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[reference to the provisions of the Budapest Convention]

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BUDAPEST CONVENTION	DOMESTIC LEGISLATION
Chapter I – Use of terms	
<p>Article 1 – “Computer system”, “computer data”, “service provider”, “traffic data”:</p> <p>For the purposes of this Convention:</p> <p>a “computer system” means any device or a group of interconnected or related devices, one or more of which, pursuant to a program, performs automatic processing of data;</p> <p>b “computer data” means any representation of facts, information or concepts in a form suitable for processing in a computer system, including a program suitable to cause a computer system to perform a function;</p> <p>c “service provider” means:</p> <p>i any public or private entity that provides to users of its service the ability to communicate by means of a computer system, and</p> <p>ii any other entity that processes or stores computer data on behalf of such communication service or users of such service;</p> <p>d “traffic data” means any computer data relating to a communication by means of a computer system, generated by a computer system that formed a part in the chain of communication, indicating the communication’s origin, destination, route, time, date, size, duration, or type of underlying service</p>	<p>Section 2 of Computer Crimes Act 1997 (CCA): Interpretation</p> <p>“Computer” means an electronic, magnetic, optical, electrochemical, or other data processing device, or a group of such interconnected or related devices, performing logical, arithmetic, storage and display functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device or group of such interconnected or related devices, but does not include an automated typewriter or typesetter, or a portable hand held calculator or other similar device which is non-programmable or which does not contain any data storage facility.</p> <p>“Computer network” means the interconnection of communication lines and circuits with a computer or a complex consisting of two or more interconnected computers.</p> <p>“Computer output” or “output” means a statement or a representation whether in written, printed, pictorial, film, graphical, acoustic or other form-</p> <ul style="list-style-type: none"> • Produced by a computer • Displayed on the screen of a computer • Accurately translated from a statement or representation so produced <p>“Data” means representations of information or of concepts that are being prepared or have been prepared in a form suitable for use in a computer.</p> <p>“Function” includes logic, control, arithmetic, deletion, storage and retrieval and communication or telecommunication to, from or within a computer.</p>

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	<p>"Premises" includes land, buildings, movable structures and any conveyance by land, water and air.</p> <p>"Program" means data representing instructions or statements that, when executed in a computer, causes the computer to perform a function.</p> <p>Section 6 (1) of the Communications and Multimedia Act 1998(CMA): Interpretation</p> <p>Communications means any communication, whether between persons and persons, things and things, or persons and things, in the form of sound, data, text, visual images, signals or any other form or any combination of those forms – wide enough to cover both traffic data and content data.</p>
Chapter II – Measures to be taken at the national level	
Section 1 – Substantive criminal law	
Title 1 – Offences against the confidentiality, integrity and availability of computer data and systems	
<p>Article 2 – Illegal access</p> <p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.</p>	<p>Section 3 of CCA 1997 - Unauthorized access to computer material</p> <p>(1) A person shall be guilty of an offence if-</p> <ol style="list-style-type: none"> a) he causes a computer to perform any function with intent to secure access to any program or data held in any computer b) the access he intends to secure is unauthorised; and c) he knows at the time when he causes the computer to perform the function that is the case <p>Section 4 of CCA 1997 - Unhauthorized access with intent to commit or facilitate commission of further offence</p> <p>(1) A person shall be guilty of an offence under this section if he commits an offence referred to in section 3 with intent –</p> <ol style="list-style-type: none"> (a) to commit an offence involving fraud or dishonesty or which causes injury as defined in the Penal Code [Act 574]; or (b) to facilitate the commission of such an offence whether by himself or by any other person <p>(2) For the purposes of this section, it is immaterial whether the offence to which this section applies is to be committed at the same time when the</p>

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	<p>unauthorized access is secured or to any future occasion.</p> <p>(3) A person guilty of an offence under this section shall on conviction be liable to a fine not exceeding one hundred and fifty thousand ringgit or to imprisonment for a term not exceeding ten years or to both.</p>
<p>Article 3 – Illegal interception Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.</p>	<p>Section 234 of CMA 1998 – Interception and disclosure of communications prohibited</p> <p>(1) A person who, without lawful authority under this Act or any other written law-</p> <ol style="list-style-type: none"> a) Intercepts, attempts to intercept, or procures any other person to intercept or attempt to intercept, any communications; b) Discloses, or attempts to disclose, to any other person the contents, of any communications, knowing or having reason to believe that the information was obtained through the interception of any communications in contravention of this section; or c) Uses, or attempts to use, the contents of any communications, knowing or having reason to believe that the information was obtained through the interception of any communications in contravention of this section, <p>commits an offence.</p> <p>(2) A person authorised under this Act who intentionally discloses, attempts to disclose, to any other person the contents of any communications, intercepted by means authorised by this Act-</p> <ol style="list-style-type: none"> a) Knowingly or having reason to believe that the information was obtained through the interception of such communications in connection with criminal investigation b) Having obtained or received the information in connection with a criminal investigation; or c) To improperly obstruct, impede or interfere with a duly authorised criminal investigation,

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	<p>commits an offence</p> <p>(3) A person who commits an offence under subsection (1) or (2) shall on conviction be liable to a fine not exceeding RM50, 000.00 or to imprisonment for a term not exceeding 1 year or both.</p> <p>(4) It shall be lawful under this Chapter for an officer, employee or agent of any network facilities provider, network service provider, applications service provider or content applications service provider whose facilities or services are used in communications to intercept, disclose or use those communications in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his facilities or services or to the protection of the rights or property of the provider of the facilities or services, but the provider shall not utilise the facilities or services for observing or random monitoring unless it is for mechanical or service quality control checks.</p>
<p>Article 4 – Data interference</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>	<p>Section 5 of Computer Crimes Act 1997- Unauthorised modification of the contents of any computer</p> <p>(1) A person shall be guilty of an offence if he does any act which he knows will cause unauthorised modification of the contents of any computer</p> <p>(2) For the purposes of this section, it is immaterial that the act in question is not directed at-</p> <ol style="list-style-type: none"> a) Any particular program or data b) A program or data of any kind or c) A program or data held in any particular computer <p>(3) For the purposes of this section, it is immaterial whether an unauthorised modification is or is intended to be permanent or merely temporary</p> <p>(4) A person guilty of an offence under this section shall on conviction be liable to a fine not exceeding RM100,000.00 or to imprisonment for a term not exceeding 7 years or both or be liable to a fine not exceeding RM150,000.00 or to imprisonment for a term not exceeding 10 years or to both, if the act is done with the intention of causing injury as defined</p>

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<p>Article 5 – System interference Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data</p>	<p>in the Penal Code.</p> <p>Section 5 of the CCA – Unauthorised modification of the contents of any computer <i>See above</i></p> <p>Section 2 of CCA 1997 – Interpretation (7) for the purposes of this Act, a modification of the contents of any computer takes place if, by the operation of any function of the computer concerned or any other computer-</p> <ul style="list-style-type: none"> a) Any program or data held in the computer concerned is altered or erased; b) Any program or data is introduced or added to its content; c) Any event occurs which impairs the normal operation of any computer, <p>And any act that contributes towards causing such a modification shall be regarded as causing it.</p> <p>(8) Any modification referred to subsection (7) above is unauthorised if-</p> <ul style="list-style-type: none"> a) The person whose act causes it is not himself entitled to determine whether the modification should be made; and b) He does not have consent to the modification from any person who is so entitled. <p>Section 235 of CMA - Damage to network facilities A person who by any wilful, dishonest or negligent act or omission, extends, tampers with, adjusts, alters, removes, destroys or damages any network facilities or any part of them commits an offence and shall, on conviction, be liable to a fine not exceeding RM300,000.00 or to imprisonment for a term not exceeding 3 years or both.</p>
<p>Article 6 – Misuse of devices 1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right:</p>	<p>Section 236 CMA – Fraud and related activity in connection with access devices etc (1) A person who knowingly or with intention to defraud-</p>

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a the production, sale, procurement for use, import, distribution or otherwise making available of:

i a device, including a computer program, designed or adapted primarily for the purpose of committing any of the offences established in accordance with the above Articles 2 through 5;

ii a computer password, access code, or similar data by which the whole or any part of a computer system is capable of being accessed, with intent that it be used for the purpose of committing any of the offences established in Articles 2 through 5; and

b the possession of an item referred to in paragraphs a.i or ii above, with intent that it be used for the purpose of committing any of the offences established in Articles 2 through 5. A Party may require by law that a number of such items be possessed before criminal liability attaches.

2 This article shall not be interpreted as imposing criminal liability where the production, sale, procurement for use, import, distribution or otherwise making available or possession referred to in paragraph 1 of this article is not for the purpose of committing an offence established in accordance with Articles 2 through 5 of this Convention, such as for the authorised testing or protection of a computer system.

3 Each Party may reserve the right not to apply paragraph 1 of this article, provided that the reservation does not concern the sale, distribution or otherwise making available of the items referred to in paragraph 1 a.ii of this article.

a) Produce, assembles, uses, imports, sells, supplies or lets for hire any counterfeit access devices

b) Possesses any counterfeit access device or unauthorised access device

c) Produces, assembles, uses, imports, sells, supplies or lets for hire, or has control or custody of, or possesses any device-making equipment; or

d) Produces, assembles, uses, imports, sells, supplies or lets for hire, or has control or custody of, or possesses-

(i) Any equipment, device or apparatus that has been modified or altered to obtain unauthorised use of any network service applications service or content applications services or

(ii) Hardware or software used for altering or modifying any equipment, device or apparatus to obtain unauthorised access to any network service, applications services or content applications services,

commits an offence.

(2) A person who without the authorisation of the issuer of an access device, solicits a person for the purpose of-

a) Offering an access device; or

b) Selling information regarding, or an application to obtain an access device,

commits an offence.

