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Act 621

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 2002

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ACT 2002**

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MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 2002

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LAWS OF MALAYSIA

Act 621

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 2002

An Act to make provision for mutual assistance in criminal matters between Malaysia and other countries and for matters connected therewith.

[1 May 2003, P.U. (B) 168/2003]

ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Mutual Assistance in Criminal Matters Act 2002.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Interpretation

2. (1) In this Act, unless the context otherwise requires—

“Bank” means the Central Bank of Malaysia established by the Central Bank of Malaysia Act 1958 [Act 519];

“material” includes any book, document or other record in any form, and any container or article relating to it;

“thing” includes material;

“items subject to legal privilege” means—

- (a) communications between an advocate and solicitor and his client or any person representing his client made in connection with the giving of legal advice to the client;
- (b) communications between an advocate and solicitor and his client or any person representing his client, or between such an advocate and solicitor or his client or any such representative and any other person, made in connection with, or in contemplation of, judicial proceedings and for the purposes of such proceedings; and
- (c) items enclosed with or referred to in such communications and made—
 - (i) in connection with the giving of legal advice; or
 - (ii) in connection with or in contemplation of judicial proceedings and for the purposes of such proceedings,

when they are in the possession of a person who is entitled to possession of them, but excluding, in any case, any communications or thing held with the intention of furthering a criminal purpose;

“prescribed” means prescribed by regulations made under this Act, and a power to prescribe includes the power to make different provisions in the regulations for different persons or classes of persons;

“property” means movable or immovable property of every description, whether situated in or outside Malaysia and whether tangible or intangible and includes an interest in any such movable or immovable property;

“proceeds of crime” means any property suspected, or found by a court, to be property directly or indirectly derived or realized as a result of the commission of an offence or to represent the value of property and other benefits derived from the commission of an offence;

“financial institution” means—

- (a) an institution licensed under the Islamic Banking Act 1983 [Act 276], the Takaful Act 1984 [Act 312], the Banking and Financial Institutions Act 1989 [Act 372], the Insurance Act 1996 [Act 553] and the Money-Changing Act 1998 [Act 577];

- (b) a person licensed under the Securities Industry Act 1983 [Act 280], the Securities Commission Act 1993 [Act 498] and the Futures Industry Act 1993 [Act 499]; or
- (c) an offshore financial institution;

“offshore financial institution” has the meaning as in the Labuan Offshore Financial Services Authority Act 1996 [Act 545];

“serious offence” means—

- (a) an offence as defined under the Anti-Money Laundering Act 2001 [Act 613];
- (b) an offence against the laws of Malaysia where—
 - (i) the maximum penalty for the offence is death; or
 - (ii) the minimum term of imprisonment is not less than one year; or
- (c) any attempt, abetment or conspiracy to commit any of the offences referred to in paragraph (b);

“foreign serious offence” means an offence—

- (a) against the law of a prescribed foreign State stated in a certificate purporting to be issued by or on behalf of the government of that prescribed foreign State; and
- (b) that consists of or includes activity which, if it had occurred in Malaysia, would have constituted a serious offence;

“Minister” means the Minister charged with the responsibility for legal affairs;

“foreign State” means any country or territory outside Malaysia;

“prescribed foreign State” means a foreign State declared by the Minister, by an order made under subsection 17(1), as a prescribed foreign State or a foreign State in respect of which the Minister has issued a special direction under section 18, as the case may be;

“authorized officer” means—

- (a) any police officer;
- (b) any customs officer;

- (c) any immigration officer;
- (d) any officer of the Anti-Corruption Agency; and
- (e) any officer authorized by the Attorney General;

“criminal investigation” means an investigation—

- (a) into a serious offence or a foreign serious offence, as the case may be; or
- (b) for the purposes of an ancillary criminal matter;

“foreign law immunity certificate” means a certificate given, or a declaration made, by a prescribed foreign State or under the law of a prescribed foreign State, certifying or declaring that, under the law of that prescribed foreign State, persons generally or a specified person could or could not, either generally or in specified proceedings and either generally or in specified circumstances, be required—

- (a) to answer a specified question; or
- (b) to produce a specified thing;

“order” includes a decree, direction or judgment, or any part of it, howsoever described;

“forfeiture order” means an order made in Malaysia for the forfeiture of property in respect of a serious offence;

“foreign forfeiture order” means an order made by a court in a prescribed foreign State for the recovery, forfeiture or confiscation of—

- (a) payments or other rewards received in connection with an offence against the law of that prescribed foreign State that is a foreign serious offence, or the value of such payments or rewards; or
- (b) property derived or realized, directly or indirectly, from payments or other rewards received in connection with such an offence, or the value of such property,

that is made on or after the date of the order under subsection 17(1) declaring a foreign State as a prescribed foreign State comes into force or on or after the date of the special direction given by the Minister in respect of a foreign State under section 18;

“criminal matter” means, in respect of a serious offence or a foreign serious offence, as the case may be—

- (a) a criminal investigation;
- (b) criminal proceedings; or
- (c) an ancillary criminal matter;

“ancillary criminal matter” means—

- (a) the restraining of dealing with, or the seizure, forfeiture or confiscation of, property in connection with a serious offence or a foreign serious offence, as the case may be; or
- (b) the obtaining, enforcement or satisfaction of a forfeiture order or a foreign forfeiture order, as the case may be;

“appropriate authority”, in relation to a foreign State, means a person or authority whom the Attorney General is satisfied is authorized under the law of that foreign State—

- (a) in the case of a request by that foreign State to Malaysia for assistance in a criminal matter, to make the request; or
- (b) in the case of a request by Malaysia to that foreign State for assistance in a criminal matter, to receive the request;

“premises” includes—

- (a) a structure (whether or not movable or offshore), building, tent, vehicle, vessel, hovercraft or aircraft;
- (b) a place (whether or not enclosed or built upon); and
- (c) part of any premises (including premises of a kind referred to in paragraph (a) or (b));

“criminal proceedings” means a trial of a person for a serious offence or a foreign serious offence, as the case may be, and includes any proceeding to determine whether a particular person should be tried for the offence;

“process” includes any summons, warrant, order or other document in respect of a criminal matter that is issued, as the case may be—

- (a) by any court in Malaysia or by any Judge, Sessions Court Judge or Magistrate or by the Registrar or a Deputy Registrar or a Senior Assistant Registrar of a High Court or by a Registrar of a Subordinate Court; or

- (b) by any court of a foreign State or by any judge, magistrate or officer of such a court;

“dealing”, in relation to any property, includes—

- (a) receiving or acquiring the property;
- (b) concealing or disguising the property (whether by concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it or otherwise);
- (c) disposing of or converting the property;
- (d) bringing the property into or removing the property from Malaysia;
- (e) using the property to borrow money, or as security (whether by way of a charge, mortgage or pledge or otherwise); or
- (f) where a debt is owed to the person holding the property, making a payment to any person in reduction of the amount of the debt.

