



SHIPPING AND LOGISTICS IN MALAYSIA

MOHD YAZID ZUL KEPLI



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PREFACE

This book provides an introductory study on shipping and logistics in the form of a single medium-sized textbook. Written specifically with students in mind, concentrating on legal principles and practice, and tailored to common law coverage, this title covers all essential topics in shipping and logistics courses. This book can also serve as an introductory work of reference for those in the shipping and logistics sector, shipping lawyers, members of Protection and Indemnity (P&I) clubs, seafarers, in-house counsels, and students.

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ABBREVIATIONS

AELB	Atomic Energy Licensing Board
AIS	Automated Identification System
AJA	Administration of Justice Act
ARPA	automatic radar plotting aid
BIFA	British International Freight Association
BIMCO	Baltic and International Maritime Council
BNWAS	Bridge Navigational Watch Alarm System
BOLA	Bills of Lading Act
Bolero	Bills of Lading in Europe
BOMBA	Fire and Rescue Department of Malaysia
BPMB	Bank Pembangunan Malaysia Berhad
CIF	Cost, Insurance, and Freight
CISG	1980 United Nations Convention on Contracts for the International Sale of Goods
CJJA	Civil Jurisdiction and Judgments Act
CJEU	Court of Justice of the European Union
CFI	Comité Maritime International
CMMF	Central Mercantile Marine Fund
CMR	UN Convention relative au contrat de transport international de Marchandises par Route
CMSR	Century Maritime Silk Road
COGSA	Carriage of Goods by Sea Act
COLREG	Convention on the International Regulations for Preventing Collisions at Sea
CFR	Cost and Freight
CPR	Civil Procedure Rules

Abbreviations

CSR	continuous synopsis record
CVLB	Commercial Vehicle Licensing Board
DFTZ	digital free trade zone
DOE	Department of Environment
DOSH	Department of Occupational Safety and Health
DSLB	Domestic Shipping Licensing Board
DWT	dead weight tonnage
ECDIS	Electronic Chart Display and Information System
ECJ	European Court of Justice
EDI	electronic data interchange
EEZ	exclusive economic zone
EFTA	European Free Trade Association
ETA	estimated time of arrival
ETO	electrical technical officer
FCL	full container load
FD&D	freight, demurrage, and defence
FENEX	Netherlands Association for Forwarding and Logistics
FIOST	free in, out, stowed, and trimmed
FMFF	Federation of Malaysian Freight Forwarders
FOB	free on board
GRT	Gross Register Tonnage
ICA	Inter-Club Agreement
ICC	International Chamber of Commerce
ICS	International Chamber of Shipping
IILS	International Integrated Logistics Services (MIDA)
IMDG Code	International Maritime Dangerous Goods Code
IMO	International Maritime Organization
INCOTERMS	International Commercial Terms
IOPC	The International Oil Pollution Compensation Funds
ISM Code	International Safety Management Code
ISPS Code	International Ship and Port Facility Code
ISSC	International Ship Security Certificate
ISU	International Salvage Union
ITF	International Transport Workers' Federation
ITM	Industry Transformation Map
JKDM	Royal Malaysian Customs Department (RMC)

Abbreviations

JPJ	Road Transport Department Malaysia
JTKSM	Jabatan Tenaga Kerja Semenanjung Malaysia
LANBY	Large Automatic Navigation Buoy
LCL	less than container load
LIBOR	London Interbank Offered Rate
LLMC	Convention on Limitation of Liability for Maritime Claims
LMAA	London Maritime Arbitrators Association
LNG	liquefied natural gas
LOF	Lloyd's Open Form
LPI	Logistics Performance Index
LSSA	Lloyd's Standard Salvage and Arbitration
MARPOL	International Convention for the Prevention of Pollution from Ships 1973
MASA	Malaysia Shipowners' Association
METI	maritime education and training (MET) institute
MIROS	Malaysian Institute of Road Safety Research
MISC	Malaysia International Shipping Corporation
MMHE	Malaysia Marine and Heavy Engineering
MOE	Ministry of Education
MOHR	Ministry of Human Resources
MSC	Maritime Safety Committee
MSC	Maritime Singapore Connect
MSM	Malaysia Shipping Masterplan (MSMP)
MTO	multimodal transport operator
NCSR	Navigation, Radio-communication, and Search and Rescue
NLTF	National Logistics Task Force
NODISP	No Disposal
NOR	Notice of Readiness
NVOCC	non-vehicle-owning carrier
NYPE	New York Produce Exchange
OBO	oil, bulk, ore carriers
OECD	Economic Co-operation and Development
OLSA	Ocean Liner Service Agreement
O&G	oil and gas
OPOL	Offshore Pollution Liability Agreement
OPRC	International Convention on Oil Pollution

