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Malaysia

Primila Edward and Jeremy Joseph

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Newbuilding contracts

- 1** When does title in the ship pass from the shipbuilder to the shipowner? Can the parties agree to change when title will pass?

Passing of title will depend on the terms of the shipbuilding contract. Generally, under the terms of a typical shipbuilding agreement the title in the ship remains vested in the shipbuilder until delivery and payment in full of the purchase price, which is normally evidenced by the Protocol of Delivery and Acceptance (the Protocol) signed by the shipbuilder and shipowner. Title will formally pass on the date specified in the Protocol.

- 2** What formalities need to be complied with for the refund guarantee to be valid?

A refund guarantee will fall under the ambit of sections 79 and 80 of the Contracts Act 1950. Section 79 defines a ‘contract of guarantee’ as a contract to perform the promise or discharge the liability of a third party in the case of a default, and section 80 provides that consideration for the guarantee shall be anything done or any promise made for the benefit of the principal debtor may be sufficient consideration to the surety for giving the guarantee.

A refund guarantee can be given by way of:

- a bank guarantee by licensed banks under the Bank and Financial Institution Act 1989 that operate in Malaysia;
- a finance company’s guarantee from a licensed finance company as under the Bank and Financial Institution Act 1989 that operates in Malaysia;
- an insurance guarantee from a licensed insurance company as under the Insurance Act 1996 that operates in Malaysia;
- an Islamic bank guarantee from a licensed bank under the Islamic Bank Act 1983; or
- a takaful guarantee from Syarikat Takaful under the Takaful Act 1984.

- 3** Are there any remedies available in local courts to compel delivery of the vessel when the yard refuses to do so?

An application for an order for specific performance can be made to the courts by the shipowner, which is a discretionary remedy. It has to be proved by the shipowner that damages for breach of contract would not be sufficient compensation for his or her loss.

- 4** Where the vessel is defective and damage results, would a claim lie in contract or under product liability against the shipbuilder at the suit of the shipowner; a purchaser from the original shipowner; or a third party that has sustained damage?

If the vessel is found to be defective then the following legislation would be applicable:

- section 16 (1)(a) of the Sale of Goods Act 1957, which provides for liability for breach of implied terms of quality and fitness:

Where the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required so as to show that the buyer relies on the seller's skill or judgment and the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or producer) there is an implied condition that the goods shall be reasonably fit for purpose;

- the Contracts Act 1950 for breach of contract; and
- liability under the common law tort of negligence.

Ship registration and mortgages

- 5** What vessels are eligible for registration under the flag of your country? Is it possible to register vessels under construction under the flag of your country?

Under the provisions of the Merchant Shipping Ordinance 1952 (MSO) in West Malaysia, the MSO (Sarawak) 1960; and the MSO (Sabah) 1960 as amended by the Merchant Shipping (Amendment) Act 1998, which now provides for a Malaysian International Ship Registry, vessels are eligible for registration under the Malaysian flag if they are wholly-owned by Malaysian citizens or Malaysian corporations. Under section 66E of the MSO no ship shall be registered unless:

- it is fitted with mechanical means of propulsion;
- it is not less than 16,000 GT;
- the age of ship is not more than 15 years if it is a tanker or bulk carrier; and
- the age of ship is not more than 20 years if it is of a type other than a tanker or bulk carrier.

It is not possible to register vessels under construction under the Malaysian flag.

- 6** Who may apply to register a ship in your jurisdiction?

Pursuant to section 11 of the Merchant Shipping Ordinance 1952 (MSO), a ship may be registered in Malaysia by:

- Malaysian citizens; or
- corporations that:
 - are incorporated in Malaysia;
 - have their principal office and the management of the corporation carried out mainly in Malaysia;
 - have the majority of their shareholding held by Malaysian citizens free from any trust or obligation in favour of non-Malaysians; and
 - the majority of the directors of which are Malaysian citizens.

