

ANNEXURE A

MALAYSIA'S COMMENTS ON THE REVISED PRELIMINARY DRAFT CONVENTION ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE (PREL.DOC.NO.29)

NO.	ARTICLES	PROVISIONS OF THE CONVENTION	MALAYSIA'S COMMENTS
1.	Article 2(1)	<p>1. This Convention shall apply to maintenance obligations arising from a parent-child relationship towards a child under the age of 21 [including claims for spousal support made in combination with claims for maintenance in respect of such a child] and, with the exception of Chapters II and III, to spousal support.</p> <p>2. Any Contracting State may declare in accordance with Article 58 that it will extend the application of the whole or any part of the Convention to any maintenance obligation arising from a family relationship, parentage, marriage or affinity. Any such declaration shall give rise to obligations between two Contracting States only in so far as their declarations cover the same maintenance obligations and parts of the convention.</p> <p>[3. The provisions of this Convention shall apply to children regardless of the marital status of the</p>	<p>Malaysia has no objection to the proposal to insert the words "including claims for spousal support made in combination with claims for maintenance in respect of such a child" in this paragraph.</p> <p>In Malaysia, Section 2 of the Child Act (Act 611) defines 'child' as a person under the age of eighteen years. This is consistent with the Convention on the Rights of the Child, where Malaysia is a party.</p> <p>With regard to paragraph (3), the words "regardless of the marital status of the parents"</p>

NO.	ARTICLES	PROVISIONS OF THE CONVENTION	MALAYSIA'S COMMENTS
		<p>parents.]</p> <p>4. The Convention also applies to claims by a public body in respect of maintenance obligations covered by paragraphs (1), (2) [and (3)]</p>	<p>are of great legal significance to Muslims. The phrase appears very wide and may include adopted children of homosexual parents, illegitimate children and parents of artificially conceived children.</p> <p>With regard to paragraph (4), clarification is sought as to whether a public body can be a creditor in respect of maintenance obligations as provided for in Article 3 of the Prel.Doc.No.13, January 2005. The rights of a public body to obtain reimbursement of benefits provided for the maintenance creditor is allowed by Syariah under the concept of "<i>wakalah</i>". According to <i>Shafii's</i> school of thought, the word <i>wakalah</i> is defined as "delivering of right by a person in possession to another person during his/her life time to enable him/her self to exercise certain duty".</p> <p><u>Syariah Perspective</u></p> <ul style="list-style-type: none"> - Parentage of a child to its parents is established through marriage, acknowledgment or evidence. One of the most important rights emanating from marriage is the establishment of parentage, i.e. maternity and paternity of the child of

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			<p>the spouses. This legal relationship between parent and child gives rise to rights and obligations including maintenance. It shall be the duty of the parents to ensure that such needs are satisfied with the interest of the child being deemed paramount to any other legislation.</p> <p>- As regard to claims for spousal support, the right to maintenance is, of course, available during continuance of the marriage. In case of dissolution of marriage, which could be either by death or divorce, the right to maintenance is slightly different.</p> <p>- The right to maintenance is confined only to a married Muslim woman who has been divorced by <i>talaq raji</i>' whether she is pregnant or not. The entitlement will cease upon the expiry of the period of <i>'iddah</i> or upon delivery if she is pregnant, whichever is longer. In case where she has been held <i>nusyuz</i> (rebelliousness) by the court, maintenance is refused on her. A married Muslim woman who is not pregnant and who has been divorced by <i>talaq bain</i> either <i>khulu'</i> or three <i>talaq</i> has no right to</p>

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			<p data-bbox="1289 354 1915 678">maintenance. A married Muslim woman who is observing the <i>'iddah</i> due to her husband's demise is not entitled to maintenance, even if she is pregnant. However, she is still entitled to other forms of maintenance that is <i>mut'ah</i> or consolatory gift which is to be determined by the court and the payment is to be made in lump sum.</p> <p data-bbox="1289 721 1915 1367">- It should be noted that <i>Syariah</i> does not impose any age limitation as a requirement for the payment of maintenance. However, the duty to maintain children is no longer an obligation in the event that the children are deemed independent, but for daughters, the obligation only ceases when they are married. If they are divorced, the obligation to maintain them will return to the father. However, if the children, either sons or daughters are able to work and are capable of maintaining themselves, even though they have not reached puberty or are married, or not yet married (for daughters), fathers or parties responsible in the eyes of <i>Syariah</i> are not under the obligation to maintain them. The capability to be independent is indicated in the Islamic</p>