Abbreviations

	Preparedness, Response and Co-operation
OSV	offshore support vessel
PD	Practice Directions
P&I	protection and indemnity
PTP	Port of Tanjung Pelepas
Ro-ro	roll-on, roll-off
RSC	Rules of the Supreme Court
SCOPIC	Special Compensation P&I Clause
SCR	Special Casualty Representative
SDR	special Drawing Rights
SIP	structured internship programme
SMS	safety management system
SOLAS	International Convention for Safety of Life at Sea
SPAD	Land Public Transport Commission
SSAS	Ship Security Alert System
STC	said to contain
STCW	Standards of Training, Certification and Watchkeeping for Seafarers
STOPIA	Small Tanker Oil Pollution Indemnification Agreement
TEU	twenty-foot or equivalent units
OPIA	Tanker Oil Pollution Indemnification Agreement
UN	United Nations
UNESCO	United Nations Education, Scientific and Cultural Organization
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Commission on Trade and Development
UNSP	unmanned non-self-propelled
wcon	whether customs cleared or not
wibon	whether in berth or not
wifon	whether in free pratique or not
wipon	whether in port or not

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The author would like to express his thanks to the Ministry of Higher Education (MOHE) for the Fundamental Research Grant Scheme (FRGS) entitled “*Developing new legal and regulatory framework for cryptocurrency businesses in Malaysia.*”



FOREWORD

I am deeply honoured to contribute the foreword to *Shipping and Logistics in Malaysia*. This inspiring work is indeed a Herculean task - painstakingly analysing the ins and outs of the maritime industry, compartmentalising various aspects at national and global levels, further incorporating its relevant law, as well as accompanying readers on a historical maritime journey that dates back to thousands of years. I would also like to take this opportunity to congratulate the author for his significant contribution to the maritime industry, and to thank him for entrusting the Maritime Institute of Malaysia (MIMA) in the publication of this book.

Malaysia, in its own right, has been a strategic maritime asset, with the Straits of Malacca carving a water-path of importance for the global maritime trade for many centuries. As such, the publication of this book will serve to provide an all-encompassing analysis of how Malaysia can continue to sustain its presence as an important maritime nation and evolve its role in international trade.

The timely publication of this book also aligns with the current high interest of the maritime community at large on the major seas and their diverse regulation. As such, *Shipping and Logistics in Malaysia*, would surely be of integral help for ocean patronage and the unification of contemporary maritime law across the continents.

In this book, the author has further brought attention to the combined efforts of civil and corporate initiatives to advance the importance of Malaysia's maritime sector. These efforts have served a twofold developmental purpose of solidifying the country's economic strength, and deepening international ties with a growing pool of

nations participating in maritime activities. By extension then, this book will be a significant asset to maritime scholars, lawyers, and policymakers alike, but just as importantly, it will also prove to be a fascinating read for the general reader with its seamless layman writing.

The turn of the century has proven that the oceans of our planet are more vital than we previously thought, on ecological and economic grounds, and it behoves any conscious citizen of the world to take greater interest in the welfare of the seas.

As a closing thought for the discerning reader, *Shipping and Logistics in Malaysia* must be acknowledged to be a significant addition to the collection of contemporary maritime literature. It brings a refreshing narrative to what can be only seen as a rising complexity of concerns and agendas that involve the oceanic stage. As the world becomes even more integrated and the visions by various countries and institutions address a collective stewardship of resources and prosperity, the state of the maritime ecosystem will continue to hold great significance, and inevitably, take centre stage in ushering the next step of human advancement.

