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The Legal 500 Country Comparative Guides

Malaysia

SHIPPING

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This country-specific Q&A provides an overview of shipping laws and regulations applicable in Malaysia.

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MALAYSIA
SHIPPING

1. What system of port state control applies in your jurisdiction? What are their powers?

In Malaysia, the sea ports have been privatized pursuant to the Port (Privatisation) Act 1990. Malaysian sea ports are now controlled and governed by private entities *qua* port authorities. The Schedule to the Port (Privatisation) Act 1990 provides the port authorities for each port in Malaysia, and the relevant Act governing each port authority. In brief, the port authorities are now the facilitator, regulator and owner of their relevant ports.

Section 8 of the Port (Privatisation) Act 1990 provides that a port authority is given the right to exercise regulatory functions in respect of the conduct of the port activities, the running of port facilities and services in the port by licensed operators. This includes the determination of the performance standards, standards of facilities and services, and the enforcement of standards for services provided by the licensed operators.

2. Are there any applicable international conventions covering wreck removal or pollution? If not what laws apply?

Malaysia has accepted several significant international conventions relating to wreck removal and pollution.

Wreck Removal

a. The Nairobi International Convention On The Removal Of Wrecks (Nairobi Convention) 2007 (WRC 2007) (accepted by Malaysia on 14.4.2015).

Pollution

a. The International Convention On Civil Liability For Oil Pollution Damage 1992 (CLC 1992) (accepted by Malaysia on 9.6.2005).

b. The International Convention On Civil Liability For Bunker Oil Pollution Damage 2001 (BCC 2001) (accepted by Malaysia on 12.2.2009).

c. The International Convention On The Establishment Of An International Fund For Oil Pollution (1992) (accepted by Malaysia on 9.6.2005).

d. United Nations Convention On The Law Of The Sea, 1982 (accepted by Malaysia on 14.10.1996).

e. International Convention For The Prevention Of Pollution From Ships, 1973 as modified by the Protocol of 1978 (MARPOL 73/78). The Annexes were accepted on various dates between 1992 and 2005.

f. International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC), 1990 (accepted by Malaysia on 30.10.1997).

3. What is the limit on sulphur content of fuel oil used in your territorial waters? Is there a MARPOL Emission Control Area in force?

Pursuant to the Malaysia Shipping Notice No. MSN 06/2019 dated 11.11.2019 issued by the Marine Department of Malaysia, the sulphur content of any fuel oil used on board ships shall not exceed 0.5% m/m on and after 1.1.2020 (for ships operating outside an emission control area). This is in compliance with Regulation 14.1, Annex VI of the International Convention For The Prevention Of Pollution From Ships, 1973 as modified by the Protocol of 1978 (MARPOL 73/78), of which Malaysia is party to.

There is no MARPOL Emission Control Area in force in Malaysia.

4. Are there any applicable international conventions covering collision and salvage? If not what laws apply?

The Convention on the International Regulations for Preventing Collisions at Sea (COLREG) 1972, as

amended, is in force in Malaysia by virtue of the Merchant Shipping (Collision Regulations) Order 1984.

Malaysia is not a signatory to the Salvage Convention 1989. Malaysian Courts are guided by the English common law in this area through the application of English law *vide* the Civil Law Act 1956. In ***Fordeco Sdn Bhd v PK Fertilisers Sdn Bhd*** *[2019] MLJU 596*, the Court reiterated the law as such is based on common law.

There are express provisions in the Merchant Shipping Ordinance 1952 that relate to salvage and wrecks (Part X).

Additionally, the admiralty jurisdiction of the High Court includes the jurisdiction to hear and determine any claims under any contract for and in relation to salvage services or in the nature of salvage (section 20(2)(j) of the United Kingdom Senior Courts Act 1981).

5. Is your country party to the 1976 Convention on Limitation of Liability for Maritime Claims? If not, is there equivalent domestic legislation that applies? Who can rely on such limitation of liability provisions?

The Convention on Limitation of Liability for Maritime Claims 1976 as amended by the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims 1976 (Protocol of 1996) has force in Malaysia and applies to the territorial waters and the exclusive economic zone of West Malaysia and the Federal Territory of Labuan. Part IX of the Merchant Shipping Ordinance 1952 (Sixteenth Schedule) gives statutory force to the same.