(2) For the purposes of this Act—

- (a) a reference to a foreign State includes a reference to—
 - (i) a territory of that foreign State; and
 - (ii) a ship or aircraft of, or registered in, that foreign State; and
- (b) a reference to the law of a foreign State includes a reference to the law in force in any part of that foreign State.

(3) For the purposes of this Act, judicial proceedings that are criminal proceedings are—

- (a) instituted in a prescribed foreign State when a person is produced and charged in court with a foreign serious offence;
- (b) concluded on the occurrence of any of the following events:
 - (i) the discontinuance of the proceedings;
 - (ii) the acquittal of the defendant;

- (iii) the quashing of the defendant's conviction for the offence;
- (iv) the grant of a pardon in respect of the defendant's conviction for the offence;
- (v) the court sentencing or otherwise dealing with the defendant in respect of his conviction for the offence without having made a foreign forfeiture order;
- (vi) the satisfaction of a foreign forfeiture order made in the proceedings, whether by payment of the amount due under the order, by the defendant serving imprisonment in default, by the recovery of all property liable to be recovered or otherwise.

Object of Act

3. The object of this Act is for Malaysia to provide and obtain international assistance in criminal matters, including—

- (a) providing and obtaining of evidence and things;
- (b) the making of arrangements for persons to give evidence, or to assist in criminal investigations;
- (c) the recovery, forfeiture or confiscation of property in respect of a serious offence or a foreign serious offence;
- (d) the restraining of dealings in property, or the freezing of property, that may be recovered in respect of a serious offence or a foreign serious offence;
- (e) the execution of requests for search and seizure;
- (f) the location and identification of witnesses and suspects;
- (g) the service of process;
- (h) the identification or tracing of proceeds of crime and property and instrumentalities derived from or used in the commission of a serious offence or a foreign serious offence;
- (i) the recovery of pecuniary penalties in respect of a serious offence or a foreign serious offence; and
- (j) the examination of things and premises.

Act does not limit cooperation with international organizations, etc.

4. (1) This Act does not prevent the provision or obtaining of international assistance in criminal matters to or from the International Criminal Police Organization (INTERPOL) or any other international organization.

(2) This Act does not prevent the provision or obtaining of international assistance in criminal matters to or from any foreign State other than assistance of a kind that may be provided or obtained under this Act.

(3) This Act does not prevent the provision or obtaining of international assistance in criminal matters under any other written law.

Act not authority for extradition of person

5. This Act does not authorize the extradition, or the arrest or detention with a view to the extradition, of any person.

PART II

REQUEST BY MALAYSIA

Application of this Part

6. A request for assistance under this Part may be made to any foreign State.

Request to be made by or through Attorney General

7. (1) A request by Malaysia to a foreign State for assistance in a criminal matter under this Part shall be made by or through the Attorney General.

(2) A request under subsection (1) shall be made through the diplomatic channel.

Request for taking of evidence, etc.

8. (1) The Attorney General may, if he is satisfied that there are reasonable grounds for believing that any evidence would be relevant to any criminal proceedings in Malaysia, request the appropriate authority of a foreign State to arrange for—

- (a) such evidence to be taken in the foreign State; and
- (b) the evidence to be sent to him.

(2) The Attorney General may, if he is satisfied that there are reasonable grounds for believing that any thing would be relevant to a criminal matter in Malaysia, request the appropriate authority of a foreign State—

- (a) to assist in obtaining, by search and seizure if necessary, such thing in the foreign State or a photograph or copy of the thing; and
- (b) to arrange for the thing or the photograph or copy of the thing to be sent to him.

(3) Any evidence or thing, or photograph or copy of a thing, received by the Attorney General pursuant to a request under subsection (1) or (2) may, subject to the provisions of the Evidence Act 1950 [Act 56] and the Criminal Procedure Code [Act 593], be admitted as evidence at any criminal proceedings to which the request relates.

(4) In assessing the weight, if any, to be attached to any evidence received by the Attorney General pursuant to a request made under subsection (1) which has been admitted as evidence in any criminal proceedings to which the request relates, the court shall have regard to—

- (a) whether it was possible to challenge the evidence taken; and
- (b) whether the law of the foreign State concerned allowed the parties to the criminal proceedings to be legally represented when the evidence was being taken.

Request for attendance of person in Malaysia

9. (1) The Attorney General may request the appropriate authority of a foreign State to assist in arranging for the attendance in Malaysia of a person in the foreign State for the purpose of giving any evidence or assistance if he is satisfied that—

- (a) there are reasonable grounds to believe that the person is capable of giving such evidence or assistance relevant to a criminal matter involving a serious offence; and
- (b) the person consents to travel to Malaysia for the purpose of giving such evidence or assistance.

(2) The Attorney General may make arrangements with the appropriate authority of the foreign State for the purpose of the attendance of that person in Malaysia, his return to the foreign State and other relevant matters.

Penalty not to be imposed for refusal to consent

10. Where, pursuant to section 9, the Attorney General requests the assistance of the appropriate authority of a foreign State in arranging the attendance in Malaysia of any person, that person shall not be subjected to any penalty or liability or otherwise prejudiced in law by reason only of his refusal or failure to consent to attend as requested.

