

Agreement on Privileges, Exemptions and Immunities between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States

Whereas the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States:

Are charged with responsibility on behalf of their respective authorities for conducting and facilitating commercial, cultural and other relations between the people of the United States and the people on Taiwan;

Have, since 1980, consistent with domestic law and customary international law as applicable to the authorities they represent, performed consular functions and provided consular assistance, including the visitation of detained persons, on behalf of their respective authorities;

Have operated pursuant to the agreement on privileges, exemptions and immunities between the American Institute in Taiwan and the Coordination Council for North American Affairs, signed at Washington, D.C., October 2, 1980;

Have reviewed the laws of their respective authorities, including, in the case of AIT, the Taiwan Relations Act of 1979; and

Have gained practical experience with the operation of the 1980 agreement and are mindful of the value in making reciprocal and appropriate modifications to ensure that they enjoy such privileges and immunities as may be necessary for the effective performance of their functions;

Have therefore reached the following agreement:

Article I

For the purposes of this agreement, the following expressions shall have the meanings hereunder assigned to them:

- (a) "AIT" or "the Institute" shall refer to the American Institute in Taiwan;
- (b) "TECRO" shall refer to Taipei Economic and Cultural Representative Office in the United States;
- (c) "Counterpart organizations" shall refer, collectively, to AIT and TECRO;
- (d) "Primary office" shall refer, respectively, to the TECRO Office(s) located in the metropolitan area of the District of Columbia and to the AIT Office(s) (including a Chinese language school) located in Taipei;
- (e) "Subsidiary offices" shall refer, in the case of TECRO, to the branch offices known as "Taipei Economic and Cultural Offices" located outside of the metropolitan area of the District of Columbia as described in article 2 below and, in the case of AIT, to its branch office(s) in Kaohsiung or in other locations as provided in accordance with article 2;

- (f) "Designated employee of a primary office" means any person, including the head of such primary office, who is duly notified to and accepted by the receiving counterpart organization as a designated employee of the sending counterpart organization at its primary office and who exercises functions related to conducting and facilitating commercial, cultural and other relations between the people of the United States and the people on Taiwan, as well as any person employed in the administrative or technical service of such primary office. It shall not apply with respect to any person who is a national or is permanently resident in the jurisdiction in which the receiving counterpart organization is headquartered;
- (g) "Designated employee of a subsidiary office" means any person, including the head of such subsidiary office, who is duly notified to and accepted by the receiving counterpart organization as a designated employee of the sending counterpart organization at one of its subsidiary offices and who exercises functions related to conducting and facilitating commercial, cultural and other relations between the people of the United States and the people on Taiwan, as well as any person employed in the administrative or technical service of such subsidiary office. It shall not apply with respect to any person, who is a national of or is permanently resident in the jurisdiction in which the receiving counterpart organization is headquartered;
- (h) "Designated employees" of a counterpart organization shall comprise the persons described in paragraphs (f) and (g) of this article;
- (i) "Jurisdiction in which the receiving counterpart organization is headquartered" refers, in the case of AIT, to the United States, and in the case of TECRO, to Taiwan. "Central authorities" refers to the U.S. federal government or its equivalent on Taiwan, and "local authorities" refers to state, provincial, county, city, and other forms of municipal government within the United States or their equivalents on Taiwan.

Article 2

TECRO may operate a primary office in the metropolitan area of the District of Columbia and may also operate subsidiary offices in twelve cities within the United States and in such other additional locations as may be agreed upon between the counterpart organizations. AIT may operate a primary office in Taipei and may also operate a subsidiary office in Kaohsiung and in such other additional locations as may be agreed upon between the counterpart organizations.

Article 3

- (a) Each counterpart organization shall possess the capacity: (i) to contract; (ii) to acquire and dispose of real and personal property; and (iii) to institute legal proceedings.
- (b) In order that it may effectively perform its functions, each sending counterpart organization shall enjoy in the territory in which the receiving counterpart organization is headquartered, immunity from suit and legal processes equivalent to those enjoyed by public international organizations in the United States, which for purposes of this agreement means the restrictive theory of immunity as reflected, for example, in 28 U.S.C. sections 1602 et seq.

Article 4

- (a) Each counterpart organization shall undertake to ensure that the other counterpart organization and its personnel will receive all privileges, exemptions and immunities as set forth in this agreement and to take all possible measures, as appropriate, to secure adequate protection of the other counterpart organization's premises and personnel, so as to facilitate proper execution of that organization's functions.
- (b) The receiving counterpart organization shall facilitate issuance of identification cards to persons who enjoy benefits under this agreement.
- (c) The sending counterpart organization shall notify the receiving counterpart organization of the termination of services or of the departure of any person enjoying the benefits of this agreement.
- (d) Should the receiving counterpart organization determine that the continued presence of any person enjoying the benefits of this agreement is not desirable, it shall so inform the sending counterpart organization. After such person shall have had a reasonable length of time to depart, to be determined by the receiving counterpart organization, he or she shall cease to enjoy such benefits.
- (e) No person shall, by reason of the provisions of this agreement, be considered as receiving any privileges or immunities other than such as are specifically set forth herein.