The insurers for liability of claims, shipowners, salvors, and any person whose act, neglect or default the shipowner or salvor is responsible for are entitled to limit their liability. A shipowner includes a charterer, manager and operator of a ship.

6. If cargo arrives delayed, lost or damaged, what can the receiver do to secure their claim? Is your country party to the 1952 Arrest Convention? If your country has ratified the 1999 Convention, will that be applied, or does that depend upon the 1999 Convention coming into force? If your country does not apply any Convention, (and/or if your country allows ships to be detained other than by formal arrest) what rules apply to permit the detention of a ship, and what limits are there on the right to arrest or detain (for example, must there be a "maritime claim", and, if so, how is that defined)? Is it possible to arrest in order to obtain security for a claim to be pursued in another jurisdiction or in arbitration?

The receiver may initiate *In Rem* proceedings before the Malaysian Admiralty Court to arrest the offending vessel as security for its claim.

Malaysia is not a party to the International Convention Relating to the Arrest of Sea-Going Ships 1952 ("**the Arrest Convention 1952**"). Neither is Malaysia a party to the International Convention of Arrest of Ships 1999 ("**the 1999 Convention**"). However, the salient provisions of the Arrest Convention 1952 are referenced in Malaysian law by reason of section 24(b) of the Courts of Judicature Act 1964, which stipulates that the civil jurisdiction of the Malaysian High Court shall be the same jurisdiction and authority as the English High Court under the United Kingdom Supreme Court Act 1981 (now known as the United Kingdom Senior Courts Act). Hence there is a referential application in Malaysia of the admiralty sections of the United Kingdom Supreme Court Act 1981 (now known as the United Kingdom Senior Courts Act), particularly sections 20 to 24 thereof. The admiralty jurisdiction of the High Court of Malaysia permits the arrest of vessels as security for an admiralty claim.

It is not permissible to arrest a vessel in order to obtain security for a claim to be pursued in another jurisdiction. The Malaysian Admiralty Court in issuing a warrant of arrest against the vessel exercises *in rem* jurisdiction over proceedings pending before it.

It is possible to arrest a vessel in order to obtain security for a claim to be pursued in arbitration. Section 10(2A) of the Arbitration Act 2005 is to be read with Section 11(1)(e) thereof pursuant to which a party may, before or during arbitral proceedings, apply to the High Court for an order to secure the amount in dispute by way, *inter alia*, an arrest of property, bail or other security. Of particular relevance to maritime arbitration is the order to secure the amount in dispute by way of an arrest pursuant to the admiralty jurisdiction. Such powers are also available in respect of an international arbitration where the seat of arbitration is not in Malaysia (section 10(4)).

7. For an arrest, are there any special or notable procedural requirements, such as the provision of a PDF or original power of attorney to authorise you to act?

In initiating an *in rem* claim which leads to an arrest of a vessel, solicitors having conduct of the matter will usually require an executed warrant to act from their client as a verification document that the solicitor is representing the said client *qua* claimant.

With that warrant to act, the solicitors, on behalf of their client *qua* claimant, will be able to move the Court pursuant to Order 70 Rule 2 of the Malaysian Rules of Court 2012 ("**ROC 2012**") for the issuance of a Writ in action *in rem* against a vessel. Once the Writ in action *in rem* is issued, the claimant could then further move the Court pursuant to Order 70 Rule 4 of the ROC 2012 for a warrant to arrest the vessel.

Before the warrant to arrest the vessel is issued, the claimant is required to file the following documents in Court:

1. a *praecipe* for the issuance of the warrant to arrest;
2. an affidavit leading up to the warrant of arrest which serves as the supporting affidavit;
3. an undertaking to pay the Sheriff's fees and expenses in connection with the arrest.

8. What maritime liens / maritime privileges are recognised in your jurisdiction? Is recognition a matter for the law of the forum, the law of the place where the obligation was incurred, the law of the flag of the vessel, or another system of law?

In ***The Owners and/or Demise Charterers of the Ship or Vessel 'Edzard Schulte' v The Owners and/or Demise Charterers of the Ship or Vessel 'Setia Budi'*** *[2023] 12 MLJ 53*, the Malaysian Admiralty Court observed that salvage, damage done by the ship, seaman's and master's wages, bottomry, and master's disbursements are deemed as maritime claims that give rise to maritime liens.

