

## **Arrangement**

between

the Taipei Representative Office in the Federal Republic of Germany

and

the German Institute Taipei

### **on the Cooperation in the Area of Judicial Mutual Legal Assistance in Criminal Matters**

The Taipei Representative Office in the Federal Republic of Germany and

the German Institute Taipei

(in short, both Sides),

desire to cooperate in the field of mutual legal assistance, and have come to the following understanding:

#### **I. Purpose**

1. Both Sides intend to support one another upon request in accordance with the conditions of their respective laws in the field of mutual legal assistance in criminal matters. This Arrangement is not intended to cover requests for extradition (or for the arrest or detention of any person with a view to extradition), for the purposes of enforcing a criminal law judgment of the requesting Side in the requested Side (except for judgments concerning asset recovery) or for the purposes of transferring sentenced persons to serve sentences.
2. Both Sides therefore declare their willingness, on the basis of the pertinent laws and regulations of each Side, to render mutual legal assistance, according to the principles of humanity, security, speed, simplicity and reciprocity.

#### **II. Definitions**

1. The "requesting Side" means the Side which asks for assistance.
2. The "requested Side" means the Side which should render assistance.

#### **III. Authorities**

1. The contacting authorities responsible for the implementation of this Arrangement will be

- a) the German Institute Taipei;
  - b) the Taipei Representative Office in the Federal Republic of Germany.
2. The Central Authorities responsible for the practical implementation of this Arrangement will be (hereinafter "Central Authorities"):
- a) the Department of International and Cross-Strait Legal Affairs of Ministry of Justice, Taiwan;
  - b) the German Federal Office of Justice.

#### **IV. Formal Requirements of a Request**

- 1. Both Sides share the view that requests for mutual legal assistance should be submitted in writing, should bear the signature of the contacting authority on the requesting Side, and should include specific content, which according to the respective laws and practice of either Side should include in particular:
  - a) the name of the competent authority conducting the criminal proceedings to which the request relates;
  - b) where possible, the identity, nationality or comparable status, and location of the person or persons who is/are the subject of the criminal proceedings;
  - c) the nature of the criminal matter to which the request relates as well as a summary of the facts and a copy of the applicable laws;
  - d) the purpose of the request and the nature of the assistance sought;
  - e) if applicable, details of any particular procedure or requirement that the requesting Side wishes to be followed and the reasons therefor;
  - f) if applicable, any special requirements with regard to confidentiality (including the protection of personal data) and the reasons therefor;
  - g) if applicable, the desired period of time in which the request should be complied with;
  - h) any other information which is required to facilitate compliance with the request;
  - i) in the case of request for service of documents: the identity and address of the person to be served and that person's relationship to the proceedings;
  - j) in the case of a request for inquiry, search, freezing or seizure: the facts underlying the belief that evidence is located in the requested Side, the circumstances justifying such a measure under the laws of the requesting Side, and an order for such a measure by a competent authority or a statement by the central authority of the requesting Side showing that such an order could be obtained if the item were located in the requesting Side;

- k) in the case of requests to take evidence from a person: the identity and the address of the person as well as the subject matter on which the person is to be examined, including (where possible) a list of questions and details of any right of that person to decline to give evidence; if the requesting Side wishes that witnesses or experts give evidence in the presence of a judge, public prosecutor or police officer, such a request should be expressly made;
  - l) in the case of requests for locating and identifying persons: information on the identity and (where possible) the whereabouts of the person to be located or identified;
  - m) in the case of requests for inspection or examination of objects: a description of the object to be inspected or examined;
  - n) in the case of the transfer of persons in custody so that they can give evidence or assist in investigations: the place to which the person in custody should be transferred and the planned time of their return.
2. Both Sides share the understanding that requests and supporting documents should be submitted together with a translation into traditional Chinese in case of requests from the German Institute Taipei and a translation into German in case of requests from the Taipei Representative Office in the Federal Republic of Germany.

## **V. Channels of Communication**

- 1. Requests and responses thereto should be communicated pursuant to both Sides' laws.
- 2. In order to speed up the procedure, requests for mutual legal assistance can be submitted additionally between the Central Authorities in writing and electronically in advance.
- 3. If necessary, enquiries regarding mutual assistance can be made directly between the Central Authorities in English language.