Alternatively, under section 66B of MSO, irrespective of where the ship was built, a ship can be registered in the Malaysian International Ship Registry (MISR) if the ship is owned by a corporation:

- that is incorporated in Malaysia;
- with an office established in Malaysia; and
- the majority of the shareholding of which is not held by Malaysian citizens.

It must, however, be noted that under section 66D(1) of MSO, a ship shall not be registered under MISR unless the corporation has a minimum paid-up capital of 10 per cent of the value of the ship or 1 million ringgit, whichever is higher.

7 What are the documentary requirements for registration?

An application for the registry of a ship shall be made pursuant to section 16 of MSO. In particular, a statutory declaration must be prepared containing the following details:

- the name of the ship and its existing tonnages;
- a statement of the date when and the place where the ship was built, if unknown, a statement that the declarant does not know the date and place of the building of the ship;
- a statement as to the owner of the ship and the citizenship of the owner, and if the ship is owned by more than one person, the number of shares each is entitled to;
- a statement of the name of the master of the ship and his citizenship;
- a statement that no other person is entitled as owner to any legal or beneficial interest in the ship or any share thereof;
- except where the operator and the owner are the same person, the name and citizenship of the operator of the ship; and
- a declaration that the particulars stated in the form are true to the best of his knowledge and belief.

Besides a statutory declaration, a surveyor's certificate of measurement must be provided to the registrar (section 17 of MSO) and marking of ships must be done (section 18 of MSO) prior to the registration. A registrar shall further, on registering the ship, retain in his possession a copy of the surveyor's certificate of measurement, the builder's certificate, bill of sale (if any), condemnation certificate (if any) in accordance to section 23 of MSO.

8 Is dual registration and flagging out possible and what is the procedure?

Dual registration and flagging out is not possible in Malaysia.

9 Who maintains the register of mortgages and what information does it contain?

The Register of Mortgages is maintained by the registrar of ships who has offices in Port Klang, Labuan, Kuching and Penang.

The information it contains is a description of the type of mortgage being registered. It can either be a mortgage to secure principal sum and interest or a mortgage to secure the current account.

The instrument of mortgage must be submitted on registration, together with the document of title of ownership and a letter from the previous port of registry (if any) to state that the vessel is free from any encumbrance.

Limitation of liability

10 What limitation regime applies? What claims can be limited? Which parties can limit their liability?

The limitation of liability is encapsulated in part IX of the MSO, in particular section 360 of the MSO, which ratifies the International

Convention relating to the Limitation of Liability of Owners of Seagoing Ships 1957 (the 1957 Convention).

In West Malaysia, Malaysian shipowners can, under section 359 of the MSO 1952, exclude liability in certain specific cases provided the losses that were covered in those specific cases were not due to the shipowner's actual fault or privity.

Under section 360(1) of the MSO 1952, Malaysian and foreign shipowners can limit liability for certain cases of loss of life, injury or damages, provided the above-mentioned occurrences were not due to the shipowner's actual fault or privity.

With respect to the carriage of goods and any goods that are damaged or lost, the shipowner has another option of limiting liability under article IV, rule 5 of the Hague Rules relating to bills of lading (the Hague Rules), which has been incorporated under the First Schedule of the Carriage of Goods by Sea Act 1950.

The £100 is gold value and not its paper value (*The Rosa S* (1989)).

Although the Hague Rules were subsequently amended by the Hague-Visby Rules, the Hague-Visby Rules are yet to be adopted by Malaysia.

As for oil pollution, the Merchant Shipping (Oil Pollution) Act 1994 implements the provisions of the International Convention on Civil Liability (Convention 1969) as amended by the protocol of 1976 concerning civil liability for oil and pollution and limitation of liability for loss and damage caused by oil pollution, which applies to West Malaysia, Sabah and Sarawak. This 1994 Act applies to sea-going vessels or any seaborne craft of any type whatsoever actually carrying oil in bulk or cargo.

11 What is the procedure for establishing limitation?

Section 6(2) of the 1994 Act provides that the shipowners may only limit their liability under section 3 of the 1994 Act, if the incident was caused without their actual fault or privity.