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			<p>Family Law (Federal Territories) Act 1984 [Act 303] and other Islamic Family Law State Enactments (except for the States of Kedah and Kelantan) at the age of 18 years old. Therefore, the order for maintenance normally cease when the children have attained that age.</p> <p>-Thus, apart from the fact that a child's maintenance can be extended beyond the age of 18 years old, it can also be curtailed from the normal period of time, based on the grounds and reasonable causes which are accepted by the court. The flexible period mentioned is suitable to the reality of today, where many children pursue tertiary education after that age.</p> <p>- The maintenance obligation on the parties involved is not merely on the basis of a moral obligation; it is also a religious duty as stated.</p> <p>- The money spent for the children's life is promised by Allah, huge reward and the negligence to discharge that duty is considered sinful. The source of maintenance spent on them must be <i>halal</i></p>

NO.	ARTICLES	PROVISIONS OF THE CONVENTION	MALAYSIA'S COMMENTS
			<p>and not dubious (<i>shubhat</i>).</p> <p>- There is difficulty in accepting the words “regardless of the marital status of the parents” due to the impact on Muslims. Under Syariah, a man and a woman are considered as husband and wife when they are married. In the case of an illegitimate child, maintenance is incumbent upon the mother. This is because the child who is a result of <i>zina</i> does not create legitimate lineage upon the man who commits sexual intercourse with the woman. The lineage of a child towards a mother whether being borne out of a legitimate relationship or not in the eyes of <i>Syariah</i> is fixed and certain while the lineage of a child to his/her father is otherwise.</p>
2.	Article 5(b)	<p>Central Authorities shall –</p> <p>a) ...;</p> <p>b) provide information to the Permanent Bureau as to the laws and procedures concerning maintenance obligations, in their States;</p>	<p>- It is noted that Article 51 is more extensive than Article 5(b) with regard to the provision of information to the Permanent Bureau. Therefore, if Article 51 is acceptable, Article 5(b) appears to be unnecessary.</p> <p>- Acceptability of Article 51 and Article 5(b) is subject to the resources of the Central Authority.</p>

NO.	ARTICLES	PROVISIONS OF THE CONVENTION	MALAYSIA'S COMMENTS
3.	Article 6(1)(b)	<p>Central Authorities shall provide assistance in relation to applications under Chapter III. In particular they shall –</p> <p>a) ...;</p> <p>b) initiate, or facilitate the institution of, proceedings in respect of such applications.</p>	<p>Clarification is sought as to whether the Central Authorities can appoint a counsel to act on its behalf.</p> <p><u>Syariah Perspective</u></p> <p>This Article is acceptable subject to conformity to the existing laws of the States in Malaysia.</p>
4.	Article 6(2)(i)	<p>In relation to such applications they shall take all appropriate measures –</p> <p>a) ...;</p> <p>...;</p> <p>i) [to initiate or facilitate the institution of proceedings to obtain any necessary provisional measures that are territorial in nature and the purpose of which is to secure the outcome of a pending maintenance application;]</p>	<p>The provision can be given due consideration as it is consistent with the spirit of international co-operation.</p>
5.	Article 7(2)	<p>[A Central Authority may also take specific measures on the request of another Central Authority in relation to a case having an international element concerning the recovery of maintenance pending in the requesting State.]</p>	<p>This paragraph does not appear mandatory due to the use of the word “may”, hence it can be given due consideration.</p>
6.	Article 9	<p>An application under this Chapter shall be made through the Central Authority of the Contracting State in which the applicant resides to the</p>	<p>For the purpose of clarity it is proposed that the word “residence” be clearly defined in the Convention.</p>

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		Central Authority of the requested State. For the purpose of this provision, residence excludes mere presence.	
7.	Article 11	<p><i>Option 1 (if no mandatory forms exist)</i></p> <p>1. All applications under Article 10 shall as a minimum include -</p> <p>a) a statement of the nature of the application or applications;</p> <p>b) the name and contact details, including the address, and date of birth of the applicant;</p> <p>c) the name and, if known, address and date of birth of the respondent;</p> <p>d) the name and the date of birth of an person for whom maintenance is sought;</p> <p>e) the grounds upon which the application is based;</p> <p>f) in an application by a creditor, information concerning where the maintenance payment should be sent or electronically</p>	Option 2 is preferable because the use of a mandatory form would make implementation more convenient. However, the agreement to the provision would be subject to the mandatory form being agreeable to Malaysia.