Article 5

Each counterpart organization shall facilitate the issuance of appropriate visas for designated employees of the other organization, as well as members of their immediate family forming part of their households.

Article 6

- (a) The sending counterpart organization shall be free to communicate for all purposes related to the performance of its functions and shall enjoy inviolability for all correspondence related to its functions.
- (b) The bag carrying the correspondence referred to in the preceding paragraph and other articles related to the performance of the counterpart organization's functions shall neither be opened nor detained.
- (c) The packages constituting such a bag must bear visible external marks of their character and may contain only documents or articles intended for the performance of the organization's designated functions. There are no limits on the permissible size, weight, or quantity of properly designated bags. The packages constituting such a bag may be comprised of crates, lift vans, boxes, and envelopes or other types of containers. The designated carriers of such bags, who shall be provided with a document indicating their status and the number of packages constituting such bags, shall be protected in the performance of their functions. The designated carrier shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.
- (d) The sending counterpart organization may designate such carriers *ad hoc*. In such cases, the provisions of paragraph (c) of this article shall apply, except that the privileges and

immunities of an *ad hoc* carrier shall cease when the bag in his charge shall have been delivered to the consignee.

- (e) Bags carrying such correspondence and articles may be entrusted to the captain of a commercial aircraft scheduled to land at an authorized port-of-entry. The captain shall be provided with a document indicating the number of packages constituting the bag, but the captain shall not be considered to be a designated carrier of such bags. The sending counterpart organization may send one of its members to take possession of such a bag directly and freely from the captain of the aircraft.

Article 7

- (a) The wages, fees or salaries of any designated employee of a sending counterpart organization to the extent such wages, fees or salaries are received in connection with the performance of authorized functions, shall be exempt from taxation imposed by the central or local authorities of the jurisdiction in which the receiving counterpart organization is headquartered.
- (b) Wages, salaries and fees paid by the sending counterpart organization to its designated employees shall not be subject to withholding for purposes of taxation by the central or local authorities of the jurisdiction in which the receiving counterpart organization is headquartered. The sending counterpart organization and its designated employees, shall be exempt from making contributions for unemployment or similar insurance, social security, or other programs adopted by the central or local authorities of the jurisdiction in which the receiving counterpart organization is headquartered.
- (c) Unless such immunity be expressly waived, the primary and subsidiary offices of the sending counterpart organization shall be immune from forced entry and search and, if owned by such organization, shall also be immune from attachment, execution, requisition, expropriation or any other form of seizure or confiscation. Physical movable property (including means of transport) used for the purposes of the primary office shall be immune from forced entry and search and, if owned by such organization, shall also be immune from attachment, execution, requisition, expropriation or any other form of seizure or confiscation. Financial assets and bank accounts used for the purposes of the primary and subsidiary offices shall be immune from attachment, execution, requisition, or any other form of seizure or confiscation. The archives and documents of the sending counterpart organization shall be inviolable at all times and wherever they may be.
- (d) Real property used for the performance of the sending counterpart organization's authorized functions and for which the counterpart organization would be liable for payment of taxes shall be exempt from central and local taxation of the jurisdiction in which the receiving counterpart organization is headquartered. The property, income, operations, and other transactions of the sending counterpart organization shall be exempt from taxation by the central and local authorities of the jurisdiction in which the receiving counterpart organization is headquartered. The exemptions provided in this article, however, shall not apply to any property which is not used for the purposes of the sending counterpart organization or successor organizations.
- (e) Designated employees of each sending counterpart organization shall be immune from suit and all legal processes relating to acts performed by them within the scope of their authorized

functions, unless such immunity is specifically waived by the sending counterpart organization in accordance with article 9.

- (f) The receiving counterpart organization shall undertake to ensure that the primary and subsidiary offices of the sending counterpart organization and the designated employees of the sending counterpart organization shall be exempt from payment of central and local sales, value added, or other similarly imposed consumption taxes, except those normally included in the price of goods and services. This exemption shall not, however, extend to charges for specific services rendered.
- (g) The receiving counterpart organization shall undertake to ensure that the primary and subsidiary offices of the sending counterpart organization and the designated employees of the primary office of a sending counterpart organization shall be exempt from all taxes and dues imposed by central or local authorities of the jurisdiction in which the receiving counterpart organization is headquartered in connection with the ownership or operation of a motor vehicle. The receiving counterpart organization shall undertake to ensure that the primary and subsidiary offices of the sending counterpart organization and designated employees of such offices shall also be exempt from payment of central excise taxes on gasoline, diesel fuel and lubricating oil.
- (h) A sending counterpart organization and its designated employees and their immediate families forming part of their households, except nationals or permanent residents of the jurisdiction in which the receiving counterpart organization is headquartered, shall be entitled, insofar as customs duties, customs clearance, and internal revenue taxes imposed by reason of importation of baggage and effects, as well as laws regulating entry into and departure from the jurisdiction in which the receiving counterpart organization is headquartered, alien registration and fingerprinting, and registration of foreign agents are concerned, to the privileges, exemptions and immunities equivalent to those accorded under similar circumstances in the United States to public international organizations, their officers and employees as well as members of their families.
- (i) With respect to the treatment of authorized communications and imposition of taxes for authorized communications, a sending counterpart organization shall be entitled to privileges, exemptions and immunities equivalent to those accorded a public international organization in the United States.