(3) A person who commits an offence under subsection (1) or (2) shall on conviction, be liable to a fine not exceeding RM500,00.00 or to imprisonment for a term not exceeding 5 years or to both

(4) For the purposes of this section-

„Counterfeit access device“ means any access device that is counterfeit, fictitious, altered or forged or an identifiable component of an access device or a

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	<p>counterfeit access device</p> <p>„Device –making equipment” means any equipment, mechanism or impression designed or primarily used for making an access device or a counterfeit access device</p> <p>„Unauthorised access device” means any access device that is lost, stolen, expired, revoked, cancelled or obtained with intent to defraud</p> <p>„Access device” is defined as any card, plate, code, account number, electronic serial number, mobile identification number, or other network service, applications service or content applications service, equipment, or facility identifier, or other means of access that can be used, alone or in conjunction with another access device, for the purposes of any communications.</p> <p>Section 6 of the CCA 1997 – Wrongful communications</p> <p>(1) A person shall be guilty of an offence if he communicates directly or indirectly a number, code, password or other means of access to a computer to any person other than a person to whom he is duly authorised to communicate</p> <p>(2) A person guilty of an offence under this section shall on conviction be liable to a fine not exceeding RM25,000.00 or to imprisonment for a term not exceeding 3 years or both.</p>
Title 2 – Computer-related offences	
<p>Article 7 – Computer-related forgery</p> <p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.</p>	<p>Section 463 – Forgery – Penal Code</p> <p>Whoever makes any false document or part of a document with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.</p> <p>Section 4 of CCA 1997 – Unauthorised access with intent to commit or</p>

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	<p>facilitate commission of further offence</p> <p>(1) A person shall be guilty of an offence under this section if he commits an offence referred to in Section 3 of CCA 1997 with intent-</p> <p>a) To commit an offence involving fraud or dishonesty or which causes injury as defined in the Penal Code [Act 574]; or</p> <p>b) To facilitate the commission of such an offence whether by himself or by any other person</p> <p>(2) For the purposes of this section, it is immaterial whether the offence to which this section applies is to be committed at the same time when the unauthorised access is secured or any future occasions.</p> <p>(3) A person guilty of an offence under this section shall on conviction be liable to a fine not exceeding RM150,000.00 or to imprisonment for a term not exceeding 10 years or both.</p>
<p>Article 8 – Computer-related fraud</p> <p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:</p> <p>a any input, alteration, deletion or suppression of computer data;</p> <p>b any interference with the functioning of a computer system,</p> <p>with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.</p>	<p>Section 415 of Penal Code (covers both conventional and cyber fraud)- Cheating.</p> <p>Whoever by deceiving any person, whether or not such deception was the sole or main inducement:</p> <p>(a) fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property; or</p> <p>(b) intentionally induces the person so deceived to do or omit to do anything which he would not do or omit to do if he were not so deceived and which act or omission causes or is likely to cause damage or harm to any person in body, mind, reputation, or property,</p> <p>is said to "cheat".</p> <p>Section 3 of CCA 1997 – Unauthorized access to computer material (see above)</p>

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Section 4 of CCA 1997 – Unauthorized access with intent to commit or facilitate commission of further offence (see above)

Section 8 of CCA 1997 – Presumption

A person who has in his custody or control any program, data or other information which is held in any computer or retrieved from any computer which he is not authorized to have in his custody or control shall be deemed to have obtained unauthorized access to such program, data or information unless the contrary is proved.

Section 233 of CMA 1998 – Improper use of network facilities or network service etc.

- (1) A person who-
- (a) By means of any network facilities or network service or applications service knowingly-
- i) Makes, creates or solicits and
 - ii) Initiates the transmission of,

any comment, request, suggestion or other communication which is obscene, indecent, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass another person; or

- (b) Initiates a communications using any application service, whether continuously, repeatedly or otherwise during which communication may or may not ensue, with or without disclosing his identity and with intent to annoy, abuse, threaten or harass any person at any number or electronic address,

commits an offence.

- (2) A person who knowingly—
- (a) by means of a network service or applications service provides any obscene communication for commercial purposes to any person; or
 - (b) permits a network service or applications service under the person's

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	<p>control to be used for an activity described in paragraph (a), commits an offence.</p> <p>(3) A person who commits an offence under this section shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both and shall also be liable to a further fine of one thousand ringgit for every day during which the offence is continued after conviction.</p>
Title 3 – Content-related offences	
<p>Article 9 – Offences related to child pornography</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct:</p> <ul style="list-style-type: none"> a producing child pornography for the purpose of its distribution through a computer system; b offering or making available child pornography through a computer system; c distributing or transmitting child pornography through a computer system; d procuring child pornography through a computer system for oneself or for another person; e possessing child pornography in a computer system or on a computer-data storage medium. <p>2 For the purpose of paragraph 1 above, the term “child pornography” shall include pornographic material that visually depicts:</p> <ul style="list-style-type: none"> a a minor engaged in sexually explicit conduct; b a person appearing to be a minor engaged in sexually explicit conduct; c realistic images representing a minor engaged in sexually explicit conduct <p>3 For the purpose of paragraph 2 above, the term “minor” shall include all persons under 18 years of age. A Party may, however, require a lower age-</p>	<p>Section 4 of the Sexual Offences Against Children Bill 2017 – Child Pornography</p> <p>4. In this Act –</p> <ul style="list-style-type: none"> (a) “child pornography” means any representation, whether visual audio or written or the combination of visual, audio or written, or by any other means – <ul style="list-style-type: none"> (i) of a child engaged in sexually explicit conduct; (ii) of a person appearing to be a child engaged in sexually explicit conduct; (iii) of realistic images of a child engaged in sexually explicit conduct; or (iv) of realistic images of a person appearing to be a child engaged in sexually explicit conduct; and (b) “sexually explicit conduct” includes actual or simulated of the following: <ul style="list-style-type: none"> (i) sexual intercourse, or lascivious acts including physical contact involving genital to genital, oral to genital, anal to genital, or oral to anal, between persons of the same or opposite sex; (ii) bestiality; (iii) masturbation; (iv) sadistic or masochistic abuse in a sexual context;

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limit, which shall be not less than 16 years.

4 Each Party may reserve the right not to apply, in whole or in part, paragraphs 1, sub-paragraphs d. and e, and 2, sub-paragraphs b. and c.

(v) lascivious exhibition of the genital, buttock, breast, public area or anus; and

(vi) use of any object or instrument for lascivious acts.

Section 5 of the Sexual Offences Against Children Bill 2017 – Making, producing, directing the making or production of, etc., child pornography

5. Any person who makes, produces, directs the making or production of, or participates, engages or is involved, in any way, in the making, production or the directing of the making or production of, any child pornography commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding thirty years and shall also be punished with a whipping of not less than six strokes.

Section 5 of the Sexual Offences Against Children Bill 2017 – Exchanging, publishing, etc., child pornography

8. Any person who –

(a) exchanges, publishes, sells, lets for hire, distributes, exhibits, advertises, transmits, promotes, imports, exports, conveys, offers or makes available, in any manner, any child pornography;

(b) obtains, collects or seeks any child pornography; or

(c) participates in or receives profits from any business that he knows or has reason to believe is related to any child pornography,

commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding fifteen years and shall also be punished with whipping of not less than three strokes.

Section 9 of the Sexual Offences Against Children Bill 2017 – Selling, etc., child pornography to a child

9. Any person who sells, lets for hire, distributes, exhibits, advertises, transmits, promotes, conveys, offers or makes available, in any manner, any child pornography to a child commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding fifteen years and shall

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	<p>also be punished with whipping of not less than five strokes.</p> <p>Section 10 of the Sexual Offences Against Children Bill 2017 – Accessing, etc., child pornography</p> <p>10. Any person who accesses, or has in his possession or control, any child pornography commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten thousand ringgit or to both.</p>
Title 4 – Offences related to infringements of copyright and related rights	
<p>Article 10 – Offences related to infringements of copyright and related rights</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the infringement of copyright, as defined under the law of that Party, pursuant to the obligations it has undertaken under the Paris Act of 24 July 1971 revising the Bern Convention for the Protection of Literary and Artistic Works, the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Copyright Treaty, with the exception of any moral rights conferred by such conventions, where such acts are committed wilfully, on a commercial scale and by means of a computer system.</p> <p>2 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the infringement of related rights, as defined under the law of that Party, pursuant to the obligations it has undertaken under the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention), the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Performances and Phonograms Treaty, with the exception of any moral rights conferred by such conventions, where such acts are committed wilfully, on a commercial scale and by means of a computer system.</p> <p>3 A Party may reserve the right not to impose criminal liability under paragraphs 1 and 2 of this article in limited circumstances, provided that other effective remedies are available and that such reservation does not derogate from the Party’s international obligations set forth in the international instruments referred to in paragraphs 1 and 2 of this article.</p>	<p>Section 7 of the Copyright Act 1987 – Works eligible for copyright</p> <p>7. (1) Subject to this section, the following works shall be eligible for copyright:</p> <ul style="list-style-type: none"> (a) literary works; (b) musical works; (c) artistic works; (d) films; (e) sound recordings; and (f) broadcasts. <p>(2) Works shall be protected irrespective of their quality and the purpose for which they were created.</p> <p>(2A) Copyright protection shall not extend to any idea, procedure, method of operation or mathematical concept as such.</p> <p>(3) A literary, musical or artistic work shall not be eligible for copyright unless—</p> <ul style="list-style-type: none"> (a) sufficient effort has been expended to make the work original in character; and (b) the work has been written down, recorded or otherwise reduced to material form. <p>(4) A work shall not be ineligible for copyright by reason only that the making of the work, or the doing of any act in relation to the work involves an infringement of copyright in some other work.</p>

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(5) Copyright shall not subsist under this Act in any design which is registered under any written law relating to industrial design.

(6) (Deleted by Act A1420).

(7) For the purpose of this section, —any written law relating to industrial design includes:

- (a) the United Kingdom Designs (Protection) Act 1949 [Act 214];
- (b) the United Kingdom Designs (Protection) Ordinance of Sabah [Sabah Cap. 152]; and
- (c) the Designs (United Kingdom) Ordinance of Sarawak [SWK Cap. 59].

Section 8 of the Copyright Act 1987 — Derivative works

8. (1) The following derivative works are protected as original works:

- (a) translations, adaptations, arrangements and other transformations of works eligible for copyright; and
- (b) collections of works eligible for copyright, or compilation of mere data whether in machine readable or other form, which constitute intellectual creation by reason of the selection and arrangement of their contents.

(2) Protection of works referred to in subsection (1) shall be without prejudice to any protection of the existing works used.

