

Fuzet Farid

Malaysia Arrest

Update on Current Reforms



Introduction

What's new:

- 2010 Admiralty Court
- 2012 Practice Directions
- 2012 Rules of Court
- 2011 Arbitration (A) Act
- 2011 Fast Track Small Claim for maritime arbitration
- Website Msian Marine Dept
- Labuan MISR
- 2012 Legal Profession (A) Act
- 2010 Taskforce on maritime law reform

What's not:

- 1964 Admiralty Jurisdiction
- 1976 Liability Limits
- 1952 Merchant Shipping Ord.
- 1950 Carriage of Goods By Sea

Essentials of Malaysian Arrest of Ships

- Arrest of vessels in Malaysia by High Court admiralty jurisdiction
- Admiralty jurisdiction inherent and statute-based on S.24(b) Courts of Judicature Act 1964 & Supreme Court Act 1981 UK
- To arrest a vessel, the admiralty jurisdiction must be invoked in an action *in rem* in claims under S.20(2)(a) to (s) SCA81:
Ownership, earnings and mortgage of ship, or damage by ship
- Must comply with S.21(2) to (4) SCA81 too:
 - (a) in connection with a ship
 - (b) owner or charterer
- Sister ship arrest and bareboat chartered vessel arrest allowed
- No Arrest Convention adopted
- Practice Direction 1/2012 extends jurisdiction of Admiralty Court to all aspects of maritime related disputes
- An action *in rem* is commenced by writ *in rem*, valid for 6 months, extendable 5x:
“the absence of reasonable opportunity to serve”

Essentials of Malaysian Arrest of Ships

- Vessel is arrested by service of the writ *in rem* and warrant of arrest on the property being arrested
- Constitutes notice to the world of the claim against the property
- Service is effected on ship by affixing to mast or superstructure of vessel
- Service is carried out by the sheriff acting through court bailiff
- Affidavit to lead warrant of arrest must substantiate claim – 1 day
- Admiralty Court in Kuala Lumpur High Court centralised Admiralty Registry
- 21 High Courts in 14 states, East M'sia & West M'sia
- Principal ports (about 20):
 - (a) West Malaysia - Penang, Port Kelang, Port Dickson, Lumut, Malacca, Pasir Gudang, Tanjung Pelepas, Kuantan, Kemaman and Kerteh
 - (b) East Malaysia - Kota Kinabalu, Kudat, Sandakan, Lahad Datu, Kunak, Semporna, Tawau, Kuching, Sibul, Miri and Bintulu

Essentials of Malaysian Arrest of Ships

- Vessels can be arrested as security for pending foreign arbitrations of maritime claims
- Vessels cannot be arrested where caveat against arrest lodged
- Webpage Caveats&Warrants <http://efiling.kehakiman.gov.my>
- Arrested ship is in sheriff's custody
- Undertaking to pay sheriff's fees, costs and expenses
- Initial deposit RM15,000/USD5,000 + any increase
- Sheriff's expenses rank highest in priority
- Parties can request for sheriff's expenses to be taxed
- Omnibus order can be applied for by arresting party or sheriff
- Release of vessel by filing release with alternative security

New Developments

Innovations in Malaysia arrest:

- New Admiralty Court 2012
- New Practice Directions 1/2012
- New Rules of Court 2012
- New amendments in 2011 to Arbitration Act 2005
- New review of Fast Track Small Claim Rules 2007 for maritime arbitration by Kuala Lumpur Regional Centre for Arbitration (“KLRCA”) and Institut Kelautan Malaysia
- New Official Website Marine Department Malaysia
- New Labuan Malaysia International Ship Registry (MISR)
- New amendments in 2012 to Legal Profession Act 1976
- New Taskforce on maritime law reform

Admiralty Court 2010

From 1 October 2010:

- One stop centre Admiralty Court
- 12 categories of claims including 18 categories in s.24(b) CJA64
- Parties by consensus can bring all maritime claims
- Covers both High Courts of Malaya and of Sabah & Sarawak
- Located in Kuala Lumpur High Court Commercial Division
- Centralisation of registration of claims and caveats
- Efficient adjudication of all admiralty and maritime claims
- Clearance target of 9 months from date of filing/service
- 2 months for urgent applications

Practice Directions 1/2012

- Practice Direction No. 1 of 2012
- Admiralty & Maritime Claims from 1 March 2012
- High Court of Malaya and High Court of Sabah and Sarawak
- Facilitate efficient administration of all admiralty and maritime claims in one centralised Admiralty Court
- Maritime claims include:
 - all 18 claims in Courts of Judicature/Supreme Court Acts + 13 ors
 - applications for preservation of assets for maritime arbitrations
- Register of Maritime Claims Cause Book
- Register of Central Maritime Warrants and Caveats Book
- Webpage of Caveats and Warrants <http://efiling.kehakiman.gov.my>
- Practice Directions 2/2007 superceded

Rules of Court 2012

- Replaces High Court 1980 and Subordinate Court Rules 1980
- Streamline and combine procedures for civil cases in Malaysian Subordinate Courts and High Courts
- Intention to provide uniformity across Courts of first instance and increase efficiency in which civil procedural matters are governed
- Key changes include:
 - (a) Allows for affidavits affirmed outside Malaysia to be in English;
 - (b) Empowers courts to expedite disposal of proceedings.
- Approved by Statutory Rules Committees for High Court and Subordinate Courts chaired by the Chief Justice, members of the Judiciary, the Attorney General Chambers, Presidents of the Malaysian Bar, Sabah Law Association and the Advocates' Association of Sarawak

Arbitration (Amendment) Act 2011

- Amends the Arbitration Act 2005
- Allows arrests of ships to secure foreign arbitration proceedings
- Empowers the Malaysian High Court to grant injunctions and other interim measures pending foreign arbitrations
- *Aras Jalinan v Tipco Asphalt Public Company Ltd & Others [2008] 5 CLJ 65* overturned
- Section 10 amended by inserting sub-sections 2(A), 2(B) and 2(C)
- Section 11(e) amended
- Section 11(3) added: Court empowered to make any interim orders in aid of arbitration
- Effective date 1 July 2011
- Facilitates arbitrations in maritime disputes

Miscellaneous

- Website Marine Department <http://www.marine.gov.my/>
English => Online Query => List of Registered Ships
Labuan MISR is included
- 1976 limits of liability under Merchant Shipping Ordinance
- Taskforce for maritime law reform by judiciary & lawyers
- KLRCA Fast-Track Maritime Arbitration Rules 2007 reviewed:
(a) small claims not exceeding RM250,000.00 / USD85,000
(b) rules for claims exceeding RM250,000.00 /USD85,000

Bunga Alpina 2012

- The MISC tanker was loading six tonnes of methanol at the Petronas Methanol Labuan jetty at Pulau Enoe, Labuan island on Thursday 26 July 2012 when a small fire broke out during a thunderstorm at 3am.
- The fire turned into a raging inferno sparking off at least three major explosions that could be felt throughout the island. Nineteen crewmen, including the skipper, managed to escape.
- The bodies of four missing crewmen have been recovered since then in the sea just metres away from the scene of the tragedy.
- The tanker listed to portside and broke into two.
- Cause of fire confirmed to be lightning
- Photos reproduced courtesy of PIMMAG







Thank you.

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