



Treaty Series No. 84 (1978)

# Exchange of Notes

between the Government of the  
United Kingdom of Great Britain and Northern Ireland  
and the Government of the Federation of Malaysia  
further amending the Agreement for  
the reference of appeals from the  
Supreme Court of the Federation of  
Malaya to the Judicial Committee of  
the Privy Council dated 4 March 1958

Kuala Lumpur, 30 May 1977

[The Exchange of Notes entered into force on 1 January, 1978]

*Presented to Parliament  
by the Secretary of State for Foreign and Commonwealth Affairs  
by Command of Her Majesty  
September 1978*

LONDON

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20p net

**EXCHANGE OF NOTES  
BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM  
OF GREAT BRITAIN AND NORTHERN IRELAND AND THE  
GOVERNMENT OF THE FEDERATION OF MALAYSIA  
FURTHER AMENDING THE AGREEMENT FOR THE  
REFERENCE OF APPEALS FROM THE SUPREME COURT OF THE  
FEDERATION OF MALAYA TO THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL DATED 4 MARCH 1958**

No. 1

*The Minister of Foreign Affairs of Malaysia to the  
United Kingdom High Commissioner at Kuala Lumpur*

*Kuala Lumpur.  
30 May, 1977.*

I have the honour to refer to the Agreement between His Majesty the Yang di-Pertuan Agong and Her Majesty the Queen for the reference of appeals from the Supreme Court of the Federation of Malaya to the Judicial Committee of the Privy Council signed at Kuala Lumpur on 4 March 1958<sup>(1)</sup>, to the amending Agreement signed at Kuala Lumpur on 10 December 1963<sup>(2)</sup> and to the Malaysian Courts of Judicature (Amendment) Act, 1976. In accordance with the understanding between our two Governments that the arrangements for the reference of appeals to the Judicial Committee of the Privy Council should be altered in accordance with the wishes of the Government of the Federation of Malaysia, I have the honour to propose that the Agreement should be further amended as follows:

Article 3, 4 and 5 of the Agreement shall be terminated and shall be replaced by the following provisions:—

**ARTICLE 3**

“ Appeals shall lie from the Federal Court of Malaysia to His Majesty the Yang di-Pertuan Agong and shall be referred by Him to the Judicial Committee in the following cases, provided that the leave of the Federal Court therefor is granted:

- (a) from any final judgment or order in any civil matter where—
  - (i) the matter in dispute in the appeal amounts to or is of the value of twenty-five thousand dollars or upwards;
  - (ii) the appeal involves, directly or indirectly, some claim or question to or respecting property or some civil right of like amount or value; or
  - (iii) the case is from its nature a fit one for appeal; and
- (b) from any interlocutory judgment or order which the Federal Court considers a fit one for appeal.

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<sup>(1)</sup> Cmnd. 383.

<sup>(2)</sup> Cmnd. 2329.

#### ARTICLE 4

Appeals shall lie from the Federal Court of Malaysia to His Majesty the Yang di-Pertuan Agong and shall be referred by him to the Judicial Committee in the following cases :

- (a) in any of the cases mentioned in Article 3 of this Agreement where the leave of the Federal Court has not been duly obtained; and
- (b) in any case arising in a civil matter other than the cases referred to in Article 3 of this Agreement;

provided that the special leave of the Yang di-Pertuan Agong therefor is granted. Where application is made to His Majesty the Yang di-Pertuan Agong for such special leave it shall be referred to the Judicial Committee, and His Majesty the Yang di-Pertuan Agong shall grant or refuse special leave in those cases as the Judicial Committee may recommend.

#### ARTICLE 5

(1) Notwithstanding Articles 3 and 4 of this Agreement, no appeal shall lie from the Federal Court to the Yang di-Pertuan Agong :

- (a) from any decision as to the effect of any provision of the Constitution including the validity of any written law relating to such provision; or
- (b) from any opinion pronounced on a reference under Article 130 of the Constitution.

(2) If any question arises whether a decision given or an opinion pronounced by the Federal Court falls under sub-paragraph (a) or sub-paragraph (b) of paragraph (1) of this Article, a certificate issued by the Federal Court either :

- (a) stating that a decision given by that Court is a decision as to the effect of any provision of the Constitution including the validity of any written law relating to such provision; or
- (b) stating that an opinion previously pronounced by that Court is an opinion pronounced on a reference under Article 130 of the Constitution;

shall be final and conclusive evidence of the fact stated therein and shall not be a subject of appeal to the Yang di-Pertuan Agong.”

If the above proposals are acceptable to the Government of the United Kingdom, I have the honour to suggest that the present Note and Your Excellency's reply in that sense shall constitute an Agreement between the two Governments which shall enter into force on the date on which section 13 of the Courts of Judicature (Amendment) Act, 1976 is brought into force<sup>(3)</sup>, but

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<sup>(3)</sup> The Agreement entered into force on 1 January 1978.

not so as to affect any appeal or application for leave to appeal which is then pending. Your Excellency will be notified of this date in advance in order that an Order of Her Britannic Majesty in Council<sup>(1)</sup> giving effect to this Agreement may be brought into operation on the same date.

I avail myself of this opportunity to present to Your Excellency the assurances of my highest consideration.

TENGGU AHMAD RITHAUDDEEN

No. 2

*The United Kingdom High Commissioner at Kuala Lumpur to the  
Minister of Foreign Affairs of Malaysia*

*Kuala Lumpur.*

*30 May, 1977.*

Your Excellency,

I have the honour to acknowledge receipt of your Note of today's date which reads as follows :

[As in No. 1]

In reply, I have the honour to inform you that the foregoing proposals are acceptable to the Government of the United Kingdom who therefore agree that Your Excellency's Note and this reply shall constitute an Agreement between the two Governments which shall enter into force on the date on which Section 13 of the Courts of Judicature (Amendment) Act, 1976 is brought into force, but not so as to affect any appeal or application for leave to appeal which is then pending.

I avail myself of this opportunity to present to Your Excellency the assurances of my highest consideration.

ERIC NORRIS

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<sup>(1)</sup> The Malaysia (Appeals to Privy Council) order, 1978 (S.I. 182 (1978)) came into operation on 2 March, 1978.