



LAWS OF MALAYSIA

Act 1950

A BILL

intituled

An Act to amend the Evidence Act 1950.

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BE IT ENACTED by the Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Evidence (Amendment) Act 1993. Short title.

2. Section 3 of the Evidence Act 1950, which in this Act is referred to as the "principal Act", is amended— Amendment of section 3. Art 56

(a) by inserting, immediately before the definition of "court", the following new definition:

"computer" means any device for recording, storing, processing, retrieving or producing any information or other matter, or for performing any one or more of those functions, by whatever name or description such device is called; and where two or more computers carry out any one or more of those functions in combination or in succession or otherwise howsoever conjointly, they shall be treated as a single computer;";

(b) by substituting for the definition of "document" the following:

' "document" means any matter expressed, described, or howsoever represented, upon any substance, material, thing or article, including any matter embodied in a disc, tape, film, sound track or other device whatsoever, by means of—

- (a) letters, figures, marks, symbols, signals, signs, or other forms of expression, description, or representation whatsoever;
- (b) any visual recording (whether of still or moving images);
- (c) any sound recording, or any electronic, magnetic, mechanical or other recording whatsoever and howsoever made, or any sounds, electronic impulses, or other data whatsoever;
- (d) a recording, or transmission, over a distance of any matter by any, or any combination, of the means mentioned in paragraph (a), (b) or (c),

or by more than one of the means mentioned in paragraphs (a), (b), (c) and (d), intended to be used or which may be used for the purpose of expressing, describing, or howsoever representing, that matter;

ILLUSTRATIONS

A writing is a document.

Words printed, lithographed or photographed are documents.

A map, plan, graph or sketch is a document.

An inscription on wood, metal, stone or any other substance, material or thing is a document.

EVIDENCE (AMENDMENT)

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A drawing, painting, picture or caricature is a document.

A photograph or a negative is a document.

A tape recording of a telephonic communication, including a recording of such communication transmitted over distance, is a document.

A photographic or other visual recording, including a recording of a photographic or other visual transmission over a distance, is a document.

A matter recorded, stored, processed, retrieved or produced by a computer is a document.'; and

(c) by inserting, after the definition of "fact in issue", the following new definitions;

' "film" includes a microfilm and any negative;

"microfilm" means any transparent material bearing a visual image in reduced size either singly or as a series and includes a microfiche;

"negative" means a transparent negative photograph on any substance or material, and includes any transparent negative photograph made from the original negative photograph;'

3. The principal Act is amended by inserting under the subheading "*Admissions and Confessions*" the following new section 31A after section 31: New section 31A,

“Admissibility of statements in criminal proceedings 31 A. (1) Where in any criminal proceedings, a statement, whether written or verbal, made by any person charged with an offence, is admissible in evidence under or by virtue of any written law, then, notwithstanding anything contained in that written law, such statement shall not be admitted in evidence, or produced

in, or considered by, the court, unless evidence of such statement is given—

(a) by the officer to whom the statement is made; or

(b) by the person charged with the offence.

(2) Subsection (1) shall not affect the application of the provisions of sections 90A, 90B, 90c, 145 and 155."

Amendment
of section 32.

4. Section 32 of the principal Act is amended—

(a) by substituting a semicolon for the full stop at the end of paragraph (h) and inserting after paragraph (h) the following new paragraphs (i) and (j):

"(i) when the statement was made in the course of, or for the purposes of, an investigation or inquiry into an offence under or by virtue of any written law; and

(j) where the statement was made by a public officer in the discharge of his duties."; and

(b) by renumbering section 32 as subsection (1) of section 32 and inserting after that subsection (1) a new subsection (2) as follows:

"(2) The provisions of paragraphs (i) and (j) of subsection (1) shall apply only in relation to a criminal proceeding."

Amendment
of section 60.

5. Subsection (3) of section 60 of the principal Act is amended—

(a) by substituting for the words "other than" the word "including"; and

(b) by inserting after the words "that material thing" the words "or the document".

6. Section 62 of the principal Act is amended by inserting, after *Explanation 2*, a new *Explanation 3* as follows:

Amendment of section 62.

"Explanation 3 - A document produced by a computer is primary evidence."

7. Section 63 of the principal Act is amended by substituting for the words "seen it" in paragraph (e) the words, "seen or heard it or perceived it by whatever means".

