SHIP ARREST IN *MALAYSIA*

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1. Please give an overview of ship arrest practice in your country.

A ship may be arrested in Malaysia where the arresting party's claim falls within the admiralty jurisdiction as set out in sections 20 to 24 of the United Kingdom Senior Courts Act 1981 (UK SCA 1981), as incorporated into Malaysian law through Order 70 of the Rules of Court 2012 and the section 24(b) of the Courts of Judicature Act 1964 (CJA 1964). Any party seeking to arrest a vessel must strictly comply with the procedural requirements under Order 70 of the Rules of Court 2012, which govern admiralty proceedings in the Malaysian High Court. Malaysia has a dedicated Admiralty Court located at the High Court of Malaya in Kuala Lumpur for vessels calling at West Malaysian ports, while applications for vessels calling at East Malaysian ports are heard by the High Courts in Sabah and Sarawak. Under section 10 of the Malaysian Arbitration (Amendment) Act 2011, a ship may also be arrested as security for arbitration proceedings or for the satisfaction of an arbitration award, including in cases where the seat of arbitration is outside of Malaysia.

Malaysia has commenced a phased review of its maritime legislative framework under the Malaysian Maritime Law Revision & Reform Committee (MLRRC), with completion targeted by end–2026. A proposed Admiralty Bill is also being prepared to establish a dedicated maritime court. These developments are prospective and do not alter the existing ship arrest regime described above.

2. Which International Convention applies to arrest of ships in your country?

Malaysia is neither a party to the International Convention relating to the Arrest of Seagoing Ships of 1952 nor the International Convention on Arrest of Ships 1999. However, pursuant to section 24(b) of the CJA 1964, the Malaysian High Court is vested with the same jurisdiction as the English High Court. Therefore, the Malaysian High Court applies the UK SCA 1981 of the Arrest of Sea-Going Ships 1952.

3. Is there any other way to arrest a ship in your jurisdiction?

No.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

No. Why is saisie conservatoire not available under Malaysian admiralty law? Malaysia follows the common law system, and its admiralty jurisdiction is based on the action in rem procedure derived from English law. Unlike civil jurisdictions, Malaysia does not recognise the saisie conservatoire, a preventive measure used in some civil law systems to secure maritime claims before judgement.

5. For which types of claims can you arrest a ship?

Typical maritime claims capable of supporting an arrest fall within the 18 categories of admiralty matters set out in section 24(b) of the CJA 1964, read together with the corresponding provisions of the UK SCA 1981 as adopted into Malaysian practice. These encompass, among others, claims for unpaid seamen's wages, salvage, collision and damage caused by a ship, as well as claims under section 24(b) of the CJA 1964 that give rise to maritime liens.

The claims under section 24(b) of the CJA 1964 are as follows:

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:
g. the owners, charterers or persons in possession or control of a ship; or
h. 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,
i. being an act, neglect or default in the investigation 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;
j. any claim for loss of or damage to goods carried on a ship;
k. 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;
l. any claim in the nature of salvage (including any claim arising by virtue of the application, by or under section 51 of the Civil Aviation Act 1949, of the law relating to salvage to aircraft and their apparel and cargo);
m. any claim in the nature of towage in respect of a ship or an aircraft;
n. any claim in the nature of pilotage in respect of a ship or an aircraft;
o. any claim in respect of goods and materials supplied to a ship for her operation or maintenance;
p. any claim in respect of the construction, repair or equipment of a ship or in respect of dock charges or dues;
q. 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);
r. any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;
s. any claim arising out of an act which is or is claimed to be a general average act;
t. any claim arising out of bottomry;
u. 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.

6. Can you arrest a ship irrespective of her flag?

Yes.

7. Can you arrest a ship irrespective of the debtor?

No. A ship may only be arrested where the person who would be liable on the claim in an action in personam was, at the time the cause of action arose, the owner, bareboat charterer, or the person in possession or control of the vessel, and the vessel sought to be arrested – whether the offending ship or a sister ship – must be beneficially owned by the same debtor both at the time the cause of action arose and at the time the arrest is effected. Accordingly, arrest of a vessel held under associated or related corporate ownership, but not beneficially owned by the debtor, is not permitted.

8. What is the position as regards sister ships and ships in associated ownership?

It is possible to arrest sister ships but not associated ships. Sister ships are ships that when the action is brought are owned by the same person who was the owner of the ship in connection with which the claim arises at the time when the cause of action arose.

9. What is the position as regards Bareboat and Time-Chartered vessels?

It is possible to arrest bareboat chartered vessels, but not time-chartered vessels. This is because a time-charterer does not possess the legal title, possession, or control of the vessel required to sustain an action in rem, holding only the contractual right to the ship's services. Under Malaysian admiralty law, only vessels that are owned or bareboat chartered by the party liable on the claim are subject to arrest.

