



UNITED NATIONS

E/NL.2005/01-04  
13 June 2005  
English only

## LAWS AND REGULATIONS

### PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

*In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances,  
the Secretary-General has the honour to communicate the following legislative text / texts*

### MALAYSIA

Communicated by the Government of Malaysia

#### NOTE BY THE SECRETARIAT

- (a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [ ] have been added or changed by the Secretariat.
- (b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

#### CONTENTS

#### PAGE

E/NL.2005/01	Act 479: Extradition Act 1992	1
E/NL.2005/02	Act 574: Penal Code (Revised 1997) (Extracts)	28
E/NL.2005/03	Act 613: Anti-Money Laundering Act 2001	29
E/NL.2005/04	Act 621: Mutual Assistance in Criminal Matters Act 2002	61



**E/NL.2005/01**

**ACT 479**

**EXTRADITION ACT 1992**

Date of Royal Assent 30<sup>th</sup> January 1992  
Date of publication in the Gazette 20<sup>th</sup> February 1992  
Date of coming into operation 21<sup>st</sup> February 1992

**ARRANGEMENT OF SECTIONS**

Long Title & Preamble

**PART I - PRELIMINARY**

Section 1. Short title and application.  
Section 2. Order of the Minister.  
Section 3. Special direction of the Minister applying this Act where no order has been made under section 2.  
Section 4. Direction of the Minister to apply procedure in section 20.  
Section 5. Interpretation.

**PART II - EXTRADITION OFFENCE**

Section 6. Extradition offence.  
Section 7. Law of a country.

**PART III - RETURN OF FUGITIVE CRIMINALS**

Section 8. Restrictions on return of fugitive criminals.  
Section 9. Exceptions to political offences.  
Section 10. When consent of the Minister is necessary.

**PART IV - PROCEDURE FOR RETURN OF FUGITIVE CRIMINALS**

Section 11. Liability of fugitive criminal to be apprehended and returned.  
Section 12. Requisition for return of fugitive criminal.  
Section 13. Issue of warrants by Magistrate.  
Section 14. Magistrate to report issue of provisional warrant to Minister.  
Section 15. Procedure in respect of a fugitive criminal apprehended on a warrant issued under paragraph 13(1)(a).  
Section 16. Procedure in respect of fugitive criminal apprehended on a provisional warrant.  
Section 17. Procedure in respect of a fugitive criminal apprehended on a provisional warrant when order has been received by the Magistrate.  
Section 18. Powers and jurisdiction of Sessions Court.  
Section 19. Procedure before Sessions Court.  
Section 20. Procedure before Sessions Court where a special direction has been given under section 4.  
Section 21. Return of fugitive criminal.  
Section 22. Waiver of committal proceedings by fugitive criminal.  
Section 23. Depositions to be evidence.  
Section 24. Authentication of foreign documents.

## **PART V - RETURN OF FUGITIVE CRIMINALS TO BRUNEI DARUSSALAM AND THE REPUBLIC OF SINGAPORE**

Section 25. Application to Brunei Darussalam and Singapore.

Section 26. Endorsement of warrant issued in Brunei Darussalam or Singapore .

Section 27. Warrant executed in Brunei Darussalam or Singapore deemed to be validly executed in Malaysia.

Section 28. Transfer of persons to Brunei Darussalam or Singapore.

## **PART VI - RETURN OF FUGITIVE CRIMINALS WHO ARE ALSO PRISONERS TO STAND TRIAL**

Section 29. Procedure for return.

Section 30. Fugitive criminal ceases to be liable to serve the sentence in Malaysia, time spent in custody in connection with issue of temporary surrender warrant.

Section 31. Issue of warrant by Minister.

## **PART VII - RETURN OF ACCUSED OR CONVICTED PERSONS TO MALAYSIA**

Section 32. Extraditable offenses.

Section 33. Conveyance of accused or convicted person returned.

Section 34. Accused or convicted person returned to Malaysia not to be tried for previous offence or returned to another country.

Section 35. Persons temporarily returned to Malaysia.

## **PART VIII - HABEAS CORPUS AND REVIEW**

Section 36. Application for habeas corpus.

Section 37. Review by High Court.

## **PART IX - MISCELLANEOUS**

Section 38. Country includes colonies, dependencies, protectorates, vessels or aircraft.

Section 39. Liability of fugitive criminal to be arrested and returned.

Section 40. Minister may direct detention of fugitive criminal on transit.

Section 41. Appearance on behalf of the Public Prosecutor.

Section 42. Jurisdiction as to offences committed at sea or in air.

Section 43. Discharge of fugitive criminal if not returned within three months.

Section 44. Provisions in the Criminal Procedure Code when applicable.

Section 45. Property found on fugitive criminal.

Section 46. Forms.

Section 47. Power of Minister to discharge any fugitive criminal in custody.

Section 48. Simultaneous requisitions.

Section 49. Discretion in respect of return of certain fugitive criminals.

Section 50. Taking of evidence for purpose of criminal matters pending in a country.

Section 51. Witnesses to attend and give evidence, etc.

Section 52. Taking of evidence for purpose of return of fugitive criminals to Malaysia.

Section 53. Rules.

**PART X - REPEAL**

Section 54. Repeal.

SCHEDULE [Section 46]

LIST OF AMENDMENTS

**ACT 479**  
**EXTRADITION ACT 1992**

Long Title & Preamble

An Act relating to the extradition of fugitive criminals.

BE IT ENACTED by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and the authority of the same, as follows:

**PART I - PRELIMINARY**

Section 1. Short title and application.

- (1) This Act may be cited as the Extradition Act 1992 and shall apply throughout Malaysia.  
(2) This Act or any part thereof shall apply to-

- (a) such countries in respect of which the Minister has issued an order under section 2;  
(b) such countries in respect of which the Minister has issued a special direction under section 3:

Provided that Part V shall apply to Brunei Darussalam and the Republic of Singapore notwithstanding that no order under section 2 or special direction under section 3 has been issued or given by the Minister.

Section 2. Order of the Minister.

(1) Where a binding arrangement has been entered into between Malaysia and any country for the extradition of fugitive criminals, the Minister may, by order to be published in the Gazette reciting or embodying the terms of such arrangement, direct that the provisions of this Act shall apply to that country subject to any restriction, exception, modification, adaptation, condition or qualification contained in the order.

(2) Where any arrangement referred to in this section is revoked or lapses, the Minister shall, by order published in the Gazette, forthwith certify that fact; and any such order shall be conclusive evidence that the arrangement referred to therein has been revoked or has lapsed, as the case may be, and shall not be questioned in any legal proceedings whatsoever.

(3) Any order made under this section shall be laid before each House of Parliament as soon as may be after it is made.

(4) An order made under this section shall be conclusive evidence that the arrangement therein referred to complies with the provisions of this Act, and that this Act applies in the case of the country mentioned in the order, and the validity of such order shall not be questioned in any legal proceedings whatsoever.

Section 3. Special direction of the Minister applying this Act where no order has been made under section 2.

Where a country in respect of which no order has been made under section 2 makes a request for the extradition thereto of a fugitive criminal, the Minister may personally, if he deems it fit to do so, give a special direction in writing that the provisions of this Act shall apply to that country in relation to the extradition thereto of that particular fugitive criminal.

Section 4. Direction of the Minister to apply procedure in section 20.

Where the binding arrangement which has been entered into between Malaysia and any country for the extradition of fugitive criminals contains a provision for the prima facie requirement to be dispensed with either generally or in relation to a class or classes of offences, the Minister may give a direction in writing that the procedure specified in section 20 shall apply to such cases .

Section 5. Interpretation.

In this Act, unless the context otherwise requires-

"country" includes a territory of a country which, though not sovereign and independent, is authorized by that country to enter into extradition arrangements with other countries;

"diplomatic representative" means a chief representative or consular officer, as defined in the Diplomatic and Consular Privileges Ordinance 1957 [Ord. 53 of 1957];<sup>1</sup>

"extraditable offence" means an offence described in section 32;

"extradition offence" means an offence described in subsection 6(2) or 6(3);

"fugitive criminal" means any person who is accused of or convicted of an extradition offence committed within the jurisdiction of another country and is, or is suspected to be, in some part of Malaysia;

"Magistrate" means a Magistrate of the First Class or a Sessions Court Judge;

"Minister" means the Minister of Home Affairs;

"prescribed" means prescribed by rules made under this Act;

"provisional warrant" means a warrant which is issued under paragraph 13(1)(b);

"surrender warrant" means a warrant which is issued under paragraph 21(2)(b);

"temporary surrender warrant" means a warrant which is issued under paragraph 21(2)(a)

## **PART II - EXTRADITION OFFENCE**

Section 6. Extradition offence.

(1) A fugitive criminal shall only be returned for an extradition offence.

(2) For the purposes of this Act, an extradition offence is an offence, however described, including fiscal offences-

(a) which is punishable, under the laws of a country referred to under paragraph 1(2)(a) or 1(2)(b), with imprisonment for not less than one year or with death; and

---

<sup>1</sup> Original note: The Diplomatic and Consular Privileges Ordinance 1957 [Ord. 53 of 1957] has since been repealed by Diplomatic Privileges (Vienna Convention) (Amendment) Act 1999 [Act A1064]-- see s. 5 of Act A1064.

(b) which, if committed within the jurisdiction of Malaysia, is punishable under the laws of Malaysia with imprisonment for not less than one year or with death:

Provided that, in the case of an extraterritorial offence, it is so punishable under the laws of Malaysia if it took place in corresponding circumstances outside Malaysia.

(3) An offence shall also be an extradition offence if it consists of an attempt or a conspiracy to commit, or an abetment of the commission of, any offence described in subsection (2).

Section 7. Law of a country.

A reference in this Act to a law of a country includes a reference to a law of, or in force in, a part of that country.

### **PART III - RETURN OF FUGITIVE CRIMINALS**

Section 8. Restrictions on return of fugitive criminals.

A fugitive criminal shall not be surrendered to a country seeking his return-

(a) if the offence in respect of which his return is sought is of a political character or he proves to the satisfaction of the Sessions Court before which he is brought or of the Minister that the warrant for his return has in fact been made with a view to try or punish him for an offence of a political character;

(b) if the request for his surrender although purporting to be made for an extradition offence was in fact made for the purpose of prosecuting or punishing the person on account of his race, religion, nationality or political opinions;

(c) if he might be prejudiced at his trial or punished or imprisoned by reason of his race, religion, nationality or political opinions;

(d) if prosecution for the offence in respect of which his return is sought is, according to the law of that country, barred by time;

(e) unless provision is made by the law of that country, or in the extradition arrangement with that country, that a fugitive criminal who has not had a reasonable opportunity of leaving that country shall not be detained or tried in that country for any offence committed prior to his return, other than the extradition offence proved by the facts on which his surrender or return is based or any lesser offence proved by the facts on which that return was grounded unless the consent of the appropriate authority in the requested country has been obtained; or

(f) unless provision is made by the law of that country, or in the extradition arrangement with that country, that a fugitive criminal who has not had a reasonable opportunity of leaving that country shall not be extradited to another country for trial or punishment for any offence that is alleged to have been committed or was committed before the fugitive criminal's return to the first mentioned country unless the consent of the appropriate authority in the requested country has been obtained.

Section 9. Exceptions to political offences.

(1) For the purposes of paragraph 8(a), any of the following offences shall not be held to be offences of a political character in relation to a country which has made corresponding provisions in its laws:

(a) murder or other willful crime against the person of a Head of State or a member of the Head of State's immediate family;

(b) an act which, under a multilateral treaty to which Malaysia and the country seeking the return of the fugitive criminal are parties, constitutes an offence for which a person will be extradited or prosecuted notwithstanding the political character or motivation of such act;

(c) any attempt, abetment or a conspiracy to commit any of the foregoing offences.

Section 10. When consent of the Minister is necessary.

(1) Where a fugitive criminal has been returned to a country and the country concerned intends to try him for an extradition offence committed prior to his return other than that for which he was extradited, or to extradite him to another country for trial or punishment for any other offence, it shall make a request for the consent of the Minister through its diplomatic representative and such request shall be accompanied by all relevant information and documents in respect thereof.

(2) The Minister may call for any additional information or documents as he may require in order that he may be satisfied that the request for his consent under subsection (1) is consistent with the provisions of this Act.

(3) The Minister shall not give his consent under subsection (1) if he has reasonable grounds for believing that the offence to which the request for consent relates could have been charged prior to the return of such fugitive criminal if due diligence had been exercised.

#### **PART IV - PROCEDURE FOR RETURN OF FUGITIVE CRIMINALS**

Section 11. Liability of fugitive criminal to be apprehended and returned.

Where a fugitive criminal is found in Malaysia, he shall be liable to be apprehended and returned in the manner provided by this Part to the country concerned.

Section 12. Requisition for return of fugitive criminal.

(1) A requisition by any country for the return of a fugitive criminal who is in or suspected of being in Malaysia shall be made to the Minister by a diplomatic representative of that country.

(2) There shall be furnished with any requisition made for the purposes of subsection (1)-

(a) in the case of a fugitive criminal accused of an offence, a warrant for his apprehension issued in that country; or

(b) in the case of a fugitive criminal unlawfully at large after conviction of an offence, a certificate of the conviction and sentence in that country and a statement of the amount, if any, of that sentence which has been served,

together in each case with particulars of the fugitive criminal whose return is requested and of the facts upon which and the law under which he is accused or was convicted, and evidence sufficient to justify the issue of a warrant for his apprehension under section 13.

(3) On receipt of such requisition, the Minister may, by order under his hand and seal, signify to a Magistrate that such requisition has been made and authorise him to issue a warrant for the apprehension of the fugitive criminal.

(4) If the Minister is of the opinion that the offence to which the warrant relates is one of a political character, he may, if he thinks fit, refuse to make any such order, and may also at any time order a fugitive criminal convicted of such offence to be discharged from custody.



Section 13. Issue of warrants by Magistrate.

- (1) Where a fugitive criminal is in or suspected of being in or on the way to Malaysia, the Magistrate-
- (a) shall, on receipt of an order made under subsection 12(3), issue a warrant for the apprehension of such fugitive criminal; or
  - (b) may, where no order has been made under subsection 12(3), issue a provisional warrant for the apprehension of such fugitive criminal on such information and evidence and under such circumstances as would, in his opinion, justify the issue of a warrant if the offence had been committed or the fugitive criminal convicted in Malaysia.
- (2) For the purposes of paragraph (1)(b), information contained in an international notice issued by the International Criminal Police Organization (INTERPOL) in respect of a fugitive criminal may be considered by the Magistrate in deciding whether a provisional warrant should be issued for the apprehension of a fugitive criminal.

Section 14. Magistrate to report issue of provisional warrant to Minister.

- (1) A Magistrate issuing a provisional warrant shall forthwith send a report of the issue together with the information or evidence or certified copy thereof to the Minister.
- (2) The Minister may, if he thinks fit, order the warrant to be cancelled and the person who has been apprehended on the warrant to be discharged.

Section 15. Procedure in respect of a fugitive criminal apprehended on a warrant issued under paragraph 13(1)(a).

A fugitive criminal who is apprehended on a warrant issued under paragraph 13(1)(a) shall be brought before any Magistrate who shall order-

- (a) that the case be transmitted to the Sessions Court; and
- (b) that the fugitive criminal be remanded in custody prior to his appearance before the Sessions Court.

Section 16. Procedure in respect of fugitive criminal apprehended on a provisional warrant.

- (1) A fugitive criminal who is apprehended on a provisional warrant shall be brought before any Magistrate who shall, in the case where the Minister has not received any requisition for the return of the fugitive criminal, order that the fugitive criminal be remanded in custody for such reasonable period of time as with reference to the circumstances of the case he may fix, and for this purpose, the Magistrate shall take into account any period in the relevant extradition arrangement relating to the permissible period of remand upon provisional arrest of a fugitive criminal.
- (2) Upon receipt of the order of the Minister signifying that a requisition has been made for the return of the fugitive criminal, the Magistrate shall order-
- (a) that the case be transmitted to the Sessions Court; and
  - (b) that his remand under subsection (1) be extended until his appearance before the Sessions Court.

