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**FORM AGC 1**

[Section 7]

**MODEL FORM FOR REQUEST BY MALAYSIA**

**To:**

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

**From:**

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

Through diplomatic channels

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

**RE: (insert particulars)**

**INTRODUCTION**

**EITHER:**

1. I, ....., the Attorney General of Malaysia, 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 requested foreign State*) on Mutual Assistance in Criminal Matters (after this referred to

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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.

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as “the Treaty”), and being empowered by section 7 of the Mutual Assistance in Criminal Matters Act 2002 [Act 621], to make requests for mutual assistance in criminal matters on behalf of Malaysia, present this request to the Central Authority of *(name of requested foreign State)*.<sup>2</sup>

**OR:**

1. I, ....., the Attorney General of Malaysia, being the appropriate authority by virtue of section 7 of the Mutual Assistance in Criminal Matters Act 2002 [Act 621] to make requests for mutual assistance in criminal matters on behalf of Malaysia present this request to the *(name of appropriate authority of requested foreign State)*.<sup>3</sup>

**AUTHORITY FOR REQUEST**

**EITHER:**

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

**OR:**

2. Malaysia makes this request for assistance to be extended under the *(specify relevant legislation of requested foreign State)*.<sup>5</sup> The request is made in respect of a criminal matter within the meaning of *(specify relevant legislation of requested foreign State)*.

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<sup>2</sup> This version may be used if there is an operative bilateral agreement for mutual assistance in criminal matters between Malaysia and the requested foreign State.

<sup>3</sup> This version may be used if there is no operative bilateral agreement for mutual assistance in criminal matters between Malaysia and the requested foreign State.

<sup>4</sup> This version may be used if there is an operative bilateral agreement for mutual assistance in criminal matters between Malaysia and the requested foreign State.

<sup>5</sup> This version may be used if there is no operative bilateral agreement for mutual assistance in criminal matters between Malaysia and the requested foreign State.

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**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(s) of the request are as follows:

**EITHER:**

Name:

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 follows<sup>7</sup>:

Description:

Location:

Other relevant details:

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<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 forfeiture order.

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

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- 3.4 The reasons for suspecting that the property is in (*name of requested foreign State*) are as follows<sup>8</sup>:
- 3.5 The authority having the conduct of the criminal matter is (describe authority in Malaysia 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 the requested foreign State and the relevance of the foreign State's evidence to the criminal matter in Malaysia.*)

**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*)<sup>9</sup>.

**OR:**

- 5.1 A forfeiture order (*has been/may be*) made in proceedings in Malaysia.

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<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.

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*(State basis for any statement that a forfeiture order may be made.)*

The forfeiture order is connected with *(state the relevant offences)* in Malaysia 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 investigations/ proceedings against the subject(s), enforce the abovementioned 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 *(name of requested foreign State)*, would have constituted a military offence under the laws of *(name of requested foreign State)* which is not also an offence under the ordinary criminal law of *(name of requested foreign State)*;

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

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- (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 Malaysia; or
  - (ii) has undergone the punishment provided by the law of Malaysia, 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 (*name of requested foreign State*), would not have constituted an offence against the laws of (*name of requested foreign State*);
- [(f) does not have as its primary purpose the assessment or collection of tax.]<sup>11</sup>

7.2. I further undertake –

- (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>; and
- (b) that in the case of a request for assistance under (*specify relevant provisions of the relevant legislation of requested foreign State*), to return

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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 between Malaysia and the requested foreign State is in operation.

<sup>12</sup> Not applicable if the appropriate authority of the requested foreign State consents.

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to the (*appropriate authority of the requested foreign State*), upon its 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>.

**DESCRIPTION OF ASSISTANCE REQUESTED**

8. The (*appropriate authority of the requested foreign State*) 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 (*relevant judicial authority of requested foreign State*);

(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>14</sup>;

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<sup>13</sup> Not applicable if the appropriate authority of the requested foreign State consents to waive this requirement.  
<sup>14</sup> Include this part if it is deemed necessary for the purposes of admissibility of the documents in evidence.

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



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- 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*

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*and where located).*

- *(state grounds for believing that the material sought is likely to be of substantial value to the criminal matter in Malaysia.)*
- *(support any request for the production of originals of documents with reasons.)*

(e) arrangement of travel of person/prisoner from (name of requested foreign State) to assist in a criminal matter;

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

to travel to Malaysia to give assistance in a (criminal matter)<sup>15</sup> by rendering the following assistance:

- *(specify the assistance sought).*
- *(provide the undertakings required by the law of (name of requested foreign State)).*
- *(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 Malaysia pursuant to the request).*

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

○ *(state particulars of the forfeiture order to be enforced, or the*

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<sup>15</sup> State whether it is an investigation or criminal proceedings of an offence in Malaysia or an ancillary criminal matter.

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*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 serious offence;

(e.g.) Arrangements to be made to locate/identify and locate Mr. X who is believed to be in (*name of requested foreign State*) with the last known address at (*address*).

- (*state particulars of person concerned*).

- (h) assistance in tracing property suspected to be connected to a serious offence;

(e.g.) Arrangements to be made to trace (*description of property*) believed to be in (*name of requested foreign State*).