NO.	ARTICLES	PROVISIONS OF THE CONVENTION	MALAYSIA'S COMMENTS
		<p>transmitted;</p> <p><i>g)</i> save in an application made under Article 10(1) <i>a)</i>, any information or document specified by declaration in accordance with Article 58 by the requested State;</p> <p><i>[h)</i> the name and contact details of the person or unit from the Central Authority of the requesting State responsible for processing the application.]</p> <p>2. As appropriate, and to the extent known, the application shall in addition in particular include –</p> <p><i>a)</i> the financial circumstances of the creditor;</p> <p><i>b)</i> the financial circumstances of the debtor including the name and address of the employer of the debtor and the nature and location of the assets of the debtor;</p> <p><i>c)</i> any other information that may assist with the location of the respondent.</p> <p>3. The application shall be accompanied by any necessary supporting information or documentation including documentation concerning the entitlement of the applicant to</p>	

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		<p>legal assistance. In the case of applications under Article 10(1) a), the application shall be accompanied only by the documents listed under Article 21.</p> <p>4. An application under Article 10 may be made in the form recommended and published by the Hague Conference on Private International Law.</p> <p>Option 2 (if mandatory forms exist)</p> <p>Applications under Article 10 shall be in accordance with the forms annexed to this Convention and shall be accompanied by any necessary documents, without prejudice, save in relation to an application under Article 10(1) a), to the right of the requested State to require further information or documents in appropriate cases.</p>	
8.	Article 14	<p>Option 1 Article 14 Effective access to procedures</p> <p>1. The requested State shall provide applicants with effective access to the procedures, including appeal procedures, arising from applications under Chapter III, where necessary by the</p>	Option 1 appears to be simpler and clearer.

NO.	ARTICLES	PROVISIONS OF THE CONVENTION	MALAYSIA'S COMMENTS
		<p>provision of free legal assistance.</p> <p>2. The requested State shall not be obliged to provide the legal assistance referred to in paragraph 1 where the procedures are designed to enable the applicant to make the case without the need for such assistance, and where the Central Authority provides such free services as are necessary.</p> <p>3. The provision of free legal assistance may be made subject to a means or a merits test. A Contracting State may declare in accordance with Article 58 that it will provide free legal assistance in applications concerning child support on the basis of the assessment of the child's means only, or without any means test at all.</p> <p>4. Entitlements to free legal assistance shall not be less than those available in equivalent domestic cases.</p> <p>[5. A creditor, who in the State of origin has benefited from complete or partial legal aid or exemption from costs or expenses, shall be entitled, in any proceedings for recognition or enforcement, to benefit from the most favourable</p>	<p>We have reservations on the fulfilment of the obligation as envisaged under paragraph 5 as Malaysia has no laws to this effect as yet.</p>

NO.	ARTICLES	PROVISIONS OF THE CONVENTION	MALAYSIA'S COMMENTS
		<p>legal aid or the most extensive exemption from costs or expenses provided for by the law of the State addressed.]</p> <p>[5. Subject to paragraph 2, a creditor, who in the State of origin has benefited from free legal assistance, shall be entitled, in any proceedings for recognition or enforcement, to benefit at least to the same extent, from free legal assistance as provided for by the law of the State addressed.]</p> <p>6. No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in proceedings brought by a creditor under the Convention.</p> <p><i>Option 2 (Articles 14 to 14 quater)</i></p> <p><i>Article 14 Effective access to procedures</i></p> <p>1. The requested State shall provide applicants with effective access to procedures, including enforcement and appeal procedures, arising from applications under Chapter III.</p> <p>2. To provide such effective access, the requested State shall provide free legal assistance in accordance with Articles 14, 14 bis</p>	

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		<p>and 14 <i>ter</i> unless paragraph 3 applies.</p> <p>3. The requested State shall not be obliged to provide such free legal assistance if and to the extent that the procedures of that State enable the applicant to make the case without the need for such assistance, and the Central Authority provides such services as are necessary_free of charge.</p> <p>4. Entitlements to free legal assistance shall not be less than those available in equivalent domestic cases.</p> <p>5. No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in proceedings [brought by the creditor] under the Convention.</p>	
9.	Article 15	<p>1. Where a decision is made in a Contracting State where the creditor is habitually resident, proceedings to modify the decision or to make a new decision cannot be brought by the debtor in any other Contracting State as long as the creditor remains habitually resident in the State where the decision was made.</p> <p>2. The previous paragraph shall not apply</p>	<p><u>Syariah perspective</u></p> <p>- A decision made by the State of origin may not be consistent with the law of the State where the decision is to be enforced. For instance, a decision made by the English Court may not be in line with Syariah i.e. Islamic Family Law which is applicable to the Muslims. Therefore, the decision cannot be enforced</p>

