



# ICMA XXI RIO DE JANEIRO MARITIME ARBITRATION IN MALAYSIA 2020 AND BEYOND

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# Malaysian Maritime History

Malaysia is placed across one of the world's most coveted and prosperous body of water, the Straits of Malacca. It has a celebrated history.

Malaysian seas have witnessed the hordes of Empires past, from the galleons of Imperial Portugal to the ferocious frigates of Great Britain fighting and dying to control it.



# Malaysian Maritime and Trade Industry

Portuguese orientalist, Tome Pires once declared that

“..whoever is Lord of Malacca has his hand on the throat of Venice.”



## Malaysian Trade Facts

Malaysia is the 19th largest export economy in the world and the 25th most complex economy according to the Economic Complexity Index (ECI).

In 2017, Malaysia exported \$263B and imported \$197B, resulting in a positive trade balance of \$66.4B. In 2017 the GDP of Malaysia was \$314B and its GDP per capita was \$29.4k.



# Malaysian Trade Facts

The top exports of Malaysia are

1. Integrated Circuits (\$55.7B)
2. Refined Petroleum (\$18B)
3. Office Machine Parts (\$11.1B)
4. Petroleum Gas (\$10.1B)
5. Palm Oil (\$9.9B)



# Malaysian Trade Facts

The top export destinations of Malaysia are

1. China (\$42.5B)
2. Singapore(\$35.7B)
3. United States (\$33.1B)
4. Japan (\$17.8B)
5. Hong Kong(\$13.6B)

The top import origins are China (\$38.1B), Singapore (\$28.4B), the United States (\$14.7B), Japan (\$13.4B) and Other Asia (\$12.4B).

Malaysia borders Brunei, Indonesia and Thailand by land and the Philippines, Singapore and Vietnam by sea.



# Malaysian Maritime Industry

However, in recent times, Malaysian shipping has seen a decline.

In terms of statistics:

- ✓ Malaysian shipowners own 662 merchant ships, of which 162 vessels were flagged outside Malaysia.
- ✓ Our ships only account for 1.02% of the world fleet and ranked no 22 in the world fleet size ranking.
- ✓ Around 55% of Malaysian owned vessels are made up of smaller coastal and offshore support vessels servicing our oil and gas sector. A further third of this are tankers.



## Malaysian Maritime Industry

The majority, of them, owned by our national line, is now focused on the tanker sector. Unfortunately, our poor showing in the world fleet is a marked discrepancy between Malaysia's significant contribution to global maritime trade and the local advantages that Malaysian ports enjoy.





# Malaysian Maritime and Trade Industry

- ✓ Malaysia is home to the 12<sup>th</sup> busiest container Port in the world namely Port Klang, as well as the 18<sup>th</sup> busiest container Port in the world, namely Tanjung Pelepas. "Top 50 World Container Ports | World Shipping Council' (World Shipping <[www.worldshipping.org](http://www.worldshipping.org). > accessed 28.11.2019

**RANKED 12<sup>th</sup>**   
top 50 world container ports



## Malaysian Maritime Industry

The Malaysia Shipping Master Plan was created to improve the declining Malaysian shipping scene. Some decline includes the following:

- ✓ Decrease in distribution of Malaysian Ship Ownership
- ✓ Worsening Transport Balance of Payment



# Malaysian Maritime Industry

The Malaysia Shipping Master Plan has five focus areas each with its targets and a five-year implementation plan. The focus areas are:

- ✓ Promoting employment of Malaysian ships
- ✓ Promoting employment of Malaysian seafarers and maritime human resources
- ✓ Facilitating access to capital and financing
- ✓ Enhancing Malaysia's attractiveness to shipping businesses
- ✓ Promoting innovation in and sustainable growth of maritime ancillary service



# Maritime Arbitration Scene in Malaysia

Malaysia has a functioning Admiralty Court since 2010

Arrest of ships as security for arbitration claims are allowed since 2011

Local maritime expertise is still lacking

Most panel arbitrators on the Asian International Arbitration Centre (AIAC) in Kuala Lumpur are based outside Malaysia.



## Maritime Arbitration Scene in Malaysia

Only 32 out of 214 arbitrators with maritime expertise are from Malaysia.

Out of those 32 Malaysian maritime arbitrators, only 2 are women.

In the 21st century, inclusion and gender balance are key ingredients to ensure that we get everyone on board, irrespective of their gender.



## **New Amendments to the Arbitration Act 2005**

The Arbitration Act 2005 under Amendment No.2 in 2018, wanted to further strengthen the powers of the arbitral tribunal. It included important and long-awaited changes to the Arbitration Act 2005, namely:



## New Amendments to the Arbitration Act 2005

- ✓ clarification of the status of an emergency arbitrator and orders/awards granted by the emergency arbitration
- ✓ reinstatement of parties' right to choose representation by any representative, not just a lawyer
- ✓ a court's power to look at the subject matter of the dispute, in deciding on arbitrability



## New Amendments to the Arbitration Act 2005

- ✓ clarification of the requirement that an arbitration should be in writing  
– recognition of electronic means of communication
- ✓ comprehensive, yet balanced provisions dealing with the High Court's and arbitral tribunal's powers to grant interim measures
- ✓ reinstatement of parties' right to choose any law or rules of law applicable to the substance of a dispute and arbitral tribunal's right to decide according to equity and conscience, if so, authorized by the parties





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## New Amendments to the Arbitration Act 2005

- ✓ express provisions empowering arbitral tribunal to grant pre- and post-award interest on any sums that are in disputes
- ✓ express provisions ensuring confidentiality of arbitration and arbitration-related court proceedings
- ✓ reinforcement of principles of minimum court intervention and finality of arbitral awards



## **New Amendments to the Arbitration Act 2005**

AIAC also introduced the AIAC Fast Track Rules in 2012 last revised in 2018 and designed with the maritime industry in mind and considered the views of maritime experts sitting in the working committee.

The revision included revisions to the timelines enhancing expediency in procedure as well as completion of substantive oral hearings. Furthermore, the applicable rules for the appointment of a sole arbitrator and presiding arbitrator have been improved to encourage the smooth progression of the arbitration.



## **New Amendments to the Arbitration Act 2005**

To help promote the efforts made by AIAC, the International Malaysian Society of Maritime Law (IMSML), was launched in 2016 to encourage the maintenance of appropriate facilities and legislative framework for the advancement of maritime law.

Many events and social gatherings are organized by the Society to foster closer interaction within the maritime business community.



## Beyond 2020

Malaysia needs to improve its maritime legislations to cope with the demands of modern shipping as well as the Malaysian Shipping Master Plan. Accelerated reforms on key maritime legislations in the pipeline are:

- ✓ a new Carriage of Goods by Sea Act (to adopt the Hague-Visby Rules)
- ✓ a new Bills of Lading and Analogous Documents Act (to replace the old Bills of Lading Act 1855 with a similar Act like the English COGSA 1992) and.
- ✓ a new Admiralty Jurisdiction Act (to replace the English Senior Courts Act 1981)



## Beyond 2020

These laws are expected to come into force in 2020 and beyond.

The lack of local maritime experts offer good advancement opportunities for Malaysian legal practitioners in a niche area of law that is open to growth for both local and foreign firms.

In the pipeline for 2020 and beyond is a Certificate in Maritime Arbitration that is being offered by IMSML in collaboration with AIAC to develop maritime talent pool.

In the end, one hopes that with the introduction of all these reforms, Malaysia would be a more attractive venue to resolve maritime disputes especially in the Asian region



# THANK YOU

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