



Malaysia No. 1 (2011)

Treaty

between the Government of the United Kingdom of Great Britain and Northern
Ireland and the Government of Malaysia on Mutual Assistance in Criminal
Matters

Kuala Lumpur, 21 July 2010

[The Treaty has not yet entered into force]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
February 2011*

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**TREATY BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM
OF GREAT BRITAIN AND NORTHERN IRELAND AND
THE GOVERNMENT OF MALAYSIA ON MUTUAL ASSISTANCE IN
CRIMINAL MATTERS**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Malaysia (hereinafter referred to singularly as “the Party” and collectively as “the Parties”):

DESIRING to improve the effectiveness of the law enforcement authorities of the Parties through cooperation and mutual assistance in criminal matters,

MINDFUL of the guarantees under their respective legal systems concerning human rights and the rule of law,

HAVE AGREED as follows:

ARTICLE 1

Definitions

- (a) “criminal matter” means -
 - (i) a criminal investigation;
 - (ii) criminal proceedings; or
 - (iii) an ancillary criminal matter which includes restraint, freezing, seizure, forfeiture and confiscation of proceeds of crime and instrumentalities of crime;
- (b) “instrumentalities of crime” means any property which has been, is or is intended to be used in connection with the commission of an offence;
- (c) “proceeds of crime” means any property derived or realised, directly or indirectly, by any person as a result of criminal conduct, or the value of any such property;
- (d) “property” includes money and all kinds of moveable or immoveable and tangible or intangible property, and includes any interest in such property and instrumentalities of crime.

ARTICLE 2

Scope of Assistance

1. The Parties shall, in accordance with this Treaty and in conformity with their respective domestic laws, render to one another the widest measure of mutual assistance in criminal matters.
2. Such assistance shall include:
 - (a) taking the testimony or statements of persons;
 - (b) providing relevant documents and records, including bank, financial, corporate or business records, and other evidentiary material;
 - (c) making arrangements for persons to give evidence or to otherwise assist in the Requesting Party in relation to criminal matters;
 - (d) transferring persons in custody to give evidence or to otherwise assist in the Requesting Party in relation to criminal matters;
 - (e) effecting service of judicial and related documents;
 - (f) executing requests for search and seizure;
 - (g) locating and identifying persons or items where required as part of a wider request for assistance;
 - (h) examining items and sites where required as part of a wider request for assistance;
 - (i) identifying, locating, restraining, freezing, seizure, forfeiture and confiscation of proceeds of crime and instrumentalities of crime;
 - (j) return of property;
 - (k) sharing of property; and
 - (l) any other form of assistance as may be agreed between the Central Authorities.
3. This Treaty does not authorise any person from either Party to undertake, in the territory of the other Party, the exercise of jurisdiction or the performance of functions that are placed within the exclusive purview of the authorities of that other Party under its domestic law.

4. This Treaty applies solely to the provision of mutual assistance in criminal matters between the Parties. The provisions of this Treaty shall not create any right on the part of any private person to obtain any evidence pursuant to this Treaty.

ARTICLE 3

Central Authorities

1. Each Party shall designate a Central Authority to send and receive requests pursuant to this Treaty.

2. For Malaysia, the Central Authority for the purpose of sending and receiving requests shall be the Attorney General or a person designated by the Attorney General.

3. For the United Kingdom, the Central Authorities for the purpose of sending requests shall be:

- (a) the Secretary of State; and
- (b) the Lord Advocate for matters pertaining to Scotland.

4. For the United Kingdom, the Central Authorities for the purpose of receiving requests shall be:

- (a) the Secretary of State;
- (b) the Lord Advocate for matters pertaining to Scotland; and
- (c) Her Majesty's Revenue and Customs.

5. The Parties may at any time designate any other authority as a Central Authority for the purposes of this Treaty. Notification of such a designation shall take place by exchange of diplomatic notes.

6. Requests from the United Kingdom shall be transmitted through the Ministry of Foreign Affairs of Malaysia to the Malaysia Central Authority. Requests from Malaysia shall be transmitted through the Ministry of Foreign Affairs of Malaysia directly to the relevant United Kingdom Central Authority.