(3) The Magistrate shall, where he has not received from the Minister within such period of time as he may fix under subsection (1) an order signifying that a requisition has been made for the return of the fugitive criminal, order that the fugitive criminal be discharged.

Section 17. Procedure in respect of a fugitive criminal apprehended on a provisional warrant when order has been received by the Magistrate.

Where at the time the fugitive criminal who is apprehended on a provisional warrant is brought before any Magistrate the Magistrate has received an order of the Minister signifying that a requisition has been made for the return of the fugitive criminal, the Magistrate shall order-

- (a) that the case be transmitted to the Sessions Court; and
- (b) that the fugitive criminal be remanded in custody until his appearance before the Sessions Court.

Section 18. Powers and jurisdiction of Sessions Court.

A Sessions Court shall have the powers and jurisdiction to inquire into an extradition matter brought before it in accordance with the procedure specified under this Act.

Section 19. Procedure before Sessions Court.

(1) Where the fugitive criminal is brought before the Sessions Court, the Sessions Court shall receive any evidence tendered by or on behalf of the fugitive criminal to show-

- (a) that he did not do or omit to do the act alleged to have been done or omitted by him;
- (b) that he is not the person against whom the warrant was issued in the country which seeks his return;
- (c) that the alleged act or omission is not an extradition offence in relation to the country which seeks his return;
- (d) that the offence is of a political character, or that the proceedings are being taken with a view to try or punish him for an offence of a political character;
- (e) that the offence is an offence under military law which is not also an offence under the general criminal law;
- (f) that the alleged act or omission does not constitute an offence under the law of Malaysia;
- (g) that his return would not be in accordance with the provisions of this Act;
- (h) that he has been previously convicted or acquitted or pardoned by a competent tribunal or authority in the country which seeks his return or in Malaysia in respect of the alleged act or omission; or
- (i) that the request for his surrender was made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions, or that he might be prejudiced at his trial or punished or imprisoned by reason of his race, religion, nationality or political opinions.

(2) Nothing in this section shall limit the power of the Sessions Court to receive any other evidence that may be tendered to show that the fugitive criminal should not be returned.

(3) For the purposes of paragraph (2)(d), the Sessions Court may receive such evidence as in its opinion may assist it in determining the truth, whether or not such evidence is otherwise legally admissible in a court of law.

(4) If the Sessions Court is of the opinion that a prima facie case is not made out in support of the requisition of the country concerned, the Court shall discharge the fugitive criminal.

(5) If the Sessions Court is of the opinion that a prima facie case is made out in support of the requisition of the country concerned, the Court shall commit the fugitive criminal to prison to await the order of the Minister for his surrender, and shall report the result of its inquiry to the Minister; and shall forward together with such report any written statement which the fugitive criminal may desire to submit for the consideration of the Minister.

Section 20. Procedure before Sessions Court where a special direction has been given under section 4.

(1) Where a direction has been given by the Minister under section 4, the Sessions Court shall-

(a) after hearing any representation made in support of the extradition request;

(b) upon the production of supporting documents in relation to the offence;

(c) upon being satisfied that the alleged act or omission of the fugitive criminal would, if it had taken place in Malaysia, constitute an offence under the laws of Malaysia;

(d) if the fugitive criminal does not satisfy the Court that there are substantial grounds for believing that-

(i) the offence is an offence of a political character, or that the proceedings are being taken with a view to try or punish him for an offence of a political character;

(ii) prosecution for the offence in respect of which his return is sought is barred by time in the country which seeks his return;

(iii) the offence is an offence under military law which is not also an offence under the general criminal law;

(iv) the fugitive criminal has been acquitted or pardoned by a competent tribunal or authority in the country which seeks his return or in Malaysia;

(v) the fugitive criminal has undergone the punishment provided by the law of the country which seeks his return or of Malaysia in respect of the extradition offence or any other offence constituted by the same conduct as that which constitutes the extradition offence;

(e) upon being satisfied that the fugitive is not accused of an offence, nor undergoing a sentence in respect of an offence, in Malaysia, other than the extradition offence in respect of which his return is sought,

commit the fugitive criminal to prison to await the order by the Minister for his surrender.

(2) In the proceedings before the Sessions Court under subsection (1) the fugitive criminal is not entitled to adduce, and the Court is not entitled to receive, evidence to contradict the allegation that the fugitive criminal has done or omitted to do the act which constitutes the extradition offence for which his return is sought.

(3) In this section, "supporting documents" means-

(a) any duly authenticated warrant for the arrest of the fugitive criminal issued by the country which seeks his return or any duly authenticated copy of such warrant;

(b) any duly authenticated document to provide evidence of the fugitive criminal's conviction or sentence or the extent to which a sentence imposed has not been carried out;

(c) a statement in writing setting out a description of, and the penalty applicable in respect of, the offence and a duly authenticated statement in writing setting out the conduct constituting the offence.

#### Section 21. Return of fugitive criminal.

(1) If the Sessions Court commits the fugitive criminal to prison pursuant to section 19 or 20, the Court shall also inform such fugitive criminal that he will not be surrendered until after the expiration of such period, not being less than fifteen days, as the Minister may determine and that he has a right to apply to the High Court for a writ of habeas corpus.

(2) Upon the expiration of the period referred to in subsection (1) or, if an application for a writ of habeas corpus has been made to the High Court by the fugitive criminal, upon the final determination of such application by the High Court or after such further period as may be allowed in either case by the Minister, the Minister shall-

(a) in the case of a requisition made under section 29, issue a temporary surrender warrant under his hand and seal; or

(b) in the case of a requisition made under section 12, issue a surrender warrant under his hand and seal,

to order the fugitive criminal to be surrendered to such person as may in his opinion be duly authorised to receive the fugitive criminal by the country which made the requisition for his return, and such fugitive criminal shall be returned accordingly.

(3) It shall be lawful for any person to whom such warrant is directed and for the person so authorised as aforesaid to receive, hold in custody and convey, within the jurisdiction of the country which made the requisition for his return, the fugitive criminal and if the fugitive criminal escapes out of any custody to which he may be surrendered in pursuance of such warrant, it shall be lawful to retake him in the same manner as any person accused of any crime against the laws of Malaysia may be retaken upon an escape.

#### Section 22. Waiver of committal proceedings by fugitive criminal.

(1) When the fugitive criminal is brought before the Sessions Court he may inform the Court that he consents to a waiver of the committal proceedings before the Court and the Court shall-

(a) ascertain whether the consent is given voluntarily;

(b) upon being satisfied that such consent is given voluntarily, advise the fugitive criminal that the effect of so consenting will be that-

(i) he will be committed to prison;

(ii) he will not be entitled to apply under section 36 for a writ of habeas corpus to review the validity of the decision to commit him to prison;

(iii) upon his return to the country which made the requisition for his return, he shall be tried for the extradition offence in respect of which his extradition was requested or he may be tried for any lesser offence proved by the facts on which that extradition offence was grounded;

(iv) upon his return to that country, he may also be tried for any other extradition offence in respect of which the Minister so consents under section 10.

(2) If, after the fugitive criminal has been advised in accordance with paragraph (1)(b), the fugitive criminal again consents to the waiver, the Court shall commit the fugitive criminal to prison to await the warrant of the Minister under subsection (3).

(3) The Minister may, at any time after a fugitive criminal has been committed to prison, issue-

(a) a temporary surrender warrant; or

(b) a surrender warrant,  
as the case may be, for the return of the fugitive criminal to the country concerned.

(4) The provisions of section 36 shall not apply to a fugitive criminal committed to prison under this section.

#### Section 23. Depositions to be evidence.

Depositions or statements on oath taken in any country and copies of such original depositions or statements, and foreign certificates of or judicial documents stating the fact of a conviction may, if duly authenticated, be received in evidence in proceedings under this Act.

#### Section 24. Authentication of foreign documents.

Foreign warrants and depositions or statements on oath and copies thereof, and foreign certificates of or judicial documents stating the fact of a conviction, shall be deemed duly authenticated for the purposes of this Act if authenticated in the manner provided for the time being by law or authenticated as follows:

(a) if the warrant purports to be signed by a Judge, Magistrate or officer of the country where the same was issued;

(b) if the depositions or statements or the copies thereof purport to be certified under the hand of a Judge, Magistrate or officer of the country where the same were taken to be the original depositions or statements, or to be true copies thereof, as the case may require; or

(c) if the certificate of or judicial document stating the fact of conviction purports to be certified by a Judge, Magistrate or officer of the country where the conviction took place;  
and if in every case the warrant, depositions, statement, copies, certificates and judicial documents (as the case may be) are authenticated by the oath of some witness or being sealed with the official seal of the Minister of Justice or some other Minister of State; and all courts in Malaysia shall take judicial notice of such official seal and shall admit the documents so authenticated by it to be received in evidence without further proof.

## **PART V - RETURN OF FUGITIVE CRIMINALS TO BRUNEI DARUSSALAM AND THE REPUBLIC OF SINGAPORE**

Section 25. Application to Brunei Darussalam and Singapore.

(1) This Part applies in relation to Brunei Darussalam and the Republic of Singapore.

(2) In this Part, "offence" means a seizable offence or an offence punishable, on conviction, with imprisonment for a term exceeding six months under the laws of Brunei Darussalam or the Republic of Singapore.

Section 26. Endorsement of warrant issued in Brunei Darussalam or Singapore .

Where, under the provisions of any law in force in Brunei Darussalam or the Republic of Singapore, a judicial authority has issued a warrant authorizing the arrest of a person accused or convicted of an offence and that person is or is believed to be in Malaysia, a Magistrate in Malaysia may, if satisfied that the warrant was duly issued in Brunei Darussalam or Singapore, endorse the warrant, and the warrant may then be executed on that person as if it were a warrant lawfully issued in Malaysia under the provisions of the Criminal Procedure Code. [Act 593]

Section 27. Warrant executed in Brunei Darussalam or Singapore deemed to be validly executed in Malaysia.

Where, under the provisions of any law in force in Brunei Darussalam or the Republic of Singapore corresponding to section 26, a warrant issued by a Magistrate or a Magistrate's Court in Malaysia has been endorsed by a Magistrate in Brunei Darussalam or the Republic of Singapore and executed on the person named in the warrant, the warrant shall for the purposes of this Act be deemed to have been as validly executed as if the execution had been effected in Malaysia.

Section 28. Transfer of persons to Brunei Darussalam or Singapore.

Where a warrant has been executed in Malaysia pursuant to section 26, the person arrested shall be produced as soon as possible before a Magistrate in Malaysia, who shall, if satisfied that he is the person specified in the warrant, direct that the arrested person be transferred forthwith in custody to the appropriate court in Brunei Darussalam or the Republic of Singapore; and any such person shall, while in such custody, be deemed for all purposes to be in lawful custody:

Provided that such Magistrate may, if for reasons to be recorded by him he is satisfied that it is in the interests of justice to do so and if the case is one in which bail may lawfully be granted, release the person arrested on bail conditional on his appearing before the appropriate court in Brunei Darussalam or the Republic of Singapore at a time to be specified in the bond and bail bond.

## **PART VI - RETURN OF FUGITIVE CRIMINALS WHO ARE ALSO PRISONERS TO STAND TRIAL**

Section 29. Procedure for return.

(1) A requisition by any country for the return of: a fugitive criminal who is serving a sentence or sentences of imprisonment in respect of an offence or offences against a law of Malaysia, for the purpose of a trial against him, shall be made to the Minister by a diplomatic representative of the country concerned.

(2) There shall be furnished with any requisition made under subsection (1) particulars of the fugitive criminal whose return is requested and of the facts upon which and the law under he is accused as well as adequate undertakings to the effect that-

(a) the fugitive criminal shall be immediately returned to Malaysia upon completion of his trial in the country concerned; and

(b) the country concerned shall-

(i) be responsible for the custody of the fugitive criminal while travelling to and from, and while in, the country concerned; and

(ii) take all appropriate and necessary measures to ensure his safe return to Malaysia.

(3) Notwithstanding subsection (2), the Minister may require the country concerned to give such other undertakings as he may specify.

(4) Notwithstanding anything in any written law, the Minister, upon being satisfied that the requirements of subsection (2) have been met, may, by order under his hand and seal, authorize that the fugitive criminal be removed from his place of imprisonment and brought before the Sessions Court for an inquiry under section 19.

Section 30. Fugitive criminal ceases to be liable to serve the sentence in Malaysia, time spent in custody in connection with issue of temporary surrender warrant.

(1) Where, while the fugitive criminal is in a country pursuant to a warrant issued under paragraph 21(2)(a), he ceases to be liable to serve the sentence or sentences of imprisonment in Malaysia, the Minister shall inform that country that the undertakings referred to in paragraphs 29(2)(a) and (b) are no longer required to be complied with.

(2) Any time spent by the fugitive criminal in custody in connection with the warrant issued under paragraph 21(2)(a) (including time spent in custody outside Malaysia) shall be counted as time served towards the sentence or sentences of imprisonment referred to in subsection 29(1).

Section 31. Issue of warrant by Minister.

Where-

(a) a fugitive criminal is returned to a country under a temporary surrender warrant and thereafter returned to Malaysia in pursuance of the undertakings referred to in subsection 29(2); and

(b) the country concerned still seeks the return of the fugitive criminal after he has served his sentence in Malaysia,  
the Minister may, in his discretion, issue a surrender warrant for the return of the fugitive criminal to that country.

## **PART VII - RETURN OF ACCUSED OR CONVICTED PERSONS TO MALAYSIA**

Section 32. Extraditable offenses.

In this Part, an extraditable offence is an offence however described, including fiscal offences, which is punishable under the laws of Malaysia with imprisonment for not less than one year or with death.

Section 33. Conveyance of accused or convicted person returned.

Any person accused of or convicted of an extraditable offence who is returned by a country may, under the warrant of arrest for his return issued in that country, be brought into Malaysia and delivered to the proper authority to be dealt with according to law.

Section 34. Accused or convicted person returned to Malaysia not to be tried for previous offence or returned to another country.

Whenever any person accused of or convicted of an extraditable offence is returned by a country, that person shall not, unless he has left or has had an opportunity of leaving Malaysia-

(a) be detained or tried in Malaysia for any offence that is alleged to have been committed, or was committed, prior to the return of such person, other than-

(i) the extraditable offence in respect of which he is returned;

(ii) any lesser offence proved by the facts on which that return was grounded; or

(iii) any other extraditable offence in respect of which the country concerned consents to the person being so detained or tried, if such consent is required by that country;

as the case may be; or

(b) be extradited by Malaysia to another country for trial or punishment for any extradition offence that is alleged to have been committed, or was committed, before the return of the person to Malaysia unless, where so required by the country that returned the person to Malaysia, that country's consent has been obtained.

Section 35. Persons temporarily returned to Malaysia.

(1) Where a person who is serving a sentence of imprisonment in respect of an offence in any country is returned by that country to Malaysia, the person-

(a) shall, while travelling to and from, and while in Malaysia, be kept in custody as the Minister orders in writing and the Minister may make such an order notwithstanding anything in any written law to the contrary; and

(b) shall not be tried in Malaysia in respect of any offence other than an offence proved by the facts on which the return is based or any lesser offence proved by the facts on which that return was grounded or, with the consent of the country which returned him, any other extraditable offence.

(2) Where-

(a) a person is held in custody in accordance with an order of the Minister under paragraph (1)(a); and

(b) the country which returned the person informs Malaysia that the person has served his sentence of imprisonment in that country and is no longer required to be returned, the Minister shall revoke such order.

## **PART VIII - HABEAS CORPUS AND REVIEW**

Section 36. Application for habeas corpus.

A fugitive criminal who is committed to prison under this Act may apply to the High Court for a writ of habeas corpus in accordance with the procedure as provided in the Criminal Procedure Code .

Section 37. Review by High Court.