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		<p>a) where, except in disputes relating to maintenance obligations in respect of children, there is agreement in writing between the parties to the jurisdiction of that other Contracting State;</p> <p>b) where the creditor submits to the jurisdiction of that other Contracting State either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity;</p> <p>c) where the competent authority in the State of origin cannot, or refuses to, exercise jurisdiction to modify the decision or make a new decision; or,</p> <p>d) where the decision made in the State of origin cannot be recognised or declared enforceable in the Contracting State where proceedings to modify the decision or make a new decision are contemplated.</p>	<p>accordingly and it should be made subject to a review by the Syariah Court. It should be noted that the principles applicable in a foreign court may not be in accordance with the Syariah law.</p> <p>- The effect of this provision is that the decision made cannot be modified as long as the creditor remains habitually resident in the State where the decision was made. In a case where the creditor is no longer residing in the State where the decision was made, the proceedings to modify the decision or to make a new decision then can be brought by the debtor in any other Contracting State. Based on the comments above, the position as advanced by this Article would be contrary to Syariah. The decision must be in accordance with Syariah irrespective of whether or not the creditor remains habitually resident in the State where the decision was made.</p>
10.	Article 16(4)	[This Chapter also applies to authentic instruments and private agreements relating to a maintenance obligation in accordance with Article 26.]	Article 26 would serve as a guideline prior to the recognition and enforcement of authentic instrument and private agreements. However, it is noted that this issue is not yet settled.

NO.	ARTICLES	PROVISIONS OF THE CONVENTION	MALAYSIA'S COMMENTS
11.	Article 16(5)	The provisions of this Chapter apply to an application for recognition and enforcement made directly to a competent authority of the State addressed in accordance with Article 34.	It is proposed, for the efficient implementation of the Convention that the Central Authority should have a mechanism for monitoring direct applications made to competent authorities in the States. A provision such as "For direct applications made to the competent authority, a copy of the application should be sent to the Central Authority." Alternatively, perhaps an online communication/ICT could be utilized.
12.	Article 17(1)	<p>A decision made in one Contracting State ("the State of origin") shall be recognized and enforced in other Contracting States if –</p> <p>a) the respondent was habitually resident in the State of origin at the time proceedings were instituted;</p> <p>b) the respondent has submitted to the jurisdiction either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity;</p> <p>c) the creditor was habitually resident in the State of origin at the time proceedings were instituted;</p> <p>d) the child for whom maintenance was ordered</p>	<p>Under present law, the term 'habitual resident' is not used but the term 'ordinary resident' is used. The residence of the respondent is one of the criteria for the High Court to seize jurisdiction.</p> <p>With regard to paragraph (d), it is noted that a proviso has been inserted that "the respondent has lived with the child in that State or has resided in that State and provided support for the child there". Would the inclusion of the proviso make this limb more difficult to be fulfilled?</p> <p><u>Syariah Perspective</u></p> <p>- The decision, whether whole or partial can be recognized and enforceable provided that the</p>

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		<p>was habitually resident in the State of origin at the time proceedings were instituted, provided that the respondent has lived with the child in that State or has resided in that State and provided support for the child there.</p> <p>e) except in disputes relating to maintenance obligations in respect of children, there has been agreement to the jurisdiction in writing by the parties; or</p> <p>f) the decision was made by an authority exercising jurisdiction on a matter of personal status or parental responsibility, unless that jurisdiction was based solely on the nationality of one of the parties.</p>	<p>decision is not inconsistent with Syariah.</p>
13.	Article 17(5)	<p>A decision in favour of a child under the age of 18 which cannot be recognised by virtue only of a reservation under Article 17(1) c), e) or f) shall be accepted as establishing the eligibility of that child for maintenance in the requested State.</p>	<p>Malaysia seeks clarification on the reference to age of 18 which is not consistent with the new Article 2(1) of the Convention which use “a <i>child under the age of 21</i>”.</p> <p>Malaysia also seeks clarification on the application of this provision.</p>
14.	Article 19	<p>Recognition and enforcement of a decision may be refused –</p>	<p><u>Syariah Perspective</u></p> <p>Malaysia seeks clarification whether “public</p>