7. Except as otherwise provided in this Article, the Central Authorities shall communicate directly with one another for the purposes of this Treaty.

ARTICLE 4

Refusal of Assistance

1. The refusal of a request for assistance under this Treaty shall be done in conformity with the respective domestic laws of the Parties and the grounds of refusal shall include the following:

- (a) that the request relates to an offence that is regarded by the Requested Party as an offence under military law that if it had occurred in the Requested Party would not be an offence under ordinary criminal law;
- (b) that the request relates to a person who, if proceeded against in the Requested Party for the offence for which assistance is requested, would be entitled to be discharged on the ground of double jeopardy;
- (c) that there are substantial grounds for believing that the request has been made for the purpose of -
 - (i) investigating, prosecuting or punishing a person for an offence of a political nature; or
 - (ii) causing prejudice to a person on account of that person's race, sex, religion, nationality, ethnic origin or political opinions;
- (d) that the execution of the request would prejudice the sovereignty, security, national interest, public order or other essential interests of the Requested Party;
- (e) that the conduct to which the request relates fails to satisfy a requirement of the domestic law of the Requested Party requiring the establishment of dual criminality;
- (f) that the offence to which the request relates does not satisfy a minimum sentencing requirement of the Requested Party or is otherwise considered to be an offence of a trivial nature by the Requested Party;
- (g) that provision of the assistance sought could prejudice a criminal matter in the Requested Party;
- (h) that the request involves an assertion of jurisdiction which in the view of the Requested Party is extraterritorial and objectionable;
- (i) that provision of the assistance sought could impose an excessive burden on the resources of the Requested Party.

2. Assistance shall not be refused solely on the ground of secrecy of banks and similar financial institutions.

3. Before refusing to grant a request whether in whole or in part the Requested Party shall wherever possible consult with the Requesting Party to consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to such conditions, it shall comply with those conditions.

4. If the Central Authority of the Requested Party refuses assistance or agrees to grant the assistance subject to a postponement, it shall inform the Central Authority of the Requesting Party of the reasons for refusal or postponement, as the case may require.

ARTICLE 5

Form and Content of Requests

1. Requests for assistance shall be made in writing.
2. Requests, supporting documents and other communications made pursuant to this Treaty shall be in the English language.
3. A request shall contain the following:
 - (a) the name of the authority conducting the criminal matter to which the request relates;
 - (b) the purpose for which the evidence or other assistance is sought;
 - (c) a description of the offence to which the request relates, including the applicable penalty, and a statement or text of the relevant laws;
 - (d) a description of the facts alleged to constitute the offence; and
 - (e) a description of the assistance sought.
4. Requests for assistance shall also, to the extent necessary, contain the following information:
 - (a) the identity, nationality, date of birth and location of any person from whom evidence is sought;
 - (b) a list of questions to be asked of a witness or expert;
 - (c) a description of the manner in which any testimony or statement is to be taken and recorded;

- (d) the identity, nationality, date of birth and location of a person to be served, that person's relationship to the criminal matter, and the manner in which service is to be made;
- (e) a precise description of the place to be searched and of the items to be seized;
- (f) available information on the identity and whereabouts of a person to be located;
- (g) a description of the property or items to which the request relates including its identity and location;
- (h) in the case of a request for assistance involving the identification, location, restraint, freezing, seizure, forfeiture or confiscation of proceeds of crime and instrumentalities of crime:
 - (i) details of the property in relation to which co-operation is sought;
 - (ii) the location of the property and its connection with the subjects of the request;
 - (iii) the connection, if any, between the property and the offences;
 - (iv) details of any third party interests in the property;
 - (v) a certified true copy of the restraint, freezing, seizure, forfeiture or confiscation order and a statement of the grounds on the basis of which the order was made, if they are not indicated in the order itself;
- (i) a description of any particular procedures to be followed in executing the request;
- (j) specification of any time limit within which compliance with the request is desired;
- (k) any special requirement for confidentiality and the reasons for it;
- (l) in the case of a person invited to attend in the Requesting Party to give evidence or to assist in a criminal matter -
 - (i) an indication of the extent to which his expenses will be paid; and
 - (ii) confirmation of -
 - (A) the allowances and expenses to which he will be entitled to;

- (B) the arrangements for his security, if any, while he is travelling to and from the Requesting Party and while he is in the Requesting Party; and
 - (C) the arrangements for his accommodation, if any, while he is in the Requesting Party;
- (m) any other information which may be brought to the attention of the Requested Party to facilitate the execution of the request.

