

## **LXVI. MALAYSIA<sup>3</sup>**

### **SUMMARY OF LEGISLATION OF MALAYSIA RELATED TO TERRORISM**

#### **(a) Internal Security Act 1960 (ISA)**

There is a definition of “terrorist” in Section 2 of the ISA which reads as follows:

“Terrorist” means any person who by the use of any firearm, explosive or ammunition acts in a manner prejudicial to the public safety or to the maintenance of public order or incites to violence or counsels disobedience to the law or to any lawful order; carries or has in his possession or under his control any firearm, ammunition or explosive without lawful authority therefor; demands, collects or receives any supplies for the use of any person who intends or is about to act, or has recently acted, in a manner prejudicial to public safety or the maintenance of public order.”

Section 8 and Section 73 empower the preventive detention of persons suspected of acting in any manner prejudicial to Malaysia’s national security maintenance of essential services the economic life of Malaysia.

Section 38 provides that any officer or person authorized to exercise the powers of entry or investigation under Section 36 may seize any document or other thing in respect of which he reasonably believes an offence to have been committed under Chapter IV of the Act (Sections 32-41) or any order made thereunder or which he reasonably believes to be or to contain evidence relating to such an offence provided that nothing in this section shall be deemed to affect the powers of a police officer under the Criminal Procedure Code.

Section 59 makes it an offence for any person to collect or receive any supplies (including money) which raises a reasonable presumption that he intends or is about to act or has recently acted in a manner prejudicial to public security or public order.

Section 62 provides that no person, knowing or having reasonable cause to believe that another person has committed an offence against Part III of the Act shall, whether within or outside a security area, give that other person any

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<sup>3</sup> Transmitted to the Secretariat by that Government on 4 January 2002 (S/2002/35, enclosure), 22 November 2002 (S/2002/1334, enclosure) and 14 July 2003 (S/2003/729, enclosure). Information was also provided in respect of the Exchange Control Act 1953, the Arms Act 1960, the Banking and Financial Institutions Act 1989; the Anti-Money Laundering Act 2001.

assistance with intent thereby to prevent, hinder or interfere with the apprehension, trial or punishment of that person for the said offence.

Section 76 provides for the inspection of bankers' books for the purposes of the Act by empowering the Minister, if he is satisfied that any evidence of the commission of an offence against this Act or against any written law for the time being specified in the Second Schedule is likely to be found in any banker's book, by order authorize any police officer to inspect any such book, and a police officer so authorized may, at all reasonable times, enter the bank specified in the order and inspect the banker's books kept therein, and may take copies of any entry in any such book.

**(b) Penal Code**

Section 120A provides for criminal conspiracy, as an offence. Acts of persons who cooperate with a terrorist who may be elsewhere by way of an agreement to commit an unlawful act is said to be conspiring with the terrorist.

Section 125 criminalizes the waging of war, or attempts or abetments thereof, against the Government of any power in alliance or at peace with the Yang di-Pertuan Agong, whether in conjunction with the enemies of the Yang di-Pertuan Agong or otherwise (Yang di Pertuan Agong is the Supreme Head of the Federation.)

Section 125A makes it an offence to "harbour" or attempt to "harbour" the enemies of the Yang di-Pertuan Agong in Malaysia or elsewhere; or in the territories of any power at war with, or otherwise in actual hostility against, the Yang di-Pertuan Agong.

Section 126 criminalizes the commission of depredation (i.e. plundering, looting or ravaging) or any preparation to commit depredation, on the territories of any power in alliance or at peace with the Yang di-Pertuan Agong.

**(c) Aviation Offences Act 1984**

Section 7(1) of the Aviation Offences Act (1984) makes it an offence for a person on board an aircraft in flight to unlawfully, by use of force or by threats of any kind, to seize the aircraft or exercise control of it, whatever his nationality or citizenship, whatever the State of registration of the aircraft and whether the aircraft is in Malaysia or elsewhere.

Section 7(2) provides that Section 7(1) does not apply if the aircraft is used in military, customs or police service unless the person seizing or exercising control of the aircraft is a citizen of Malaysia; his act is committed in or over Malaysia; or the aircraft is used in the military, customs or police service of Malaysia.