9. Is it a requirement that the owner or demise charterer of the vessel be liable in personam? Or can a vessel be arrested in respect of debts incurred by, say, a charterer who has bought but not paid for bunkers or other necessaries?

The Malaysian Admiralty Court only seizes in rem jurisdiction over an admiralty claim when the claim falls under section 24(b) of the Malaysian Courts of Judicature Act 1984 read together with sections 20 to 24 of the United Kingdom Supreme Court Act 1981 (now Senior Courts Act 1981) ("**SCA 1981**").

Section 20(1)(a) of SCA 1981 stipulates that the admiralty jurisdiction of the High Court shall, *inter alia*, include the jurisdiction to hear and determine any questions and claims mentioned in subsection (2). The questions and claims reproduced under subsection (2) are:

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 received by a ship;

e. any claim for damage done by a ship;

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 any other person 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;

j. any claim— i. under the Salvage Convention 1989; ii. under any contract for or in relation to salvage services; or iii. in the nature of salvage not falling within (i) or (ii) above; or any corresponding claim in connection with an aircraft;

k. any claim in the nature of towage in respect of a ship

or an aircraft;

l. any claim in the nature of pilotage in respect of a ship or an aircraft;

m. any claim in respect of goods or materials supplied to a ship for her operation or maintenance;

n. any claim in respect of the construction, repair or equipment of a ship or in respect of dock charges or dues;

o. 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);

p. any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;

q. any claim arising out of an act which is or is claimed to be a general average act;

r. any claim arising out of bottomry;

s. 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.

Pursuant to section 20(2)(m) SCA 1981, any claim in respect of goods or materials supplied to a ship for her operation or maintenance falls within the admiralty jurisdiction of the Malaysian Admiralty Court. Therefore, debt incurred by unpaid bunkers and/or other supplies for a vessel may lead to an *in rem* action. As elaborated above, if an in rem action is initiated against the vessel, the vessel may be arrested.

Section 21(4) SCA 1981 provides that in respect of a claim for under section 20(2)(m) SCA 1981, where the claim arises in connection with the ship and where the person who would be liable in the claim in an action *in personam* (the relevant person) was, when the cause of action arose, the owner or charterer of, or in possession or in control of the ship, then an action in rem may be brought in the High Court against:

a. that ship, if at the time when the action is brought the relevant person is either the beneficial owner of that ship as respects all the shares in it or the charterer of it under a charter by demise; or

b. any other ship of which, at the time when the action is brought, the relevant person is the beneficial owner as respects all the shares in it.

10. Are sister ship or associated ship arrests possible?

Malaysian admiralty law allows a sister ship to be arrested, provided at the time when the *in rem* action is brought, the relevant person i.e. the person who would be liable in the claim in action *in rem*, was the beneficial owner as respect of all shares in it.

However, it should be noted that only one ship – either the sister ship or the ship in respect of which the claim arises – may be arrested in respect of any one cause of action.

11. Does the arresting party need to put up counter-security as the price of an arrest? In what circumstances will the arrestor be liable for damages if the arrest is set aside?

An arresting party is not required to put up counter-security as the price of an arrest. The arresting party, however, will have to give an undertaking to the Court to pay the Sheriff's fees and expenses in connection with the arrest as a precondition for the issuance of a warrant of arrest. Pursuant to Practice Direction 2/2007 issued by the Admiralty Court, a court deposit of RM15,000 towards Sheriff's costs and expenses must be deposited by the arresting party into Court as a pre-condition for the arrest.

In ***Tamina Navigation Ltd v The Owner Of The Cargo Laden On Board The Ship Or Vessel M.T "SWALLOW" (Defendant), Newick Shipping Limited (Interveners)*** *[2003] MLJU 683*, the Court reiterated that the arresting party may be liable for damages if the arrest is set aside where there is *mala fides or* gross negligence as to imply malice on the part of the arresting party.

12. How can an owner secure the release of the vessel? For example, is a Club LOU acceptable security for the claim?

Where a vessel has been arrested, the arresting party *qua* the claimant may issue a demand for security to be furnished for the release of the vessel. The owner may then secure the release of the vessel by furnishing security in response to the demand. Parties can mutually agree on the amount of security to be furnished for the release of the vessel.