Article 8

In addition to the privileges, exemptions and immunities described in paragraph (e) of article 7 of this agreement:

- (a) Designated employees of a primary office shall enjoy immunity from the criminal jurisdiction of the central and local authorities in the jurisdiction in which the receiving counterpart organization is headquartered.
- (b) Designated employees of a primary office shall not be liable to any form of arrest or detention. Central and local authorities in the jurisdiction in which the receiving counterpart organization is headquartered shall treat all designated employees of a primary office with due respect and shall take all appropriate steps to prevent any attack on their person, freedom or dignity.

- (c) Designated employees of a primary office shall not be obliged to give evidence as a witness in criminal, civil, administrative, or other proceedings.
- (d) The private residence of designated employees of a primary office shall be immune from forced entry and search, and if such residence is owned by the sending counterpart organization, shall also be immune from attachment, execution, requisition, expropriation or any other form of seizure or confiscation.
- (e) The papers, correspondence, and property of a designated employee of a primary office shall not be subject to forced entry, search, attachment, execution or any other form of seizure or confiscation by the central or local authorities of the jurisdiction in which the receiving counterpart organization is headquartered: (1) in matters involving the exercise of criminal jurisdiction; and (2) in matters involving the exercise of civil or administrative jurisdiction if related to acts performed within the scope of such individual's authorized functions. The baggage and household goods of a designated employee shall not be exempt from inspection upon entry and exit from the jurisdiction in which the receiving counterpart organization is headquartered.
- (f) The immediate family members of a designated employee of a primary office forming part of his or her household, except nationals or permanent residents of the jurisdiction in which the receiving counterpart organization is headquartered, shall enjoy the same immunity from criminal jurisdiction and arrest and detention as the designated employee.
- (g) The head of a subsidiary office and one designated deputy head of such office shall not be liable to arrest or detention pending trial, except in the case of a criminal offense punishable by one year or more in prison and pursuant to a decision by the competent judicial authority.
- (h) Central and local authorities in the jurisdiction in which the receiving counterpart organization is headquartered shall treat all designated employees of a subsidiary office with due respect and shall take all appropriate steps to prevent any attack on their person, freedom or dignity.
- (i) Designated employees of a subsidiary office may be called upon to attend as witnesses in the course of judicial or administrative proceedings.
 - i. Such employees shall not, except with respect to matters falling within the scope of paragraph (e) of article 7, decline to give evidence.
 - ii. Such employees are under no obligation to give evidence concerning matters connected with the exercise of their functions or to produce official correspondence and documents relating thereto.
 - iii. Such employees are also entitled to decline to give evidence as expert witnesses with regard to the law of the jurisdiction in which they are headquartered.
 - iv. If an employee described above should decline to provide evidence, no coercive measure or penalty may be applied to such person.

Article 9

- (a) With respect to privileges and immunities set forth in articles 7 and 8 of this agreement enjoyed by designated employees of a primary office, the head or acting head of that primary office or of that organization's headquarters office may waive such privileges and immunities.

- (b) With respect to privileges and immunities set forth in articles 7 and 8 enjoyed by designated employees of a subsidiary office, the head or acting head of that subsidiary office or primary or headquarters offices may waive such privileges and immunities.
- (c) With the exception of paragraph (d), below, a waiver of any of the privileges, exemptions and immunities provided in this agreement shall in all cases be express.
- (d) The initiation of proceedings by designated employees of a counterpart organization in a matter in which he or she might enjoy immunity from civil jurisdiction under this agreement shall preclude his or her invoking immunity from such jurisdiction in respect of any counterclaim directly connected with the principal claim.
- (e) The waiver of immunity from jurisdiction for purposes of civil or administrative proceedings shall not be deemed to imply a waiver of immunity from the measures of execution resulting from the judicial decision; in respect of such measures, a separate waiver shall be necessary.

Article 10

This agreement shall replace the Agreement on privileges, exemptions and immunities between the American Institute in Taiwan and the Coordination Council for North American Affairs, signed at Washington, D.C., October 2, 1980.

Article 11

This agreement may be modified at any time by mutual consent.

Article 12

This agreement is effective on the date of signature and will remain in effect indefinitely. It may, however, be terminated by either party upon one year's prior written notice to the other party or, otherwise, by mutual agreement.

IN WITNESS WHEREOF the undersigned duly authorized for this purpose have signed this agreement.

DONE at Washington, D.C., on this 4th day of February, 2013, in the English and Chinese languages, each text being equally authentic.

For the American Institute in Taiwan:

Barth J. Schurz

For the Taipei Economic and
Cultural Representative Office in the
United States:

金溥聰 - Pu-tsong King