(1) Where a fugitive criminal is ordered by the Sessions Court to be discharged under subsection 19(4), the Public Prosecutor may, at the request of the country seeking his return, within ten days of the making of the order by the Sessions Court, apply to the High Court for a review of the order of discharge on any question of law, and on such application the High Court may so review the order.



(2) Where the Public Prosecutor desires to make such an application, he shall, at the time of the making of the order of discharge by the Sessions Court, give to the Court notice of his intention to apply to the High Court for a review of the order, and such notice shall operate as a stay of the order of discharge by the Sessions Court-

(a) until the expiration of the period of ten days, beginning with the day on which the order of discharge was made; or

(b) if an application for a review of the order of discharge is made, until the determination of the application by the High Court.

(3) Where the Public Prosecutor gives notice of his intention to apply for a review of the order of the Sessions Court, the Court may grant, to the fugitive criminal in respect of whom the order of discharge was made, bail pending the determination by the High Court of the application.

(4) Upon application for a review of the order of discharge, the Sessions Court Judge shall transmit to the High Court the exhibits tendered before him, the evidence admitted in Court, the reasons for his decision and his finding on any question of law which arose during the inquiry.

(5) The High Court to which an application is made for a review of an order of discharge may order the release on bail of the fugitive criminal on such terms and conditions as the Court thinks fit pending determination of the application for review.

(6) The High Court may confirm, vary or quash the order or make a new order in substitution for the order so quashed, and any such order of the High Court shall be final and conclusive.

#### **PART IX - MISCELLANEOUS**

Section 38. Country includes colonies, dependencies, protectorates, vessels or aircraft.

For the purposes of this Act, every constituent part of a country and every colony, dependency and protectorate of, and every vessel or aircraft of, that country shall be deemed to be within the jurisdiction of and to be part of such country.

Section 39. Liability of fugitive criminal to be arrested and returned.

Every fugitive criminal shall, subject to the provisions of this Act, be liable to be arrested and returned, whether the offence in respect of which the return is sought was committed before or after the commencement of this Act, and whether or not a Court in Malaysia has jurisdiction to try that offence.

Section 40. Minister may direct detention of fugitive criminal on transit.

Notwithstanding anything in any written law, the Minister may in writing direct that a fugitive criminal who is in Malaysia on transit to a country which requested for his return be detained in custody for such period of time or in such place as he may determine.

Section 41. Appearance on behalf of the Public Prosecutor.

(1) Any barrister, advocate and solicitor or legal officer in the employment of the government of any country may with the written authorization of the Public Prosecutor appear on his behalf in any proceedings under this Act.

(2) Where the Public Prosecutor has issued a written authorisation under subsection (1), the provisions in any written law pertaining to the admission of advocates and solicitors and the right of advocates and solicitors to appear in all courts of justice in Malaysia shall not apply to the person named in such authorization.

(3) The person named in the written authorization shall comply with any directions that may be issued by or on behalf of the Public Prosecutor.

(4) The power given to the Public Prosecutor to issue a written authorization under subsection (1) includes the power to revoke, cancel or suspend such written authorization.

Section 42. Jurisdiction as to offences committed at sea or in air.

Where the offence in respect of which the return of a fugitive criminal is sought was committed on board any vessel on the high seas or any aircraft while in the air outside Malaysia which comes into any port or aerodrome in Malaysia, the Minister and any Magistrate having jurisdiction in such port or aerodrome may exercise the powers conferred by this Act.

Section 43. Discharge of fugitive criminal if not returned within three months.

If a fugitive criminal who, in pursuance of this Act, has been committed to prison to await his return to any country is not conveyed out of Malaysia within three months after such committal, or if an application for a writ of habeas corpus or for a review has been made to the High Court, after the final determination of such application by the said Court, it shall be lawful for the Minister, upon application made to him by or on behalf of the fugitive criminal, to order such fugitive criminal to be discharged unless sufficient cause is shown to the contrary.

Section 44. Provisions in the Criminal Procedure Code when applicable.

The provisions of the Criminal Procedure Code in relation to matters not covered by this Act shall apply in so far as they are not inconsistent with the provisions of this Act, and in the event of any inconsistency between the provisions of this Act and the Criminal Procedure Code the provisions of this Act shall prevail.

Section 45. Property found on fugitive criminal.

(1) Everything found in the possession of a fugitive criminal at the time of his arrest which may be material as evidence in proving the extradition offence may be delivered up with the fugitive criminal on his return, subject to-

- (a) a deferment of its delivery if it is needed as evidence in Malaysia;
- (b) an undertaking for its return to Malaysia upon request;
- (c) the rights, if any, of third parties with respect thereto.

(2) Everything mentioned in subsection (1) may be delivered even when the extradition of the fugitive criminal cannot be effected due to his death, disappearance or escape subject to the conditions mentioned in that subsection.

Section 46. Forms.

The Forms set out in the Schedule may be used in the matters to which such Forms refer.

Section 47. Power of Minister to discharge any fugitive criminal in custody.

If it appears to the Minister that by reason of-

(a) the trivial nature of the case; or

(b) the application for the return of a fugitive criminal not being made in good faith or in the interests of justice or being made for political reasons, or for any other reason, it would, having regard to all the circumstances, be unjust or oppressive to return the fugitive criminal, he may, by order, at any time, stay any proceedings under this Act and direct any warrant issued or endorsed under this Act to be revoked and the person for whose arrest the warrant has been issued to be discharged.

Section 48. Simultaneous requisitions.

(1) If requisitions for the return of a fugitive criminal are received from more than one country, the Minister may, having regard to the circumstances of the case, return the fugitive criminal to such country as he thinks fit.

(2) The Minister, in determining to which country the fugitive criminal should be returned, shall consider all the circumstances of the case and in particular-

(a) the relative seriousness of the offence;

(b) the relative dates on which the requests were made; and

(c) the citizenship or other national status of the fugitive criminal and his ordinary residence.

Section 49. Discretion in respect of return of certain fugitive criminals.

(1) The Minister may, in his discretion, refuse the surrender or the return of a fugitive criminal if-

(a) the fugitive criminal is a citizen of Malaysia; or

(b) the extradition offence is one in respect of which the courts in Malaysia have jurisdiction

(2) Where extradition is refused under subsection (1), the Minister shall, if courts in Malaysia have jurisdiction over the extradition offence, submit the case to the Public Prosecutor with a view to having the fugitive criminal prosecuted under the laws of Malaysia.

Section 50. Taking of evidence for purpose of criminal matters pending in a country.

(1) The Minister may, by order under his hand and seal, require a Magistrate to take evidence for the purpose of any extradition matter pending in any Court or Tribunal in any country.

(2) Upon the receipt of such order, the Magistrate shall take the evidence of every witness appearing before him for the purpose referred to in subsection (1) in like manner as if such witness appeared on a preliminary enquiry into the case of a person accused of an offence triable by the High Court and shall certify at the foot of the depositions so taken that such evidence was taken before him and shall transmit the same to the Minister.

(3) The evidence referred to in subsection (1) may be taken in the presence or absence of the accused person, if any, and the fact of such presence or absence shall be stated in such depositions.

(4) This section shall not apply in the case of any criminal matter of a political character.

Section 51. Witnesses to attend and give evidence, etc.

Any person may be compelled for the purposes of section 50 to attend and give evidence and answer questions and produce documents in like manner and subject to the like conditions as he may be so compelled for the purposes of a preliminary enquiry into the case of a person accused of an offence triable by the High Court, and every such person shall in respect of all evidence and answers given by him be legally bound to state the truth.

Section 52. Taking of evidence for purpose of return of fugitive criminals to Malaysia.

(1) Where a warrant has been issued in Malaysia for the apprehension of a person and he is, or is suspected of being, in another country, the Minister may by order in writing authorize a Magistrate to take evidence in Malaysia for transmission to the country concerned for use in any proceedings in that country for the return of that person to Malaysia.

(2) Upon receipt of the order, the Magistrate shall-

(a) take the evidence on oath or affirmation of each witness appearing before him to give evidence in relation to that matter;

(b) cause the evidence to be reduced into writing and certify that the evidence was taken by him; and

(c) cause the evidence so certified to be sent to the Minister.

(3) The person against whom the warrant of arrest has been issued under subsection (1) is not entitled to make any representation or cause any representation to be made in the proceeding under subsection (2).

Section 53. Rules.

(1) The Minister may make rules generally for carrying this Act into effect, and, in particular and without prejudice to the generality of the foregoing, such rules may provide for-

(a) any matter which is required to be, or may be, prescribed under this Act;

(b) the removal of fugitive criminals accused or in custody under this Act and their control and maintenance until such time as they are handed over to the persons named in the warrants as entitled to receive them;

(c) the seizure and disposition of any property which is the subject of, or required for proof of, any alleged offence to which this Act applies;

(d) the form and manner in which, or the channel through which, a Magistrate may be required to make his report to the Minister; and

(e) the removal and return of fugitive criminals who are also prisoners for their temporary surrender to a country.

**PART X - REPEAL**

Section 54. Repeal.

The Extradition Ordinance, 1958 [Ord. 2 of 1958] and the Commonwealth Fugitive Criminals Act, 1967 [Act 54 of 1967] are hereby repealed.

**SCHEDULE [Section 46]**<sup>2</sup>

[...]

---

<sup>2</sup> Note by the Secretariat: Forms are not reproduced in this document and are available from the Secretariat on request.

**E/NL.2005/02**

**ACT 574  
PENAL CODE (REVISED 1997)(EXTRACTS)**

[ ... ]

**CHAPTER XIV - OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY,  
CONVENIENCE, DECENCY AND MORALS**

[ ... ]

**Section 274. Adulteration of drugs.**

Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy, or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for any medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand ringgit, or with both.

**Section 275. Sale of adulterated drugs.**

Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand ringgit

**Section 276. Sale of any drug as a different drug or preparation.**

Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation, as a different drug or medical preparation, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand ringgit, or with both.

[ ... ]

**ACT 613  
ANTI-MONEY LAUNDERING ACT 2001**

Date of Royal Assent 25-Jun-2001  
Date of publication in the *Gazette* 5-Jul-2001

An Act to provide for the offence of money laundering, the measures to be taken for the prevention of money laundering and to provide for forfeiture of property derived from, or involved in, money laundering, and for matters incidental thereto or connected therewith.

**ARRANGEMENT OF SECTIONS**

**PART I**

**PRELIMINARY**

- 1.Short title and commencement
- 2.Application
- 3.Interpretation

**PART II**

**MONEY LAUNDERING OFFENCES**

- 4.Offence of money laundering
- 5.Protection of informers and information
- 6.Restriction on revealing disclosure under section 5

**PART III**

**FINANCIAL INTELLIGENCE**

- 7.Functions of the competent authority
- 8.Provisions relating to the competent authority
- 9.Authorisation to release information
- 10.Communication to a foreign State
- 11.Prohibited disclosure
- 12.Permitted disclosure

**PART IV**

**REPORTING OBLIGATIONS**

- 13.Record-keeping by reporting institutions
- 14.Report by reporting institutions
- 15.Centralisation of information
- 16.Identification of account holder
- 17.Retention of records
- 18.Opening account in false name
- 19.Compliance programme
- 20.Secretary obligations overridden
- 21.Obligations of supervisory or licensing authority
- 22.Powers to enforce compliance
- 23.Currency reporting at border
- 24.Protection of persons reporting
- 25.Examination of a reporting institution
- 26.Examination of person other than a reporting institution
- 27.Appearance before examiner
- 28.Destruction of examination records

**PART V  
INVESTIGATION**

29. Investigation by competent authority and enforcement agencies
30. Appointment of investigating officer
31. Powers of an investigating officer
32. Power to examine persons
33. Search of a person
34. Obstruction to exercise of powers by an investigating officer
35. Tipping-off
36. Requirement to provide translation
37. Delivery of property, record, report or document
38. Seizing of property, record, report or document
39. Release of property, record, report or document seized
40. Statement to be admissible
41. Investigating officer may arrest without warrant
42. Arrested person to be made over to police officer
43. Investigating officer deemed to be public servant and public officer

**PART VI  
FREEZING, SEIZURE AND FORFEITURE**

44. Freezing of property
45. Seizure of movable property
46. Further provisions relating to seizure of movable property
47. Advocates and solicitors to disclose information
48. Investigation powers in relation to a financial institution
49. Public Prosecutor's powers to obtain information
50. Seizure of movable property in financial institution
51. Seizure of immovable property
52. Special provisions relating to seizure of a business
53. Prohibition of dealing with property outside Malaysia
54. Dealing with property after seizure to be void
55. Forfeiture of property upon prosecution for an offence
56. Forfeiture of property where there is no prosecution
57. Validity of freeze, seizure or sale
58. Vesting of forfeited property in the Federal Government
59. Pecuniary orders
60. Release of property seized
61. *Bona fide* third parties
62. Disposition of forfeited property
63. Absconded person
64. Forfeiture order where person has absconded
65. Effect of death on proceedings
66. Service of documents on absconder

**PART VII  
MISCELLANEOUS**

67. Property tracking
68. Additional powers of competent authority and enforcement agency
69. Agent provocateur
70. Standard of proof
71. Admissibility of documentary evidence
72. Admissibility of statements by accused persons
73. Admissibility of statements and documents of persons who are dead or cannot be traced, etc.
74. Admissibility of translation of documents



- 75.Evidence of corresponding law or foreign law
- 76.Proof of conviction and acquittal
- 77.Indemnity
- 78.Service of notices
- 79.Preservation of secrecy
- 80.Exemptions
- 81.Modifications
- 82.Jurisdiction
- 83.Power to issue guidelines, etc.
- 84.Regulations
- 85.Amendment of Schedules
- 86.General offence
- 87.Offence committed by any person acting in an official capacity
- 88.Offence by an individual
- 89.Falsification, concealment and destruction of document, etc.
- 90.Seizable offence
- 91.Joinder of offences
- 92.Power of competent authority to compound offences
- 93.Prosecution

First Schedule

Second Schedule

## PART I PRELIMINARY

### Short title and commencement

1. (1) This Act may be cited as the Anti-Money Laundering Act 2001.
- (2) This Act comes into operation on a date to be appointed by the Minister of Finance by notification in the *Gazette*.

### Application

2. (1) This Act shall apply to any serious offence, foreign serious offence or unlawful activity whether committed before or after the commencement date.
- (2) This Act shall apply to any property, whether it is situated in or outside Malaysia.
- (3) Nothing in this Act shall impose any duty or confer any power on any court in or in connection with any proceedings under this Act against a person for a serious offence in respect of which he has been convicted by a court before the commencement date.