The Limitation Fund (the Fund) as provided for under section 6(2) of the 1994 Act allows shipowners to limit their liability. The aggregate of his or her liabilities under section 3 of the 1994 Act in respect of any one incident for a ship not exceeding 5,000 GT, shall be at 4.51 million special drawing rights (SDR) and for a ship with tonnage exceeding 5,000 GT, there will be an additional 631 SDR for each additional ton, provided that this aggregate amount does not in any event exceed 89.77 million SDR.

The Malaysian ringgit equivalent of the special drawing right is set out in the Merchant Shipping (Oil Pollution (Money Conversion)) Regulation 1995.

Furthermore, as defined under section 2 (4) of the 1994 Act, the ship's tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement regulations contained in annex I of the International Convention on Tonnage Measurement of Ships.

The Fund was established under the International Convention on the Establishment of an International Fund for compensation for Oil Pollution Damage 1971 as amended by 1972 Protocol.

The Fund as provided for under section 16 of the 1994 Act has legal personality that is capable of assuming rights and obligations and of being a party in legal proceedings.

12 In what circumstances can the limit be broken?

Any party suffering from pollution damage in excess of that limited by the shipowner under section 6 of the 1994 Act can claim the remaining sum from the Fund pursuant to section 19(1)(c) of the 1994 Act.

The 1994 Act further provides that if the shipowner has incurred reasonable expenses as a result of mitigating the pollution damage, he or she may claim it from the Fund pursuant to section 19(3) of the 1994 Act.

Port state control

- 13** Which body is the port state control agency? Under what authority does it operate?

Malaysia is a member of the Memorandum of Understanding on Port State Control in the Asia-Pacific Region (Tokyo MoU), which came into effect in April 1994. The Maritime Industrial Control Division, Marine Department, is the relevant agency.

The port state control for foreign-registered ships and flag control for Malaysian-registered or licensed boats is normally carried out within the gazetted harbour limit to ensure the safety of ships or boats before berthing in any wharf or being given clearance to unload from the port.

- 14** What sanctions may the port state control inspector impose?

Under section 302 of MSO, the port officer has the power to detain an unsafe ship.

- 15** What is the appeal process against detention orders or fines?

By virtue of section 302(d) of MSO, before a detention order is made final, a shipowner or master of the ship may appeal to the court of survey at the port where the ship was detained.

Classification societies

- 16** Which are the approved classification societies?

It is provided under part IIC of the MSO 1952 that the following are the approved societies:

- the American Bureau of Shipping;
- Bureau Veritas;
- Det Norske Veritas;
- Germanischer Lloyd;
- Lloyds Register of Shipping; and
- Nippon Kaiji Kyokai.

- 17** In what circumstances can a classification society be held liable, if at all?

The classification societies could be held liable, if at all, under the common law principles of the tort of negligent misrepresentation.

Collision, salvage, wreck removal and pollution

- 18** Can the state or local authority order wreck removal?

Malaysia is a party to the International Convention on Salvage (1989). The provisions of this Convention will apply.

- 19** Which international conventions or protocols are in force in relation to collision, salvage and pollution?

- International Convention on Salvage (1989);
- Convention on the International Regulation for Preventing Collisions at Sea, 1972;
- International Convention on Maritime Search and Rescue, 1979;
- International Convention for the Prevention of Pollution from Ships 1973/78 (Marpol 73/78), ratified on 1 May 1997;
- International Convention on Oil Pollution Preparedness, Response and Co-operation (1990), ratified on 30 October 1997;
- International Convention on Civil Liability for Oil Pollution Damage 1992, ratified on 9 June 2005; and
- International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, ratified on 9 June 2005.

- 20** Is there a mandatory local form of salvage agreement or is Lloyd's standard form of salvage agreement acceptable? Who may carry out salvage operations?

There is no standard form of salvage agreement required for use in Malaysia.

Ship arrest

- 21** Which international convention regarding the arrest of ships is in force in your jurisdiction?

