

Malaysia

Jeremy M. Joseph
&
Matthew Jerome van Huizen

Part I. Arrest of Vessels

*This chapter has been reviewed by the Authors and
is up-to-date as of April 2020*

JOSEPH/VAN HUIZEN

MALAYSIA

Table of Contents

Part I. Arrest of Vessels	1
INTRODUCTION	1
CHAPTER 1. Sources of Local Law	3
CHAPTER 2. International Conventions	4
2.1. Multilateral conventions	4
2.2. Consular representation in Malaysia: possession and wages claims	4
CHAPTER 3. Competence of Courts or Other Authorities	4
3.1. Outline of the system	4
3.2. Domestic arbitration clauses	5
3.3. Foreign arbitration clauses	6
3.4. Forum non conveniens and lis alibi pendens	7
CHAPTER 4. Immunity of State-Owned Vessels	8
4.1. Vessels belonging to the government of Malaysia	8
4.2. Vessels belonging to foreign states	8
CHAPTER 5. Types of Claims for Which an Arrest Can Be Requested	8
CHAPTER 6. Other Specific Preconditions to an Arrest	10
CHAPTER 7. Definition of ‘Ship’ and ‘Vessel’	11
CHAPTER 8. Evidence Required to Support an Arrest Application	11
CHAPTER 9. Sister Ships	12
CHAPTER 10. Demise- and Time-Chartered Vessels	12
10.1. Maritime liens	12
10.1.1. The damage lien	12
10.1.2. The salvage lien	13
10.1.3. The crew wages lien	13
10.1.4. The master’s disbursements lien	13

JOSEPH/VAN HUIZEN

10.2. Claims in rem other than maritime liens	13
CHAPTER 11. Form of Application	13
CHAPTER 12. Must the Arresting Party Put Up Security?	14
CHAPTER 13. Representation by Lawyers; Powers of Attorney	14
CHAPTER 14. Court Hearing	15
CHAPTER 15. Provision of Bail by Defendants	16
CHAPTER 16. Proceedings for Maintaining an Arrest	16
CHAPTER 17. Costs and Advances for Court Proceedings and Custody	17
CHAPTER 18. Enforcement of the Order of Arrest	17
CHAPTER 19. Service of the Order of Arrest	17
CHAPTER 20. Time Element	18
CHAPTER 21. Appeal by Defendant	18
CHAPTER 22. Forced Sale in the Arrest Procedure	18
22.1. Sale upon judgment	18
22.2. Sale pendente lite	19
CHAPTER 23. Claims for Damages by the Owners of an Arrested Vessel	20
CHAPTER 24. Special Remarks	20
24.1. Foreign flag vessels	20
24.2. Mareva injunctions	21
24.3. Security for foreign proceedings	21
24.4. An example of conditions of sale	22

MALAYSIA

Jeremy M. Joseph

Originally a marine insurance broker, Jeremy has knowledge of the shipping and insurance industry, and his first position in law was at the Singapore office of the international firm Holman Fenwick & Willan where he worked as an associate for several years until he set up Messrs Joseph & Partners in Kuala Lumpur. His firm has been consistently ranked in the top category every year since 2010 as a leading Malaysian shipping law firm by international law publications, such as *Legal 500* and *Chambers Asia*. The firm has also bagged the prestigious ‘ALB Malaysia Law Awards’ for Maritime Law Firm of the Year three years in a row hosted by Asian Legal Business and Thomson Reuters.

Jeremy currently serves as Secretary for the International Malaysian Society of Maritime Law.

Matthew Jerome van Huizen

Matthew’s practice focuses on domestic and cross-border shipping disputes, customs and excise advisory work, and the judicial arrest and sale of vessels (including superyachts, AHTS vessels and crude tankers). Matthew further advises on general maritime corporate matters, including the drafting of Ship-Management, Sea-Men Employment, and Joint-Venture contracts.

This chapter is based on the previous edition by Tan Sri Cecil Abraham and Rishwant Singh.

JOSEPH/VAN HUIZEN

MALAYSIA

Part I. Arrest of Vessels

INTRODUCTION

Malaysia is a federation, and law-making powers are shared between the Federal Parliament and the thirteen state legislative assemblies.

The eleven states of the peninsula of West Malaysia were the constituent units of the old Federation of Malaya which obtained its independence on 31 August 1957. The two states of East Malaysia, namely Sabah and Sarawak, were governed as British crown colonies, and they obtained independence by merging with the Federation of Malaysia in September 1963.

Because of the separate systems of administration which had been in existence, there are some differences between the laws of West Malaysia and the two East Malaysian states; however, in the course of time, full harmonization will take place.

The influence of the English common law in Malaysia is regulated by sections 3 and 5 of the Civil Law Act 1956 which read as follows:

- Section 3 (1) Save so far as other provision has been made or may hereafter be made by any written law in force in Malaysia, the Court shall:
- (a) in West Malaysia or any part thereof, apply the common law of England and the rules of equity as administered in England on the 7 April 1956;
 - (b) in Sabah, apply the common law of England and the rules of Equity, together with statutes of general application, as administered or in force in England on the 1 December, 1951;
 - (c) in Sarawak, apply the common law of England and the rules of equity, together with statutes of general application, as administered or in force in England on the 12 December 1949, subject however to subsection (3)(ii):
Provided always that the said common law, rules of equity and statutes of general application shall be applied so far only as the circumstances of the States of Malaysia and their respective inhabitants permit and subject to such qualifications as local circumstances render necessary.
- (2) Subject to the express provisions of this Act or any other written law in force in Malaysia or any part thereof, in the event of conflict or variance between the common law and

the rules of equity with reference to the same matter, the rules of equity shall prevail.

- (3) Without prejudice to the generality of subsection (1)(b) and (c) and notwithstanding subsection (1)(c):
- (i) it is hereby declared that proceedings of a nature such as in England are taken on the Crown side of the Queen's Bench Division of the High Court by way of habeas corpus or for an order of mandamus, an order of prohibition, an order of certiorari or for an injunction restraining any person who acts in an office in which he is not entitled to act, shall be available in Sabah to the same extent and for the like objects and purposes as they are available in England;
 - (ii) the Acts of Parliament of the United Kingdom applied to Sarawak under sections 3 and 4 of the Application of Laws Ordinance of Sarawak and specified in the Second Schedule to this Act shall, in the second column of the said Schedule, continue in force in Sarawak with such formal alterations and amendments as may be necessary to make the same applicable to the circumstances of Sarawak and, in particular, subject to the modifications set out in the third column of the said Schedule.

