應指定受指定代表人，以依照本協定提出或受理請求。

2 對駐美國台北經濟文化代表處而言，其受指定代表人係駐美國台北經濟文化代表處所屬領土之法務部部長或受法務部部長指定之人；對美國在台協會而言，該受指定代表人係美國在台協會所屬領土之司法部長或受司法部長指定之人。

3 為遂行本協定之目的，受指定代表人應彼此直接連繫，但依本條第四項和第五項之規定，當事人之一方依本協定匯款至他方者，應由駐美國台北經濟文化代表處及美國在台協會為之。

4 依本協定之任何匯至駐美國台北經濟文化代表處之款項，應由美國在台協會以新台幣或美金匯款至北美事務協調委員會。款項應寄至：

秘書長

北美事務協調委員會

台灣台北市（郵遞區號：100）博愛路 133 號

電話：(02) 23116970

傳真：(02) 23822651

依本協定之任何匯至美國在台協會之款項，應由駐美國台北經濟文化代表處以美金匯款至美國在台協會。該款項應寄至：

副執行理事

美國在台協會

1700, N. Moore Street, Suite 1700

Arlington, VA. 22209

Telephone Number: (703) 525-8474  
Facsimile Number: (703) 841-1385

5 依本協定之任何匯款及匯款請求必須附隨與該請求  
相關之文件，並列明特定之協助行為及其有關費用。

## 第四條

### 協助之限制

1 有下列情形之一者，受請求方之指定代表人得拒絕協助：

- (1) 所涉行為係觸犯軍法而非觸犯普通刑法；
- (2) 該請求之執行將有害於受請求方所屬領土內之安全、公共秩序或類似之重要利益；或
- (3) 該請求與本協定不符者；
- (4) 依第十五條規定所為之請求，其所涉行為在受請求方所屬領土內不構成犯罪者。

2 受請求方之指定代表人依本條規定拒絕提供協助前，應與請求方之指定代表人協商考量是否在附加必要之條件後，再提供協助，如請求方之指定代表人接受該附加條件之協助，則其所屬領土內之相關機關應遵守該條件。

3 受請求方之指定代表人如拒絕提供協助，應將拒絕之理由通知請求方之指定代表人。



## 第五條

### 請求之形式及其內容

1 請求協助，應以書面為之，但在緊急情形下，經受請求方指定代表人同意以其他方式提出者，不在此限；以其他方式提出請求者，除經受請求方指定代表人之同意外，應於提出請求後十日內以書面確認之。請求協助除經同意外，應以受請求方所屬領土內所使用之語文提出。

2 請求應包括以下事項：

- (1) 執行調查、追訴或相關訴訟程序之機關名稱；
- (2) 請求事項及調查、追訴或訴訟程序性質之說明，包括請求事項涉及之特定刑事罪行、罪名及其法定刑責；
- (3) 所要尋找的證據、資料或其他協助之敘述；
- (4) 所要尋找的證據、資料或其他協助之目的之陳述。

3 在可能及必要之程度內，請求亦應包括以下事項：

- (1) 提供證據者之身分及其處所；
- (2) 應受送達者之身分及處所、於訴訟程序中之關係及送達方式；
- (3) 受尋找人之身分及處所
- (4) 受搜索之處所、人及應扣押物品之確切描述；
- (5) 有關取得及記錄證詞或陳述之方式之說明；
- (6) 訊問證人之問題表；
- (7) 執行請求時，應行遵守之特別程序；
- (8) 經要求在請求方所屬領土內出庭者可得之津貼及費用；
- (9) 其他有助於受請求方執行請求之相關資料。