Section 41 of the Copyright Act 1987 — Offences

(1) Any person who during the subsistence of copyright in a work or performers' right—

- (a) makes for sale or hire any infringing copy;
- (b) sells, lets for hire or by way of trade, exposes or offers for sale or hire any infringing copy;
- (c) distributes infringing copies;
- (d) has in his possession, custody or control, otherwise than for his private and domestic use, any infringing copy;
- (e) by way of trade, exhibits in public any infringing copy;
- (f) imports into Malaysia, otherwise than for his private and domestic use, an infringing copy;

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- (g) makes or has in his possession any contrivance used or intended to be used for the purposes of making infringing copies;
- (h) circumvents or causes or authorizes the circumvention of any effective technological measures referred to in subsection 36A(1);
- (ha) manufactures, imports or sells any technology or device for the purpose of the circumvention of technological protection measure referred to in subsection 36A(3);
- (i) removes or alters any electronic rights management information referred to in section 36B without authority; or
- (j) distributes, imports for distribution or communicates to the public, without authority, works or copies of works in respect of which electronic rights management information has been removed or altered without authority

shall, unless he is able to prove that he had acted in good faith and had no reasonable grounds for supposing that copyright or performers' right would or might thereby be infringed, be guilty of an offence and shall on conviction be liable—

- (i) in the case of an offence under paragraphs (a) to (f), to *a fine of not less than two thousand ringgit and not more than twenty thousand ringgit for each infringing copy, or to imprisonment for a term not exceeding five years or to both and for any subsequent offence, to **a fine of not less than four thousand ringgit and not more than forty thousand ringgit for each infringing copy or to imprisonment for a term not exceeding ten years or to both;
- (ii) in the case of an offence under paragraphs (g) and (ha), to ***a fine of not less than four thousand ringgit and not more than forty thousand ringgit for each contrivance in respect of which the offence was committed or to imprisonment for a term not exceeding ten years or to both and for any subsequent offence to †a fine of not less than eight thousand ringgit and not more than eighty thousand ringgit for each contrivance in respect of which the offence was committed or to imprisonment for a term not exceeding twenty years or to both;
- (iii) in the case of an offence under paragraphs (h), (i) and (j), to a fine not

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exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both and for any subsequent offence, to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding ten years or to both.

(2) For the purposes of paragraphs (1)(a) to (f), any person who has in his possession, custody or control three or more infringing copies of a work or recording in the same form shall, unless the contrary is proved, be presumed to be in possession of or to import such copies otherwise than for private or domestic use.

(3) Any person who causes a literary or musical work, sound recording or film to be performed in public shall be guilty of an offence under this subsection unless he is able to prove that he had acted in good faith and had no reasonable grounds for supposing that copyright would or might thereby be infringed.

(4) Where an offence under this section is committed by a body corporate or by a person who is a partner in a firm, every director, chief executive officer, chief operating officer, secretary, manager or other similar officer of the body corporate or every other partner in the firm or was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of the affairs of the body corporate or firm or was assisting in such management, as the case may be, shall be deemed to be guilty of the offence and may be charged severally or jointly in the same proceedings with the body corporate or firm unless he proves that the offence was committed without his consent or connivance and that he exercised all due diligence to prevent the commission of the offence.

Compounding of offences

41A. (1) The Controller or a Deputy Controller or any person authorized in writing by the Controller may with the written consent of the Public Prosecutor compound any subsidiary legislation made under this Act which is prescribed to be a compoundable offence by accepting from the person reasonably suspected of having committed such offence a sum of money not exceeding such amount as may be prescribed.

(2) Upon receipt of the payment under subsection (1), no further

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	<p>proceedings shall be taken against such person in respect of such offence and where possession has been taken of any goods, such goods may be released, subject to such conditions as may be imposed in accordance with the conditions of the compound.</p>
Title 5 – Ancillary liability and sanctions	
<p>Article 11 – Attempt and aiding or abetting</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, aiding or abetting the commission of any of the offences established in accordance with Articles 2 through 10 of the present Convention with intent that such offence be committed.</p> <p>2 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, an attempt to commit any of the offences established in accordance with Articles 3 through 5, 7, 8, and 9.1.a and c. of this Convention.</p> <p>3 Each Party may reserve the right not to apply, in whole or in part, paragraph 2 of this article.</p>	<p>Section 4(1/b,3) of the CCA - Unauthorized access with intent to commit or facilitate commission of further offence</p> <p>4. (1) A person shall be guilty of an offence under this section if he commits an offence referred to in section 3 with intent –</p> <p style="padding-left: 40px;">(b) to facilitate the commission of such an offence whether by himself or by any other person.</p> <p>Section 7(1) of CCA - Abetments and attempts punishable as offences</p> <p>7. (1) A person who abets the commission of or who attempts to commit any offence under this Act shall be guilty of that offence and shall on conviction be liable to the punishment provided for the offence.</p> <p>Section 34 of the Penal Code - Each of several persons liable for an act done by all, in like manner as if done by him alone</p> <p>34. When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if the act were done by him alone.</p> <p>Section 511 of the Penal Code - Punishment for attempting to commit offences punishable with imprisonment</p> <p>511. Whoever attempts to commit an offence punishable by this Code or by any other written law with imprisonment or fine or with a combination of such punishments, or attempts to cause such an offence to be committed, and in such attempt does any act towards the commission of such offence, shall, where</p>

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	no express provision is made by this Code or by such other written law, as the case may be, for the punishment of such attempt, be punished with such punishment as is provided for the offence: Provided that any term of imprisonment imposed shall not exceed one-half of the longest term provided for the offence.
<p>Article 12 – Corporate liability</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to ensure that legal persons can be held liable for a criminal offence established in accordance with this Convention, committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within it, based on:</p> <ol style="list-style-type: none"> a a power of representation of the legal person; b an authority to take decisions on behalf of the legal person; c an authority to exercise control within the legal person. <p>2 In addition to the cases already provided for in paragraph 1 of this article, each Party shall take the measures necessary to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of a criminal offence established in accordance with this Convention for the benefit of that legal person by a natural person acting under its authority.</p> <p>3 Subject to the legal principles of the Party, the liability of a legal person may be criminal, civil or administrative.</p> <p>4 Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offence.</p>	<p>Section 244 of the CMA - Offences by body corporate</p> <p>244. (1) If a body corporate commits an offence under this Act or its subsidiary legislation a person who at the time of the commission of the offence was a director, chief executive officer, manager, secretary or other similar officer of the body corporate or was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of any of the affairs of the body corporate or was assisting in such management—</p> <ol style="list-style-type: none"> (a) may be charged severally or jointly in the same proceedings with the body corporate; and (b) if the body corporate is found guilty of the offence, shall be deemed to be guilty of that offence unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves— <ol style="list-style-type: none"> (i) that the offence was committed without his knowledge, consent or connivance; and (ii) that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence. <p>(2) If any person would be liable under this Act to any punishment or penalty for his act, omission, neglect or default, he shall be liable to the same punishment or penalty for every such act, omission, neglect or default of any employee or agent of his, or of the employee of the agent, if the act, omission, neglect or default was committed—</p> <ol style="list-style-type: none"> (a) by that person’s employee in the course of his employment; (b) by the agent when acting on behalf of that person; or (c) by the employee of the agent in the course of his employment by the agent or otherwise on behalf of the agent acting on behalf of that person.
<p>Article 13 – Sanctions and measures</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to ensure that the criminal offences established in accordance</p>	<p>Sufficient sanctions and measures provided in the following legislations: -</p> <ul style="list-style-type: none"> • Computer Crimes Act 1997;

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<p>with Articles 2 through 11 are punishable by effective, proportionate and dissuasive sanctions, which include deprivation of liberty.</p> <p>2 Each Party shall ensure that legal persons held liable in accordance with Article 12 shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions or measures, including monetary sanctions.</p>	<ul style="list-style-type: none"> • Communications and Multimedia Act 1998; • Penal Code • Child Act 2001 • Copyright Act 1987
<i>Section 2 – Procedural law</i>	
<p>Article 14 – Scope of procedural provisions</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish the powers and procedures provided for in this section for the purpose of specific criminal investigations or proceedings.</p> <p>2 Except as specifically provided otherwise in Article 21, each Party shall apply the powers and procedures referred to in paragraph 1 of this article to:</p> <ul style="list-style-type: none"> a the criminal offences established in accordance with Articles 2 through 11 of this Convention; b other criminal offences committed by means of a computer system; and c the collection of evidence in electronic form of a criminal offence. <p>3 a Each Party may reserve the right to apply the measures referred to in Article 20 only to offences or categories of offences specified in the reservation, provided that the range of such offences or categories of offences is not more restricted than the range of offences to which it applies the measures referred to in Article 21. Each Party shall consider restricting such a reservation to enable the broadest application of the measure referred to in Article 20.</p> <ul style="list-style-type: none"> b Where a Party, due to limitations in its legislation in force at the time of the adoption of the present Convention, is not able to apply the measures referred to in Articles 20 and 21 to communications being transmitted within a computer system of a service provider, which system: <ul style="list-style-type: none"> i is being operated for the benefit of a closed group of users, and ii does not employ public communications networks and is not connected with another computer system, whether 	<p>Section 10 of CCA – Powers of search, seizure and arrest</p> <p>10. (1) Whenever it appears to any Magistrate upon information and after such inquiry as he thinks necessary that there is reasonable cause to believe that in any premises there is evidence of the commission of an offence under this Act, he may, by warrant directed to any police officer of or above the rank of Inspector, empower the officer to enter the premises, by force if necessary, and there to search for, seize and detain any such evidence and he shall be entitled to—</p> <ul style="list-style-type: none"> (a) have access to any program or data held in any computer, or have access to, inspect or check the operation of, any computer and any associated apparatus or material which he has reasonable cause to suspect is or has been in use in connection with any offence under this Act; (b) require— <ul style="list-style-type: none"> (i) the person by whom or on whose behalf the police officer has reasonable cause to suspect the computer is or has been so used; or (ii) any person having charge of or otherwise concerned with the operation of, the computer, apparatus or material, <p>to provide him with such reasonable assistance as he may require for the purposes of paragraph (a); and</p> <ul style="list-style-type: none"> (c) require any information contained in a computer and accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible. <p>(2) Whenever it appears to any police officer of or above the rank of Inspector that there is reasonable cause to believe that in any premises there is concealed</p>

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public or private,
that Party may reserve the right not to apply these measures to such communications. Each Party shall consider restricting such a reservation to enable the broadest application of the measures referred to in Articles 20 and 21

or deposited any evidence of the commission of an offence under this Act, and the police officer has reasonable grounds for believing that by reason of the delay in obtaining a search warrant the object of the search is likely to be frustrated, he may exercise in and in respect of the premises all the powers mentioned in subsection (1) in as full and ample a measure as if he were empowered to do so by warrant issued under that subsection.