Section 5 (1) In all questions or issues which arise or have to be decided in the States of West Malaysia other than Malacca and Penang with respect to the law of partnerships, corporations, banks and banking, principals and agents, carriers by air, land and sea, marine insurance, average, life and fire insurance, and with respect to mercantile law generally, the law to be administered shall be the same as would be administered in England in the like case at the date of the coming into force of this Act, if such question or issue had arisen or had to be decided in England, unless in any case other provision is or shall be made by any written law.

- (2) In all questions or issues which arise or which have to be decided in the States of Malacca, Penang, Sabah and Sarawak with respect to the law concerning any of the matters referred to in subsection (1), the law to be administered shall be the same as would be administered in England in the like case at the corresponding period, if such question or issue had arisen or had to be decided in England, unless in any case other provision is or shall be made by any written law.

MALAYSIA

1. SOURCES OF LOCAL LAW

The Malaysian Parliament has exclusive authority to make laws on admiralty matters. The entry 'admiralty jurisdiction' appears as Item 4(j) in the Federal List in the Ninth Schedule of the Constitution. There is no specific Act of Parliament dealing with admiralty matters in general.

The continuing influence of English law can be seen in admiralty matters in section 24(b) of the Courts of Judicature Act 1964 which provides that the civil jurisdiction of every High Court includes:

the same jurisdiction and authority in relation to matters of admiralty as is for the time being exercisable by the High Court of Justice in England under the United Kingdom Supreme Court Act 1981 (now known as the Senior Courts Act 1981).

In an unreported decision in *The Vinta*, the Supreme Court of Malaysia held that, by virtue of the express stipulation by Parliament that the jurisdiction was to be determined by reference to the United Kingdom Supreme Court Act 1981, this was a clear intention by Parliament that any subsequent acts in the United Kingdom did not apply in Malaysia.

Decided cases on admiralty matters are published in the *Malayan Law Journal*, the *Current Law Journal* and the *All Malaysia Reports*. English decisions are freely cited. Other statutes that contain provisions related to admiralty jurisdiction are:

- Arbitration Act 2005.
- Civil Law Act 1956.
- Courts of Judicature Act 1964.
- Exclusive Economic Zone Act 1984.
- Government Proceedings Act 1956.
- Merchant Shipping Ordinance 1952 (as amended by the Merchant Shipping (Amendment) Act 1991).
- Carriage of Goods by Sea Act 1950.
- Merchant Shipping (Liability and Compensation for Oil and Bunker Oil Pollution) Act 1994.
- Penang Port Commission Act 1955.
- Port Authorities Act 1963.
- Sabah Merchant Shipping Ordinance 1960.
- Sabah Ports Authority Enactment 1967.
- Sabah Ports Authority (Consequential Provisions) Act 25/1968
- Sabah Ports Authority Act 1981.
- Sarawak Merchant Shipping Ordinance 1960.

2. INTERNATIONAL CONVENTIONS

2.1. *Multilateral conventions*

Malaysia has yet to ratify any specific conventions relating to the arrest of ships, but many of the provisions of the Convention relating to the Arrest of Seagoing Ships signed at Brussels on 10 May 1952 are in effect incorporated into Malaysian law by section 24(b) of the Courts of Judicature Act 1964 and the consequential application in Malaysia of the admiralty sections of the Supreme Court Act 1981 (UK), namely sections 20–24.

The 1952 Brussels Arrest Convention was signed and ratified by the British Government, and English law now largely conforms to the Convention by virtue of the provisions of sections 20–24 of the Supreme Court Act 1981 (UK).

2.2. *Consular representation in Malaysia: possession and wages claims*

The Rules of the High Court 1980 have since been replaced with the Rules of Court 2012.

Order 70, Rule 4(4) of the Rules of Court 2012 lays down a special condition which applies to arrest proceedings against any vessel registered in the port of a state which has consular representation in Malaysia. Unless the leave of the High Court is obtained, a warrant of arrest will be issued in respect of a possession or wages claim against such a vessel only if prior notice of the commencement of proceedings has been sent to the relevant consul. There is no specific requirement as to the period of such notice.

3. COMPETENCE OF COURTS OR OTHER AUTHORITIES

3.1. *Outline of the system*

The arrest of vessels in Malaysia in respect of civil claims is exclusively a matter for the courts. Every High Court in East and West Malaysia has admiralty jurisdiction by reason of section 24(b) of the Courts of Judicature Act 1964 which states that the civil jurisdiction of every High Court includes ‘the same jurisdiction and authority in relation to matters of admiralty as is for the time being exercisable by the High Court of Justice in England’.

There are two High Courts in Malaysia. These are, first, the High Court of Malaya, whose territorial jurisdiction covers the eleven states of West Malaysia, namely Johore, Malacca, Negeri Sembilan, Selangor, Pahang, Perak, Kedah, Perlis, Penang, Kelantan and Terengganu and, second, the High Court of Sabah and Sarawak, whose territorial jurisdiction covers

MALAYSIA

Sabah and Sarawak. Appeals from the High Courts are heard by the Court of Appeal and thereafter a party may appeal to the Federal Court against the decision of the Court of Appeal upon obtaining leave to do so from the Federal Court.

The territorial jurisdiction of the High Court of Malaya covers admiralty matters, including the arrest of vessels in West Malaysia, where the principal ports are Penang, Port Kelang, Port Dickson, Lumut, Malacca, Pasir Gudang, Tanjung Pelepas, Kuantan, Kuala Terengganu and Kerteh as well as the Federal Territory of Labuan which is located off the coast of Borneo.

The High Court of Sabah and Sarawak exercises jurisdiction over the East Malaysian states of Sabah and Sarawak. The major ports of Sabah are Kota Kinabalu, Kudat, Sandakan, Lahad Datu, Kunak, Semporna and Tawau. The major ports of Sarawak are Kuching, Sibut, Miri and Bintulu. All East Malaysian ports are under the jurisdiction of the respective state governments except Bintulu which has, by Royal Proclamation, been designated a federal port. The federal government exercises jurisdiction in respect of the management and development of Bintulu Port.

The High Court of Malaya has since set up a specialist Admiralty High Court presided over by a judge of the commercial division of the High Court sitting at Kuala Lumpur. The Admiralty High Court will have its own Registry. A comprehensive practice direction has been passed: Practice Direction No. 1 of 2012 which deals with Admiralty and Maritime Claims. Admiralty actions may be filed in any of the High Courts in East or West Malaysia. The establishment of the specialist Admiralty High Court sitting in Kuala Lumpur does not mean that an admiralty action cannot be filed before the High Courts of Malaya (in West Malaysia) other than Kuala Lumpur. Such actions may still be filed outside Kuala Lumpur, but they will be reported to the Admiralty Registry of the High Court in Kuala Lumpur. A transfer of the action to Kuala Lumpur can only take place with the consent of all parties.

