AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

109TH CONGRESS
2d Session

SENATE

TREATY DOC.
109–22

TREATY WITH MALAYSIA ON MUTUAL LEGAL ASSISTANCE

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

TREATY BETWEEN THE UNITED STATES OF AMERICA AND MALAYSIA ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS, SIGNED ON JULY 28, 2006, AT KUALA LUMPUR

NOVEMBER 14, 2006.—Treaty was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE

59–118 WASHINGTON : 2006

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *November 14, 2006.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty between the United States of America and Malaysia on Mutual Legal Assistance in Criminal Matters, signed on July 28, 2006, at Kuala Lumpur. I transmit also, for the information of the Senate, the report of the Department of State with respect to the Treaty.

The Treaty is one of a series of modern mutual legal assistance treaties being negotiated by the United States in order to counter criminal activities more effectively. The Treaty should enhance our ability to investigate and prosecute a wide variety of crimes. The Treaty is self-executing.

The Treaty provides for a broad range of cooperation in criminal matters. Under the Treaty, the Parties agree to assist each other by, among other things: providing evidence (such as testimony, documents, items, or things) obtained voluntarily or, where necessary, by compulsion; arranging for persons, including persons in custody, to travel to the other country to provide evidence; serving documents; executing searches and seizures; locating and identifying persons, items, or places; examining objects and sites; freezing and forfeiting assets or property; and identifying or tracing proceeds of crime.

I recommend that the Senate give early and favorable consideration to the Treaty, and give its advice and consent to ratification.

GEORGE W. BUSH.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, September 27, 2006.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Treaty on Mutual Legal Assistance in Criminal Matters between the United States and Malaysia signed on July 28, 2006. I recommend that the Treaty be transmitted to the Senate for its advice and consent to ratification.

The Treaty covers mutual legal assistance in criminal matters. In recent years, similar bilateral treaties have entered into force with a number of countries. This Treaty contains all of the essential provisions of such treaties sought by the United States. It will enhance our ability to investigate and prosecute a wide variety of offenses. The Treaty is self-executing and will not require implementing legislation.

A detailed, article-by-article analysis is enclosed with this report. The Department of Justice joins the Department of State in favoring approval of this Treaty by the Senate at the earliest possible date.

Respectfully submitted.

CONDOLEEZZA RICE.

Enclosures: As stated.

U.S.-MALAYSIA MUTUAL LEGAL ASSISTANCE TREATY

OVERVIEW

The Treaty on Mutual Legal Assistance in Criminal Matters between the United States and Malaysia creates for the first time a treaty-based relationship of mutual legal assistance between the United States and Malaysia.

The following is an article-by-article description of the provisions of the Treaty.

Article 1 sets out the scope of assistance available under the Treaty. Article 1 (1) requires the Parties to provide each other the widest measure of mutual legal assistance in connection with investigations and proceedings pertaining to criminal matters. During the negotiations, both Parties expressed their understanding that this creates an international obligation on each Party to provide mutual legal assistance. The Parties further expressed their understanding that their international obligation would be carried out pursuant to the terms of the Treaty and in compliance with domestic laws.

Assistance is to be available for "investigations and proceedings pertaining to criminal matters." This terminology is meant to incorporate not only the full range of proceedings in a criminal case, including grand jury and other investigative and pre-charge proceedings, but also ancillary matters such as forfeiture proceedings that may be civil in nature but are nonetheless covered by the Treaty because they pertain to a criminal matter.

Article 1 (2) contains a non-exhaustive list of the major types of assistance to be provided under the Treaty, including producing evidence (such as testimony, documents, or items or things) obtained voluntarily or, where necessary, by compulsion; arranging for persons, including persons in custody, to travel to the other country to provide evidence; serving documents; executing searches and seizures; locating and identifying persons, items, or places; examining objects and sites; freezing and forfeiting assets or property; and identifying or tracing proceeds of crime. Most of these types of assistance are described in detail in subsequent articles in the Treaty.

The Treaty also authorizes provision of any other form of assistance not prohibited by the laws of the state receiving the request (referred to in the Treaty, as in other such treaties, as the "requested state" or "requested Party," while the state making the request is the "requesting state" or "requesting Party"). As long as there is no specific legal restriction barring the type of assistance requested, it may be provided pursuant to the Treaty.

Article 1(3), a standard provision in U.S. mutual legal assistance treaties, provides that the Treaty is intended solely for government-to-government mutual legal assistance. The Treaty is not intended to provide to private persons a means of evidence gathering, nor is it intended to extend generally to civil matters. Private persons in the United States may continue to obtain evidence from Malaysia by letters rogatory, an avenue of international assistance that the Treaty leaves undisturbed. Similarly, the paragraph provides that the Treaty is not intended to create any right in a private person to suppress or exclude evidence provided pursuant to the Treaty, or to impede the execution of a request.

Article 2 requires that each Party designate a "Central Authority" to make and receive Treaty requests. The Central Authority of the United States would make all requests to Malaysia on behalf of federal and state agencies and local law enforcement authorities in the United States. The Central Authority of Malaysia would make all requests emanating from officials in Malaysia.

In each state, the Central Authority is to be the Attorney General or a person designated by the Attorney General. In the United States, the authority to handle the duties of the Central Authority under mutual legal assistance treaties has been delegated to the Office of International Affairs in the Criminal Division of the Department of Justice.

The Central Authority of the requesting state exercises discretion as to the form and content of requests, as well as the number and priority of requests. The Central Authority of the requested state is responsible for receiving and evaluating each incoming request; transmitting it to the proper agency, court, or other authority for execution; and effecting a timely response.

Article 2(1) provides that, in Malaysia, requests are to be transmitted through the Ministry of Foreign Affairs to or from the Central Authority. This pass-through is necessary because of a provision of Malaysian law that requires use of the diplomatic channel in Malaysia to transmit requests. There is no such requirement in United States law, and the Treaty specifically provides that requests need not pass through the diplomatic channel in the United States. This provision also does not affect transmission of evidence or other responses to requests or any other followup communications, all of which, pursuant to Article 2(5), are to be done directly between the Central Authorities.