### Interpretation

3. (1) In this Act, unless the context otherwise requires—
  - “enforcement agency” includes a body or agency that is for the time being responsible in Malaysia for the enforcement of laws relating to the prevention, detection and investigation of any serious offence;
  - “unlawful activity” means any activity which is related, directly or indirectly, to any serious offence or any foreign serious offence;
  - “Bank Negara Malaysia” means the Central Bank of Malaysia established by the Central Bank of Malaysia Act 1958 [Act 519];
  - “thing” includes material;
  - “specify” means specify in writing, and a power to specify includes the power to specify differently for different persons or different classes of persons and to amend any specification;
  - “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;
  - “document” has the same meaning as in the Evidence Act 1950 [Act 56];
  - “constituent document,” in relation to an institution, means the statute, charter, memorandum of association and articles of association, rules and by-laws, partnership agreement, or other instrument, under or by which the institution is established and its governing and administrative structure and the scope of its functions and business are set out, whether contained in one or more documents;
  - “proceeds of an unlawful activity” means any property derived or obtained, directly or indirectly, by any person as a result of any unlawful activity;
  - “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;
  - “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 same meaning as in the Labuan Offshore Financial Services Authority Act 1996 [Act 545];
  - “reporting institution” means any person, including branches and subsidiaries outside Malaysia of that person, who carries on any activity listed in the First Schedule;
  - “serious offence” means—
    - (a) any of the offences specified in the Second Schedule;
    - (b) an attempt to commit any of those offences; or
    - (c) the abetment of any of those offences;
  - “foreign serious offence” means an offence—

(a) against the law of a foreign State stated in a certificate purporting to be issued by or on behalf of the government of that foreign State; and

(b) that consists of or includes an act or activity which, if it had occurred in Malaysia, would have constituted a serious offence;

“client” includes a customer;

“Labuan Offshore Financial Services Authority” means the Authority established by the Labuan Offshore Financial Services Authority Act 1996;

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

“Minister of Home Affairs” means the Minister charged with the responsibility for internal security;

“Minister of Finance” means the Minister charged with the responsibility for finance;

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

“controller”, in relation to an institution, means—

(a) the chief executive officer of the institution or of a body corporate of which the institution is a subsidiary;

(b) a person, either alone or with any associate—

(i) has interest in one third or more of its voting shares;

(ii) has the power to appoint, or cause to be appointed, a majority of its directors; or

(iii) has the power to make a decision, or cause a decision to be made, in respect of its business or administration;

“money laundering” means the act of a person who—

(a) engages, directly or indirectly, in a transaction that involves proceeds of any unlawful activity;

(b) acquires, receives, possesses, disguises, transfers, converts, exchanges, carries, disposes, uses, removes from or brings into Malaysia proceeds of any unlawful activity; or

(c) conceals, disguises or impedes the establishment of the true nature, origin, location, movement, disposition, title of, rights with respect to, or ownership of, proceeds of any unlawful activity;

where—

(aa) as may be inferred from objective factual circumstance, the person knows or has reason to believe, that the property is proceeds from any unlawful activity; or

(bb) in respect of the conduct of a natural person, the person without reasonable excuse fails to take reasonable steps to ascertain whether or not the property is proceeds from any unlawful activity;

“competent authority” means the person appointed under subsection 7(1);

“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));

“process” means any summons, warrant, order or other document in respect of a criminal matter that is issued—

(a) out of any court; or

(b) out of any court of a foreign State;

or by any judge, magistrate or officer of such a court, as the case may be;

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

“relative”, in relation to a person, means—

(a) a spouse of that person;

(b) a brother or sister of that person;

(c) a brother or sister of the spouse of that person; or

(d) any lineal ascendant or descendant of that person;

“associate”, in relation to a person, means—

(a) any person who is a nominee or an officer of that person;

(b) any person who manages the affairs of that person;

(c) any firm of which such person, or any nominee of his, is a partner or a person in charge or in control of its business or affairs;

(d) any corporation within the meaning of the Companies Act 1965 [*Act 125*], of which such person, or any nominee of his, is a director or is in charge or in control of its business or affairs, or in which such person, alone or together with any nominee of his, has or have a controlling interest, or shares to the total value of not less than thirty per centum of the total issued capital of that corporation; or

(e) the trustee of any trust, where—

(i) the trust has been created by that person; or

(ii) the total value of the assets contributed by that person to the trust at any time, whether before or after the creation of the trust, amounts, at any time, to not less than twenty per centum of the total value of the assets of the trust;

“Securities Commission” means the Securities Commission established under the Securities Commission Act 1993;

“transaction” includes an arrangement to open an account involving two or more persons and any related transaction between any of the persons concerned and another;

“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 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.

## **PART II MONEY LAUNDERING OFFENCES**

Offence of money laundering

4. (1) Any person who—

(a) engages in, or attempts to engage in; or

(b) abets the commission of,

money laundering, commits an offence and shall on conviction be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding five years or to both.

(2) A person may be convicted of an offence under subsection (1) irrespective of whether there is a conviction in respect of a serious offence or foreign serious offence or that a prosecution has been initiated for the commission of a serious offence or foreign serious offence.

Protection of informers and information

5. (1) Where a person discloses to an enforcement agency his knowledge or belief that any property is derived from or used in connection with money laundering or any matter on which such knowledge or belief is based—

(a) if he does any act in contravention of subsection 4(1) and the disclosure relates to the arrangement concerned, he does not commit an offence under that subsection if the disclosure is made—

(i) before he does the act concerned, being an act done with the consent of the enforcement agency; or

(ii) after he does the act, but the disclosure is made on his initiative and as soon as it is reasonable for him to make it;

(b) notwithstanding any other written law, the disclosure shall not be treated as a breach of any restriction on the disclosure of information imposed by any law, contract or rules of professional conduct; and

(c) he shall not be liable for damages for any loss arising out of—

(i) the disclosure; or

(ii) any act done or omitted to be done in relation to the property in consequence of the disclosure.

(2) Where any information relating to an offence under this Act is received by an officer of the competent authority or reporting institution, the information and the identity of the person giving the information shall be secret between the officer and that person and everything contained in such information, the identity of that person and all other circumstances relating to the information, including the place where it was given, shall not be disclosed except for the purposes of subsection 8(1) or section 14.

Restriction on revealing disclosure under section 5

6. (1) No person shall, subject to subsection (2)—

(a) reveal that a disclosure was made under section 5;

(b) reveal the identity of any person as the person making the disclosure; or

(c) answer any question if the answer would lead, or would tend to lead, to the revealing of any fact or matter referred to in paragraph (a) or (b).

(2) Subsection (1) shall not apply to a witness in any civil or criminal proceedings—

(a) for an offence under subsection 4(1) or subsection (3) of this section; or

(b) where the court is of the opinion that justice cannot fully be done between the parties without revealing the disclosure or the identity of any person as the person making the disclosure.

(3) No person shall publish in writing or broadcast any information, including a report of any civil or criminal proceedings but excluding information published for statistical purposes by a competent authority or the Government, so as to reveal or suggest—

(a) that a disclosure was made under section 5; or

(b) the identity of any person as the person making the disclosure.

(4) Subsection (3) shall not apply in respect of proceedings against the person making the disclosure for an offence under subsection 4(1) or subsection (1).

(5) If information is published or broadcast in contravention of subsection (3), each of the following persons, namely—

(a) in the case of publication as part of a newspaper or periodical publication, any proprietor, editor, publisher and distributor of the newspaper or periodical publication;

(b) in the case of a publication otherwise than as part of a newspaper or periodical publication, any person who publishes it and any person who distributes it;

(c) in the case of a broadcast, any person who broadcasts the information and, if the information is contained in a programme, any person who transmits or provides the programme and any person having functions in relation to the programme corresponding to those of the editor of a newspaper or periodical publication,

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, and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

(6) In this section, “broadcast” includes any broadcast by radio, film, videotape, television or electronic media.

PART III  
FINANCIAL INTELLIGENCE

**Functions of the competent authorities**

7. (1) The Minister of Finance may, by order published in the *Gazette*, appoint a person to be the competent authority and such person shall have all the functions conferred on the competent authority by this Act.

(2) The competent authority may authorise any of its officers or any other person to perform any or all of its functions or render such assistance in the performance of its functions under this Act as it may specify.

Provisions relating to the competent authority

8. (1) The Minister of Finance may, upon the recommendation of the competent authority, who shall consult the relevant supervisory authority of a reporting institution, by order published in the *Gazette*, invoke any or all of the provisions of Part IV in respect of that reporting institution.

(2) For the avoidance of doubt, it is declared that a competent authority may exercise its powers under this section in respect of reporting institutions carrying on any or all of the activities listed in the First Schedule, and shall—

(a) receive and analyse information and reports from any person, including reports issued by reporting institutions under section 14;

(b) send any report received under paragraph (a) or any information derived from any such report to an enforcement agency if it is satisfied or has reason to believe or suspect that a transaction involves proceeds of an unlawful activity or a serious offence is being, has been or is about to be committed; and

(c) send any information derived from an examination carried out under Part IV to an enforcement agency if it has reason to suspect that a transaction involves proceeds of an unlawful activity or a serious offence is being, has been or is about to be committed.

(3) The competent authority may—

(a) compile statistics and records;

(b) give instructions to a reporting institution in relation to any report or information received under section 14;

(c) make recommendations to the relevant supervisory authority, enforcement agency and reporting institutions arising out of any report or information received under subsection (2); and

(d) create training requirements and provide training for any reporting institutions in respect of their transactions and reporting and record-keeping obligations under Part IV.

Authorization to release information

9. (1) Subject to subsection (2), the competent authority may, in writing, authorise any enforcement agency or its designated officers to have access to such information as the competent authority may specify for the purposes of performing the enforcement agency's functions.

(2) In respect of any information received from a reporting institution carrying on any business activity listed under Part II of the First Schedule, the competent authority shall authorise Labuan Offshore Financial Services Authority or its designated officers to have access to that information.

(3) The competent authority may, in writing, authorise the Attorney-General or his designated officer to have access to such information as the competent authority may specify for the purpose of dealing with a foreign State's request in relation to mutual assistance in criminal matters.

Communication to a foreign State

10. (1) Notwithstanding any other written law or rule of law, the competent authority may communicate any thing disclosed to it under section 14 to a corresponding authority of a foreign State if—

(a) there exists an arrangement between Malaysia and a foreign State under which the corresponding authority of the foreign State has agreed to communicate to Malaysia, upon Malaysia's request, information received by the corresponding authority that corresponds to any thing required to be disclosed to the competent authority under section 14; and

(b) the competent authority is satisfied that the corresponding authority has given appropriate undertakings—

(i) for protecting the confidentiality of any thing communicated to it; and  
(ii) for controlling the use that will be made of it, including an undertaking that it will not be used as evidence in any proceedings.

(2) In this section, “corresponding authority”, in relation to a foreign State, means the authority of that foreign State responsible for receiving information that corresponds to any thing required to be disclosed to a competent authority under section 14.

#### Prohibited disclosure

11. Subject to section 12, no person who has obtained information from a competent authority under Part IV shall—

(a) while he is authorised under section 9, disclose or communicate the information except to another officer authorised under that section, for the purposes of, or in connection with, the performance of his duties; and

(b) when he is no longer authorised under section 9, make a record of the information, or disclose or communicate the information in any circumstances.

#### Permitted disclosure

12. (1) Nothing in section 11 shall prevent the communication of the competent authority’s information under this Part with respect to a prosecution or legal proceedings in connection with the commission of a serious offence, a foreign serious offence or an offence under subsection 4(1).

(2) Nothing in section 11 shall prevent the communication of the competent authority’s information under this Part in respect of the affairs of a person by the person authorised under section 9 to—

(a) if the person is not a company, that person;

(b) if the person is a company—

(i) any person who is, or has been, a director or an officer of the company; or

(ii) any person who is, or has been directly involved in, or responsible for, the preparation of information furnished on behalf of the company; or

(c) the person who furnished the information to the competent authority.

(3) No person to whom the competent authority or person

authorised under section 9 communicates any information under this Part and the information does not relate to the affairs of the person shall make a record of the information or disclose, or communicate the information to any person in any circumstances.

(4) Any person who contravenes subsection (3) commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both.

(5) Except where it is necessary to do so for the purposes of carrying into effect the provisions of this Act, a person who obtains information from the competent authority under this Part shall not be required to produce in court any document containing any of the information or to disclose or communicate to any court such information.

## PART IV REPORTING OBLIGATIONS

#### Record-keeping by reporting institutions

13. (1) A reporting institution shall keep a record of any transaction involving the domestic currency or any foreign currency exceeding such amount as the competent authority may specify.

(2) The record referred to in subsection (1) shall be in such form as the competent authority may specify.

(3) The record referred to in subsection (1) shall include the following information for each transaction:

(a) the identity and address of the person in whose name the transaction is conducted;

(b) the identity and address of the beneficiary or the person on whose behalf the transaction is conducted, where applicable;

(c) the identity of the accounts affected by the transaction, if any;

(d) the type of transaction involved, such as deposit, withdrawal, exchange of currency, cheque cashing, purchase of cashier's cheques or money orders or other payment or transfer by, through, or to such reporting institution;

(e) the identity of the reporting institution where the transaction occurred; and

(f) the date, time and amount of the transaction,

and shall also include such other information as the competent authority may specify in writing.

(4) For the purposes of this Part, multiple cash transactions in the domestic or foreign currency which, in aggregate, exceeds the amount specified by the competent authority pursuant to subsection (1) shall be treated as a single transaction if they are undertaken by or on behalf of any one person during any one day or such other period as the competent authority may specify.

#### **Report by reporting institutions**

14. A reporting institution shall promptly report to the competent authority any transaction—

(a) exceeding the amount specified by the competent authority under subsection 13(1); and

(b) where the identity of the persons involved, the transaction itself or any other circumstances concerning that transaction gives any officer or employee of the reporting institution reason to suspect that the transaction involves proceeds of an unlawful activity.

#### **Centralization of information**

15. A reporting institution shall provide for the centralisation of the information collected pursuant to this Part.

#### **Identification of account holder**

16. (1) A reporting institution—

(a) shall maintain accounts in the name of the account holder; and

(b) shall not open, operate or maintain any anonymous account or any account which is in a fictitious, false or incorrect name.

(2) A reporting institution shall—

(a) verify, by reliable means, the identity, representative capacity, domicile, legal capacity, occupation or business purpose of any person, as well as other identifying information on that person, whether he be an occasional or usual client, through the use of documents such as identity card, passport, birth certificate, driver's licence and constituent document, or any other official or private document, when establishing or conducting business relations, particularly when opening new accounts or passbooks, entering into any fiduciary transaction, renting of a safe deposit box, or performing any cash transaction exceeding such amount as the competent authority may specify; and

(b) include such details in a record.

(3) A reporting institution shall take reasonable measures to obtain and record information about the true identity of the person on whose behalf an account is opened or a transaction is conducted if there are any doubts that any person is not acting on his own behalf, particularly in the case of a person who is not conducting any commercial, financial, or industrial operations in the foreign State where it has its headquarters or domicile.

(4) For purposes of this section, "person" shall include any person who is a nominee, agent, beneficiary or principal in relation to a transaction.

#### **Retention of records**

17. (1) Notwithstanding any provision of any written law pertaining to the retention of documents, a reporting institution shall maintain any record under this Part for a period of not less than six years from the date an account has been closed or the transaction has been completed or terminated.

(2) A reporting institution shall also maintain records to enable the reconstruction of any transaction in excess of such amount as the competent authority may specify, for a period of not less than six years from the date the transaction has been completed or terminated.

(3) Subsections (1) and (2) will not apply where a reporting institution has transmitted the record to the competent authority or an enforcement agency.

(4) Any reporting institution which contravenes subsection (1) or (2) commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both.

#### **Opening account in false name**



18. (1) No person shall open, operate or authorise the opening or the operation of an account with a reporting institution in a fictitious, false or incorrect name.

(2) Where a person is commonly known by two or more different names, the person shall not use one of those names in opening an account with a reporting institution unless the person has previously disclosed the other name or names to the reporting institution.

(3) Where a person using a particular name in his dealings with a reporting institution discloses to it a different name or names by which he is commonly known, the reporting institution shall make a record of the disclosure and shall, upon request in writing from the competent authority, give the competent authority a copy of that record.

(4) For the purposes of this section—

(a) a person opens an account in a false name if the person, in opening the account, or becoming a signatory to the account, uses a name other than a name by which the person is commonly known;

(b) a person operates an account in a false name if the person does any act or thing in relation to the account (whether by way of making a deposit or withdrawal or by way of communication with the reporting institution concerned or otherwise) and, in doing so, uses a name other than a name by which the person is commonly known; and

(c) an account is in a false name if it was opened in a false name, whether before or after the commencement date of this Act.

(5) Any person who contravenes this section commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both.

#### **Compliance programme**

19. (1) A reporting institution shall adopt, develop and implement internal programmes, policies, procedures and controls to guard against and detect any offence under this Act.

(2) The programmes in subsection (1) shall include—

(a) the establishment of procedures to ensure high standards of integrity of its employees and a system to evaluate the personal, employment and financial history of these employees;

(b) on-going employee training programmes, such as “know-your-customer” programmes, and instructing employees with regard to the responsibilities specified in sections 13, 14, 15, 16 and 17; and

(c) an independent audit function to check compliance with such programmes.

(3) A reporting institution shall implement compliance programmes under subsection (1) on its branches and subsidiaries in and outside Malaysia.