Where parties are unable to agree on the amount of security to be furnished, the interested parties may

make an application to the Court for the quantum of the security to be determined judicially. In ***Shell Refining Company (Federation of Malaya) Bhd v Neptune Associated Shipping Pte Ltd (formerly known as Nepture Associated Lines Pte Ltd)*** *[2007] 5 MLJ 84*, the High Court held that in deciding the quantum of security to be proffered, the Court will take into account the reasonably arguable best case of the applicant's principal claim, the reasonably recoverable interest and cost.

A Letter of Undertaking by a Protection & Indemnity Club is generally accepted as security for a claim. This was emphasised in ***The Owner of Ship or Vessel 'Lavela' v The Owner of Ship or Vessel 'Basilia'*** *[2019] 9 MLJ 188*, where it was held that the usage of letter of undertakings by insurance clubs would be a preferred mechanism as an alternative or compromise to an arrest. In ***Sabah Shell Petroleum Co Ltd & Anor v The Owners of and/or any other Person Interested in the Ship or Vessel the ' Borcos Takdir'*** *[2011] 6 MLJ 562* the Court acknowledged that it is common for a defendant to give security by way of undertaking indemnity or guarantee given by a Protection & Indemnity Club.

13. Describe the procedure for the judicial sale of arrested ships. What is the priority ranking of claims?

The arresting party must file an application in Court for the arrested ship to be appraised and sold by the Sheriff. This is known as a judicial sale. Where the application is allowed by the Court, the arresting party will need to file an undertaking in Court to the Sheriff to pay the fees and expenses of the Sheriff on demand, as per Order 70 Rule 22(3) ROC 2012.

The Sheriff will then appoint appraisers to value the arrested ship. The arrested ship cannot be sold at an amount lower than the appraised value. The Sheriff will receive bids or offers for the ship. Once the tender is closed, the ship will be sold to the highest bidder. The proceeds of sale of the ship will then be paid into Court.

Pursuant to Order 70 Rule 21 ROC 2012, and where the Court has ordered for the sale of the arrested ship, any party who has obtained judgment against the arrested ship or the proceeds of sale of the vessel may apply for an order for the determination of priority of payment out of the proceeds of sale of the ship.

The priority ranking of claims under Malaysian law is the same as that under English law. In ***Emmanuel E Okwuosa & Ors v Owners of the ship and other persons interested in the ship MV Brihope (Hong Leong Leasing Sdn Bhd, Interveners)*** *[1995] 1 MLJ 676*, the High Court described the order of priorities of distribution of the proceeds of sale as follows:

a. The admiralty sheriff's charges and expenses will be paid out in priority to any other claim. These include the expenses he incurred in effecting the arrest, in maintaining the arrest, for example port dues, the cost of a shipkeeper and any supplies required to maintain the ship whilst under arrest, and any other expenses authorized by the court to enable the ship to be sold for the best possible price. b. After the expenses of the admiralty sheriff have been satisfied, priority is granted to the original arresting party in respect of the costs of his action up to and including the arrest, and the costs of the party who obtained the order for appraisement and sale, up to and including the order for appraisement and sale. c. A claim with a maritime lien ranks first and has priority over all other types of claim. However, the maritime lien attaches to the ship in connection with which the claim arose and so where the claim is enforced by means of the sister ship provision, the claim will not be to enforce a maritime lien, but will be only a statutory right of action in rem and will have the lesser priority accorded such claims. d. The claim of a mortgagee is postponed to a claim with a maritime lien whether arising before or after the mortgage, and will also be subject to any claim secured by the issue of an admiralty writ in rem issued prior to the date of the mortgage even if such claim does not carry a maritime lien. e. The claim of others entitled to proceed by admiralty action in rem will be subject to all maritime liens and mortgages, but will have priority over general creditors of the shipowner, except those who have perfected their execution prior to the issue of the writ in rem. f. The claims in personam of creditors of the owner of the res will be last, having no priority. g. The owner of the res is entitled to the balance remaining, if any.