Article 3 sets forth the circumstances under which a requested state's Central Authority may deny assistance under the Treaty. Refusal under this Article is discretionary with the Central Authority of the requested state. Several of the grounds for refusal are common to most U.S. mutual legal assistance treaties. So, for example, a request may be denied if it relates to a political or a military offense, if it does not conform to the requirements of the Treaty, or if its execution would prejudice the sovereignty, security, public order, or other essential interest of the requested state.

In addition, the Treaty provides that a request may be denied if it relates to an act or omission that, if it had occurred in the requested state, would not have constituted an offense under the laws of that state punishable by a deprivation of liberty for a period of one year or more, or by a more severe penalty (Article 3(1)(e)). The United States does not generally impose this requirement—known as "dual criminality"—on mutual legal assistance requests, but under Malaysian law Malaysia is not permitted to provide assistance in support of the investigation or prosecution of an offense that is not recognized in Malaysia. To ensure that the Treaty would be available for assistance in the types of cases in which law enforcement authorities in the United States generally require assistance, the negotiators undertook a review of the respective criminal codes of the United States and Malaysia. That review revealed broad areas of commonality between the United States and Malaysia criminal codes, establishing that a dual criminality refusal ground would not unduly restrict the ability of U.S. authorities to obtain assistance.

To further provide certainty to U.S. (and Malaysian) authorities seeking assistance, the Parties agreed to include in an annex to the Treaty a non-exclusive list of offenses for which they have already established that dual criminality exists. A similar approach was previously adopted in the Mutual Legal Assistance Treaty between the United States and the Republic of Korea. If a request relates to an offense that appears on this annexed list, pursuant to Article 3(2), the request may not be denied on the grounds of an absence of dual criminality. The list in the Annex is not all-encompassing—indeed, it does not include most common crimes for which dual criminality is obvious—but rather is designed to cover some of the types of offenses regarding which mutual legal assistance requests are most commonly made. The Parties further agreed that the Annex could be modified by an exchange of notes, without requiring amendment of the Treaty. The Annex is an integral part of the Treaty.

Other grounds for refusal included in Article 3(1) reflect requirements in Malaysian law that a Central Authority maintain the discretion to consider certain factors in evaluating requests. Assistance may be refused if the request (a) was made for the purpose of investigating a person on account of that person's race, religion, sex, ethnic origin, nationality, or political opinions; (b) relates to an offense for which a person has already been convicted or acquitted by a court in the requested state; or (c) relates to an offense of insufficient gravity or an item of insufficient importance. The negotiators expressed their views that these grounds for refusal would be employed infrequently, if ever.

In keeping with the overall intent of the Treaty to facilitate assistance, the Parties also included in Article 3 several provisions designed to limit the use of grounds for refusal. Article 3(2), referred to above, restricts the use of the ground of absence of dual criminality. Article 3(3) provides that assistance shall not be refused solely on the ground of bank secrecy or that the offense involves fiscal matters. And Article 3(4) requires a Central Authority, before refusing assistance under Article 3(1), to consult with its counterpart in the requesting Party to consider whether assistance can be given subject to such conditions as the Central Authority of the requested Party deems necessary. If the requesting Party accepts assistance subject to these conditions, it is required to comply with them. Finally, if a Central Authority refuses assistance, it is required under Article 3(5) to inform the Central Authority of the requesting Party of the reasons for the refusal.

Articles 4 and 5 prescribe the form and contents of requests under the Treaty, specifying in detail the information required in each request. If the information in the request is not sufficient to enable the request to be executed, the Central Authority of the requested state may ask for additional information. A request for assistance must be in writing, except that in urgent situations a request may be made in another form so long as the request is confirmed in writing as soon as possible thereafter. The requirement that requests be in writing can be satisfied with an electronic version, the authenticity of which can be verified. As both countries move towards use of electronic signatures, it is anticipated that this method might be used more frequently.

Article 6 concerns the execution of requests. Article 6(1) includes three important concepts: the obligation to execute requests, and to do so promptly; a requirement that competent authorities do "everything in their power" to execute requests; and the granting of authority to courts in the requested state to issue subpoenas, search warrants, or other orders necessary to execute requests. Taken together, the latter two provisions specifically authorize United States courts to use all of their powers to issue whatever process is necessary to satisfy a request under the Treaty. They also reflect an understanding that the Parties intend to provide each other with every available form of assistance from judicial and executive branches of government in the execution of mutual legal assistance requests.

Article 6(2) addresses the manner in which requests are to be executed. It creates a hierarchy for a requested state to follow in determining the appropriate procedures for executing a request. In

the first instance, requests themselves may specify a particular procedure to be followed, and such specified procedures are to be followed unless prohibited by law in the requested state. This can be important to ensure that evidence collected in one state satisfies requirements for admissibility at trial in the other. If no particular procedure is specified in the request, the request is to be executed in accordance with any specific provisions of the Treaty. Finally, if neither the Treaty nor the request specifies procedures to be followed, the requested state is to execute the request in accordance with its domestic criminal procedure laws. The negotiators intended this provision, like similar provisions in other MLATs, to allow the requested state to use its established procedures for obtaining evidence where procedures are not otherwise specified, so long as those procedures do not undermine the obligation in the Treaty to provide assistance. *See, e.g, In re Commissioner's Subpoenas,* 325 F.3d 1287 (11th Cir. 2003).

Article 6(3) states that the Central Authority of the requested state shall represent the requesting state or make other arrangements for representing the requesting state in the execution of a request for assistance. Thus, it is understood that if execution of the request entails action by a judicial authority or administrative agency, the Central Authority of the requested state shall arrange for the presentation of the request to that court or agency at no cost to the requesting state.

Under Article 6(5), if the Central Authority of the requested state determines that execution of a request would interfere with an ongoing investigation or proceeding pertaining to a criminal matter in that state, it may postpone execution or make execution subject to conditions deemed necessary after consultations with the Central Authority of the requesting state. If the requesting Party accepts assistance subject to such conditions, it must comply with them.

Article 6(6) is meant to address the possible circumstance in which the Central Authority of the requested state believes that the provision of assistance is likely to create a significant safety risk, for example, to a prospective witness or his or her family members. In such a circumstance, which the negotiators concluded would be unusual, the Parties would consult on reasonable measures to address the safety concern.