5. If the Central Authority of the Requested Party considers that the information contained in the request is not sufficient to enable the request to be dealt with, the Central Authority may request additional information. The Requesting Party shall supply such additional information as the Requested Party considers necessary to enable the request to be fulfilled.

ARTICLE 6

Execution of Requests

1. The Central Authority of the Requested Party shall promptly execute the request or, when appropriate, shall forward it to the relevant competent authority to do so. The competent authorities of the Requested Party shall do everything in their power to execute the request. The courts of the Requested Party shall have authority to issue summonses, search warrants or other orders necessary to execute the request.
2. The Requested Party shall comply with the formalities and procedures expressly indicated by the Requesting Party in the request, including in particular in relation to authentication, provided that such formalities and procedures are not contrary to the domestic law of the Requested Party.
3. The Central Authority of the Requested Party shall respond within a reasonable period to reasonable inquiries by the Central Authority of the Requesting Party concerning progress toward execution of the request.
4. If the Central Authority of the Requested Party determines that execution of a request would interfere with an ongoing criminal matter in the territory of the Requested Party or would prejudice the safety of any person, it may postpone execution, or make execution subject to conditions determined necessary after consultations with the Central Authority of the Requesting Party. If the Requesting Party accepts the assistance subject to the conditions, it shall comply with the conditions.

5. The Central Authority of the Requested Party may facilitate the presence and participation in the execution of the request of such persons as are specified in the request.

6. The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of the outcome of the execution of the request.

ARTICLE 7

Return of Documents, Records and Items

1. Any documents, records or items handed over to the Requesting Party under this Treaty shall be returned to the Requested Party as soon as possible unless the Requested Party waives its right of return.

2. Notwithstanding paragraph 1, the Requesting Party shall at any time, upon request, temporarily return to the Requested Party any documents, records or items provided to the Requesting Party pursuant to a request under this Treaty if it is needed for a criminal matter in the Requested Party, so long as it does not compromise the criminal matter in the Requesting Party.

ARTICLE 8

Confidentiality and Limitations on Use

1. The Requesting Party shall not, without the consent of the Requested Party and subject to such terms and conditions as the Requested Party considers necessary, use, transfer or disclose any information (including personal data) obtained under this Treaty for any purpose other than that specified in the request.

2. Notwithstanding paragraph 1 and to the extent permitted by the domestic law of the Requesting Party, information (including personal data) may however be used, transferred or disclosed by the Requesting Party without the consent of the Requested Party where it has been lawfully disclosed in a public judicial hearing related to the request.

3. The Requested Party may refuse to transfer information (including personal data) obtained as a result of the execution of a request made under this Treaty where such information (including personal data) is protected under its national legislation.

4. The Requested Party may at any time require the Requesting Party to provide information as to the manner in which information (including personal data) provided or transferred pursuant to a request made under this Treaty is being or has been used.

and to the extent permitted by domestic law, take all possible steps to keep confidential any information (including personal data) which might indicate that a request has been made or responded to. If the request cannot be executed without breaching confidentiality, the Requested Party shall so inform the Requesting Party, which shall then determine whether and the extent to which it wishes the request to be executed.

ARTICLE 9

Obtaining Evidence

1. A person in the territory of the Requested Party from whom evidence is requested pursuant to this Treaty may be compelled, if necessary, to appear in order to testify or produce documents, records or items by summons as may be permitted under the domestic law of the Requested Party.
2. If the person referred to in paragraph 1 of this Article asserts a claim of immunity, incapacity or privilege under the domestic law of the Requesting Party, the testimony, documents, records or items shall nonetheless be taken unless the Requesting Party concedes the claim.
3. The Requested Party may permit the presence of persons specified in the request during the execution of the request and may, to the extent permitted by domestic law, allow specified persons to present questions to be asked of the person giving the testimony or evidence.
4. For the purpose of executing a request for the taking of testimony, the Parties may agree to the use of live video or television link or other appropriate communications facilities in accordance with the domestic law and procedures of the Requested Party.

