

# INTERNATIONAL COOPERATION: MUTUAL LEGAL ASSISTANCE AND EXTRADITION

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## I. INTRODUCTION

The challenge for prosecutors and law enforcement authorities in every nation in combating crime is the issue of sovereignty, frontiers (borders) and differences in legal systems between States. Criminals depend heavily upon the barriers of sovereignty and evidence to shield themselves of their crimes from detection. Organizations which orchestrate transnational crime and which then disperse and conceal the proceeds of their illicit activities the world over have no regard for national borders. They are positioned to take advantage of the differences between legal systems, the clash of bureaucracies, the protection of sovereignty, and, at many times, the complete incapacity of nations to work together to overcome their differences.

This is where international cooperation plays an important part in crime detection, crime prevention and prosecution. International cooperation in criminal matters such as mutual assistance and extradition are instruments which can be used to overcome the barriers of sovereignty and allow the international community to "fight back" despite existing differences. Both extradition and mutual legal assistance are about countries building bridges to overcome the differences in their legal systems and assisting each other in law enforcement matters.

### A. Legal Framework

Criminal offenders are mobile and often seek to evade detection, arrest and punishment by operating across international borders. They avoid being caught by taking advantage of those borders and playing on the frequent reluctance of the law enforcement authorities to engage in complicated and expensive transnational investigations and prosecution.

### B. Mutual Assistance in Criminal Matters (MLA)

MLA is the formal process by which one State requests another State to exercise its coercive powers or to take steps to obtain evidence that must be admissible in a criminal trial. MLA is commonly resorted to in situations when compulsive measures or legal sanctions are required to obtain evidence in a foreign States' jurisdiction. An example of compulsive measures would be the issue of subpoenas to witnesses to record statements before a judicial authority and production orders to financial institutions or companies. Thus it operates under different and much stricter rules than those that apply to the informal channels.

The MLA legal framework allows for the collection of evidence in a useable and admissible form by taking into account issues of voluntariness, authorization, oath, affirmation, certification and authenticity. The powers of the authorities in each country vary

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and it will be necessary to establish what can and cannot be obtained through discussions with the relevant authorities.

Before we can fully appreciate the issues and plan of action to fully encourage the utilization of the tools under international cooperation, i.e. MLA and extradition, a brief look at its legal framework is necessary.

### 1. MLA Legislation

Malaysia already has in place the mechanism for international cooperation such as the Mutual Assistance in Criminal Matters Act 2002 [*Act 621*] (“MACMA”) which came into force on 1 May 2003. MACMA is an Act which makes provisions for mutual assistance in criminal matters to be rendered and sought between Malaysia and other countries and for matters connected therewith. The Mutual Assistance in Criminal Matters Regulations 2003 also has been enacted and came into effect on 15 June 2003 to complement the implementation of MACMA.

MACMA provides for MLA pursuant to a Mutual Legal Assistance Treaty (MLAT)<sup>1</sup> or where a request is made by a State that does not have an MLAT with Malaysia (non-treaty partner), the Minister charged with the responsibility for legal affairs, may, where the requirements of MACMA have been fulfilled and on the recommendation of the Attorney General, issue a special direction to enable the request to be executed in accordance with the provisions of MACMA.<sup>2</sup>

#### (i) *Central Authority*

The Central Authority for MLA is the Attorney General of Malaysia who is empowered to make and receive requests to and from the foreign States.<sup>3</sup> These requests shall be made and sent through diplomatic channels.<sup>4</sup>

#### (ii) *Scope of Offences and Dual Criminality Principle*

In considering a request from a foreign State for rendering assistance under the MLA regime, the requirements of *dual criminality* and *threshold* are pertinent in granting assistance to a foreign country. Dual criminality is a mandatory requirement in order for Malaysia to provide assistance to foreign States. This is to ensure that the offence provided for in the request has a relevant corresponding provision under the Malaysia law. The Attorney General (AG) shall refuse any request from any foreign State if the act or omission, had it occurred in Malaysia, would not have constituted an offence against the laws of Malaysia.<sup>5</sup>

It is mandatory that the issue of threshold is satisfied where the request for assistance can only be made if it relates to “criminal matters”<sup>6</sup> and in respect of a serious offence<sup>7</sup> or a foreign serious offence.<sup>8</sup>

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<sup>1</sup> Section 17(1) of MACMA.

<sup>2</sup> Section 18 of MACMA.

<sup>3</sup> Sections 7 and 19 of MACMA.

<sup>4</sup> Sections 7(2) and 19(2) of MACMA.

<sup>5</sup> Section 20(1)(f) of MACMA.

<sup>6</sup> Section 2 of MACMA defines the term “criminal matter” as being in respect of a serious offence or a serious foreign serious offence as (a) a criminal investigation, (b) criminal proceedings or (c) an ancillary criminal matter.

<sup>7</sup> “Serious offence” is defined in Section 2 of MACMA as (a) an offence as defined under the Anti-Money Laundering Act 2001 [*Act 613*], (b) an offence against the laws of Malaysia where the maximum penalty of the

However, in view of the current developments relating to MLA and desiring to improve the effectiveness of the law enforcement authorities of the countries in the investigation of crime and in proceedings pertaining to criminal matters through cooperation and MLA, Malaysia is in the midst of reviewing the current MLA law and the Model Treaty in order to keep abreast of the common practices by other foreign States.

*(iii) Undertaking of Reciprocity and Specialty*

Once the issue of dual criminality has been satisfied, the Requesting State is also required to provide undertakings of reciprocity<sup>9</sup> and specialty.<sup>10</sup> The Attorney General will refuse any request from any foreign State if that State fails to give an undertaking that it will subject to its laws, comply with a future request by Malaysia to that State for assistance in criminal matters if that State is not the party to the treaty with the Government of Malaysia. This is to ensure that the Requesting State will oblige (reciprocate) a future request based on a similar offence from Malaysia so as to avoid a one-sided affair.

There is a need for the undertaking of specialty to be made to avoid the assistance requested being used for a matter other than the criminal matter in respect of which the request was made. This is to ensure that the information obtained from Malaysia can only be used for the requested purpose due to the confidentiality element contained in the request.

*(iv) Types of Assistance Available under MACMA<sup>11</sup>*

Under MACMA, the Attorney General may make arrangements for the provision of the following assistance<sup>12</sup>:

- (a) providing and obtaining of evidence and things<sup>13</sup>;
- (b) the making of arrangements for persons to give evidence, or to assist in criminal investigations<sup>14</sup>;
- (c) the recovery, forfeiture or confiscation of property in respect of a serious offence or a foreign serious offence<sup>15</sup>;
- (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<sup>16</sup>;
- (e) the execution of requests for search and seizure<sup>17</sup>;

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offence is death and the minimum term of imprisonment is not less than one year and (c) any attempt, abetment or conspiracy to commit any of the offences referred to in (b).

<sup>8</sup> Section 2 of MACMA defines foreign serious offence as an offence 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 that consists of or includes activity which, if it had occurred in Malaysia, would have constituted a serious offence.

<sup>9</sup> Section 20(3)(d) of MACMA.

<sup>10</sup> Section 20(1)(j) of MACMA.

<sup>11</sup> The list of assistance is non-exhaustive.

<sup>12</sup> Section 3 of MACMA.

<sup>13</sup> Section 22 of MACMA.

<sup>14</sup> Section 27 of MACMA.

<sup>15</sup> Section 31- 34 of MACMA.

<sup>16</sup> Section 31 of MACMA and Reg. 23-26 of MACMR.

<sup>17</sup> Section 35-36 of MACMA.

- (f) the location and identification of witnesses and suspects<sup>18</sup>;
- (g) the service of process<sup>19</sup>;
- (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.

(v) *Grounds of Refusal – Mandatory*

A request for assistance will be refused as required by Malaysian law<sup>20</sup>, if the Attorney General is of the opinion that:

- (a) Treaty/Agreement noncompliance – there is a failure to comply with the terms of any treaty or other agreement between Malaysia and that prescribed foreign State in respect of that request;
- (b) Political Offence – 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) Military offence – 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) Ulterior purpose – 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) Double jeopardy – the request relates to the investigation, prosecution or punishment of a person for an offence in a case where the person has been convicted, acquitted or pardoned by a competent court or other authority in that prescribed foreign State or 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) Dual criminality – 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) Insufficient gravity – the facts constituting the offence to which the request relates does not indicate an offence of sufficient gravity;

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<sup>18</sup> Section 39 of MACMA.

<sup>19</sup> Section 40 of MACMA.

<sup>20</sup> Section 20(1) of MACMA.

- (h) Insufficient importance – the thing requested of insufficient importance to the investigation or could reasonably be obtained by other means;
- (i) Impairment of sovereignty etc. – the provision of the assistance would affect the sovereignty, security, public order or other essential public interest of Malaysia;
- (j) Specialty – the appropriate authority fails to undertake that the thing requested will not be used for a matter other than the criminal matter in respect of which the request was made;
- (k) Return of thing obtained – in the case of a request for assistance under sections 22, 23, 24, 25 and 26 or sections 35, 36, 37 and 38 of the MACMA, the appropriate authority fails to undertake to return to the Attorney General, upon his request, anything obtained pursuant to the request upon completion of the criminal matter in respect of which the request was made;
- (l) Criminal matter prejudiced – the provision of the assistance could prejudice a criminal matter in Malaysia; or
- (m) Contrary to law – the provision of the assistance would require steps to be taken that would be contrary to any written law.

