

**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**

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 law 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 Component 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.

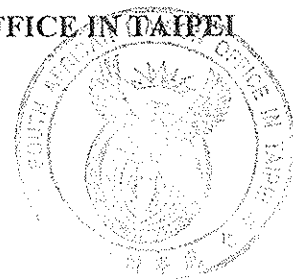
SIGNED at Pretoria on this 24 day of July 2013 in duplicate in the Chinese and English languages, both texts being equally authentic.



Mr Pei-Yung Hsu  
Representative  
FOR THE TAIPEI LIAISON  
OFFICE IN THE REPUBLIC  
OF SOUTH AFRICA



Mr Nicolaas Sauer Schoombie  
Representative  
FOR THE SOUTH AFRICAN  
LIAISON OFFICE IN TAIPEI



## 駐南非共和國臺北聯絡代表處與南非聯絡辦事處 刑事司法互助協議

駐南非共和國臺北聯絡代表處與南非聯絡辦事處（以下簡稱「雙方」或「一方」）亟欲透過刑事司法互助與合作改善執法機關調查、起訴與預防犯罪之效率，並注意到雙方提供國際司法互助之國內法，爰達成以下協議：

### 第一條 主管機關與合作

1. 執行本協議之主管機關為：
  - (1) 駐南非共和國臺北聯絡代表處，法務部；
  - (2) 南非聯絡辦事處，司法與憲政發展部。
2. 主管機關將在個別管轄範圍內及遵守適用各方國內法之前提下本於最大努力，依據本協議各節進行合作。

### 第二條 合作範圍

1. 主管機關將盡力針對犯罪調查及起訴包含在其管轄區內所犯之罪刑進行合作，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) 為取得證據之目的而執行搜索及扣押之請求；
  - (6) 不違反雙方國內法禁止規定之任何形式請求。
2. 本協議不適用於引渡。

### 第三條 協助之請求

1. 請求協助，應以書面為之，惟緊急情形下，經受請求方主管機關同意以其他方式提出時，不在此限；以其他方式提出之請求，除經受請求方主管機關之同意外，應於提出請求後十

日內以書面確認之。

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與罪名；
- (3) 所要尋找的證據、資料或其他協助項目之陳述；及
- (4) 所要尋找的證據、資料或其他協助之目的之聲明。

3. 在可能及必要之情況下，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) 詢問證人之問題表；
- (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之說明；
- (9) 任何保密與其理由之請求；
- (10) 如有任何應適用之法院、司法命令或經公證之影本需執行，與說明此命令為最終結果之聲明；
- (11) 其他有助於受請求方執行請求之相關資料。

#### 第四條 請求之執行

1. 受請求方主管機關應盡力立即執行請求。
2. 執行請求倘遇到障礙或造成執行延誤之任何情形需立即通知請求方主管機關。
3. 如果執行請求未屬受請求方主管機關之權責範圍，受請求方主管機關應立即通知請求方主管機關。
4. 受請求方主管機關如認為有需要可要求更多資料以順利執行請求。

5. 如受請求方主管機關認為立即執行請求有礙於受請求方國內進行之刑事調查、追訴或其他訴訟程序時，得延緩執行或依照與請求方主管機關磋商後所定之必要條件執行之。請求方主管機關倘接受該附加條件之協助，則應遵守上述條件。
6. 受請求方主管機關，於請求方主管機關要求時，對於協助之請求、內容、附件與提供之協助應盡力保密；如為執行該請求而無法保密時，受請求方主管機關應通知請求方主管機關，由請求方主管機關決定該請求是否仍應執行。
7. 受請求方主管機關應將執行結果，立即通知請求方主管機關。

#### 第五條 拒絕請求

1. 如認為該請求之執行將有害於受請求方主管機關管轄區內之安全、公共秩序或其他重要利益，或認為該請求與其國內法或締約雙方應盡之國際義務有所衝突時，受請求方得拒絕提供本協議之所有或部分協助。
2. 如其所涉行為在受請求方所屬管轄區內不構成犯罪者，受請求方主管機關得拒絕協助。
3. 如執行此項請求將對受請求方主管機關造成過度負擔，受請求方主管機關得拒絕協助。
4. 受請求方主管機關，依本條文第一項、第二項及第三項拒絕提供協助請求前，應儘可能與請求方主管機關協商考量是否在附加必要之條件後，再提供協助。如請求方主管機關接受該附加條件之協助，即應遵守其條件。
5. 受請求方主管機關如拒絕提供所有或部分協助，應將拒絕之理由通知請求方主管機關。

#### 第六條 使用資訊、文件與個人資料之限制

1. 雙方主管機關對於另一方所提供有所限制或不同意公開之資訊、文件與個人資料，應盡力予以保密。保密等級將由提供方主管機關決定。
2. 依本協議所收到之資訊、文件與個人資料，如未經提供方主

管機關同意，不得作為請求目的以外之用途。

3. 與第三方分享依本協議所取得之資訊、文件與個人資料，應先經提供方主管機關同意。

### 第七條 溝通

依本協議第一條規定負責執行之主管機關得直接溝通與諮商。

### 第八條 費用

除經雙方協議外，受請求方所屬管轄區內之主管機關應支付依本協議執行請求有關之費用。如執行該請求所支出之費用明顯過高或超乎尋常，雙方應協商以決定執行該請求之條件及支付費用之方式。

### 第九條 語言

主管機關依本協議進行合作過程應使用英文或中文作為溝通媒介。

### 第十條 諮商

雙方得協商任何有關本協議之解釋或執行事宜。

### 第十一條 生效與終止

1. 本協議於雙方通知他方已完成其國內之法定程序，並自最後通知之日起生效。
2. 本協議適用於生效後提出之任何請求，即使犯罪發生於本協議生效前者，亦同。
3. 任一方得於六個月前以書面通知他方終止本協議。

### 第十二條 修正

本協議得經雙方合意修正，並以換文方式完成。

本協議以中文及英文各繕製兩份，兩種文字同一作準。

西元 2013 年 7 月 24 日於普里托利亞簽署。

徐佩勇

徐佩勇

代表

駐南非共和國臺北聯絡代表處

史功畢

史功畢

代表

南非聯絡辦事處