Immunities and privileges

11. (1) A person who is in Malaysia pursuant to a request made under section 9 shall not—

- (a) be detained, prosecuted or punished in Malaysia for any offence that is alleged to have been committed, or that was committed, before his departure from the foreign State concerned pursuant to the request;
- (b) be subjected to any civil suit in respect of any act or omission that is alleged to have occurred, or that had occurred, before his departure from the foreign State pursuant to the request; or
- (c) be required to give evidence or assistance in relation to any criminal matter in Malaysia other than the criminal matter to which the request relates.

(2) Subsection (1) ceases to apply if—

- (a) the person has left Malaysia; or
- (b) the person has had the opportunity of leaving Malaysia and has remained in Malaysia otherwise than for—
 - (i) the purpose to which the request relates; or
 - (ii) the purpose of giving evidence or assistance in a criminal matter in Malaysia certified by the Attorney General in writing to be a criminal matter in which it is desirable that the person gives evidence or assistance.

(3) A certificate given by the Attorney General under subparagraph (2)(b)(ii) has effect from the day specified in the certificate, which may be a day before the day on which the certificate is given.

Limitation on use of statement

12. Where a person is in Malaysia pursuant to a request made under section 9 and that person has made a statement in relation to the criminal matter to which the request relates or in relation to a criminal matter certified by the Attorney General under subparagraph 11(2)(b)(ii), that statement—

- (a) shall not be admitted or otherwise used in any prosecution of the person for an offence against the laws of Malaysia (other than for the offence of perjury or contempt of court in relation to the giving of that evidence) unless the appropriate authority of the foreign State concerned consents to it being so used; and
- (b) may be admitted or used against him in any criminal proceedings in Malaysia—
 - (i) for the purpose of impeaching his credibility; or
 - (ii) as evidence of any fact stated in that statement, of which direct oral evidence by him would be admissible,

if in giving such evidence he makes a statement inconsistent with that statement.

Request for enforcement of forfeiture order

13. (1) The Attorney General may, if he is satisfied that there are reasonable grounds for believing that some or all of the property concerned is located in a foreign State, request the appropriate authority of that foreign State to make arrangements—

- (a) for the enforcement and satisfaction of a forfeiture order; or
- (b) where a forfeiture order may be made in criminal proceedings which have been or are to be instituted in Malaysia, to restrain dealing in any property against which the order may be enforced or which may be available to satisfy the order.

(2) A certificate purporting to be issued by or on behalf of the appropriate authority of a foreign State stating—

- (a) that property has been recovered in the foreign State pursuant to a request under subsection (1);
- (b) the value of the property; or
- (c) the date on which the property was recovered,

shall, in any judicial proceedings, be admissible as evidence of the matter so stated.

Assistance in locating or identifying persons

14. Where the Attorney General is satisfied that there are reasonable grounds for believing that there is, in any foreign State, a person who—

- (a) is or might be concerned in or affected by; or
- (b) could give evidence or assistance relevant to,

any criminal matter in Malaysia, the Attorney General may request the appropriate authority of that foreign State to assist in locating, or, if the person's identity is unknown, in identifying and locating, that person.

Assistance in service of process

15. (1) The Attorney General may request the appropriate authority of a foreign State to assist in effecting service of any process where the Attorney General is satisfied that for the purposes of or

in connection with any criminal matter in Malaysia, it is necessary or desirable to serve that process on a person or an authority in that foreign State.

(2) This section shall be without prejudice to the Summonses and Warrants (Special Provisions) Act 1971 [Act 25].

PART III

REQUEST TO MALAYSIA

Application of this Part

16. Unless otherwise stated in this Part, assistance under this Part may be provided to a prescribed foreign State.

Prescribed foreign State

17. (1) The Minister may, for the purposes of this Part, by order declare a foreign State to be a prescribed foreign State if there is in force a treaty or other agreement between Malaysia and that foreign State under which that foreign State has agreed to provide assistance in criminal matters to Malaysia.

(2) An order under subsection (1) may provide that the provisions of this Part shall apply to the foreign State subject to such restrictions, limitations, exceptions, modifications, adaptations, conditions or qualifications as are specified in the order, and in that event the provisions of this Part shall apply accordingly.

(3) An order made under subsection (1) shall be conclusive evidence that the arrangement referred to in the order complies with this Act, and that this Act applies in the case of the foreign State referred to in the order, and the validity of the order shall not be questioned in any legal proceedings.

(4) The Minister may by a subsequent order vary or revoke any order previously made under this section.

Special direction of Minister

18. If a foreign State in respect of which no order has been made under section 17 makes a request for mutual assistance in a criminal matter under this Act, the Minister may, on the recommendation of the Attorney General, give a special direction in writing that this Act shall apply to that foreign State in relation to the requested mutual assistance subject to any restriction, limitation, exception, modification, adaptation, condition or qualification contained in the direction.

Request to be made to Attorney General

19. (1) A request by a prescribed foreign State to Malaysia for assistance in a criminal matter under this Part shall be made to the Attorney General.

(2) A request under subsection (1) shall be made through the diplomatic channel.

(3) Every request shall—

(a) specify the purpose of the request and the nature of the assistance being sought;

(b) identify the person or authority that initiated the request; and

(c) be accompanied by—

(i) a certificate from the appropriate authority of that prescribed foreign State that the request is made in respect of a criminal matter within the meaning of this Act;

(ii) a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws;

(iii) where the request relates to—

(A) the location of a person who is suspected to be involved in or to have benefited from the commission of a foreign serious offence; or

(B) the tracing of property that is suspected to be connected with a foreign serious offence,

the name, identity, nationality, location or description of that person, or the location and description of the property, if known, and a statement setting forth the basis for suspecting the matter referred to in subsubparagraph (A) or (B);

- (iv) a description of the offence to which the criminal matter relates, including its maximum penalty;
- (v) details of the procedure which that prescribed foreign State wishes Malaysia to follow in giving effect to the request, including details of the manner and form in which any information or thing is to be supplied to that prescribed foreign State pursuant to the request;
- (vi) where the request is for assistance relating to an ancillary criminal matter and judicial proceedings to obtain a foreign forfeiture order have not been instituted in that prescribed foreign State, a statement indicating when the judicial proceedings are likely to be instituted;
- (vii) a statement setting out the wishes of that prescribed foreign State concerning the confidentiality of the request and the reason for those wishes;
- (viii) details of the period within which that prescribed foreign State wishes the request to be met;
- (ix) if the request involves a person travelling from Malaysia to that prescribed foreign State, details of allowances to which the person will be entitled, and of the arrangements for security and accommodation for the person while he is in that prescribed foreign State pursuant to the request;
- (x) any other information required to be included with the request under any treaty or other agreement between Malaysia and that prescribed foreign State, if any; and
- (xi) any other information that may assist in giving effect to the request or which is required under the provisions of this Act or any regulations made under this Act.