The Attorney General may exercise his discretionary powers<sup>21</sup> to refuse a request on the following grounds –

- (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 the 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.

*(vi) Confidentiality of Request and the Provided Information*

A request to Malaysia may state that confidentiality of the request (both as to its content and the fact that it has been made) is required. It would be helpful if the reasons for requiring confidentiality are given in the request. Requests for confidentiality will normally be entertained.

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<sup>21</sup> Section 20(3) of MACMA.

*(vii) The Internal Procedure for Requesting MLA to Foreign States*

The Attorney General's Chambers provides a form in which a request from a foreign country is to be made<sup>22</sup>, a copy of which is annexed herewith as APPENDIX 1.

2. Agreements/Treaties

In addition to MACMA, Malaysia also has entered into international (bilateral and multilateral) treaties or other agreements on mutual assistance in criminal matters which impose a legal obligation upon Malaysia within its legal framework to obtain and render mutual assistance in criminal matters to the treaty partners.

The most common formal procedure used by States to request or provide legal assistance in criminal matters is through a formal bilateral MLAT. Malaysia had entered into a multilateral mutual legal assistance in criminal matters treaty<sup>23</sup> and five (5) bilateral MLATs which form the legal basis to request and render MLA assistance.<sup>24</sup>

The ASEAN MLAT is intended to facilitate the implementation of ASEAN Member Countries' obligations under MLA regimes that have been established through international instruments such as the United Nations Convention against Transnational Organized Crime (UNTOC) and the United Nations Convention against Corruption (UNCAC). ASEAN Member Countries have developed a strong legal framework that regulates the provision of MLA through the ASEAN MLAT and this reflects the common desire and commitment among the ASEAN Member States in improving the effectiveness of the law enforcement authorities of the Parties in the prevention, investigation and prosecution of offences through cooperation and MLA.

These MLATs seek to improve the effectiveness of rendering of assistance where it regularizes and facilitates its procedures. It creates unambiguous and binding obligations and makes the MLA process reliable and effective as the provisions are tailored to the respective needs of the negotiating States and can be customized to suit their respective needs. The negotiation process also provided an opportunity to negotiating Parties to get acquainted with the legislation of the other Parties.

**C. Extradition**

Extradition, unlike MLA, is the oldest component of international cooperation and is very much familiar to the prosecutors and law enforcement authorities in Malaysia. However, in comparison with our foreign counterparts, outgoing extradition requests from Malaysia are still relatively low.

In simple terms extradition could be termed as the process by which a fugitive criminal is returned from the country where he is found to the country where he is accused of or has been

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<sup>22</sup> Form AGC2- Model Form for Request to Malaysia.

<sup>23</sup> Treaty on Mutual Legal Assistance in Criminal Matters (among like-minded ASEAN Member Countries).

<sup>24</sup> Treaty between the Government of Malaysia and the Government of Australia on Mutual Assistance in Criminal Matters; Treaty between the Government of Malaysia and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters; Agreement between the Government of Malaysia and the Government of the Hong Kong Special Administrative Region of the People's Republic of China concerning Mutual Assistance in Criminal Matters; Treaty between the Government of Malaysia and the Government of the United Kingdom of Great Britain and Northern Ireland on Mutual Legal Assistance in Criminal Matters and Treaty between the Government of Malaysia and the Government of the Republic of India on Mutual Assistance in Criminal Matters.

convicted of an offence. It is an arrangement designed to prevent criminals from escaping from justice by crossing frontiers.

Extradition in Malaysia is usually employed when prosecutors intend to prosecute accused person/persons who are no longer within the jurisdiction of the country. Malaysia needs to ensure that criminals cannot evade justice simply by crossing borders. This requires a responsive, streamlined extradition system that effectively combats domestic and transnational crime, including terrorism, with appropriate safeguards.

#### 1. Extradition Legislation

Extradition matters in Malaysia are governed by the Extradition Act 1992 [Act 479] (“EA”). Malaysia’s extradition relationships with other countries exist to enable Malaysia to ensure the effective administration of criminal justice in this country. Malaysia’s extradition relationships also enable us to cooperate with partner countries to fight crime and prevent Malaysia from becoming a refuge and safe haven for persons accused of serious crimes in other countries.

##### (i) *Central Authority*

The Minister of Home Affairs is the central authority in extradition matters.<sup>25</sup> In practice, the Attorney General’s Chambers examines and advises the Minister on whether a request complies with the Extradition Act. Malaysian extradition requests will be prepared by the Attorney-General’s Chambers with approval of the Minister for Home Affairs.

##### (ii) *Scope of Offences and Dual Criminality Principle*

Fugitive criminals can only be extradited for “extradition offences.”<sup>26</sup> Dual criminality is also a mandatory requirement for extradition where a person may be extradited only for conduct/acts which are criminal in both the requested and requesting jurisdictions. Two aspects of dual criminality are threshold where the request can only be entertained if the foreign offence underlying the request is punishable for not less than one (1) year imprisonment or with death. This is to determine that the offence is serious and not a trivial/petty offence. It does not mean the offence in the requesting state must have exactly the same description or terminology as a similar offence in Malaysia. The focus is on the act or omission underlying the request. Malaysia will do its best to fit the conduct into an offence under Malaysian law to accommodate the request.

##### (iii) *Undertaking of Reciprocity and Specialty*

The widely accepted principle for extradition is the *principle of reciprocity* where the requesting State gives assurances to the requested State that it will reciprocate or comply in a similar type of offence in future. Under the current Extradition Act, there is no provision on reciprocity. However, in practice, when Malaysia receives an extradition request from any country, among the mandatory requirements that need to be fulfilled by a Requesting State is the undertaking of reciprocity.

*Specialty* means a person shall be tried or punished, after extradition, only for the criminal conducts/acts for which his surrender has been made, unless the requested state, after surrender, gives consent to further trial or punishment.

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<sup>25</sup> Section 5 of EA.

<sup>26</sup> Section 32 of EA.

*(iv) The Internal Procedure for Requesting Extradition to Malaysia*

The handling of an extradition matter commences upon receipt of either of the following requests:

- (a) a request for a provisional warrant of arrest<sup>27</sup> pending a full extradition request; or
- (b) a full request for extradition.

The provisional warrant of arrest is used in cases of urgency. For treaty partners, requests for provisional warrants of arrest are usually made by the foreign state to the designated Central Authority as provided for in the treaty and the supporting documents or the particulars to be included in the request for provisional warrant will normally be identified in the said treaty itself. The Model Form is annexed herewith as APPENDIX 2.<sup>28</sup>

For non-treaty countries, 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 and the Attorney General's Chambers (AGC) is to advise the Ministry of Home Affairs to issue a Special Direction to give effect to the request<sup>29</sup>.

If the above matters are satisfied, the Royal Malaysia Police (RMP) will be notified of the request and the RMP's assistance will be sought to locate the fugitive criminal. Upon agreement by the Attorney General or issuance of a Special Direction by the Minister and upon confirmation on the location of the fugitive criminal, notice of application is to be filed. Upon execution by the RMP, to produce the fugitive criminal before the Magistrate Court and to apply for an order to remand the fugitive criminal to custody for such reasonable period of time with reference to the circumstances of the case, as he may fix, and for this purpose the Magistrate shall take into account any period in the relevant extradition treaty relating to the permissible period of remand upon provisional arrest of a fugitive criminal and to request a mention date on the last day of the remand period.

Upon receipt of the full request, the fugitive criminal is produced before the Magistrate Court, and a request is made for the case to be transferred to the Sessions Court. A request for extradition shall be made in writing and shall be sent through diplomatic channels. However, in urgent circumstances, an advance copy is sometimes transmitted to the AGC to enable initial work to be carried out. The advance copy is only to facilitate the work in the interest of expediting the request. It is not to be treated as an official request.

For non-treaty partners, undertakings of reciprocity are required. If the particulars and information received are insufficient, a request for better and further particulars and information from the requesting authority will be made. Unless expressly provided otherwise in an extradition treaty, a request for provisional arrest should be made by the diplomatic representative of the foreign State in Malaysia to the Minister of Home Affairs. The channel of transmission should be through the Malaysian Ministry of Foreign Affairs ("MoFA"). To

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<sup>27</sup> Section 13(1)(b) of EA.

<sup>28</sup> Model Form AGC-EX1-A.

<sup>29</sup> Section 3 of EA.



expedite consideration of the request, an advance copy should also be sent, simultaneously, directly to the International Affairs Division (“IAD”), Attorney General’s Chambers.

A full request requires requisition papers to be submitted through diplomatic channels and the Requesting country shall furnish a warrant of apprehension of the fugitive criminal issued by that country, particulars of him and the facts upon which, and the law under which, he is accused or was convicted as well as evidence sufficient to justify the issue of the warrant of apprehension under section 13 of the Extradition Act. The Attorney General’s Chambers provides a form<sup>30</sup> in which a request by a foreign country is made to Malaysia and is annexed herewith as APPENDIX 3.