Confidentiality and limitations on use of evidence obtained under the Treaty are addressed in Article 7. Although requests themselves are generally not confidential, the requesting Party may ask that the request, the supporting documents, action taken pursuant to the request, and even the fact that assistance is granted be kept confidential (Article 7(2)). The requested Party is to use its best efforts to comply with such a request, but if assistance cannot be granted without breaching the confidentiality requirements, the decision whether to proceed is left to the requesting Party.

Article 7(1) requires that information or evidence provided under the Treaty not be used for investigations or proceedings other than those stated in the request without the consent of the requested Party. The requested Party may also request that the information or evidence produced under the Treaty be kept confidential or be used subject to certain conditions (Article 7(3)). The default rule, however, is that such information or evidence is not confidential,

and Article 7(5) also provides that once such information or evidence has been disclosed in a public judicial or administrative proceeding, it may be used for any purpose. Moreover, the Treaty is explicit that it does not preclude the disclosure of information to the extent that there is an obligation to disclose it under the Constitution of the requesting state in a criminal prosecution. This contingency, found in Article 7(4), was included to ensure that the United States would be able to satisfy any obligations to disclose information under its Constitution, such as set forth in *Brady v. Maryland*, 373 U.S. 83 (1963). Malaysia's delegation indicated that there is no corresponding obligation under its laws.

As with other provisions of the Treaty, the confidentiality protections and use limitation provisions of Article 7 are for the benefit of the two governments that are Parties to the Treaty, and invocation and enforcement of these provisions is entirely a matter for the Parties.

Article 8 is the first of a series of articles that spell out in detail the procedures to be employed in the case of specific types of requests for assistance outlined in Article 1(2). Article 8 addresses the obtaining of evidence, whether it is a statement or testimony, documents, records, or particular items or things. A person from whom evidence is sought under the Treaty may appear voluntarily to provide such evidence, or, if necessary, the Treaty authorizes the Parties to compel production of evidence. This compulsion may be accomplished by subpoena or any other means available under the laws of the requested state. Article 8(2) specifically provides that use of compulsory process is authorized regardless of whether the proceeding for which the evidence is sought takes place in a court in the requesting state. This provision was necessary to ensure that Malaysia would be empowered to compel witness testimony when requested for use in U.S. grand jury proceedings.

Article 8(3) requires the requested Party to permit persons specified in the request to be present during execution of the request and, where permitted by law, to question the person giving testimony or evidence. Even where direct questioning is not permitted, persons could be permitted under this provision to propose questions to be asked of a witness. Consistent with Article 1(3), this provision does not create a right for private persons to be present during the execution of the request.

Article 8(4) contains the first of several provisions in the Treaty addressing the authentication of evidence produced pursuant to the Treaty. Similar provisions are found at Article 9(3) and 14(3). In the case of requests by Malaysia, the request will specify any authentication requirements that might apply. In the case of requests by the United States, evidence produced under the Treaty is to be authenticated by use of one of the forms appended to the Treaty. The appended forms are an integral part of the Treaty. It is the intent of the Parties that evidence produced and authenticated according to the procedure set forth in the Treaty be admissible in evidence in the requesting state.

In the event that a person from whom the request seeks testimony, documents, records, or items of evidence asserts a right to decline to provide such evidence (such as a privilege or immunity), Article 8(5) establishes two different methods to proceed depending

on which state's law is invoked. If the claim is based on the requested state's law, it is to be resolved by the authorities of the requested state. If, however, the claim is based on the laws of the requesting state, the evidence may nonetheless be taken and the claim resolved by the authorities of the requesting state, although the requested state may request a statement from the requesting state of its views as to the validity of the claim. This formulation allows each Party to resolve privilege claims made under its own laws.

Article 8(6) provides that the Parties may agree to the use of live video or television links or other appropriate communications facilities for the purpose of executing a request for the taking of testimony on a case-by-case basis. Such technologies are to be employed according to the laws and procedures of the requested state. The United States can use and has used video technology, for example, to provide testimony to other countries upon request pursuant to 28 U.S.C. Section 1782.

Article 9 addresses provision of documents or other records in the possession of government agencies. The Parties are obligated to provide to each other copies of publicly available records upon request. With respect to documents that are not publicly available, whether to provide such documents is left to the discretion of the requested Party.

Article 10 provides a mechanism for the requesting Party to ask for the voluntary attendance in its territory of a person located in the requested state as a witness or expert in proceedings or to assist in an investigation. The requesting Party must indicate the extent to which the person's expenses will be paid, as well as any arrangements for the person's safety and accommodation while in the requesting state.

Article 11 provides a similar mechanism for persons in custody in the requested state. A need sometimes arises for the testimony in one country of a person who is incarcerated in another country. For example, a witness incarcerated in one country may have to give testimony in the presence of an incarcerated defendant in the other country. Attendance of the person is still voluntary, but is also subject to the discretion of the Parties and agreement of the Central Authorities. In addition, the Treaty imposes certain conditions on such transfers: the person must be held in custody by the requesting Party, unless otherwise authorized by the requested Party; the requesting Party must return the person in custody to the requested Party at the conclusion of the matter, or as soon as circumstances permit or as otherwise agreed; the return of the person shall not require any extradition or other proceedings, such as immigration proceedings; and the period that the person is in custody in the requesting state shall be counted towards the person's period of imprisonment or detention in the requested state.

When persons agree to travel to a requesting state to give evidence, whether in custody or not, Article 12 authorizes the Central Authority of the requesting state, in its discretion, to give such persons a guarantee of "safe conduct." This would ensure that a person attending in the requesting state would not be subject to service of process or any restriction on personal liberty by reason of any acts or convictions that preceded that person's departure from the

requested state. It is understood that this provision would not prevent action against a person for perjury or any other crime committed while in the requesting state—rather, it applies only to past offenses. Under Article 12(2), any safe conduct so provided would cease seven days after the Central Authority of the requested state is notified that the person's presence is no longer required, or if the person has left the requesting state and voluntarily returns to it. Of course, as the Treaty sets forth, this article does not preclude a state from holding a person in custody as required by Article 11(2).

While Article 11 addresses the transfer of persons in custody from one Party to the other, Article 13 addresses the situation in which one Party may need to bring persons in custody through the territory of the other on the way to or from third states in order to participate in an investigation or proceeding. Article 13(2) provides that the state through which the person transits has the authority and obligation to keep that person in custody during the transit unless otherwise agreed.