(3) Any police officer may arrest without a warrant any person whom he reasonably believes to have committed or to be committing an offence against this Act, and every offence against this Act shall be deemed to be seizable offence for the purposes of the law for the time being in force relating to criminal procedure.

Part X Chapter 3 of the CMA – Powers of entry, investigation into offences and prosecution

Additional powers 254. An authorized officer shall, for the purposes of the execution of this Act or its subsidiary legislation, have power to do all or any of the following:

- (a) to require the production of records, accounts, computerized data and documents kept by a licensee or other person and to inspect, examine and to download from them, make copies of them or take extracts from them;
- (b) to require the production of any identification document from any person in relation to any case or offence under this Act or its subsidiary legislation; and
- (c) to make such inquiry as may be necessary to ascertain whether the provisions of this Act or its subsidiary legislation have been complied with

Section 50 of Copyright Act - Powers of investigation

50. (1) Any Assistant Controller or police officer not below the rank of Inspector shall have the power to investigate the commission of any offence under this Act or subsidiary legislation made thereunder.

(2) Any Assistant Controller or police officer not below the rank of Inspector may, in relation to any investigation in respect of any offence under this Act or subsidiary legislation made thereunder, exercise the special powers in relation to police investigation in seizable cases given by the Criminal Procedure Code

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[Act 593].

Power of arrest 50A.

(1) Any Assistant Controller may arrest without warrant any person whom he reasonably believes has committed or is attempting to commit seizable offence under this Act or any regulations made thereunder.

(2) Any Assistant Controller making an arrest under subsection (1) shall without unnecessary delay make over the person so arrested to the nearest police officer or, in the absence of a police officer, take such person to the nearest police station, and thereafter the person shall be dealt with as is provided for by the law relating to criminal procedure for the time being in force as if he had been arrested by a police officer.

Power to intercept communications 50B.

(1) Notwithstanding the provisions of any other written law, the Public Prosecutor, if he considers that any communications is likely to contain any information which is relevant for the purpose of any investigation into an offence under this Act or its subsidiary legislation, may, on the application of an Assistant Controller or a police officer not below the rank of Inspector, authorize the officer to intercept or to listen to any communications transmitted or received by any communications.

(2) When any person is charged with an offence under this Act or its subsidiary legislation, any information obtained by an Assistant Controller or a police officer under subsection (1), whether before or after the person is charged, shall be admissible at his trial in evidence.

(3) An authorization by the Public Prosecutor under subsection (1) may be given either orally or in writing; but if an oral authorization is given, the Public Prosecutor shall, as soon as practicable, reduce the authorization into writing.

(4) A certificate by the Public Prosecutor stating that the action taken by an Assistant Controller or a police officer under subsection (1) had been authorized by him under that subsection shall be conclusive evidence that it had been so authorized, and the certificate shall be admissible in evidence without proof of his signature there.

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(5) No person shall be under any duty, obligation or liability, or be in any manner compelled, to disclose in any proceedings the procedure, method, manner or means, or any matter related to it, of anything done under subsection (1).

Section 16 of the Criminal Procedure Code - Search of place entered by person sought to be arrested

16. (1) If any person under a warrant of arrest or any police officer or penghulu having authority to arrest has reason to believe that any person to be arrested has entered into or is within any place the person residing in or in charge of the place shall, on demand of the person so acting or the police officer or penghulu, allow him free ingress to the place and afford all reasonable facilities for a search in it.

(2) If ingress to that place cannot be obtained under subsection (1) it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue but cannot be obtained without affording the person to be arrested an opportunity to escape for a police officer or penghulu to enter the place and search in it, and in order to effect an entrance into the place to break open any outer or inner door or window of any place whether that of the person to be arrested or of any other person if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance.

Section 17 of the Criminal Procedure Code - Search of persons in place searched under warrant

17. Whenever a search for anything is or is about to be lawfully made in any place in respect of any offence all persons found therein may be lawfully detained until the search is completed, and they may, if the thing sought is in its nature capable of being concealed upon the person, be searched for it by or in the presence of a Magistrate or Justice of the Peace or a police officer not below the rank of Inspector.

Section 20 of the Criminal Procedure Code - Search of persons arrested

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20. Whenever a person is arrested—

(a) by a police officer under a warrant which does not provide for the taking of bail or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail; or

(b) without warrant or by a private person under a warrant and the person arrested cannot legally be admitted to bail or is unable to furnish bail,

the police officer making the arrest or, when the arrest is made by a private person, the police officer to whom such private person hands over the person arrested may search such person and place in safe custody all articles other than necessary wearing apparel found upon him, and any of those articles which there is reason to believe were the instruments or the fruits or other evidence of the crime may be detained until his discharge or acquittal.

Section 20A of the Criminal Procedure Code - Procedure on search of a person

20a. (1) Any search of a person shall comply with the procedure on body search as specified in the Fourth Schedule of this Code.

(2) Notwithstanding any written law, the provisions of the Fourth Schedule shall apply to any search of a person conducted by any officer of any enforcement agency conferred with the power of arrest or search of a person under any law.

(3) The Minister charged with the responsibility for internal security and public order may amend the Fourth Schedule by order published in the *Gazette*.

Section 62 of the Criminal Procedure Code - Search without warrant

62. (1) If information is given to any police officer, not below the rank of Inspector that there is reasonable cause for suspecting that any stolen property is concealed or lodged in any place and he has good grounds for believing that by reason of the delay in obtaining a search warrant the property is likely to be removed, that officer by virtue of his office may search in the place specified for specific property alleged to have been stolen.

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	<p>(2) A list of the property alleged to have been stolen shall be delivered or taken down in writing with a declaration stating that such property has been stolen and that the informant has good grounds for believing that the property is deposited in that place.</p> <p>(3) The person from whom the property was stolen or his representative shall accompany the officer in the search.</p>
<p>Article 15 – Conditions and safeguards</p> <p>1 Each Party shall ensure that the establishment, implementation and application of the powers and procedures provided for in this Section are subject to conditions and safeguards provided for under its domestic law, which shall provide for the adequate protection of human rights and liberties, including rights arising pursuant to obligations it has undertaken under the 1950 Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, the 1966 United Nations International Covenant on Civil and Political Rights, and other applicable international human rights instruments, and which shall incorporate the principle of proportionality.</p> <p>2 Such conditions and safeguards shall, as appropriate in view of the nature of the procedure or power concerned, <i>inter alia</i>, include judicial or other independent supervision, grounds justifying application, and limitation of the scope and the duration of such power or procedure.</p> <p>3 To the extent that it is consistent with the public interest, in particular the sound administration of justice, each Party shall consider the impact of the powers and procedures in this section upon the rights, responsibilities and legitimate interests of third parties.</p>	<ul style="list-style-type: none"> • Federal Constitution of Malaysia Part II – Fundamental Liberties (supreme law of the country) • Examples of safeguards in substantive law Section 252 of CMA 1998 – Power to intercept Requirement to make application and obtain authorisation from Public Prosecutor prior to conducting interception.
<p>Article 16 – Expedited preservation of stored computer data</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to enable its competent authorities to order or similarly obtain the expeditious preservation of specified computer data, including traffic data, that has been stored by means of a computer system, in particular where there are grounds to believe that the computer data is particularly vulnerable to loss or modification.</p> <p>2 Where a Party gives effect to paragraph 1 above by means of an order to a</p>	<p>Section 263 of the CMA – General duty of the licensees</p> <p>263. (1) A licensee shall use his best endeavour to prevent the network facilities that he owns or provides or the network service, applications service or content applications service that he provides from being used in, or in relation to, the commission of any offence under any law of Malaysia.</p> <p>(2) A licensee shall, upon written request by the Commission or any other authority, assist the Commission or other authority as far as reasonably</p>

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<p>person to preserve specified stored computer data in the person's possession or control, the Party shall adopt such legislative and other measures as may be necessary to oblige that person to preserve and maintain the integrity of that computer data for a period of time as long as necessary, up to a maximum of ninety days, to enable the competent authorities to seek its disclosure. A Party may provide for such an order to be subsequently renewed.</p> <p>3 Each Party shall adopt such legislative and other measures as may be necessary to oblige the custodian or other person who is to preserve the computer data to keep confidential the undertaking of such procedures for the period of time provided for by its domestic law.</p> <p>4 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.</p>	<p>necessary in preventing the commission or attempted commission of an offence under any written law of Malaysia or otherwise in enforcing the laws of Malaysia, including, but not limited to, the protection of the public revenue and preservation of national security.</p> <p>Section 268 in CMA – Minister may make rules on record-keeping</p> <p>268. The Minister may make rules, to be published in the Gazette, to provide for record-keeping and to require one or more licensees or persons to keep and retain records.</p>
<p>Article 17 – Expedited preservation and partial disclosure of traffic data</p> <p>1 Each Party shall adopt, in respect of traffic data that is to be preserved under Article 16, such legislative and other measures as may be necessary to:</p> <p>a ensure that such expeditious preservation of traffic data is available regardless of whether one or more service providers were involved in the transmission of that communication; and</p> <p>b ensure the expeditious disclosure to the Party's competent authority, or a person designated by that authority, of a sufficient amount of traffic data to enable the Party to identify the service providers and the path through which the communication was transmitted.</p> <p>2 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.</p>	<p>Section 263 of the CMA – General duty of the licensees</p> <p>263. (1) A licensee shall use his best endeavour to prevent the network facilities that he owns or provides or the network service, applications service or content applications service that he provides from being used in, or in relation to, the commission of any offence under any law of Malaysia.</p> <p>(2) A licensee shall, upon written request by the Commission or any other authority, assist the Commission or other authority as far as reasonably necessary in preventing the commission or attempted commission of an offence under any written law of Malaysia or otherwise in enforcing the laws of Malaysia, including, but not limited to, the protection of the public revenue and preservation of national security.</p> <p>Section 51 (1) of the Criminal Procedure Code: Summons to produce document or other things.</p> <p>51. (1) Whenever any Court or police officer making a police investigation considers that the production of any property or document is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before that Court or officer, such Court may issue a</p>