(4) A reporting institution shall also designate compliance officers at management level in each branch and subsidiary who will be in charge of the application of the internal programmes and procedures, including proper maintenance of records and reporting of suspicious transactions.

(5) A reporting institution shall develop audit functions to evaluate such policies, procedures and controls to test compliance with the measures taken by the reporting institution to comply with the provisions of this Act and the effectiveness of such measures.

#### **Secrecy obligations overridden**

20. The provisions of this Part shall have effect notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed by any written law or otherwise.

Obligations of supervisory or licensing authority

21. (1) The relevant supervisory authority of a reporting institution or such other person as the relevant supervisory authority may deem fit may—

(a) adopt the necessary measures to prevent or avoid having any person who is unsuitable from controlling, or participating, directly or indirectly, in the directorship, management or operation of the reporting institution;

(b) examine and supervise reporting institutions, and regulate and verify, through regular examinations, that a reporting institution adopts and implements the compliance programmes in section 19;

(c) issue guidelines to assist reporting institutions in detecting suspicious patterns of behaviour in their clients and these guidelines shall be developed taking into account modern and secure techniques of money management and will serve as an educational tool for reporting institutions' personnel; and

(d) co-operate with other enforcement agencies and lend technical assistance in any investigation, prosecution or proceedings relating to any unlawful activity or offence under this Act.

(2) The licensing authority of a reporting institution may, upon the recommendation of the competent authority, revoke or suspend the reporting institution's licence if it has been convicted of an offence under this Act.

(3) The relevant supervisory authority shall report promptly to the competent authority any information received from any reporting institutions relating to transactions or activities that could be related to any unlawful activity or offence under this Act.

#### **Powers to enforce compliance**

22. (1) An officer of a reporting institution shall take all reasonable steps to ensure the reporting institution's compliance with its obligations under this Part.

(2) The competent authority, upon application to the High Court and satisfying the Court that a reporting institution has failed without reasonable excuse to comply in whole or in part with any obligations in this Act, shall obtain an order against any or all of the officers or employees of that reporting institution on such terms as the Court deems necessary to enforce compliance with such obligations.

(3) Notwithstanding subsection (2), the competent authority may direct or enter into an agreement with any reporting institution that has without reasonable excuse failed to comply in whole or in part with any obligations in this Part to implement any action plan to ensure compliance with its obligations under this Part.

(4) Any person who contravenes subsection (1) or fails to comply with a directive under subsection (3) 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 six months or to both, and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

#### **Currency reporting at border**

23. (1) A person leaving or entering Malaysia with an amount in cash, negotiable bearer instruments or both, exceeding such value as the competent authority may prescribe by order published in the *Gazette*, shall declare to the competent authority such amount in such form as the competent authority may specify.

(2) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both.

(3) Notwithstanding the Exchange Control Act 1953 [*Act 17*] and the Central Bank of Malaysia Act 1958, the Controller of Foreign Exchange shall have authority to submit to the competent authority information received under section 24 or 25 of the Exchange Control Act 1953.

(4) Any declaration required to be made or given under subsection (1) shall for the purposes of the Customs Act 1967 [*Act 235*] be deemed to be a declaration in a matter relating to customs.

#### **Protection of persons reporting**

24. (1) No civil, criminal or disciplinary proceedings shall be brought against a person who—

(a) discloses or supplies any information in any report made under this Part; or

(b) supplies any information in connection with such a report, whether at the time the report is made or afterwards;

in respect of—

(aa) the disclosure or supply, or the manner of the disclosure or supply, by that person, of the information referred to in paragraph (a) or (b); or

(bb) any consequences that follow from the disclosure or supply of that information, unless the information was disclosed or supplied in bad faith.

(2) In proceedings against any person for an offence under this Part, it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

#### **Examination of a reporting institution**

25. (1) For the purposes of monitoring a reporting institution's compliance with this Part, the competent authority may authorise an examiner to examine—

(a) any of the reporting institution's records or reports that relate to its obligations under this Part, which are kept at, or accessible from, the reporting institution's premises; and

(b) any system used by the reporting institution at its premises for keeping those records or reports.

(2) In carrying out the examination under subsection (1), the examiner may—

(a) ask any question relating to any record, system or report of a reporting institution; and

(b) make any note or take any copy of the whole or part of any business transaction of the reporting institution.

#### **Examination of person other than a reporting institution**

26. (1) An examiner authorised under section 25 may examine—

(a) a person who is, or was at any time, a director or an officer of a reporting institution or of its agent;

(b) a person who is, or was at any time, a client, or otherwise having dealings with a reporting institution; or

(c) a person whom he believes to be acquainted with the facts and circumstances of the case, including an auditor or an advocate and solicitor of a reporting institution, and that person shall give such document or information as the examiner may require within such time as the examiner may specify.

(2) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both, and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

(3) Notwithstanding any other written law, an agent, including an auditor or an advocate and solicitor of a reporting institution, shall not be liable for breach of a contract relating to, or a duty of, confidentiality for giving any document or information to the examiner.

#### **Appearance before examiner**

27. (1) A director or an officer of a reporting institution examined under subsection 25(1), or a person examined under subsection 26(1), shall appear before the examiner at his office upon being called to do so by the examiner at such time as the examiner may specify.

(2) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both, and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

#### **Destruction of examination records**

28. The competent authority may destroy any document or copy of such document made or taken pursuant to an examination under sections 25 and 26 within six years of the examination except where a copy of the document has been sent to an enforcement agency.

## **PART V INVESTIGATION**

### **Investigation by competent authority and enforcement agencies**

29. (1) Where—

(a) the competent authority has reason to suspect the commission of an offence under Part III or IV; or

(b) an enforcement agency having the power to enforce the law under which a related serious offence is committed has reason to suspect the commission of an offence under any other provisions of this Act,

the competent authority or the relevant enforcement agency shall cause an investigation to be made and for such purpose may exercise all the powers of investigation provided for under this Act.

(2) The competent authority or the relevant enforcement agency, as the case may be, may instruct any person to take such steps as may be necessary to facilitate an investigation under subsection (1).

(3) The competent authority and the relevant enforcement agency shall co-ordinate and co-operate with any other enforcement agency in and outside Malaysia, with respect to an investigation into any serious offence or foreign serious offence, as the case may be.

**Appointment of investigating officer**

30. (1) For purposes of an investigation under this Part, the competent authority or relevant enforcement agency, as the case may be, may appoint its employee or any other person to be an investigating officer.

(2) An investigating officer who is not an employee of the competent authority or the relevant enforcement agency shall be subject to, and enjoy such rights, protection, and indemnity as may be specified in this Act or other written law applicable to an employee of the competent authority or the relevant enforcement agency, as the case may be.

(3) An investigating officer shall be subject to the direction and control of the competent authority or the relevant enforcement agency, which has authorised him to act on its behalf, as the case may be.

**Powers of investigating officer**

31. (1) Where an investigating officer is satisfied, or has reason to suspect, that a person has committed an offence under this Act, he may, without a search warrant—

(a) enter any premises belonging to or in the possession or control of the person or his employee, and in the case of a body corporate, its director or manager;

(b) search the premises for any property, record, report or document;

(c) inspect, make copies of or take extracts from any record, report or document so seized and detained;

(d) take possession of, and remove from the premises, any property, record, report or document so seized and detained and detain it for such period as he deems necessary;

(e) search any person who is in, or on, such premises, if the investigating officer has reason to suspect that that person has on his person any property, record, report or document, including personal document, necessary, in the investigating officer's opinion, for the purpose of investigation into an offence under this Act;

(f) break open, examine and search any article, container or receptacle; or

(g) stop, detain or search any conveyance.

(2) An investigating officer may, if it is necessary to do so—

(a) break open any outer or inner door of such premises or conveyance and enter such premises or conveyance;

(b) remove by force any obstruction to such entry, search, seizure, detention or removal as he is empowered to effect; or

(c) detain any person found on such premises, or in such conveyance, until the search is completed.

(3) An investigating officer may seize, take possession of, and detain for such duration as he thinks necessary, any property, record, report or document produced before him in the course of his investigation or found on the person who is being searched by him.

(4) An investigating officer, in the course of his investigation or search, shall—

(a) prepare and sign a list of every property, record, report or document seized; and

(b) state in the list the location in which, or the person on whom, the property, record, report or document is found.

(5) The occupant of the premises entered in the course of investigation, or any person on his behalf, shall be present during the search, and a copy of the list prepared under subsection (4) shall be delivered to such person at his request.

### **Power to examine persons**

32. (1) Notwithstanding any written law, or oath, undertaking or requirement of secrecy or confidentiality to the contrary, or an obligation under an agreement or arrangement, express or implied, to the contrary, an investigating officer conducting an investigation shall have the power to administer an oath or affirmation to the person being examined.

(2) An investigating officer may order, orally or in writing, any person whom he believes to be acquainted with the facts and circumstances of the case—

(a) to attend before him for examination;

(b) to produce before him any property, record, report or document; or

(c) to furnish to him a statement in writing made on oath or affirmation setting out such information as he may require.

(3) Any person who contravenes subsection (2) commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both, and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

(4) The person examined under subsection (2) shall be legally bound to answer all questions relating to such case put to him by the investigating officer, but he may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

(5) A person making a statement under paragraph (2) (c) shall be legally bound to state the truth, whether or not such statement is made wholly or partly in answer to the questions of the investigating officer.

(6) An investigating officer examining a person under subsection (2) shall first inform that person of the provisions of subsections (4) and (5).

(7) A statement made by any person under paragraph (2) (c) shall, whenever possible, be reduced into writing and signed by the person making it or affixed with his thumb print—

(a) after it has been read to him in the language in which he made it; and

(b) after he has been given an opportunity to make any correction he may wish.

(8) Any person who—

(a) fails to appear before an investigating officer as required under paragraph (2) (a);

(b) refuses to answer any question put to him by an investigating officer under subsection (4); or

(c) furnishes to an investigating officer any information or statement that is false or misleading in any material particular,

commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both, and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

### **Search for a person**

33. (1) An investigating officer searching any person under paragraph 31(1) (e) may detain the person for such period as may be necessary to have the search carried out, which shall not in any case exceed twenty-four hours without the authorisation of a magistrate, and may, if necessary, remove the person in custody to another place to facilitate such search.

(2) No person shall be searched under this Part except by an investigating officer of the same gender and such search shall be carried out with strict regard to decency.

### **Obstruction to exercise of powers by an investigating officer**

34. Any person who—

(a) refuses any investigating officer access to any premises, or fails to submit to the search of his person;

(b) assaults, obstructs, hinders or delays an investigating officer in effecting any entrance which he is entitled to effect;

(c) fails to comply with any lawful demands of any investigating officer in the execution of his duties under this Part;

(d) refuses to give to an investigating officer any property, document or information which may reasonably be required of him and which he has in his power to give;

- (e) fails to produce to, or conceal or attempt to conceal from, an investigating officer, any property, record, report or document, which the investigating officer requires;
  - (f) rescues or attempts to rescue any thing which has been duly seized;
  - (g) furnishes to an investigating officer as true any information which he knows or has reason to believe to be false; or
  - (h) before or after any search or seizure, breaks or otherwise destroys any thing to prevent its seizure, or the securing of the property, record, report or document,
- commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both, and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

**Tipping-off**

35. (1) Any person who—

- (a) knows or has reason to suspect that an investigating officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted under or for the purposes of this Act or any subsidiary legislation made under it and discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation; or
  - (b) knows or has reason to suspect that a disclosure has been made to an investigating officer under this Act and discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure,
- commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both.

(2) Nothing in subsection (1) makes it an offence for an advocate and solicitor or his employee to disclose any information or other matter—

- (a) to his client or the client's representative in connection with the giving of advice to the client in the course and for the purpose of the professional employment of the advocate and solicitor; or
- (b) to any person in contemplation of, or in connection with and for the purpose of, any legal proceedings.

(3) Subsection (2) does not apply in relation to any information or other matter which is disclosed with a view to furthering any illegal purpose.

(4) In proceedings against a person for an offence under this section, it is a defence to prove that—

- (a) he did not know or suspect that the disclosure made under paragraph (1) (b) was likely to prejudice the investigation; or
- (b) he had lawful authority or reasonable excuse for making the disclosure.

(5) An investigating officer or other person does not commit an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or of any other written law relating to a serious offence.

**Requirements to provide translation**

36. (1) Where an investigating officer finds, seizes, detains, or takes possession of any property, record, report or document which, wholly or partly, is in a language other than the national language or English language, or is in any sign or code, the investigating officer may, orally or in writing, require the person who had the possession, custody or control of the property, record, report or document to furnish to him a translation in the national language or English language within such period as he may specify.

(2) No person shall knowingly furnish a translation under subsection (1) which is not an accurate, faithful and true translation of the document.

(3) Any person who fails to comply with the requirement in subsection (1) or contravenes subsection (2) commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both, and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

(4) Where the person required to furnish a translation under subsection (1) is not the person who is suspected to have committed the offence, the competent authority or the relevant enforcement agency, as the case may be, may pay him reasonable fees and reimburse him for such reasonable expenses as he may have incurred in furnishing the translation.

**Delivery of property, record, report of document**

37. (1) An investigating officer may, by a notice in writing, require any person to deliver to him any property, record, report or document which he has reason to suspect has been used in the commission of an offence under this Act or is able to assist in the investigation of an offence under this Act that is in the possession or custody of, or under the control of, that person or within the power of that person to furnish.

(2) An investigating officer may grant permission to any person to inspect the property, record, report or document he had detained and taken possession of under subsection (1) if the person is entitled to inspect such property, record, report or document under this Act.

(3) A person who—

(a) fails to deliver any property, record, report or document that is required by an investigating officer; or

(b) obstructs or hinders an investigating officer while exercising any of his powers under subsection (1),

commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both, and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

**Seizing of property, record, report of document**

38. An investigating officer may seize, take possession of and retain for such duration as he deems necessary, any property, record, report or document produced before him in the course of an examination under paragraph 32(2) (a) or (b), or search of the person under subsection 33(1), for ascertaining whether anything relevant to the investigation is concealed, or is otherwise, upon such person.

**Release of property, record, report or document seized**

39. (1) An investigating officer shall, unless otherwise ordered by any court—

(a) at the close of an investigation or any proceedings arising from the investigation; or

(b) with the prior written consent of the competent authority or the relevant enforcement agency, as the case may be, or of any investigating officer superior to him in rank, at any time before the close of an investigation,

release any property, record, report or document seized, detained or removed by him or any other investigating officer, to such person as he determines to be lawfully entitled to the property, record, report or document if he is satisfied that it is not required for the purpose of any prosecution or proceedings under this Act, or for the purpose of any prosecution under any other written law.

(2) The investigating officer effecting the release under subsection (1) shall record in writing the circumstances of, and the reason for, such release.

(3) Where the investigating officer is unable to determine the person who is lawfully entitled to the property, record, report or document or where there is more than one claimant to the property, record, report or document, or where the investigating officer is unable to locate the person under subsection (1) who is lawfully entitled to the property, record, report or document, the investigating officer shall report the matter to a magistrate who shall then deal with the property, record, report or document as provided for under subsections 413(ii), (iii) and (iv) and sections 414, 415 and 416 of the Criminal Procedure Code [*Act 593*].

**Statement to be admissible**

40. The record of an examination under paragraph 32(2) (a), any property, record, report or document produced under paragraph 32(2) (b) or any statement under paragraph 32(2) (c) shall, notwithstanding any written law or rule of law to the contrary, be admissible as evidence in any proceedings in any court for, or in relation to, an offence or any other matter under this Act or any offence under any other written law, regardless whether such proceedings are against the person who was examined, or who produced the property, record, report or document, or who made the written statement on oath or affirmation, or against any other person.

**Investigating officer may arrest without warrant**

41. An investigating officer appointed under section 30 may arrest without warrant a person whom he reasonably suspects to have committed or to be committing any offence under this Act.

**Arrested person to be made over to police officer**

42. An investigating officer, other than a police officer, making an arrest under section 41 shall make over the person so arrested to the nearest police officer or, in the absence of a police officer, take such person to the nearest police station, and the person arrested shall be dealt with according to the law relating to criminal procedure for the time being in force as if he had been arrested by a police officer.