Malaysia has neither acceded to nor ratified the International Convention Relating to the Arrest of Seagoing Ships 1952 (the Arrest Convention).

However, by virtue of section 24 of the Malaysian Courts of Judicature Act 1964, the civil jurisdiction of the High Court of Malaya shall include the same jurisdiction as the English High Court of Justice, under the English Supreme Court Act 1981. (The Arrest Convention is implemented in England through the Supreme Court Act 1981.)

- 22** In respect of what claims can a vessel be arrested? In what circumstances may associated ships be arrested?

Following the provisions of the English Supreme Court Act 1981, a ship may be arrested in the following instances:

- any claim to the possession or ownership of a ship or share in a ship;
- dispute between co-owners of a ship as to, for example, her employment;
- claim in respect of a mortgaged ship;
- claim for damage suffered or done by a ship;
- claims for death, or personal injury caused by a defect in a ship or negligence of the owners, charterers or persons in possession of such ship;
- claim for loss or damage to goods carried;
- claim for breach of contract of carriage, for example, charter party, bill of lading (related to carriage on a specified vessel; see *The Lloyd Pacifico* (1995));
- claim relating to salvage;
- claim relating to towage;
- claim relating to pilotage;
- goods or materials supplied to a ship for 'her operation or maintenance';
- construction or repair of ship's equipment;
- dock charges or dues;
- master or crew's wages;
- disbursements made on behalf of the ship;
- general average act;
- bottomry;
- collision liabilities; and
- oil pollution liabilities SCA 1981 sections 20(1) to (6).

- 23** What is the test for wrongful arrest?

Common law tests.

- 24** Can a bunker supplier arrest a vessel in connection with a claim for the price of bunkers supplied to that vessel pursuant to a contract with the charterer, rather than with the owner, of that vessel?

Case law on this indicates that even if the charterer is responsible for payment of bunkers under the charter party, it does not follow that, as between the shipowner and the bunker supplier, it is not liable. This principle was accepted in the case of *Middle East Tankers and Freighters v Owner of the Vessel and other interested party in the vessel MV 'IRA'* [1966] 4 MLR 109, which followed the principle

enunciated in the case of the *Tolla* [1921] PD 22 and the *Gulf Venture* [1984] 2 Lloyds Report 445, where Shearn J stated: 'It seems to me strongly arguable that shipowners are bound by acts of their agents who acted through their sub-agents in asking charterer to make payments on their own behalf.'

The supplier is entitled to assert a claim by proceeding in rem and arresting the vessel and need not prove at the outset that he has a cause of action substantial in law (*Inter Maritime Shipping (Pte) Ltd v MV 'Wigman'* [1983] 1 MLR).

25 Will the arresting party have to provide security and in what form and amount?

Security does not need to be provided under Malaysian law.

26 How is the amount of security the court will order the arrested party to provide calculated and can this amount be reviewed subsequently? In what form must the security be provided?

Not applicable in this jurisdiction.

27 Who is responsible for the maintenance of the vessel while under arrest?

The sheriff.

28 Must the arresting party pursue the claim on its merits in the courts of your country or is it possible to arrest simply to obtain security and then pursue proceedings on the merits elsewhere?

It is not possible to arrest a vessel in Malaysia as security for court proceedings elsewhere. The arresting party must pursue the claim on its merits in Malaysia if it intends to arrest a vessel in Malaysia. As for arrest to obtain security for a foreign arbitration proceeding, the position in Malaysia is now similar to the English and Singapore position. According to sections 10 and 11 of the Arbitration Act 2005 read together with sections 4 and 5 of the Arbitration (Amendment) Act 2011, the Malaysian court has the power to order the retention of an arrest of a vessel to satisfy an arbitral award or order that alternative security be provided for its release.

29 Apart from ship arrest, are there other forms of attachment order or injunctions available to obtain security?

An applicant may apply to the court for a *Mareva* injunction, which is essentially an asset freezing. Although, *Mareva* injunctions are not strictly meant for security purposes, it is nonetheless a legal process to prevent a defendant to an action from dissipating their assets beyond the jurisdiction of a court so as to frustrate a potential judgment.

