



Mutual Assistance in Criminal Matters (Malaysia) Regulations 2006¹

Select Legislative Instrument 2006 No. 292

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Mutual Assistance in Criminal Matters Act 1987*.

Dated 16 November 2006

P. M. JEFFERY
Governor-General

By His Excellency's Command

CHRISTOPHER MARTIN ELLISON
Minister for Justice and Customs

1 Name of Regulations

These Regulations are the *Mutual Assistance in Criminal Matters (Malaysia) Regulations 2006*.

2 Commencement

These Regulations commence on the day on which the Treaty between the Government of Australia and the Government of Malaysia on Mutual Assistance in Criminal Matters, done at Putrajaya in Malaysia on 15 November 2005, enters into force.

3 Definition

In these Regulations:

Act means the *Mutual Assistance in Criminal Matters Act 1987*.

4 Application of Act

For paragraph 7 (2) (a) of the Act, the Act applies to Malaysia subject to:

- (a) the Treaty between the Government of Australia and the Government of Malaysia on Mutual Assistance in Criminal Matters done at Putrajaya in Malaysia on 15 November 2005, a copy of the text of which is set out in Schedule 1; and
- (b) an exchange of notes on 7 December 2005, relating to the Treaty, a copy of the text of which is set out in Schedule 2.

**Schedule 1 Treaty between the
Government of Australia and
the Government of Malaysia
on Mutual Assistance in
Criminal Matters done at
Putrajaya in Malaysia on
15 November 2005**

(paragraph 4 (a))

**TREATY BETWEEN THE GOVERNMENT OF AUSTRALIA
AND THE GOVERNMENT OF MALAYSIA ON MUTUAL
ASSISTANCE IN CRIMINAL MATTERS**

The Government of Australia and the Government of Malaysia,
(hereinafter referred to singularly as “the Party” and collectively as “the
Parties”),

Desiring to improve the effectiveness of law enforcement authorities by
enabling the extension to each other of the widest measure of cooperation
in the investigation and prosecution of crime,

HAVE AGREED as follows:

**ARTICLE 1
SCOPE OF APPLICATION**

1. The Parties shall, in accordance with this Treaty and in conformity
with their respective laws, grant to each other the widest measure of
mutual assistance in connection with investigations, prosecutions and
proceedings related to criminal matters over which the Requesting Party
has jurisdiction at the time the assistance is requested.
2. Criminal matter includes matters connected with offences against a
law relating to taxation, customs duties, foreign exchange control and
other revenue matters.

3. Such assistance shall consist of:

- (a) taking of evidence, including testimony, documents, records and things, by way of judicial process;
- (b) taking of voluntary statements of persons;
- (c) providing relevant documents and records, including bank, financial, corporate or business records;
- (d) locating and identifying persons;
- (e) executing search and seizure;
- (f) identifying, locating, restraining dealings in and forfeiting the instruments derived from or used in the commission of an offence and proceeds of crime;
- (g) recovering pecuniary penalties in respect of an offence;
- (h) seeking the consent of persons and making arrangements for such persons to give evidence or to assist in criminal investigations in the Requesting Party and, where such persons are in custody, arranging for their temporary transfer to the Requesting Party;
- (i) effecting service of judicial and related documents;
- (j) examining objects and sites, to the extent that it is not inconsistent with the laws of the Requested Party; and
- (k) other assistance consistent with the objects of this Treaty which is not inconsistent with the laws of the Requested Party.

4. Assistance shall not include:

- (a) the arrest or detention of any person with a view to the extradition of that person or the extradition of any person;

(b) the enforcement in the Requested Party of criminal judgments imposed in the Requesting Party except to the extent permitted by the laws of the Requested Party and this Treaty;

(c) the transfer of persons in custody to serve sentences; and

(d) the transfer of proceedings in criminal matters.

5. The Treaty does not authorise any Party to undertake, in the territory of the other, the exercise of jurisdiction or the performance of functions that are placed within the exclusive purview of the authorities of that other Party by its laws.

6. 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 2 COMPATIBILITY WITH OTHER ARRANGEMENTS

This Treaty shall not derogate from obligations subsisting between the Parties pursuant to other international agreements nor, where the Parties agree, shall it prevent the Parties providing assistance to each other pursuant to other international agreements or the provisions of their domestic laws.