3.2. Domestic arbitration clauses

The existence of a domestic arbitration clause in a contract does not preclude a plaintiff from issuing proceedings and arresting a vessel in respect of a claim, but upon application by the defendant, after entering an appearance and before taking any other step in the proceedings, the court may stay the action to allow an arbitration to proceed. An amendment to section 10(2A) of the Arbitration Act 2005 now allows a court that grants a stay of court proceedings to further order that the arrested vessel be retained under arrest as security for any possible arbitration award.

Under section 10 of the Arbitration Act 2005, if any party to an arbitration agreement commences legal proceedings against another party, the defendant may apply to the court to stay the proceedings. The court, if satisfied that

there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement, may make an order staying the proceedings. The Court of Appeal, in *Interscope Versicherung Sdn Bhd v. Sime Axa* [1999] 2 *Current Law Journal* 843 (on the law under the old section 6 of the Arbitration Act 1952), held that the entry of an unconditional appearance was tantamount to a step in the proceedings. The legal position has since changed. The Federal Court, in *Sanwell Corp v. Trans Resources Corp Sdn Bhd* [2002] 2 *Malayan Law Journal* 625, held that the entry of an unconditional appearance in court proceedings did not amount to a step in the proceedings, and a stay of court proceedings could nevertheless be granted under section 6 of the Arbitration Act 1952. Section 10 of the Arbitration Act 2005 has been interpreted in a similar, consistent fashion. There is further first instance authority to state that the provision of an unconditional bail bond is tantamount to a submission to the jurisdiction (*Concord Lines Co. Ltd v. The Owners of the Ship Molly* [1998] 1 *All Malaysia Reports* 26) and should the application for stay be made together with an application for striking out the Writ, this is likewise tantamount to a submission to jurisdiction (*PP Persero Sdn Bhd v. Bimacom Property & Development Sdn Bhd* [1993] 3 *All Malaysia Reports* 3479).

3.3. Foreign arbitration clauses

Malaysia had adopted the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards through the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act 1985 which came into force on 3 February 1986.

The Arbitration Act 2005 came into effect on 15 March 2006. It repealed the Arbitration Act 1952 and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act 1985. Malaysia remains a party to the New York Convention, and the High Court is empowered under section 38 of the Arbitration Act 2005 to register international arbitration awards as judgments of the High Court by making an application in writing with an authenticated original award or duly certified copy of the award and the original arbitration agreement or a certified copy of it. Pursuant to the most recent amendment in the Arbitration (Amendment) Act 2011 to include section 10(2A) of the Arbitration Act 2005, a vessel arrested as security for court proceedings can continue as security for an award made either in a domestic or an international arbitration, or a court may order that the stay of those proceedings be conditional on the provision of equivalent security for the satisfaction of any such award.

MALAYSIA

3.4. *Forum non conveniens and lis alibi pendens*

Where it is more convenient for a foreign court to hear and determine a matter, a Malaysian High Court may grant a stay of proceedings. In this matter generally, the Malaysian court is guided by the practice prevailing in English admiralty jurisprudence. The principles enunciated by the House of Lords in *The Abidin Daver* [1984] AC 398 would be followed in Malaysia.

A plaintiff may wish to pursue his/her claim in Malaysia, even though proceedings are pending in a foreign jurisdiction which is the natural and appropriate forum. The court will exercise its discretion to stay the Malaysian proceedings unless the plaintiff establishes that there is some personal or juridical advantage available to him/her only in Malaysia which is of such importance that it would be unjust to deprive him/her of it, or that justice might not be accorded to him/her in the foreign jurisdiction concerned.

If there is a valid exclusive foreign jurisdiction clause, the court may set aside the writ and hence the arrest, unless it can be shown that if the action is not allowed to continue, the plaintiff will be denied the relief he/she is entitled to, for example, if the clause is time-barred in the jurisdiction agreed upon. The court must therefore take into consideration such factors as the relative convenience and expense of trial as between the Malaysian and foreign courts, the jurisdiction with which either party is connected and how close such a connection is, and whether the defendant genuinely seeks trial in the foreign jurisdiction or is only seeking to gain some procedural advantage. The Malaysian courts would generally follow the guidelines laid down by the English courts in such cases. In *Globus Shipping & Trading Co. (Pte) Ltd v. Taiping Textiles Bhd* (1976) 2 *Malayan Law Journal* 154, the Malaysian Federal Court, applying the test as set out by Brandon J. in *Eleferia* [1970] P 94, stated that the Court retained the discretion, and this discretion was to be exercised with regard to all circumstances in the case, disregarding a Singapore jurisdiction clause. This decision has subsequently been approved and applied in the Supreme Court case of *American Express Bank Ltd v. Mohammed Toufic Al-Ozier* [1995] 1 *All Malaysia Reports* 253 and the Court of Appeal decision in *Inter Maritime Management Sdn Bhd v. Kai Tai Timber Company Ltd Hong Kong* [1995] 1 *All Malaysia Reports* 805.

Where an action is stayed to allow proceedings to continue in another jurisdiction, any warrant of arrest issued in the Malaysian proceedings will be discharged.

4. IMMUNITY OF STATE-OWNED VESSELS

4.1. *Vessels belonging to the government of Malaysia*

Malaysian law relating to civil proceedings against the Government is contained in the Government Proceedings Ordinance 1956, section 37 which provides:

- (1) Nothing in this Ordinance shall authorize proceedings in rem in respect of any claims against the government or the arrest, detention or sale of any ship or aircraft or of any cargo or other property belonging to the government or give to any person any lien on such ship, aircraft, cargo or other property.
- (2) Where the admiralty action in rem is instituted in the reasonable belief that the ship or other property concerned did not belong to the Government, the court may order that the proceedings be treated as if they were in personam and duly instituted against the government or some other proper person.

The immunity accorded to Malaysian government vessels applies only in respect of actions in rem. The Government may therefore be held liable in personam in appropriate cases.

4.2. *Vessels belonging to foreign states*

Proceedings in rem cannot be maintained against a vessel owned by a foreign sovereign or sovereign State if an objection is raised by the defendant on the grounds of sovereign immunity.

Currently there is no law in Malaysia corresponding to the United Kingdom State Immunity Act 1978. Malaysia has not incurred any obligation by treaty whereby immunity from arrest should be granted to vessels belonging to the government of any foreign State.