30 Are orders for delivery up or preservation of evidence or property available?

Yes. Pursuant to order 29 rule 2 of the Rules of Court 2012, the Court has the discretion to grant an order to detain, take into custody or to preserve any property which is the subject of the cause or matter. Under rule 3 of the same order, a court can also authorise or require any sample to be taken, any observation to be made or any experiment to be tried for the purpose of obtaining full information or evidence in any cause of matter.

Further, according to order 70 rule 27 of the Rules of Court 2012, the court may, on the application of any party, make an order for the inspection of any ship which may be necessary or desirable for the purpose of obtaining full information or evidence in connection with any issue in the action.

Alternatively, the Applicant could seek a *Mare Del Nord* order from the Court to inspect the ship documents onboard the ship.

31 Is it possible to arrest bunkers in your jurisdiction or to obtain an attachment order or injunction in respect of bunkers?

There are no legal provisions governing this area. However, it may be possible to obtain a freezing injunction against the bunkers onboard the vessel.

Judicial sale of vessels

32 Who can apply for judicial sale of an arrested vessel?

The arresting party, the owner of the vessel or any party with an in rem claim against the vessel can apply to have the arrested vessel sold.

33 What is the procedure for initiating and conducting judicial sale of a vessel? How long on average does it take for the judicial sale to be concluded following an application for sale? What are the court costs associated with the judicial sale? How are these costs calculated?

The first step towards obtaining a judicial sale of a vessel is for an application to be made for an order for appraisement and sale by a sheriff of the High Court.

Such an order for sale will usually include an order specifying a period after which the court will determine the priorities between the competing claims (O 70 r22(2), Rules of Court 2012). After the order for an appraisement and sale is made, the party who obtains it must seek from the court a commission for the appraisement and sale of the property arrested to put the order into effect. The commission, according to O 70 r22(1) Rules of Court 2012, shall not be issued until the party applying for it has filed a request in the prescribed form. The commission cannot be executed by the sheriff until an undertaking in writing satisfactory to the sheriff to pay his fees and expenses on demand has been lodged with the sheriff's office (O 70 r22(3) Rules of Court 2013).

The sale of the vessel by the sheriff is usually by public auction or private tender. The duration of the sale depends on the response from potential buyers to the auction or the sheriff's call for tender. If no bids or tenders above the appraised price are received by the sheriff, the normal procedure is for the sheriff to hold another auction or call for fresh bids. The vessel can only be sold below its appraised values with the approval of the court.

The court costs of filing the summons and supporting affidavit to obtain an order for appraisement and sale and for the appointment of an appraiser (excluding his fees) are prescribed in the Rules of Court and are in the region of 100 ringgit. In addition, if the vessel is sold by way of a public auction, the court's commission is 5 per cent for the first 1,000 ringgit and 2.5 per cent upon the amount above that sum. The court's commission in the event of a private sale is half of the above amount.

34 What is the order of priority of claims against the proceeds of sale?

The order of priority of claims against the proceeds of sale is generally as follows, from highest to lowest:

- the sheriff's costs and expenses arising from the arrest and sale of the vessel;
- the costs of the arresting party up to and including the arrest and the costs of subsequent proceedings up to and including the order for appraisement and sale;
- maritime liens;
- possessory liens that arise after the maritime lien has accrued;
- mortgages; and
- statutory liens.

- 35** What are the legal effects or consequences of judicial sale of a vessel?

The effect of a judicial sale is to transfer all claims in the vessel to the proceeds of sale. The sale therefore frees the vessel from all claims, liens and encumbrances, including maritime liens and gives the purchaser clean title to the vessel. The court retains the proceeds of sale to answer all claims that may be made against the vessel.

- 36** Will judicial sale of a vessel in a foreign jurisdiction be recognised?