ARTICLE 3 DESIGNATION OF CENTRAL AUTHORITIES

1. The Parties shall each designate a Central Authority for the purpose of this Treaty. The Central Authority for Australia shall be the Attorney-General's Department, Canberra and the Central Authority for Malaysia shall be the Attorney General. Each Party shall expeditiously notify the other of any change in the designation of its Central Authority.

2. The Central Authorities shall communicate directly with one another but may, if they choose, communicate through the diplomatic channel.

ARTICLE 4 REFUSAL OF ASSISTANCE

1. Assistance shall be refused if:

(a) the request relates to the investigation, prosecution or punishment of a person for an offence that is regarded by the Requested Party as, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political character;

(b) the request relates to the investigation, prosecution or punishment of a person for an offence that had it occurred in the Requested Party, would have constituted an offence under the military law of the Requested Party but not also under the ordinary criminal law of the Requested Party;

(c) the request relates to the investigation, prosecution or punishment of a person for an offence in respect of which the person:

(i) has been finally convicted, acquitted or pardoned by a competent court or other authority in the Requesting Party; or

(ii) has undergone the punishment provided by the laws of that Requesting Party,

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

(d) there are substantial grounds for believing that the request has been made for the purpose of investigating, prosecuting or punishing or otherwise causing prejudice to a person on account of that person's race, sex, religion, nationality, ethnic origin or political opinions;

(e) the Requested Party is of the opinion that the request, if granted, would prejudice its sovereignty, security, national interest, public order or other essential interests of the Requested Party;

(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 the Requested Party, would not have constituted an offence against the laws of the Requested Party, except that the Requested Party may provide assistance in the absence of dual criminality if permitted by its domestic laws; or

(g) provision of the assistance sought could prejudice an investigation, prosecution or proceedings related to a criminal matter in the Requested Party, unless the Parties agree otherwise.

2. Assistance may be refused if:

(a) the request relates to the prosecution or punishment of a person for an extraterritorial offence under the laws of the Requesting Party and such extraterritorial offence would not be punishable under the laws of the Requested Party if it took place in similar circumstances outside the Requested Party;

(b) provision of the assistance sought could prejudice the safety of any person, whether that person is within or outside the Requested Party; or

(c) provision of the assistance sought could impose an excessive burden on the resources of the Requested Party.

3. For the purpose of paragraph 1(c)(i), assistance shall not be refused solely on the ground that the request relates to a criminal matter where a person has been convicted in the Requesting Party if the sentence has not been imposed.

4. Assistance shall not be refused solely on the ground of secrecy of banks and similar financial institutions or that the offence is also considered to involve fiscal matters.

5. Before refusing to grant a request the Requested Party shall 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.

ARTICLE 5 CONTENTS OF REQUESTS

1. Requests for assistance shall include:

- (a) the purpose of the request and a description of the assistance sought;
- (b) the name of the requesting office and the competent authority conducting the investigation, prosecution or proceedings related to a criminal matter to which the request relates;
- (c) a description of the nature of the criminal matter, each offence to which the request relates, including its maximum penalty and a statement or text of the relevant laws;
- (d) except in cases of request for service of judicial and related documents, a description of the acts or omissions or matters alleged to constitute the offence;
- (e) a description of the evidence, information or other assistance sought;
- (f) the court order, if any, sought to be enforced and a statement to the effect that it is a final order;
- (g) the reasons for and details of any particular procedure or requirement that the Requesting Party wishes to be followed, including a statement as to whether sworn or affirmed evidence or statements are required;
- (h) any special requirement for confidentiality and the reasons for it;
- (i) specification of any time limit within which compliance with the request is desired; and
- (j) such other information as is necessary for the proper execution of the request.

2. Requests for assistance, to the extent necessary and relevant, shall also include:

(a) the identity, nationality and location of the person or persons who are the subject of or who may have information relevant to the investigation, prosecution or proceedings related to a criminal matter;

(b) the identity and location of a person to be served, that person's relationship to the criminal proceedings, and the manner in which service is to be made;

(c) a description of the documents, records or items of evidence to be produced as well as a description of the appropriate person to be asked to produce them and, to the extent not otherwise provided for, the form in which they should be reproduced and authenticated;

(d) a description of the manner in which any testimony or statement is to be taken and recorded; and

(e) a description of the property, asset or item to which the request relates, including its identity and location, and any court order relating to the assistance requested and a statement relating to the finality of that order.