(4) Failure to comply with subsection (3) shall not be a ground for refusing assistance.

Refusal of assistance

20. (1) A request by a prescribed foreign State for assistance under this Part shall be refused if, in the opinion of the Attorney General—

- (a) the appropriate authority of that prescribed foreign State has, in respect of that request, failed to comply with the terms of any treaty or other agreement between Malaysia and that prescribed foreign State;
- (b) the request relates to the investigation, prosecution or punishment of a person for an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political nature;
- (c) the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Malaysia, would have constituted a military offence under the laws of Malaysia which is not also an offence under the ordinary criminal law of Malaysia;
- (d) there are substantial grounds for believing that the request was made for the purpose of investigating, prosecuting, punishing or otherwise causing prejudice to a person on account of the person's race, religion, sex, ethnic origin, nationality or political opinions;
- (e) the request relates to the investigation, prosecution or punishment of a person for an offence in a case where the person—
 - (i) has been convicted, acquitted or pardoned by a competent court or other authority in that prescribed foreign State; or
 - (ii) has undergone the punishment provided by the law of that prescribed foreign State,

in respect of that offence or of another offence constituted by the same act or omission as the first-mentioned offence;

- (f) the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Malaysia, would not have constituted an offence against the laws of Malaysia;

- (g) the facts constituting the offence to which the request relates does not indicate an offence of sufficient gravity;
- (h) the thing requested for is of insufficient importance to the investigation or could reasonably be obtained by other means;
- (i) the provision of the assistance would affect the sovereignty, security, public order or other essential public interest of Malaysia;
- (j) the appropriate authority fails to undertake that the thing requested for will not be used for a matter other than the criminal matter in respect of which the request was made;
- (k) in the case of a request for assistance under sections 22, 23, 24, 25 and 26 or sections 35, 36, 37 and 38, the appropriate authority fails to undertake to return to the Attorney General, upon his request, any thing obtained pursuant to the request upon completion of the criminal matter in respect of which the request was made;
- (l) the provision of the assistance could prejudice a criminal matter in Malaysia; or
- (m) the provision of the assistance would require steps to be taken that would be contrary to any written law.

(2) Paragraph (1)(j) shall not apply where the failure to undertake that the thing requested for will not be used for a matter other than the criminal matter in respect of which the request was made is with the consent of the Attorney General.

(3) A request by a prescribed foreign State for assistance under this Part may be refused by the Attorney General—

- (a) pursuant to the terms of any treaty or other agreement between Malaysia and that prescribed foreign State;
- (b) if, in the opinion of the Attorney General, the provision of the assistance would, or would be likely to, prejudice the safety of any person, whether that person is within or outside Malaysia;
- (c) if, in the opinion of the Attorney General, the provision of the assistance would impose an excessive burden on the resources of Malaysia; or

- (d) if that foreign State is not a prescribed foreign State and the appropriate authority of that foreign State fails to give an undertaking to the Attorney General that the foreign State will, subject to its laws, comply with a future request by Malaysia to that foreign State for assistance in a criminal matter.

(4) Without prejudice to paragraph (3)(c), if there is a request for assistance by a prescribed foreign State and the Attorney General is of the opinion that the expenses involved in complying with the request or continuing to effect the assistance requested for is of an extraordinary or substantial nature, the Attorney General shall consult with the appropriate authority of the prescribed foreign State on the conditions under which the request is to be effected or under which the Attorney General is to cease to give effect to it, as the case may be.

Exceptions to political offences

21. (1) For the purposes of paragraph 20(1)(b), the following offences shall not be held to be offences of a political nature:

- (a) an offence against the life or person of a Head of State or a member of the immediate family of a Head of State;
- (b) an offence against the life or person of a Head of Government, or of a Minister of a Government;
- (c) an offence established under any multilateral international treaty to which Malaysia and the prescribed foreign State are parties and which is declared in the multilateral treaty concerned not to be regarded as an offence of a political nature for the purposes of mutual assistance in criminal matters;
- (d) any other offence declared by the Minister by order published in the *Gazette*; and
- (e) any attempt, abetment or conspiracy to commit any of the offences referred to in paragraphs (a) to (d).

(2) The Attorney General may restrict the application of any of the provisions made under subsection (1) to a request from a prescribed foreign State that has made similar provision in its laws.

Taking of evidence for criminal proceedings

22. (1) Where a request is made by the appropriate authority of a prescribed foreign State that evidence be taken in Malaysia for the purpose of any criminal proceedings pending in a court in the prescribed foreign State, the Attorney General may, subject to such conditions as the Attorney General may specify, authorize the taking of such evidence.

(2) If the Attorney General authorizes the taking of the evidence under subsection (1), a Sessions Court Judge shall—

- (a) take the evidence on oath of each witness appearing before him to give evidence in relation to the criminal matter as if the witness were giving evidence on a charge against a person for an offence against the laws of Malaysia;
- (b) cause the evidence to be reduced into writing and certify at the end of that writing that the evidence was taken by him; and
- (c) cause the evidence so certified to be sent to the Attorney General.

(3) The proceedings may be conducted in the presence or absence of the person to whom the criminal proceedings in the prescribed foreign State relates or of his legal representative, if any.

(4) The Sessions Court Judge conducting proceedings under subsection (2) shall allow the following persons to have legal representation at the proceedings before the Sessions Court Judge:

- (a) the person to whom the proceedings in the prescribed foreign State relates;
- (b) any other person giving evidence or producing any materials or articles at the proceedings before the Sessions Court Judge; and
- (c) the appropriate authority of the prescribed foreign State.