5. TYPES OF CLAIMS FOR WHICH AN ARREST CAN BE REQUESTED

The admiralty jurisdiction of a High Court in Malaysia extends to the hearing and determination of any of the questions or claims set out in section 20(2) of the Supreme Court Act 1981 (UK) (which is in turn based on the 1952 Brussels Arrest Convention):

S.20(2)

MALAYSIA

- (a) any claim to the possession or ownership of a ship or to the ownership of any share therein;
- (b) any question arising between the co-owners of a ship as to possession, employment or earnings of that ship;
- (c) any claim in respect of a mortgage of or charge on a ship or any share therein;
- (d) any claim for damage done by a ship;
- (e) any claim for damage received by a ship;
Note: This category of claim cannot be pursued in rem.
- (f) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or in consequence of the wrongful act, neglect or default of:
 - (i) the owners, charterers or persons in possession or control of a ship; or
 - (ii) the Master or crew of a ship or of any other persons for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship or in the embarkation, carriage or disembarkation of persons on, in or from the ship;
- (g) any claim for loss of or damage to goods carried in a ship;
- (h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;
- (i) any claim in the nature of salvage (including any claim arising by virtue of the application, by or under Section 87 of the Civil Aviation Act 1982 of the law relating to salvage to aircraft and their apparel and cargo);
- (j) any claim in the nature of towage in respect of a ship or an aircraft;
- (k) any claim in the nature of pilotage in respect of a ship or an aircraft;
- (l) any claim in respect of goods or materials supplied to a ship for her operation or maintenance;
- (m) any claim in respect of the construction, repair or equipment of a ship or in respect of dock charges or dues;
- (n) any claim by a Master or member of the crew of a ship for wages (including any sum allotted out of wages or adjudged by a superintendent to be due by way of wages);
- (o) any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;
- (p) any claim arising out of an act which is or is claimed to be a general average act;

- (q) any claim arising out of bottomry;
- (r) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for droits of Admiralty.

Admiralty jurisdiction may be invoked by an action in rem against the ship or property in question in each of the cases set out under section 20(2)(a)–(c) and section 20(2)(s) of the Supreme Court Act 1981 (UK).

Furthermore, where there is a maritime lien or other charge, then an action in rem can be brought against that ship or property (section 21(3) of the Supreme Court Act 1981 (UK)).

A maritime lien may exist in respect of the following claims:

- (a) collision damage;
- (b) salvage;
- (c) wages of Master and crew;
- (d) Master's disbursements.

If the claim gives rise to a maritime lien, the right of arrest survives the sale of the vessel.

6. OTHER SPECIFIC PRECONDITIONS TO AN ARREST

As previously stated, the right to arrest a vessel in Malaysian territorial waters exists as an adjunct to proceedings issued out of the High Court by a plaintiff in respect of a claim or claims that may be legally pursued in rem. Provided those conditions are met, no other conditions are required to be satisfied.

Section 3(1) of the Territorial Sea Act 2012 provides:

The breadth of the territorial sea of Malaysia shall for all purposes be 12 nautical miles. The baselines from which the breadth of that territorial sea is to be measured shall, for all purposes, be as established in accordance with section 5 of the Baselines of Maritime Zones Act 2006. Malaysia has deposited her instrument of ratification of the Law of the Sea done at Montego Bay on 10 December 1982. Section 5(1) of the Baselines of Maritime Zones Act 2006 provides that for the purpose of determining the maritime zones of Malaysia, the baselines shall be (a) the low-water line along the coast as marked on large-scale charts; (b) the seaward low-water line of a reef as shown by the appropriate symbol on charts; or (c) the low-water line on a low-tide elevation that

MALAYSIA

is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island.

7. DEFINITION OF ‘SHIP’ AND ‘VESSEL’

Several statutes contain definitions of the words ‘ship’ and ‘vessel’.

The Merchant Shipping Ordinance 1952, Penang Port Commission Act 1955, Port Authorities Act 1963 and the Bintulu Port Authority Act 1981 contain identical definitions of ‘ship’ and ‘vessel’ in their interpretation sections:

‘Ship’ includes every description of vessel used in navigation not propelled by oars.

‘Vessel’ includes any ship or boat or any other description of vessel used in navigation.

The Interpretation Act 1967 defines ‘ship’ as follows:

‘Ship’ includes every description of vessel used in the navigation of water, other than vessels exclusively propelled by oars, paddles or poles.

The same Act also defines ‘vessel’ as follows:

‘Vessel’ includes floating and submarine craft of every description.

Order 70, Rule 1 of the Rules of the High Court 1980 contains the following definitions:

‘Ship’ includes any description of vessel used in navigation.

8. EVIDENCE REQUIRED TO SUPPORT AN ARREST APPLICATION

The plaintiff is required to submit an affidavit with all relevant details to demonstrate that he/she/it has reasonable grounds for establishing a maritime claim, and that such a claim is properly advanced against the vessel which is to be arrested. Evidence as to ownership of the vessel is usually provided by submitting certified extracts from Lloyd’s Register. However, the Federal Court of Malaysia held, in *The Loon Chong* (1982) 1 *Malayan Law Journal* 212, that an entry in Lloyd’s Register is not conclusive evidence of ownership. It might therefore be necessary to obtain evidence to

corroborate the Lloyd's Register entry to strengthen the case. Further details as to the form of affidavit and other relevant documents are given in section 11.

9. SISTER SHIPS

The plaintiff, in most cases properly falling within the admiralty jurisdiction, is entitled to arrest a vessel if the claim arises in connection with that vessel and if the person who is liable on the claim is the beneficial owner or demise-charterer of that vessel both at the time when the cause of action arose and at the time the action has commenced.

Where an owner or charterer of any vessel is personally liable in respect of a maritime claim against that vessel, then the claimant/plaintiff may arrest any other vessel which, at the time the proceedings are issued, is owned by such shipowner or charterer.

The various circumstances in which a claimant may arrest a sister ship are listed in section 20(2)(e)–(r) of the Supreme Court Act 1981 (UK) (refer to section 5 for the full text).

10. DEMISE- AND TIME-CHARTERED VESSELS

Where a vessel is on a demise-charter or time-charter at the time a claim arises, the existence or non-existence of a legal right to arrest that vessel will depend upon the nature of that claim.

Section 21(3) of the Supreme Court Act 1981 (UK), which, by virtue of section 24(b) of the Courts of Judicature 1964, is applicable in Malaysia enables an action in rem to be brought against a vessel or property if there is a maritime lien on that vessel or property.

10.1. *Maritime liens*

10.1.1. The damage lien

In cases where damage is done by a vessel, a maritime lien arises against the vessel if, at the material time, the vessel was in the hands of the owner or a demise-charterer of the vessel or the servants or agents of either of them.

MALAYSIA

10.1.2. The salvage lien

This lien arises, as a result of the successful performance of salvage services, over all salvaged property. The existence of a demise-charter or time-charter is irrelevant in this case.

10.1.3. The crew wages lien

The crew has a lien over the vessel upon which they have actually performed their services, irrespective of the identity of their contractual employers. Demise-charters and time-charters are therefore irrelevant to a claim based on this lien.