4. 如受請求方認為請求之內容不充足，以致不能執行

時，可要求提供補充資料。

5. 協助之請求及其輔助文件無需任何形式的證明或認證。

## 第六條

### 請求之執行

1 受請求方之指定代表人應立即執行請求，如由相關機關執行較為適當者，應移轉之。受請求方之主管機關應依其權責盡力執行請求。

2 受請求方之指定代表人，應在請求方經費允許範圍內，為其在受請求方所屬領土內因請求協助而產生之任何訴訟程序，做一切必要之安排。

3 請求之執行應依受請求方所屬領土內之法律規定程序為之。請求書所指定之執行方法，除違反受請求方所屬領土內之法律者外，應予遵守。

4 受請求方指定代表人如認為執行請求有礙於在受請求方所屬領土內進行之刑事調查、追訴或其他訴訟程序時，得延緩執行；或依照與請求方指定代表人協商後所定之必要條件執行之。請求方指定代表人如接受該附加條件之協助，則其所屬領土內之機關應遵守這些條件。

5 受請求方所屬領土內之相關機關，於請求方指定代表人要求時，對於協助之請求及其內容，應盡力保密；如為執行該請求而無法保密時，受請求方指定代表人應通知請求方指定之代表人，由請求方指定之代表人決定該請求是否仍應執行。

6 受請求方指定代表人對於請求方指定代表人就執行請求進展所提出之合理詢問，應予回應。

7 受請求方之指定代表人應將執行結果，立即通知請

求方指定代表人。如該請求遭拒絕時，受請求方指定代表人應將拒絕理由通知請求方指定代表人。

## 第七條

### 費用

1. 受請求方所屬領土內之主管機關應支付與執行請求有關之費用，但請求方所屬領土內之主管機關應負擔下列費用：
  - (1) 根據請求方所屬領土之規定，支付本協定第十一條及第十二條規定人員津貼或旅費；
  - (2) 有關人員按照第九條第三項之規定，前往、停留和離開受請求方所屬領土之費用；
  - (3) 專家之費用及報酬；以及
  - (4) 筆譯、口譯及謄寫費用。
2. 如請求之執行明顯須支出超乎尋常之費用，締約雙方指定之代表人應協商以決定該請求可被執行之條件。

## 第八條

### 用途之限制

1 受請求方之指定代表人得請求請求方所屬領土內之機關在未經受請求方指定代表人同意之前，不得將依本協定而取得之資料或證據，使用於請求（書）所載以外用途之任何調查、起訴或訴訟程序。於此情形下，請求方所屬領土內之機關應遵守此條件。

2 受請求方之指定代表人對於依本協定而提供之資料及證據，得請求應予保密，或僅得依其所指定之條件使用。請求方之指定代表人如在該等指定條件下接受資料或證據，則其所代表領土內之機關應盡力遵守之。

3 在刑事追訴程序中，如依駐美國台北經濟文化代表處所屬領土之憲法或依美國在台協會所屬領土之憲法或法律，有義務使用或公開資料時，不應以本條之限制規定排除之。請求方之指定代表人應將此準備公開之情形預先通知受請求方之指定代表人。

4 依本條第一、二、三項之規定，在請求方所屬領土內已公開之資料或證據，得使用於任何用途。

## 第九條

### 受請求方所屬領土內之證言或證據

1 受請求方所屬領土內之人經依本協定受請求自其取得證據者，必要時應強制其出庭、作證或提供包括供證之文件、紀錄及物品在內之證物。受請求而做虛偽證言者，無論以口頭或書面方式，須在受請求方所屬領土內，依該領土內之刑事法規定予以追訴及處罰。

2 受請求方之指定代表人於受請求時，應先行提供有關依本條規定取得證言或證據之日期及地點之資料。

3 受請求方所屬領土之主管機關在執行請求時，應准許請求中所指明之人在場，並依照受請求方所屬領土之主管機關所同意之方式，准許其詢問作證或提供證據之人，並進行逐字紀錄。

4 如第一項規定之人依請求方所屬領土內法律之規定主張豁免、無行為能力或特權時，受請求方指定代表人仍應取得任何所請求之證據，並使請求方之指定代表人知悉該人之主張，俾使請求方所屬領土內有關當局解決之。