- Extradition Proceedings –
  - Jurisdiction – The power and jurisdiction to hear extradition matters falls under the purview of the Sessions Court.<sup>31</sup>
  - Procedures – there are three different procedures envisaged under the Extradition Act—
    - (i) a full enquiry<sup>32</sup> where a prima facie standard of proof is required;
    - (ii) a full enquiry<sup>33</sup> where the Minister has issued a written direction under section 4 of the Extradition Act to dispense with the prima facie standard of proof;
    - (iii) a simplified procedure where the fugitive criminal informs the court that he consents to a waiver of committal proceedings.<sup>34</sup> The Sessions Court is required to follow the procedures provided in order to ascertain that the said waiver is given voluntarily and to advise the fugitive criminal on the effect of such consent. Upon such advice, if the fugitive criminal still consents to the waiver, the Sessions Court shall commit the fugitive criminal to prison to await the issuance of the warrant of surrender from the Minister.
- Extradition Hearing –
  - (i) The hearing of the extradition case is based on the affidavits and evidence filed by the parties. The Sessions Court is empowered to receive any other evidence to show that the fugitive criminal should not be returned.<sup>35</sup>
  - (ii) Writ of Habeas Corpus – Upon issuance of the committal order by the Sessions Court, the fugitive criminal may apply to the High Court for a writ of habeas corpus.<sup>36</sup> The said application will be heard by a High Court Judge. Upon the decision made by the High Court Judge, the aggrieved party (Appellant) may file an appeal against the said decision to the Federal Court. Upon receiving the records of appeal from the High Court, the Appellant is required to file a petition of appeal setting out the grounds of appeal to the Federal Court. Upon the final determination by the Federal Court—

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<sup>30</sup> Model Form AGC-EX1-B.

<sup>31</sup> Section 18 of EA.

<sup>32</sup> Section 19 of EA.

<sup>33</sup> Section 20 of EA.

<sup>34</sup> Section 22 of EA.

<sup>35</sup> Section 19(2) of EA.

<sup>36</sup> Section 36 of EA.

- if the fugitive criminal is discharged, he will be released from detention under the Act; or
- if the fugitive criminal is committed, he will be further detained pending the issuance of order of surrender by the Minister.

(iii) Application for Review<sup>37</sup> - If the Sessions Court discharged the fugitive criminal upon hearing under section 19 or 20 of the Extradition Act, the Public Prosecutor, upon the said decision, gives to the Sessions Court a notice of his intention to review the said decision at the High Court. The said Notice shall operate as a stay of the said order of discharge. Upon such notice, the Sessions Court may grant bail to the fugitive criminal pending the determination of the review by the High Court. Upon receiving instruction to proceed from the Requesting Party, AGC is required to file the application to review at the High Court within 10 days from the order of discharge. The said review is limited to questions of law only. The decision of the High Court shall be final and conclusive.

- Surrender – Upon final determination of the committal order, AGC will inform the Requesting Party of the decision and will request particulars of the officer(s) in charge to receive the fugitive criminal. Upon receiving the said particulars, AGC will advise the Minister to issue the surrender order under section 21(2) or section 22(3) of Act 479 to authorize the surrender of the fugitive criminal to the said authorized officer(s) of the Requesting Party. Upon receiving the said order of surrender from the Minister, AGC will consult with the RMP and the Requesting Party on the appropriate time/place of surrender. Upon agreement, RMP will assist the Requesting Party in the process of surrender. The process of surrender is to take place within 3 months or the period prescribed by the treaty after the date of committal order or after the final determination of the Court's decision. The Minister may, upon an application by the fugitive criminal or on his behalf, order such fugitive criminal to be discharged unless sufficient cause is shown to the contrary.

## 2. Extradition Agreements

Malaysia's extradition relationships with other countries exist to enable Malaysia to ensure the effective administration of criminal justice in this country. Malaysia's extradition relationships also enable us to cooperate with partner countries to fight crime and prevent Malaysia from becoming a refuge and safe haven for persons accused of serious crimes in other countries.

Extradition is not available at the request of members of the public. Malaysia's treaty partners have obligations to consider Malaysia's requests, and the process will be dealt with in accordance with the provisions of the treaty. In the absence of a treaty, it is a matter for the domestic law in the foreign country to determine whether the country can agree to Malaysia's extradition request, and for requests from the Requesting State (non-treaty based), the extradition process will be dealt with under the Extradition Act 1992.

Like the MLA regime, the EA provides the legal basis for extradition to and from Malaysia. It contemplates two bases for extradition (a) a treaty-based scheme<sup>38</sup> and (b) a non-treaty-based scheme. Presently, Malaysia has concluded bilateral treaties on extradition with six (6) countries which have come into force such as the Extradition Treaty between Great

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<sup>37</sup> Section 47 of EA.

<sup>38</sup> Section 3 of EA.

Britain and Siam,<sup>39</sup> the Treaty between the Government of the Republic of Indonesia and the Government of Malaysia Relating to Extradition, the Extradition Treaty between the Government of Malaysia and the Government of the United States of America; the Agreement between the Government of Hong Kong and the Government of Malaysia for the Surrender of Fugitive Offenders; the Treaty between the Government of Malaysia and the Government of Australia on Extradition; and the Extradition Treaty between the Government of Malaysia and the Government of the Republic of India.

## **II. INFORMAL CHANNELS**

As a matter of goodwill and international comity, law enforcement authorities around the world may assist each other in the investigation and prosecution of crimes through informal mutual assistance. MACMA allows assistance upon an informal request or other arrangement<sup>40</sup>.

At the preliminary stage of an investigation, coercive powers are not yet needed, and some form of “informal assistance” may suffice to provide information helpful to the investigation. This term is generally used for assistance through channels outside of the formal MLA regime, often through direct communications between counterparts such as financial intelligence units (“FIU’s”) or police sharing intelligence or data which is legally available to that agency through domestic databases. The informal channels have been effective law enforcement tools used among member countries for the expedient sharing of information and use of multiple tools available for each jurisdiction to trace, freeze or seize, and confiscate the assets of international criminal organizations.

The law enforcement authorities of Malaysia such as the Malaysian Anti-Corruption Commission may request their overseas counterparts to provide information or intelligence and conversely may, at their discretion, provide assistance to their respective foreign counterparts. This system of cooperation among law enforcement agencies has the advantage of speed, efficiency and effectiveness. However, assistance can only be offered to the extent that it does not conflict with any laws of Malaysia, and no compulsory measures may be employed in offering assistance. Hence such assistance often neglects the issue of admissibility of evidence.

## **III. OBSTACLES TO EFFECTIVE MLA AND RECOMMENDATIONS**

Malaysia has received from various countries a total of 162 MLA requests from 2007 till present. Malaysia has had many experiences in dealings with the requests received both from treaty partners and non-treaty partners. Malaysia has also made about 30 MLA requests to several countries. From our experience, some of the challenges, or rather barriers, to effective MLA that need to be ironed out and possible recommendations in enhancing cooperation are as follows –

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<sup>39</sup> The Minister pursuant to section 2(1) of Act 479 issued an order on 10 July 1992 directing for the provision of Act 479 to be applied to the Treaty (Extradition (Thailand) Order 1992) and the order was published in the Gazette as P.U. (A) 269. The order came into force on 21 February 1992. Malaysia and Thailand note that the Extradition Treaty between Great Britain and Siam which is applicable to Malaysia by virtue of the Extradition (Thailand) Order 1992 [*P.U. (A) 169/1992*], which was signed on 4 March 1911, does not address current extradition development. Hence, both countries are currently in the process of negotiating a new extradition treaty to be entered into by both countries.

<sup>40</sup> Section 4 of MACMA.

- *Establishment of effective Central Authorities* – failure to identify or designate a responsible central authority to facilitate the implementation of MLA is likely to seriously impede the effectiveness of the process. Central authorities should be single entities to make it easier for other States to contact the appropriate authority for all kinds of mutual legal assistance matters.

It is critical for the central authorities to be staffed with officers who are legally trained, have developed institutional expertise and continuity in the area of mutual legal assistance for the speedy execution of the requests received from other Parties and in planning and drawing up requests as they must be accurate, up to date and widely available to those who frame or transmit mutual legal assistance requests.

- *Increasing availability and use of practical guides regarding national mutual legal assistance legal framework and practices (domestic manuals; guides for foreign authorities)* – States should adopt mechanisms to allow for the dissemination of information, regarding the law, practice and procedures for mutual legal assistance and on making requests to other States, to domestic authorities. One possible approach is to develop a procedural manual or guide for distribution to relevant law enforcement, prosecutorial, and judicial authorities to facilitate effective cooperation.

Guidelines on domestic law and procedures relating to mutual legal assistance to foreign authorities<sup>41</sup> should be made available to foreign authorities through a variety of methods, such as, for example, publication on a website and direct transmission to law enforcement partners in other States to inform foreign authorities on the requirements that must be met to obtain assistance.

- *Reducing delay* – significant delay in the execution of a request is partly caused by delays in consideration of the request by the receiving central authority and transmission of the request to the appropriate executing authority. States should take appropriate action to ensure that requests are examined and prioritized by central authorities promptly upon receipt and are transmitted to executing authorities without delay. States should consider placing time limits upon the processing of requests by central authorities. States are encouraged to afford foreign requests the same priority as similar domestic investigations or proceedings. States should also ensure that executing agencies do not unreasonably delay the processing of requests.
- *Reviewing of treaties and legislation* – States should regularly review their treaties and laws when necessary to ensure that they keep abreast of useful developments in international mutual legal assistance practice to enable speedy assistance, for example, doing away with the dual criminality, specialty and diplomatic channels requirements.
- *Increasing training of personnel involved in the mutual legal assistance process* – lectures and presentations by central authorities as part of regular training courses or workshops for law enforcement, prosecutors, magistrates or other judicial authorities; special workshops or seminars on a domestic, regional or multi-jurisdictional basis; introducing programmes on mutual legal assistance as part of the curriculum for law schools or continuing legal education programmes; and exchanges of personnel between central authorities of various jurisdictions;

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<sup>41</sup> AGC has published Guidelines entitled, “Obtaining Assistance From Malaysia in Criminal Case”.