## **VI. Types of Legal Assistance**

- 1. Mutual assistance is governed by the laws of the requested Side.
- 2. Legal assistance measures may include any types of assistance not contradictory to both Sides' laws, and in particular as follows:
  - a) Taking statements of persons;
  - b) Hearing by video conference;
  - c) Transferring persons in custody for statements or other purposes;
  - d) Search and seizure;



- e) Service of documents;
- f) The surveillance of telecommunications, electronic communications and other types of communications;
- g) Joint investigation teams;
- h) Freezing of assets;
- i) Execution of final and irrevocable judgment or order for confiscation of assets or collection of proceeds value relating to a criminal offense;
- j) Assets sharing.

## **VII. Hearings by Video Conference**

With reference to hearing by video conference, the following rules and requirements should apply:

1. A judicial authority of the requested Side should be present during the hearing, where necessary assisted by an interpreter, and should also be responsible for ensuring both the identification of the person to be heard and respect for the fundamental principles of the law of the requested Side;
2. The hearing should be conducted directly by, or under the direction of, the judicial authority of the requesting Side in accordance with its laws;
3. At the request of the requesting Side or the person to be heard, the requested Side should ensure that the person to be heard is assisted by an interpreter, if necessary;
4. The person to be heard may claim the right not to testify which would accrue to him or her under the law of either the requested or the requesting Side.

## **VIII. Transfer of Persons in Custody**

1. A person in the custody of the requested Side whose presence in the requesting Side is sought for purposes of assistance under this Arrangement may be transferred from the requested Side to the requesting Side if the person consents and if both Sides agree.
2. A person in the custody of the requesting Side whose presence in the requested Side is sought for purposes of assistance under this Arrangement may be transferred from the requesting Side to the requested Side if the person consents and if both Sides agree.
3. The transfer of persons in custody is based on both Sides' respective laws. For this purpose, the sides should adhere to the following principles:

- a) the authorities of the receiving Side should have the authority and the obligation to keep the person transferred in custody unless otherwise authorized by the authorities of the sending Side;
- b) the authorities of the receiving Side should return the transferred person to the custody of the sending Side within a reasonable period or as soon as circumstances permit or as otherwise agreed by both Sides;
- c) the authorities of the receiving Side should not require the authorities of the sending Side to initiate extradition proceedings for the return of the person transferred; and
- d) the person transferred should receive credit for service of the sentence imposed in the sending Side for time served in custody in the receiving Side.

#### **IX. Search and Seizure**

The requested Side should permit the presence of the persons as specified in the letter of request from the requesting Side during the execution of the request.

#### **X. Joint Investigation Teams**

- 1. Both Sides may establish a joint investigation team based on their respective laws by a case-by-case arrangement. A member of a joint investigation team seconded by one Side may be entrusted with carrying out investigative measures under the direction of the other Side's competent team member if both their laws allow for it.
- 2. Officers working in a joint investigation team may directly transmit evidence and information, including personal data, obtained in the course of their official duties to members seconded by one Side or other team members insofar as this is necessary for the work of the joint investigation team.

#### **XI. Asset Sharing**

In the case that the assistance provided by the requested Side resulted in the requesting Side's successful confiscation of assets or collection of the proceeds value, both Sides may agree to a division of the assets according to their respective laws.

#### **XII. Speciality**

Both Sides concur that any use of information or evidence for other purposes than those specified in the request requires the prior consent of the Side which transmitted the information or evidence concerned, and that the requested Side should, after consultation with the requesting Side, be able to demand that the transmitted information or evidence or the



source of such information or evidence be kept confidential or only be disclosed or used subject to such terms and conditions as it may specify.

### **XIII. Grounds for Refusal**

1. Both Sides share the understanding that the requested Side may refuse to comply with a request in accordance with its own laws particularly if the measures requested by the requesting Side would be contrary to the laws of the requested Side. The requested Side should furthermore be able to postpone the compliance with a request if the said compliance could jeopardise an ongoing criminal prosecution on the requested Side. Both Sides emphasise that a request may be refused if the alleged criminal offence's punishment is considered to prejudice or violate the requested Side's essential value of human rights, fundamental principles of law or other important interest under the law of the requesting Side; in the case of Germany, such interest includes obligations resulting from its membership in the European Union and the German Fundamental Law.
2. The requested Side may ask for an assurance, deemed to be sufficient, that the above-mentioned important interests will not be prejudiced or violated.
3. In addition, the requested Side should be able to refuse to comply with a request if the said compliance would endanger the personal safety and other legitimate rights and interests of any person participating in the proceedings, of any law enforcement officer, or of any person related to or associated with such persons.
4. To achieve the objectives of this Arrangement as effectively as possible, both Sides will consult one another before the requested Side refuses a request or postpones the compliance with a request, in order to consider whether the requested Side is able to provide the desired legal assistance under certain conditions or in some other way.