Datuk Dr. Sabirin Ja'afar
Director-General
Maritime Institute of Malaysia

INTRODUCTION

MALAYSIA'S MARITIME SECTOR

Around 90 per cent (%) of the world's trade are carried on ships, making maritime trade the backbone of globalisation and modern lifestyle. According to Baltic and International Maritime Council (BIMCO) and International Chamber of Shipping (ICS) Seafarer Workforce Report 2021, at the start of 2021, the trading world merchant fleet had a capacity of 74,505 ships across 11 main segments.¹ At any given time, there are about 20 million containers making their journey across the seas.²

There are various advantages to shipping compared to other modes of transportation. Shipping is more sustainable; a greener form of transport compared to planes and trucks. Maintenance cost for rail and road transport can be quite high while the maintenance cost for maritime transport like ships is much less. Bulky and heavy goods can be transported with much ease using maritime transport. In addition, maritime trade generates massive employment, facilitates industrial activities, and contributes strongly to the global economy.

Carriage of goods by sea is the most time-and-cost-effective method to transport goods due to its ability to move large volumes of goods at low cost in a safe and eco-friendly manner.³ Before the coronavirus pandemic, the cost of transporting a 20-foot container from Asia to Europe (carrying over 20 tonnes of cargo) can be as low as the economy airfare for a single passenger on the same journey.⁴ In one year, a single large containership can carry more than 200,000 container loads of cargo. These large container ships can fit up to 11,000 containers of cargo per voyage.⁵ Many container ships can transport up to 8,000 containers of goods in a single voyage⁶ while selected car carrier ships can handle 7,600 cars.

All of these, help to facilitate global trade and encourage competition, resulting in more economical prices and cheaper products. Families can go to a local supermarket and purchase goods from all over the globe e.g., Colombian coffee, Indian bananas, Siamese rice, and Malaysian palm oil at an affordable price. This efficiency underlines shipping's ability to transport goods cheaply and in large volumes, and with minimal environmental footprints.

According to the former United Nations (UN) Secretary-General Ban Ki-moon, on World Maritime Day 2016:

“No country is entirely self-sufficient, and every country relies on maritime trade to sell what it has and buy what it needs. Much of what we use and consume in our everyday lives either has been or will be transported by sea, in the form of raw materials, components, or finished articles.”⁷

The maritime sector of Malaysia contributes about 40% to the gross domestic product.⁸ Petronas is the biggest contributor at 14.5%. The fisheries sector is next at 9.4% while the remaining 15% comes from the services sector, maritime-related industries, and tourism.⁹ Unfortunately, many weaknesses remain as noted in the Malaysia Shipping Masterplan (MSM) 2017-2022:

“The Malaysian shipping industry is in decline with the steady reduction in Malaysian shipping tonnage and an increasing number of shipping businesses in distress. The Malaysia Shipowners' Association (MASA) has attributed this to the weak global shipping market while the lack of emphasis on fiscal and legislative measures to mitigate domestic shipping vulnerabilities has exacerbated the situation. This has contributed to a continuation of the nation's balance of payment deficit, as Malaysian shippers increasingly depend on foreign ships while Malaysian ships reflag to other jurisdictions, and its seafarers and maritime human resources move elsewhere. This has major strategic and security implications for Malaysia.”¹⁰

The coronavirus pandemic further revealed various legal and regulatory defects in the shipping industry. In the Secretary-General's message on World Maritime Day 2021 entitled "Seafarers: at the core of shipping's future", the Secretary-General warned:

"The COVID-19 pandemic continues to place immense physical and mental pressures on the two million women and men who serve on the world's merchant fleet. Hundreds of thousands still face extended times at sea, with tours of duty stretching many months beyond their contracts. Unable to go to shore, repatriate and change crews, and without access to medical care, seafarers face a humanitarian crisis that jeopardizes the safety and the future of shipping.