ARTICLE 10

Provision of Publicly Available Documents and Other Records

1. The Requested Party shall provide the Requesting Party with copies of publicly available records, including documents or information in any form, in the possession of government departments, agencies and authorities in the Requested Party.
2. The Requested Party may, to the extent permitted by domestic law, provide the Requesting Party with copies of any records, including documents or information in any form, that are in the possession of a government department, agency or authority in the Requested Party but that are not publicly available to the same extent and under the same conditions as such copies would be available to its

own law enforcement or judicial authorities. The Requested Party may in its discretion deny, entirely or in part, a request pursuant to this paragraph.

ARTICLE 11

Attendance of Person in the Requesting Party

The Requested Party shall, upon request, invite a person to attend in the Requesting Party to assist in relation to a criminal matter and where the person consents, assist in making the arrangements for the attendance of that person.

ARTICLE 12

Attendance of Person in Custody in the Requesting Party

1. The Requested Party may, upon request agree to allow a person in custody in the Requested Party, subject to his consent and if the Central Authorities agree, to be temporarily transferred to the Requesting Party to assist in relation to a criminal matter.

2. For the purposes of this Article:

- (a) the Requesting Party shall be responsible for the safety of the person transferred and shall have the authority and the obligation to keep the person transferred in custody unless otherwise authorised by the Requested Party;
- (b) the Requesting Party shall return the person transferred to the custody of the Requested Party as soon as circumstances permit and in any event no later than the date upon which he would have been released from custody in the territory of the Requested Party, unless otherwise agreed by both Central Authorities and the person transferred.

3. The Requesting Party shall not require the Requested Party to initiate extradition proceedings for the return of the person transferred.

4. The period of custody in the territory of the Requested Party shall be deducted from the period of detention, which the person concerned is or will be obliged to undergo in the territory of the Requesting Party.

ARTICLE 13

Protection for Transferred Person

1. The Central Authority of the Requesting Party may, so far as is possible, make arrangements to ensure that a person attending in the territory of the Requesting Party pursuant to Article 11 or 12 shall not be subject to service of process or be detained or subjected to any restriction of personal liberty by reason of any acts or convictions in the Requesting Party that preceded his departure from the territory of the Requested Party.

2. Arrangements made under paragraph 1 shall cease fifteen days after the Central Authority of the Requesting Party has notified the Central Authority of the Requested Party that the person's presence is no longer required, or when the person, having left the Requesting Party, voluntarily returns to it. This period may be extended by agreement between the Parties to take account of circumstances beyond the control of the person appearing which do not include the commission of a criminal offence.

ARTICLE 14

Transit of Person in Custody

The Requested Party may authorise the transit through its territory of a person held in custody, by the Requesting Party or a third State, whose attendance has been requested by the Requesting Party.

ARTICLE 15

Search and Seizure

1. The Requested Party shall, where not inconsistent with domestic law, execute a request for the search, seizure and delivery of any documents, records or items to the Requesting Party if the request includes the information justifying such action under the domestic laws of the Requested Party.

2. The Central Authority of the Requested Party may require that the Requesting Party agrees to terms and conditions related to any seized documents, records or items which may be delivered to the Requesting Party that are considered necessary by the Requested Party to protect the documents, records or items to be transferred and any third party interests in the documents, records or items to be transferred.

3. Every official who has custody of any seized documents, records or items shall certify the identity of such document, record or item, the continuity of custody, and its condition in any form as indicated by the Requesting Party.

4. The Requested Party may refuse a request if it relates to conduct in respect of which powers of search and seizure would not be exercisable in the territory of the Requested Party in similar circumstances.

ARTICLE 16

Service of Documents

1. The Requested Party shall use its best efforts to effect service of any document relating to or forming part of any request for assistance properly made pursuant to this Treaty by the Requesting Party, including any summons or other process requiring the appearance of any person before any authority or court in the territory of the Requesting Party.