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		<p>a) if recognition and enforcement of the decision is manifestly incompatible with the public policy ("<i>ordre public</i>") of the State addressed;</p> <p>b) if the decision was obtained by fraud in connection with a matter of procedure;</p> <p>c) if proceedings between the same parties and having the same purpose are pending before an authority of the State addressed and those proceedings were the first to be instituted;</p> <p>d) if the decision is incompatible with a decision rendered between the same parties and having the same purpose, either in the State addressed or in another State, provided that this latter decision fulfils the conditions necessary for its recognition and enforcement in the State addressed;</p> <p>e) if the respondent had neither – <i>i)</i> proper notice of the proceedings and an opportunity to be heard, nor <i>ii)</i> proper notice of the decision and the opportunity to challenge it on fact and law; or</p> <p>f) if the decision was made in violation of Article</p>	<p>policy" includes Syariah which can be regarded as one of the grounds for refusing recognition and enforcement. Even if Syariah is not intended to be included in the meaning of "public policy", it is proposed that a matter against Syariah must be made a ground for refusing recognition and enforcement.</p>

NO.	ARTICLES	PROVISIONS OF THE CONVENTION	MALAYSIA'S COMMENTS
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15.	Article 20(2)(b)	Where an application for recognition and enforcement of a decision has been made through Central Authorities in accordance with Chapter III, the requested Central Authority shall promptly either – <i>a) ...; or</i> <i>b) if it is the competent authority take such steps itself.</i>	Malaysia seeks clarification as to the purpose of paragraph (b) and its relation to the chapeau.
16.	Article 20(4)	A declaration or registration may be refused only for the reasons specified in [Articles 17 and 19] [19 a)]. At this stage neither the applicant nor the respondent is entitled to make any submissions.	Malaysia is not agreeable that a declaration or registration may be refused only for the reasons specified in Article 17 as Article 17 is with regard to “Bases for Recognition and Enforcement”. Hence, Malaysia supports that a declaration or registration may be refused only for the reasons specified in Article 19. Between the 2 bracketed options, Malaysia prefers the second option which mentioned only Article 19(a).
17.	Article 20(6)	A challenge or an appeal is to be lodged within 30 days of notification under paragraph 6. If the contesting party is not resident in the Contracting State in which the declaration or registration was made or refused, the challenge or appeal shall be lodged within 60 days of notification.	It is proposed that the words “paragraph 6” be substituted with the words “paragraph 5” as the notification is issued under paragraph 5.

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18.	Article 20(11)	Nothing in this Article shall prevent the use of simpler or more expeditious procedures.	<p>Malaysia seeks clarifications on the following:</p> <ul style="list-style-type: none"> - In the event there is a challenge against the court based decision, can the court based decision be stayed pending the disposal of the challenge? - Paragraph 6 is not clear as to whom the appeal and the challenge is to be lodged. Is it within the Central Authority? - With reference to paragraph 9, it is unclear as regards to who is responsible to notify the parties of the decision of the challenge.
19.	Article 21(1)(b)	<p>An application for recognition and enforcement under Article 20 shall be accompanied by the following –</p> <ul style="list-style-type: none"> a) ...; b) a document stating that the decision is enforceable in the State of origin and, in the case of a decision by an administrative authority, a document stating that the requirements of Article 16(3) are met; c) ...; d) ...; e) ...; 	<p>It is proposed that in order to be consistent with Article 17(6) the word 'recognized and/or' is to be inserted before the word 'enforceable'.</p>

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		f) where necessary, documentation concerning the entitlement of the applicant to legal assistance in the State of origin.	The necessity of having subparagraph (f) is doubted. Malaysia is of the view that entitlement to legal assistance in the State of origin is a domestic matter, and how the documentation concerning the entitlement would help in the proceeding is not clear.
20.	Article 22	This Chapter shall apply <i>mutatis mutandis</i> to an application for recognition of a decision, save that the requirement of enforceability is replaced by the requirement that the decision has effect in the State of origin.	<p>Clarification is sought as to whether Article 20 of this Chapter shall apply <i>mutatis mutandis</i> to an application for recognition of a decision. If it is this Chapter that shall apply <i>mutatis mutandis</i>, clarification is sought as to how it is to be applied.</p> <p>We also seek clarification as to the applicability of the phrase "save that the requirement of enforceability is replaced by the requirement that the decision has effect in the State of origin".</p>
21.	Article 24	There shall be no review by any competent authority of the State addressed of the merits of a decision.	There appears to be no statutory provision or case law in Malaysia that prohibit domestic courts from reviewing the merits of the decision from the judicial or other competent authorities of other jurisdictions. However, the principle of judicial comity may result in the domestic courts being reluctant to review the merits of another jurisdictions' decision.

