

LAW ENFORCEMENT

Cooperation

**Agreement Between the
UNITED STATES OF AMERICA
and MALAYSIA**

Signed at Kuala Lumpur November 19, 2015



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“ . . . the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

MALAYSIA

Law Enforcement: Cooperation

*Agreement signed at Kuala Lumpur
November 19, 2015;
Entered into force April 25, 2016.*

**AGREEMENT BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND
THE GOVERNMENT OF MALAYSIA
ON ENHANCING CO-OPERATION IN
PREVENTING AND COMBATING SERIOUS CRIME**

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 co-operate as partners to prevent and combat Serious Crime, particularly terrorism, more effectively;

RECOGNIZING that information sharing is an essential component in the fight against Serious Crime, particularly terrorism;

RECOGNIZING the importance of preventing and combating Serious Crime, particularly terrorism, while respecting fundamental rights and freedoms;

SEEKING to enhance and encourage co-operation between the Parties in the spirit of partnership;

HAVE AGREED AS FOLLOWS:

ARTICLE 1

DEFINITIONS

For purposes of this Agreement the following definitions shall apply unless the Parties otherwise agree:

1. "Data Subject" shall mean an identified or identifiable natural person;
2. "National Automated Fingerprint Identification System" shall mean, in the case of Malaysia, the database that links fingerprinting data to individual criminal records as handled and maintained by the Royal Malaysia Police, and in the case of the United States the IDENT database of the U.S. Department of Homeland Security and the Next Generation Identity database of the U.S. Federal Bureau of Investigation or their successor systems;
3. "Other Data" shall mean information tied to the data subject that is relevant to the circumstances of the individual exchange of information under this Agreement;
4. "Personal Data" shall mean any biographical data, such as the name, date of birth and passport number relating to the Data Subject;
5. "Process or processing of Personal Data" shall mean any operation or set of operations performed upon Personal Data, whether or not by automated means, such as collection, recording, organization, storage, adaptation or alteration, sorting, retrieval, consultation, use, disclosure by supply, dissemination or otherwise making available, combination or alignment, blocking, or deletion through erasure or destruction of personal data;
6. "Reference Data" shall mean fingerprinting data and the related reference (fingerprinting reference data).

7. "Serious Crime" shall mean, for purposes of implementing this Agreement, conduct constituting an offense punishable by a maximum deprivation of liberty of more than one (1) year or a more serious penalty.

ARTICLE 2

OBJECTIVE

The Parties, subject to the terms of this Agreement and the laws, rules and regulations in each country, agree to enhance the co-operation between the Parties in preventing and combating Serious Crime.

ARTICLE 3

REFERENCE DATA

1. For the purpose of implementing this Agreement, the Parties shall ensure the availability of Reference Data from the file for the National Automated Fingerprint Identification Systems.

2. Reference Data shall only include fingerprinting data and a reference, and excludes any data from which the Data Subject can be directly identified.

ARTICLE 4

AUTOMATED QUERY

1. For the prevention and investigation of Serious Crime, each Party shall allow the other Party's National Contact Points access to the Reference Data in the automated fingerprint identification system, which it has established for that purpose, with the power to conduct automated queries of its National Automated Fingerprint Identification System.

2. An automated query shall include, at a minimum, the electronic receipt of a fingerprint from the requesting Party, comparison of that fingerprint against the National Automated Fingerprint Identification System of the requested Party and an electronic confirmation to the requesting Party of whether the requested Party has a matching fingerprint. These minimum measures shall take place without human intervention.
3. Queries may be conducted only in individual cases and in compliance with the laws, rules and regulations and national policies of the requesting Party.
4. The querying authorities provided for under this Agreement shall be used only for prevention, detection and investigation of Serious Crime.
5. Comparison of fingerprinting data with its related reference held by the requested Party shall be carried out by the requesting National Contact Points by means of the automated supply of the reference data required for a clear match.
6. Upon request, further analysis for the purpose of confirming a match of the fingerprinting data with its related reference may be carried out by the National Contact Point of the requested Party.