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	<p>summons or such officer a written order to the person in whose possession or power such property or document is believed to be requiring him to attend and produce it or to produce it at the time and place stated in the summons or order.</p> <p>Section 268 in CMA – Minister may make rules on record-keeping</p> <p>268. The Minister may make rules, to be published in the Gazette, to provide for record-keeping and to require one or more licensees or persons to keep and retain records.</p>
<p>Article 18 – Production order</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to order:</p> <p>a a person in its territory to submit specified computer data in that person’s possession or control, which is stored in a computer system or a computer-data storage medium; and</p> <p>b a service provider offering its services in the territory of the Party to submit subscriber information relating to such services in that service provider’s possession or control.</p> <p>2 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.</p> <p>3 For the purpose of this article, the term “subscriber information” means any information contained in the form of computer data or any other form that is held by a service provider, relating to subscribers of its services other than traffic or content data and by which can be established:</p> <p>a the type of communication service used, the technical provisions taken thereto and the period of service;</p> <p>b the subscriber’s identity, postal or geographic address, telephone and other access number, billing and payment information, available on the basis of the service agreement or arrangement;</p> <p>c any other information on the site of the installation of communication equipment, available on the basis of the service agreement or arrangement.</p>	<p>Specific provisions in relation with the handling and producing of evidence:-</p> <ul style="list-style-type: none"> • Section 10 of the CCA:- Powers of search, seizure and arrest • Chapter 3 of the CMA :- Powers of entry, investigation into offences and prosecution (Section 245 to Section 262) • Section 51 of the Criminal Procedure Code (summons to produce document or other things) • Section 23 Mutual Assistance in Criminal Matters 2002 (production order for criminal matters) <p>Section 90A of the Evidence Act 1950 - Admissibility of documents produced by computers and of statements, contained therein.</p> <p>(1) In any criminal or civil proceeding a document produced by a computer or a statement contained in such document, shall be admissible as evidence of any fact stated therein if the document was produced by the computer in the course of its ordinary use, whether or not the person tendering the same is the maker of such document or statement.</p> <p>Provisioning of subscribers information</p> <p>Service Providers are obliged to share subscriber’s information to the Regulator and relevant authorities’ for investigation of offences through the General Consumer Code, application of which is mandated through the Service Providers’ standard licence condition.</p>

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	The above requirement is also duplicated in the terms and conditions of the contractual agreement for subscription of service between the Service Providers and their customers.
<p>Article 19 – Search and seizure of stored computer data</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to search or similarly access:</p> <p style="padding-left: 20px;">a a computer system or part of it and computer data stored therein; and</p> <p style="padding-left: 20px;">b a computer-data storage medium in which computer data may be stored</p> <p style="padding-left: 40px;">in its territory.</p> <p>2 Each Party shall adopt such legislative and other measures as may be necessary to ensure that where its authorities search or similarly access a specific computer system or part of it, pursuant to paragraph 1.a, and have grounds to believe that the data sought is stored in another computer system or part of it in its territory, and such data is lawfully accessible from or available to the initial system, the authorities shall be able to expeditiously extend the search or similar accessing to the other system.</p> <p>3 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to seize or similarly secure computer data accessed according to paragraphs 1 or 2. These measures shall include the power to:</p> <p style="padding-left: 20px;">a seize or similarly secure a computer system or part of it or a computer-data storage medium;</p> <p style="padding-left: 20px;">b make and retain a copy of those computer data;</p> <p style="padding-left: 20px;">c maintain the integrity of the relevant stored computer data;</p> <p style="padding-left: 20px;">d render inaccessible or remove those computer data in the accessed computer system.</p> <p>4 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to order any person who has knowledge about the functioning of the computer system or measures applied to protect the computer data therein to provide, as is reasonable, the necessary information, to enable the undertaking of the measures referred to in paragraphs 1 and 2.</p> <p>5 The powers and procedures referred to in this article shall be subject to</p>	<p>Section 10 of the CCA 1997 – Powers of search, seizure and arrest</p> <p>1. Whenever it appears to any Magistrate upon information and after such inquiry as he thinks necessary that there is reasonable cause to believe that in any premises there is evidence of the commission of an offence under this Act, he may, by warrant directed to any police officer of or above the rank of Inspector, empower the officer to enter the premises, by force if necessary, and there to search for, seize and detain any such evidence and he shall be entitled-</p> <p>a) "have access to any program or data held in any computer, or have access to, inspect or check the operation of, any computer and any associated apparatus or material which he has reasonable cause to suspect is or has been use in connection with any offence under this Act"</p> <p>b) Require</p> <p>i)The person by whom or on whose behalf the police officer has reasonable cause to suspect the computer is or has been so used; or</p> <p>ii) Any person having charge of or otherwise concerned with the operation of, the computer, apparatus or material</p> <p>To provide him with such reasonable assistance as he may require for the purposes of paragraph (a); and</p> <p>c)Require any information contained in a computer and accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible.</p> <p>Part X Chapter 3 of CMA – Powers of Entry, Investigation into Offences and Prosecution</p> <p>Section 249 of the CMA 1998 - Access to computerised data</p> <p>1. A police officer conducting a search under Section 247 (search under warrant)</p>

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Articles 14 and 15.	<p>or 248 (search and seizure without warrant) or an authorised officer conducting a search under section 247 shall be given access to computerised data whether stored in a computer or otherwise.</p> <p>2. For the purpose of this section, “access” includes-</p> <p>a) Being provided with the necessary password, encryption code, decryption code, software or hardware and any other means required to enable comprehension of computerised data; and</p> <p>b) The meaning assigned to it by subsection 2(2) and (5) of the CCA 1997</p>
<p>Article 20 – Real-time collection of traffic data</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to:</p> <p>a collect or record through the application of technical means on the territory of that Party, and</p> <p>b compel a service provider, within its existing technical capability:</p> <p>i to collect or record through the application of technical means on the territory of that Party; or</p> <p>ii to co-operate and assist the competent authorities in the collection or recording of, traffic data, in real-time, associated with specified communications in its territory transmitted by means of a computer system.</p> <p>2 Where a Party, due to the established principles of its domestic legal system, cannot adopt the measures referred to in paragraph 1.a, it may instead adopt legislative and other measures as may be necessary to ensure the real-time collection or recording of traffic data associated with specified communications transmitted in its territory, through the application of technical means on that territory.</p> <p>3 Each Party shall adopt such legislative and other measures as may be necessary to oblige a service provider to keep confidential the fact of the execution of any power provided for in this article and any information relating to it.</p> <p>4 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.</p>	<p>Section 268 of CMA 1998 – Minister may make rules on record keeping</p> <p>The Minister may make rules, to be published in the Gazette to provide for record-keeping and to require one or more licensees or persons to keep and retain records</p> <p>Section 252 of CMA – Power to intercept communications</p> <p>252. (1) Notwithstanding the provisions of any other written law, the Public Prosecutor, if he considers that any communications is likely to contain any information which is relevant for the purpose of any investigation into an offence under this Act or its subsidiary legislation, may, on the application of an authorized officer or a police officer of or above the rank of Superintendent, authorize the officer to intercept or to listen to any communication transmitted or received by any communications.</p> <p>(2) When any person is charged with an offence under this Act or its subsidiary legislation, any information obtained by an authorized officer or a police officer under subsection (1), whether before or after the person is charged, shall be admissible at his trial in evidence.</p> <p>(3) An authorization by the Public Prosecutor under subsection (1) may be given either orally or in writing; but if an oral authorization is given, the Public Prosecutor shall, as soon as practicable, reduce the authorization into writing.</p> <p>(4) A certificate by the Public Prosecutor stating that the action taken by an</p>

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	<p>authorized officer or a police officer under subsection (1) had been authorized by him under that subsection shall be conclusive evidence that it had been so authorized, and the certificate shall be admissible in evidence without proof of his signature there.</p> <p>(5) No person shall be under any duty, obligation or liability, or be in any manner compelled, to disclose in any proceedings the procedure, method, manner or means, or any matter related to it, of anything done under subsection (1).</p>
<p>Article 21 – Interception of content data</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary, in relation to a range of serious offences to be determined by domestic law, to empower its competent authorities to:</p> <p>a collect or record through the application of technical means on the territory of that Party, and</p> <p>b compel a service provider, within its existing technical capability:</p> <p> i to collect or record through the application of technical means on the territory of that Party, or</p> <p> ii to co-operate and assist the competent authorities in the collection or recording of, content data, in real-time, of specified communications in its territory transmitted by means of a computer system.</p> <p>2 Where a Party, due to the established principles of its domestic legal system, cannot adopt the measures referred to in paragraph 1.a, it may instead adopt legislative and other measures as may be necessary to ensure the real-time collection or recording of content data on specified communications in its territory through the application of technical means on that territory.</p> <p>3 Each Party shall adopt such legislative and other measures as may be necessary to oblige a service provider to keep confidential the fact of the execution of any power provided for in this article and any information relating to it.</p> <p>4 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.</p>	<p>Section 252 of the CMA– Power to intercept communications</p> <p>1. Notwithstanding the provisions of any other written law, the Public Prosecutor, if he considers that any communications is likely to contain any information which is relevant for the purpose of any investigation into an offence under this Act or its subsidiary legislation may on the application of an authorised officer or a police officer or above the rank of Superintendent, authorise the officer to intercept or to listen to any communication transmitted or received by any communication.</p> <p>(includes both traffic and content data)</p> <p>Section 211 of the CMA – Prohibition on provision of offensive content</p> <p>211. (1) No content applications service provider, or other person using a content applications service, shall provide content which is indecent, obscene, false, menacing, or offensive in character with intent to annoy, abuse, threaten or harass any person.</p> <p>(2) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both and shall also be liable to a further fine of one thousand ringgit for every day or part of a day during which the offence is continued after conviction.</p> <p>Section 233 of the CMA – Improper use of network facilities and network services</p>

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- (1) A person who—
- (a) by means of any network facilities or network service or applications service knowingly—
- (i) makes, creates or solicits; and
- (ii) initiates the transmission of, any comment, request, suggestion or other communication which is obscene, indecent, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass another person; or
- (b) initiates a communication using any applications service, whether continuously, repeatedly or otherwise, during which communication may or may not ensue, with or without disclosing his identity and with intent to annoy, abuse, threaten or harass any person at any number or electronic address,
- commits an offence.
- (2) A person who knowingly—
- (a) by means of a network service or applications service provides any obscene communication for commercial purposes to any person; or
- (b) permits a network service or applications service under the person's control to be used for an activity described in paragraph (a),
- commits an offence.
- (3) A person who commits an offence under this section shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both and shall also be liable to a further fine of one thousand ringgit for every day during which the offence is continued after conviction.
- General provisions for interception are also provided for the following offences: -
- Kidnapping Act
 - Dangerous Drug Act
 - Anti Terrorism provisions under Criminal Procedure Code (Section 106C)

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1 Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over any offence established in accordance with Articles 2 through 11 of this Convention, when the offence is committed:

- a in its territory; or
- b on board a ship flying the flag of that Party; or
- c on board an aircraft registered under the laws of that Party; or
- d by one of its nationals, if the offence is punishable under criminal law where it was committed or if the offence is committed outside the territorial jurisdiction of any State.