Article 14 obligates the requested Party to execute a request for the search, seizure, and delivery of any documents, records, or items or things if the request includes the information justifying such action under the laws of the requested state. For requests from Malaysia to the United States, this means that a request would have to be supported by a showing of probable cause for the search. The evidentiary standard required under Malaysia law for requests by the United States is similar.

Article 15 provides for determining the whereabouts in the requested state of persons (such as witnesses, potential defendants, or experts) or items or things when such information is requested. The Treaty requires only that the requested state use its "best efforts" to locate the persons or items or things sought. The extent of such efforts will vary, of course, depending on the quality and extent of the information provided by the requesting state concerning the suspected location and last known location. The obligation is limited to persons or items or things that are reasonably believed to be in the territory of the requested state. Thus, the United States would not be obliged to attempt to locate persons or items that may be in third countries.

Article 16 relates to service of documents. It creates an obligation on the Parties to use their best efforts, upon request, to serve documents relating to a criminal investigation or proceeding such as summonses, complaints, subpoenas, or notices. When the document pertains to a response or appearance in the requesting state, it must be transmitted a reasonable time before the scheduled response or appearance. The Parties chose not to set a fixed period of time for this obligation, as circumstances may vary.

Article 17 obligates the Parties, upon request and to the extent permitted by their domestic laws, to endeavor to locate, trace, restrain, freeze, seize, forfeit, or confiscate the proceeds and instrumentalities of crime or recover pecuniary penalties. The types of actions that could be undertaken in the United States under this Article include actions to seize and forfeit property under 18 U.S.C. Section 981, which can be and is employed to temporarily restrain or to seize assets or proceeds of offenses committed abroad. The

language of this Article, however, does not require either state to take any action that would exceed its domestic legal authority. Thus it does not mandate, for example, institution of forfeiture proceedings against property located in the United States in the absence of statutory authority to institute such proceedings.

Once property is confiscated, Article 17(2) permits the Party in control of the property to share it with the other Party or otherwise dispose of it in accordance with its own laws. United States law permits the government to transfer a share of certain forfeited property to other countries that participate directly or indirectly in the seizure or forfeiture of the property where, among other requirements, such transfer is authorized by an international agreement. This Article provides such authorization for asset sharing with Malaysia.

Article 17(3) requires the rights of bona fide third parties to be respected in any action taken under this Article.

Article 18 states that this Treaty shall not prevent the Parties from providing assistance to each other through the provisions of other treaties, arrangements, or practices that may be applicable, or through the provisions of their national laws. Thus, for example, the Treaty would leave the provisions of U.S. and Malaysian law on letters rogatory completely undisturbed, and would not alter any practices or arrangements concerning investigative assistance or prohibit the Parties from developing other such practices or arrangements.

Article 19 addresses the costs associated with providing assistance. As is standard in U.S. mutual legal assistance treaties, Article 19 provides that the requested Party must pay all costs relating to the execution of a request, except for the following items to be paid by the requesting Party: fees of private counsel retained at the request of the requesting Party; fees and reasonable expenses of expert witnesses; costs of translation, interpretation and transcription; and allowances and expenses related to travel of persons pursuant to Articles 10 and 11. The article also provides that the requesting Party shall pay the travel expenses of custodial or escorting officers, and the costs of utilizing live video links or other similar facilities, subject to agreement between the Parties. Finally, Article 19(3) provides that, in the event that fulfilling a request would require extraordinary and substantial resources, including expenses, consultation between Central Authorities shall occur in order to determine the terms and conditions for execution.

Article 20 provides for consultations between the Central Authorities to promote the effective use of the Treaty. The Parties discussed the importance of regular consultations between Central Authorities. Such contacts generally result in development of practical measures to more effectively implement the Treaty.

Article 21 is a dispute settlement clause. In keeping with the intent of the Treaty to make the Central Authorities the primary points of contact between the two governments in implementation of the Treaty, the Central Authorities are also expected to resolve any disputes that arise. The article provides, however, that if the Central Authorities are not able to reach accommodation after a reasonable period, disputes shall be resolved through the diplo-

matic channel. No external dispute resolution mechanism is contemplated or provided for.

The final clauses are contained in Article 22. The Treaty will enter into force upon exchange of instruments of ratification. It is expressly retroactive—that is, once in force, it shall apply to all requests presented between the Parties regardless of when the acts or omissions constituting the offense occurred. Article 22 also provides procedures for termination of the Treaty, but specifies that termination shall not prevent completion of any requests made prior to termination.

TREATY

BETWEEN

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

AND

THE GOVERNMENT OF MALAYSIA

ON

MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

The Government of the United States of America and the Government of Malaysia (hereinafter referred to singularly as the "Party" and collectively as the "Parties"):

DESIRING to improve the effectiveness of the law enforcement authorities of the Parties in the investigation of crime and in proceedings pertaining to criminal matters through cooperation and mutual legal assistance in criminal matters,

HAVE AGREED as follows:

ARTICLE 1
SCOPE OF ASSISTANCE

1. The Parties shall, in accordance with this Treaty, render to one another the widest measure of mutual legal assistance in connection with investigations and proceedings pertaining to criminal matters.

2. Mutual legal assistance to be rendered in accordance with this Treaty shall include:

(a) taking of evidence, including testimony, documents, records and items or things, by way of judicial process;

(b) taking of voluntary statements of persons;

(c) providing documents, records and items or things;

(d) making arrangements for persons to give evidence or to assist in criminal investigations, including the transfer of persons in custody;

(e) effecting service of judicial documents;

(f) executing searches and seizures;

(g) locating and identifying persons or items or things and examining objects and sites;

(h) freezing and forfeiting assets or property and collecting fines;

(i) identifying or tracing proceeds of crime and property and instrumentalities derived from or used in the commission of an offence; and

(j) any other form of assistance not prohibited by the laws of the requested state.

3. This Treaty applies solely to the provision of mutual legal assistance between the Parties. The provisions of this Treaty shall not create any right on the part of any private person to obtain, suppress or exclude any evidence or to impede the execution of any request for assistance.

