

## RE: GENERAL GUIDANCE FOR VESSELS ANCHORING IN WATERS OFF MALAYSIA

Ingosstrakh has recently faced an increase of claims coming from Malaysian authorities for illegal anchorage in waters off Malaysia. In order to guide the Insured Owners and in attempt to avoid respective unnecessary claims and expenses, we have approached P&I Correspondent in the region Messrs. Van Ameyde Seasia who has kindly provided below recommendations and comments concerning the subject issue.

As it stands, the most important recommendation is very obvious - when anchoring in waters off Malaysia, Indonesia and/ or Singapore "East Outside Port Limits" (EOPL), it is recommended that ships take extra precautions to check their exact location and the designated position for anchoring. It is also of paramount importance to contact the relevant authority of these countries and obtain permission before carrying out their intended act. Malaysia has extended this information in Malaysia Shipping Notice 05/2014 (<https://www.marine.gov.my/jlm/admin/assets/uploads/files/notis/16405-npm052014.pdf> ).

Malaysian authorities (Malaysian Maritime Enforcement Agency (MMEA) and the Marine Department of Malaysia) are known to rely on the "1979 Territorial Waters Chart" to find out if a ship has entered its territorial waters. As such, if a ship wishes to find out the limit of Malaysian territorial waters, it is advised that a copy of this chart is made available on board, which can be obtained via local agents.

Anchoring in non-designated anchorage areas without prior permission is illegal in Malaysian waters, and the country has incorporated these rules into its Merchant Shipping Ordinance 1952. Section 491B of the ordinance requires ships to notify the director of the marine or port office regarding their planned actions within the territorial waters. Ships may be required to pay a fee for conducting such activities. It should be kept in mind that the ordinance has

recently been amended to include “anchoring in non-anchorage areas”. Insured Owners should also be aware that fines related to anchoring which is deemed to be illegal by the Malaysian authorities may not always be covered by P&I insurance.

For each of the section 491B offence, the penalty for contravention is a fine not exceeding RM100,000 or imprisonment for a term not exceeding two years or both (section 491B (4)). The practice and past experience show that the courts do not impose custodial sentence, it is always a fine.

The arrested ship and its master would generally go through a lengthy process before being released. Master and other officers may be taken ashore to give statements and can be expected to be questioned about their qualifications, experience, voyage plans and purpose for anchoring at the location. In Malaysia, it may take months for a final decision to be made by the local court. Early release of the vessel would require the Owners to submit a security bond of MYR 100,000 per alleged offence. We would like to alert Insured Owners operating off the Malaysian coast (sometimes referred as EOPL) to be cautious about the risk of detention.

In a recent case, a ship was detained for illegal anchoring at a distance from the Malaysian shore exceeding the 12-mile territorial limit. Malaysia authorities however considered the location to be within their territorial waters, not international. To avoid such occurrences, it would be prudent to appoint/check with a local agent who will be in the position to advise.

The following actions should be considered at least.

- The Master, before anchoring, should ask the company or agent for information regarding the territorial limits and designated areas as well as local sea charts. Vessel local agents and shipowners/operators are advised to acquire copies of the latest local chart that indicates the boundaries of Malaysian territorial waters from the local authority MMEA or MMD. Besides, their navigational aids on board are to be regularly updated especially if they are using paper charts.

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- Where the Master is uncertain about the position to drop anchor, it is recommended to appoint a local agent to declare the vessel for the authority's approval of anchoring.
- All vessels sailing in Malaysian / Indonesian territorial waters should ensure that the AIS is active at all times with accurate transmission of dynamic and static information.
- Apart from the EOPL (waters east of Johor, Malaysia), Insured Owners should also be careful not to operate in any other area in Malaysian waters. The waters between Pulau Pinang and Pulau Klang north of Malaysia by the Straits of Malacca are also under MMEA control.
- Insured Owners should check provisions regarding operations in the OPL before entering into a charter party to protect their interests in case of any offence to applicable laws.

## Other Recommendations

- Local agent and permission from authorities before anchoring: Before anchoring it is important that a local agent is appointed, and permission is sought from the local authorities when anchoring in this region. This is irrespective of whether a vessel is intending to call any local port, idling while waiting for orders or conducting any other operation such as crew change, STS, repairs etc.
- Designated anchorages: Obtain information on designated anchorages from local agents and mark these on the charts, if not already shown. Procuring local charts may also be helpful.