Amendment of section 63.

8. The principal Act is amended by inserting after section 78, the following new section 78A:

New section 78A.

"Proof of public documents produced by computers. 78A. Notwithstanding anything contained in sections 77 and 78, the provisions of sections 90A, 90B and 90c shall apply to a public document."

9. The principal Act is amended by inserting in Chapter V, after section 90, the following new subheading and new sections 90A, 90B and 90c:

New subheading and new sections 90A, 90b and 90c.

" *Documents Produced by a Computer*

Admissibility of documents produced by computers, and of statements contained therein. 90A. (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.

(2) For the purposes of this section it may be proved that a document was produced by a computer in the course of its ordinary use by tendering to the court a certificate signed by a person who either before or after the production of the document by the computer is responsible for the management of the operation of that computer, or for the conduct of the activities for which that computer was used.

(3) (a) It shall be sufficient, in a certificate given under subsection (2), for a matter to be stated to the best of the knowledge and belief of the person stating it.

(b) A certificate given under subsection (2) shall be admissible in evidence as *prima facie* proof of all matters stated in it without proof of signature of the person who gave the certificate.

(4) Where a certificate is given under subsection (2), it shall be presumed that the computer referred to in the certificate was in good working order and was operating properly in all respects throughout the material part of the period during which the document was produced.

(5) A document shall be deemed to have been produced by a computer whether it was produced by it directly or by means of any appropriate equipment, and whether or not there was any direct or indirect human intervention.

(6) A document produced by a computer, or a statement contained in such document, shall be admissible in evidence whether or not it was produced by the computer after the commencement of the criminal or civil proceeding or after the commencement of any investigation or inquiry in relation to the criminal or civil proceeding or such investigation or inquiry, and any document so produced by a computer shall be deemed to be produced by the computer in the course of its ordinary use.

(7) Notwithstanding anything contained in this section, a document produced by a computer, or a statement contained in such document, shall not be admissible in evidence

Sections 90c. The provisions of sections 90A and 90s
 90A and 90B shall prevail and have full force and effect
 to prevail notwithstanding anything inconsistent
 over other provisions therewith, or contrary thereto, contained in any
 provisions of this Act, other provision of this Act, or in the Bankers'
 the Banker's Books (Evidence) Act 1949, or in any provision
 Books (Evidence) Act 1949. of any written law relating to certification,
 Act 1949. production or extraction of documents or in any
 and any rule of law or practice relating to production,
 written law. admission, or proof, of evidence in any criminal
 Act 33 or civil proceeding.".

EXPLANATORY STATEMENT

This Bill seeks to amend the Evidence Act 1950 ("the Act") by introducing certain new provisions and amending certain existing provisions.

2. *Clause 2* seeks to amend section 3 of the Act which contains definitions of words and expressions used in the Act.

The principal amendment is made under paragraph (*b*) of this *clause* whereby the definition of "document" is substituted by a new definition which embraces all forms of expression or description upon any substance, material, thing or article, and expressly includes within the scope of the meaning of "document" any matter embodied in a disc, tape, film, sound track or other device whatsoever by means of forms of expression which are set out under paragraphs (*a*), (*b*), (*c*) and (*d*) of the definition.

The illustrations to the definition have been amended so as to include within the meaning of "document" certain forms of documents which are within the scope of the new definition, such as tape recordings of telephonic communications, photographic or other visual recordings, and matters recorded, stored, processed, retrieved or produced by a computer.

Under paragraph (*a*) of *clause 2* a definition of "computer" is introduced as new provisions relating to evidence produced by computers are introduced into the Act by subsequent *clauses* of this Bill.

Paragraph (*c*) of *clause 2* of the Bill inserts the definition of "film" and "negative", being words which are used in the new definition of "document" mentioned above. The word "microfilm" is also defined as it is used in the definition of "film".

3. *Clause 3* of the Bill seeks to introduce a new section 31A into the Act which provides that in a criminal proceeding a written or verbal statement made by a person charged with an offence which is admissible in evidence under or by virtue of any written law, would be so admissible only if evidence of the statement is given by the officer to whom it was made or by the person who is charged with the offence.

However, subsection (2) seeks to provide that the above restriction would not affect the provisions of sections 90A, 90B and 90c which relate to documents produced by computers, or the provisions of section 145 which relates to cross-examination as to previous statements in writing, or the provisions of section 155 which relates to impeachment of the credit of a witness.