3. Requests, supporting documents and other communications made pursuant to this Treaty shall be in the English language.

4. If the Requested Party considers that the information contained in the request is not sufficient to enable the request to be dealt with, it 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
FORM OF REQUESTS

1. Requests for assistance shall be made in writing or, where possible, by any means capable of producing a written record under conditions allowing the Requested Party to establish authenticity.
2. The Central Authority shall make and receive requests through the diplomatic channel.
3. Central Authorities shall deal with the transmission of all requests and any communication related thereto.

ARTICLE 7
EXECUTION OF REQUESTS

1. Requests for assistance shall be carried out promptly, in accordance with the laws and procedures of the Requested Party and, insofar as it is not incompatible with those laws and procedures, in the manner requested by the Requesting Party.
2. The Requested Party may postpone the execution of the request if its immediate execution would interfere with any ongoing investigation, prosecution or proceedings related to a criminal matter in the Requested Party.
3. The Requested Party may postpone the delivery of documents, records or items requested if such material is required for proceedings in respect of criminal or civil matters in that Party. The Requested Party shall, upon request, provide certified copies of such material.
4. Before postponing the execution of a request pursuant to this Article, the Requested Party shall consider whether assistance may be granted subject to certain conditions.
5. If the Requesting Party accepts assistance subject to the terms and conditions imposed under this Article, it shall comply with such terms and conditions.

6. The Requested Party shall promptly inform the Requesting Party of circumstances, when they become known to the Requested Party, which are likely to cause a significant delay in responding to the request.

7. If the Requested Party refuses or postpones assistance, it shall promptly inform the Requesting Party of the decision not to comply in whole or in part with the request and the reason for that decision.

ARTICLE 8 RETURN OF MATERIAL TO REQUESTED PARTY

1. The Requesting Party shall, upon request, return the documents, records or items provided under this Treaty when no longer needed for the relevant investigation, prosecution or proceedings related to a criminal matter.

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 an investigation, prosecution or proceedings related to a criminal matter in the Requested Party, so long as it does not compromise the investigation, prosecution or proceedings related to a criminal matter in the Requesting Party.

ARTICLE 9 PROTECTION OF CONFIDENTIALITY AND RESTRICTION ON USE OF EVIDENCE AND INFORMATION

1. The Requested Party shall, upon request, use its best endeavours to keep confidential the request for assistance, the contents of the request and its supporting documents, the fact of granting such assistance and any action taken pursuant to the request. If the request cannot be executed without breaching the confidentiality requirements stated in the request, the Requested Party shall so inform the Requesting Party which shall then determine whether the request should nevertheless be executed.

2. The Requesting Party shall, upon request, use its best endeavours to keep information and evidence provided by the Requested Party confidential, except to the extent that the evidence and information is needed for the investigation, prosecution or proceedings related to a criminal matter described in the request.

3. The Requesting Party shall not, without the prior written consent of the Requested Party and subject to such terms and conditions as the Requested Party considers necessary, use or transfer information or evidence provided by the Requested Party nor anything derived from such information or evidence, for purposes other than those stated in the request.

4. Notwithstanding paragraph 3, in cases where the charge is altered, the information or evidence provided may, with the prior written consent of the Requested Party, be used in so far as the offence, as charged, is an offence in respect of which mutual assistance could be provided under this Treaty.

ARTICLE 10 SERVICE OF DOCUMENTS

1. The Requested Party shall, upon request, use its best endeavours to effect service of any document relevant to a criminal matter in the Requesting Party.

2. The Requesting Party shall transmit any request for the service of a document requiring a response from or appearance of a person in the Requesting Party not later than 45 days before the date on which the response or appearance is required. In urgent cases, the Requested Party may waive this requirement.

3. The Requested Party may effect service of any document by mail or, if the Requesting Party so requests, in any other manner required by the laws of the Requesting Party which is not inconsistent with the laws of the Requested Party.

4. The Requested Party shall forward to the Requesting Party proof of service of the documents. If service cannot be effected, the Requesting Party shall be so informed and advised of the reasons.

ARTICLE 11
LOCATION OR IDENTIFICATION OF PERSONS

The Requested Party shall, upon request, use its best endeavours to ascertain the location or identity of a person specified in the request and who is reasonably believed to be within its territory.

