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Key Takeaways on Malaysian shipping law

A. Anchoring at Malaysian Waters

1. Based on our experience, it is quite a common occurrence for vessels to erroneously drop anchor in areas where the Masters believe to be international waters when they are, in actual fact, in Malaysian territorial waters
2. A case in point would come in the form of vessels anchoring outside the port limits (OPL) in the area around Singapore. Vessels usually anchor at OPL Singapore for purposes of bunkering, ship to ship transfer operations, tank cleaning exercises and so on. It must therefore be highlighted that as soon as the vessel leaves Singapore port limits, she is entering either Malaysian territorial waters or Indonesian territorial waters.
3. Owners should be cautious when dropping anchor at OPL Singapore and at Malaysian territorial waters, given that the Malaysian authorities have specific requirements / regulations in that regard. We elaborate as follows.
4. Malaysia Shipping Notice 5/2014: If a vessel is anchoring in a non-anchorage area in Malaysian waters or intends to carry out any activities in the said Shipping Notice, notification should be given to the Malaysia Director of Marine at the nearest port office using the prescribed form and such notification shall be made during normal working hours via email, facsimile or in person not later than 24 hours before the activity is scheduled to commence. If notification is not given to the Malaysia Director of Marine in

accordance with the Malaysia Shipping Notice 5/2014, the owner or agent of the ship shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding 2 years or to both.

5. In addition, the Malaysia Marine Department (together with the Maritime Enforcement Agency of Malaysia) has the power to detain any vessel that fails to give notification under the Malaysia Shipping Notice 5/2014.
6. Out of prudence, and as a matter of good practice, once a vessel is within Malaysian territorial waters and if the Master is not sure whether the location which he intends to drop anchor is a designated anchorage area, he should, as a matter of priority, liaise with the local shipping agent to contact the Malaysia Marine Department to ascertain this point.

B. Ship arrest in Malaysia – key areas of note

1. Malaysia is becoming an increasingly popular location for ship arrests – the number of arrests has tripled over the last couple of years.
2. On 1 October 2010, a specialist admiralty Court was established in Malaysia (falling under the ambit of the commercial division of the High Court) which acts as a centralized forum for adjudicating maritime disputes. It also serves as a one-stop centre to provide easy access to information on the arrest, release and sale of vessels in Malaysia.

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3. The Malaysia High Court has the same jurisdiction and authority in relation to admiralty matters as is had by the High Court of Justice in England under the Supreme Court Act of 1981 (now known as Senior Courts Act 1981). Claims which can invoke the admiralty jurisdiction of the Malaysia High Court and for which ship arrest can be pursued include ship mortgages, claims under carriage agreements, salvage, general average, construction, repair or equipment of a ship or in respect of dock charges / dues and so on.
4. A warrant of arrest can be obtained within 24 to 48 hours from the time of filing of the necessary arrest papers – this is an ex parte application. The arresting party is required to provide full and frank disclosure of all material facts of the claim and grounds which gave rise to the arrest. The arresting party also needs to check for any caveat against arrest in respect of the vessel to be arrested.
5. To extract the Warrant of Arrest, the arresting party must pay a deposit of RM 15,000 to the Court as Sheriff's deposit.
6. There is no requirement of counter-security to carry out a ship arrest in Malaysia.
7. Common forms of security provided in order for release of vessel – bail bonds, letter of undertaking from P&I Club and bank guarantees.
8. Upon the provision of sufficient security, the arresting party shall file the necessary release papers and the vessel is usually released within 24 hours upon the filling of the same.
9. A unique aspect of ship arrest in Malaysia is that a vessel can be arrested whether within port limits or outside port limits so long as she is in Malaysian territorial waters. The breadth of Malaysian territorial waters is 12 nautical miles from the baseline. Once a vessel is arrested outside port limits, and given the difficulties which may be faced, the Court may direct the arresting party to do the following:
 - a. Arrange for the marine coast guard to escort the Court bailiff to effect the arrest;
 - b. Arrange for security guards to be put on board the vessel to prevent the vessel from "jumping" arrest; and
 - c. Arrange for the arrested vessel to be then towed into port limits.
10. Under Malaysian law, it is possible for a vessel to be arrested as security in aid of foreign arbitration, but not in aid of foreign Court proceedings / litigation.
11. Maritime claims which give rise to maritime liens are salvage, collision, bottomry and seaman wages. For such claims, a claimant can proceed to commence an in rem action and arrest the offending vessel even though there was a change of ownership prior to the commencement of the action. As for maritime claims which do not give rise to maritime liens, it is important to ascertain first whether the vessel targeted for arrest belongs to the same owner liable for the claim.
12. Courts in Malaysia do award damages for wrongful arrest; hence the need to seek proper legal advice prior to commencing any application for ship arrest.



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