

COMPILATION OF CONSTITUTIONAL AND LEGISLATIVE PROVISIONS ON TREATY PRACTICE OF MALAYSIA

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IMPORTANT NOTES

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This document was last amended in December 2012.

1. Federal Constitution of Malaysia 1957

(As amended, most recently in 2009)

[Extracts of relevant provisions]

...

Executive authority of Federation

39. The executive authority of the Federation shall be vested in the Yang di-Pertuan Agong and exercisable, subject to the provisions of any federal law and of the Second Schedule, by him or by the Cabinet or any minister authorized by the Cabinet, but Parliament may by law confer executive functions on other persons.

...

Subject matter of federal and State laws

74.

(1) Without prejudice to any power to make laws conferred on it by any other Article, Parliament may make laws with respect to any of the matters enumerated in the Federal List or the Concurrent List (that is to say, the First or Third List set out in **the Ninth Schedule**).

...

Federal List in the Ninth Schedule – Legislative Lists

List I – Federal List

(1) External affairs, including –

- (a) Treaties, agreements and conventions with other countries and all matters which bring the Federation into relations with any other country;
- (b) Implementation of treaties, agreements and conventions with other countries;

- (c) Diplomatic, consular and trade representation;
- (d) International organizations; participation in international bodies and implementation of decisions taken thereat;
- (e) Extradition; fugitive offenders; admission into and emigration and expulsion from, the Federation;
- (f) Passport; visas; permits of entry or other certificates; quarantine;
- (g) Foreign and extra-territorial jurisdiction; and Pilgrimages to places outside Malaysia.

...

Power of Parliament to legislate for States in certain cases

76.

- (1)** Parliament may make laws with respect to any matter enumerated in the State List, but only as follows, that is to say:
- (a) for the purpose of implementing any treaty agreement or convention between the Federation and any other country, or any decision of an international organization of which the Federation is a member; or
 - (b) for the purpose of promoting uniformity of the laws of two or more States; or
 - (c) if so requested by the Legislative Assembly of any State.
- (2)** No law shall be made in pursuance of paragraph (a) of Clause (1) with respect to any matters of Islamic law or the custom of the Malays or any matters of native law or custom in the States of Sabah and Sarawak and no Bill for a law under that paragraph shall be introduced into either House of Parliament until the Government of any State concerned has been consulted.

...

Exercise of concurrent legislative powers

79.

- (1) Where it appears to the presiding officer of either House of Parliament or of the Legislative Assembly of any State that a Bill or an amendment to a Bill proposes a change in the law relating to any of the matters enumerated in the Concurrent List, or to any of the matter enumerated in the State List with respect to which the Federation is exercising functions in accordance with Article 94, he shall certify the Bill or amendment for the purposes of this Article.
- (2) A Bill or amendment certified under this Article shall not be proceeded with until four weeks have elapsed since its publication, unless the presiding officer, being satisfied that the State Governments, or as the case may be, the Federal Government, have been consulted, allows it to be proceeded with on the ground of urgency.

Distribution of executive powers

80.

- (1) Subject to the following provisions of this Article the executive authority of the Federation extends to all matters with respect to which Parliament may make laws, and the executive authority of a State to all matters with respect to which the Legislature of that State may make laws.
- (2) The executive authority of the Federation does not extend to any matter enumerated in the State List, except in so far as is provided in Articles 93 to 95, nor to any matter enumerated in the Concurrent List, except in so far as may be provided by federal or State law; and so far as federal or State law confers executive authority on the Federation with respect to any matter enumerated in the Concurrent List it may do so to the exclusion of the executive authority of the State.
- (3) So far as a law made under Clause (4) of Article 76 makes provisions for conferring executive authority on the Federation it shall not operate in any State unless approved by resolution of the Legislative Assembly of that State.

- (4) Federal law may provide that the executive authority of a State shall extend to the administration of any specified provisions of federal law and may for that purpose confer powers and impose duties on any authority of the State.
- (5) Subject to any provisions of federal or State law, arrangements may be made between the Federation and a State for the performance of any functions by the authorities of the one on behalf of the authorities of the other and such arrangements may provide for the making of payments in respect of any costs incurred under the arrangements.
- (6) Where, in pursuance of Clause (4), any functions are conferred by federal law on any authority of a State the Federation shall make such payments to the State as may be agreed between the Federation and the State or as may in default of agreement be determined by a tribunal appointed by the Chief Justice of the Federal Court.

Note:

The full text of Malaysia's Constitution can be accessed on the official website of the Judicial Appointments Commission:

<http://www.jac.gov.my/images/stories/akta/federalconstitution.pdf>

2. Official Online Treaty Status Information

The Malaysian Ministry of Foreign Affairs website sets out a list of multilateral and bilateral treaties in which Malaysia participates at:

<http://www.kln.gov.my/web/guest/md-treaties>; and

http://www.kln.gov.my/web/guest/bd-bilateral_treaties