(5) The certificate referred to in subsection (2) shall state whether the person to whom the criminal proceedings in the prescribed foreign State relates or his legal representative, if any, was present at the proceedings.

(6) The laws for the time being in force with respect to the compelling of persons to attend before a Sessions Court Judge, and to give evidence, answer questions and produce materials or articles shall, in so far as they are applicable, apply for the purposes of this section as if it were a hearing of a charge against a person for an offence against the laws of Malaysia.

(7) Notwithstanding subsection (6), for the purposes of this section, the person to whom the criminal proceedings in the prescribed foreign State relates is competent, but not compellable, to give evidence.

(8) Notwithstanding subsection (6), no person who is required under this section to give evidence for the purposes of any criminal proceedings in a prescribed foreign State shall be required to answer any question that the person could not be compelled to answer in those proceedings in that prescribed foreign State.

(9) A duly certified foreign law immunity certificate is admissible in proceedings under this section as *prima facie* evidence of the matters stated in the certificate.

(10) Evidence taken under this section shall not be admissible in evidence or otherwise used for the purposes of any judicial proceedings, disciplinary proceedings, or other proceedings in Malaysia except in a prosecution of the person who gave that evidence for the offence of perjury or contempt of court in respect of that evidence.

(11) Notwithstanding subsection (10), evidence taken under this section may be used for impeaching the credibility of the person who gave the evidence in any judicial proceedings for the purposes under the Evidence Act 1950.

Production order for criminal matters

23. (1) Where a request is made by the appropriate authority of a prescribed foreign State that any particular thing or description of a thing in Malaysia be produced for the purpose of any criminal matter in that prescribed foreign State, the Attorney General or a person duly appointed by him may apply to the court for an order under subsection (3).

(2) An application for an order under subsection (3) in relation to any thing in the possession of a financial institution shall be made only to the High Court.

(3) If, on such an application, the court is satisfied that the conditions referred to in subsection (4) are fulfilled, it may make an order that the person who appears to the court to be in possession of the thing to which the application relates shall—

- (a) produce the thing to an authorized officer for him to take away; or
- (b) give an authorized officer access to the thing,

within seven days of the date of the order or such other period as the court considers appropriate.

(4) The conditions referred to in subsection (3) are—

- (a) that there are reasonable grounds for suspecting that a specified person has committed or benefited from a foreign serious offence;
- (b) that there are reasonable grounds for believing that the thing to which the application relates—
 - (i) is likely to be of substantial value, whether by itself or together with another thing, to the criminal matter in respect of which the application was made; and
 - (ii) does not consist of or include items subject to legal privilege; and
- (c) that the court is satisfied that it is not contrary to the public interest or to any written law for the thing to be produced or access to it to be given.

(5) The proceedings referred to in subsection (3) may be conducted in the presence or absence of the person to whom the criminal proceedings in the prescribed foreign State relates or of his legal representative, if any.

(6) No person who is required by an order under this section to produce or make available any thing for the purposes of any criminal proceedings in a prescribed foreign State shall be required to produce any thing that the person could not be compelled to produce in the proceedings in that prescribed foreign State.

(7) A duly certified foreign law immunity certificate is admissible in proceedings under this section as *prima facie* evidence of the matters stated in the certificate.

Supplementary provisions regarding production order

24. (1) Where a court orders a person under section 23 to give an authorized officer access to any thing on any premises, the court may, on the same or subsequent application of an authorized officer, order any person who appears to it to be entitled to grant entry to the premises to allow an authorized officer to enter the premises to obtain access to the thing.

(2) Where any material to which an order under section 23 relates consists of information contained in or accessible by means of any data equipment—

(a) an order under paragraph 23(3)(a) shall have effect as an order to produce the material in a form which can be taken away and which is visible, legible and comprehensible; and

(b) an order under paragraph 23(3)(b) shall have effect as an order to give access to the material in a form which is visible, legible and comprehensible.

(3) A person is not excused from producing or making available any thing by an order under section 23 on the ground that—

(a) the production or making available of the thing might tend to incriminate the person or make the person liable to a penalty; or

(b) the production or making available of the thing would be in breach of an obligation, whether imposed by law or otherwise, of the person not to disclose the existence of the contents of the thing.

(4) An order under section 23—

(a) shall not confer any right to the production of, or of access to, items subject to legal privilege; and

(b) shall have effect notwithstanding any obligations as to secrecy or other restrictions upon the disclosure of information imposed by law or otherwise.

(5) An authorized officer may photograph or make copies of any thing produced or to which access is granted pursuant to an order made under section 23.

(6) Where an authorized officer takes possession of any thing under an order made under section 23 or takes any photograph or makes any copy of the thing pursuant to subsection (5), he shall inform the Attorney General and shall, unless the Attorney General otherwise directs, immediately send the thing or the photograph or copy of the thing to the appropriate authority of the prescribed foreign State concerned.

(7) In this section, “data equipment” means any equipment which—

- (a) automatically processes information;
- (b) automatically records or stores information;
- (c) can be used to cause information to be automatically recorded, stored or otherwise processed on other equipment, wherever situated;
- (d) can be used to retrieve information whether the information is recorded or stored in the equipment itself or in other equipment, wherever situated; or
- (e) can be used to carry out any combination of the functions specified in paragraphs (a) to (d).

Immunities in compliance of production order

25. (1) No civil or criminal action, other than a criminal action for an offence under section 26, shall lie against any person for—

- (a) producing or giving access to any thing if he had produced or given access to the thing in good faith in compliance with an order made against him under section 23; or
- (b) doing or omitting to do any act if he had done or omitted to do the act in good faith and as a result of complying with such an order.

(2) A person who complies with an order made under section 23 shall not be treated as being in breach of any restriction upon the disclosure of information or thing imposed by law, contract or rules of professional conduct.