**Investigating officer deemed to be public servant and public officer**

43. An investigating officer shall be deemed to be a public servant for the purposes of the Penal Code [Act 574], and to be a public officer for the purposes of the Criminal Procedure Code.

**PART VI  
FREEZING, SEIZURE AND FORFEITURE**

**Freezing of property**

44. (1) Subject to section 50, where an enforcement agency, having the power to enforce the law under which a serious offence is committed, has reasonable grounds to suspect that an offence under subsection 4(1) has been, is being or is about to be committed by any person, it may issue an order freezing any property of that person, wherever the property may be, or in his possession, under his control or due from any source to him.

(2) An order under subsection (1) may include—

(a) an order to direct that the property, or such part of the property as is specified in the order, is not to be disposed of, or otherwise dealt with, by any person, except in such manner and in such circumstances, if any, as are specified in the order; and

(b) an order to authorise any of its officers to take custody and control of the property, or such part of the property as is specified in the order if the enforcement agency is satisfied that the circumstances so require.

(3) The enforcement agency in making the order under subsection (1) may give directions to the person named or described in the order as to—

(a) the duration of the order;

(b) the disposal of that property, for the purpose of—

(i) determining any dispute as to the ownership of or other interest in the property or any part of it;

(ii) its proper administration during the period of the order;

(iii) the payment of debts incurred in good faith due to creditors prior to the order;

(iv) the payment of money to that person for the reasonable subsistence of that person and his family;  
or

(v) the payment of the costs of that person to defend criminal proceedings against him; or

(c) the manner in which the property should be administered or dealt with.

(4) An order made under subsection (1) may direct that the person named or described in the order shall—

(a) be restrained, whether by himself or by his nominees, relatives, employees or agents, from selling, disposing of, charging, pledging, transferring or otherwise dealing with or dissipating his property;

(b) not remove from or send out of Malaysia any of his money or property; and

(c) not leave or be permitted to leave Malaysia and shall surrender any travel documents to the Director-General of Immigration within one week of the publication of the order.



(5) An order made under subsection (1) shall cease to have effect after ninety days from the date of the order, if the person against whom the order was made has not been charged with an offence under this Act.

(6) An enforcement agency shall not be liable for any damages or cost arising directly or indirectly from the making of an order under this section unless it can be proved that the order under subsection (1) was not made in good faith.

(7) Where an enforcement agency directs that frozen property be administered or dealt with, the person charged with the administration of the property shall not be liable for any loss or damage to the property or for the cost of proceedings taken to establish a claim to the property or to an interest in the property unless the court before which the claim is made finds that the person charged with the administration of the property has been negligent in respect of the administration of the property.

#### Seizure of movable property

45. (1) In the course of an investigation into an offence under subsection 4(1), an investigating officer may, upon obtaining approval from an investigating officer senior in rank to him, seize any movable property which he has reasonable grounds to suspect to be the subject-matter of such offence or evidence relating to such offence.

(2) A list of all movable property seized pursuant to subsection (1) and of the places in which they are respectively found shall be prepared by the investigating officer effecting the seizure and signed by him.

(3) A copy of the list referred to in subsection (2) shall be served as soon as possible on the owner of such property or on the person from whom the property was seized.

(4) This section shall not apply to any movable property liable to seizure under subsection (2) which is in the possession, custody or control of a financial institution.

#### **Further provisions relating to seizure of movable property**

46. (1) Where any movable property is seized under this Act, the seizure shall be effected by removing the movable property from the possession, custody or control of the person from whom it is seized and placing it under the custody of such person, and at such place, as the investigating officer may determine.

(2) Where it is not practicable, or it is otherwise not desirable, to remove any property under subsection (1), the investigating officer may leave it at the premises in which it is seized under the custody of such person as he may determine for the purpose.

(3) Notwithstanding subsection (1), when any movable property, including any movable property referred to in subsection (6), has been seized under this Act, an investigating officer, other than the investigating officer who effected the seizure, upon obtaining approval from an investigating officer senior in rank to him, may—

(a) temporarily return the movable property to its owner, or to the person from whose possession, custody or control it was seized, or to such person as may be entitled to it, subject to such terms and conditions as may be imposed, and subject in any case, to sufficient security being furnished to ensure that the movable property shall be surrendered on demand being made by the investigating officer who authorised the release and that such terms and conditions, if any, shall be complied with; or

(b) return the movable property to the owner, or to the person from whose possession, custody or control it was seized, or to such person as may be entitled to the movable property, with liberty for the person to whom the movable property is so returned to dispose of the movable property, such return being subject to security being furnished in an amount which is not less than an amount which represents the open market value of that property on the date on which it is so returned.

(4) Where any person to whom movable property is temporarily returned under paragraph (3) (a) fails to surrender the movable property on demand or comply with any term or condition imposed under that paragraph—

(a) the security furnished in respect of such movable property shall be forfeited; and

(b) that person commits an offence and shall on conviction be liable to a fine of not less than two times the amount of the security furnished by him or to imprisonment for a term not exceeding two years or to both, and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

(5) Where an order of forfeiture is made by the court in respect of movable property returned under paragraph (3) (b), such forfeiture shall be effected by forfeiting the security furnished by the person to whom the property was returned.

(6) When any movable property seized under this Act consists of money, shares, securities, stocks, debentures or any chose-in-action in the possession or under the custody or control of any person other than the person against whom the prosecution is intended to be taken, the seizure shall be effected by an investigating officer serving an order on such person—

(a) prohibiting him from using, transferring, or dealing with such property; or

(b) requiring him to surrender the property to an investigating officer in the manner and within the time specified in the order.

(7) Where any movable property seized is liable to speedy decay or deterioration, or is property which cannot be maintained without difficulty, or which is not practicable to maintain, and which cannot be dealt with under subsection (3), an investigating officer may sell or cause the property to be sold and shall hold the proceeds of the sale, after deducting the costs and expenses of the maintenance and sale of the movable property, to abide by the result of any proceedings under this Act.

#### **Advocated and solicitors to disclose information**

47. (1) Notwithstanding any other law, a Judge of the High Court may, on application being made to him in relation to an investigation into any offence under subsection 4(1), order an advocate and solicitor to disclose information available to him in respect of any transaction or dealing relating to any property which is liable to seizure under this Act.

(2) Nothing in subsection (1) shall require an advocate and solicitor to comply with any order under that subsection to the extent that such compliance would disclose any privileged information or communication which came to his knowledge for the purpose of any pending proceedings.

#### **Investigation powers in relating to a financial institution**

48. (1) Notwithstanding the provisions of any other written law or any rule of law, the Public Prosecutor, if he is satisfied that it is necessary for the purpose of any investigation into an offence under subsection 4(1), may authorise in writing an investigating officer to exercise in relation to any financial institution specified in the authorisation all the powers of investigation set out in Part V and in subsection (2).

(2) An investigating officer authorised under subsection (1) may, in relation to the financial institution in respect of which he is so authorised—

(a) inspect and take copies of any book, record, report or document belonging to or in the possession, custody or control of the financial institution;

(b) inspect and take copies of any share account, purchase account, expense account or any other account of any person kept in the financial institution;

(c) inspect the contents of any safe deposit box in the financial institution; or

(d) request for any other information relating to any record, report, document, account or article referred to in paragraphs (a), (b) and (c).

(3) Notwithstanding anything in subsection (2), an investigating officer authorised under subsection (1) may take possession of any account, book, record, report, document, title, securities or cash to which he has access under that subsection where in his opinion—

(a) the inspection of them, the copying of them, or the taking of extracts from them, cannot reasonably be undertaken without taking possession of them;

(b) they may be interfered with or destroyed unless he takes possession of them; or

(c) they may be needed as evidence in any prosecution for an offence under subsection 4(1) or any other written law.

(4) Any person who wilfully fails or refuses to disclose any information or to produce any account, book, record, report, document or article under subsection (2) to the investigating officer authorised under subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both, and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

(5) Where any person discloses any information or produces any account, book, record, report, document or article to an investigating officer authorised under subsection (1), neither the first-mentioned person nor any other person on whose behalf or direction or as whose agent or officer the first-mentioned person may be acting shall, on account of such disclosure or production, be liable to any prosecution for any offence under any law, or to any proceedings or claim by any person under any law, or under any contract, agreement or arrangement, or otherwise.

**Public Prosecutor's power to obtain information**

49. (1) Notwithstanding any law or rule of law to the contrary, the Public Prosecutor, if he has reasonable grounds to believe, based on the investigation carried out under this Act, that an offence under subsection 4(1) has been committed, may by written notice—

(a) require any person suspected of having committed such offence;  
(b) any relative or associate of the person referred to in paragraph (a); or  
(c) any other person whom the Public Prosecutor has reasonable grounds to believe is able to assist in the investigation,

to furnish a statement in writing on oath or affirmation—

(aa) identifying every property, whether movable or immovable, whether in or outside Malaysia, belonging to him or in his possession, or in which he has any interest, whether legal or equitable, and specifying the date on which each of the properties so identified was acquired and the manner in which it was acquired, whether by way of any dealing, bequest, devise, inheritance, or any other manner;

(bb) identifying every property sent out of Malaysia by him or on his behalf during such period as may be specified in the notice;

(cc) setting out the estimated value and location of each of the properties identified under subparagraphs (aa) and (bb), and if any of such properties cannot be located, the reason for it;

(dd) stating in respect of each of the properties identified under subparagraphs (aa) and (bb) whether the property is held by him or by any other person on his behalf, whether it has been transferred, sold to, or kept with any person, whether it has been diminished in value since its acquisition by him, and whether it has been commingled with other property which cannot be separated or divided without difficulty;

(ee) setting out all other information relating to his property, business, travel, or other activities as may be specified in the notice; and

(ff) setting out all his sources of income, earnings or property.

(2) An officer of any financial institution, or any person who is in any manner or to any extent responsible for the management and control of the affairs of any financial institution, shall furnish a copy of all accounts, books, records, reports or documents relating to any person to whom a notice may be issued under subsection (1).

(3) Every person to whom a notice is sent by the Public Prosecutor under subsection (1) shall, notwithstanding any law or rule of law to the contrary, comply with the terms of the notice within such time as may be specified in the notice, and any person who wilfully neglects or fails to comply with the terms of the notice commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both, and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

(4) Every person to whom a notice or direction is sent by the Public Prosecutor under this section shall be legally bound to state the truth and shall disclose all information which is within his knowledge, or which is available to him, or which is capable of being obtained by him.

(5) Where any person discloses any information or produces any accounts, books, records, reports or documents in response to a notice under subsection (1), such person, his agent or employee, or any other person acting on his behalf or under his direction, shall not, by reason only of such disclosure or production, be liable to prosecution for any offence under any law, or to any proceedings or claim by any person under any law or under any contract, agreement or arrangement, or otherwise.

(6) Subsection (5) shall not bar, prevent or prohibit the institution of any prosecution for any offence as provided by this section or the giving of false information in relation to any statement on oath or affirmation furnished to the Public Prosecutor pursuant to this section.

### **Seizure of movable property in financial institution**

50. (1) Where the Public Prosecutor is satisfied on information given to him by an investigating officer that any movable property, including any monetary instrument or any accretion to it, which is the subject-matter of an offence under subsection 4(1) or evidence in relation to the commission of such offence, is in the possession, custody or control of a financial institution, he may, notwithstanding any other law or rule of law, after consultation with Bank Negara Malaysia, the Securities Commission or the Labuan Offshore Financial Services Authority, as the case may be, by order direct the financial institution not to part with, deal in, or otherwise dispose of such property or any part of it until the order is revoked or varied.

(2) A financial institution or any agent or employee of a financial institution shall not, on account of complying with an order of the Public Prosecutor under subsection (1), be liable to any prosecution under any law or to any proceedings or claim by any person under any law or under any contract, agreement, or arrangement, or otherwise.

(3) Any person who fails to comply with an order of the Public Prosecutor under subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding two times the amount which was parted with, dealt in or otherwise disposed of in contravention of the Public Prosecutor's order or one million ringgit, whichever is the higher, or to imprisonment for a term not exceeding one year or to both, and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

(4) In this section, "monetary instrument" includes the domestic currency or any foreign currency, travellers' cheque, personal cheque, bank cheque, money order, investment security or negotiable instrument in bearer form or otherwise in such form that title to it passes upon delivery or upon delivery and endorsement.

### **Seizure of immovable property**

51. (1) Where the Public Prosecutor is satisfied on information given to him by an investigating officer that any immovable property is the subject-matter of an offence under subsection 4(1) or evidence of the commission of such offence, such property may be seized, and the seizure shall be effected—

(a) by the issue of a Notice of Seizure by the Public Prosecutor setting out the particulars of the immovable property which is seized in so far as such particulars are within his knowledge, and prohibiting all dealings in such immovable property;

(b) by publishing a copy of such Notice in two newspapers circulating in Malaysia, one of which shall be in the national language and the other in the English language; and

(c) by serving a copy of such Notice on the Land Administrator or the Registrar of Titles, as the case may be, in Peninsular Malaysia, or on the Registrar of Titles or Collector of Land Revenue, as the case may be, in Sabah, or on the Director of Lands and Surveys or the Registrar responsible for land titles, as the case may be, in Sarawak, of the area in which the immovable property is situated.

(2) The Land Administrator, the Collector of Land Revenue, the Director of Lands and Surveys, the Registrar of Titles or the Registrar responsible for land titles, as the case may be, referred to in subsection (1) shall immediately upon being served with a Notice of Seizure under that subsection endorse the terms of the Notice of Seizure on the document of title in respect of the immovable property in the Register at his office.

(3) Where an endorsement of a Notice of Seizure has been made under subsection (2), the Notice shall have the effect of prohibiting all dealings in respect of the immovable property, and after such endorsement has been made no dealing in respect of the immovable property shall be registered, regardless whether it was effected before or after the issue of such Notice or the making of such endorsement.

(4) Subsection (3) shall not apply to a dealing effected by an officer of a public body in his capacity as such officer, or otherwise by or on behalf of the Federal Government of Malaysia or the Government of a State, or a local authority or other statutory authority.

(5) Any person who contravenes subsection (2) or (3) or does any act which results in, or causes, a contravention of subsection (2) or (3) commits an offence and shall on conviction be liable to a fine not exceeding twice the value of the property in respect of which the Public Prosecutor's order had been contravened, or one million ringgit, whichever is the higher, or to imprisonment for a term not exceeding one year or to both, and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

(6) Where a Notice of Seizure has been issued under subsection (1), a registered proprietor of the immovable property which is seized under such Notice, or any other person having any interest in such immovable property, who has knowledge of such Notice, and who knowingly enters into any agreement with any person to sell, transfer, or otherwise dispose of or deal with, the whole or any part of such immovable property, commits an offence and shall on conviction be liable to a fine not exceeding twice the value of such property, or one million ringgit, whichever is the higher, or to imprisonment for a term not exceeding one year or to both, and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

**Special provisions relating to seizure of a business**

52. (1) Where an enforcement agency has reason to believe that any business—

(a) is being carried on by or on behalf of any person against whom prosecution for an offence under subsection 4(1) is intended to be commenced;

(b) is being carried on by or on behalf of a relative or an associate of such person;

(c) is a business in which such person, or a relative or associate of his, has an interest which amounts to or carries a right to not less than thirty per centum of the entire business; or

(d) is a business over which such person or his relative or associate has management or effective control, either individually or together,

the enforcement agency may seize the business in the manner provided under this Part or by an order in writing—

(aa) direct the extent and manner in which the business may be carried on;

(bb) specify any person to supervise, direct or control the business, including its accounts, or to carry on the business or such part of it as may be specified;

(cc) direct that all or any proportion of the proceeds or profits of the business be paid to the Accountant-General and retained by him pending further directions in respect of it by the enforcement agency;

(dd) prohibit any director, officer or employee or any other person from being in any manner involved in the business with effect from the date of the letter of prohibition; or

(ee) direct that the premises where the business was carried on to be closed and, if necessary or expedient, placed under guard or custody.

