

SHIP ARREST

New Arbitration Amendment Act 2011 active in Malaysia



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Malaysia's maritime law just went through a drastic change through an amendment in their Arbitration Act 2005. The law now enables ship arrest in Malaysian waters as security for a maritime arbitration claim.

This change in the Malaysian maritime law was on the books for a while, but now with the Admiralty Court in place, this is a welcome addition. The Arbitration Amendment Act 2011 was activated on 1 July 2011 by the Minister of Law. It amends the principal legislation, the Arbitration Act 2005. This amendment Act enables Malaysian law firms to process ship arrest cases with greater ease. Malaysia has become the latest country in the South East Asia region to enact this law.

The amendments introduced via s.10 and s.11 of the amending Act in effect widens the admiralty jurisdiction and authority of the High Court in the context of arbitral proceedings. Previously a writ in rem can only be issued if a maritime claim falls under s 20 (2) read together with s 21 (2) to (4) of English Supreme Court Act 1981. The dispute must be litigated in Court. The Court can only issue the warrant of arrest for the purposes of obtaining security for an action in rem suit. Arbitration claims were not recognised simply because it was not an in rem action. In rare circumstances, like in the case of the *Rena K*, it was possible to arrest provided the claimant could prove that the Defendant shipowner would not have the financial capacity to satisfy an arbitration award. Even in those circumstances, a stay of the in rem suit would be made to enable the claimant to get his arbitration award.

Subsequently, the in rem suit would be re-activated later to enforce against the security. Lawyers were not able to process these exceptional cases with ease as they could be complex.

Now that the Arbitration Amendment Act 2011 is in force, a claimant must still meet the maritime claim criteria but the law clearly permits him to arrest a ship as security for a maritime arbitration claim.

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According to the amended s. 10, in the event the admiralty action in rem is stayed, the court may order the retention of the property arrested or it may order that an alter-

nate equivalent security be provided to stand as security for the satisfaction of any local or foreign arbitration award. It remains to be seen whether a stay application must be made in order for the Court to give full effect to the provisions. But it is submitted that the Malaysian court ought to give a wide and purposive meaning to s.10 to order the retention of property or release on provision of adequate alternative security to stand despite the absence of a stay application.

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