Failure to comply with production order

26. Any person who—

- (a) without reasonable excuse contravenes or fails to comply with an order under section 23; or
- (b) in purported compliance with such an order, produces or makes available to an authorized officer any material known to the person to be false or misleading in a material particular without—
 - (i) indicating to the authorized officer that the material is false or misleading and the part of the material that is false or misleading; or
 - (ii) providing correct information to the authorized officer if the person is in possession of, or can reasonably acquire, the correct information,

commits an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Request for attendance of person in prescribed foreign State

27. (1) The appropriate authority of a prescribed foreign State may request the Attorney General to assist in arranging the attendance in that prescribed foreign State of a person in Malaysia for the purpose of giving evidence or assistance in relation to a criminal matter in that prescribed foreign State.

(2) The Attorney General may assist in making arrangements for the travel of the person to the prescribed foreign State pursuant to a request referred to in subsection (1) if the Attorney General is satisfied that—

- (a) the request relates to a criminal matter in the prescribed foreign State involving a foreign serious offence;
- (b) there are reasonable grounds to believe that the person concerned is capable of giving evidence or assistance relevant to the criminal matter;
- (c) the person concerned has freely consented to attend as requested; and
- (d) the appropriate authority has given adequate undertakings in respect of the matters referred to in subsection (3).

(3) The matters in relation to which undertakings are to be given by the appropriate authority are—

(a) that the person shall not—

(i) be detained, prosecuted or punished for any offence against the law of the prescribed foreign State that is alleged to have been committed, or that was committed, before the person's departure from Malaysia;

(ii) be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred, or that had occurred, before the person's departure from Malaysia; or

(iii) be required to give evidence or assistance in relation to any criminal matter in the prescribed foreign State other than the criminal matter to which the request relates, unless the person has left the prescribed foreign State or the person has had the opportunity of leaving the prescribed foreign State and has remained in the prescribed foreign State otherwise than for the purpose of giving evidence or assistance in relation to the criminal matter to which the request relates;

(b) that any evidence given by the person in the criminal proceedings to which the request relates, if any, will be inadmissible or otherwise disqualified from use in the prosecution of the person for an offence against the law of the prescribed foreign State, other than for the offence of perjury or contempt of court in relation to the giving of that evidence;

(c) that the person will be returned to Malaysia in accordance with arrangements agreed to by the Attorney General; and

(d) such other matters as the Attorney General thinks appropriate.

(4) Where, pursuant to this section, the appropriate authority of a prescribed foreign State requests the assistance of the Attorney General in arranging the attendance of any person in that prescribed foreign State, the person to whom the request relates shall not be subjected to any penalty or liability or otherwise prejudiced in law by reason only of that person's refusal or failure to consent to attend as requested.

Request for attendance of prisoner or person under detention

28. (1) Where a request by the appropriate authority of a prescribed foreign State under section 27 relates to—

- (a) a prisoner within the meaning of section 2 of the Prison Act 1995 [Act 537]; or
- (b) a person under detention in a prescribed institution,

the Attorney General may assist in arranging the transfer of such person into the custody of an officer of the prescribed foreign State for the purpose of transporting such person from Malaysia to the prescribed foreign State and, after that, to be detained in that prescribed foreign State under the custody of such authority as may be lawful in that prescribed foreign State and produced from time to time under custody before the appropriate authority or court in the prescribed foreign State before which he is required to attend as a witness.

(2) Immediately upon his further attendance being dispensed with by the appropriate authority or court in the prescribed foreign State before which his attendance is required, the person shall be transported in the custody of an officer of the prescribed foreign State to Malaysia and returned into the custody of a Malaysian officer having lawful authority to take him into custody and he shall, after that, continue to undergo the imprisonment or detention which he was undergoing prior to the transfer of his custody under subsection (1).

(3) The period during which such person was under foreign custody under this section shall count towards the period of his imprisonment or detention in Malaysia.

(4) No transfer under subsection (1) shall be effected unless the appropriate authority of the prescribed foreign State gives an undertaking—

- (a) to bear and be responsible for all the expenses of the transfer of custody;
- (b) to keep the person under lawful custody throughout the transfer of his custody; and
- (c) to return him into Malaysian custody immediately upon his attendance before the appropriate authority or court in the prescribed foreign State being dispensed with.

Custody of person in transit

29. (1) A person who is in custody in a prescribed foreign State and has consented to give evidence or assistance in relation to a criminal matter in another prescribed foreign State may be transported through Malaysia, in the custody of another person, to that other prescribed foreign State, if the first-mentioned prescribed foreign State gives prior notice of this to the Attorney General.

(2) The person being transported through Malaysia in custody may, if an aircraft, vessel or train by which the person is being transported lands or calls or stops in Malaysia, be kept in the custody of such authorized officer as the Attorney General directs in writing until his transportation is continued.

(3) Where—

(a) a person is being held in custody pursuant to a direction under subsection (2); and

(b) the person's transportation is not, in the opinion of the Attorney General, continued within a reasonable time,

the Attorney General may direct that the person be transported in custody to the prescribed foreign State from which the person was first transported, and such direction shall be sufficient authority for that person's removal from Malaysia by such means as the Attorney General directs.

(4) All costs and expenses incurred by Malaysia in respect of subsections (2) and (3) shall be reimbursed by the prescribed foreign State from which the person was first transported.

Escape from custody while in transit

30. (1) Any person who, being a person held in custody pursuant to a direction under subsection 29(2), escapes from such custody commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(2) Any authorized officer may, without warrant, arrest a person if the authorized officer has reasonable grounds to believe that the person is a person referred to in subsection (1).

(3) A person who has been arrested under this section shall be returned to custody in accordance with this Act.

Request for enforcement of foreign forfeiture order

31. (1) The appropriate authority of a prescribed foreign State may request the Attorney General—

- (a) to assist in the enforcement and satisfaction of a foreign forfeiture order made in any judicial proceedings instituted in that prescribed foreign State against property that is reasonably believed to be located in Malaysia; or
- (b) where a foreign forfeiture order may be made in judicial proceedings which have been or are to be instituted in that prescribed foreign State, to assist in the restraining of dealing in any property that is reasonably believed to be located in Malaysia and against which the order may be enforced or which may be available to satisfy the order.

(2) On receipt of a request referred to in subsection (1), the Attorney General may—

- (a) in the case of paragraph (1)(a), act or authorize the taking of action under section 32 and the regulations made pursuant to section 44; or
- (b) in the case of paragraph (1)(b), act or authorize the taking of action under the regulations made pursuant to section 44,

and in that event section 32 and the regulations made pursuant to section 44 shall apply accordingly.