ARTICLE 2
DESIGNATION OF CENTRAL AUTHORITIES

1. Each Party shall designate a Central Authority to make and receive requests pursuant to this Treaty. Requests from the United States shall be transmitted through the Ministry of Foreign Affairs of Malaysia to the Malaysia Central Authority. Requests from Malaysia shall be transmitted through the Ministry of Foreign Affairs of Malaysia directly to the United States Central Authority.

2. For Malaysia, the Central Authority shall be the Attorney General or a person designated by the Attorney General.

3. For the United States of America, the Central Authority shall be the Attorney General or a person designated by the Attorney General.

4. Each Party shall expeditiously notify the other of any change in the designation of its Central Authority.

5. Except as otherwise provided in paragraph 1, the Central Authorities shall communicate directly with one another for the purposes of this Treaty.

ARTICLE 3
LIMITATIONS ON ASSISTANCE

1. The Central Authority of the requested state may refuse assistance if, in the opinion of the Central Authority of the requested state-

(a) the request relates to a political offence;

(b) the request relates to an offence under military law that if it had occurred in the requested state would not be an offence under ordinary criminal law in the requested state;

(c) there are substantial grounds for believing that the request was made for the purpose of investigating, prosecuting, or punishing a person on account of the person's race, religion, sex, ethnic origin, nationality or political opinions;

(d) the request relates to the investigation or prosecution of a person for an offence in a case where the person has been convicted or acquitted by a court in the requested state in respect of the same offence;

(e) the request relates to an act or omission that, if it had occurred in the requested state, would not have constituted an offence against the laws of the requested state punishable under the laws of that state by deprivation of liberty for a period of one year or more, or by a more severe penalty;

(f) the execution of the request would prejudice the sovereignty, security, public order or other essential interest of the requested state;

(g) the Central Authority of the requesting state has, in respect of that request, failed to comply with any material terms of this Treaty or failed to agree to reasonable conditions imposed under paragraph 4 of this Article;

(h) the facts constituting the offence to which the request relates do not indicate an offence of sufficient gravity;

(i) the item or thing requested is of insufficient importance to the investigation or could reasonably be obtained by other means.

2. Without prejudice to any other offences which satisfy dual criminality, a request that relates to an offence identified in the Annex to this Treaty shall not be refused pursuant to subparagraph (1)(e) of this Article as the Parties have determined that dual criminality exists for such offences. The Annex to this Treaty may be modified by the Parties by an exchange of notes.

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

4. Before denying assistance pursuant to this Article, the Central Authority of the requested state shall consult with the Central Authority of the requesting state to consider whether assistance can be given subject to such conditions as it deems necessary. If the requesting Party accepts assistance subject to these conditions, it shall comply with the conditions.

5. If the Central Authority of the requested state refuses assistance, it shall promptly inform the Central Authority of the requesting state of the grounds of refusal.

ARTICLE 4
FORM OF REQUESTS

Requests for assistance shall be made in writing, including, where possible, by electronic means that are capable of establishing authenticity. In urgent situations, requests may be made orally or by any other means, but in such cases the requests shall be confirmed in writing as soon as possible, but not later than ten days thereafter, unless the Central Authority of the requested state agrees otherwise.

ARTICLE 5
CONTENTS OF REQUESTS

1. A request shall contain the following:

   (a) the name of the competent authority conducting the investigation or proceedings to which the request relates;

   (b) the purpose of the request and the nature of the assistance sought;

   (c) a description of the offence to which the request relates, including the applicable penalty, and a statement or text of the relevant laws;

   (d) a description of the facts alleged to constitute the offence; and

(e) a description of the evidence, information or other assistance sought.

2. Requests for assistance shall also, to the extent necessary, contain the following information:

(a) the identity and location of any person from whom evidence is sought;

(b) a list of questions to be asked of a witness;

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

(d) a precise description of the place or person to be searched and of the items or things to be seized;

(e) information on the identity and suspected whereabouts of a person to be located;

(f) a description of the property, asset or items or things to which the request relates, including its identity and location;

(g) in the case of a request for the enforcement of a forfeiture order or any other court order, a certified copy of the court order relating to the assistance requested and a statement relating to the finality of that order;

(h) a description of any particular procedure to be followed;

(i) specification of any time limit within which compliance with the request is desired;

(j) any special requirement for confidentiality and the reasons for it; and

(k) such other information or requirement as is necessary for the proper execution of the request.

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

4. If the Central Authority of the requested state considers that the information contained in the request is not sufficient to enable the request to be

executed, the Central Authority may request additional information. The requesting Party shall supply such additional information as the requested Party considers necessary to enable the request to be fulfilled.

ARTICLE 6
EXECUTION OF REQUESTS

1. The Central Authority of the requested state shall promptly execute the request or, when appropriate, shall transmit it to the authority having jurisdiction to do so. The competent authorities of the requested state shall do everything in their power to execute the request. The courts of the requested state shall have authority to issue subpoenas, search warrants or other orders necessary to execute the request.

2. Requests shall be executed in accordance with the laws of the requested state except to the extent that this Treaty provides otherwise. Procedures specified in the request shall be followed except to the extent that those procedures cannot lawfully be followed in the requested state. Where neither the Treaty nor the request specifies a particular procedure, the request shall be executed in accordance with the appropriate procedure under the laws applicable for criminal investigations or proceedings in the requested state.

3. The Central Authority of the requested state shall represent the interests of the requesting Party or may, if requested to do so, make other arrangements for the representation of the requesting Party in the requested state in any proceedings arising out of a request for assistance.

4. The Central Authority of the requested state shall respond within a reasonable period to reasonable inquiries by the Central Authority of the requesting state concerning progress toward execution of the request.

5. If the Central Authority of the requested state determines that execution of a request would interfere with an ongoing investigation or proceeding pertaining to a criminal matter in that state, it may postpone execution, or make execution subject to conditions determined necessary after consultations with the Central Authority of the requesting state. If the requesting Party accepts the assistance subject to the conditions, it shall comply with the conditions.

6. Where, in the opinion of the requested Party, the provision of assistance pursuant to a request is likely to create a significant safety risk in the requested state, the Parties shall consult on reasonable measures to address the safety concern.