- *Reducing complexity of mutual legal assistance through reform of extradition processes* – traditionally, some States did not extradite their nationals to the State in which a crime took place. At times, such States would instead seek to prosecute their nationals themselves in lieu of extradition, resulting in lengthy and complex requests for mutual legal assistance in order to obtain the necessary evidence from the country in which the crime took place. Recent increases in the number of States that either will extradite their nationals or temporarily extradite them provided that any sentence can be served in the State of their nationals, reduce the need for mutual legal assistance that would otherwise be required. States that do not extradite nationals should consider whether this approach can be reduced or eliminated. If this is not possible, the States concerned should seek to coordinate efficiently with a view to an effective domestic prosecution in lieu of extradition.
- *Ensuring confidentiality in appropriate cases* – some States are not in a position to maintain confidentiality of requests, and that the contents of requests were disclosed to the subjects of the foreign investigation/proceedings, thereby potentially prejudicing the investigation/proceedings. It was noted that confidentiality of requests was often a critical factor in the execution of requests. It was recommended that, where it is specifically requested, Requested States take appropriate measures to ensure the confidentiality of requests is maintained, and that in circumstances where it is not possible to maintain confidentiality under the law of the Requested State, the Requested State notify the Requesting State at the earliest possible opportunity, and in any case prior to the execution of the request, in order that it may decide whether it wishes to continue with the request in the absence of confidentiality.
- *Execution of requests in accordance with procedures specified by the Requesting State* – It is important to comply with formal evidentiary/admissibility requirements stipulated by the Requesting State to ensure the request achieves its purpose; failure to comply with such requirements would render it impossible to use the evidence in the proceedings in the Requesting State. This causes delay, where the requested material has to be returned to the Requested State for certification/authentication in accordance with the request. The Requested State should make every effort to achieve compliance with specified procedures and formalities to the extent that such procedures/formalities are not contrary to the domestic law of the Requested State. States are also encouraged to consider if domestic laws relating to the reception of evidence can be made more flexible to overcome problems with the use of evidence gathered in a foreign State.

## VI. CONCLUSION

Effective implementation of MLA requires well trained staff in the applicable laws, principles, and practices as failure to meet the standards of requested states can greatly compromise the successful outcome of MLA requests. International corruption case proceedings take place in a complex environment where different national legal systems, including different institutions and models of investigation and prosecution provide obstacles to effective legal cooperation across borders.

The absence of uniform procedures for granting MLA results in lengthy and cumbersome procedures with no guarantee of timely and successful provision of the requested assistance. There have been some cases where pieces of evidence were finally provided long after the trial had been completed. In addition to different and sometimes incompatible transnational and national systems for police co-operation, investigation and prosecution, MLA faces

challenges of organization, efficiency and effectiveness in many developing countries. Last but not least, the outcome of MLA greatly depends on political factors affecting the decisions of the requested State, including issues of national interest and security.

## APPENDIX I

Version 1.3 – November 2010

### FORM AGC 2 [Section 19]

#### MODEL FORM FOR REQUEST TO MALAYSIA

**To:**

The Attorney General of Malaysia  
Level 8 Attorney General's Chambers Malaysia  
No. 45 Persiaran Perdana  
62100 PUTRAJAYA  
MALAYSIA.

(Attention: Head of the International Affairs Division)

**From:**

[name appropriate authority/Central Authority of requesting State]<sup>1</sup>

Through diplomatic channels

#### REQUEST FOR MUTUAL ASSISTANCE IN A CRIMINAL MATTER

**RE:** *(insert particulars)*

#### INTRODUCTION

**EITHER:**

1. I/The office of *(name of designated authority under an operative bilateral agreement with Malaysia for mutual assistance in criminal matters)*, being the Central Authority designated by Article *(number of the relevant Article)* of the Treaty between the Government of Malaysia and the Government of *(name of requesting foreign State)* on Mutual Assistance in Criminal Matters (after this referred to as "the Treaty") to make requests for mutual assistance in criminal matters on behalf of *(name of requesting foreign State)*, and being empowered by *(state relevant provisions of empowering legislation of requesting foreign State)*

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<sup>1</sup> Please insert the name of the Central Authority if the request is made pursuant to an operative bilateral agreement with Malaysia, which requires requests to be made by a designated Central Authority. In other cases, please insert the name of the appropriate authority.

to make requests for mutual assistance in criminal matters, present this request to the Central Authority of Malaysia.<sup>2</sup>

**OR:**

1. I/The office of (*describe appropriate authority, either person or office*), being an appropriate authority by virtue of (*state relevant provisions of empowering legislation of requesting foreign State*) to make requests for mutual assistance in criminal matters on behalf of (*name of requesting foreign State*), present this request to the Attorney General of Malaysia.<sup>3</sup>

### **AUTHORITY FOR REQUEST**

**EITHER:**

2. This request is made under the Treaty.<sup>4</sup>

**OR:**

2. (*Name of requesting foreign State*) makes this request for assistance to be extended under the Mutual Assistance in Criminal Matters Act 2002 [*Act 621*] of Malaysia.<sup>5</sup> The request is made in respect of a criminal matter within the meaning of subsection 2(1) of the Mutual Assistance in Criminal Matters Act 2002.

### **NATURE OF REQUEST**

- 3.1 This request relates to a (*criminal matter*)<sup>6</sup> concerning (*describe subject of criminal matter*).
- 3.2 The personal details of the subject of the request are as follows:

Name/Description:  
Date of birth:  
Age:  
Occupation:  
Nationality:  
Passport No.

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<sup>2</sup> This version may be used by a foreign State having an operative bilateral agreement for mutual assistance in criminal matters with Malaysia.

<sup>3</sup> This version may be used by a foreign State without any operative bilateral agreement for mutual assistance in criminal matters with Malaysia.

<sup>4</sup> This version may be used by a foreign State having an operative bilateral agreement for mutual assistance in criminal matters with Malaysia.

<sup>5</sup> This version may be used by a foreign State without any operative bilateral agreement for mutual assistance in criminal matters with Malaysia.

<sup>6</sup> State whether it is an investigation, prosecution or an ancillary criminal matter relating to the restraining of dealing with property or the enforcement or satisfaction of a foreign forfeiture order.



Address/Location:

3.3 The details of the property to be traced/restrained/forfeited are as follows<sup>7</sup>:

Description:

Location:

Other relevant details:

3.4 The reasons for suspecting that the person/property is in Malaysia are as follows<sup>8</sup>:

3.5 The authority having the conduct of the criminal matter is (*describe authority in the requesting foreign State concerned with the criminal matter*).

### **STATEMENT OF FACTS**

4. (*Describe the material facts of the criminal matter including, in particular, those facts necessary to establish circumstances connected to evidence sought in Malaysia and the relevance of Malaysian evidence to the criminal matter in the requesting foreign State.*)

### **CRIMINAL OFFENCES/APPLICABLE LEGISLATION/PENALTIES**

#### **EITHER:**

5.1 (*Name of suspects/defendants*) are (*suspected of having/alleged to have*) committed/have been charged with the commission of the following offences, namely -

- (*describe offences and provisions of the legislation contravened*)

The maximum penalties for the above offences, which are the subject of this (*investigation/prosecution*) are:

- (*specify maximum penalty for each offence and applicable law*)<sup>9</sup>.

#### **OR:**

5.1 A foreign forfeiture order (*has been/may be*) made in proceedings in (*name of requesting foreign State*). (*State basis for any statement that a foreign forfeiture order may be made.*)

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<sup>7</sup>Applicable where request relates to restraint of property or enforcement of a forfeiture order.

<sup>8</sup>Applicable where request relates to restraint of property or enforcement of a forfeiture order.

<sup>9</sup>Applicable where request relates to an investigation or prosecution.

The foreign forfeiture order is connected with (*state the relevant offences*) in (*name of requesting foreign State*) the maximum penalties for which are (*specify maximum penalty for the offence and applicable law*)<sup>10</sup>.

- 5.2 A copy/extract of the relevant legislation is attached and marked as “Attachment A” to this request.

### **PURPOSE OF THE REQUEST**

6. By this request it is intended to (*state purpose: e.g. secure admissible evidence for the purpose of the criminal proceedings against the defendants, enforce the abovementioned foreign forfeiture order, etc.*)

### **MANDATORY UNDERTAKINGS**

- 7.1 It is confirmed that this request:

- (a) does not relate to the investigation, prosecution or punishment of a person for a criminal 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;
- (b) does not relate 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;
- (c) is not made for the purpose of investigating, prosecuting, punishing or otherwise causing prejudice to a person on account of that person’s race, religion, sex, ethnic origin, nationality or political opinions;
- (d) does not relate 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 of the (*name of the requesting foreign State*); or
  - (ii) has undergone the punishment provided by the law of (*name of the requesting foreign State*),

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

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<sup>10</sup> Applicable where request relates to restraint of property or enforcement of a foreign forfeiture order.

