

Legal Update

Securing Maritime Claims Through Ship Arrest in Malaysia

While there is no publicly available official annual statistic recording the precise number of vessels arrested in Malaysian territorial waters, available public legal commentary nevertheless suggests that Malaysian admiralty courts are seeing an increase in the number of warrants of arrest in connection with maritime claims in the country. Globally, detentions of vessels and port state control interventions are rising, in part driven by stricter environmental enforcement, complex cargo tracking and geopolitical trade scrutiny.

With the amount of vessel arrests increasing in Malaysia, it is essential that shipowners have a strong understanding of the procedures governing the arrest of vessels in Malaysia. To this end, the team at TSL Legal have put together a brief overview detailing the process of arresting a vessel in Malaysia.

In rem nature of maritime claims and vessel arrest mechanism

Maritime claims are unique in the sense of the *in rem* nature of the actions. An action in rem is essentially an action against the *res*, i.e., the vessel. It comes with various procedural advantages in comparison to ordinary actions in personam, by virtue of a specialised arrest mechanism for the claimant to arrest the vessel.

The arrest mechanism provides various benefits for a claimant. For instance, once a vessel is arrested, the shipowner would be compelled to appear and defend the action, assuming the role as the defendant. In most cases, security would be provided by the shipowner to secure the release of the vessel. However, even if no security is given, the arrested vessel can be sold by way of judicial sale, and the proceeds can be used to pay off the claimant after judgment has been obtained.

Essentially, the claimant's claim can be secured before judgment is even obtained. There is no need to look to the defendant personally for enforcement to recover the claim.

Due to this procedural advantage accorded by the arrest mechanism, it is common for parties to a maritime claim to arrest the relevant vessels as the first steps of the proceedings.

1. Arresting a maritime vessel in Malaysia

In order to arrest a vessel in Malaysian territorial waters, a claimant must first bring its claim within the admiralty jurisdiction of the relevant Malaysian High Court. Currently, this is derived directly from the law of England and Wales, specifically the *Senior Courts Act 1981* (“**SCA**”), by virtue of section 24(b) of the *Malaysian Courts of Judicature Act 1964* (“**CJA**”). This means that reference must be made to the SCA when determining the scope of the Malaysian High Court’s admiralty jurisdiction.¹

Subject Matter Requirement

Pursuant to section 20 of the SCA, the subject matter of the claim must fall within one of the categories of claims as provided for under section 20(2), which can be summarised in brief as follows:

- (a) Claims for possession or ownership of a ship;
- (b) Claims between co-owners regarding the possession, employment or earnings of a ship;
- (c) Claims in respect of a mortgage (usually by a bank mortgagee) of or charge on a ship or any share;
- (d) Claims for damage received by a ship;
- (e) Claims for damage done by a ship (usually due to a collision at sea or allision with port infrastructure);
- (f) Claims for loss of life or personal injury;
- (g) Claims for loss of or damage to goods carried in a ship;
- (h) Claims relating to the use or hire of a ship;
- (i) Claims for salvage, towage, pilotage;
- (j) Claims for goods or materials supplied to a ship for her operation or maintenance;
- (k) Claims in respect of the construction or repair of a ship or for dock charges or dues;
- (l) Claims by the crew for wages or for disbursements made on account of a ship;
- (m) Claims arising from bottomry; or
- (n) Claims arising from forfeiture or condemnation of a ship or goods.

¹ On 13 July 2026, the *Admiralty Jurisdiction Bill* was tabled for first reading in the Parliament of Malaysia. Once passed, the Bill is expected to replace the reliance on the provision of the SCA with Malaysia’s own domestic statutory framework.

Ownership Requirement

Generally², in addition to fulfilling the subject matter requirement, the claimant must fulfil another requirement with regard to the ownership of the target vessel under section 21 of the SCA.

Pursuant to section 21(4)(a) and (b) of the SCA, it must first be shown that:

- (a) the claim arises in connection with a vessel; and
- (b) when the right to claim arose, the person who would be liable on the claim, or in other words, the defendant (“**Relevant Person**”) was either the owner, the charterer of, or in possession or control of the vessel.

Once the requirements under section 21(4)(a) and (b) above are fulfilled, an action *in rem* may then be brought against (i) the vessel directly involved or (ii) any other ship that is a sister vessel. The respective requirements are as follows:

Against the vessel directly involved

- (a) at the time when the action is brought, the Relevant Person was either the beneficial owner of the vessel for all shares in the vessel, or the charterer of it under a charter by demise.

Against any other vessel /sister ship

- (b) at the time when the action is brought, the Relevant Person is the beneficial owner of the other vessel, which will then be considered as the sister ship.

Locality Requirement

Finally, it is also important to establish that the vessel sought to be arrested is within Malaysia's territorial waters.

For admiralty jurisdiction to be exercised over the vessel, Malaysia's territorial waters extend up to 12 nautical miles from the applicable statutory baselines. Malaysia's *Territorial Sea Act 2012* sets out 12 nautical miles as the breadth of the territorial sea throughout Malaysia's 13 states and three federal territories.