In summary, the prima facie ranking of claims in order of priority is as follows:

a. Statutory claimants, namely through powers conferred by the port legislation of Malaysia on harbour and port authorities to detain and sell ships for unpaid dues. b. Admiralty Court's commission upon judicial sale. c. Admiralty Sheriff's expenses and costs. d. Costs of the producer of the fund (usually arresting party's legal costs). e. Maritime liens (except for possessory liens which accrue before the maritime liens). f. Possessory liens. g. Mortgages. h. Statutory liens ranking *pari passu.*

14. Who is liable under a bill of lading?

How is “the carrier” identified? Or is that not a relevant question?

A bill of lading serves three primary functions, namely:

a. though it is not the actual contract in itself, it provides evidence of the contract terms of carriage.

b. it acts as a receipt for goods that have been loaded onto the vessel.

c. it acts as a document of title to goods.

The Carriage of Goods By Sea Act 1950 (Revised 1994) defines a carrier to include the owner or the charterer who entered into the contract of carriage with a shipper.

The Carriage of Goods By Sea Act 1950 (Revised 1994) recognises a bill of lading as a sea carriage document.

Paragraph 1, Article II to the First Schedule of the Carriage of Goods By Sea Act 1950 (Revised 1994) provides that a carrier is responsible, and shall be liable for, the loading, handling, stowage, carriage, custody, care and discharge of goods pursuant to a bill of lading.

Paragraph 1, Article III to the First Schedule of the Carriage of Goods By Sea Act 1950 (Revised 1994) provides that a carrier is bound to exercise due diligence to make the ship seaworthy, properly man, equip and supply the ship, and make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation.

The liabilities of a carrier are limited under Articles IV, IVbis, V, VI, VII and VIII to the First Schedule of the Carriage of Goods By Sea Act 1950 (Revised 1994). For instance, Paragraph 1, Article IV to the First Schedule of the Carriage of Goods By Sea Act 1950 (Revised 1994) provides that the carrier would not be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier.

Paragraph 3, Article IV to the First Schedule of the Carriage of Goods By Sea Act 1950 (Revised 1994) provides that the shipper may be liable for loss or damage sustained by the carrier or the ship arising or resulting from the act, fault or neglect of the shipper, his agents or his servants.

15. Is the proper law of the bill of lading relevant? If so, how is it determined?

The proper law of the bill of lading is determined by reference to the governing law term stipulated on the reverse of the bill of lading. The governing law of the bill of lading is often identified expressly in the jurisdiction clause of the bill of lading.

The proper law of the bill of lading is relevant as a Court adjudicating a dispute arising out of, and in connection with, the bill of lading, will have to determine the rights and liabilities thereunder by referring to the proper law.

16. Are jurisdiction clauses recognised and enforced?

Jurisdiction clauses are recognised and enforced by the Malaysian Courts. It is axiomatic that parties to the contract are bound by the jurisdiction clause contained in the contract. The Malaysian Court of Appeal in ***Inter Maritime Management Sdn Bhd v Kai Tai Timber Co Ltd, Hong Kong*** *[1995] 1 MLJ 322* held that a party applying to depart from the jurisdiction clause would have to show strong grounds why it should not be compelled to honour the bargain it made with the other party *cum* respondent.

17. What is the attitude of your courts to the incorporation of a charterparty, specifically: is an arbitration clause in the charter given effect in the bill of lading context?

Charterparties, like any other contracts, are given due legal recognition by Malaysian Courts.

The Malaysian Courts do not rewrite contracts that were freely entered into between parties. Instead, Malaysian Courts uphold and give effect to contracts. As such, where a charterparty and/or bill of lading includes a validly incorporated arbitration clause, Malaysian Courts will give effect to the arbitration clause.

However, the arbitration clause in the charter will only apply to a dispute arising out of the charter party itself and cannot be extended to the bill of lading. A general provision in the bill of lading stipulating that the shipment was carried under and pursuant to the terms of the charterparty will not be construed as having incorporated the arbitration clause of the charterparty. (***The “Fuji Hoshi Maru”; United Asian Bank Bhd v M/V Fuji Hoshi Maru, Owners & Ors Interested*** *[1981] 2 MLJ 333*)

18. Is your country party to any of the

international conventions concerning bills of lading (the Hague Rules, Hamburg Rules etc)? If so, which one, and how has it been adopted – by ratification, accession, or in some other manner? If not, how are such issues covered in your legal system?