2 Each Party may reserve the right not to apply or to apply only in specific cases or conditions the jurisdiction rules laid down in paragraphs 1.b through 1.d of this article or any part thereof.

3 Each Party shall adopt such measures as may be necessary to establish jurisdiction over the offences referred to in Article 24, paragraph 1, of this Convention, in cases where an alleged offender is present in its territory and it does not extradite him or her to another Party, solely on the basis of his or her nationality, after a request for extradition.

4 This Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with its domestic law.

When more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention, the Parties involved shall, where appropriate, consult with a view to determining the most appropriate jurisdiction for prosecution.

Section 9 of the CCA – Territorial scope of offences under this Act

9. (1) The provisions of this Act shall, in relation to any person, whatever his nationality or citizenship, have effect outside as well as within Malaysia, and where an offence under this Act is committed by any person in any place outside Malaysia, he may be dealt with in respect of such offence as if it was committed at any place within Malaysia.

(2) For the purposes of subsection (1), this Act shall apply if, for the offence in question, the computer, program or data was in Malaysia or capable of being connected to or sent to or used by or with a computer in Malaysia at the material time.

(3) Any proceeding against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence was committed in Malaysia shall be a bar to further proceedings against him under any written law relating to the extradition of persons, in respect of the same offence outside Malaysia.

Section 4 of the CMA – Territorial and extra-territorial application

4. (1) This Act and its subsidiary legislation apply both within and outside Malaysia.

(2) Notwithstanding subsection (1), this Act and its subsidiary legislation shall apply to any person beyond the geographical limits of Malaysia and her territorial waters if such person—

- (a) is a licensee under this Act; or
- (b) provides relevant facilities or services under this Act in a place within Malaysia.

(3) For the purposes of this section, “a place” means a point of any nature or description whether on land, in the atmosphere, in outer space, underground, underwater, at sea or anywhere else.

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(4) For the purposes of this section, a place that is—

- (a) in or below the stratosphere; and
- (b) above the geographical limits of Malaysia and her territorial waters, is taken to be a place within the geographical limits of Malaysia and her territorial waters.

Section 4 of the Penal Code – Extension of the Code to extra territorial offences

4. (1) The provisions of Chapters VI, VIA and VIB shall apply to any offence committed—

- (a) by any citizen or any permanent resident on the high seas on board any ship or on any aircraft whether or not such ship or aircraft is registered in Malaysia;
- (b) by any citizen or any permanent resident in any place without and beyond the limits of Malaysia;
- (c) by any person against a citizen of Malaysia;
- (d) by any person against property belonging to, or operated or controlled by, in whole or in part, the Government of Malaysia or the Government of any State in Malaysia, including diplomatic or consular premises of Malaysia, any citizen of Malaysia, or any corporation created by or under the laws of Malaysia located outside Malaysia;
- (e) by any person to compel the Government of Malaysia or the Government of any State in Malaysia to do or refrain from doing any act;
- (f) by any stateless person who has his habitual residence in Malaysia;
- (g) by any person against or on board a fixed platform while it is located on the continental shelf of Malaysia; or
- (h) by any person who after the commission of the offence is present in

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	Malaysia, as if the offence had been committed in Malaysia.
Chapter III – International co-operation	
<p>Article 24 – Extradition</p> <p>1 a This article applies to extradition between Parties for the criminal offences established in accordance with Articles 2 through 11 of this Convention, provided that they are punishable under the laws of both Parties concerned by deprivation of liberty for a maximum period of at least one year, or by a more severe penalty.</p> <p>b Where a different minimum penalty is to be applied under an arrangement agreed on the basis of uniform or reciprocal legislation or an extradition treaty, including the European Convention on Extradition (ETS No. 24), applicable between two or more parties, the minimum penalty provided for under such arrangement or treaty shall apply.</p> <p>2 The criminal offences described in paragraph 1 of this article shall be deemed to be included as extraditable offences in any extradition treaty existing between or among the Parties. The Parties undertake to include such offences as extraditable offences in any extradition treaty to be concluded between or among them.</p> <p>3 If a Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it does not have an extradition treaty, it may consider this Convention as the legal basis for extradition with respect to any criminal offence referred to in paragraph 1 of this article.</p> <p>4 Parties that do not make extradition conditional on the existence of a treaty shall recognise the criminal offences referred to in paragraph 1 of this article as extraditable offences between themselves.</p> <p>5 Extradition shall be subject to the conditions provided for by the law of the requested Party or by applicable extradition treaties, including the grounds on which the requested Party may refuse extradition.</p> <p>6 If extradition for a criminal offence referred to in paragraph 1 of this article is refused solely on the basis of the nationality of the person sought, or because the requested Party deems that it has jurisdiction over the offence, the requested Party shall submit the case at the request of the requesting</p>	<p>Section 6 of the Extradition Act 1992 - Extradition offence</p> <p>6. (1) A fugitive criminal shall only be returned for an extradition offence.</p> <p>(2) For the purposes of this Act, an extradition offence is an offence, however described, including fiscal offences—</p> <ul style="list-style-type: none"> (a) which is punishable, under the laws of a country referred to under paragraph 1(2)(a) or 1(2)(b), with imprisonment for not less than one year or with death; and (b) which, if committed within the jurisdiction of Malaysia, is punishable under the laws of Malaysia with imprisonment for not less than one year or with death: Provided that, in the case of an extraterritorial offence, it is so punishable under the laws of Malaysia if it took place in corresponding circumstances outside Malaysia. <p>(3) An offence shall also be an extradition offence if it consists of an attempt or a conspiracy to commit, or an abetment of the commission of, any offence described in subsection (2).</p> <p>Section 9(3) of the CCA 1997 - Territorial scope of offences under this Act</p> <p>(3) Any proceeding against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence was committed in Malaysia shall be a bar to further proceedings against him under any written law relating to the extradition of persons, in respect of the same offence outside Malaysia.</p> <p>Specific Extradition Treaties with Thailand, Indonesia, Hong Kong, Australia and USA.</p>

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<p>Party to its competent authorities for the purpose of prosecution and shall report the final outcome to the requesting Party in due course. Those authorities shall take their decision and conduct their investigations and proceedings in the same manner as for any other offence of a comparable nature under the law of that Party.</p> <p>7 a Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the name and address of each authority responsible for making or receiving requests for extradition or provisional arrest in the absence of a treaty.</p> <p>b The Secretary General of the Council of Europe shall set up and keep updated a register of authorities so designated by the Parties. Each Party shall ensure</p>	
<p>Article 25 – General principles relating to mutual assistance</p> <p>1 The Parties shall afford one another mutual assistance to the widest extent possible for the purpose of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence.</p> <p>2 Each Party shall also adopt such legislative and other measures as may be necessary to carry out the obligations set forth in Articles 27 through 35.</p> <p>3 Each Party may, in urgent circumstances, make requests for mutual assistance or communications related thereto by expedited means of communication, including fax or e-mail, to the extent that such means provide appropriate levels of security and authentication (including the use of encryption, where necessary), with formal confirmation to follow, where required by the requested Party. The requested Party shall accept and respond to the request by any such expedited means of communication.</p> <p>4 Except as otherwise specifically provided in articles in this chapter, mutual assistance shall be subject to the conditions provided for by the law of the requested Party or by applicable mutual assistance treaties, including the grounds on which the requested Party may refuse co-operation. The requested Party shall not exercise the right to refuse mutual assistance in</p>	<p>Section 3 of the Mutual Assistance in Criminal Matters Act 2002 – Object of Act</p> <p>3. The object of this Act is for Malaysia to provide and obtain international assistance in criminal matters, including—</p> <ul style="list-style-type: none"> (a) providing and obtaining of evidence and things; (b) the making of arrangements for persons to give evidence, or to assist in criminal investigations; (c) the recovery, forfeiture or confiscation of property in respect of a serious offence or a foreign serious offence; (d) the restraining of dealings in property, or the freezing of property, that may be recovered in respect of a serious offence or a foreign serious offence; (e) the execution of requests for search and seizure; (f) the location and identification of witnesses and suspects; (g) the service of process; (h) the identification or tracing of proceeds of crime and property and instrumentalities derived from or used in the commission of a serious offence or a foreign serious offence; (i) the recovery of pecuniary penalties in respect of a serious offence or a foreign serious offence; and

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relation to the offences referred to in Articles 2 through 11 solely on the ground that the request concerns an offence which it considers a fiscal offence.

5 Where, in accordance with the provisions of this chapter, the requested Party is permitted to make mutual assistance conditional upon the existence of dual criminality, that condition shall be deemed fulfilled, irrespective of whether its laws place the offence within the same category of offence or denominate the offence by the same terminology as the requesting Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under its laws.

(j) the examination of things and premises.

Section 7 of the Mutual Assistance in Criminal Matters Act 2002 – Request to be made by or through Attorney General

7. (1) A request by Malaysia to a foreign State for assistance in a criminal matter under this Part shall be made by or through the Attorney General.

(2) A request under subsection (1) shall be made through the diplomatic channel.

Section 19 of the Mutual Assistance in Criminal Matters Act 2002 – Request to be made to Attorney General

19. (1) A request by a prescribed foreign State to Malaysia for assistance in a criminal matter under this Part shall be made to the Attorney General.

(2) A request under subsection (1) shall be made through the diplomatic channel.