² Except any question as to the possession or ownership of the vessels, claims in respect of a mortgage of or charge on a ship, claim for forfeiture or condemnation of a ship or goods, or a claim of maritime liens.

Malaysian waters also include the internal waters, territorial sea, continental shelf and its exclusive economic zone.

2. Procedures of maritime arrest in Malaysia

The procedure governing admiralty claims in Malaysia, including a vessel arrest, is provided for under *Order 70 of the Rules of Court 2012* (“**ROC 2012**”).

An arrest is effected by the issuance of a valid warrant of arrest. However, before an arrest can be applied, the admiralty action must first commence. A writ to initiate an action *in rem* must first be issued, and a *praecipe* for service of the writ *in rem* be filed. In addition, a search must be made in the caveat book to determine whether there is a caveat against arrest in force with respect to the vessel to be arrested.

Once the prerequisites above have been cleared, the following would need to be prepared:

- (a) The Warrant of Arrest in Form 147;
- (b) A Notice of Application for an arrest hearing;
- (c) The Affidavit leading to warrant of arrest;
- (d) The Praecipe for Warrant of Arrest;
- (e) The Particulars of Property and the Undertaking to Meet Arrest Expenses; and
- (f) A Court Deposit of RM15,000 must be paid as a deposit for the Sheriff’s towards the Sheriff’s costs and expenses.

If the application is of an urgent nature, a Certificate of Urgency must also be filed with the court. A Certificate of Urgency is a formal legal documentary request to a court to hear a motion or dispute outside of their normal scheduling. Typically, a Certificate of Urgency is utilised in actions like the emergency arrest or release of a vessel.

Of particular importance is that the affidavit leading to arrest must contain such particulars as required under Order 70 rule 4 (6), (7) and (8) of the ROC 2012, which, among other things, include:

- (a) the nature of the claim or counterclaim in respect of which the warrant is required and that it has not been satisfied;
- (b) the nature of the property to be arrested and, if the property is a ship, the name of the ship and the port to which she belongs;
- (c) whether the ship against which the action is brought is the ship in connection with which the claim in the action arose;

- (d) that in the belief of the deponent, the Ownership Requirement above has been fulfilled, and the grounds for such belief;
- (e) the nationality of the ship against which the action is brought and that the notice under Order 70 Rule 4(4)³ has been sent; and
- (f) the amount of security sought, if any.

Once all the necessary paperwork is in order, the arresting party should file them and notify the Sheriff by telephone that the documents have been filed. Thereafter, a hearing may be fixed before the Admiralty Registrar to hear the arrest. The hearing is generally held *ex parte*, which means without the attendance of the opposing party, due to the urgency of arrests.

Once the Writ and Warrant of Arrest are issued, they would usually be executed/served by affixing them for a short time to a mast or another suitable part of the vessel's superstructure. Upon their removal, copies of both documents must be left affixed in a sheltered and conspicuous part of the vessel. Copies of these documents should also be delivered to the relevant maritime authorities, including the Malaysian Marine Department, the Malaysian Maritime Enforcement Agency, the relevant port authority, the Malaysian Immigration Department and the Royal Malaysian Customs Department.

Thereafter, the Sheriff will file an affidavit of service of the writ *in rem* and execution of the Warrant of Arrest within two days.

3. Consequences of a maritime arrest

The arrest procedure would generally be considered completed once the Writ and Warrant of Arrest have been successfully served. Thereafter, the vessel would come under the care and custody of the Sheriff, although possession is not transferred. This would remain until the vessel is released from arrest or judicially sold.

Upon the execution of the arrest warrant, the Sheriff may apply to the court for directions with respect to the arrested property, and may seek an omnibus order to, among other things:

- (a) take such measures as to preserve the vessel, machinery, equipment or property in safe and satisfactory custody;

³ *Except with leave of the Court, a warrant of arrest shall not be issued in an action in rem against a foreign ship belonging to a port of a State having a consulate in Malaysia, being an action for possession of the ship or for wages, until notice that the action has been begun has been sent to the consul.*

- (b) move the ship up to five nautical miles within the limits of the port in which she is lying; and
- (c) supply victuals, fuel and water to the crew.

Any party interested in the vessel and wishes to apply for a release may then enter appearance in the suit and apply for its release by furnishing security to the claim initiated.

4. Conclusion

The arrest mechanism is a powerful procedure in maritime claims in Malaysia and across the world.

It allows a claimant to secure its claim even before obtaining a court judgment. Once a vessel is arrested, the vessel will be prevented from continuing its voyage, which would usually result in delay and lead to demurrage claims against the shipowner or charterer.

Both the substantial and procedural requirements for arrest must be carefully observed to avoid any counterclaim for wrongful arrest by the shipowner or charterer.

Further information

Should you have any questions regarding maritime arrests in Malaysia, please contact the team at TSL Legal:

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