10.1.4. The master's disbursements lien

The master of a vessel has a lien against his/her vessel to the extent of his/her outstanding disbursements. However, this is conditional upon the true owner of the vessel being personally liable for the claim. No lien arises if the disbursements were incurred on behalf of a demise-charterer or any other person.

10.2. *Claims in rem other than maritime liens*

The claims that may be brought against chartered vessels are set out in section 21(4) of the Supreme Court Act 1981 (UK), and these provisions are applicable to Malaysia. Subsections (e)–(r) of section 20(2) of the Supreme Court Act 1981 (UK) include references to claims that may be maritime liens.

11. FORM OF APPLICATION

The form of application is set out in Order 70 of the Rules of Court 2012. Details of the requirements are as follows:

- (1) An action in rem must be begun by a writ of summons in Form 146.
- (2) A warrant of arrest may be issued after the issue of the writ in an action in rem at the instance of the plaintiff (or defendant in a counterclaim).
- (3) Before applying for the warrant of arrest the applicant must procure a search of the caveat book to ascertain if a caveat against arrest exists.
- (4) The applicant must file a *praecipe* in accordance with a set form requesting issue of a warrant together with an affidavit.

- (5) The affidavit must state:
- (a) the name, address and occupation of the applicant for the warrant;
 - (b) the nature of the claim or counterclaim in respect of which the warrant is required and that it has not been satisfied;
 - (c) the nature of property to be arrested and, if a vessel, the name of the vessel and the port to which it belongs;
 - (d) the amount of security sought, if any;
 - (e) if the action is against a vessel:
 - (i) whether the vessel is the vessel in connection with which the claim arose;
 - (ii) the deponent's belief that the person liable in personam on the claim was, at the time the action arose, the owner or charterer or in possession or control of the vessel in connection with which the claim arose and is the beneficial owner of all the shares in the vessel against which the action is brought;
 - (iii) the grounds of the deponent's belief;
 - (f) in an action in rem for possession of a vessel, or for wages, the nationality of the vessel subject to the arrest must be given and, if the relevant state has a consulate in Malaysia, notice that an action has commenced must be sent to the consul.

An application for arrest may therefore be made only as an adjunct to proceedings already commenced in the High Court.

12. MUST THE ARRESTING PARTY PUT UP SECURITY?

While the vessel is under arrest, it is under the custody and control of the Sheriff and, consequently, it is incumbent upon the Sheriff to maintain the vessel. Prior to the warrant of arrest being issued, the arresting party must put up security with the Court towards the arrest costs, including the maintenance costs, and must provide an undertaking to the Sheriff that they will provide further security upon demand by the Sheriff. At present the sum required by most of the Courts is about MYR 15,000, although some Courts may require up to MYR 40,000.00. This may be paid in cash, or by a bank draft or solicitor's cheque.

13. REPRESENTATION BY LAWYERS; POWERS OF ATTORNEY

A litigant may choose to conduct his/her own case, but this is not advisable owing to the complexity of admiralty law and procedure.

Powers of attorney are not required either by lawyers or the Court for the purpose of commencing proceedings or for taking any other action.

MALAYSIA

In Malaysia the term ‘lawyer’ or ‘counsel’ refers to an advocate and solicitor, as the legal profession here is a ‘fused’ and not a ‘divided’ profession. Local counsel must be engaged. A body corporate may not commence, carry on or defend proceedings otherwise than by an advocate and solicitor.

Furthermore, as lawyers in West Malaysia do not have an automatic right of audience in the East Malaysian Courts, it is best to instruct solicitors in the same jurisdiction as that where the arrest is contemplated.

14. COURT HEARING

The documents relating to the arrest application must be filed by the plaintiff’s solicitors at the High Court Registry. The documents will be considered by the Registrar, and a writ can be issued on the same day that it is filed. The affidavit leading to the arrest, if filed by a deponent residing outside Malaysia, must be affirmed before a Notary (for Commonwealth countries) or a Consular Officer of the Malaysian Consulate Office situated in that country (for non-Commonwealth countries). The Court decides on the application for arrest without any hearing at this stage as to the substantive merits of the claim. If the evidence in support of the application is deemed to be sufficient, a warrant of arrest will be issued immediately.

A person who desires to prevent the arrest of a ship must file in the prescribed form, signed by him/her or his/her solicitor, an undertaking both to enter an appearance in any action that may be begun against the ship and to give bail in the action in a sum not exceeding an amount specified in the *praecipe* or to pay the amount into Court. A caveat against the issue of a warrant to arrest the ship will then be entered in the caveat book.

Order 70, Rule 5(2) of the Rules of Court 2012 states:

The fact that there is a caveat against arrest in force shall not prevent the issue of a warrant to arrest the property to which the caveat relates.

A remedy exists for a party alleging arrest of a ship without good and sufficient reason. If a caveat against arrest *exists* in respect of a ship arrested by warrant, the person who entered the caveat, the caveator, may apply to the Court by motion for an order. If the Court is satisfied that the party procuring the arrest did not have a good and sufficient reason for so doing, the Court may discharge the warrant and order damages to be paid to the caveator for loss suffered as a result of the arrest.

15. PROVISION OF BAIL BY DEFENDANTS

Order 70, Rule 15 of the Rules of Court 2012 provides for bail to be given by a party to an action in rem.

In practice the usual form of bail is a cash deposit, a bank guarantee or a Protection and Indemnity (P&I) Club guarantee. It is very rare for cash to be offered as security. There is now some reluctance among solicitors to accept a P&I Club guarantee if it is from a very distant country, but a bank guarantee is generally acceptable.

It is now rare for a bail bond to be provided. However, if the parties to an action are unable to agree upon the terms of the undertaking or the identity of the third party who is to provide it, it may be necessary to resort to a bail bond. In the event that the intention of the defendant is to challenge the jurisdiction of the Court, it would be advisable that the bail bond or other security be expressed to be conditional on or qualified as to the right to make the application, failing which, the provision of the bond may be held to be a submission to the jurisdiction.

The Rules require the sureties to the bank to enter into this commitment before a Commissioner for Oaths or the Registrar. The Commissioner should not be the person who or whose partner is acting as solicitor or agent for the party on whose behalf bail is to be given.

The surety must declare in an affidavit that he/she is able to pay the amount for which the bond is given. If the surety is a corporation, then no affidavit is necessary unless the other party so requires. Where such an affidavit is required, it shall be made by a director, manager, secretary or another similar officer of the corporation.

Notice of bail must be served on the other party. After twenty-four hours the bond, the affidavit of the surety and the affidavit proving service of notice of bail must be filed.

16. PROCEEDINGS FOR MAINTAINING AN ARREST

It will be necessary for the plaintiff to proceed with the action initiated by the writ issued before the grant of the warrant of arrest. Should the plaintiff default in the service of a statement of claim on the defendant, the latter may apply for the action to be dismissed after the lapse of the relevant period, and the court may order dismissal or make such other order as it thinks fit.