(3) Every request shall-

- (a) specify the purpose of the request and the nature of the assistance being sought;
- (b) identify the person or authority that initiated the request; and
- (c) be accompanied by-

- (i) a certificate from the appropriate authority of that prescribed foreign State that the request is made in respect of a criminal matter within the meaning of this Act;
- (ii) a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws;
- (iii) where the request relates to--

(A) the location of a person who is suspected to be involved in or to have benefited from the commission of a foreign

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serious offence; or

(B) the tracing of property that is suspected to be connected with a foreign serious offence,

the name, identity, nationality, location or description of that person, or the location and description of the property, if known, and a statement setting forth the basis for suspecting the matter referred to in subparagraph (A) or (B);

- (iv) a description of the offence to which the criminal matter relates, including its maximum penalty;
- (v) details of the procedure which that prescribed foreign State wishes Malaysia to follow in giving effect to the request, including details of the manner and form in which any information or thing is to be supplied to that prescribed foreign State pursuant to the request;
- (vi) where the request is for assistance relating to an ancillary criminal matter and judicial proceedings to obtain a foreign forfeiture order have not been instituted in that prescribed foreign State, a statement indicating when the judicial proceedings are likely to be instituted;
- (vii) a statement setting out the wishes of that prescribed foreign State concerning the confidentiality of the request and the reason for those wishes;
- (viii) details of the period within which that prescribed foreign State wishes the request to be met;
- (ix) if the request involves a person travelling from Malaysia to that prescribed foreign State, details of allowances to which the person will be entitled, and of the arrangements for security and accommodation for the person while he is in that prescribed foreign State pursuant to the request;
- (x) any other information required to be included with the request under any treaty or other agreement between Malaysia and that prescribed foreign State, if any; and
- (xi) any other information that may assist in giving effect to the request or which is required under the provisions of this Act or any regulations made under this Act.

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(4) Failure to comply with subsection (3) shall not be a ground for refusing assistance.

Section 20 of the Mutual Assistance in Criminal Matters Act 2002 – Refusal of assistance

20. (1) A request by a prescribed foreign State for assistance under this Part shall be refused if, in the opinion of the Attorney General--

- a. the appropriate authority of that prescribed foreign State has, in respect of that request, failed to comply with the terms of any treaty or other agreement between Malaysia and that prescribed foreign State;
- b. the request relates to the investigation, prosecution or punishment of a person for an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political nature;
- c. the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Malaysia, would have constituted a military offence under the laws of Malaysia which is not also an offence under the ordinary criminal law of Malaysia;
- d. there are substantial grounds for believing that the request was made for the purpose of investigating, prosecuting, punishing or otherwise causing prejudice to a person on account of the person's race, religion, sex, ethnic origin, nationality or political opinions;
- e. the request relates to the investigation, prosecution or punishment of a person for an offence in a case where the person--
 - (i) has been convicted, acquitted or pardoned by a competent court or other authority in that prescribed foreign State; or
 - (ii) has undergone the punishment provided by the law of that

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prescribed foreign State,

in respect of that offence or of another offence constituted by the same act or omission as the first-mentioned offence;

- f. the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Malaysia, would not have constituted an offence against the laws of Malaysia; 21Mutual Assistance in Criminal Matters
- g. the facts constituting the offence to which the request relates does not indicate an offence of sufficient gravity;
- h. the thing requested for is of insufficient importance to the investigation or could reasonably be obtained by other means;
- i. the provision of the assistance would affect the sovereignty, security, public order or other essential public interest of Malaysia;
- j. the appropriate authority fails to undertake that the thing requested for will not be used for a matter other than the criminal matter in respect of which the request was made;
- k. in the case of a request for assistance under sections 22, 23, 24, 25 and 26 or sections 35, 36, 37 and 38, the appropriate authority fails to undertake to return to the Attorney General, upon his request, any thing obtained pursuant to the request upon completion of the criminal matter in respect of which the request was made;
- l. the provision of the assistance could prejudice a criminal matter in Malaysia; or
- m. the provision of the assistance would require steps to be taken that would be contrary to any written law.

(2) Paragraph (1)(j) shall not apply where the failure to undertake that the thing requested for will not be used for a matter other than the criminal matter in respect of which the request was made is with the consent of the Attorney General.

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	<p>(3) A request by a prescribed foreign State for assistance under this Part may be refused by the Attorney General—</p> <ul style="list-style-type: none"> a. pursuant to the terms of any treaty or other agreement between Malaysia and that prescribed foreign State; b. if, in the opinion of the Attorney General, the provision of the assistance would, or would be likely to, prejudice the safety of any person, whether that person is within or outside Malaysia; c. if, in the opinion of the Attorney General, the provision of the assistance would impose an excessive burden on the resources of Malaysia; or d. if that foreign State is not a prescribed foreign State and the appropriate authority of that foreign State fails to give an undertaking to the Attorney General that the foreign State will, subject to its laws, comply with a future request by Malaysia to that foreign State for assistance in a criminal matter. <p>(4) Without prejudice to paragraph (3)(c), if there is a request for assistance by a prescribed foreign State and the Attorney General is of the opinion that the expenses involved in complying with the request or continuing to effect the assistance requested for is of an extraordinary or substantial nature, the Attorney General shall consult with the appropriate authority of the prescribed foreign State on the conditions under which the request is to be effected or under which the Attorney General is to cease to give effect to it, as the case may be.</p>
<p>Article 26 – Spontaneous information</p> <p>1 A Party may, within the limits of its domestic law and without prior request, forward to another Party information obtained within the framework of its own investigations when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings concerning criminal offences established in accordance with this Convention or might lead to a request for co-operation by that Party under this chapter.</p> <p>2 Prior to providing such information, the providing Party may request that it be kept confidential or only used subject to conditions. If the receiving Party cannot comply with such request, it shall notify the providing Party, which</p>	<p>Section 4 of the Mutual Assistance in Criminal Matters Act 2002 – Act does not limit cooperation with international organizations, etc.</p> <p>4. (1) This Act does not prevent the provision or obtaining of international assistance in criminal matters to or from the International Criminal Police Organization (INTERPOL) or any other international organization.</p> <p>(2) This Act does not prevent the provision or obtaining of international assistance in criminal matters to or from any foreign State other than assistance of a kind that may be provided or obtained under this Act.</p> <p>(3) This Act does not prevent the provision or obtaining of international</p>

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<p>shall then determine whether the information should nevertheless be provided. If the receiving Party accepts the information subject to the conditions, it shall be bound by them.</p>	<p>assistance in criminal matters under any other written law.</p> <p>Section 269 of the CMA 1998 - Interworking with other authorities</p> <ol style="list-style-type: none"> 1. The Minister may direct the Commission regarding the interworking arrangements between the Commission and any other authority in Malaysia or in a foreign jurisdiction or any international organisation 2. The Minister may make rules to be published in the Gazette and/or determine arrangements for interworking with or membership of international organisations regarding the interworking arrangements between licensees under this Act and international organisation 3. The Commission may direct a licensee to comply with the rules made and/or arrangements determined under subsection (2)
<p>Article 27 – Procedures pertaining to mutual assistance requests in the absence of applicable international agreements</p> <p>1 Where there is no mutual assistance treaty or arrangement on the basis of uniform or reciprocal legislation in force between the requesting and requested Parties, the provisions of paragraphs 2 through 9 of this article shall apply. The provisions of this article shall not apply where such treaty, arrangement or legislation exists, unless the Parties concerned agree to apply any or all of the remainder of this article in lieu thereof.</p> <p>2 a Each Party shall designate a central authority or authorities responsible for sending and answering requests for mutual assistance, the execution of such requests or their transmission to the authorities competent for their execution.</p> <p>b The central authorities shall communicate directly with each other;</p> <p>c Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the names and addresses of the authorities designated in pursuance of this paragraph;</p> <p>d The Secretary General of the Council of Europe shall set up and keep updated a register of central authorities designated by the Parties. Each Party shall ensure that the details held on the register are correct at all times.</p> <p>3 Mutual assistance requests under this article shall be executed in accordance with the procedures specified by the requesting Party, except where incompatible with the law of the requested Party.</p>	<p>Section 19, Section 20-42 of the Mutual Assistance in Criminal Matters Act 2002 + numerous treaties with ASEAN and non-ASEAN members.</p>

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4 The requested Party may, in addition to the grounds for refusal established in Article 25, paragraph 4, refuse assistance if:

- a the request concerns an offence which the requested Party considers a political offence or an offence connected with a political offence, or
- b it considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests.

5 The requested Party may postpone action on a request if such action would prejudice criminal investigations or proceedings conducted by its authorities.

6 Before refusing or postponing assistance, the requested Party shall, where appropriate after having consulted with the requesting Party, consider whether the request may be granted partially or subject to such conditions as it deems necessary.

7 The requested Party shall promptly inform the requesting Party of the outcome of the execution of a request for assistance. Reasons shall be given for any refusal or postponement of the request. The requested Party shall also inform the requesting Party of any reasons that render impossible the execution of the request or are likely to delay it significantly.

8 The requesting Party may request that the requested Party keep confidential the fact of any request made under this chapter as well as its subject, except to the extent necessary for its execution. If the requested Party cannot comply with the request for confidentiality, it shall promptly inform the requesting Party, which shall then determine whether the request should nevertheless be executed.