5 依本條規定在受請求方所屬領土內所取得之證據或依本條規定取得之證詞，得以聲明方式，包括業務上紀錄之情形，依本協定附表A所示之證明方式確認證實。依附表A所證明之文件，應准許在請求方所屬領土內之法院作為證據使用。

## 第十條

### 雙方所屬領土內之紀錄

1 受請求方之指定代表人，應對請求方之指定代表人，提供受請求方所屬領土內政府各主管機關所持有得公開之紀錄，包括任何形式之文件或資料。

2 受請求方之指定代表人，得以對待受請求方所屬領土內執法機關或司法當局相同的程度及條件，提供任何在其所屬領土內政府主管機關持有之不公開文件、紀錄或資料之副本。受請求方指定之代表人得根據本項規定，依職權拒絕全部或部分之請求。

3 依本條規定所提出之紀錄，得由負責保管之人依附表B填載聲明確認證實，毋需提出其他證明。依本項規定經認定為真正之文件，應准許在請求方所屬領土內之法院作為證據使用。



## 第十一條

### 解送受拘禁人

1 基於本協定所定協助之目的，經受請求方所屬領土內主管當局拘禁之人，被請求在請求方所屬領土內出庭者，如經其本人及締約雙方指定代表人之同意，得由受請求方所屬領土解送至請求方所屬領土內，以達協助之目的。

2 基於本協定所定協助之目的，經請求方所屬領土內主管當局拘禁之人，被請求在受請求方所屬領土出庭者，如經其本人及締約雙方指定代表人之同意，得由請求方所屬領土解送至受請求方所屬領土內，以達協助之目的。

3 為達本條之目的：

- (1) 受移送方所屬領土內之主管機關，除經移送方所屬領土內之當局授權外，應有使被移送之人繼續受拘禁之權力與義務。
- (2) 受移送方所屬領土內之主管機關，應在解送之日起三十日內，或在情況許可之下，或經雙方指定代表人同意之情形下，儘速將被移送之人解還移送方所屬領土受拘禁。
- (3) 受移送方所屬領土內之主管機關不得要求移送方所屬領土內之主管機關發動引渡程序以達送還被移送之人之目的；並且
- (4) 被移送之人於受移送方所屬領土內受拘禁期間，應折抵其在移送方所屬領土內所受判決之服刑期間。

## 第十二條

### 在請求方所屬領土內作證

1 請求方之指定代表人請求某人在請求方所屬領土內應訊時，受請求方之指定代表人應要求該人至請求方所屬領土內相關機關應訊。請求方指定代表人應表明其願支付費用之額度。受請求方之指定代表人應立即通知請求方之指定代表人有關該人之回應。

2 受請求方之指定代表人可要求請求方之指定代表人承諾，對於依本條被要求至請求方所屬領土內應訊之人員，不得因該人於進入請求方所屬領土前之任何作為、不作為或有罪判決而予以起訴、羈押、傳喚或以其他形式限制其人身自由，亦不應強制該人在該請求所未涉及之任何其他偵查、起訴或訴訟程序中作證或協助，除非事先取得受請求方之指定代表人與該人之同意。如請求方之指定代表人不能作出上述保證，則被要求前往之人可拒絕接受該請求。

3 依本條規定所賦予之安全維護行為，應於請求方之指定代表人通知受請求方之指定代表人，該人已毋需應訊七日後，或於該人離開請求方所屬領土而自願返回時，終止之。請求方之指定代表人認有正當理由時，得依職權延長該期間至十五日。

### 第十三條

#### 人或證物之所在或其辨識

如請求方之指定代表人尋求在受請求方所屬領土內之人或證物之所在，或為身分、物件之辨識時，受請求方所屬領土內之主管機關應盡其最大努力以確定其所在或為人身、物件之辨識。