ARTICLE 5

ALTERNATIVE MEANS TO QUERY USING IDENTIFYING DATA

1. Notwithstanding Article 4, until the Government of Malaysia has a fully operational and automated fingerprint identification system that links to individual criminal records, it shall provide an alternative means to determine a clear match linking the fingerprinting data to its related reference.
2. For the purpose of this Article, query authorities shall be exercised in the same manner as provided in Article 4.

ARTICLE 6
SUPPLY OF PERSONAL AND OTHER DATA

In the event that the procedure referred to in Article 4 or 5 result in a match between fingerprinting data, the supply of any available Personal Data or Other Data relating to the Reference Data shall be governed by the laws, rules, and regulations of the requested Party, and shall be supplied in accordance with Article 7.

ARTICLE 7
NATIONAL CONTACT POINTS

For the purpose of the supply of data as referred to in Articles 4 and 5, and the subsequent supply of further personal data as referred to in Article 6, each Party shall designate one or more national contact points. For purposes of the Government of Malaysia, the National Contact Point shall be the Royal Malaysia Police. The contact points shall supply such data in accordance with the national law of the Party designating the contact points. Other available legal assistance channels need not be used unless necessary, for instance to authenticate such data for purposes of its admissibility in judicial proceedings of the requesting Party.

ARTICLE 8
IMPLEMENTING ARRANGEMENTS

The technical and procedural details for purposes of implementing this Agreement may be set forth in one or more implementing arrangements or other documents.

ARTICLE 9
SUPPLY OF PERSONAL AND OTHER DATA IN ORDER TO PREVENT SERIOUS
CRIMINAL AND TERRORIST OFFENSES

1. For the prevention of serious criminal and terrorist offenses, the Parties may, in compliance with their respective national law, in individual cases, even without being requested to do so, supply the other Party's relevant national contact point, as referred to in paragraph 6, with the personal data specified in paragraph 2, in so far as is necessary because particular circumstances give reason to believe that the data subject(s):

- a. will commit or has committed terrorist or terrorism related offenses, or offenses related to a terrorist group or association, as those offenses are defined under the supplying Party's national law; or
- b. is undergoing or has undergone training to commit the offenses referred to in subparagraph a; or
- c. will commit or has committed a Serious Crime, or participates in an organized criminal group or association

2. The personal data to be supplied may include, if available, surname, first names, former names, other names, aliases, alternative spelling of names, sex, date and place of birth, current and former nationalities, passport number, numbers from other identity documents, and fingerprinting data, as well as a description of any conviction or of the circumstances giving rise to the belief referred to in paragraph 1.

3. In addition to the personal data referred to in paragraph 2, the Parties may provide each other with non-personal data related to the offenses set forth in paragraph 1.

4. Each Party shall designate one or more national contact points for the exchange of personal and other data under this Article with the other Party's contact

points. The powers of the national contact points shall be governed by the national law applicable.

ARTICLE 10

PRIVACY AND DATA PROTECTION

1. The Parties recognize that the handling and processing of Personal Data that they acquire from each other is of critical importance to preserving confidence in the implementation of this Agreement.

2. The Parties commit themselves to processing personal data fairly and in accord with their respective laws, rules, and regulations by –

- a. ensuring that the personal data provided are adequate and relevant in relation to the specific purpose of the transfer;
- b. retaining Personal Data only so long as necessary for the specific purpose for which the data were provided or further processed in accordance with this Agreement; and
- c. ensuring that possibly inaccurate Personal Data are timely brought to the attention of the requesting Party in order that appropriate corrective action is taken.

3. This Agreement shall not give rise to rights on the part of any private person, including to obtain, suppress, or exclude any evidence, or to impede the sharing of Personal Data. Rights existing independently of this Agreement, however, are not affected.