MALAYSIA

17. COSTS AND ADVANCES FOR COURT PROCEEDINGS AND CUSTODY

The principal costs involved in arresting a ship in Malaysia are as follows:

<i>Deposit in Court to Cover</i>	<i>Ringgit Malaysia (MYR)</i>
Sheriff's expenses	15,000
Legal fees of solicitors	Between 20,000 and 75,000

There would be other expenses, such as watchmen's wages and supplies of necessaries to the vessel under arrest. It is well-nigh impossible to estimate in advance what all these costs will amount to, as much will depend on factors such as the location of the vessel, its physical condition, and the length of the period of arrest.

If the defendant owner is solvent and continues to pay the vessel's outgoings, such as berth and harbour dues, while the vessel is under arrest, then the costs of custody will be reduced. If the plaintiff's claim is ultimately successful, then the costs of arrest and custody may be recovered from the defendant.

18. ENFORCEMENT OF THE ORDER OF ARREST

A warrant of arrest may be executed only by the sheriff or his/her officer. The warrant is valid for six months beginning from the date of its issue. Any party who interferes with the enforcement or maintenance of a warrant of arrest is liable to be held guilty of contempt of court.

19. SERVICE OF THE ORDER OF ARREST

A warrant of arrest may be executed only by the sheriff or his/her officer. Service of a warrant is effected by affixing it to the mast or superstructure of the vessel for a short time and thereafter leaving a copy in its place.

If the warrant was issued against freight, then the warrant can be served on the cargo in respect of which the freight is payable or on the ship carrying the cargo or on both. The warrant may be affixed to the cargo itself or, if access to the cargo is not permitted, the warrant may be left with the person who has custody of the cargo.

20. TIME ELEMENT

The warrant can be obtained as soon as the writ is issued, and the documentation pertaining to the arrest is submitted. The warrant may be issued immediately, but otherwise it is usually available within twenty-four hours of submission. Physical service of the warrant has been described in section 19.

21. APPEAL BY DEFENDANT

A warrant of arrest is issued on an *ex parte* application, that is, without the prior knowledge of the shipowner. The shipowner may decide to contest the decision to issue the warrant. A hearing will be arranged to provide an aggrieved party with an opportunity to state his/her case to the Court. The High Court may in its discretion allow other interested parties to intervene in the proceedings. The defendant may apply for the writ and the warrant of arrest to be set aside upon the grounds, for example, that the action is frivolous, vexatious and an abuse of the process of the court, or that the plaintiff does not have a good arguable case, or that the person sued is not the shipowner.

If the High Court refuses to set aside the Writ and the warrant of arrest, an appeal may be taken to the Court of Appeal in the first instance, without the necessity of obtaining leave of Court, and thereafter by appeal to the Federal Court, but in the latter case only upon obtaining leave to file the appeal.

22. FORCED SALE IN THE ARREST PROCEDURE

22.1. *Sale upon judgment*

The procedure to be followed when the sale of a vessel has been ordered by a Court is contained in Order 70, Rule 21 of the Rules of the High Court 1980.

The Court may, after a full hearing or on hearing of the motion for judgment in default of the defendant entering an appearance or filing a defence, and if satisfied that the plaintiff's claim is well founded, give judgment for the claim, and it may order that the vessel be sold.

The Order for Sale will usually include an order specifying the period after which the Court will determine the priorities between the competing claims. After the expiration of the period specified in the order, an application may be made to the Court for an order to determine the order of priority of the claims against the proceeds of sale of the vessel.

MALAYSIA

Within seven days after the date of payment into Court of the proceeds of sale, the sheriff gazettes in the Government Gazette and advertises in any newspaper the Court may specify, a notice in the form prescribed by the Rules of Court 2012. The notice must state that the vessel has been sold, and that the gross proceeds of the sale have been paid into Court. Furthermore, the notice should mention that the order of priority of the claims against the proceeds will not be determined until after the expiration of a specific period mentioned in the order for sale. Any person with claims against the vessel or the proceeds of sale thereof is required to file his/her claim papers before the expiration of that period.

The prima facie ranking of claims in order of priority is generally as follows, from highest to lowest:

- (a) the sheriff's costs and expenses arising from the arrest and sale of the vessel;
- (b) 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 appraisal and sale;
- (c) maritime liens;
- (d) possessory liens that arise after the maritime lien has accrued;
- (e) mortgages; and
- (f) statutory liens.

There is usually no interest payable on the proceeds paid into Court unless special application is made that the sum be paid into an interest-bearing account. It would be in everybody's interest that an application to open such an account be made by the solicitors of the main claimant. Moreover, the solicitor could be liable for negligence if he/she omits to put the money into such an account with a reputable commercial bank.

22.2. *Sale pendente lite*

Where the vessel under arrest is deteriorating, or for some other good reason it appears to be in the interests of all parties concerned that it should be sold without further delay, the Court may, on motion, order the vessel to be appraised and sold, and the proceeds thereof will be brought into Court. All claims against the ship will thereupon be transferred to the fund in Court and payment out of the fund will take place after priorities are determined. Sale pendente lite may also occur if the shipowner has ceased trading and is insolvent.

If the shipowner opposes the application for sale pendente lite, the Court will take into consideration all relevant issues, such as why the shipowner has not provided security, the strength of the claim and whether the

shipowner is likely to be capable of continuing to trade with the vessel if the claim fails.

In *The Owners of the Cargo Aboard 'Yih Shen'* (unreported), the High Court in Penang had the opportunity to consider the English decisions such as *The Myrto* [1977] 2 *Lloyd's Law Rep.* 243 and adopted the principles enunciated therein. *The Myrto* has been approved and followed in, among others, the cases of *Kingstar Shipping Ltd v. The Owners of the Ship or Vessel 'Sino Glory'* [1997] 4 *All Malaysia Reports* 3694 and *Timberail Sdn Bhd v. The Owners and/or Other persons interested in the Vessel 'San Yang 2'* [1998] 6 *Malayan Law Journal* 434. In Malaysia, an application for sale pendente lite will be allowed where it is clear from the evidence before the Court that the vessel is a deteriorating asset and that the continued arrest will reduce the amount of security available to satisfy the various claims before the Court.