(e) does not relate 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;

[(f) does not have as its primary purpose the assessment or collection of tax.]<sup>11</sup>

7.2. The (*appropriate authority of the requesting foreign State*) further undertakes -

(a) 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<sup>12</sup>;

(b) that in the case of a request for assistance under sections 22, 23, 24, 25 and 26 or sections 35, 36, 37 and 38 of the Mutual Assistance in Criminal Matters Act 2002, to return to the Attorney General of Malaysia, upon his request, any thing obtained pursuant to the request upon completion of the criminal matter in respect of which the request was made<sup>13</sup>;

(c) that (*name of person*) who attends in (*name of requesting foreign State*) shall not -

(i) be detained, prosecuted or punished for any offence against the law of (*name of requesting foreign State*) that is alleged to have been committed, or that was committed, before the his/her 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 his/her departure from Malaysia; or

(iii) be required to give evidence or assistance in relation to any criminal matter in (*name of requesting foreign State*) other than the criminal matter to which the request relates, unless he/she has left (*name of requesting foreign State*) or he/she has had the opportunity of leaving (*name of requesting foreign State*) and has remained in (*name of requesting foreign State*) otherwise than for the purpose of giving evidence or assistance in relation to the criminal matter to which the request relates<sup>14</sup>;

(d) that any evidence given by (*name of person*) in the criminal proceedings to which the request relates, if any, will be inadmissible or otherwise

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<sup>11</sup> Necessary only if the criminal matter is an investigation concerning offences relating to taxation and a bilateral agreement with Malaysia is in operation.

<sup>12</sup> Not applicable if the Attorney General consents pursuant to subsection 20(2) of the Mutual Assistance in Criminal Matters Act 2002.

<sup>13</sup> Not applicable if the Attorney General consents to waive this requirement.

<sup>14</sup> Applicable if request relates to attendance of person in requesting foreign State.

disqualified from use in the prosecution of *(name of person)* for an offence against the law of *(name of requesting foreign State)*, other than for the offence of perjury or contempt of court in relation to the giving of that evidence<sup>15</sup>;

- (e) that *(name of person)* will be returned to Malaysia in accordance with arrangements agreed to by the Attorney General of Malaysia<sup>16</sup>; and
- (f) *(such other matters as the Attorney General of Malaysia considers appropriate)*.

### **DESCRIPTION OF ASSISTANCE REQUESTED**

8. The Attorney General of Malaysia is requested to take such steps as are necessary to give effect to the following:

- (a) examination on oath or affirmation of a witness before a Sessions Court Judge;

(e.g.) Mr. X  
ABC Co., Ltd.  
(address)

to be orally examined on oath or affirmation on the following matters:

- *(specify clearly the relevant issues/areas relating to the subject-matter of the criminal proceedings/investigation on which evidence of the witness is sought and/or provide a list of the relevant questions)*

#### **Note:**

This statement is to be obtained in the form of an affidavit in accordance with Form 1 attached to this request.

- (b) production of things (documents, books, etc.) before a court [and obtaining of oral evidence of the witness producing such material for the purpose of identifying and proving the material produced]<sup>17</sup>;

(e.g.) Director  
ABC Co., Ltd.

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<sup>15</sup> Applicable if request relates to attendance of person in requesting foreign State.

<sup>16</sup> Applicable if request relates to attendance of person in requesting foreign State.

<sup>17</sup> Include this part if it is deemed necessary for the purposes of admissibility of the documents in evidence.

(address)

to be required to produce (*describe the form of evidence e.g. "certified copies"*) of the following documents for the period (*state relevant time frame*):

- (*specify documents or classes thereof*).

The above witness to be orally examined on oath or affirmation on the following matters for the purpose of identifying and proving the documents produced:

- (*state relevant particulars*).

(e.g.)

- to provide confirmation as to his position in a company/office and that he is responsible for keeping/maintaining/holding the records in relation to the subject-matter of the investigation
- that he is authorised by the relevant law of the requested foreign State to make the affidavit
- to confirm that he has access to the records kept in relation to the subject-matter of the investigation in the normal course of his duties
- to confirm the authenticity of the copies of the documents supplied
- to confirm that the documents were created in the ordinary course of business

**Note:**

This statement is to be obtained in the form of an attestation in accordance with Form 2 attached to this request.

(c) search of person or premises for things;

(e.g.) The premises of ABC Co., Ltd.  
(address)

to be searched under a search warrant for the seizure of the following from the company:

- *(provide details of the things sought to be searched for and seized).*
- *(support any request for originals of items seized with reasons).*

(d) production of material (documents, books, etc.) through production orders;

(e.g.) Manager  
ABC Bank Ltd.  
(address)

to be required to produce copies of the following documents under a production order:

- *(describe particulars of material required to be produced and where located).*
- *(state grounds for believing that the material sought is likely to be of substantial value to the criminal matter in the requesting foreign State).*
- *(support any request for the production of originals of documents with reasons).*

(e) arrangement of travel of person/prisoner from Malaysia to assist in a criminal matter;

(e.g.) Arrangements to be made for Mr. X  
(address)

to travel to *(name of requesting foreign State)* to give assistance in a *(criminal matter)*<sup>18</sup> by rendering the following assistance:

- *(specify the assistance sought).*
- *(provide the undertakings required by the law of Malaysia).*
- *(provide details of the allowances to which the person will be entitled, and of the arrangements for security and accommodation for the person, while the person is in the requesting foreign State pursuant to the request).*

(f) enforcement of a foreign forfeiture order/request to assist in the restraining of dealing in property;

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<sup>18</sup> State whether it is an investigation or criminal proceedings of an offence in the requesting foreign State or an ancillary criminal matter.

- *(state particulars of the foreign forfeiture order to be enforced, or the property to be restrained and present state of related proceedings).*
- (g) assistance in locating/identifying and locating a person who is suspected to be involved in/to have benefited from the commission of a foreign serious offence;
  - (e.g.) Arrangements to be made to locate/identify and locate Mr. X who is believed to be in Malaysia with the last known address at *(address)*.
    - *(state particulars of person concerned).*
- (h) assistance in tracing property suspected to be connected to a foreign serious offence;
  - (e.g.) Arrangements to be made to trace *(description of property)* believed to be in Malaysia.
    - *(state particulars of property concerned).*
- (i) service of process.
  - (e.g.) Mr. X  
(address)

to be served with the following documents:

  - *(describe documents to be served).*
  - *(specify manner of service and period within which documents to be served).*
  - *(specify required proof of service).*

## **EXECUTION OF REQUEST**

### **(A) CONFIDENTIALITY**

- [9.1 It is requested that the fact that this request has been made and the execution of the request be kept entirely confidential except to the extent necessary to execute the request as *(state reasons e.g. the likelihood of interference with witnesses and /or destruction of evidence, etc.)*]<sup>19</sup>

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<sup>19</sup> Necessary if confidentiality is requested.

[9.2 It is also requested that the evidence of the witness be taken *in camera* as there exist reasonable grounds for believing that it is in the interests of the witness to give evidence *in camera* because (*state reasons*) and the criminal matter would be substantially prejudiced if the examination was conducted in open court because (*state reasons*).]<sup>20</sup>

**(B) PARTICULAR PROCEDURES TO BE FOLLOWED**

10. It is requested that the following procedures be observed in the execution of the request:

- (*state details of manner and form in which evidence is to be taken and transmitted to requesting foreign State, if relevant.*)

(e.g.)

In relation to the evidence obtained on examination on oath/affirmation of a witness, please provide the statement in admissible form. To be admissible, the statement must be made in the form of an affidavit except when recorded in writing by a judicial authority. If documents and records are referred to or are otherwise enclosed, the documents and records must be accompanied by an attestation of authenticity. Copies of the prescribed form for the affidavit and attestation of authenticity are attached to this request and marked as Attachment B and Attachment C respectively.

- (*state any special requirements as to certification/authentication of documents.*)

(e.g.)

In relation to evidence to be provided by affidavit-

- (a) the affidavit should be made before a judicial officer or other officer who is authorised to administer oaths or affirmations in Malaysia. When the affidavit has been sworn or affirmed, the affidavit should be sealed with an official or public seal of Malaysia to ensure compliance with (*relevant provision of applicable law of requesting foreign State*), a copy of which is attached to this request and marked as Attachment D;
- (b) if the affidavit runs for more than one page, each page other than the last should be initialed both by the person who makes the affidavit and by the person before whom the affidavit is made; and
- (c) each page of each attachment should be initialed both by the person who makes the affidavit and by the person before whom the affidavit is made.

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<sup>20</sup> Applicable if the request relates to the taking of evidence before a court for the purposes of an investigation in the requesting foreign State.



- *(state if attendance by representative of appropriate authority at examination of witnesses/execution of request is required and, if so, the title of the office held by the proposed representative.)*

(e.g.)

Permission is requested for an officer of *(name of appropriate authority in requesting State)* to travel to Malaysia to assist in the execution of this request.

**(C) PERIOD OF EXECUTION<sup>21</sup>**

11. It is requested that the request be executed urgently/within *(state period giving reasons i.e. specify likely trial or hearing dates or any other dates/reasons relevant to the execution of the request).*

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<sup>21</sup> Section 23 of the Mutual Assistance in Criminal Matters Act 2002 prescribes a period of 7 days for the production of documents and things under a court order. Where large quantities of documents are involved, a longer period may be required.