4. *Clause 4* seeks to amend section 32 of the Act by adding two new paragraphs (i) and {j}. Paragraph (i) enables a statement made in the course of, or for the purpose of, an investigation or inquiry into an offence under or by virtue of a written law to itself constitute a relevant fact where it is made by a person who is dead, or cannot be found, or who is not available for the reasons specified in section 32.

Similarly, the new paragraph (j) enables a statement made by a public officer in the discharge of his duties to itself constitute a relevant fact where the public officer is dead, or cannot be found, or is not available for reasons specified in section 32. By a new subsection (2) which is sought to be added to section 32, the provisions of the new paragraphs (i) and (j) mentioned above would only apply in relation to a criminal proceeding.

5. *Clause 5* seeks to amend the existing subsection (3) of section 60 of the Act which excludes the production of documents for the examination of the court. The amendment will enable documents to be included as material which can be produced before the court and examined by the court.

6. *Clause 6* seeks to amend section 62 of the Act by inserting a new explanation to the meaning of primary document whereby a document produced by a computer is rendered primary evidence.

7. *Clause 7* seeks to amend paragraph (e) of section 63 of the Act so as to bring within the scope of secondary evidence oral accounts of the contents of documents given by a person who has heard the document, or perceived it by whatever means.

8. *Clause 8* introduces a new section 78A into the Act whereby sections 90A, 90B and 90C which relate to documents produced by computers are rendered applicable to a public document notwithstanding the provisions of sections 77 and 78 which relate to proof of public documents.

9. *Clause 9* introduces new sections 90A, 90B and 90c into Chapter V of the Act which contain provisions on documentary evidence.

The new section 90A provides clearly that a document produced by a computer, or a statement contained in such document, would be admissible in any suit or proceeding as evidence of any fact stated therein. The admissibility of the computer document is made subject to the condition that the document was produced in the course of the ordinary use of the computer for that purpose.

Subsection (2) of section 90A provides that matters stated above relating to the condition of admissibility may be proved by a certificate given by a person responsible for the management of the operation of the computer or for the conduct of the activities it was used for.

Subsection (3) relates to the contents and admissibility of a certificate given under subsection (2).

Subsection (4) provides for a presumption that the computer in respect of which a certificate is given under subsection (2) was in good working order and was operating properly in all respects throughout the material part of the period during which the document was produced by the computer.

Subsection (5) provides for a document produced by a computer to be deemed to be so produced in cases in which it was produced by means of an appropriate equipment, whether or not there was any direct or indirect human intervention.

Subsection (6) enables documents produced by a computer after the commencement of a criminal or civil proceeding, or of any investigation or inquiry in relation thereto, to be admissible in evidence and to be deemed to have been produced by the computer in the course of its ordinary use.

Subsection (7) seeks to provide that a document produced by a computer or a statement contained in such document shall not be admissible in evidence in a criminal proceeding where it is given by or on behalf of a person charged with an offence if such person was responsible for the management of the operation of that computer or for the conduct of the activities for which the computer was used, or was in any manner or to any extent involved directly or indirectly in the production of the document by the computer.

Section 90B allows the court to draw inferences from circumstances relating to evidence admissible under section 90A, including the manner and purpose of its creation and its contents, the purpose of its production in evidence, and the physical effectiveness of the computer, equipment and other devices used in creating the document, when evaluating the probative value of such evidence. To assist the courts in so doing, this section also

provides for the factors which the court may have regard to in estimating the weight to be attached to the computer document or the statement contained in it, which is rendered admissible under section 90A. These factors include circumstances in which inferences can be drawn as to the accuracy, contemporaneous supply of the information recorded, and incentive to conceal or misrepresent any fact by any person concerned with the production of such evidence.

Section 90c makes it clear that sections 90A and 90B are to have effect notwithstanding anything contained in the Act or in the Bankers' Books (Evidence) Act 1949 or in any other written law relating to certification, production or extraction of documents, or in rule of law or practice relating to production, admission, or proof, of evidence in any criminal or civil proceeding which are inconsistent with the new provisions.

FINANCIAL IMPLICATIONS

This Bid will not involve the Government in any extra financial expenditure. [PN. (U-) 1629.]