2. The Requesting Party shall transmit any request for the service of a document requiring the response or appearance of a person before an authority or court in the Requesting Party within a reasonable time before the required response or scheduled appearance.

3. The Requested Party shall return proof of service in the manner specified in the request.

ARTICLE 17

Restraint, Forfeiture and Confiscation

1. The Parties shall assist each other in relation to criminal matters involving the identification, location, restraint, freezing, seizure, forfeiture and confiscation of proceeds of crime and instrumentalities of crime in accordance with the domestic law of the Requested Party.

2. Where an offence has been committed and a conviction has been obtained in the Requesting Party, the property which has been seized by the Requested Party may be returned, in accordance with the domestic law of the Requested Party, to the Requesting Party for the purpose of forfeiture or confiscation.

3. The rights claimed by bona-fide third parties over such property shall be respected.

4. Where a Party has forfeited or confiscated property as a result of cooperation provided by the other Party, it may at its discretion and to the extent permitted by its domestic law, share such property with the other Party.

ARTICLE 18

Compatibility with other Arrangements

Nothing in this Treaty shall prevent the Parties from providing assistance to each other pursuant to other treaties, arrangements or the provisions of their domestic law.

ARTICLE 19

Costs

1. The Requested Party shall pay all costs relating to the execution of the request, except for the following which shall be paid by the Requesting Party:

- (a) the fees of counsel retained by the Requesting Party;
- (b) the fees and reasonable expenses of expert witnesses;
- (c) the costs of establishing and operating video-conferencing or television links, including interpretation and transcription;
- (d) the allowances and expenses related to travel of persons pursuant to Article 11 (Attendance of Person in the Requesting Party);
- (e) the costs of transferring persons in custody pursuant to Article 12 (Attendance of Person in Custody in the Requesting Party), including the travel expenses of custodial or escorting officers;
- (f) such costs or resources as agreed under paragraph 2.

2. If the Central Authority of the Requested Party notifies the Central Authority of the Requesting Party that execution of the request might require costs or other resources of an extraordinary nature, or if it otherwise requests, the Central Authorities shall consult with a view to reaching agreement on the conditions under which the request shall be executed and the manner in which costs shall be allocated.

ARTICLE 20

Consultation

1. The Parties shall consult, at the request of either, concerning the operation of this Treaty either generally or in relation to a particular case. The Parties may also

agree on such practical measures as may be necessary to facilitate the operation of this Treaty.

2. Any issues arising from the interpretation or implementation of the provisions of this Treaty shall be settled through consultation between the Central Authorities.

ARTICLE 21

Amendment

1. This Treaty may be modified or amended at any time by mutual written consent of the Parties. Such modification or amendment shall enter into force on such date as may be mutually agreed upon by the Parties and shall form part of this Treaty.

2. Any modification or amendment shall be without prejudice to the rights and obligations arising from or based on this Treaty before or up to the date such modification or amendment enters into force.

ARTICLE 22

Territorial Application

This Treaty shall apply to:

- (a) the territory of Malaysia;
- (b) the territory of the United Kingdom, which consists of Great Britain and Northern Ireland;
- (c) any other territory for whose international relations the United Kingdom is responsible and to which this Treaty shall have been extended by Exchange of Notes and by Agreement of the Parties.

ARTICLE 23

Ratification, Entry into Force and Termination

1. This Treaty shall be subject to ratification and the instruments of ratification shall be exchanged as soon as possible.

2. This Treaty shall enter into force upon the exchange of instruments of ratification.

3. This Treaty shall apply to requests presented after the date of its entry into force whether the relevant acts or omissions constituting the offence occurred before or after that date.

4. Either Party may terminate this Treaty by written notification to the other Party sent through the diplomatic channel. Termination shall take effect six months following the date of notification.

5. Termination of this Treaty shall be without prejudice to the completion of any requests made pursuant to this Treaty before or up to the date of termination.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed this Treaty.

Done in duplicate at Kuala Lumpur on this twenty-first day of July 2010 in the English language.

**For the Government of the United
Kingdom of Great Britain and
Northern Ireland:**

BOYD MCCLEARY

For the Government of Malaysia:

TAN SRI ABDUL GANI PATAIL



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