(2) Where an order is made by an enforcement agency under subsection (1), it may include in the order, or may subsequently give any further direction orally or in writing of an ancillary or consequential nature, or which may be necessary, for giving effect to, or for the carrying out of, the order.

(3) An order under subsection (1) may at any time be varied or revoked by an enforcement agency and where it so varies or revokes the order, it may give any direction of an ancillary or consequential nature, or which may be necessary, for giving effect to, or for the carrying out of, such variation or revocation.

(4) Subject to subsection (5), neither the Federal Government nor any person shall, in consequence of any order under subsection (1) be responsible for the payment of any money, dues, debts, liabilities or charges payable to any person in respect of the business, or in respect of any movable or immovable property owned, possessed, occupied or used, by any person in relation to the business.

(5) Where a person is carrying on any activities of the business in pursuance of an order under subsection (1), he shall be responsible for the payment of the wages of such employees of the business as are engaged in performing any work in relation to those activities for the period during which such person carries on those activities and such wages shall be paid out of the profits derived from such activities or, if there are no such profits or if such profits are insufficient, from the assets and the properties of the business.

(6) In this section—

(a) “wages” means the wages payable under the contract of employment between the employee and the business;

(b) “business” means any business registered under any written law providing for the registration of businesses and includes a corporation incorporated or registered under the Companies Act 1965 and an associate of that company as defined in section 3.

**Prohibition of dealing with property outside Malaysia**

53. Where the Public Prosecutor is satisfied that any property is the subject-matter of an offence under subsection 4(1) or was used in the commission of the offence, and such property is held or deposited outside Malaysia, he may make an application by way of an affidavit to a Judge of the High Court for an order prohibiting the person by whom the property is held or with whom it is deposited from dealing with the property.

**Dealing with property after seizure to be void**

54. (1) Where any property has been seized under this Act, and so long as such seizure remains in force, any dealing effected by any person or between any persons in respect of such property, except any dealing effected under this Act by an officer of a public body in his capacity as such officer, or otherwise by or on behalf of the Federal Government, or the Government of a State, or a local authority or other statutory authority, shall be null and void, and shall not be registered or otherwise be given effect to by any person or authority.

(2) Subsection (1) shall be in addition to and not in derogation of subsections 51(3) and (4).

(3) For so long as a seizure of any property under this Act remains in force, no action, suit or other proceedings of a civil nature shall be instituted, or if it is pending immediately before such seizure, be maintained or continued in any court or before any other authority in respect of the property which has been so seized, and no attachment, execution or other similar process shall be commenced, or if any such process is pending immediately before such seizure, be maintained or continued, in respect of such property on account of any claim, judgement or decree, regardless whether such claim was made, or such judgement or decree was given, before or after such seizure was effected, except at the instance of the Federal Government or the Government of a State, or at the instance of a local authority or other statutory authority, or except with the prior consent in writing of the Public Prosecutor.

**Forfeiture of property upon prosecution for an offence**

55. (1) Subject to section 61, in any prosecution for an offence under subsection 4(1), the court shall make an order for the forfeiture of any property which is proved to be the subject-matter of the offence or to have been used in the commission of the offence where—

(a) the offence is proved against the accused; or

(b) the offence is not proved against the accused but the court is satisfied—

(i) that the accused is not the true and lawful owner of such property; and

(ii) that no other person is entitled to the property as a purchaser in good faith for valuable consideration.

(2) Where the offence is proved against the accused but the property referred to in subsection (1) has been disposed of, or cannot be traced, the court shall order the accused to pay as a penalty a sum which is equivalent to, in the opinion of the court, the value of the property, and any such penalty shall be recoverable as a fine.

(3) In determining whether the property is the subject-matter of an offence or has been used in the commission of an offence under subsection 4(1) the court shall apply the standard of proof required in civil proceedings.

**Forfeiture of property where there is not prosecution**

56. (1) Subject to section 61, where in respect of any property frozen or seized under this Act there is no prosecution or conviction for an offence under subsection 4(1), the Public Prosecutor may, before the expiration of twelve months from the date of the freeze or seizure, apply to a judge of the High Court for an order of forfeiture of that property if he is satisfied that such property had been obtained as a result of or in connection with an offence under subsection 4(1).

(2) The judge to whom an application is made under subsection (1) shall make an order for the forfeiture of the property if he is satisfied—

- (a) that the property is the subject-matter of or was used in the commission of an offence under subsection 4(1); and
  - (b) that there is no purchaser in good faith for valuable consideration in respect of the property.
- (3) Any property that has been seized and in respect of which no application is made under subsection (1) shall, at the expiration of twelve months from the date of its seizure, be released to the person from whom it was seized.
- (4) In determining whether or not the property has been obtained as a result of or in connection with an offence under subsection 4(1), the court shall apply the standard of proof required in civil proceedings.

**Validity of freeze, seizure or sale**

57. Where the freeze, seizure or sale of any property has been effected under this Act, the validity of such freeze, seizure or sale, or other form of disposal of such property, or of any destruction of the property in accordance with the provisions of this Act, in consequence of such freeze, seizure or sale, shall not be affected by any objection to it relating to the manner in which the freeze, seizure or sale was effected, or the place at which it was effected, or the person from whom it was effected, or the person to whom any notice of the freeze, seizure or sale was given, or omitted to be given, or any failure to conform to any procedural provision of this Act or of any other written law in effecting the freeze, seizure or sale.

**Vesting of forfeited property in the Federal Government**

58. (1) Where any property is forfeited under this Act, the property shall vest in the Government free from any right, interest or encumbrance of any person except a right, interest or encumbrance which is held by a purchaser in good faith for valuable consideration and which is not otherwise null and void under any provision of this Act.

(2) Where any person who holds any encumbrance to which the property is subject claims that he holds the encumbrance as a purchaser in good faith for valuable consideration and that the encumbrance is not otherwise null and void under any provision of this Act, and the Federal Government disputes such claim, the Public Prosecutor may apply to the Sessions Court to determine the question and the court shall determine the question after giving an opportunity to be heard to the person holding the encumbrance and hearing the reply of the Public Prosecutor to any representations which may be made before that court by the person holding the encumbrance.

(3) Where any property is vested in the Federal Government under subsection (1), the vesting shall take effect without any transfer, conveyance, deed or other instrument and where any registration of such vesting is required under any law, the authority empowered to effect the registration shall do so in the name of such public officer, authority, person or body as the Public Prosecutor may specify.

(4) Where the property vested in the Federal Government under subsection (1) is immovable property, the vesting shall upon production to the Registrar of Titles or the Land Administrator, in Peninsular Malaysia, or to the Registrar of Titles or the Collector of Land Revenue, in Sabah or the Registrar of Titles or the Director of Lands and Surveys, as the case may be, in Sarawak of the order of the court forfeiting the immovable property, or in the case of property forfeited under subsection 55(1), a certificate of the Public Prosecutor certifying that it has been forfeited, be registered in the name of the Federal Lands Commissioner.

### **Pecuniary orders**

59. (1) Upon application by an enforcement agency to a Sessions Court, a pecuniary penalty order may be made against a person from whom property is forfeited in respect of benefits derived by the person from the commission of an offence under subsection 4(1).

(2) Where—

(a) an application is made to a court for an order under subsection (1) in respect of benefits derived by a person from the commission of an offence under subsection 4(1); and

(b) the court is satisfied that the person derived benefits from the commission of that offence, the court may, if it considers it appropriate, assess in accordance with the manner prescribed by the Minister of Home Affairs by order published in the *Gazette*, the value of the benefits so derived and order that person to pay to the Federal Government a pecuniary penalty equal to the amount.

(3) Where a forfeiture order has been made under sections 55 and 56 against any property that is proceeds of an offence under subsection 4(1), the pecuniary penalty to be paid under subsection (2) shall be reduced by an amount equal to the value of the property as at the time of making the order under subsection (2).

(4) In determining whether or not any benefit is derived from an offence under subsection 4(1) the court shall apply the standard of proof required in civil proceedings.

### **Release of property seized**

60. (1) Where property has been seized under this Act, an investigating officer other than the investigating officer who effected the seizure, may at any time before it is forfeited under this Act, release such property to such person as he determines to be lawfully entitled to the property if he is satisfied that such property is not liable to forfeiture under this Act or otherwise required for the purpose of any proceedings under the Act, or for the purpose of any prosecution under any other law, and in such event neither the officer effecting the seizure, nor the Federal Government, or any person acting on behalf of the Federal Government, shall be liable to any proceedings by any person if the seizure and release had been effected in good faith.

(2) The officer effecting any release of any property under subsection (1) shall make a record in writing in respect of such release, specifying in the record in detail the circumstances of, and the reason for, such release, and he shall send a copy of such record to the Public Prosecutor.

### **Bona fide third parties**

61. (1) The provisions in this Part shall apply without prejudice to the rights of *bona fide* third parties.

(2) The court making the order of forfeiture under section 55 or the judge to whom an application is made under subsection 56(1) shall cause to be published a notice in the *Gazette* calling upon any third party who claims to have any interest in the property to attend before the court on the date specified in the notice to show cause as to why the property shall not be forfeited.

(3) A third party's lack of good faith may be inferred, by the court or an enforcement agency, from the objective circumstances of the case.

(4) The court or enforcement agency shall return the property to the claimant when it is satisfied that—

(a) the claimant has a legitimate legal interest in the property;

(b) no participation, collusion or involvement with respect to the offence under subsection 4(1) which is the object of the proceedings can be imputed to the claimant;

(c) the claimant lacked knowledge and was not intentionally ignorant of the illegal use of the property, or if he had knowledge, did not freely consent to its illegal use;

(e) the claimant did not acquire any right in the property from a person proceeded against under circumstances that give rise to a reasonable inference that any right was transferred for the purpose of avoiding the eventual subsequent forfeiture of the property; and

(e) the claimant did all that could reasonably be expected to prevent the illegal use of the property.

### **Disposition of forfeited property**

62. Whenever property that is not required to be destroyed and that is not harmful to the public is forfeited under section 55 or 56, the court or an enforcement agency may, in accordance with the law—

(a) retain it for official use, or transfer it to the Federal Government; or

(b) sell it and transfer the proceeds from such sale to the Federal Government.



**Absconded person**

63. (1) For the purposes of this Act, a person shall be treated as if he had been convicted of a serious offence if the person absconds in connection with a serious offence and any reference in this Part to the defendant shall include a reference to such person.

(2) For the purposes of subsection (1), a person shall be treated as if he had absconded in connection with a serious offence if, before or after the commencement date—

(a) an investigation for a serious offence has been commenced against the person; and

(b) the person—

(i) dies before proceedings in respect of the offence were instituted, or if such proceedings were instituted, the person dies before he is convicted of the offence; or

(ii) at the end of the period of six months from the date on which the investigation referred to in paragraph (a) was commenced against him, cannot be found, apprehended or extradited.

**Forfeiture order where person has absconded**

64. Where a person is, by reason of section 63, treated as if he had been convicted of a serious offence, a court may make a forfeiture order under this Part if the court is satisfied—

(a) on the evidence adduced before it that, on the balance of probabilities, the person has absconded; and

(b) having regard to all the evidence before the court, that such evidence if unrebutted would warrant his conviction for the offence.

**Effect of death on proceedings**

65. (1) Proceedings under section 64 shall be instituted or continued against the personal representatives of a deceased defendant or, if there are no personal representatives, such beneficiary of the estate of the deceased defendant as may be specified by the court upon the application of the Public Prosecutor.

(2) Where the power conferred by this Act to make an order is to be exercised in relation to a deceased defendant, the order shall be made against the estate of the deceased defendant.

(3) In this section, “deceased defendant” means a person who dies—

(a) after an investigation into a serious offence has been commenced against him; and

(b) before proceedings in respect of the offence have been instituted, or if such proceedings have been instituted, before he is convicted of the offence.

(4) In this section, a reference to property or interest in property shall include a reference to income accruing from such property or interest.

**Service of documents on absconders**

66. Where any document is required under this Act to be served on a person who cannot be found or who is outside Malaysia and cannot be compelled to attend before a court in respect of proceedings under this Act, the court may dispense with service of the document upon him and the proceedings may be continued to their final conclusion in his absence.

**PART VII  
MISCELLANEOUS**

**Property tracking**

67. (1) Where the competent authority or an enforcement agency, as the case may be, has reason to believe that a person is committing, has committed or is about to commit an offence under this Act, the competent authority or enforcement agency, as the case may be, may order—

(a) that any document relevant to identifying, locating or quantifying any property, or identifying or locating any document necessary for the transfer of the property, belonging to, or in the possession or under the control of that person or any other person, be delivered to it; or

(b) any person to produce information on any transaction conducted by or for that person with the first-mentioned person.

(2) Any person who does not comply with an order under subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both, and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

**Additional powers of competent authority and enforcement agency**

68. (1) For the avoidance of doubt, the functions conferred on the competent authority or an enforcement agency under this Act shall be in addition to its functions under any other written law.

(2) Where an enforcement agency enforcing the law under which a related serious offence is committed gathers evidence with respect to any investigation relating to that offence, such evidence shall be deemed to be evidence gathered in accordance with this Act.

**Agent provocateur**

69. (1) Notwithstanding any law or rule of law to the contrary, in any proceedings against any person for an offence under this Act, no agent provocateur, whether he is an officer of an enforcement agency or not, shall be presumed to be unworthy of credit by reason only of his having attempted to commit or to abet, or having abetted or having been engaged in a criminal conspiracy to commit, such offence if the main purpose of such attempt, abetment or engagement was to secure evidence against such person.

(2) Notwithstanding any law or rule of law to the contrary, a conviction for any offence under this Act solely on the uncorroborated evidence of any agent provocateur shall not be illegal and no such conviction shall be set aside merely because the court which tried the case has failed to refer in the grounds of its judgment to the need to warn itself against the danger of convicting on such evidence.

**Standard of proof**

70. (1) Any question of fact to be decided by a court in proceedings under this Act shall be decided on the balance of probabilities.

(2) Subsection (1) shall not apply in relation to any question of fact that is for the prosecution to prove in any proceedings for an offence under this Act or any subsidiary legislation under it.

**Admissibility of documentary evidence**

71. Where the Public Prosecutor or any enforcement agency has obtained any document or other evidence in exercise of his powers under this Act or by virtue of this Act, such document or copy of the document or other evidence, as the case may be, shall be admissible in evidence in any proceedings under this Act, notwithstanding anything to the contrary in any written law.

**Admissibility of statements by accused persons**

72. (1) In any trial or inquiry by a court into an offence under this Act, any statement, whether the statement amounts to a confession or not or is oral or in writing, made at any time, whether before or after the person is charged and whether in the course of an investigation or not and whether or not wholly or partly in answer to questions, by an accused person to or in the hearing of an officer of any enforcement agency, whether or not interpreted to him by any other officer of such enforcement agency or any other person, whether concerned or not in the arrest of that person, shall, notwithstanding any law or rule of law to the contrary, be admissible at his trial in evidence and, if that person tenders himself as a witness, any such statement may be used in cross-examination and for the purpose of impeaching his credit.

(2) No statement made under subsection (1) shall be admissible or used as provided for in that subsection if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the person, proceeding from a person in the enforcement agency and sufficient in the opinion of the court to give that person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

(3) Where any person is arrested or is informed that he may be prosecuted for any offence under this Act, he shall be served with a notice in writing, which shall be explained to him, to the following effect:

“You have been arrested/informed that you may be prosecuted for... (the possible offence under this Act). Do you wish to say anything? If there is any fact on which you intend to rely in your defence in court, you are advised to mention it now. If you hold it back till you go to court, your evidence may be less likely to be believed and this may have an adverse effect on your case in general. If you wish to mention any fact now, and you would like it written down, this will be done.”

(4) Notwithstanding subsection (3), a statement by any person accused of any offence under this Act made before there is time to serve a notice under that subsection shall not be rendered inadmissible in evidence merely by reason of no such notice having been served on him if such notice has been served on him as soon as is reasonably possible after the statement is made.