7. The Central Authority of the requested state shall promptly inform the Central Authority of the requesting state of the outcome of the execution of the request. If execution of the request is denied, delayed or postponed, the Central Authority of the requested state shall inform the Central Authority of the requesting state of the reasons for the denial, delay or postponement.

ARTICLE 7
LIMITATIONS ON USE OF EVIDENCE OBTAINED AND PROTECTION OF CONFIDENTIALITY

1. The requesting Party shall not, without the consent of the requested Party and subject to such terms and conditions as the requested Party considers necessary, use or transfer information or evidence provided by the requested Party for investigations or proceedings pertaining to a criminal matter other than those stated in the request.

2. The requested Party shall, upon request and to the extent permitted by its laws, use its best efforts to keep confidential the request for assistance, its contents and its supporting documents, the fact of granting of such assistance and any action taken pursuant to the request. If the request cannot be executed without breaching the confidentiality requirements stated in the request, the requested Party shall so inform the requesting Party, which shall then determine whether the request should nevertheless be executed.

3. The Central Authority of the requested state may request that information or evidence furnished under this Treaty be kept confidential or be used only subject to terms and conditions it may specify. If the requesting Party accepts the information or evidence subject to such conditions, the requesting Party shall use its best efforts to comply with the conditions.

4. Nothing in this Article shall preclude the use or disclosure of information to the extent that there is an obligation to do so under the Constitution of the requesting state in a criminal prosecution. The requesting Party shall notify the requested Party in advance of any such proposed disclosure.

5. Information or evidence, the contents of which have been disclosed in a public judicial or administrative proceeding, may thereafter be used for any purpose.

ARTICLE 8
OBTAINING OF EVIDENCE

1. A person in the requested state from whom evidence is requested pursuant to this Treaty shall appear and provide a statement, or sworn or affirmed testimony, or produce documents, records or items of evidence. The person may provide such evidence voluntarily or the requested Party may compel the testimony or production of such evidence, as may be necessary.

2. The requested Party shall, as necessary, authorize the use of compulsory process to execute a request for testimony or evidence for use in a proceeding pertaining to a criminal matter regardless of whether such a proceeding takes place in a court.

3. Upon request, the requested Party shall permit the presence of persons set forth in the request during the execution of the request and, to the extent permitted by its laws, shall allow specified persons to question the person giving the testimony or evidence.

4. Evidence that has been produced in the requested state pursuant to this Article or that has been the subject of testimony taken under this Article shall, upon request, be authenticated, in the case of requests by Malaysia, as required under Malaysian laws and specified in the request, and in the case of requests by the United States of America, by use of Form A or Form B, as the case may require, appended to this Treaty.

5. If a person who is required to give sworn or affirmed testimony or produce documents, records or items of evidence under this Article claims that there is a right to decline to do so under the laws of the requested state, the claim shall be resolved by the authorities of the requested state. If such a claim is made regarding a right under the laws of the requesting state, the requesting Party shall, if so requested, provide a statement to the requested Party of its views as to the validity of the claim and whether the evidence shall nonetheless be taken and forwarded and the claim resolved by the authorities of the requesting state.

6. For the purpose of executing a request for the taking of testimony, the Parties may agree on a case by case basis to the use of live video or television links or other appropriate communications facilities in accordance with the laws and procedures of the requested state if it is expedient and in the interests of justice to do so.

ARTICLE 9
PROVISION OF PUBLICLY AVAILABLE DOCUMENTS AND OTHER RECORDS

1. The requested Party shall provide the requesting Party with copies of publicly available records, including documents or information in any form, in the possession of government departments and agencies in the requested state.

2. The requested Party may, to the extent permitted by its laws, provide the requesting Party with copies of any records, including documents or information in any form, that are in the possession of a government department or agency in the requested state but that are not publicly available. The requested Party may in its discretion deny, entirely or in part, a request pursuant to this paragraph.

3. Records produced in the requested state pursuant to this Article shall, upon request, be authenticated, in the case of requests by Malaysia, as required under Malaysian laws and specified in the request, and in the case of requests by the United States of America, by use of Form C or Form D, as the case may require, appended to this Treaty.

ARTICLE 10
ATTENDANCE OF PERSON IN THE REQUESTING STATE

1. The requested Party shall, upon request, invite a person to attend in the requesting state as a witness or expert in proceedings pertaining to a criminal matter or to assist in an investigation and where the person consents, assist in arranging that person's attendance.

2. The requesting Party shall indicate the extent to which the person's expenses will be paid. A person who agrees to attend in the requesting state may ask that the requesting Party advance money to cover these expenses. This advance may be provided through the Embassy or a Consulate of the requesting Party.

3. Where a person is asked to attend in the requesting state, the request shall contain information on the following matters:

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

(b) the arrangements for his security, if any, while he is traveling to and from the requesting state and while he is in the requesting state; and

(c) the arrangements for his accommodation, if any, while he is in the requesting state.

ARTICLE 11
ATTENDANCE OF PERSON IN CUSTODY IN THE REQUESTING STATE

1. The requested Party may, upon request, agree to allow a person in custody in the requested state, subject to his consent and if the Central Authorities agree, to be temporarily transferred to the requesting state to give evidence or to assist in an investigation.

2. The requesting Party shall hold the person in custody, unless otherwise authorized by the requested Party, and shall return that person in custody to the requested Party at the conclusion of the matter, or as soon as circumstances permit or otherwise agreed by both Central Authorities.

3. The requesting Party shall not require the requested Party to initiate extradition or any other proceedings for the return of the person transferred.

4. The period during which such person was under the custody of the requesting Party shall count towards the period of his imprisonment or detention in the requested state.

ARTICLE 12
SAFE CONDUCT

1. The Central Authority of the requesting state may, in its discretion, determine that a person attending in the requesting state pursuant to Article 10 or 11 shall not be subject to service of process or be detained or subjected to any restriction of personal liberty by reason of any acts or convictions that preceded his departure from the requested state. Nothing in this Article shall preclude the requesting Party from holding a person in custody pursuant to Article 11(2).

2. The safe conduct provided for by this Article shall cease seven days after the Central Authority of the requesting state has notified the Central Authority of the requested state that the person's presence is no longer required, or when the person, having left the requesting state, voluntarily returns to that state. The Central Authority of the requesting state may, in its discretion, extend this period up to fifteen days if it determines that there is good cause to do so.