ARTICLE 11

LIMITATION ON PROCESSING TO PROTECT PERSONAL AND OTHER DATA

1. Without prejudice to paragraphs 3 and 4 of this Article, each Party may process data obtained under this Agreement:

- a. for the purpose of its criminal investigations;
- b. for preventing a serious threat to its public security;
- c. in its non-criminal judicial or administrative proceedings directly related to investigations set forth in subparagraph (a); or
- d. for any other purpose, only with the prior consent of the Party which has transmitted the data.

2. The Parties shall not communicate data provided under this Agreement to any third State, international body or private entity without the consent of the Party that provided the data and without the appropriate safeguards.

3. The requested Party may, in compliance with its laws, rules, and regulations, impose conditions on a case by case basis on the use that may be made of such data by the receiving Party. If the requesting Party accepts the data, it shall be bound by any such conditions.

4. Generic restrictions with respect to the legal standards of the requesting Party for processing Personal Data may not be imposed by the requested Party as a condition to providing data under paragraph 3 of this Article.

5. A Party may conduct a query of the other Party's fingerprint files under Articles 4 or 5 and process data received in response to such a query, including the communication whether or not a hit exists, solely in order to:

- a. establish whether the compared fingerprint data match;

- b. prepare and submit a follow-up request for assistance in compliance with laws, rules, and regulations ; or
- c. conduct record-keeping, as required or permitted by its laws, rules, and regulations.

6. The requested Party may process the data supplied to it by the requesting Party during the course of a query in accordance with Articles 4 and 5 solely where this is necessary for the purposes of comparison, providing automated replies to the query or record-keeping pursuant to Article 13. The data supplied for comparison shall be deleted immediately following data comparison or automated replies to queries unless further processing is necessary for the purposes mentioned under this Article, paragraph 5, subparagraphs (b) or (c).

ARTICLE 12

CORRECTION, BLOCKAGE AND DELETION OF DATA

1. At the request of the requested Party, the requesting Party shall correct, block or delete, consistent with its laws, rules, and regulations, data received under this Agreement that are incorrect or incomplete or if its collection or further processing contravenes this Agreement or the rules applicable to the requested Party.
2. Where a Party becomes aware that data it has received from the other Party under this Agreement are not accurate, it shall take all appropriate measures to safeguard against erroneous reliance on such data, which shall include in particular supplementation, deletion, or correction of such data.
3. Each Party shall notify the other if it becomes aware that material data it has transmitted to the other Party or received from the other Party under this Agreement are inaccurate or unreliable or are subject to significant doubt.

ARTICLE 13

DOCUMENTATION

1. Each Party shall maintain a record of the transmission and receipt of data communicated to the other Party under this Agreement. This record shall serve to:
 - a. ensure effective monitoring of data protection in accordance with the laws, rules, and regulations of the respective Party;
 - b. enable the Parties to effectively make use of the rights granted to them according to Articles 12 and 16; and
 - c. ensure data security.
2. The record shall include the following:
 - a. Information on the data supplied;
 - b. The date of supply; and
 - c. The recipient of the data in case the data are supplied to other entities.
3. The recorded data shall be protected with suitable measures against inappropriate use and other forms of improper use and shall be kept for two years. After the conservation period the recorded data shall be deleted immediately, unless this is inconsistent with national law, including applicable data protection and retention rules.

ARTICLE 14

DATA SECURITY

1. The Parties shall ensure that the necessary technical measures and organizational arrangements are utilized to protect personal data against accidental or

unlawful destruction, accidental loss or unauthorized disclosure, alteration, access or any unauthorized form of processing. The Parties in particular shall reasonably take measures to ensure that only those authorized to access Personal Data can have access to such data.

2. Any implementing, arrangements or other documents that govern the procedures for automated querying of fingerprint files pursuant to Articles 4 and 5 shall provide –

- a. that appropriate use is made of modern technology to ensure data security and protection;
- b. that encryption and authorization procedures recognized by the competent authorities are used when having recourse to generally accessible networks; and
- c. for a mechanism to ensure that only permissible queries are conducted.