A judicial sale effected by a foreign court in an action that, in the eyes of Malaysian law, is either an action in rem or has the same effect as an action in rem, will be recognised by the Malaysian court. The court will recognise that such judicial sale in a foreign jurisdiction has the effect of giving the purchaser clean title to the vessel.

- 37** Is your country a signatory to the International Convention on Maritime Liens and Mortgages 1993?

Malaysia is not a signatory to the International Convention on Maritime Liens and Mortgages 1993.

Carriage of goods by sea and bills of lading

- 38** Are the Hague Rules, Hague-Visby Rules, Hamburg Rules or some variation in force and have they been ratified or implemented without ratification? Has your state ratified, accepted, approved or acceded to the UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea? When does carriage at sea begin and end for the purpose of application of such rules?

Malaysia has not declared as yet whether it will ratify, accept, approve or accede to the UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea.

At present the applicable legislation in Malaysia in this area is the Carriage of Goods by Sea Act 1950 (COGSA) in West Malaysia; the Merchant Shipping (Implementation of Convention relating to Carriage of Goods by Sea and to Liability of Shipowners) Regulation in Sarawak; and the Merchant Shipping (Applied Subsidiary Legislation) Regulation 1961 in Sabah.

The Hague Rules apply to Malaysia via the English Bills of Lading Act 1855 pursuant to the provisions of section 5 of the Civil Law Act 1956, which provides for the application of English law in commercial matters.

- 39** Are there conventions or domestic laws in force in respect of road, rail or air transport that apply to stages of the transport other than by sea under a combined transport or multimodal bill of lading?

There is no combined transport or multimodal bill of lading conventions at present in Malaysia.

- 40** Who has title to sue on a bill of lading?

The English Bill of Lading Act 1855 (the Act) applies in Malaysia by virtue of section 5(1) of the Civil Law Act 1956. Malaysia has therefore adopted section 1 of the Act, which provides as follows:

Every consignee of Goods named in a Bill of Lading and every endorsee of a Bill of Lading to whom the property in the goods therein mentioned shall pass upon or by reason of such consignment or endorsement shall have transferred to and vested in him all rights of suit and be subject to the same liabilities in respect of such goods as if the contract contained in the Bill of Lading has been made with himself.

- 41** To what extent can the terms in a charter party be incorporated into the bill of lading? Is a jurisdiction or arbitration clause in a charter party, the terms of which are incorporated in the bill, binding on a third-party holder or endorsee of the bill?

Although section 1 of the Act was intended to give the consignee or endorsee of the bill of lading a right to sue the carrier in contract, it provides that such rights of suit are only transferred to and vested in the consignee and endorsee when property in the goods has passed to him or her upon or by reason of such consignment or endorsement.

However, in order to sue the carrier in contract, the buyer of the goods must establish:

- that said buyer is the consignee named in the bill of lading or the endorsee of the bill of lading; and
- that property in the goods must have passed to him or her 'upon or by reason of such consignment or endorsement'.

Provided the above requirements have been met, it would seem that the arbitration clause in the charter party where incorporated into the bill of lading can be binding on a third party.

- 42** Is the 'demise' clause or identity of carrier clause recognised and binding?

Yes, if the Malaysian courts can be persuaded to follow the decision of the English courts in *The Starsin*.

- 43** Are shipowners liable for cargo damage where they are not the contractual carrier and what defences can they raise against such liability? In particular, can they rely on the terms of the bill of lading even though they are not contractual carriers?

An owner of a Malaysian ship or any share therein shall not be liable to make good to any extent whatever any loss or damage happening without his or her actual fault or privity where loss or damage is caused by fire, or where the value of goods is not ascertained or where the loss or damage is as a result of robbery, theft, breach of trust or misappropriation (section 359 MSO 1952).

- 44** What is the effect of deviation from a vessel's route on contractual defences?

There have been no relevant cases on this point in Malaysia.

- 45** What liens can be exercised?

Common law liens can be exercised in Malaysia.

- 46** What liability do carriers incur for delivery of cargo without production of the bill of lading and can they limit such liability?

This is not relevant in Malaysia.

- 47** What are the responsibilities and liabilities of the shipper?