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			<p><u>Syariah Perspective</u></p> <p>- Acceptable, subject to the decision not being inconsistent with Syariah.</p>
22.	Article 28	<p>1. Subject to the provisions of this Chapter, enforcement shall take place in accordance with the law of the State addressed.</p> <p>2. Enforcement shall be prompt.</p> <p>3. In the case of applications through Central Authorities, where a decision has been declared enforceable or registered for enforcement under Chapter V, enforcement shall proceed without the need for further action by the applicant.</p> <p>4. Effect shall be given to any rules applicable in the State of origin of the decision relating to the duration of the maintenance obligation.</p> <p>5. Any limitation on the period for which arrears may be enforced shall be determined either by the law of the State of origin of the decision or by the law of the State addressed, whichever provides for the longer limitation period.</p>	<p>Clarification is sought on the word "prompt". Would it be feasible to state a time frame?</p>

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23.	Article 30(2)	<p>[Such measures may include –</p> <ul style="list-style-type: none"> a) wage withholding; b) garnishment from bank accounts and other sources; c) deductions from social security payments; d) lien on or forced sale of property; e) tax refund withholding; f) withholding or attachment of pension benefits; g) credit bureau reporting; h) denial, suspension or revocation of various licenses (for example, driving licenses).] 	<p>Presently in Malaysia, only subparagraphs (b) and (d) are possible modes of enforcement of decisions available to debtors in general.</p> <p>However, besides the means in subparagraphs (a) to (h), attachments of earning is also a means adopted in Malaysia for the purpose of enforcing maintenance decisions.</p> <p>Acceptability of this provision requires Malaysia either to amend or enact domestic laws to enforce the decision.</p>
24.	Article 31(2)	A Contracting State, under whose law the transfer of funds is restricted, shall accord the highest priority to the transfer of funds payable under this Convention.	“Highest priority” is a subjective term and requires further clarification.
25.	Article 32	Contracting States, at the time of becoming a Party to this Convention, shall provide the Permanent Bureau of the Hague Conference	Para 8 of the Report of the Working Group on Applicable Law (Prel.Doc.No.27) April 2007 proposed to add, after the phrase ‘including

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		with a description of their enforcement rules and procedures, including any debtor protection rules. Such information shall be kept up to-date by the Contracting States.	any debtor protection rules', the phrase "and rules regarding the duration of maintenance obligations and the time limitation for enforcement". This is pursuant to criticism which relates to the difficulty in determining the limitation rules in force in the State of origin of the decision, and also to facilitate the task of the enforcement authorities. Malaysia seeks clarification on the status of the above proposal.
26.	Article 33(1)	For the purposes of applications for recognition and enforcement under Article 10(1), "creditor" includes a public body acting in place of an individual to whom maintenance is owed or one to which reimbursement is owed for benefits provided in lieu of maintenance.	It is suggested that the words "public body" be defined for the purpose of clarity.
27.	Article 33(2) &(3)	2. The right of a public body to act in place of an individual to whom maintenance is owed or to seek reimbursement of benefits provided to the creditor in place of maintenance shall be governed by the law to which the body is subject. 3. A public body may seek recognition or claim enforcement of –	There does not appear to be any statutory provision or law in Malaysia providing for reimbursement to public bodies and providing authority to a public body to seek recognition or claim enforcement of a decision for the benefit of the maintenance creditor. However this provision appears to ensure better protection to public bodies which take up

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		<p>a) a decision rendered against a debtor on the application of a public body which claims payment of benefits provided in place of maintenance;</p> <p>b) a decision rendered between a creditor and debtor to the extent of the benefits provided to the creditor in place of maintenance.</p>	<p>claims on behalf of an applicant.</p> <p>Hence, new laws may need to be enacted to implement this Article.</p> <p><u>Syariah Perspective</u></p> <p>- The right of a public body to obtain reimbursement of benefits provided for the maintenance creditor is allowed by Syariah under the concept of “<i>wakalah</i>”.</p>
28.	Article 34(1)	This Convention does not exclude the possibility of recourse to such procedures as may be available under the national law of a Contracting State allowing a person (an applicant) to seize directly a competent authority of that State in a matter governed by this Convention including, subject to Article 15, for the purpose of having a maintenance decision established or modified.	Malaysia is of the view that all applications must go through the Central Authority and no direct request be allowed.
29.	Article 38	No legalisation or similar formality may be required in the context of this Convention.	<p>This provision is in line with the object of the Hague Convention Abolishing the Requirement of Legalisation.</p> <p>It is inserted for the purpose of ensuring faster transmission and processing of documents in the process of application.</p>