ARTICLE 12
OBTAINING VOLUNTARY STATEMENTS

1. The Requested Party shall, upon request, endeavour to obtain voluntary statements from persons for the purpose of an investigation, prosecution or proceedings related to a criminal matter for transmission to the Requesting Party.

2. A request under this Article shall specify the subject matter about which a voluntary statement is to be obtained, including any questions to be put to the person from whom the statement is to be obtained.

ARTICLE 13
TAKING OF EVIDENCE

1. Where a request is made for the purpose of proceedings related to a criminal matter in the Requesting Party, the Requested Party shall take the evidence of persons for transmission to the Requesting Party.

2. For the purposes of this Treaty, the taking of evidence shall include the production of documents, records or other items.

3. A request under this Article shall specify the subject matter about which evidence is to be taken, including any questions to be put to persons from whom evidence is to be taken.

4. Upon the request of the Requesting Party, the parties to the relevant proceedings in the Requesting Party, their legal representatives and representatives of the Requesting Party may, subject to the laws and procedures of the Requested Party, appear and question the person from whom evidence is to be taken.

5. Nothing in this Article shall prevent the use of live video or live television links or other appropriate communication facilities in accordance with the laws and procedures of the Requested Party for the purpose of executing this Article if it is expedient and in the interest of justice to do so.

6. A person from whom evidence is to be taken in the Requested Party under this Article may decline to give evidence where either:

(a) the laws of the Requested Party permit or require that person to decline to give evidence in similar circumstances in proceedings originating in the Requested Party; or

(b) the laws of the Requesting Party permit or require that person to decline to give evidence in similar circumstances in proceedings originating in the Requesting Party.

7. If any person claims that there is a right or obligation to decline to give evidence under the laws of the Requesting Party, that Party shall, upon request, provide a certificate to the Requested Party as to the existence of that right or obligation. In the absence of evidence to the contrary, the certificate shall provide sufficient evidence as to the existence of that right or obligation.

ARTICLE 14
ATTENDANCE OF PERSONS TO ASSIST IN INVESTIGATIONS OR
GIVE EVIDENCE

1. The Requesting Party may request the assistance of the Requested Party in seeking the consent of persons and making arrangements for such persons to:

(a) assist in investigations related to a criminal matter in the Requesting Party; or

(b) appear as a witness in proceedings related to a criminal matter in the Requesting Party unless that person is the person charged.

2. The Requested Party shall, if satisfied that satisfactory arrangements for a person's security will be made by the Requesting Party, seek the consent of the person to assist in investigations or to appear as a witness in proceedings related to a criminal matter.

3. A request under this Article shall contain information on the following matters:

(a) the fees, allowances and expenses, if any, to which the person will be entitled;

(b) the arrangements, if any, for the security of the person while the person is travelling to, from and within the Requesting Party; and

(c) the arrangements for the accommodation of the person in the Requesting Party.

4. Nothing in this Article shall prevent the use of live video or live television links or other appropriate communication facilities in accordance with the laws and procedures of the Requested Party if it is expedient and in the interests of justice to do so.

ARTICLE 15
ATTENDANCE OF PERSONS IN CUSTODY TO ASSIST IN
INVESTIGATIONS OR TO GIVE EVIDENCE

1. The Requested Party may, upon request and where not inconsistent with its laws, temporarily transfer a person in custody in the Requested Party, subject to the consent of the person, to the Requesting Party to assist in investigations or to give evidence in proceedings related to a criminal matter in the Requesting Party.
2. While the person transferred is required to be held in custody under the laws of the Requested Party, the Requesting Party shall hold that person in custody and shall return that person in custody to the Requested Party at the conclusion of the matter in relation to which transfer was sought or at such earlier time as the person's presence is no longer required.
3. Where the Requested Party advises the Requesting Party that the transferred person is no longer required to be held in custody, that person shall be released from custody and be treated as a person referred to in Article 14 of this Treaty.
4. The Requesting Party shall not require the Requested Party to initiate extradition proceedings for the return of the person transferred.
5. The period during which such person was under the custody of the Requesting Party shall count towards the period of imprisonment or detention of the person in the Requested Party.
6. Nothing in this Article shall prevent the use of live video or live television links or other appropriate communication facilities in accordance with the laws and procedures of the Requested Party if it is expedient and in the interests of justice to do so.