On 15.7.2021 the Carriage of Goods by Sea (Amendment) Act (2020) (the "**Amendment Act**") and its supplementary Carriage of Goods by Sea (Amendment of First Schedule) Order 2021 (the "**Order**") officially came into force. The Amendment Act and the Order brought into effect the long-awaited changes to the Carriage of Goods by Sea Act 1950 (the "**Principal Act**"), which has been in force since 23.5.1950.

Prior to the amendments coming into force, the Principal Act regulated the carriage of goods by sea in Peninsular Malaysia by adopting the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading ("**the Hague Rules of 1924**"), which was incorporated as the First Schedule in the Principal Act. The main reason for amending the Principal Act is to implement:

a. the "Visby Rules" – the Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading of 23.2.1968; and

b. the "The Hague-Visby Rules" – the Protocol (SDR Protocol) Amending the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading of 25 August 1924 (The Hague Rules), as amended by the Protocol of 23.2.1968 (Visby Rules).

The Hague Rules of 1924 remain in force in relation to the carriage of goods by sea from any port in Sabah or Sarawak to any port whether within or outside Sabah or Sarawak, by reason of section 3(1) of the Merchant Shipping (Applied Subsidiary Legislation) Regulations 1961 and section 2 of the Merchant Shipping (Implementation of Conventions Relating to Carriage of Goods by Sea and to Liability of Shipowners and Others) Regulations 1960 respectively.

19. Is your country party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? If not, what rules apply? What are the available grounds to resist enforcement?

Yes. Malaysia adopted the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards on 5.11.1985. The 1958 New York Convention was adopted by Malaysia with declarations that the Convention will be applied:

a. on the basis of reciprocity, to the recognition and enforcement of arbitral awards made only in the territory of another Contracting State to the 1958 New York Convention.

b. only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under Malaysian law.

In resisting the enforcement of a foreign arbitral award, section 39 of the Malaysian Arbitration Act 2005 provides the following grounds:

a. where a party to the arbitration agreement was under any incapacity.

b. where the arbitration agreement is not valid under the law to which the parties have subjected it, or, failing any indication thereon, under the laws of the State where the arbitral award was made.

c. the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present that party's case.

d. the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration.

e. the award contains decisions on matters beyond the scope of the submission to arbitration.

f. the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of the Arbitration Act 2005 from which the parties cannot derogate, or, failing such agreement, was not in accordance with the Arbitration Act 2005.

g. the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made.

h. the subject-matter of the dispute is not capable of settlement by arbitration under the laws of Malaysia.

i. the arbitral award is in conflict with the public policy of Malaysia, such as where the making of the award was induced or affected by fraud or corruption, or a breach of the rules of natural justice has occurred during the arbitral proceedings or in connection with the making of the award.

20. Please summarise the relevant time limits for commencing suit in your jurisdiction (e.g. claims in contract or in tort, personal injury and other passenger claims, cargo claims, salvage and collision claims, product liability claims).

The principal statute of limitation in force in Peninsular Malaysia is the Limitation Act 1953. The applicable statutes of limitation in Sabah and Sarawak are the Sabah Limitation Ordinance and the Sarawak Limitation Ordinance respectively.

The Limitation Act 1953 prescribes limitation periods in specific cases, contains provisions which seek to extend (sections 24, 24A, 25) or postpone (section 29) the limitation periods in some circumstances or provide for fresh accrual of causes of action (section 26).

The Limitation Act 1953 applies to all causes of action for which a period of limitation is laid down by the Act. The Limitation Act 1953 applies to arbitrations as they apply to an action (section 30(1)).

The Limitation Act 1953 does not apply to actions for which a limitation period is prescribed by or under any other enactment (section 3).

The Contracts Act 1950 expressly provides that an agreement which restricts a party absolutely from enforcing his rights under or in respect of the agreement by the usual legal proceedings before the ordinary tribunals or that which limits the time within which he may enforce his rights is void to that extent (section 29). This was affirmed by the Federal Court in ***CIMB Bank Bhd v Anthony Lawrence Bourke & Anor*** *[2019] 2 CLJ 1*.