NO.	ARTICLES	PROVISIONS OF THE CONVENTION	MALAYSIA'S COMMENTS
			This Article requires further study.
30.	Article 41(1)	Any application and related documents shall be in the original language, and shall be accompanied by a translation into an official language of the requested State or in another language which the requested State has indicated, by way of declaration in accordance with Article 58, it will accept, unless the competent authority of that State dispenses with translation.	<p>Malaysia is of the view that this provision would make it difficult for applications to be made to countries where the language is unfamiliar to Malaysia.</p> <p>In order to ensure more effective implementation, it is proposed that the wording of paragraph 1 of Option 1, old Article 34 be adopted i.e as follows:</p> <p><i>“1. Any application and related documents shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State [or, where that is not feasible, a translation into French or English,] unless the competent authority of that State dispenses with translation.”</i></p> <p>Malaysia prefers the usage of English or French instead of “one of the official languages of the requested State”.</p>
31.	Article 42(1)	In case of applications made under Chapter III, the Central Authorities may agree in an individual	Malaysia is of the opinion that the means of translation would, to some extent, affect the

NO.	ARTICLES	PROVISIONS OF THE CONVENTION	MALAYSIA'S COMMENTS
		<p>case that the translation into an official language of the requested State may be made in the requested State from the original language or from any other agreed language. If no agreement can be reached and it is not possible for the requesting Central Authority to comply with the requirements of Article 41(1) and (2), then the application and related documents may be transmitted with translation into French or English for further translation into an official language of the requested State.</p>	<p>expediency of the application. As proposed earlier, by standardizing the languages used by the States or at least confining the languages to a few acceptable languages, as agreed by Parties, would address this concern.</p>
32.	Article 43(1)	<p>In relation to a State in which two or more systems of law or sets of rules of law with regard to any matter dealt with in this Convention apply in different territorial units –</p> <p><i>a)</i> any reference to the law or procedure of a State shall be construed as referring, where appropriate, to the law or procedure in force in the relevant territorial unit;</p> <p><i>b)</i> any reference to a decision established, recognised and / or enforced, and modified in that State shall be construed as referring, where appropriate, to a decision established, recognised and / or enforced, and modified in a territorial unit;</p>	<p>The request for clarification on the term “territorial unit” is applicable here as well.</p>

NO.	ARTICLES	PROVISIONS OF THE CONVENTION	MALAYSIA'S COMMENTS
		<p>c) any reference to a judicial or administrative authority in that State shall be construed as referring, where appropriate, to a judicial or administrative authority in the relevant territorial unit;</p> <p>d) any reference to competent authorities, public bodies, and other bodies of that State, other than Central Authorities, shall be construed as referring, where appropriate, to those authorised to act in the relevant territorial unit;</p> <p>e) any reference to residence or habitual residence in that State shall be construed as referring, where appropriate, to residence or habitual residence in a territorial unit;</p> <p>f) any reference to location of assets in that State shall be construed as referring, where appropriate, to the assets in the relevant territorial unit.</p>	
33.	Article 43(2)	Notwithstanding the preceding paragraph, a Contracting State with two or more territorial units in which different systems of law apply shall not be bound to apply this Convention to situations which involve solely such different	In the Malaysian context, the Syariah law applies simultaneously with the civil law throughout the Federation. Clarification is sought as to whether Malaysia may use this provision to exempt the application of the

NO.	ARTICLES	PROVISIONS OF THE CONVENTION	MALAYSIA'S COMMENTS
		territorial units.	Convention when Syariah law applies.
34.	Article 51	<p>[1. A Contracting State, by the time its instrument of ratification or accession is deposited, shall provide the Permanent Bureau of the Hague Conference on Private International Law with</p> <p>a) a description of its laws and procedures concerning maintenance obligations;</p> <p>b) a description of the measures it will take to meet the obligations under Article 6(2);</p> <p>c) a description of how it will provide applicants with effective access to procedures, as required under Article 14;</p> <p>d) a description of its enforcement rules and procedures, including any limitations, in particular limitation periods, on enforcement.</p> <p>2. Contracting States may, in fulfilling their obligations under paragraph 1, utilise the Country Profile [Annex to the Convention]. The Country Profile may be amended from time to time by a Special Commission.</p> <p>3. Information shall be kept up-to-date by the</p>	<p>Malaysia acknowledges that the purpose of this provision is to facilitate the implementation of this Convention by making an obligation upon States to provide information concerning the applicable laws, procedures and services in their respective States to the Permanent Bureau. This is for easy reference for all the Contracting Parties. Hence, this Article can be given due consideration.</p>