ARTICLE 16
SAFE CONDUCT

1. Subject to paragraph 2, where a person is present in the Requesting Party pursuant to a request made under Article 14 or 15 of this Treaty:

(a) that person shall not be detained, prosecuted, punished or subjected to any other restriction of personal liberty in the Requesting Party in respect of any acts or omissions or convictions for any offence against the laws of the Requesting Party that is alleged to have been committed, or that was committed, before the departure of the person from the Requested Party;

(b) that person shall not, without the consent of that person, be required to give evidence in any proceedings or to assist any investigation in the Requesting Party other than the proceedings or investigation to which the request relates; and

(c) that person shall not be subject to any civil suit in respect of any act or omission which preceded the person's departure from the Requested Party.

2. Paragraph 1 of this Article shall cease to apply if that person, being free and able to leave, has not left the Requesting Party within a period of 15 days after that person has been officially notified that the presence of the person is no longer required or, having left, has voluntarily returned.

3. Evidence taken under Article 14 or 15 of this Treaty shall not be admitted or otherwise used in any prosecution of the person for an offence against the laws of the Requesting Party except for the prosecution of the person for contempt, perjury or the making of a false declaration.

4. A person who does not consent to attend in the Requesting Party pursuant to a request made under Article 14 or 15 of this Treaty shall not, by reason thereof, be liable to any penalty or be subjected to any coercive measure notwithstanding anything to the contrary in the request or in any document accompanying the request.

ARTICLE 17
TRANSIT OF PERSONS IN CUSTODY

1. The Requested Party may, upon request and to the extent permitted by its laws, authorise the transit through its territory of a person held in custody, by the Requesting Party or a third State, whose personal appearance has been requested by the Requesting Party for an investigation, prosecution or proceedings related to a criminal matter.
2. Where the aircraft, vessel or train by which the person is being transported lands or calls or stops in the Requested Party, the custodial or escorting officers of the Requesting Party or, if applicable, the third State that is assisting the Requesting Party to facilitate the transfer shall continue to be responsible for the custody of the person being transported while the person is on transit in the Requested Party, unless otherwise determined by the Requested Party.
3. Without prejudice to paragraph 2 and where the Requested Party determines, the person being transported may be kept temporarily in the custody of a competent authority of the Requested Party until the person's transportation is continued.
4. Where a person is being held in custody in the Requested Party on transit and the person's transportation is not continued within a reasonable time, the Requested Party may direct that the person be transported in custody to the State from which the person was first transported.
5. All costs and expenses incurred by the Requested Party in respect of paragraphs 3 and 4 shall be reimbursed by the Requesting Party.

ARTICLE 18
PROVISION OF PUBLICLY AVAILABLE AND OFFICIAL
DOCUMENTS AND RECORDS

1. The Requested Party shall provide the Requesting Party with copies of documents and records that are open to public access as part of a public register or otherwise, or that are available for purchase by the public.

2. The Requested Party may provide the Requesting Party with copies of any official document or record in the same manner and under the same conditions as such document or record may be provided to its own law enforcement and judicial authorities.

ARTICLE 19 SEARCH AND SEIZURE

1. The Requested Party shall, upon request and where not inconsistent with its laws, execute a request for search and seizure and delivery of any documents, records or items to the Requesting Party if there are reasonable grounds for believing that the documents, records or items are relevant to a criminal matter for evidentiary purposes and if the request includes the information justifying such action under the laws of the Requested Party.

2. The Requested Party shall provide such information as may be required by the Requesting Party concerning the result of any search, the place of seizure, the circumstances of seizure and the subsequent custody of the documents, records or items seized.

3. The Requesting Party shall observe any conditions imposed by the Requested Party in relation to any seized documents, records or items which may be delivered to the Requesting Party.

ARTICLE 20 INSTRUMENTS AND PROCEEDS OF CRIME

1. The Requested Party shall, upon request, endeavour to ascertain whether any instruments or proceeds of a crime are located within its jurisdiction and shall notify the Requesting Party of the results of its inquiries. In making the request, the Requesting Party shall notify the Requested Party of the basis of its belief that such instruments or proceeds may be located in its jurisdiction.