**(D) TRANSMISSION OF REQUESTED MATERIAL**

12.1 Any documents, statements, information or things obtained in response to this request should be sent to *(name of appropriate authority in requesting foreign State)* at the following address:

- *(state address of appropriate authority in requesting foreign State).*
- *(state telephone, facsimile, electronic mail address).*

12.2 The *(appropriate authority in requesting foreign State)* will forward the material to *(name of requesting authority in requesting foreign State)*, being the relevant requesting authority in this matter.

**(E) DETAILS OF ALLOWANCES, ARRANGEMENTS FOR SECURITY AND ACCOMODATION<sup>22</sup>**

13.1 The allowances to which *(name of person)* will be entitled are as follows:

*(State details of allowances)*

13.2 The arrangements for the security of *(name of person)* are as follows:

*(State details of security arrangements)*

13.3 The arrangements for the accommodation of *(name of person)* are as follows:

*(State details of accommodation arrangements)*

**LIAISON**

14.1 The case officer of *(name of appropriate authority in requesting foreign State)* is:

*(name of officer of appropriate authority in requesting foreign State, telephone and facsimile numbers and e-mail address)*

14.2 The following Malaysian officers of *(name of appropriate authority in Malaysia)* has knowledge of this matter:

*(name of officer of appropriate authority in Malaysia, telephone and facsimile numbers and e-mail addresses).*

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<sup>22</sup> If the request involves a person travelling from the requested foreign State to Malaysia.

- 14.3 If permission is given for an officer of (*name of appropriate authority in requesting foreign State*) to travel to Malaysia, the officer is likely to be ((*name of officer of appropriate authority in requesting foreign State*)).

#### **SUPPLEMENTARY REQUEST**

15. The (*name of appropriate authority in requesting foreign State*) may wish to make supplementary requests for assistance in this matter if necessary.

#### **RECIPROCITY UNDERTAKING<sup>23</sup>**

16. The Government of (*name of requesting foreign State*) assures the Government of Malaysia that it would, subject to its laws, comply with a request by the Government of Malaysia to (*name of requested foreign State*) for assistance of this kind in respect of an equivalent offence.

#### **EITHER:**

17. I, \_\_\_\_\_, the (*name of appropriate authority of requesting foreign State*), pursuant to (*relevant provision in applicable law of requesting foreign State*) and at the instance of (*name of appropriate authority in requesting foreign State*), being satisfied that there are reasonable grounds for believing that there is evidence in Malaysia that would be relevant to an investigation/criminal proceedings in the (*name of requesting foreign State*), make this request to the Attorney General of Malaysia for assistance in relation to this criminal matter.

#### **OR:**

17. I, (*name of person*), an officer of the (*name of appropriate authority in requesting foreign State*), acting in reliance on the authority of the (*name of appropriate authority in requesting foreign State*) in the exercise of the executive powers under (*relevant provision of applicable law of requesting foreign State*) to make requests to foreign States for assistance in criminal matters, and at the instance of (*name of relevant authority in requesting foreign State*), make this request to the Attorney General of Malaysia for assistance in relation to this criminal matter.

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<sup>23</sup> Applicable if the request is made by a foreign State without any operative bilateral agreement with Malaysia. The undertaking should be given by the appropriate authority that is authorised to give such undertaking on behalf of the requesting foreign State.

Signed by

Name: \_\_\_\_\_

Office: \_\_\_\_\_

Date: \_\_\_\_\_

## APPENDIX II

### FORM AGC – EX 1- A

#### MODEL FORM FOR EXTRADITION REQUEST TO MALAYSIA FROM TREATY PARTNER

To:

The Minister of Internal Security  
Ministry of Internal Security  
Level 11, Block D1 & D2  
Federal Government Administrative Centre  
62512 PUTRAJAYA  
(Attn: Head of the Security and Public Order Division)

**OR**

[Name Central Authority for Malaysia designated by bilateral agreement].<sup>1</sup>

From:

[name appropriates Central Authority designated in bilateral extradition agreement with Malaysia]

[Through diplomatic channels]

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<sup>1</sup> Central Authority designated by treaty –

- Provisional arrest request:
  - Thailand – Ministry of Internal Security (diplomatic channel)
  - Indonesia – Inspector General of Police (diplomatic channel/direct/Interpol)
  - USA – Attorney General’s Chambers (diplomatic channel)
  - HK – Attorney General’s Chambers (direct)
  - General – Ministry of Internal Security (diplomatic channel)
  
- Extradition requests –
  - Thailand – Ministry of Internal Security (diplomatic channel)
  - Indonesia – Minister responsible for the administration of justice (diplomatic channel)
  - USA – Ministry of Internal Security (diplomatic channel)
  - HK – Attorney General’s Chambers – (direct)
  - General – Ministry of Internal Security (diplomatic channel)

**INTRODUCTION**

1. I/The office of (*name of designated authority under an operative bilateral agreement with Malaysia for extradition*), being the Central Authority designated by Article (*number of the relevant Article*) of the Treaty between the Government of Malaysia and the Government of (*name of requesting foreign State*) on extradition (after this referred to as “the Treaty”) to make requests for extradition on behalf of (*name of requesting foreign State*), and being empowered by (*state relevant provisions of empowering legislation of requesting foreign State*) to make requests for extradition, present this request to the Central Authority of Malaysia.<sup>12</sup>

**AUTHORITY FOR REQUEST**

2. This request is made under the Treaty.

**NATURE OF REQUEST**

3.1 This request for provisional arrest/extradition (*name of fugitive offender*) who is a fugitive criminal /offender \* from justice / convicted person \* whose surrender is being sought by (*name competent authority of requesting foreign State*) of (*name requesting foreign State*).The subject is a person who is believed to be presently in Malaysia at (*provide particulars of address/location of subject as available*).

3.2 The personal details of the subject are as follows:

Name/ Description: .....  
(*including aliases*)

Date of Birth: .....

Age : .....

Occupation : .....

Nationality: .....

National Identity Card No: .....

Passport No: .....

Address/Location: .....

.....

.....

Other relevant details: .....  
(e.g. height/eye color/particulars of Interpol Red Notice)<sup>3</sup>

\* *Delete which ever is not applicable*

<sup>2</sup> Insert if diplomatic channels required by bilateral agreement with Malaysia.

<sup>3</sup> Attach copies of relevant documents, e.g. passport, photograph, set of fingerprints, Interpol Red Notice.

3.3 The reasons for suspecting that the person is in Malaysia are as follows:

(provide particulars)

3.4 The authority having conduct of this matter is (describe authority in the requesting foreign State concerned)

#### **Intention to request the surrender of the person<sup>4</sup>**

4. The Government of (*name of requesting State*) intends to request the surrender of (*the subject*) in accordance with (*number of relevant Article*) of the Treaty and shall submit the required documents in support of a formal request for his surrender within (*specify period provided in Treaty*) / within the period required by the Malaysian authority pursuant to this request.

#### **5. A statement of the existence of a warrant of arrest.<sup>5</sup>**

5.1 On (*specify date*), a (*specify competent authority e.g. Judge/Magistrate/Judicial Authority*) in and for (*name of requesting foreign State*) issued a warrant for the arrest of the subject. The warrant specified that (*the subject*) is wanted for a charge of (*provide particulars of offence and provisions of relevant applicable law*).

5.2 The warrant of arrest remains in full force and effect. A copy of the warrant of arrest is at **Annex “\_“** and the proposed charges at **Annex “\_“**.

#### **Description of the offences and a statement of sentence.**

6.1 The subject is wanted for (*provide details of offences and provisions of relevant applicable of law*).

6.2 A person, who commits the offence of (*provide details of offences and provisions of relevant applicable of law*) is liable on conviction to (*specify maximum applicable penalty*).

6.3 There is a/is no \* time limitation for the prosecution of the said offence.

6.4 The particulars of the offence are set out in **Annex “\_“**.

6.5 A copy/ extract of the relevant legislation is at **Annex “\_“**

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<sup>4</sup> Applicable if initial request is for provisional arrest.

<sup>5</sup> Applicable if initial request is for provisional arrest.

### **The facts of the case**

7. Provide brief summary of the facts of the case.

*\* Delete which ever is not applicable*

### **SUPPORTING DOCUMENTS**

8. The supporting documents for this request for provisional arrest/ extradition\* comprise –
  - (a) *(specify supporting documents prescribed in bilateral extradition agreement with Malaysia).*
  - (b) *(specify any additional document available)*

E.g.

The supporting documents comprise a true copy of the relevant warrant of arrest for the subject and original affirmations/affidavits of witnesses made in the *(name of competent authority)* in the requesting foreign State and duly authenticated by *(name of authorized officer)* in the *(Central Authority)* of the requesting foreign State, a competent authority of the requesting foreign State.

### **DECLARATIONS.**

9. For the purpose of *(relevant Article of the Treaty)*, I declare that – *(insert declaration required by bilateral agreement with Malaysia.)*

E.g.

I declare that:

- (1) each of the offences in respect of which the surrender of the subject is requested is not an offence of a political character;
- (2) the surrender of the subject is not for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions;



- (3) the subject will not, if surrendered, be prejudiced at his trial, or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.