NO.	ARTICLES	PROVISIONS OF THE CONVENTION	MALAYSIA'S COMMENTS
		Contracting States.]	
35.	Article 52	<p>[Option 1</p> <p>1. The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Twenty-first Session and by the other States which participated in that Session.</p> <p>2. It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.</p> <p>3. Any other State may accede to the Convention after it has entered into force in accordance with Article 55.</p> <p>4. The instrument of accession shall be deposited with the depositary.</p> <p>5. Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six</p>	<p>Malaysia prefers Option 1 because it is of the view that it is only appropriate that Member States, and non-Member States which participated in the Twenty-first Session, be allowed to sign.</p> <p>It is noted that:</p> <p>(a) Article 37 of the Convention on the Civil Aspect of International Child Abduction, <i>inter alia</i>, states the following:</p> <p><i>“The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Fourteenth Session.”</i></p> <p>(b) Article 57 (1) of the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, states the following:</p> <p><i>“The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the</i></p>

NO.	ARTICLES	PROVISIONS OF THE CONVENTION	MALAYSIA'S COMMENTS
		<p>months after the receipt of the notification referred to in Article 60. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.</p> <p>OR</p> <p>5. The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession in accordance with Article 58. Such a declaration will also have to be made by any Member State ratifying, accepting or approving the Convention after an accession. Such declaration shall be deposited with depositary which shall forward, through diplomatic channels, a certified copy to each of the Contracting States.</p> <p>Option 2</p> <p>1. This Convention is open for signature by all States.</p> <p>2. This Convention is subject to ratification, acceptance or approval by the signatory States.</p> <p>3. This Convention is open for accession by all</p>	<p><i>time of its Eighteenth Session.”</i></p> <p>(c) Article 10 of the Convention Abolishing the Requirement of Legalisation For Foreign Public Documents, states the following:</p> <p><i>“The present Convention shall be open for signature by the States represented at the Ninth Session of the Hague Conference on Private International Law and Iceland, Ireland, Liechtenstein and Turkey.”</i></p> <p>It is further noted that Option 1 is in line with the 3 abovementioned Hague Conventions with regard to signing of the Conventions.</p> <p>The second option in respect of paragraph (5) appears to be inconvenient and burdensome for the Parties since it requires Contracting States to declare acceptance of accession of each State acceding to the Convention.</p>

NO.	ARTICLES	PROVISIONS OF THE CONVENTION	MALAYSIA'S COMMENTS
		<p>States.</p> <p>4. Instruments of ratification, acceptance, approval or accession shall be deposited with the depositary.]</p>	
36.	Article 55(1)	This Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third [/ second] instrument of ratification, acceptance, approval or accession referred to in Article 52.	It is proposed that 'second instrument' is used instead of 'third instrument' as two Member States should be sufficient for the implementation of the Convention.
37.	Article 57(1)	Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 56(1), make one or more of the reservations provided for in Articles 17(2), 41(3) and 49(3). No other reservation shall be permitted.	Malaysia seeks clarification whether this Article excludes the making of any reservation on the Syariah legal system.
38.	Article 60	The depositary shall notify the Members of the Hague Conference on Private International Law, and other States and Regional Economic Integration Organisations which have signed, ratified, accepted, approved or acceded in accordance with Articles 52 and 53 of the following –	Malaysia prefers Option 2 as more information is provided.

NO.	ARTICLES	PROVISIONS OF THE CONVENTION	MALAYSIA'S COMMENTS
		<p>Option 1</p> <p>a) the signatures, ratifications, acceptances and approvals referred to in Articles 52 and 53;</p> <p>b) the accessions and objections raised to accessions referred to in Article 52(5) option 1;</p> <p>OR</p> <p>Option 2</p> <p>a) + b) the signatures and ratifications, acceptances, approvals and accessions referred to in Articles 52 and 53;</p> <p>c) the date on which the Convention enters into force in accordance with Article 55;</p> <p>d) the declarations referred to in Articles 2(2), 11(1) g) option 1, 14(3) and (7), 21(2), 41(1) and (2), 52(5) option 1, 54(1) and 56(1);</p> <p>e) the agreements referred to in Article 45(2);</p> <p>f) the reservations referred to in Articles 17(2), 41(3) and 49(3), and the withdrawals referred to in Article 57(2);</p>	

NO.	ARTICLES	PROVISIONS OF THE CONVENTION	MALAYSIA'S COMMENTS
		<i>g)</i> the denunciations referred to in Article 59.	