Section 8 makes it an offence to do any act of violence against the passengers or crew of any aircraft in flight in connection with the hijacking and provides that Malaysia is seized of the offence whatever the act of violence, whatever the State of registration of the aircraft and whatever the nationality or citizenship of the person committing the act

Section 9(1) makes it an offence for any person to unlawfully and intentionally destroy an aircraft in service or so damage such aircraft as to render it incapable of flight or as to likely endanger its safety in flight commit on board an aircraft in flight any act of violence that is likely to endanger the safety of the aircraft

Section 9(2) makes it an offence for any person to unlawfully and intentionally place or cause to be placed on an aircraft in service any device or substance that is likely to destroy the aircraft or is likely so to damage it as to render it incapable of flight or as to be likely to endanger its safety in flight

Section 9(3) provides that Malaysia will be seized of the offences under Section 9 whether the acts are committed in Malaysia or elsewhere, whatever the State of registration of the aircraft or whatever the nationality or citizenship of the person committing the act

Section 9(4) provides that no offence under Sections 9(1) or (2) is committed if the act is committed in relation to an aircraft used in military, customs or police service unless the act is committed in or over Malaysia; or where the act is committed outside Malaysia, the person committing the act is a citizen of Malaysia.

**(d) Extra-territorial Offences Act 1976**

The term "extra-territorial jurisdiction" as used in the context of the Extra-territorial Offences Act 1976 means that Malaysian authorities claim jurisdiction over certain specified offences under Malaysian law as if these offences were committed in Malaysia when such offences are committed on the high seas on board any ship or on any aircraft registered in Malaysia by any citizen or permanent resident on the high seas on board any ship or on any aircraft; by any citizen or permanent resident in any place without and beyond the limits of Malaysia.

These offences are specified in Section 2 of the Extra-territorial Offences Act 1976 as follows: any act contrary to the provisions of the Official Secrets Act 1972 and the Sedition Act 1948; any offence under any other written law the commission of which is certified by the Attorney General to affect the security of Malaysia.

If the person who participates in the financing, planning, preparation or perpetration of terrorist acts or participates in supporting terrorist acts is a citizen

or permanent resident of Malaysia or if the terrorist acts specified are committed on a Malaysian registered vessel or aircraft, Malaysia would claim jurisdiction over the offence as if the offence had been committed within Malaysia and, where the evidence is sufficient, duly prosecute such person in accordance with the law. Malaysia has not had to invoke the Extra-territorial Jurisdiction Act 1976 to date as those suspected of compromising the security of Malaysia have committed their acts within Malaysia.

## **LXVII. MALTA<sup>4</sup>**

### **SUMMARY OF LEGISLATION OF MALTA RELATED TO TERRORISM**

There is no definition of “terrorism” or “terrorist acts” in the Maltese Criminal Code. However, terrorist acts are generally punishable under the current Criminal Code though not as terrorist acts as such. However, the act of making any funds, financial assets, or economic resources or financial or other related services available for the benefit of persons involved in the commission of any crime punishable under the Criminal Code, is punishable as such under the same code.

Since there is currently no definition of “terrorism”, “terrorist” or “terrorist act” in Maltese law, there is no specific law denying a safe haven to “terrorists” though many of the acts committed by terrorists are punishable under the current Criminal Code.

Acts of violence usually linked to terrorism are dealt with as criminal offences in sections 311 to 328 of the Criminal Code, under the sub-title ‘Of Crimes against the Public Safety and of Injury to Property’

Furthermore section 5 of the Criminal Code concerning jurisdiction of the Maltese Courts makes special provision for the extension of jurisdiction over certain criminal offences committed against internationally protected persons, even when such offences are committed outside Malta.

Following are the legal provisions establishing as criminal offences acts related to terrorism together with an indication of the relative penalty:

- promoting, constituting, organising or financing an organisation of two or more persons with a view to committing criminal offences (Section 83A – Criminal Code; Chapter 9 of the Laws of Malta) from 3

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<sup>4</sup> Transmitted to the Secretariat by that Government on 21 December 2001 (S/2001/1250, enclosure) and 11 January 2002 (S/2002/876, enclosure). Information was also provided in respect of the Refugees Act of 2000 (came into force on 1 October 2001), the Prevention of Money Laundering Act, the Arms Ordinance, and the Immigration Act.