### **XIV. Execution of Requests**

1. Both Sides have come to the understanding that requests should be complied with promptly in accordance with the laws of the requested Side and, insofar as not contrary to that law, in the manner requested by the requesting Side.
2. Both Sides share the understanding that the requested Side should promptly inform the requesting Side of any circumstances liable to significantly delay the compliance with the request, and of its decision not to comply in whole or in part with a request for assistance or to postpone compliance. If the requested Side considers that the information provided is insufficient to enable the request to be complied with, it should request additional information to enable the request to be dealt with. Upon request, the requesting Side should

inform the requested Side of the outcome of the criminal proceedings to which the request for assistance is related.

3. The requested Side should permit the presence of the persons as specified in the letter of request from the requesting Side during the execution of the request, and should allow such persons to propose questions to the person leading the interrogation/questioning (of the person giving the statement) and to make notes, in a manner agreed to by the requested Side.

#### **XV. Assurances**

1. If the requesting Side gives an assurance, it is expected to comply with it, subject to its laws and this Arrangement. Where a condition is attached to the mutual assistance by the requested Side and the requesting Side accepts the assistance, the requesting Side is expected to comply with it, provided this is compatible under its laws and this Arrangement.
2. If the requesting Side has given assurances or is expected to comply with a condition, the requesting Side will grant effective monitoring of the compliance with the assurances or conditions or it will provide specific information.

#### **XVI. Confidentiality**

The requesting Side may require that the requested Side keeps confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested Side cannot comply with the requirement of confidentiality, it will promptly inform the requesting Side.

#### **XVII. Consultations**

1. The Central Authorities should consult each other, at times mutually agreed by them, with a view to promoting the most effective cooperation in the areas covered by this Arrangement and in order to develop better practical measures to facilitate this cooperation.
2. To facilitate the execution of this arrangement, both Sides may offer legal materials (e.g. the principles of personal data protection) for reference.

#### **XVIII. Personal Data Protection**

The processing of personal data in the cases covered by this Arrangement would have to be in full compliance with the applicable data protection legal framework of both sides, including EU data protection legislation.



## **XIX. Costs**

Both Sides share the view that the costs associated with complying with the request should be borne by the requested Side in accordance with the applicable provisions of its laws. If the processing of the request turns out to entail extraordinary costs, both Sides share the understanding that they may enter into a discussion preferably before complying with the request on a different cost distribution. In particular, this should be possible in connection with

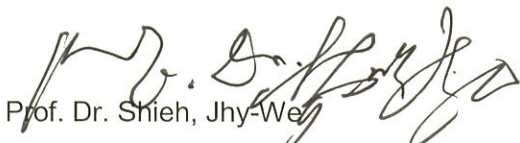
1. expenses associated with conveying any person to or from the territory of the requested Side at the request of the requesting Side, including expenses for the required work of accompanying personnel, as well as compensation or costs to be reimbursed to that person in connection with the compliance with the request;
2. expenses and fees of experts;
3. expenses of translation, interpretation and transcription;
4. expenses associated with the taking of evidence via video link from the requested Side in the requesting Side;
5. expenses associated with the management of assets.

## **XX. Final Provisions**

1. Both Sides will begin to cooperate as envisaged by this Arrangement on the thirtieth day after both Sides have informed each other in writing that they are prepared to commence such cooperation. This Arrangement should come into effect on the date of the later of these notifications.
2. This Arrangement is signed in duplicate in the Chinese, German and English languages, all three texts being equally valid.
3. In case of divergent interpretation of the Chinese and German texts, the English text can be used as an interpretation aid.

Signed in Taipei on 2023.3.23 (date)

For the Taipei Representative Office  
in the Federal Republic of Germany

  
Prof. Dr. Shieh, Jhy-We  
Representative

Signed in Taipei on 23.3.23 (date)

For the German Institute Taipei

  
Dr. Jörg Polster  
Director-General of the German  
Institute Taipei