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What Shipowners should take note of before Anchoring and Conducting STS operations in Malaysian waters

On 9 January 2023, the Malaysian Maritime Enforcement Agency (“MMEA”), carried out an enforcement operation in which they detained 4 vessels in eastern-Johor for illegal anchoring / fuel transfer. Such enforcement operations are a frequent occurrence. In 2022, 74 vessels were detained for illegal anchoring / fuel transfer in Johor waters.

What do shipowners need to do to avoid detention?

Pursuant to the Merchant Shipping Ordinance 1952, it is illegal to anchor in Malaysian waters without obtaining a permit. Section 491B of the ordinance mandates that the vessels must notify the director of the marine or port office, regarding their planned activities within Malaysian waters. Failure to do so results in detention by the Malaysian authorities.

In addition to the lack of awareness of what the local laws require, it is not uncommon for there to be a misunderstanding as to where Malaysia’s territorial waters begin. The territorial limits in Southern Johor waters, often inaccurately referred as ‘Singapore OPL East’, extend as much as 60 Nautical Miles from the main coastline in Malaysia. There are no “international waters” outside Singapore waters and vessels are either in Malaysian or Indonesian territorial waters.

Shipowners are recommended to take the following measures prior to anchoring:

- Take additional efforts to check their exact location, such as keeping the “1979 Malaysian Territorial Waters Chart” on board. The Malaysian authorities rely on this chart to determine if a vessel has entered its territorial waters. The regular navigational charts of this area may not be accurate with regards to the national boundaries.

- Obtain information on the designated anchorage area, by contacting the relevant authorities.
- Appoint a local agent and get permission from local port authority prior to carrying out their intended act.

What is the process should a vessel be detained?

Once a vessel has been detained, owners can expect the following investigative steps to be taken by the MMEA:

The Master and Chief Officer/Chief Engineer are usually taken ashore to MMEA’s office to give their statements. They are questioned about their qualifications and experience, details of the voyage undertaken, and reasons for anchoring at that specific location. The MMEA confiscates the ship’s documents and the passports of the crew members.

Once the crew’s statements have been taken, the MMEA hands over the matter to the Marine Department to prosecute the matter and a hearing before the magistrate will be fixed.

As per section 314 of the Criminal Procedure Code (CPC), the owners are required to pay a bond in order to procure the release of the vessel. The bond is to secure any fine that may be levied on the shipowners at a later date.

After the bond has been paid and the documents of the ship are returned to the vessel, the vessel can sail. Subsequently, owners can choose either to admit liability or to dispute the charges. The maximum fine for each offence is RM 100,000 (approximately USD 24,000). The entire process of getting the vessel released can take up to a few weeks.

Our firm is adept at handling such matters and have represented numerous shipowners to release their vessels (some as quick as within a week of being detained) and substantially reduce the fines which are payable. Please do not hesitate to approach us should

you require any assistance.

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