(5) No statement made by an accused person in answer to a written notice served on him pursuant to subsection (3) shall be construed as a statement caused by any inducement, threat or promise as is described in subsection (2), if it is otherwise voluntary.

(6) Where in any criminal proceedings against a person for an offence under this Act, evidence is given that the accused, on being informed that he might be prosecuted for it, failed to mention any such fact, being a fact which in the circumstances existing at the time he could reasonably have been expected to mention when so informed, the court, in determining whether the prosecution has made out a *prima facie* case against the accused and in determining whether the accused is guilty of the offence charged, may draw such inferences from the failure as appear proper; and the failure may, on the basis of those inferences, be treated as, or as capable of amounting to, corroboration of any evidence given against the accused in relation to which the failure is material.

(7) Nothing in subsection (6) shall in any criminal proceedings—

(a) prejudice the admissibility in evidence of the silence or other reaction of the accused in the face of anything said in his presence relating to the conduct in respect of which he is charged, in so far as evidence of it would be admissible apart from that subsection; or

(b) be taken to preclude the drawing of any inference from any such silence or other reaction of the accused which could be drawn apart from that subsection.

**Admissibility of statements and documents of persons who are dead or cannot be traced, etc.**

73. Notwithstanding any written law to the contrary, in any proceedings against any person for an offence under this Act—

(a) any statement made by any person to an officer of any enforcement agency in the course of an investigation under this Act; and

(b) any document, or copy of any document, seized from any person by an officer of any enforcement agency in exercise of his powers under this Act,

shall be admissible in evidence in any proceedings under this Act before any court, where the person who made the statement or the document or the copy of the document is dead, or cannot be traced or found, or has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which appears to the court unreasonable.

**Admissibility of translation of documents**

74. (1) Where any document which is to be used in any proceedings against any person for an offence under this Act is in a language other than the national language or English language, a translation of such document into the national language or English language shall be admissible in evidence where the translation is accompanied by a certificate of the person who translated the document setting out that it is an accurate, faithful and true translation and the translation had been done by such person at the instance of the Public Prosecutor or an officer of any enforcement agency.

(2) Subsection (1) shall apply to a document which is translated, regardless whether the document was made in or outside Malaysia, or whether the translation was done in or outside Malaysia, or whether possession of such document was obtained by the Public Prosecutor or an officer of any enforcement agency in or outside Malaysia.

**Evidence of corresponding law or foreign law**

75. (1) A document purporting to be issued by or on behalf of the government of a foreign State and purporting to state the terms of—

(a) a corresponding law in force in that foreign State; or

(b) a law in relation to a foreign serious offence in force in that foreign State,

shall be admissible in evidence for the purpose of proving the matters referred to in subsection (2) in any proceedings under this Act on its production by the Attorney-General or by any person duly authorised by him in writing.

(2) A document shall be sufficient evidence—

(a) if issued by or on behalf of the government of the foreign State stated in the document;

- (b) that the terms of the corresponding law or the law of the foreign State are as stated in the document; and
- (c) that any fact stated in the document as constituting an offence under that law does constitute such offence.

#### **Proof of conviction and acquittal**

76. (1) For the purposes of any proceedings under this Act, the fact that a person has been convicted or acquitted of an offence by or before any court in Malaysia or by a foreign court shall be admissible in evidence for the purpose of proving, where relevant to any issue in the proceedings, that he committed or did not commit that offence, whether or not he is a party to the proceedings, and where he was convicted whether he was so convicted upon plea of guilt or otherwise.

(2) The court shall accept the conviction referred to in subsection (1) as conclusive unless—

- (a) it is subject to review or appeal that has not yet been determined;
- (b) it has been quashed or set aside; or
- (c) the court is of the view that it is contrary to the interests of justice or the public interest to accept the conviction as conclusive.

(3) A person proved to have been convicted of an offence under this section shall be taken to have committed the act and to have possessed the state of mind, if any, which at law constitute that offence.

(4) Any conviction or acquittal admissible under this section may be proved—

- (a) in the case of a conviction or acquittal before a court in Malaysia, by a certificate of conviction or acquittal, signed by the Registrar of that court; or
- (b) in the case of a conviction or acquittal before a foreign court, by a certificate or certified official record of proceedings issued by that foreign court and duly authenticated by the official seal of a Minister of that foreign State,  
giving the substance and effect of the charge and of the conviction or acquittal.

#### **Indemnity**

77. No action, suit, prosecution or other proceedings shall lie or be brought, instituted, or maintained in any court or before any other authority against—

- (a) the competent authority or the relevant enforcement agency;
- (b) any director or officer of the competent authority or the relevant enforcement agency, either personally or in his official capacity; or
- (c) any person lawfully acting in compliance with any direction, instruction or order of a director or officer of the competent authority or the relevant enforcement agency,  
for or on account of, or in respect of, any act done or statement made or omitted to be done or made, or purporting to be done or made or omitted to be done or made, in pursuance of or in execution of, or intended pursuance of or execution of, this Act or any order in writing, direction, instruction or other thing issued under this Act if such act or statement was done or made, or was omitted to be done or made, in good faith.

#### **Service of notices**

78. A letter containing a notice or other document to be served by an enforcement agency under this Act shall be deemed to be addressed to the proper place if it is addressed to the last known address of the addressee.

#### **Preservation of secrecy**

79. (1) Except for the purpose of the performance of his duties or the exercise of his functions under this Act or when lawfully required to do so by any court or under the provisions of any written law, no person shall disclose any information or matter which has been obtained by him in the performance of his duties or the exercise of his functions under this Act.

(2) No person who has any information or matter which to his knowledge has been disclosed in contravention of subsection (1) shall disclose that information or matter to any other person.

(3) Any person who contravenes subsection (1) or (2) commits an offence and shall be liable on conviction to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both.

#### **Exemptions**

80. The Minister of Finance may, upon the recommendation of the competent authority, if he considers it consistent with the purposes of this Act or in the interest of the public, by order published in the *Gazette*, exempt a person or class of persons from all or any of the provisions of Part III or IV for such duration and subject to such condition as the Minister may specify.

#### **Modifications**

81. (1) The Minister of Finance may, upon the recommendation of the competent authority who shall consult with the Labuan Offshore Financial Services Authority, by order published in the *Gazette*, provide that any provisions of this Act or part of the provision, specified in the order, shall not apply in relation to an offshore financial institution or shall apply with such modifications as may be set out in the order.

(2) The terms of the order made under subsection (1) must be consistent with the intent and purpose of this Act.

(3) In this section, “modification” includes amendment, adaptation, alteration, variation, addition, division, substitution or exclusion.

#### **Jurisdiction**

82. (1) Any offence under this Act—

(a) on the high seas on board any ship or on any aircraft registered in Malaysia;

(b) by any citizen or any permanent resident on the high seas on board any ship or on any aircraft; or

(c) by any citizen or any permanent resident in any place outside and beyond the limits of Malaysia, may be dealt with as if it had been committed at any place within Malaysia.

(2) Notwithstanding anything in this Act, no charge as to any offence shall be inquired into in Malaysia unless a diplomatic officer of Malaysia, if there is one, in the territory in which the offence is alleged to have been committed certifies that, in his opinion, the charge ought to be brought in Malaysia; and where there is no such diplomatic officer, the sanction of the Public Prosecutor shall be required.

(3) Any proceedings taken against any person under this section which would be a bar to subsequent proceedings against that person for the same offence if the offence had been committed in Malaysia shall be a bar to further proceedings against him under any written law relating to extradition or the surrender of fugitive criminals in force in Malaysia in respect of the same offence in any territory beyond the limits of Malaysia.

(4) For the purposes of this section, the expression “permanent resident” has the meaning assigned by the Courts of Judicature Act 1964 [Act 91].

#### **Power to issue guidelines, etc.**

83. The competent authority may, upon consultation with the relevant supervisory authority, issue to a reporting institution such guidelines, circulars, or notices as are necessary or expedient to give full effect to or for carrying out the provisions of this Act and in particular for the detection or prevention of money laundering.

#### **Regulations**

84. (1) The Minister of Finance or the Minister of Home Affairs, as the case may be, 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—

(a) to prescribe anything that is required or permitted to be prescribed under this Act;

(b) to provide that any act or omission in contravention of any provision of such regulations shall be an offence;

(c) to provide for the imposition of penalties for such offences which shall not exceed a fine of one million ringgit or imprisonment for a term not exceeding one year or both; and

(d) to provide for the imposition of an additional penalty for a continuing offence which shall not exceed one thousand ringgit for each day that the offence continues after conviction.

#### **Amendment of Schedules**

85. The Minister of Finance may, by order published in the *Gazette*, amend the First and Second Schedules.

#### **General offence**

86. Any person who contravenes—

(a) any provision of this Act or regulations made under it; or  
(b) any specification or requirement made, or any order in writing, direction, instruction, or notice given, or any limit, term, condition or restriction imposed, in the exercise of any power conferred under or pursuant to any provision of this Act or regulations made under it,  
commits an offence and shall on conviction, if no penalty is expressly provided for the offence under this Act or the regulations, be liable to a fine not exceeding two hundred and fifty thousand ringgit.

**Offence committed by any person acting in an official capacity**

87. (1) Where an offence is committed by a body corporate or an association of persons, a person—

- (a) who is its director, controller, officer, or partner; or
- (b) who is concerned in the management of its affairs,

at the time of the commission of the offence, is deemed to have committed that offence unless that person proves that the offence was committed without his consent or connivance and that he exercised such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his function in that capacity and to the circumstances.

(2) An individual may be prosecuted for an offence under subsection (1) notwithstanding that the body corporate or association of persons has not been convicted of the offence.

(3) Subsection (1) shall not affect the criminal liability of the body corporate or association of persons for the offence referred to in that subsection.

(4) Any person who would have committed an offence if any act had been done or omitted to be done by him personally commits that offence and shall on conviction be liable to the same penalty if such act had been done or omitted to be done by his agent or officer in the course of that agent's business or in the course of that officer's employment, as the case may be, unless he proves that the offence was committed without his knowledge or consent and that he took all reasonable precautions to prevent the doing of, or omission to do, such act.

**Offence by an individual**

88. Where a person is liable under this Act to a penalty for any act, omission, neglect or default, he shall be liable to the same penalty for the act, omission, neglect or default of his employee, director, controller, or agent if the act, omission, neglect or default was committed by—

- (a) his employee in the course of the employee's employment;
- (b) his director in carrying out the function of a director;
- (c) his controller in carrying out the function of a controller; or
- (d) his agent when acting on his behalf.

**Falsification, concealment and destruction of document, etc.**

89. A person, with intent to deceive, in respect of a document to be produced or submitted under any provision of this Act, who makes or causes to be made a false entry, omits to make, or causes to be omitted, any entry, or alters, abstracts, conceals or destroys, or causes to be altered, abstracted, concealed or destroyed, any entry, forges a document, or makes use of or holds in his possession a false document, purporting to be a valid document, alters any entry made in any document, or issues or uses a document which is false or incorrect, wholly or partially, or misleading commits an offence and on conviction shall be liable to a fine not exceeding one million ringgit or to a term of imprisonment not exceeding one year or to both, and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

**Seizable offence**

90. Every offence punishable under this Act shall be a seizable offence.

**Joinder of offences**

91. Notwithstanding anything contained in any other written law, where a person is accused of more than one offence under this Act, he may be charged with and tried at one trial for any number of the offences committed within any length of time.

**Power of competent authority to compound offences**

92. (1) The competent authority or relevant enforcement agency, as the case may be, may, with the consent of the Public Prosecutor, compound any offence under this Act or under regulations made under this Act, by accepting from the person reasonably suspected of having committed the offence such amount not exceeding fifty per centum of the amount of the maximum fine for that offence, including the daily fine, if any, in the case of a continuing offence, to which that person would have been liable if he had been convicted of the offence, within such time as may be specified in its written offer.

(2) Any money paid to the competent authority or relevant enforcement agency pursuant to subsection (1) shall be paid into and form part of the Federal Consolidated Fund.

(3) An offer under subsection (1) may be made at any time after the offence has been committed, and where the amount specified in the offer is not paid within the time specified in the offer, or such extended time as the competent authority or relevant enforcement agency may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(4) Where an offence has been compounded under subsection (1), no prosecution shall be instituted in respect of the offence against the person to whom the offer to compound was made.

**Prosecution**

93. No prosecution for an offence under this Act shall be instituted except by or with the written consent of the Public Prosecutor.

**First Schedule <sup>1</sup>**

**Second Schedule <sup>2</sup>**

---

<sup>1</sup> Note by the Secretariat: Schedule is not reproduced in this document and is available from the Secretariat on request.

<sup>2</sup> Note by the Secretariat: Schedule is not reproduced in this document and is available from the Secretariat on request.

**ACT 621**

**MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 2002**

Date of Royal Assent 14 May 2002  
Date of Publication in the Gazette 30 May 2002

**ARRANGEMENT OF SECTIONS**

**PART I**

**PRELIMINARY**

*Section*

1. Short title and commencement
2. Interpretation
3. Object of Act
4. Act does not limit cooperation with international organisations, etc.
5. Act not authority for extradition of person

**PART II**

**REQUEST BY MALAYSIA**

*Section*

6. Application of this Part
7. Request to be made by or through Attorney General
8. Request for taking of evidence, etc.
9. Request for attendance of person in Malaysia
10. Penalty not to be imposed for refusal to consent
11. Immunities and privileges
12. Limitation on use of statement
13. Request for enforcement of forfeiture order
14. Assistance in locating or identifying persons
15. Assistance in service of process

**PART III**

**REQUEST TO MALAYSIA**

*Section*

16. Application of this Part
17. Prescribed foreign State
18. Special direction of Minister
19. Request to be made to Attorney General
20. Refusal of assistance
21. Exceptions to political offences
22. Taking of evidence for criminal proceedings
23. Production order for criminal matters
24. Supplementary provisions regarding production order
25. Immunities in compliance of production order



26. Failure to comply with production order
27. Request for attendance of person in prescribed foreign State
28. Request for attendance of prisoner or person under detention
29. Custody of person in transit
30. Escape from custody while in transit
31. Request for enforcement of foreign forfeiture order
32. Registration of foreign forfeiture order
33. Proof of orders, etc. of prescribed foreign State
34. Evidence in relation to proceedings and orders in prescribed foreign State
35. Request for search and seizure
36. Search warrant
37. Additional powers of person executing search warrant, etc.
38. Immunities in respect of authorised officer executing search warrant
39. Assistance in locating or identifying person
40. Assistance in service of process
41. Penalty not to be imposed for failure to comply with summons

#### **PART IV**

#### **MISCELLANEOUS**

*Section*

42. Authentication of documents
43. Delegation
44. Regulations

**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.

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 realised 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]<sup>1</sup>;
  - (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;  
"authorised 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 authorised 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 realised, directly or indirectly, from payments or other rewards received in connection with such an offence, or the value of such property,

---

<sup>1</sup> Note by the Secretariat: E/NL.2005/03

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 authorised 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 organisations, 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 Organisation (INTERPOL) or any other international organisation.
- (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 authorise 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 sub-paragraph (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) 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 subparagraph (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, authorise the taking of such evidence.

(2) If the Attorney General authorises 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 authorised officer for him to take away; or
- (b) give an authorised 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 authorised officer access to any thing on any premises, the court may, on the same or subsequent application of an authorised officer, order any person who appears to it to be entitled to grant entry to the premises to allow an authorised 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 authorised 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 authorised 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 authorised officer any material known to the person to be false or misleading in a material particular without-
    - (i) indicating to the authorised 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 authorised 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 authorised 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 authorised officer may, without warrant, arrest a person if the authorised 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 authorise 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 authorise 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 authorised 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 realised, 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 summarise 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 authorised 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 authorising an authorised 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 authorised 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 authorised officer may photograph or make a copy of any thing seized under subsection (1).

(3) Where an authorised 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 authorised 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 authorised 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 authorise 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 authorises 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 authorise 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 authorised 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 sub-section (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.