Registration of foreign forfeiture order

32. (1) The Attorney General or a person authorized by him may apply to the High Court for the registration of a foreign forfeiture order.

(2) The High Court may, on an application referred to in subsection (1), register the foreign forfeiture order if it is satisfied—

- (a) that the order is in force and not subject to further appeal in the prescribed foreign State;

- (b) where a person affected by the order did not appear in the proceedings in the prescribed foreign State, that the person had received notice of such proceedings in sufficient time to enable him to defend those proceedings; and
- (c) that enforcing the order in Malaysia would not be contrary to the interests of justice.

(3) For the purpose of subsection (2), the High Court shall take into consideration a certificate referred to in section 34 if tendered.

(4) The High Court shall revoke the registration of a foreign forfeiture order if it appears to the High Court that the order has been satisfied by payment of the amount due under it or by the person against whom it was made serving imprisonment in default of payment or by other means.

(5) Where an amount of money, if any, payable or remaining to be paid under a foreign forfeiture order registered in the High Court under this section is expressed in a currency other than that of Malaysia, the amount shall, for the purpose of any action taken in relation to that order, be converted into the currency of Malaysia on the basis of the Bank's exchange rate prevailing on the date of registration of the order.

(6) For the purposes of subsection (5), a certificate issued by the Bank and stating the exchange rate prevailing on a specified date shall be admissible in any judicial proceedings as evidence of the facts so stated.

(7) In this section, "appeal" includes—

- (a) any proceedings by way of discharging or setting aside a judgment; and
- (b) an application for a new trial or a stay of execution.

Proof of orders, etc., of prescribed foreign State

33. (1) For the purposes of sections 31 and 32 and the regulations made pursuant to section 44—

- (a) any order made or judgment given by a court of a prescribed foreign State purporting to bear the seal of that court or to be signed by any person in his capacity as a judge, magistrate or officer of the court, shall be deemed without further proof to have been duly sealed or to have been signed by that person, as the case may be; and

- (b) a document, duly authenticated, that purports to be a copy of any order made or judgment given by a court of a prescribed foreign State shall be deemed without further proof to be a true copy.

(2) A document is duly authenticated for the purpose of paragraph (1)(b) if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court in question or by or on behalf of the appropriate authority of that prescribed foreign State.

Evidence in relation to proceedings and orders in prescribed foreign State

34. (1) For the purposes of sections 31 and 32 and the regulations made pursuant to section 44, a certificate purporting to be issued by or on behalf of the appropriate authority of a prescribed foreign State stating that—

- (a) judicial proceedings have been instituted and have not been concluded, or that judicial proceedings are to be instituted, in that prescribed foreign State;
- (b) a foreign forfeiture order is in force and is not subject to appeal;
- (c) all or a certain amount of the sum payable under a foreign forfeiture order remains unpaid in that prescribed foreign State, or that other property recoverable under a foreign forfeiture order remains unrecovered in that prescribed foreign State;
- (d) a person has been notified of any judicial proceedings in accordance with the law of that prescribed foreign State; or
- (e) an order, however described, made by a court of that prescribed foreign State has the purpose of—
 - (i) recovering, forfeiting or confiscating—
 - (A) payments or other rewards received in connection with an offence against the law of that prescribed foreign State that is a foreign serious offence, or the value of the payments or rewards; or

- (B) property derived or realized, directly or indirectly, from payments or other rewards received in connection with such an offence or the value of such property; or
- (ii) forfeiting or destroying, or forfeiting or otherwise disposing of, any drugs or other substance in respect of which an offence against the corresponding drug law of that prescribed foreign State has been committed, or which was used in connection with the commission of such an offence,

shall, in any proceedings in a court, be received in evidence without further proof.

(2) In any such proceedings, a statement contained in a duly authenticated document, which purports to have been received in evidence or to be a copy of a document so received, or to set out or summarize evidence given in proceedings in a court in a prescribed foreign State, shall be admissible as evidence of any fact stated in the document.

(3) A document is duly authenticated for the purposes of subsection (2) if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court in the prescribed foreign State, or by or on behalf of an appropriate authority of that prescribed foreign State.

(4) Nothing in this section shall prejudice the admissibility of any evidence, whether contained in any document or otherwise, which is admissible apart from by virtue of this section.

Request for search and seizure

35. (1) The Attorney General may, on the request of the appropriate authority of a prescribed foreign State, assist in obtaining any thing by search or seizure.

(2) Where, on receipt of a request referred to in subsection (1), the Attorney General is satisfied that—

- (a) the request relates to a criminal matter in that prescribed foreign State in respect of a foreign serious offence; and

- (b) there are reasonable grounds for believing that the thing to which the request relates is relevant to the criminal matter and is located in Malaysia,

the Attorney General, or an authorized officer directed by him, may apply to the court for a warrant under section 36 in respect of premises specified by the Attorney General.

(3) An application for a warrant referred to in section 36 in respect of any thing in the possession of a financial institution shall be made to the High Court.

(4) An application for a warrant referred to in section 36 shall specify with sufficient particulars the thing in the possession of a financial institution.

Search warrant

36. (1) On an application referred to in section 35, the court may issue a warrant authorizing an authorized officer to enter and search the premises specified by the Attorney General if the court is satisfied that—

- (a) an order made under section 23 in relation to any thing on the premises has not been complied with; or
- (b) the conditions in subsection (2) are fulfilled.

(2) The conditions referred to in paragraph (1)(b) are—

- (a) that there are reasonable grounds for suspecting that a person specified in the request has committed or has benefited from a foreign serious offence;
- (b) that there are reasonable grounds for believing that the thing to which the application relates—
 - (i) is likely to be of substantial value, whether by itself or together with another thing, to the criminal matter in respect of which the application is made; and
 - (ii) does not consist of or include items subject to legal privilege; and
- (c) that the court is satisfied that it is not contrary to the public interest for the warrant to be issued.

(3) A warrant issued under this section shall be subject to such conditions as the court may specify in the warrant.

