

Note: This model request form serves as a guide and reference only.

FORM AGC 2

[Section 19]

MODEL FORM FOR REQUEST TO MALAYSIA

To:

The Attorney General of Malaysia
Attorney General's Chambers Malaysia
No. 45, Persiaran Perdana
Precinct 4
62100 PUTRAJAYA
MALAYSIA.

(Attention: Transnational Crimes Unit of the Prosecution Division)

From:

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

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*

¹ 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.

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requesting foreign State) on Mutual Assistance in Criminal Matters (after this referred to as “the Treaty”), and being empowered by (*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 Central Authority of Malaysia.²

OR:

2. 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.³

AUTHORITY FOR REQUEST

EITHER:

2. This request is made under the Treaty.⁴

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.⁵ 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 [Act 621].

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

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

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

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

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NATURE OF REQUEST

3.1 This request relates to a (*criminal matter*)⁶ concerning (*describe subject of criminal matter*).

3.2 The personal details of the subject of the request are as follows:

EITHER:

Name/Description:

Date of birth:

Age:

Occupation:

Nationality:

Passport/ NRIC No.:

Address/Location:

OR:

Name of the Company:

Date of Incorporation:

Company No. :

Address/Location:

3.3 The details of the property to be traced/restrained/forfeited are as follows⁷:

Description:

Location:

Other relevant details:

3.4 The reasons for suspecting that the person/property is in Malaysia are as follows⁸:

⁶ 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.

⁷ Applicable where request relates to restraint of property or enforcement of a forfeiture order.

⁸ Applicable where request relates to restraint of property or enforcement of a forfeiture order.

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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 subject(s)*) is/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*)⁹.

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.*)

The foreign forfeiture order is connected with (*state the relevant offences*) in (*name of requesting foreign State*) the maximum penalties for which are

⁹ Applicable where request relates to an investigation or prosecution.

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(specify maximum penalty for the offence and applicable law)¹⁰.

- 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 investigations/ proceedings against the subject(s), 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 -

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

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- (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;

- (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.]¹¹

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 made¹²;
- (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 [*Act 62 1*], 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 made¹³;

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

¹² Not applicable if the Attorney General consents pursuant to subsection 20(2) of the Mutual Assistance in Criminal Matters Act 2002 [*Act 62 1*].

¹³ Not applicable if the Attorney General consents to waive this requirement.

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- (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 relates¹⁴;
- (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 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 evidence¹⁵;
- (e) that (*name of person*) will be returned to Malaysia in accordance with arrangements agreed to by the Attorney General of Malaysia¹⁶; and

¹⁴ Applicable if request relates to attendance of person in requesting foreign State.

¹⁵ Applicable if request relates to attendance of person in requesting foreign State.

¹⁶ Applicable if request relates to attendance of person in requesting foreign State.

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- (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]¹⁷;

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

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

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(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

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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*

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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*)¹⁸ 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;

- (*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;

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

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(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*

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witnesses and /or destruction of evidence, etc.)]¹⁹

- [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*).]²⁰

(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.)

- (i) 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. A copy of the prescribed form of the affidavit is attached to this request and marked as **FORM 1**.
 - (ii) If documents and records are referred to or are otherwise enclosed, the documents and records must be accompanied by an attestation of authenticity. A copy of the prescribed form for the attestation of authenticity is attached to this request and marked as **FORM 2**.
- (*state any special requirements as to certification/authentication of documents.*)

¹⁹ Necessary if confidentiality is requested.

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

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(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 B;
 - (b) if the affidavit runs for more than one page, each page other than the last should be initialled 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 initialled both by the person who makes the affidavit and by the person before whom the affidavit is made.
- *(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 EXECUTION²¹

11. It is requested that the request be executed urgently/within (*state period giving*

²¹ Section 23 of the Mutual Assistance in Criminal Matters Act 2002 [Act 621] 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.

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reasons i.e. specify likely trial or hearing dates or any other dates/reasons relevant to the execution of the request).

(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 ACCOMODATION²²

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)

²² If the request involves a person travelling from the requested foreign State to Malaysia.

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.*)

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 UNDERTAKING²³

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.

²³ 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.

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.

Signed by

Name : _____

Office : _____

Date : _____