I renew my appeal to Governments to address their plight by formally designating seafarers and other marine personnel as 'key workers', ensuring safe crew changes, implementing established protocols, and allowing stranded seafarers to be repatriated and others to join ships. These critical workers must have access to national vaccination programmes, and provisions should be made to vaccinate international seafarers at designated ports. Governments have a duty to comply with relevant international treaty obligations to render assistance to any seafarers in distress, including medical assistance, ensuring rights and needs of seafarers are respected.

Looking ahead, seafarers will play a critical role helping advance shipping's move towards ever higher standards of safety and sustainability, in turn helping the sector do its vital part in building a sustainable future for people and planet."¹¹

The coronavirus pandemic, first identified in December 2019 in Wuhan, China, has been causing massive disruption to the global maritime trade with 2020 seeing an almost 10% drop. By October 2021, the number of reported infection cases was 238 million, with more than 4.8 million deaths.¹² The United Nations Conference on Trade and Development (UNCTAD) Secretary-General Mukhisa

Kituyi has warned industry players to change their approach:

“The global shipping industry will be at the forefront of efforts towards a sustainable recovery, as a vital enabler of the smooth functioning of international supply chains... The industry must be a key stakeholder helping adapt ‘just-in-time efficiency’ logistics to ‘just-in-case’ preparedness.”¹³

The year 2020 and 2021 have been very challenging with COVID-19, extraordinary freight rates, maritime disasters, space and equipment crunch, and stranded seafarers. Despite the initial setback, the coronavirus pandemic has accelerated the demand for maritime trade as mobility restrictions have supercharged online shopping. As countries introduced measures to control infection including lockdowns, people switched to online shopping. This unprecedented demand resulted in various new challenges worldwide including market imbalance, reduced port productivity, and the prices for container transport being quadrupled.

In light of this background, this book aims to provide a reader-friendly reading material on shipping and logistics, taking into account the new challenges faced by the industry. While this book focuses on Malaysia, many of the chapters are international in nature and can be applied to other jurisdictions as well.

Endnotes

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- 9 B.A. Hamzah, “Maritime sector in need of reform” (New Straits Times 21 December 2019) via <https://www.nst.com.my/opinion/columnists/2019/12/549605/maritime-sector-need-reform>
- 10 Ministry of Transport, “Malaysia Shipping Master Plan (2017-2022): Revitalizing Shipping for a Stronger Economy” via <http://www.mima.gov.my/news-list/204-malaysia-shipping-master-plan-2017-2022>
- 11 Secretary-General’s Message on World Maritime Day 2021: “Seafarers: at the core of shipping’s future” via <https://malaysia.un.org/index.php/en/149823-secretary-generals-message-world-maritime-day-2021-seafarers-core-shippings-future>
- 12 <https://www.worldometers.info/coronavirus/>
- 13 “COVID-19 cuts global maritime trade, transforms industry” (UNCTAD 12 November 2020) via <https://unctad.org/news/covid-19-cuts-global-maritime-trade-transforms-industry>. JIT operations receive inventory only as it’s needed for current production, whereas JIC stocks up inventories ahead of time.



CHAPTER 1

MARITIME TRADE IN MALAYSIA

As a maritime nation, the important role of maritime trade in Malaysia cannot be overemphasised. According to the former prime minister of Malaysia, Tun Dr. Mahathir Mohamad:

“Malaysia’s dependency on the ocean can never be understated and it is naturally so, given that it is surrounded by seas and its maritime space is virtually two times bigger than our land area. This dependency extends to almost all sectors particularly in food, trade, energy, transportation, tourism, and security.... With such a vast sea area, which offers a diverse range of living and non-living resources and being strategically located at the centre of important shipping lanes, the waters surrounding us carry tremendous environmental, socio-economic, and strategic value to the nation.”¹

A strong maritime sector has played a fundamental role in the development of Malaysia. The strength of Malaysian maritime trade exists in the following:

- i. Large sea area with huge marine resources
- ii. Active maritime sector
- iii. Strategic location
- iv. Considerable marine infrastructure and numerous aids for navigation
- v. Excellent maritime logistics
- vi. World class ports

- vii. Large and capable shipyards
- viii. One of the largest operators of gas tankers
- ix. Reasonably sized merchant fleet
- x. Beautiful coastlines and islands