Additional powers of person executing search warrant, etc.

37. (1) Where an authorized officer has entered premises in the execution of a warrant issued under section 36, he may seize and retain any thing that is specified in the warrant, other than items subject to legal privilege.

(2) An authorized officer may photograph or make a copy of any thing seized under subsection (1).

(3) Where an authorized officer seizes any thing or takes a photograph or makes a copy of any thing under a warrant, he shall inform the Attorney General and shall, unless the Attorney General otherwise directs, immediately send the thing or the photograph or copy of the thing to the appropriate authority of the prescribed foreign State concerned.

(4) Any person who hinders or obstructs an authorized officer in the execution of a warrant issued under this section commits an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Immunities in respect of authorized officer executing search warrant

38. (1) No civil or criminal action shall lie against any person for—

- (a) producing or giving access to any thing if he had produced or given access to the thing in good faith in compliance with a warrant issued under section 36; or
- (b) doing or omitting to do any act if he had done or omitted to do the act in good faith and as a result of complying with such a warrant.

(2) A person who complies with a warrant issued under section 36 shall not be treated as being in breach of any restriction upon the disclosure of any information or thing imposed by law, contract or rules of professional conduct.

Assistance in locating or identifying person

39. (1) The appropriate authority of a prescribed foreign State may request the Attorney General to assist in locating, or identifying and locating, a person who is believed to be in Malaysia.

(2) On receipt of a request made under subsection (1), the Attorney General may authorize in writing assistance in accordance with this section if he is satisfied that—

- (a) the request relates to a criminal matter in the prescribed foreign State; and
- (b) there are reasonable grounds for believing that the person to whom the request relates—
 - (i) is or might be concerned in, or could give or provide evidence or assistance relevant to, the criminal matter; and
 - (ii) is in Malaysia.

(3) Where, in relation to a request made under subsection (1), the Attorney General authorizes assistance in accordance with this section, the Attorney General shall forward the request to the appropriate authority in Malaysia.

(4) The appropriate authority referred to in subsection (3) shall, to the best of its ability, locate or identify and locate, as the case may be, the person to whom the request relates, and shall inform the Attorney General of the outcome of the actions taken.

(5) On receipt of such information, the Attorney General shall inform the appropriate authority of the prescribed foreign State.

Assistance in service of process

40. (1) The appropriate authority of a prescribed foreign State may request the Attorney General to assist in effecting the service of process on a person in Malaysia.

(2) On receipt of a request made under subsection (1), the Attorney General may authorize the service of the process in accordance with this section if he is satisfied that—

- (a) the request relates to a criminal matter in that prescribed foreign State;

- (b) there are reasonable grounds for believing that the person to be served is in Malaysia;
- (c) the prescribed foreign State has furnished sufficient details of the consequences of a failure to comply with such process; and
- (d) where the request relates to the service of a summons to appear as a witness in that prescribed foreign State, that prescribed foreign State has given an undertaking that the person will not be subjected to any penalty or liability or otherwise prejudiced in law by reason only of that person's refusal or failure to accept or comply with the summons, notwithstanding anything to the contrary in the summons.

(3) Where service is authorized under subsection (2), the Attorney General may, at the request of a prescribed foreign State, arrange for the service in Malaysia of a process relating to a criminal matter in the prescribed foreign State.

(4) Without limiting the manner in which the service of a process in a prescribed foreign State may be proved in Malaysia, service of such process may be proved by the affidavit of the person who served the process.

Penalty not to be imposed for failure to comply with summons

41. The person who is to appear as a witness pursuant to paragraph 40(2)(d) shall not be subjected to any penalty or liability or otherwise prejudiced in law by reason only of that person's refusal or failure to accept or comply with the summons, notwithstanding anything to the contrary in the summons.

PART IV

MISCELLANEOUS

Authentication of documents

42. (1) Subject to sections 13, 33 and 34 and any law relating to the admissibility of evidence, any document that is obtained, provided or produced pursuant to a request made under this Act and that is duly authenticated is admissible in evidence without any further proof in any criminal proceedings.

(2) A document is duly authenticated for the purposes of subsection (1) if—

(a) it purports to be signed or certified by a judge, magistrate, or officer in or of that prescribed foreign State; and

(b) either—

(i) it is verified by the oath or affirmation of a witness, or of an officer of the government of that prescribed foreign State; or

(ii) it purports to be sealed with an official or public seal of that prescribed foreign State or of a Minister of State, or of a department or officer of the government, of that prescribed foreign State.

(3) All courts in Malaysia shall take judicial notice of the official or public seal referred to in subsection (2).

(4) Nothing in this section prevents the proof of any matter or the admission in evidence of any document in accordance with any other provision of this Act or any other law of Malaysia.

Delegation

43. (1) The Attorney General may delegate to a fit and proper person as he deems fit any of his powers under this Act.

(2) A delegation under this section shall not preclude the Attorney General himself from exercising at any time any of the powers so delegated.

Regulations

44. (1) The Minister may make such regulations as are necessary or expedient to give full effect to or for carrying out the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made for all or any of the following purposes:

(a) providing for the removal and return of a prisoner or a person under detention for his temporary surrender to a prescribed foreign State under section 28;

- (b) prescribing the procedure for enforcing foreign forfeiture orders;
- (c) prescribing the forms for the purposes of this Act;
- (d) prescribing the fees and charges payable under this Act; and
- (e) providing for such other matters as are contemplated by, or necessary for giving full effect to, the provisions of this Act and for their due administration.

(3) Regulations made under this section may prescribe any act in contravention of the regulations to be an offence and may prescribe penalties of a fine not exceeding ten thousand ringgit or imprisonment not exceeding one year or both.

LAWS OF MALAYSIA

Act 621

**MUTUAL ASSISTANCE IN CRIMINAL MATTERS
ACT 2002**

LIST OF AMENDMENTS

Amending law	Short title	In force from
	— NIL —	

LAWS OF MALAYSIA**Act 621****MUTUAL ASSISTANCE IN CRIMINAL MATTERS
ACT 2002****LIST OF SECTIONS AMENDED**

Section	Amending authority	In force from
	— NIL —	