ARTICLE 13
TRANSIT OF PERSONS IN CUSTODY

1. The requested Party may, upon request, authorize the transit through its territory of a person held in custody by the requesting Party or a third state whose attendance has been requested by the requesting Party in an investigation or proceedings pertaining to a criminal matter.

2. The requested Party shall have the authority and the obligation to keep the person in custody during transit unless otherwise agreed between the Parties.

3. Where a person is being held in custody in the requested state on transit and the person's transportation is not continued within a reasonable time, the person may be returned to the state from which the person was first transported.

ARTICLE 14
SEARCH AND SEIZURE

1. The requested Party shall, upon request, execute a request for the search, seizure and delivery of any documents, records or items or things to the requesting Party if the request includes the information justifying such action under the laws of the requested state.

2. The Central Authority of the requested state may require that the requesting Party agree to terms and conditions related to any seized documents, records or items or things which may be delivered to the requesting Party that are considered necessary by the requested Party to protect the documents, records or items or things to be transferred.

3. Upon request, every official who has custody of a seized article shall certify the identity of the article, the continuity of custody, and any changes in condition, in the case of requests by Malaysia, as specified in the request, and in the case of requests by the United States of America, by use of Form E appended to this Treaty. No further certification shall be required. The form shall be admissible in evidence in the requesting state.

ARTICLE 15
LOCATION OR IDENTIFICATION OF PERSONS OR ITEMS OR THINGS

The requested Party shall, upon request, use its best efforts to ascertain the location or identity of a person or item or thing specified in the request and reasonably believed to be within its territory.

ARTICLE 16
SERVICE OF DOCUMENTS

1. The requested Party shall, upon request, use its best efforts to effect service of any document relevant to an investigation or proceeding pertaining to a criminal matter arising in the requesting state that is transmitted to it for this purpose by the requesting Party.

2. If the document pertains to a response or appearance in the requesting state, it shall be transmitted a reasonable time before the scheduled response or appearance.

3. The requested Party shall return a proof of service in the manner mutually agreed by the Parties.

ARTICLE 17
ASSISTANCE IN FORFEITURE PROCEEDINGS

1. The requested Party shall, upon request and to the extent permitted by its laws, endeavor to locate, trace, restrain, freeze, seize, forfeit or confiscate the proceeds of crime and the instrumentalities of crime or recover pecuniary penalties.

2. A Party in control of forfeited or confiscated property or assets or pecuniary penalties recovered shall dispose of them according to its laws. To the extent permitted by its laws, that Party may transfer all or any part of such property or the proceeds of its sale or the pecuniary penalties recovered to the other Party upon mutually acceptable terms.

3. In the application of this Article, the rights of *bona fide* third parties shall be respected.

ARTICLE 18
COMPATIBILITY WITH OTHER ARRANGEMENTS

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

ARTICLE 19
COSTS

1. The requested Party shall assume all ordinary expenses of fulfilling the request for assistance, except that the requesting Party shall bear -

(a) the fees of other counsel retained at the request of the requesting Party;

(b) the fees and reasonable expenses of expert witnesses;

(c) the costs of translation, interpretation and transcription;

(d) the expenses associated with conveying any person to or from the territory of the requested state and any fees, allowances and expenses payable to the person concerned while that person is in the requesting state pursuant to a request made under Article 10 or 11 of this Treaty; and

(e) the travel expenses of custodial or escorting officers as agreed between the Parties.

2. The costs of utilizing live video or television links or other appropriate communications facilities shall be borne by the requesting Party, unless the Parties mutually agree otherwise.

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

ARTICLE 20
CONSULTATION

1. The Central Authorities shall consult, at times mutually agreed upon by them, to promote the most effective use of this Treaty.

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

ARTICLE 21
SETTLEMENT OF DISPUTES

Any difference or dispute between the Parties arising from the interpretation or implementation of the provisions of this Treaty shall be resolved through the diplomatic channel if the Central Authorities are not able to reach accommodation after a reasonable period.

ARTICLE 22
RATIFICATION, ENTRY INTO FORCE AND TERMINATION

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

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

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

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

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

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

Done at Kuala Lumpur on this 28th day of July 2006 in two original copies in the English language.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

Condoleezza Rice
Secretary of State

FOR THE GOVERNMENT OF MALAYSIA

Dato' Seri Syed Hamid Albar
Minister of Foreign Affairs

ANNEX

1. Offences against the laws relating to possession, trafficking, cultivation, manufacture, import or export of dangerous drugs including narcotics, and psychotropic substances, precursors and essential chemicals used in the illegal manufacture of narcotics and psychotropic substances.

2. Racketeering activity, including -

   (a) using income derived from a pattern of criminal activity to establish, operate, or acquire an interest in an enterprise engaged in or affecting interstate commerce;

   (b) acquiring or maintaining control of or an interest in such an enterprise through a pattern of criminal activity or collection of illegal debt; or

   (c) conducting or participating in the conduct of such an enterprise's affairs through a pattern of criminal activity or collection of illegal debt.

3. Offences against the laws relating to money laundering, including –

   (a) failing to make or causing another to fail to make to the Government a report which is required by law to be made in respect of a transfer of currency or other financial transaction;

   (b) converting, transferring or receiving property knowing that such property is derived from a criminal offence, for the purpose of concealing or disguising the illicit origin of such property or of assisting any person involved in the commission of such offence to evade the legal consequences of his actions;

   (c) concealing or disguising the true nature, source, location, disposition or movement or ownership of property knowing that such property is derived from a crime; or

   (d) possessing or laundering of proceeds obtained from the commission of any offence for which mutual legal assistance may be granted in accordance with this Treaty.

4. Cheating, fraud (against the Government or individuals), obtaining property or pecuniary advantage by deception, willful issuance of a cheque under a false name or without having made arrangements with a financial institution, or after transactions have been suspended by such an institution, or the willful failure to honor a cheque.