23. CLAIMS FOR DAMAGES BY THE OWNERS OF AN ARRESTED VESSEL

An action for wrongful arrest may be brought against a plaintiff on the grounds of mala fides or crassa negligentia on the part of the Plaintiff (*see The Evangelismas (1858) Swab 378; The Ohm Mariana ex Peony* [1992] 2 SLR 623 and *The 'Lavela'* [2019] 9 MLJ 188). In this type of civil action, which will be heard by a judge sitting alone, the scale of damages will reflect the gravity of the case and all the relevant circumstances. In appropriate cases the Court may award exemplary damages as per in the case of *Ocean Gain Shipping Pte Ltd v. Owner and/or Charterer of Demise of Vessel Dong Nai Registered at Haiphong Port, Vietnam (The Dong Nai)* [1996] 4 MLJ 454. In general, an action for wrongful arrest has been successful where the vessel has been arrested for a completely unmeritorious claim.

Any prolonged detention of vessel without legitimate reason to sustain an arrest is amount to wrongful continuation of arrest even though the arrest was properly carried out. The principle applicable for wrongful continuance of an arrest is the same as that applicable for wrongful arrest (*The Evmar* [1989] 2 MLJ 460).

24. SPECIAL REMARKS

24.1. Foreign flag vessels

Under Malaysian law, all vessels, whether Malaysian or foreign, are treated alike. Only State-owned vessels are clothed with immunity from arrest.

MALAYSIA

24.2. *Mareva injunctions*

The Malaysian High Court grants Mareva injunctions in appropriate cases to restrain a party to any proceedings from removing from the jurisdiction of the High Court his/her assets located within the jurisdiction where it can be shown that there is a risk of dissipation of assets. The term 'assets' covers ships and their cargo. A Mareva injunction will be granted only as an adjunct to proceedings which the claimant is pursuing in Malaysia. The claimant must demonstrate to the Court that he/she has a 'good arguable case' for invoking Malaysian jurisdiction, as the mere presence of a vessel within that jurisdiction will not per se suffice for the grant of a Mareva injunction. Any risk that the defendant will dispose of or remove his/her assets from the jurisdiction will provide a good case for a Mareva injunction.

24.3. *Security for foreign proceedings*

In *Vinta* (unreported), the Supreme Court held that the jurisdiction of the Malaysian High Court is as provided for under the United Kingdom Supreme Court Act 1981 and was only limited to the powers given thereunder. As such, any powers granted by the English Parliament subsequent to that Act did not apply in Malaysia. This decision was applied in *Asia Pacific Parcel Pte Ltd v. The Owners of the Vessel Wormar Splendour* [1999] 4 *All Malaysia Reports* 4835.

This means that Malaysia cannot adopt *ipso facto* subsequent legislative powers that have come from the Parliament in the UK. This would include the Civil Jurisdiction and Judgments Act 1982.

There is no direct statutory provision that empowers the Malaysian courts to order that property arrested be retained for the satisfaction of a judgment given in foreign court proceedings. In this respect, the position in Malaysia is not as clear as the position in England, in which the Civil Jurisdiction and Judgments Act 1982 empowers the Courts to arrest a vessel as security for foreign proceedings.

However, *Order 70 Rule 12(11) of the Rules of Court 2012* states that where the Court stays or dismisses an action in rem on the grounds that the dispute in question should be submitted to the *determination of courts outside Malaysia*, the Court may if in those proceedings, the res has been arrested or bail or other security has been given, make an order that the property arrested be retained as security for the satisfaction of a certain judgment. That judgment however must be both enforceable in Malaysia and be given in respect of the dispute in favour of which those proceedings are stayed or dismissed. Further the Court in this circumstance may make an order that the stay or dismissal of those proceedings be conditional on provision of equivalent security for the satisfaction of any such judgment.

The Court is also at liberty to attach any such condition to the order as it thinks fit in particular conditions with respect to the institution or prosecution of the relevant legal proceedings (Order 70 Rule 12(12) Rules of Court 2012).

It is therefore arguable, that Malaysia permits an arrest as security for foreign court proceedings.

24.4. *An example of conditions of sale*

Conditions of Sale

The ship or vessel [name of vessel]

- (1) In these conditions the expression 'the vessel' means the Vessel agreed to be sold with everything on board belonging to her but excluding any equipment on hire (*see* clause 14).
- (2) The Buyer shall take and pay for the unused bunker fuel and lubricants remaining on board her (if any) in accordance with clauses 6, 7 and 8 below.

Basics of Sale

- (3) The Buyer undertakes that in making his/her offer he/she has not relied upon any information which he/she may have been given by or on behalf of [*name of seller*] and that he/she has relied solely upon his/her own inquiries and/or inspection.
- (4) The Vessel is sold as lying at the date of the sale with all her faults and all errors of description whatever. The Buyer shall not be entitled to reject the Vessel and not to any damages or diminution in price, by reason of any fault of or in the Vessel or any error of description whatever.
- (5) The vessel is at present lying under arrest pursuant to a Warrant of Arrest issued by the High Court of Malaya at [...] and this sale is conditional upon the approval of the High Court of Malaya at [...] being given to the terms of this sale. In the event that the Court does not grant approval of the sale, the contract of sale is voided and is of no effect and [*name of seller*] shall repay to the Buyer, without interest, costs or compensation, any sums the Buyer has paid under clause 6. In such an instance, the buyer shall have no claim against [*name of seller*] for any ground whatsoever.
- (6) Payment shall be made by the Buyer in cash in Malaysian Ringgit to [*name of seller*], as follows:
 - (a) Upon the making of the offer, 10% of the price;
 - (b) within one week of the acceptance of the offer:
 - (i) the balance of 90% of the price and

MALAYSIA

- (ii) a sum in respect of bunker fuel and lubricants (if any) calculated in accordance with clause 6.
- (7) The sum (if any) payable in respect of unused bunker fuel and lubricating oil shall be calculated by reference to:
 - (a) the quantities (if any) remaining on board unused at noon on the day one week after the acceptance of the offer or on the day of the final payment, whichever shall be the earlier, and
 - (b) the current market prices ruling in the port where the Vessel is lying. The quantities and prices shall be determined by the agent of *[name of seller]* so appointed for the purposes of the sale.

Delivery

- (8) On completion of the payments referred to in clause 5 *[name of seller]* shall give and the Buyer shall take immediate delivery of the Vessel (together with her bunker fuel and lubrication oil).
- (9) If the Buyer requires delivery of the Vessel to an Agent, such an Agent must produce the Buyer's written authority to that effect, signed by the Buyer and addressed to *[name of seller]*.
- (10) On delivery the Buyer shall have the Bill of Sale for the Vessel, together with any documents belonging to the Vessel which are in the possession of *[name of seller]* and/or the vessel.

Risk, etc.

- (11) The Vessel shall be at the Buyer's risk from the time when the payments referred to in clause 6(b) are made or become due, whichever is earlier, and from that time all expenses relating to the Vessel, including dock and other dues, shall be for the Buyer's account.
- (12) If the Vessel is lost, destroyed or damaged in any way whatsoever before the risk in the Vessel has passed to the Buyer under clause 11, *[name of seller]* may rescind the contract of sale by notice in writing to the Buyer and repaying to the Buyer, without interest, costs or compensation, any sums the Buyer has paid under clause 6.

