



LAWS OF MALAYSIA

Act A1424

EVIDENCE (AMENDMENT) ACT 2012

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LAWS OF MALAYSIA**Act A1424****EVIDENCE (AMENDMENT) ACT 2012**

An Act to amend the Evidence Act 1950.

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ENACTED by the Parliament of Malaysia as follows:

Short title, commencement and application

1. (1) This Act may be cited as the Evidence (Amendment) Act 2012.

(2) Section 2 comes into operation on the same date the Criminal Procedure Code (Amendment) Act 2010 [*Act A1378*] comes into operation.

(3) Section 3 comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

(4) Section 3 shall not apply in relation to criminal proceedings which began before the commencement of that section.

New section 73AA

2. The Evidence Act 1950 [*Act 56*], which is referred to as the “principal Act” in this Act, is amended by inserting after section 73A the following section:

“Admissibility of fact in criminal cases, etc.

73AA. Notwithstanding anything contained in this Chapter and subject to the Criminal Procedure Code [*Act 593*], in any criminal proceedings, no fact whether oral or written need be proved which the parties to the proceedings have agreed to admit at the trial or which the parties to the proceedings have agreed to admit before the trial in writing.”.

New Chapter VA

3. The principal Act is amended by inserting after section 90c in Chapter V the following Chapter:

“CHAPTER VA

ADMISSIBILITY OF EVIDENCE OBTAINED UNDER MUTUAL ASSISTANCE IN CRIMINAL MATTERS REQUESTS

Application of Chapter VA

90D. Notwithstanding any other provision in this Act, this Chapter shall apply for the purpose of determining the admissibility of evidence obtained pursuant to a request made under the Mutual Assistance in Criminal Matters Act 2002 [*Act 621*].

Admissibility in criminal matter of evidence obtained pursuant to requests for mutual assistance in criminal matters

90E. (1) Subject to subsections (2) to (9), any testimony, statement or deposition, together with any document or thing exhibited or annexed to such statement or deposition, that is received by the Attorney General pursuant to a request made under the Mutual Assistance in Criminal Matters Act 2002 in respect of the criminal matter, shall on its production be admitted in those criminal proceedings as evidence without further proof of any fact stated in the testimony, statement or deposition and in the document, if any, exhibited or annexed to such statement or deposition.

(2) The testimony, statement or deposition shall be taken—

- (a) on oath or affirmation;
- (b) under an obligation to tell the truth imposed, whether expressly or by implication, by or under a law of the foreign country concerned; or
- (c) under such caution or admonition as would be accepted, by courts in the foreign country concerned, for the purposes of giving testimony in proceedings before those courts.

(3) The testimony, statement or deposition shall—

- (a) be signed or certified by a judge, magistrate or officer in or of the foreign country to which the request was made; and
- (b) bear an official or public seal of—
 - (i) the foreign country; or
 - (ii) a Minister of State, or a department or officer of the government of the foreign country.

(4) A certificate by the judge, magistrate or officer referred to in subsection (3) shall, without further proof, be admitted in the proceedings as conclusive evidence of the facts contained in the certificate.

(5) All courts in Malaysia shall take judicial notice of the official or public seal referred to in subsection (3).

(6) The testimony taken under subsection (2) may be reduced to writing or be recorded on a tape, disk or other device from which sounds or images are capable of being reproduced or may be taken by means of technology that permits the virtual presence of the person in Malaysia.

(7) Where the testimony has been reduced to writing or recorded on a tape, disk or other device from which sounds or images are capable of being reproduced, the writing, tape, disk or other device shall be authenticated as provided under subsection (3).

(8) Where the testimony has been made by means of video or other means which permits the virtual presence of the person in Malaysia, that testimony shall be deemed to have been given in Malaysia.

(9) For the purposes of this Chapter, the testimony, statement or deposition need not—

(a) be in the form of an affidavit; or

(b) constitute a transcript of a proceeding in a foreign court.

(10) For the purpose of this Chapter, where the prosecutor seeks to adduce any testimony, statement, deposition, document or thing specified in subsection (1) as evidence in the criminal matter, the court shall not give any direction that such evidence or any part thereof is not to be adduced.

(11) In this Chapter, “criminal matter” has the meaning assigned to it under the Mutual Assistance in Criminal Matters Act 2002.

Certificate relating to foreign evidence

90F. A certificate by the Attorney General or by a person authorized by the Attorney General to make such a certificate certifying that any testimony, statement or deposition to which such certificate is attached, together with any document or thing exhibited or annexed thereto, if any, has been received by the Attorney General pursuant to a request made under the Mutual Assistance in Criminal Matters Act 2002 in respect of any criminal matter referred to in the certificate, shall on its production without further proof be admitted in the proceeding as conclusive evidence of the facts contained in the certificate.”