5. Offences against the laws relating to securities and futures trading, and fraudulent securities practices including the use by any person of any means, directly or indirectly, in connection with the offer, purchase or sale of any security -

   (a) to employ any device, scheme or artifice to defraud;

   (b) to willfully make any misleading statement or provide any misleading information to shareholders or securities authorities or others; or

   (c) to willfully engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

6. Offences against the laws relating to insider trading, including the offer, purchase or sale of securities by any person while in possession of material non-public information directly or indirectly relating to the securities offered, purchased or sold in breach of a legally binding duty or trust or confidence.

7. Offences against the laws relating to bribery and corruption, including acts involving foreign public officials.

8. Offences against the laws relating to fiscal matters, taxes or duties notwithstanding that the laws of the requested Party do not impose the same kind of tax or duty or do not contain a tax, duty or customs regulation of the same kind as the laws of the requesting Party, including-

   (a) tax evasion or fiscal fraud by individuals or corporate bodies;

   (b) failure to submit returns;

   (c) making a false statement or submitting false or misleading information, whether written or oral, to the relevant authorities; or

   (d) intentionally failing to make a report or declaration as required by law, to relevant authorities in matters concerning customs duties or taxes.

9. Offences against the laws relating to the environment, including conduct directed at the destruction, defacing, deterioration or harming of the earth's environment, the seas or endangered species of plant or animal life, including illegal possession and trafficking of endangered plant or animal species.

10. Offences against the laws relating to export control, including conduct tending to evade the laws controlling the export of goods or arms.

11. Criminal exploitation of children, whether for sexual or other purposes, including-

    (a) forcing children into prostitution;

    (b) commercial dealing in child pornography;

    (c) possessing obscene materials for sale, circulation, distribution or hire; or

    (d) publicly exhibiting obscene material or distributing obscene materials through the Internet.

12. Offences against bankruptcy laws.

13. Offences against the laws relating to corporations or companies, including offences committed by officers, directors or promoters.

14. Offences against the laws relating to firearms, weapons, ammunition or explosives of any type.

15. Offences against the laws relating to protection of intellectual property.

16. Offences against the laws relating to immigration and nationality, including-

    (a) harboring illegal immigrants;

    (b) fraudulent acquisition or illegal possession or use of a passport or visa or any other means to engage in any form of criminal activity; and

    (c) arranging or facilitating the illegal entry or exit of persons into or out of a jurisdiction.

17. Smuggling.

18. Offences against the laws relating to the international transfer of funds.

19. Offences against the laws relating to the protection of computers or computer systems, computer data or computer security (including passwords or other related devices).

20. Piracy involving ships or aircraft.

21. Obstruction of justice, including perjury and attempting to pervert the course of justice.

22. Offences under multilateral international conventions binding on both Parties for which offenders must be prosecuted or extradited.

23. Any offence derived from conduct described in this Annex or subject to mutual legal assistance in accordance with this Treaty where federal jurisdiction is based upon interstate transport or use of the mails, telecommunications or other interstate facilities.

24. Offences of criminal conspiracy, attempt, participation or aiding and abetting and conspiracy offences committed with the common intention of two or more persons.

25. Any offence under the laws of the requesting State which is connected with the commission of one or more offences derived from the conduct described in this Annex or subject to mutual legal assistance in accordance with this Treaty.

FORM A

CERTIFICATE OF AUTHENTICITY OF BUSINESS RECORDS

I, ... (*name*), attest on penalty of criminal punishment for false statement or attestation that I am employed by .....(*name of business from which documents are sought*) and that my official title is ..... (*official title*). I further state that each of the records attached hereto is the original or a duplicate of the original record in the custody of ..... (*name of business from which documents are sought*).

I further state that:

A) such records were made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;

B) such records were kept in the course of a regularly conducted business activity;

C) the business activity made such records as a regular practice; and

D) if any such record is not the original, it is a duplicate of the original.

....
(*signature*) (*date*)

Sworn to or affirmed before me, ... (*name*), a judicial officer, this .....day of ..... 20 ....

FORM B

CERTIFICATION OF ABSENCE OR NONEXISTENCE OF BUSINESS RECORDS

I, ... (*name*), attest on penalty of criminal punishment for false statement or attestation that I am employed by/ associated with .....(*name of business from which documents are sought*) in the position of ..... (*business position or title*) and by reason of my position am authorized and qualified to make this attestation.

As a result of my employment/ association with the above-named business, I am familiar with the business records it maintains. The business maintains records that are:

A) made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;

B) kept in the course of a regularly conducted business activity; and

C) made by the business as a regular practice.

Among the records so maintained are records of individuals and entities that have accounts or otherwise transact business with the above-named business. I have made or caused to be made a diligent search of those records. No records have been found reflecting any business activity between the business and the following individuals and entities:

.....
.....
.....

.....
(*date of execution*)

.....
(*place of execution*)

.....
(*signature*)

FORM C

I, ... (*name*), attest on penalty of criminal punishment for false statement or attestation that my position with the Government of ..... (*country*) is ..... (*official title*) ..... and that in that position I am authorized by the law of ..... (*country*) to attest that the documents attached and described below are true and accurate copies of original official records which are recorded or filed in ..... (*name of office or agency*), which is a government office or agency of ..... (*country*).

Description of Documents:

.....
(*signature*)

.....
(*title*)

.....
(*date*)

FORM D

I, ... (*name*), attest on penalty of criminal punishment for false statement or attestation that:

1. ..... (*name of office or agency*) is a government office or agency of ..... (*country*) and is authorized by law to maintain official records setting forth matters authorized by law to be reported and recorded or filed;

2. records of the type described below set forth matters that are authorized by law to be reported and recorded or filed, and such matters regularly are recorded or filed by the above-named public authority;

3. my position with the above-named public authority is ..... (*official title*);

4. in my official capacity I have caused the production of true and accurate copies of records maintained by that public authority; and

5. no such records have been found to exist therein.

Description of Documents:

.....
(*signature*)

.....
(*date*)

Official Seal

FORM E

I, ... (*name*), attest on penalty of criminal punishment for false statement or attestation that my position with the Government of ..... (*country*) is ..... (*official title*). I received custody of the articles listed below from ..... (*name of person*) on ..... (*date*), at ..... (*place*) in the same condition as when I received them (or, if different, as noted below).

Description of Articles:

Changes in condition while in my custody:

..... (*signature*)

.....(*title*)

Official Seal

.....(*place*)

.....(*date*)

O