- (*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.*)

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**EXECUTION OF REQUEST**

**(A) CONFIDENTIALITY**

[9.1. The fact that this request has been made and the execution of it is requested to 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>16</sup>

[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>17</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 Malaysia, 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**.

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<sup>16</sup> Necessary if confidentiality is requested.

<sup>17</sup> Applicable if the request relates to the taking of evidence before a court for the purposes of an investigation in Malaysia.

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- (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.*)

(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 (*name of requested foreign State*). When the affidavit has been sworn or affirmed, the affidavit should be sealed with an official or public seal of (*name of requested foreign State*) to ensure compliance with section 424 of the Criminal Procedure Code, 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.

(e.g.)

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- (i) In relation to documents produced by computers, or a statement contained in such document, the document or statement, as the case may be, is admissible as evidence of any fact stated therein if the document was produced by the computer in the course of its ordinary use, whether or not the person tendering the same is the maker of such document or statement as allowed under section 90A of the Evidence Act 1950 [Act 56] of Malaysia. An extract of the relevant legislation, section 90A of the Evidence Act 1950 [Act 56] of Malaysia is attached and marked as “Attachment C” to this request.
  - (ii) A certificate signed by a person who either before or after the production of the document by the computer is responsible for the management of the operation of that computer or for the conduct of the activities for which that computer was used must be tendered to the court to prove that a document was produced by a computer in the course of its ordinary use. A copy of the prescribed form for the certificate is attached to this request and marked as **FORM 3**.
- All documents obtained pursuant to this request should be certified in accordance with section 42 of the Mutual Assistance in Criminal Matters Act 2002 [Act 621] of Malaysia. An extract of section 42 of the Mutual Assistance in Criminal Matters Act 2002 [Act 621] is attached and marked as “Attachment D” to this request.
  - *(state if attendance by representative of appropriate authority of Malaysia at examination of witnesses/execution of request is required and, if so, the title of the office held by the proposed representative.)*

*(e.g.)*

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

**(C) PERIOD OF EXECUTION<sup>18</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*).

**(D) TRANSMISSION OF REQUESTED MATERIAL**

- 12.1 Any documents, statements, information or things obtained in response to this request should be sent to the Attorney General of Malaysia at the following address:

The Honourable Attorney General of Malaysia  
Attorney General's Chambers Malaysia  
c/o Transnational Crime Unit  
Prosecution Division  
No. 45, Persiaran Perdana  
Precinct 4  
62100 PUTRAJAYA  
MALAYSIA.

- 12.2 The Attorney General's Chambers of Malaysia will forward the material to (*name of authority in Malaysia concerned with the criminal matter*), being the relevant requesting authority in this matter.

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<sup>18</sup> 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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**(E) DETAILS OF ALLOWANCES, ARRANGEMENTS FOR SECURITY AND ACCOMODATION<sup>19</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 officers of the Attorney General's Chambers of Malaysia handling this request are:

*(state name of officer(s))*

Transnational Crime Unit

Prosecution Division

Attorney General's Chambers Malaysia

No. 45 Persiaran Perdana

Precinct 4

62100 PUTRAJAYA

MALAYSIA.

Telephone Number:

Facsimile Number:

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<sup>19</sup> If the request involves a person travelling from the requested foreign State to Malaysia.



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Electronic mail address:

- 14.2 The following officer/\*s of (name of appropriate authority in requested foreign State) \*has/\*have knowledge of this matter:

*(name of officer/\*s of appropriate authority in requested foreign State, telephone and facsimile numbers and e-mail addresses.)*

- 14.3 If permission is given for an officer of (name of authority in Malaysia concerned with the criminal matter) to travel to (name of requested foreign State), the officer is likely to be (name of officer of authority in Malaysia concerned with the criminal matter).

**SUPPLEMENTARY REQUEST**

15. The Attorney General of Malaysia may wish to make supplementary requests for assistance in this matter if necessary.

**RECIPROCITY UNDERTAKING<sup>20</sup>**

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

**EITHER:**

17. I, \_\_\_\_\_, the Attorney General of Malaysia, pursuant to section 7 of the Mutual Assistance in Criminal Matters Act 2002 [Act 621], and at the instance of (*name of authority in Malaysia concerned with the criminal matter*), being satisfied that there are reasonable grounds for

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<sup>20</sup> Applicable if the request is made by to a foreign State without any operative bilateral agreement with Malaysia. The undertaking should be given by the Attorney General as the designated Central Authority/appropriate authority authorised to give such undertaking on behalf of Malaysia.

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believing that there is evidence in (*name of requested foreign State*) that would be relevant to an investigation/criminal proceedings in Malaysia, make this request to (*name of appropriate authority of requested foreign State*) for assistance in relation to this criminal matter.

**OR:**

17. I, (*name of person*), an officer of the Attorney General's Chambers of Malaysia, acting in reliance on a delegation by the Attorney General of Malaysia under section 43 of the Mutual Assistance in Criminal Matters Act 2002 [Act 621] and on the authority of the Attorney General of Malaysia in the exercise of the executive powers under section 7 of the Mutual Assistance in Criminal Matters Act 2002 [Act 621] to make requests to foreign States for assistance in criminal matters, and at the instance of (*name of authority in Malaysia concerned with the criminal matter*), make this request to (*name of appropriate authority of requested foreign State*) for assistance in relation to this criminal matter.

Signed by

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

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

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