## 第十四條

### 送達文件

1 受請求方所屬領土內之主管機關應盡最大努力以有效送達請求方之指定代表人依本協定規定所提出與任何協助之請求全部或部分有關之文書。

2 請求方之指定代表人於請求送達文件，要求特定人至請求方所屬領土內機關應訊時，應於指定應訊時間前之合理期間內提出協助送達文件之請求。

3 受請求方之指定代表人應依請求所指定之方式返還送達證明。

## 第十五條

### 搜索及扣押

1 如依受請求方所屬領土內之法律，請求方指定代表人所提出搜索、扣押及移轉證物之請求為正當時，受請求方之指定代表人即應執行此等請求。

2 每一保管扣押物品之人，於受請求時，應使用本協定附表 C，以證明其保管之連續性、證物之辨識及其狀態之完整，毋需提出其他證明。此證明應准許在請求方所代表領土內之法院作為證據使用。

3 受請求方之指定代表人得要求請求方之指定代表人同意遵守必要條件以保護第三方對於被移轉證物之權益。

## 第十六條

### 返還證物

受請求方之指定代表人，得要求請求方之指定代表人，儘速返還任何依本協定執行請求時所提供之證物，包括供證之文件、紀錄或物品。

## 第十七條

### 沒收程序之協助

1 締約之一方所指定之代表人，知有犯罪所得或犯罪工具在締約他方所屬領土內，且係依締約他方所屬領土內之法律得予沒收或扣押之物者，得通知締約他方之指定代表人。如締約他方所屬領土內之主管機關對沒收或扣押程序有管轄權時，締約他方之指定代表人得對其主管機關提出此等資料俾其決定是否採取適當行動。該主管機關應依其領土內之法律做出決定，並應經由其指定之代表人就其所採取之行動通知對方之指定代表人。

2 締約雙方指定之代表人應在所屬領土內之相關法律許可範圍內，在沒收犯罪所得或犯罪工具、被害人求償、刑事判決罰金之執行等程序中，彼此協助。此協助包括在等候進一步程序前之暫時凍結該所得或工具。

3 犯罪所得或犯罪工具須依締約雙方所屬領土內之法律規定予以處理。締約之任何一方在其所屬領土內之法律所許可之範圍，且認為適當時，得移轉該財物、變賣所得之全部或部分予他方。

## 第十八條

### 與其他協定之關係

本協定所規定之協助及程序，並不禁止締約之任一方或其指定之代表人依其他協定或各自所屬領土內之法律之規定，對他方提供協助。締約雙方亦得依任何可適用之安排、協定或實務做法，提供協助。



## 第十九條

### 諮商

締約雙方之指定代表人，於相互同意時，應諮商以促進本協定之有效運用。受指定之代表人亦得同意採用有助於履行本協定所必要之實際方法。

## 第二十條

### 生效；終止

- 1 本協定自最後簽署之日起生效。
- 2 締約之一方得以書面通知他方後，終止本協定。該終止自收受通知後六個月生效。
- 3 本協定適用於其生效後提出之任何請求，即使有關犯罪係發生於本協定生效之前。

茲證明以下簽名者經充份授權簽署本協定。

〔本協定以中文及英文各繕製兩份，兩種文字之約本同一作準。西元二〇〇二年三月二十六日訂於華盛頓哥倫比亞特區〕

駐美國台北經濟文化代表處 美國在台協會

姓名：程建 姓名：Richard C. Bosh 卜睿哲  
Chen  
職稱：代表 REPRESENTATIVE 職稱：Chairman

日期：MARCH 26, 2002 日期：26 March 2002

表 A

業務紀錄真實性之證明

本人\_\_\_\_\_（姓名）\_\_\_\_\_作證，如有虛偽陳述或證言，將受刑事處罰。本人係受僱於\_\_\_\_\_（商業名稱；文件所取自該商業）\_\_\_\_\_，職稱為\_\_\_\_\_（職稱）\_\_\_\_\_。本人再陳述：此所附之每一紀錄均係原本或在\_\_\_\_\_（文件所取自該商業之名稱）\_\_\_\_\_監督下根據原本所製成之複製本。