Under the Limitation Act 1953, the period of limitation is 6 years from the date the cause of action accrued for actions founded on a contract or on tort (section 6(1)(a)), for actions to enforce a recognisance (section 6(1)(b)), for actions to enforce an award (section 6(1)(c)), actions to recover any sum recoverable by virtue of any written law other than a penalty or forfeiture or of a sum by way of penalty or forfeiture.

An action for account shall not be brought in respect of any matter which arose for more than 6 years before the commencement of the action.

An action may not be brought upon any judgment after the expiration of 12 years from the date which the judgment became enforceable (section 6(3)).

An action to recover any penalty or forfeiture or sum by way of penalty or forfeiture recoverable by virtue of any written law shall not be brought after the expiration of 1 year from the date on which the cause of action accrued.

The periods of limitation do not apply to any cause of action within the admiralty jurisdiction of the High Court, which is enforceable *in rem*, other than an action to recover seamen's wages (section 6(5)(a)), or any action to recover money secured by any mortgage or charge on land or personal property (section 6(5)(b)).

Section 517 of the Merchant Shipping Ordinance 1952 provides that the following legal actions to enforce any claim or lien against a vessel or her owners cannot be maintained unless the legal proceedings are commenced within two years from the date when the damage or loss or injury was caused or the salvage services were rendered:

a. any damage or loss to another vessel, her cargo or freight, or any property on board her.

b. damages for loss of life or personal injuries suffered by any person on board her, caused by the fault of the former vessel, whether such vessel be wholly or partly in fault, or in respect of any salvage services.

Section 10 of the Merchant Shipping (Liability and Compensation for Oil and Bunker Oil Pollution) Act 1994 stipulates that no action to enforce a claim in respect of a liability incurred under section 3 (liability for oil pollution) or section 3A (liability for bunker oil pollution) shall be considered, unless the action is commenced within 3 years from the date the pollution damage occurred or within 6 years from the date of the incident which caused the pollution damage, and where the incident consists of a series of occurrences, the 6 years' period shall run from the date of the first such occurrence.

Section 21 of the Merchant Shipping (Liability and Compensation for Oil and Bunker Oil Pollution) Act 1994 provides that no action to enforce a claim against the International Oil Pollution Compensation Fund shall be considered by a Court in Malaysia unless, within 3 years from the date the pollution damage occurred, the action is commenced, or a third party notice of an action to enforce a claim against the owner of a ship or his guarantor in respect of the pollution damage is given to the Fund. No action to enforce a claim against the Fund shall be considered by a court in Malaysia unless the action is commenced within 6 years from the date of the incident which caused the pollution damage.

Where an *in rem* writ has been issued before the limitation period expires but not served on the vessel, the court may under Order 6 Rule 7 ROC 2012 extend

the validity of the writ for a period not exceeding 6 months at any one time beginning with the day next following that on which it would have otherwise expired. An *in rem* writ may be extended five times.

Section 32 of the Limitation Act 1953 preserves the equitable jurisdiction of the Court to refuse relief on the ground of acquiescence, laches or otherwise.

21. Does your system of law recognize force majeure, or grant relief from undue hardship? If so, in what circumstances might the Covid-19 pandemic enable a party to claim protection or relief?

Pursuant to the principle of autonomy in contract, parties are at liberty to, and generally do, incorporate *force majeure* clauses into their written contracts. The Malaysian Courts will give effect to the terms employed by the contracting parties. Specific legislations do incorporate the *force majeure* provision. For instance, section 19F of the Port Authorities Act 1963 stipulates that a port authority or person duly authorised by the port authority shall not be liable for the loss or destruction of, or damage to, any goods arising from *force majeure* events such as, *inter alia*, fire, flood, act of God, act of war.

The Temporary Measures For Reducing The Impact Of Coronavirus Disease 2019 (COVID-19) Act 2020 was introduced to provide some form of temporary relief to parties affected by the pandemic from their pre-agreed contractual obligations, in that it bars the enforcement of a contractual right against the defaulting party where the default arises due to measures prescribed, made or taken under the said Act to control or prevent the spread of COVID-19. It is however to be noted that that provision is limited in its application to specific categories of contracts, such as construction work contracts, professional services contract lease or tenancy of non-residential immovable property. The said Act was gazetted on 23.10.2020. The Parts under the said Act came into force in different stages across the year 2020 and were in force for various time periods. The last Part of the said Act in operation was Part II, which ended on 22.10.2022.

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