2. Where suspected instruments or proceeds of crime are found or are believed to be located in the Requested Party, the Requested Party shall

take such measures as are permitted by its laws to prevent any dealing in, transfer or disposal of, those suspected instruments or proceeds of crime, pending a final determination in respect of those instruments or proceeds by a court of the Requesting Party.

3. The Requested Party shall, to the extent permitted by its laws, give effect to a final order forfeiting the instruments or proceeds of crime, or a declaration that such instruments or proceeds of crime have been forfeited or a final order for the recovery of pecuniary penalties made by a court of the Requesting Party. The Requested Party shall assist the Requesting Party in any related proceedings arising from the enforcement of such final order or declaration in the Requested Party.

4. In the application of this Article, the rights of bona fide third parties shall be respected under the laws of the Requested Party.

5. The Requested Party shall deal with the forfeited instruments or proceeds of crime or the recovered pecuniary penalties in accordance with its laws. To the extent permitted by its laws, the Requested Party may transfer all or any part of the forfeited proceeds or instruments of crime or the value thereof or recovered pecuniary penalties to the Requesting Party upon such terms as it deems appropriate.

6. In this Treaty “proceeds of crime” includes any property derived or realised, directly or indirectly, from the commission of an offence or property which represents the equivalent value of the property and other benefits derived from the commission of an offence.

7. In this Treaty “instruments of crime” means any property used in or intended to be used in, or in connection with, the commission of an offence.

ARTICLE 21 CERTIFICATION AND AUTHENTICATION

1. Documents, records or items supporting a request for assistance involving the use of compulsory measures or the forfeiture of proceeds of crime shall be authenticated in accordance with paragraph 2. Documents,

records or items furnished in response to a request shall be similarly authenticated if requested.

2. Documents, records or items are authenticated for the purposes of this Treaty if:

(a) they purport to be signed or certified by a judge, magistrate or other officer duly authorised by the laws of the Party sending the documents, records or items; and

(b) either:

(i) they purport to be sealed with an official or public seal of the Party sending the documents, records or items or of a Minister of State, or of a department or an officer of the government, of that Party; or

(ii) it is verified by the oath or affirmation of a witness, or of an officer of the government of that Requested Party.

3. Nothing in this Article shall prevent the proof of any matter or the admission in evidence of any document in accordance with the laws of the Requesting Party.

4. To the extent permitted by the laws of each Party:

(a) a document signed with a digital or electronic signature in accordance with the laws of the Party concerned shall be as legally binding as a document signed with a handwritten signature, an affixed thumb-print or any other mark; and

(b) a digital or electronic signature created in accordance with the laws of the Party concerned shall be deemed to be a legally binding signature.

ARTICLE 22 SUBSIDIARY ARRANGEMENTS

The Parties may enter into subsidiary arrangements consistent with the purposes of this Treaty and with the laws of both Parties.

ARTICLE 23
REPRESENTATION AND COSTS

1. Unless otherwise agreed between the Parties, the Requested Party shall make all necessary arrangements for the representation of the Requesting Party in any proceedings arising out of a request for assistance and shall otherwise represent the interests of the Requesting Party.

2. The Requested Party shall assume all ordinary expenses of fulfilling the request for assistance except that the Requesting Party shall bear:

(a) the expenses associated with conveying any person to or from the territory of the Requested Party, and any fees, allowances or expenses payable to that person while that person is in the Requesting Party pursuant to a request under Article 14 or 15 of this Treaty;

(b) the expenses associated with conveying custodial or escorting officers;

(c) the fees of counsel retained at the request of the Requesting Party;

(d) the fees and expenses of expert witnesses; and

(e) costs of translation, interpretation and transcription.

3. Unless the Parties mutually agree otherwise, the Requesting Party shall refund to the Requested Party the costs associated with the use of live video or live television links or other appropriate communication facilities, including:

(a) establishment and servicing costs;

(b) the remuneration of interpreters provided by the Requested Party; and

(c) allowances to witnesses and their travelling expenses in the Requested Party.

4. If during the execution of the request it becomes apparent that expenses of an extraordinary or substantial nature are required to fulfil the request, the Parties shall consult to determine the terms and conditions under which the execution of the request is to be effected or continued.

ARTICLE 24 CONSULTATION

1. For the purpose of promoting the most effective use of this Treaty, the Parties shall consult, at times mutually agreed upon by them, concerning the interpretation, application or implementation of this Treaty either generally or in relation to a particular case.