9 a In the event of urgency, requests for mutual assistance or communications related thereto may be sent directly by judicial authorities of the requesting Party to such authorities of the requested Party. In any such cases, a copy shall be sent at the same time to the central authority of the requested Party through the central authority of the requesting Party.

b Any request or communication under this paragraph may be made through the International Criminal Police Organisation (Interpol).

c Where a request is made pursuant to sub-paragraph a. of this article and the authority is not competent to deal with the request, it shall refer the request to the competent national authority and inform directly the requesting Party that it has done so.

d Requests or communications made under this paragraph that do not involve coercive action may be directly transmitted by the competent

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<p>authorities of the requesting Party to the competent authorities of the requested Party.</p> <p>e Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, inform the Secretary General of the Council of Europe that, for reasons of efficiency, requests made under this paragraph are to be addressed to its central authority.</p>	
<p>Article 28 – Confidentiality and limitation on use</p> <p>1 When there is no mutual assistance treaty or arrangement on the basis of uniform or reciprocal legislation in force between the requesting and the requested Parties, the provisions of this article shall apply. The provisions of this article shall not apply where such treaty, arrangement or legislation exists, unless the Parties concerned agree to apply any or all of the remainder of this article in lieu thereof.</p> <p>2 The requested Party may make the supply of information or material in response to a request dependent on the condition that it is:</p> <p>a kept confidential where the request for mutual legal assistance could not be complied with in the absence of such condition, or</p> <p>b not used for investigations or proceedings other than those stated in the request.</p> <p>3 If the requesting Party cannot comply with a condition referred to in paragraph 2, it shall promptly inform the other Party, which shall then determine whether the information should nevertheless be provided. When the requesting Party accepts the condition, it shall be bound by it.</p> <p>4 Any Party that supplies information or material subject to a condition referred to in paragraph 2 may require the other Party to explain, in relation to that condition, the use made of such information or material.</p>	<p>Section 19 (c) (vii) of the Mutual Assistance in Criminal Matters Act 2002. (see above)</p>
<p>Article 29 – Expedited preservation of stored computer data</p> <p>1 A Party may request another Party to order or otherwise obtain the expeditious preservation of data stored by means of a computer system, located within the territory of that other Party and in respect of which the requesting Party intends to submit a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of the data.</p> <p>2 A request for preservation made under paragraph 1 shall specify:</p>	<p>Section 263 of CMA 1998 – General duty of licensees (see above)</p> <p>Section 268 of CMA – Minister may make rules on record-keeping (see above)</p> <p>Section 51 (1) of CPC- Summons to produce documents and other things (see above)</p>

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a the authority seeking the preservation;

b the offence that is the subject of a criminal investigation or proceedings and a brief summary of the related facts;

c the stored computer data to be preserved and its relationship to the offence;

d any available information identifying the custodian of the stored computer data or the location of the computer system;

e the necessity of the preservation; and

f that the Party intends to submit a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of the stored computer data.

3 Upon receiving the request from another Party, the requested Party shall take all appropriate measures to preserve expeditiously the specified data in accordance with its domestic law. For the purposes of responding to a request, dual criminality shall not be required as a condition to providing such preservation.

4 A Party that requires dual criminality as a condition for responding to a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of stored data may, in respect of offences other than those established in accordance with Articles 2 through 11 of this Convention, reserve the right to refuse the request for preservation under this article in cases where it has reasons to believe that at the time of disclosure the condition of dual criminality cannot be fulfilled.

5 In addition, a request for preservation may only be refused if:

a the request concerns an offence which the requested Party considers a political offence or an offence connected with a political offence, or

b the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests.

6 Where the requested Party believes that preservation will not ensure the future availability of the data or will threaten the confidentiality of or otherwise prejudice the requesting Party's investigation, it shall promptly so inform the requesting Party, which shall then determine whether the request should nevertheless be executed.

4 Any preservation effected in response to the request referred to in paragraph 1 shall be for a period not less than sixty days, in order to enable

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<p>the requesting Party to submit a request for the search or similar access, seizure or similar securing, or disclosure of the data. Following the receipt of such a request, the data shall continue to be preserved pending a decision on that request.</p>	
<p>Article 30 – Expedited disclosure of preserved traffic data 1 Where, in the course of the execution of a request made pursuant to Article 29 to preserve traffic data concerning a specific communication, the requested Party discovers that a service provider in another State was involved in the transmission of the communication, the requested Party shall expeditiously disclose to the requesting Party a sufficient amount of traffic data to identify that service provider and the path through which the communication was transmitted. 2 Disclosure of traffic data under paragraph 1 may only be withheld if: a the request concerns an offence which the requested Party considers a political offence or an offence connected with a political offence; or b the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, <i>ordre public</i> or other essential interests.</p>	<p>Section 263 of CMA 1998 – General duty of licensees (see above)</p> <p>Section 51 (1) of CPC- Summons to produce documents and other things (see above)</p> <p>Section 268 of CMA – Minister may make rules on record-keeping (see above)</p>
<p>Article 31 – Mutual assistance regarding accessing of stored computer data 1 A Party may request another Party to search or similarly access, seize or similarly secure, and disclose data stored by means of a computer system located within the territory of the requested Party, including data that has been preserved pursuant to Article 29. 2 The requested Party shall respond to the request through the application of international instruments, arrangements and laws referred to in Article 23, and in accordance with other relevant provisions of this chapter. 3 The request shall be responded to on an expedited basis where: a there are grounds to believe that relevant data is particularly vulnerable to loss or modification; or b the instruments, arrangements and laws referred to in paragraph 2 otherwise provide for expedited co-operation.</p>	<p>Section 3 of Mutual Assistance in Criminal Matters Act 2002 – Provide and obtain international assistance in criminal matters</p> <p>3. The object of this Act is for Malaysia to provide and obtain international assistance in criminal matters, including—</p> <ol style="list-style-type: none"> a. providing and obtaining of evidence and things; b. the making of arrangements for persons to give evidence, or to assist in criminal investigations; c. the recovery, forfeiture or confiscation of property in respect of a serious offence or a foreign serious offence; d. the restraining of dealings in property, or the freezing of property, that may be recovered in respect of a serious offence or a foreign serious offence; e. the execution of requests for search and seizure; f. the location and identification of witnesses and suspects; g. the service of process; h. the identification or tracing of proceeds of crime and property and instrumentalities derived from or used in the commission of a serious

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	<p>offence or a foreign serious offence;</p> <p>i. the recovery of pecuniary penalties in respect of a serious offence or a foreign serious offence; and</p> <p>j. the examination of things and premises.</p> <p>Section 35 of Mutual Assistance in Criminal Matters Act 2002 – Request for search and seizure</p> <p>(1) The Attorney General may, on the request of the appropriate authority of a prescribed foreign State, assist in obtaining any thing by search or seizure.</p> <p>(2) Where, on receipt of a request referred to in subsection (1), the Attorney General is satisfied that--</p> <p>a. the request relates to a criminal matter in that prescribed foreign State in respect of a foreign serious offence; and 36 Laws of Malaysia ACT 621</p> <p>b. there are reasonable grounds for believing that the thing to which the request relates is relevant to the criminal matter and is located in Malaysia,</p> <p>the Attorney General, or an authorized officer directed by him, may apply to the court for a warrant under section 36 in respect of premises specified by the Attorney General.</p> <p>(3) An application for a warrant referred to in section 36 in respect of any thing in the possession of a financial institution shall be made to the High Court.</p> <p>(4) An application for a warrant referred to in section 36 shall specify with sufficient particulars the thing in the possession of a financial institution.</p>
<p>Article 32 – Trans-border access to stored computer data with consent or where publicly available</p> <p>A Party may, without the authorisation of another Party:</p> <p>a access publicly available (open source) stored computer data, regardless of where the data is located geographically; or</p> <p>b access or receive, through a computer system in its territory, stored</p>	<p>Section 4 of the Mutual Assistance in Criminal Matters Act 2002 - Act does not limit cooperation with international organizations, etc.</p> <p>4. (1) This Act does not prevent the provision or obtaining of international assistance in criminal matters to or from the International Criminal Police Organization (INTERPOL) or any other international organization.</p>

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<p>computer data located in another Party, if the Party obtains the lawful and voluntary consent of the person who has the lawful authority to disclose the data to the Party through that computer system.</p>	<p>(2) This Act does not prevent the provision or obtaining of international assistance in criminal matters to or from any foreign State other than assistance of a kind that may be provided or obtained under this Act.</p> <p>(3) This Act does not prevent the provision or obtaining of international assistance in criminal matters under any other written law.</p>
<p>Article 33 – Mutual assistance in the real-time collection of traffic data</p> <p>1 The Parties shall provide mutual assistance to each other in the real-time collection of traffic data associated with specified communications in their territory transmitted by means of a computer system. Subject to the provisions of paragraph 2, this assistance shall be governed by the conditions and procedures provided for under domestic law.</p> <p>2 Each Party shall provide such assistance at least with respect to criminal offences for which real-time collection of traffic data would be available in a similar domestic case.</p>	<p>Section 3 and 4 of the Mutual Assistance in Criminal Matters Act 2002 (see above)</p> <p>Section 265 of the CMA 1998 - Network interception capability</p> <p>265. (1) The Minister may determine that a licensee or class of licensees shall implement the capability to allow authorized interception of communications.</p> <p>(2) A determination, under subsection (1), may specify the technical requirements for authorized interception capability.</p> <p>Section 269 of the CMA 1998 (see above)</p>
<p>Article 34 – Mutual assistance regarding the interception of content data</p> <p>The Parties shall provide mutual assistance to each other in the real-time collection or recording of content data of specified communications transmitted by means of a computer system to the extent permitted under their applicable treaties and domestic laws.</p>	<p>Section 3 and 4 of the Mutual Assistance in Criminal Matters Act 2002 (see above)</p> <p>Section 265 and 269 of the CMA 1998 (see above)</p>
<p>Article 35 – 24/7 Network</p> <p>1 Each Party shall designate a point of contact available on a twenty-four hour, seven-day-a-week basis, in order to ensure the provision of immediate assistance for the purpose of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence. Such assistance shall include facilitating, or, if permitted by its domestic law and practice, directly carrying out the following measures:</p> <p>a the provision of technical advice;</p>	<p>Malaysian Control Centre – MCC under the Royal Malaysian Police</p>

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<p>b the preservation of data pursuant to Articles 29 and 30;</p> <p>c the collection of evidence, the provision of legal information, and locating of suspects.</p> <p>2 a A Party's point of contact shall have the capacity to carry out communications with the point of contact of another Party on an expedited basis.</p> <p>b If the point of contact designated by a Party is not part of that Party's authority or authorities responsible for international mutual assistance or extradition, the point of contact shall ensure that it is able to co-ordinate with such authority or authorities on an expedited basis.</p> <p>3 Each Party shall ensure that trained and equipped personnel are available, in order to facilitate the operation of the network.</p>	
<p>Article 42 – Reservations</p> <p>By a written notification addressed to the Secretary General of the Council of Europe, any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of the reservation(s) provided for in Article 4, paragraph 2, Article 6, paragraph 3, Article 9, paragraph 4, Article 10, paragraph 3, Article 11, paragraph 3, Article 14, paragraph 3, Article 22, paragraph 2, Article 29, paragraph 4, and Article 41, paragraph 1. No other reservation may be made.</p>	