For the purpose of *(relevant Article)* of the Treaty I declare that, if the subject is surrendered to *(name of requesting foreign State)* by Malaysia, he will not, unless he has first had the opportunity to leave *(name of requesting foreign State)* and has not do so within *(specify period provided by bilateral agreement with Malaysia if any)* of having been free to do so or he has volunteered by returning to *(name of requesting foreign State)* be proceeded against, sentenced or kept in custody for any offence committed prior to his surrender to *(name of requesting foreign State)* other than:

- (1) the offence or offences in respect of which his surrender is ordered; or
- (2) any lesser offence, however describe, disclosed by the facts in respect of which his surrender was ordered provided that such an offence is an offence for which the subject can be surrendered under Treaty.
- (3) any other offence being an offence for which surrender may be ordered under the agreement and in respect of which the Government of Malaysia consents.

For the purpose of *(relevant Article of the Treaty is surrendered)* to *(name of requesting foreign State)*, he will not be surrendered to any other jurisdiction for any offence committed before his surrender unless the Government of Malaysia consents to such surrender or he has first had an opportunity to leave *(name of requesting foreign State)* and has not done so within *(specify period provided in bilateral Agreement with Malaysia)* and having been free to do so, or he has volunteered by returning to *(name for requesting foreign State)* having first left.

10. I, ....., the *(name of appropriate authority of Requesting foreign State)*, pursuant to *(relevant provision in applicable law of requesting foreign State)* and the instance of *(name of appropriate authority in requesting foreign State)*, being satisfied that there are reasonable grounds for believing that the subject is in Malaysia make this request to *(name of requested State)* for the provisional arrest/extradition of the subject.

### **Urgency**

(Please specify the reason/s for urgency if any)

11. **Liaison**

11.1. The case officer of *(name of appropriate authority in requesting foreign State)* is:

*(name of officer of appropriate authority in requesting foreign State, telephone, and facsimile numbers and e-mail address)*

11.2 The following Malaysian officer of *(name of appropriate authority in Malaysia)* has knowledge of this matter:

*(name of officer of appropriate authority in Malaysia, telephone, and facsimile numbers and e-mail address)*

**Signed by:**

Name : .....

Office : .....

Date : .....

c.c. NCB/Interpol/Royal Malaysian Police

**OR**

IN WITNESS WHEREOF is set the official seal of *(state name of the office making request)* of *(name of requesting foreign State)* and my signature.

This ..... day of ..... 2005.

(Seal)

.....  
(Name )  
(Office)

## APPENDIX III

### FORM AGC – EX 1- B

#### MODEL FORM FOR EXTRADITION TO MALAYSIA

To:

The Minister of Home Affairs  
Ministry of Home Affairs  
Level 11, Block D1 & D2  
Federal Government Administrative Centre  
62512 PUTRAJAYA

**OR**

[Name Central Authority for Malaysia designated by bilateral agreement].<sup>1</sup>

From:

[name appropriate Central Authority designated in bilateral extradition agreement with Malaysia]

[Through diplomatic channels]

#### **INTRODUCTION**

1. I/The office of (*name of designated authority under an operative bilateral agreement with Malaysia for extradition*), being the Central Authority designated by Article (*number of the relevant Article*) of the Treaty between the Government of Malaysia and the Government of (*name of requesting foreign State*) on extradition (after this referred to as “the Treaty”) to make requests for extradition on behalf of (*name of requesting foreign State*), and being empowered by (*state relevant provisions of empowering legislation of requesting foreign State*) to make requests for extradition, present this request to the Central Authority of Malaysia.

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<sup>1</sup> Central Authority designated by treaty –

- Extradition requests –
  - Thailand – Ministry of Home Affairs (diplomatic channel)
  - Indonesia – Minister of Justice (diplomatic channel)
  - USA – United States Department of Justice (diplomatic channel)
  - HK – Attorney General’s Chambers – (direct)
  - Australia - Attorney General’s Chambers (diplomatic channel)
  - India – Ministry of External Affairs (diplomatic channel)
  - General – Ministry of Home Affairs (diplomatic channel)

**AUTHORITY FOR REQUEST**

2. This request is made under the Treaty.

**NATURE OF REQUEST**

3.1 This request for extradition of (*name of fugitive offender*) who is a fugitive criminal / offender \* from justice / convicted person \* whose surrender is being sought by (*name competent authority of requesting foreign State*) of (*name requesting foreign State*).The fugitive criminal / offender \* is a person who is believed to be presently in Malaysia at (*provide particulars of address/location of subject as available*).

3.2 The personal details of the fugitive criminal / offender \* are as follows:

Name/ Description: .....  
(*including aliases*)

Date of Birth: .....

Age : .....

Occupation : .....

Nationality: .....

National Identity Card No: .....

Passport No: .....

Address/Location: .....  
.....  
.....

Other relevant details: .....  
(e.g. height/eye color/particulars of Interpol Red Notice)<sup>3</sup>

\* *Delete which ever is not applicable*

3.3 The reasons for suspecting that the person is in Malaysia are as follows:

(provide particulars)

3.4 The authority having conduct of this matter is (*describe authority in the requesting foreign State concerned*)

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<sup>3</sup> Attach copies of relevant documents, e.g. passport, photograph, set of fingerprints, Interpol Red Notice.

## **REQUEST FOR THE EXTRADITION OF THE FUGITIVE CRIMINAL / OFFENDER\***

4. The Government of (*name of requesting State*) now makes a request for the extradition of (name of fugitive criminal / offender \*), in accordance with Article (number of the relevant Article) of the Treaty and submits herewith the required documents in support of a formal request for his surrender.

## **A STATEMENT OF THE EXISTENCE OF A WARRANT OF ARREST**

- 5.1 On (*specify date*), a (*specify competent authority e.g. Judge/Magistrate/Judicial Authority*) in and for (*name of requesting foreign State*) issued a warrant for the arrest of the fugitive criminal / offender \*. The warrant specified that (fugitive criminal / offender\*) is wanted for a charge of (*provide particulars of offence and provisions of relevant applicable law*).
- 5.2 The warrant of arrest remains in full force and effect. A copy of the warrant of arrest is at **Annex “\_”** and the proposed charges at **Annex “\_”**.

## **DESCRIPTION OF THE OFFENCES AND A STATEMENT OF SENTENCE**

- 6.1 The fugitive criminal / offender \* is wanted for (*provide details of offences and provisions of relevant applicable of law*).
- 6.2 A person, who commits the offence of (*provide details of offences and provisions of relevant applicable of law*) is liable on conviction to (*specify maximum applicable penalty*).
- 6.3 There is a/is no \* time limitation for the prosecution of the said offence.
- 6.4 The particulars of the offence are set out in **Annex “\_”**.
- 6.5 A copy/ extract of the relevant legislation is at **Annex “\_”**

*\* Delete which ever is not applicable*

## **THE FACTS OF THE CASE**

7. (Provide brief summary of the facts of the case)

## **SUPPORTING DOCUMENTS**

8. The supporting documents for this request for extradition comprise –

- (a) *(specify supporting documents prescribed in bilateral extradition agreement with Malaysia).*
- (b) *(specify any additional document available)*

E.g.

The supporting documents comprise a true copy of the relevant warrant of arrest for the subject and original affirmations/affidavits of witnesses made in the *(name of competent authority)* in the requesting foreign State and duly authenticated by *(name of authorized officer)* in the *(Central Authority)* of the requesting foreign State, a competent authority of the requesting foreign State.

## **DECLARATIONS**

9. For the purpose of *(relevant Article of the Treaty)*, I declare that – *(insert declaration required by bilateral agreement with Malaysia.)*

E.g.

I declare that:

- (1) each of the offences in respect of which the surrender of the fugitive criminal / offender \* is requested is not an offence of a political character;
- (2) the surrender of the fugitive criminal / offender \* is not for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions;
- (3) the fugitive criminal / offender \* will not, if surrendered, be prejudiced at his trial, or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.
- (4) the prosecution of which his return is sought is not barred by time according to the law of ..... *(name of requesting foreign state)*;
- (5) each of the offences in respect of which the surrender of the subject is requested is not an offence under military law.

For the purpose of *(relevant Article)* of the Treaty I declare that, if the fugitive criminal / offender \* is surrendered to *(name of requesting foreign State)* by Malaysia, he will not, unless he has first had the opportunity to leave *(name of requesting foreign State)* and has not do so within *(specify period provided by bilateral agreement with Malaysia if any)* of having been free

to do so or he has volunteered by returning to (*name of requesting foreign State*) be proceeded against, sentenced or kept in custody for any offence committed prior to his surrender to (*name of requesting foreign State*) other than:

- (1) the offence or offences in respect of which his surrender is ordered; or
- (2) any lesser offence, however describe, disclosed by the facts in respect of which his surrender was ordered provided that such an offence is an offence for which the subject can be surrendered under Treaty.
- (3) any other offence being an offence for which surrender may be ordered under the agreement and in respect of which the Government of Malaysia consents.

For the purpose of (*relevant Article of the Treaty is surrendered*) to (*name of requesting foreign State*), he will not be surrendered to any other jurisdiction for any offence committed before his surrender unless the Government of Malaysia consents to such surrender or he has first had an opportunity to leave (*name of requesting foreign State*) and has not done so within (*specify period provided in bilateral Agreement with Malaysia*) and having been free to do so, or he has volunteered by returning to (*name for requesting foreign State*) having first left.

10. I, ..... , the (*name of appropriate authority of Requesting foreign State*), pursuant to (*relevant provision in applicable law of requesting foreign State*) and the instance of (*name of appropriate authority in requesting foreign State*), being satisfied that there are reasonable grounds for believing that the subject is in Malaysia make this request to (*name of requested State*) for the extradition of the fugitive criminal / offender \*.