本人再陳述：

- A) 該紀錄係於所述事件發生時或接近發生時，由知悉該事件之人（或根據獲自知悉該事件之人傳來之訊息）所作成；
- B) 該紀錄係在經常性的業務活動過程中被保存者；
- C) 由於該業務活動，使做成紀錄成為常規；
- D) 如該紀錄並非原本，亦係根據原本所製成之複製本。

\_\_\_\_\_（簽名）\_\_\_\_\_

\_\_\_\_\_（日期）\_\_\_\_\_

在本司法官員\_\_\_\_\_（姓名）\_\_\_\_\_面前宣誓  
或確認，\_\_\_\_\_（日期）\_\_\_\_\_。

## 表 B

### 外國公文書真實性之證明

本人\_\_\_\_\_（姓名）\_\_\_\_\_作證，如有虛偽陳述或證言，將受刑事處罰。本人在\_\_\_\_\_（領土）\_\_\_\_\_之政府當局之職稱為\_\_\_\_\_（職稱）\_\_\_\_\_，並經\_\_\_\_\_（領土）\_\_\_\_\_之法律授權證明此所附及以下所述之文件係真正且係依照原本紀錄正確製作之複製本。該原本紀錄存錄在\_\_\_\_\_（領土）\_\_\_\_\_之機關（機關名）\_\_\_\_\_。

有關文件之敘述：

\_\_\_\_\_  
（簽名）

\_\_\_\_\_  
（職稱）

\_\_\_\_\_  
（日期）

## 表 C

### 有關扣押物品之證明

本人\_\_\_\_\_（姓名）\_\_\_\_\_作證，如有虛偽陳述或證詞，將受刑事處罰。本人在\_\_\_\_\_（領土）\_\_\_\_\_之政府當局之職稱為\_\_\_\_\_（職稱）。本人於\_\_\_\_\_（日期）\_\_\_\_\_在\_\_\_\_\_（地點）\_\_\_\_\_自\_\_\_\_\_（某人姓名）\_\_\_\_\_接受保管下列物品，保持其與本人收受時相同之狀態。（如有不同，註記如下）

有關物品之敘述：

在本人保管中狀態之改變

\_\_\_\_\_（簽名）\_\_\_\_\_

\_\_\_\_\_（職稱）\_\_\_\_\_

\_\_\_\_\_（地點）\_\_\_\_\_

\_\_\_\_\_（日期）\_\_\_\_\_

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

## TABLE OF CONTENTS

Article 1 .....	General Definitions
Article 2 .....	Scope of Assistance
Article 3 .....	Designated Representatives
Article 4 .....	Limitations on Assistance
Article 5 .....	Form and Contents of Requests
Article 6 .....	Execution of Requests
Article 7 .....	Costs
Article 8 .....	Limitations on Use
Article 9 .....	Testimony or Evidence in the Territory Represented by the Requested Party
Article 10 .....	Records of the Territories Represented by the Parties
Article 11 .....	Transfer of Persons in Custody
Article 12 .....	Testimony in the Territory Represented by the Requesting Party
Article 13 .....	Location or Identification of Persons or Items
Article 14 .....	Service of Documents
Article 15 .....	Search and Seizure
Article 16 .....	Return of Items
Article 17 .....	Assistance in Forfeiture Proceedings
Article 18 .....	Compatibility with Other Agreements
Article 19 .....	Consultation
Article 20 .....	Entry into Force; Termination



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;

- (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

- (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 26<sup>th</sup> 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:

TITLE:

DATE:

程建人  
程建人  
REPRESENTATIVE  
MARCH 26, 2002

FOR THE AMERICAN INSTITUTE  
IN TAIWAN:

NAME:

TITLE:

DATE:

Richard C. Bush  
Chairman  
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**