2. The Parties may develop such practical measures as may be necessary to facilitate the implementation of this Treaty.

ARTICLE 25 SETTLEMENT OF DISPUTES

Any difference or dispute between the Parties arising from the interpretation or implementation of the provisions of this Treaty shall be settled amicably through consultation or negotiation between the Parties through diplomatic channels without reference to any third party or international tribunal.

ARTICLE 26 AMENDMENT

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

2. Any modification or amendment will 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 27
ENTRY INTO FORCE

1. This Treaty shall enter into force 30 days after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of this Treaty have been complied with.
2. This Treaty shall apply to requests presented after the date of its entry into force whether the relevant acts or omissions constituting the offence or offences to which the request relates occurred before or after that date.

ARTICLE 28
TERMINATION

1. Either Party may terminate this Treaty by notice in writing at any time and it shall cease to be in force six months following the date on which notice is given.
2. Termination of this Treaty shall be without prejudice to the rights and obligations arising from or based on this Treaty and 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 thereto by their respective Governments, have signed this Treaty.

DONE at Putrajaya on the fifteenth day of November two thousand and five in two original copies in the English language.

FOR AND ON BEHALF OF THE
GOVERNMENT OF
AUSTRALIA

FOR AND ON BEHALF OF THE
GOVERNMENT OF MALAYSIA

Hon. Christopher Martin Ellison
Minister for Justice and Customs

Tan Sri Abdul Gani Patail
Attorney-General.

Schedule 2 **Exchange of Notes between the Government of Malaysia and the Government of Australia on the Treaty on Mutual Assistance in Criminal Matters**

(paragraph 4 (b))

7 December 2005

Note from Malaysia

I have the honour to refer to the Treaty on Mutual Assistance in Criminal Matters signed today between the Government of Malaysia and the Government of Australia (“the Treaty”), and agree that the Treaty be interpreted and applied in accordance with the provisions set forth in this Note.

Article 1(1) of the Treaty states that “The Parties shall, in accordance with this Treaty and in conformity with their respective laws, grant to each other the widest measure of mutual assistance in connection with investigations, prosecutions and proceedings related to criminal matters over which the Requesting Party has jurisdiction at the time the assistance is requested.” The Parties agree that the phrase “in conformity with their respective laws” shall include the limitations on assistance set forth in section 8 of Australia’s *Mutual Assistance in Criminal Matters Act 1987*, including sections 8(1A) and 8(1B), so long as this law is in effect.

I have the further honour to propose that this Note and Your Excellency’s Note in reply confirming on behalf of the Government of Australia the foregoing arrangements shall be regarded as constituting an agreement between the two Governments, which shall enter into force simultaneously with the Treaty.

Accept, Excellency, the renewed assurances of my highest consideration.

Note from Australia

I have the honour to acknowledge receipt of Your Excellency's Note of today's date, which reads as follows:

"I have the honour to refer to the Treaty on Mutual Assistance in Criminal Matters signed today between the Government of Malaysia and the Government of Australia ("the Treaty"), and agree that the Treaty be interpreted and applied in accordance with the provisions set forth in this Note.

Article 1(1) of the Treaty states that "The Parties shall, in accordance with this Treaty and in conformity with their respective laws, grant to each other the widest measure of mutual assistance in connection with investigations, prosecutions and proceedings related to criminal matters over which the Requesting Party has jurisdiction at the time the assistance is requested." The Parties agree that the phrase "in conformity with their respective laws" shall include the limitations on assistance set forth in section 8 of Australia's *Mutual Assistance in Criminal Matters Act 1987*, including sections 8(1A) and 8(1B), so long as this law is in effect.

I have the further honour to propose that this Note and Your Excellency's Note in reply confirming on behalf of the Government of Australia the foregoing arrangements shall be regarded as constituting an agreement between the two Governments, which shall enter into force simultaneously with the Treaty."

I have the honour to confirm on behalf of the Government of Australia that the above proposal is acceptable to the Government of Australia, and that Your Excellency's Note and this Note in reply shall constitute an agreement between the two Governments, which shall enter into force simultaneously with the Treaty on Mutual Assistance in Criminal Matters.

Accept, Excellency, the renewed assurances of my highest consideration.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.