Default of Buyer

- (13) If the Buyer is in default in making any of the payments referred to in clause 5, or is in any other respect whatever in breach of any of these conditions, *[name of seller]* may exercise all or any of the following rights:
 - (a) by notice in writing rescind the contract and/or sale;

JOSEPH/VAN HUIZEN

- (b) if the Buyer has made the payment referred to in clause 5(a), declare it to be forfeited to him;
 - (c) resell the Vessel by public or private sale;
 - (d) recover from the Buyer all losses, damages, costs and expenses caused by the Buyer's default, including, in the event of such resale, any loss suffered as a result thereof;
 - (e) if the Buyer has made any further payments besides those referred to in clause 59(a), retain in satisfaction or part satisfaction of the right of recovery given by sub-clause (d) above, the whole or part of such further payment(s), but without prejudice to any other means of satisfying such a right.
- (14) If any equipment of any kind on board the Vessel is on hire, it shall not be included in the sale, but the Buyer shall make his/her own arrangements in respect of such equipment with its Owners, and, if he/she fails to do so, he/she shall indemnify [name of seller] in respect of any claims arising from such a failure.

Tender of Sale and Purchase

WE,
Of [address]
(if the above address is not in Malaysia then the following information must be given)
whose agent(s) in Malaysia is/are
of [agent's address]
hereby offer to purchase at the price of Malaysian Ringgit the [name of vessel] now lying at [...] and at present under the arrest of the High Court of Malaya at [] This offer is to purchase the said [name of vessel] on the terms of [name of seller]'s Conditions of Sale. We recognise that [name of seller] is not bound to accept any offer.

Signed:
Dated:
Witnessed:

Practice Direction No. 1 of 2012 has been issued by the Office of the Chief Registrar of the Federal Court on 21 February 2012.

The Practice Direction refers to the establishment of the Admiralty Court in Kuala Lumpur in 2010 and states the purpose of its establishment to facilitate the efficient administration of admiralty claims in one centralized court. The centralization of information on admiralty and maritime claims is another reason for the centralization of the Admiralty Court in Kuala Lumpur.

The Practice Direction does not have the effect of removing the local jurisdiction of the High Courts of Malaya and Sabah and Sarawak to hear

MALAYSIA

and determine admiralty and maritime claims. Instead, the Practice Direction allows for an admiralty action occurring anywhere in East or West Malaysia to be filed in the Admiralty Court in Kuala Lumpur subject to the consent of all parties.

The Practice Direction sets out all maritime claims that the High Court may hear under section 24(b) of the Courts of Judicature Act 1964 read with the Supreme Court Act 1981 (UK), including claims relating to the carriage of goods by sea; limitation of maritime claims; disputes relating to marine insurance, reinsurance, shipbuilding agreements, the sale and purchase of ships; claims arising out of marine pollution; marine or shipping-related agency, freight and multimodal transport and warehousing of goods at any port in West Malaysia; claims relating to financing and documentary credit for the carriage of goods by sea; death, personal injury, loss or damage arising out of marine activity; claims arising from any breach of marine rules and regulations; claims pertaining to seamen, including wages and their contracts of service; applications in relation to maritime arbitrations; and appeals in respect of maritime claims determined by the subordinate courts.

When any admiralty writ, warrant of arrest, instrument of release or caveat is filed in any High Court, the Registrar of that High Court will notify the Registrar of the Admiralty Court in Kuala Lumpur within a prescribed time together with a copy of the document so filed. The Admiralty Court is required to maintain a Register of Maritime Claims Cause Book complete with details of all admiralty claims, warrants and caveats filed before the High Courts. This information is to be made available on the judiciary's website: <http://efiling.kehakiman.gov.my/>.

Warrants of arrest may be heard by a judge or registrar and will be valid from twelve months from the date of issue. All admiralty and maritime claims, whether in rem or in personam can now be filed by electronic filing and in urgent matters, once filed, the Registrar is to be informed as soon as the documents are filed. The arresting party is to attend court on the day of filing with printed copies of the documents filed for issuance. A registrar will be on duty, after hours, to attend to urgent arrests. The Deputy Registrars and Senior Assistant Registrars will act as the Admiralty Court's Sheriff and Assistant Sheriffs, respectively, and will execute and serve all warrants of arrests and writs, orders, notices, commands and other Court processes.

The arresting party is to appoint a shipping agent to assist the Sheriff and Assistant Sheriff in the preservation, management or control of the property under arrest. The arresting party shall pay for all expenses incurred by the shipping agent. The shipping agent shall lodge daily reports on the management and control of the property under arrest to the Sheriff or Assistant Sheriff. All expenses reasonably and properly incurred by the shipping agent and paid for by the arresting party shall stand as the Sheriff's expenses.

Upon the arrest of the vessel, the repatriation of the master and/or crew of the vessel will take place with consultation with the Sheriff or Assistant

Sheriff once an appropriate Court order is obtained. A substitute Master and crew may be engaged for the ship in such instance. These costs will be borne by the arresting party and will stand as the Sheriff's expenses.

Where a warrant of arrest is executed and no further steps are taken in the proceedings, the Sheriff or Assistant Sheriff may direct the arresting party to take necessary measures under the rules of court. Where there is default in carrying out these steps, the property arrested shall be released.

Once arrested, a vessel cannot continue to work without the Sheriff's express permission. If the arrest took place during loading, all loading operations must cease on direction by the Sheriff or Assistant Sheriff. However, where cargo (which is not under arrest) is being unloaded at the time of arrest, the Sheriff or Assistant Sheriff can allow the unloading to continue. In such instance, the Sheriff or Assistant Sheriff can require the ship, or their agents, to furnish a letter of indemnity with regard to the Sheriff's liability if there should be an accident during unloading. If unloading is not permitted to continue, the person entitled to immediate possession of the cargo can have the cargo discharged without having to intervene in the action. This can be done by requesting the Sheriff or Assistant Sheriff to take appropriate steps for the discharge of the cargo. If the Sheriff, Assistant Sheriff or the arresting party considers the request reasonable, an application may be made to Court for the appropriate orders. As an alternative, the cargo owners can intervene in the court action to have the cargo discharged at their cost.

Where the ship is not under arrest but the cargo on board the ship is and the shipowners wish to have the cargo discharged, they may, without intervening in the court action, request the arresting party, the Sheriff or the Assistant Sheriff to take steps to have the cargo discharged. If a sufficient undertaking to bear all costs is given in conjunction with this request, an application may be made to Court by the Sheriff, Assistant Sheriff or the arresting party to have the cargo discharged.