As stated in the Carriage of Goods of Sea Act 1950.

Shipping emissions

- 48** Is there an emission control area (ECA) in force in your domestic territorial waters?

No ECA is applicable in the territorial waters of Malaysia as yet.

Update and trends

The Malaysian shipping industry is expected to remain strong in the next few years, supported by high demand for small and medium-sized ships, balancing off the decline in orders for tankers and container vessels. Medium-sized ships are now increasingly in demand, particularly from the oil and gas industry, both within and outside the country and will be mainly used for finding deep sea oil wells and those that are marginal oil fields within the waters of the country. More complex medium-sized ships are being manufactured at local shipyards. It has been reported that this year, 7 billion ringgit had been generated from the export of medium-sized ships to regional countries, Europe, the Middle East and Australia and there is potential

to expand the export industry amid the slowdown in demand for large vessels caused by surplus tonnage of container ships and oil tankers in the region.

Further, Malaysia's major ports (Port Klang and Port Tanjung Pelepas) continue to outperform due to greater reliance on intra-Asian and local trade, which have performed better than global long-haul trade routes; the impact of fairly aggressive capacity expansion programmes; and relative success in attracting and retaining the custom of major shipping lines. At both ports, the percentage of growth in bulk cargo and container traffic is reported to be in the high single figures.

- 49** What is the cap on the sulphur content of fuel oil used in your domestic territorial waters? How do the authorities enforce the regulatory requirements relating to low-sulphur fuel? What sanctions are available for non-compliance?

Currently, the sulphur limit for petrol and diesel is 0.05 per cent m/m. However, there is no regulatory enforcement relating to low-sulphur fuel specific to marine fuel which has been implemented as yet.

Jurisdiction and dispute resolution

- 50** Which courts exercise jurisdiction over maritime disputes?

The High Court of Malaya, High Court Sabah or Sarawak.

- 51** In brief, what rules govern service of court proceedings on a defendant located out of the jurisdiction?

The High Court may exercise jurisdiction over a non-resident defendant pursuant to section 23(1) of the Courts of Judicature Act 1964.

- 52** Is there a domestic arbitral institution with a panel of maritime arbitrators specialising in maritime arbitration?

No.

- 53** What rules govern recognition and enforcement of foreign judgments and awards?

Malaysia is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

- 54** What remedies are available if the claimants, in breach of a jurisdiction clause, issue proceedings elsewhere?

Those affected may apply for a stay of proceedings.

- 55** What remedies are there for the defendant to stop domestic proceedings that breach a clause providing for a foreign court or arbitral tribunal to have jurisdiction?

Those affected may apply for a stay of proceedings on the basis that the domestic tribunal lacks jurisdiction.

Limitation periods for liability

- 56** What time limits apply to claims? Is it possible to extend the time limit by agreement?

Under section 517 of MSO, any claim or lien against a vessel must be brought within two years from the date when the damage or loss or injury accrued. In contrast, any claim based on a bill of lading incorporating



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the Hague Rules or the Hague-Visby Rules provides a time bar of one year. As for other general causes of actions founded in tort or contract, section 6 of the Limitation Act 1953 provides that the limitation period is six years from the date the cause of action arose.

57 May courts or arbitral tribunals extend the time limits?

No.

Miscellaneous

58 How does the Maritime Labour Convention apply in your jurisdiction and to vessels flying the flag of your jurisdiction?

The Maritime Labour Convention 2006 has yet not been ratified by Malaysia.

59 Is it possible to seek relief from the strict enforcement of the legal rights and liabilities of the parties to a shipping contract where economic conditions have made contractual obligations more onerous to perform?

Although economic conditions may be considered as a factor in enforcing strict rights and liabilities, the courts are nevertheless generally inclined to enforce the express terms agreed between parties. Alternatively, one would be able to enforce rights or to obtain relief pursuant to the Specific Relief Act 1950.

60 Are there any other noteworthy points relating to shipping in your jurisdiction not covered by any of the above?

No.



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