### **URGENCY**

(Please specify the reason/s for urgency if any)

### **LIAISON**

11.1. The case officer of (*name of appropriate authority in requesting foreign State*) is:

*(name of officer of appropriate authority in requesting foreign State, telephone, and facsimile numbers and e-mail address)*

11.2 The following Malaysian officer of (*name of appropriate authority in Malaysia*) has knowledge of this matter:

*(name of officer of appropriate authority in Malaysia, telephone, and facsimile numbers and e-mail address)*

**Signed by:**

Name : .....

Office : .....

Date : .....

**OR**

IN WITNESS WHEREOF is set the official seal of (*state name of the office making request*) of (*name of requesting foreign State*) and my signature.

This ..... day of..... 20 .

(Seal)

.....  
(Name )  
(Office)



# INTERNATIONAL COOPERATION: MUTUAL LEGAL ASSISTANCE AND EXTRADITION

*Roziza Sidek*\*

## I. INTRODUCTION

Since the inception of the anti-corruption laws in Malaysia, vis-à-vis the Prevention of Corruption Act 1961 and the creation of the Anti-Corruption Agency, Malaysia has witnessed rapid economic development and its establishment as a major financial hub in the region. With this development, the crime of corruption has also grown in substance and complexity. We have also realized that corruption forms an integral part of other organized and serious fraud crimes.

Many corrupt activities have transformed into cross-border crimes. Criminals are also able to escape justice by speedily moving around to different places, taking advantage of the convenience of rapid modern-day travel. In the face of this challenge of hi-tech and internationalized corrupt activities, how to tackle cross-border corruption has become an important issue among law enforcement agencies worldwide.

The Malaysian Anti-Corruption Commission (MACC) has moved with the times and paid serious attention to the need for international cooperation in fighting corruption and organized crime. Our strategy in this respect focuses on three areas: Mutual Legal Assistance, Informal Assistance and Enforcement Officers' Training.

## II. INTERNATIONAL COOPERATION

### A. Enforcement Officers' Training

In order to strengthen investigation strategies among anti-corruption agencies in the Asia-Pacific Region, MACC, through its training academy, has organized regional anti-corruption training programmes at the Malaysian Anti Corruption Academy (MACA). At these training programmes, anti-corruption professionals from the region exchange information and ideas about the fight against corruption, evaluate existing strategies and develop new approaches towards detecting and fighting corruption.

### B. Informal Assistance

Informal assistance remains an invaluable tool in international cooperation in the fight against corruption. Less formalized, its strength lies in networking and information exchange among enforcement officers. To that end, MACC has relied on informal assistance provided to us by KPK (Indonesia), CPIB (Singapore) and ICAC (Hong Kong) in its detection and investigation of certain individuals. With their timely assistance, we have subsequently embarked on and completed our investigation of these individuals.

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\* Deputy Public Prosecutor, Malaysian Anti Corruption Commission.

MACC believes that as long as care is taken to gather information lawfully, with due regard to its future use as evidence, and as long as the authorities in both jurisdictions are informed, informal cooperation along these lines can be followed-up through formal channels by ensuring that requests are well documented. Platforms of this nature should serve as an ideal set up for us to not only socialize but to network and exchange information on matters that would eventually assist in the detection, investigation and prosecution of corruptors and their ill-gotten proceeds.

It must be borne in mind that the effectiveness of informal and to a lesser extent formal cooperation largely depends on trust which, in turn, develops through familiarity, working relationships and mutual respect for the informal rules of cooperation, such as confidentiality and reciprocity.

### **C. Mutual Legal Assistance**

Quite a number of cases investigated these days by MACC involve a cross-border element: either where the suspects had absconded or they had transferred their ill-gotten gains to places outside the territory or where the act of corruption is a collaboration of different nationals from different regions.

Ever since we have witnessed the increase of cross-border corruption, we have naturally relied on assistance and information from Interpol and other overseas law enforcement agencies in providing vital information about fugitive offenders, asset tracing information in relation to corrupt public officials and individuals, and in detecting joint collaboration from different nationals in acts of corruption or conspiracies to commit acts of corruption on Malaysian soil.

This assistance that we have received was as a result of formalized mutual-assistance treaties entered into by the Government of Malaysia with other governments and through informal assistance with anti-corruption agencies worldwide.

#### 1. The Mechanism in which Mutual Legal Assistance and Extradition Can Be Rendered

In the area of formalized assistance, The Mutual Assistance in Criminal Matters Act 2002 [Act 621] of Malaysia provides the backdrop for mutual assistance in criminal matters. Since the coming into effect of this Act, Malaysia has embarked on Mutual Legal Assistance Treaties with various countries to enhance their mutual legal assistance. Substantive and procedural requirements for extradition are set forth in the Extradition Act 1992 (Act 479).

#### 2. Agencies and Organizations Responsible For These Matters

The Central Authority responsible for matters pertaining to MLA requests is the Attorney General's Chambers of Malaysia whereas MACC is the specialized organization in Malaysia to combat corruption. Thus, for the purpose of rendering MLA requests, or handling such requests, MACC liaises closely with the International Affairs Division (IAD) of the Attorney General's Chambers.

The work process for MLA in MACC can be summarized as follows.

(i) For outgoing requests, the requesting officer submits requests for foreign assistance to the special unit at MACC known as the "Management Foreign Mutual Assistance in Criminal

Matters (MACMA) Branch". The authorized officer from the MACMA Branch studies the request and then drafts the MLA. The draft MLA will then be forwarded to the Central Authority for its perusal and discussion. After that, MACC then waits for the response from the Central Authority on the outcome of the request. Once the outcome has been received, the MACMA Branch prepares the full report on the result of the request and sends the report to the requesting officer (usually the investigating officer).

However, there still remain challenges for outgoing requests. These challenges sometimes impede investigation or subsequent prosecution of corrupt practices. Among the challenges faced are delay or failure to respond to queries by MACC and delay in execution of requests by law enforcement agencies, banks, etc. – for example, compliance with production orders.

(ii) For incoming requests, once the MACMA Branch receives the official request from the Central Authority, the MACMA Branch executes the assistance and submits the result of the request to the Central Authority.

For the extradition process, once the MACMA Branch receives the application for extradition, the authorized officer will discuss the matter with the Central Authority in order to obtain its consent. If consent is given, the MACMA Branch will then handle the matter either by transporting the suspect to/from Malaysia.

### **III. THE MACC EXPERIENCE TO SPEED UP THE PROCESS**

There is a broad consensus among the law enforcement authorities that proactive use of informal channels and alternative mechanisms for cooperation can complement, and often substitute for, formal MLA procedures, particularly during the early stages of investigations. Many of the requests by MACC for assistance on routine, non-coercive measures are dealt with through informal channels, such as gathering information from public records, contacting potential witnesses to determine availability and taking voluntary statements. Mutual legal assistance would then be used primarily for measures that would require the direct participation of law enforcement authorities during the investigation (such as the interviewing of involuntary witnesses, interviewing suspects under caution, obtaining bank and financial information, and search and seizure requests), and preventive and ultimately coercive measures.

### **IV. SUCCESS STORY**

By virtue of the bilateral agreement entered into between MACC and the Anti Corruption Bureau (ACB) in Brunei Darussalam, both agencies have agreed to mutually assist each other in respect of operational matters, by forming an "Operational Working Group". This working group committee has garnered a lot of success in combating corruption between the two countries in respect of investigation, as well as intelligence work, since its establishment in 2003.

For instance, MACC has made a request to obtain several copies of documents from the Brunei Customs Department and to record a statement from a Brunei Customs Department Officer which was linked to the investigation conducted by MACC. Through this committee, MACC has received responses from the ACB, Brunei Darussalam in less than two weeks, and this enabled the case to be concluded on schedule.

## V. MEASURES TO ENHANCE INTERNATIONAL COORDINATION

### 1. The United Nations Convention Against Corruption (UNCAC)

Article 46(1) of UNCAC calls on States Parties “to afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.” The convention promotes and facilitates this cooperation by strengthening key elements of the existing international arrangements. Furthermore, there should be strong incentives for countries to collaborate, since all countries are both requesting and requested parties. However, implementation is still lagging, and there remains room for improvement in the provision of mutual legal assistance in support of asset recovery. Malaysia, has not only ratified the Convention but is currently reviewing the implementation of Chapters III and IV of the Convention.

### 2. The International Association of Anti Corruption Authorities (IAACA)

MACC’s commitment towards international assistance also lies in the role it has placed in the founding of the International Association of Anti Corruption Authorities (IAACA), where one of its objectives is to push forward international cooperation against corruption. The IAACA has successfully organized a series of events in an effort to push forward international cooperation against corruption.

### 3. The South East Asia Parties against Corruption (SEA-PAC)

Law enforcement cooperation which includes the exchange of information and coordination of certain investigations is pursued through the membership and participation of MACC in the South East Asia Parties against Corruption (SEA-PAC). MACC works closely with its counterparts: for instance, MACC has conducted joint investigations with the ACB, Brunei Darussalam.

## VI. CONCLUSION

The presence of, and the participation in, this seminar is testament that the international community has realized that international cooperation is a strategy in any country’s effort in fighting corruption. It is not a luxury anymore but an integral part in the exploration of new strategies and collaboration in the fight against ever-increasing cross-border corruption. It is hoped that these concerted efforts can be further consolidated and enhanced.