ARTICLE 15

TRANSPARENCY – PROVIDING INFORMATION TO THE DATA SUBJECTS

1. Nothing in this Agreement shall be interpreted to interfere with the Parties' legal obligations, as set forth by their respective laws, to provide Data Subjects with information as to processing of their Personal Data.

2. Such information may be denied in accordance with the respective laws of the Parties, including if providing this information may jeopardize:

- a. the purposes of the processing;
- b. investigations or prosecutions conducted by the competent authorities of the Parties; or

- c. the rights and freedoms of third parties.

ARTICLE 16

INFORMATION

Upon request, the requesting Party shall inform the requested Party of the processing of supplied data and the result obtained. The requesting Party shall ensure that its answer is communicated to the supplying Party in a timely manner.

ARTICLE 17

RELATION TO OTHER AGREEMENTS

Nothing in this Agreement shall be construed to limit or prejudice the provisions of any treaty, including but not limited to Mutual Legal Assistance treaties, other agreement, working law enforcement relationship or national law allowing for information sharing between the Parties.

ARTICLE 18

CONSULTATIONS

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

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

ARTICLE 19

SETTLEMENT OF DISPUTES

In the event of any differences or dispute regarding the interpretation, implementation, or application of any of the Articles of this Agreement, the Parties shall consult each other in order to facilitate its resolution and to settle it amicably through the diplomatic channel without reference to any third party or international tribunal.

ARTICLE 20

LANGUAGE

The English language shall be the official language of this Agreement, all documentation associated with it and all other communication in conjunction with activities and implementation of this Agreement.

ARTICLE 21

FINANCIAL ARRANGEMENTS

Each Party shall bear the costs and expenses incurred by its authorities in implementing this Agreement, in accordance with its applicable laws, rules, and regulations. In special cases, the Parties may agree on different arrangements.

ARTICLE 22

CONFIDENTIALITY

1. Pursuant to the terms of this Agreement, each Party shall observe the confidentiality of documents, information and other data received from or supplied to the other Party during the period of the implementation of this Agreement.
2. Both Parties agree that the provisions of this Article shall survive the expiry or termination of this Agreement.

ARTICLE 23
TERMINATION OF AGREEMENT

This Agreement may be terminated by either Party with three (3) months' notice in writing to the other Party. The provisions of this Agreement shall continue to apply to data supplied prior to such termination.

ARTICLE 24
AMENDMENT

1. Either Party may request in writing an amendment to this Agreement.
2. Any amendment agreed to by the Parties shall be reduced into writing.
3. Such amendment shall come into force on such date as may be determined by the Parties.

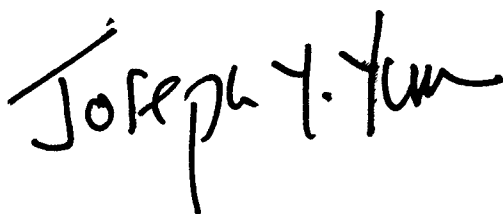
ARTICLE 25
ENTRY INTO FORCE

This Agreement shall enter into force on the date of the later note completing an exchange of diplomatic notes between the Parties indicating that each has taken the steps necessary to bring this Agreement into force. The Parties shall provisionally apply this Agreement from the date of signature to the extent consistent with their domestic laws.

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

Done at Kuala Lumpur, this 19th day of November 2015, in the English language.

FOR THE GOVERNMENT OF	FOR THE GOVERNMENT
THE UNITED STATES OF AMERICA:	OF MALAYSIA:



**H.E. JOSEPH Y. YUN
AMBASSADOR OF THE UNITED
STATES OF AMERICA TO
MALAYSIA**



**H.E. DATO' SRI ALWI
BIN HJ IBRAHIM
SECRETARY GENERAL
MINISTRY OF HOME AFFAIRS
MALAYSIA**