10. Do your Courts require counter-security in order to arrest a ship?

No. However, a written undertaking by the arresting party to the Sheriff to pay the fees and expenses of the Sheriff while the arrested ship is under his custody, must be furnished as a pre-condition to execution of the Warrant of Arrest. In addition, a Court deposit of RM 15,000 must be made prior to issuance of the warrant of arrest.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Maritime claims depend on the vessel's ownership. A ship can only be arrested if its owner at the time the cause of action arose remains the owner at the time of arrest. Maritime liens, however, attach to the vessel and may be enforced despite a subsequent change of ownership, allowing a claimant to issue a claim and arrest the ship under the same procedure.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes, Malaysia recognizes maritime liens pursuant to section 24(b) of the CJA 1964, which incorporates English admiralty principles into municipal law. Such liens attach to the vessel itself and rise within the traditional categories: damage done by a ship, salvage, seamen's wages, master's wages and disbursements, and bottomry. Malaysia has not adopted an international convention that alters these categories.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

A Warrant of Arrest can generally be obtained quickly once all claim documents are in order and the supporting affidavit has been duly affirmed or sworn. Subject to the receipt of all relevant documentation, the application to the court may be filed within a matter of hours. The timing of the actual arrest depends on the availability of local bailiffs in the area where the vessel is located, but in practice, the arrest is typically effected within 24 hours of the warrant being issued.

14. Do you need to provide a POA or any other documents of the claim to the Court?

There is no requirement for a POA to be furnished. However, the claim documents must be furnished. Prior to the arrest, the arrestor should determine whether there is a caveat against arrest in force against the ship in question.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

All court documents including the affidavit leading to the arrest can be filed electronically. All relevant documents must be filed with the court before the warrant of arrest can be issued. Essential filings include the writ in rem, statement of claim, affidavit supporting the arrest, and all supporting evidence. A Power of Attorney is not required to instruct local counsel, although it is commonly requested from foreign clients. Domestic documents generally do not require notarization, but any translations must be certified by a Notary Public. Where the deponent resides outside Malaysia, the affidavit must be affirmed before a Notary Public (for Commonwealth countries) or a Consular Officer at the Malaysian Consulate (for non-Commonwealth countries). Certification or apostille is not required, as Malaysia is not a party to the Hague Apostille Convention.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

The court's acceptance of jurisdiction will depend on the facts. If the claim arises under a contract that contains a valid exclusive foreign jurisdiction clause, the Malaysian proceedings may be stayed in favour of the nominated foreign court. In other circumstances, the Malaysian courts will generally accept jurisdiction.

17. What is the procedure to release a ship from arrest?

File into Court the release papers i.e. Praecipe for Release and Release Order, and once issued, serve on the Vessel, Marine Department and Immigration.

18. What type of security needs to be placed for the release?

Bail bond, letter of undertaking from a Protection and Indemnity (P&I) Club or a local bank guarantee.

19. Does security need to cover interest and costs?

Yes.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

Yes.

21. How long does it take to release the ship?

Within the day, depending on what time the Release Order is obtained.

22. Is there a procedure to contest the arrest?

Yes.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

Upon arresting the ship and serving the Writ of Summons on the ship, time starts running under the timetable/procedure set down by the Rules of Court 2012 and the claimants can follow the timelines.

24. Do the Courts of your country acknowledge wrongful arrest?

Yes, but only where the arrest of ship is carried out in circumstances where there is mala fides or gross negligence (i.e. crassa negligentia) as to imply malice on the part of the arresting party which results in damage to the owner of the arrested property.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Yes. A corporate veil may be lifted if there are special circumstances which indicate the presence of a faced or sham set up with the object of perpetrating fraud or deception.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

Yes, the court may order that a ship be sold while an action is pending, but only where there are sufficient grounds. The court will consider whether the security represented by the vessel is likely to be progressively eroded by ongoing maintenance expenses and port charges if she remains under arrest. Other relevant factors include the vessel's market value, rate of depreciation, any deterioration in condition, expected delay before trial, the quantum of claims compared with the vessel's value, and the timing and practicability of the proposed sale. The sale procedure typically takes several months as it involves obtaining the court's order, serving the owner, and implementing the sale protocol laid down by the court.

**Rahayu Abd Ghani* is the Principal Partner of Rahayu Partnership. The firm is part of the Joseph Tan Jude Benny (JTJB) GlobalNetwork. Rahayu graduated from the University of Newcastle-upon-Tyne with a Bachelor of Laws Honours Degree in 1996 and upon completing her Certificate in Legal Practice and being called to the Malaysian Bar in 1999, Rahayu started her practice in Messrs L.Y.Leong & Partners, Subang Jaya where she gained experience specializing in shipping, admiralty and insurance cases. She has been exposed to a full range of shipping, admiralty and insurance cases both contentious and non-contentious.*

She also handles civil, corporate and commercial cases. Her exposure includes: project financing; ship financing and registration; ship sale agreements and shipbuilding contracts; ship arrests for all types of claim; charter party and bill of lading disputes; marine insurance claims; arbitration; and shipping litigation.