Malaysia has long coastlines, large maritime exclusive economic zones (EEZs), and continental shelves in the South China Sea and Sulu Sea, and partly controls the strategic choke-points of the Straits of Malacca and the Straits of Johor.² Malaysia claims an EEZ of 334,671 square kilometres (129,217 square miles) with 200 nautical miles from its shores as provided under international law. The EEZ claimed includes much of the southern area of the South China Sea. According to international law, in the EEZ, the coastal country enjoys sovereignty and right to explore, exploit, conserve, and manage the natural resources of the waters superjacent to the seabed and its subsoil. In addition, the coastal state can also create and maintain artificial islands and installations including a marine scientific facility. The protection and preservation of marine environment under the EEZ will be below the purview of the coastal state.

Malaysia's sea area is almost twice the size of its land area while Malaysia's economy depends heavily on maritime trade with around 90 to 95% of its total trade being carried by merchant ships.

Most of Malaysia's hydrocarbon energy riches are located offshore. Malaysia is the second largest oil and natural gas producer in Southeast Asia and is the fifth largest exporter of liquefied natural gas (LNG) in the world, as of 2019.³ The Malaysia International Shipping Corporation (MISC) used to be the single largest LNG operator in the world, making Malaysia a leader in the oil tanker and LNG sectors.⁴

Blessed with huge marine resources and an active maritime sector that includes oil and gas (O&G), shipping, ports, shipbuilding and ship repairs, fisheries, and tourism, Malaysia relies heavily on the sea to facilitate its trade and economic activities, in addition to benefitting from the thriving oil and gas explorations and industries.⁵

Considered a strategic location along major shipping trade lanes, the Straits of Malacca contributes significantly as these are the world's busiest and most important sea lanes. The Straits of Malacca recorded

an excess of 70,000 ships passing through every year.⁶ The oil flow through these straits are three times greater than those through the Suez Canal and SUMED Pipeline.⁷ This maritime corridor is essential to the trillion-dollar global shipping industry.⁸

The Straits of Malacca is an important Asia-Pacific maritime shipping highway with considerable marine infrastructure and are equipped with numerous aids for navigation and are reasonably safe for international shipping. Three of the top 20 world's busiest ports are located here: Port of Singapore, Port of Tanjung Pelepas (PTP), and Port Klang.

Although Malaysia is advantageously located on the main trade routes between India and China, and between Europe and the East, these are not reasons to be complacent. Tun Dr. Mahathir Mohamad warned:

“A country cannot claim itself to be a maritime nation merely by virtue of attributes such as suitable geographical position, physical conformation, or strength of population as propounded by Admiral Alfred T Mahan⁹ in the 19th century. These geographical attributes or a glorious maritime history do not automatically make a country a maritime nation.... A true maritime nation is one which has the capability to fully exploit its God-given maritime endowments to enhance its socio-economic standing among the community of nations. In this regard, though Malaysia has all the makings of a maritime nation, strategically located at the centre of shipping lane and a large sea area rich in fishery, oil, and gas resources, it has yet to optimise all these attributes to qualify as a maritime nation in the true sense of the word.”¹⁰

Malaysia is strong in tourism and has beautiful coastlines and islands that bring millions of tourists to the shores, allowing it to generate revenues from marine tourism, island resorts, boating, cruising, and diving. The number of tourist arrivals in 2019 was 26.1 million, generating receipts of RM86.1 billion.

Malaysia also has world class ports and is one of the world's largest owners/operators of gas tankers through MISC Berhad, the

national carrier. Its shipyard is capable of building ships for the export markets. Malaysia is now ranked the 18th largest shipbuilding country.¹¹

Major ports in Malaysia are actively expanding their capacities. Malaysia's largest port, Port Klang, is increasing its capacity by 50% to an estimate of 30 million 20-foot equivalent unit (TEUs) per annum by 2040 while the "Port of Tanjung Pelepas (PTP) is developing a new berth that is expected to add 3.5 million TEUs to its current capacity by the year 2025."¹² This is an initiative to improve export and import via e-commerce by using Digital Free Trade Zone (DFTZ).¹³

The container ports in Malaysia have been performing well, as the favourable exchange rate for transshipping in Malaysia has attracted liners. In addition, the outlook of Malaysia's shipping sector is favourable especially for containers, dry bulk, tankers, and offshore support vessel (OSV) segments since the demand for these is increasing.¹⁴

Malaysia also possesses excellent maritime logistics including deep seaports, and extensive highways and roads connecting the various ports with the hinterlands. In 2016, there were 100 registered shipyards in Malaysia.¹⁵ In West Malaysia, the main shipyards are located in Lumut (Perak), Port Klang (Selangor), Kemaman (Terengganu), and Pasir Gudang (Johor).¹⁶ In the Borneo side, Sibul (Sarawak) is the main shipbuilding hub with around 40 small to medium-sized companies.¹⁷

Malaysia is a popular "port-of-call for commercial and naval ships at Kota Kinabalu in Sabah, Tanjung Pelepas in Johor, the facilities in Westport, the Boustead Cruise Centre in Pulau Indah, and Port Klang in Selangor".¹⁸

Malaysia also possesses large shipyards including the Malaysia Marine and Heavy Engineering (MMHE), Boustead Naval Shipyard, Sabah Shipyard, Sapura Kencana, Nam Cheong, and Muhibbah Marine Engineering.¹⁹ These shipyards have repairing capabilities of more than 600 tons displacement.²⁰ The shipbuilding and ship repair industry in Malaysia employs around 15,000 people with a recorded total trade of at least RM6.1 billion in 2017.²¹ The Malaysia ship fleet expanded from a total of 8,708 (thousand dead weight tonnage [DWT]) in 2005 to 9,841 (thousand DWT) by 2017. In addition to ports and shipyards, Malaysia also has a reasonably sized merchant fleet engaged in international and domestic voyages.²²

The government has been supportive of maritime trade, and various incentives are provided for investors. Maritime trade is thriving in Malaysia with approximately 37% of Malaysia's seaborne trade being carried by Malaysian ships.²³ Malaysia's biggest trading partner is China, followed by Singapore, the United States of America (USA), Japan, and Thailand. China's revival of the 21st Century Maritime Silk Road (CMSR) initiative, which is backed by a US\$40 billion development fund, has set into motion the establishment of a sister-port relationship between the largest Malaysian port, Port Klang, and eight Chinese ports in economically thriving locations such as Shanghai and Guangzhou. This will undoubtedly benefit the shipping and trade industry by facilitating the import-export dynamics between the two countries, as China retains its position as Malaysia's largest trading partner.

The true potential of Malaysia remains untapped. The total value of trade by Malaysia increased 58% from 2008 to 2018 but the size of Malaysian-owned fleet and the country's share of world shipping had been reduced.²⁴ The combined container throughput (in Malaysia) in 2017 was merely 60% of Singapore's container throughput.²⁵ Despite Malaysia's strengths, various challenges remain including outdated strategy, brain-drain, fierce regional competitions, new commercial shipping routes²⁶, oil spills and dumping of waste²⁷, geopolitical conflicts²⁸, inadequate local ships²⁹, small domestic market, financing-issues³⁰, shifting shipping alliances³¹, lack of fiscal and legislative measures³², lack of essential resources for enforcement agencies³³, natural challenges with the Straits of Malacca and Singapore³⁴, piracy and other illegal activities³⁵, and lack of a clearly constituted national body to coordinate maritime space.³⁶

However, at the core of these problems is the poor governance of the maritime sector although the next conflict in the region is likely to be at sea, with big powers already in dispute over the South China Sea and the East China Sea.³⁷ Unlike in Indonesia, Japan, Canada, and South Korea, there is no overarching national policy on how to manage the maritime sector.³⁸

Against this backdrop, it is important for Malaysia to have a strong political will reflected in a clear and proactive masterplan and

SHIPPING AND LOGISTICS IN MALAYSIA

This book is written with a semi-empirical approach. The book refers to cases and authoritative articles from reputable journals and books.

However, references are also made to statutes, guidelines, online news, white papers, government reports, and policymakers reports.

This book will be a definitive reference for anything related to shipping and logistic laws in Malaysia.

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