



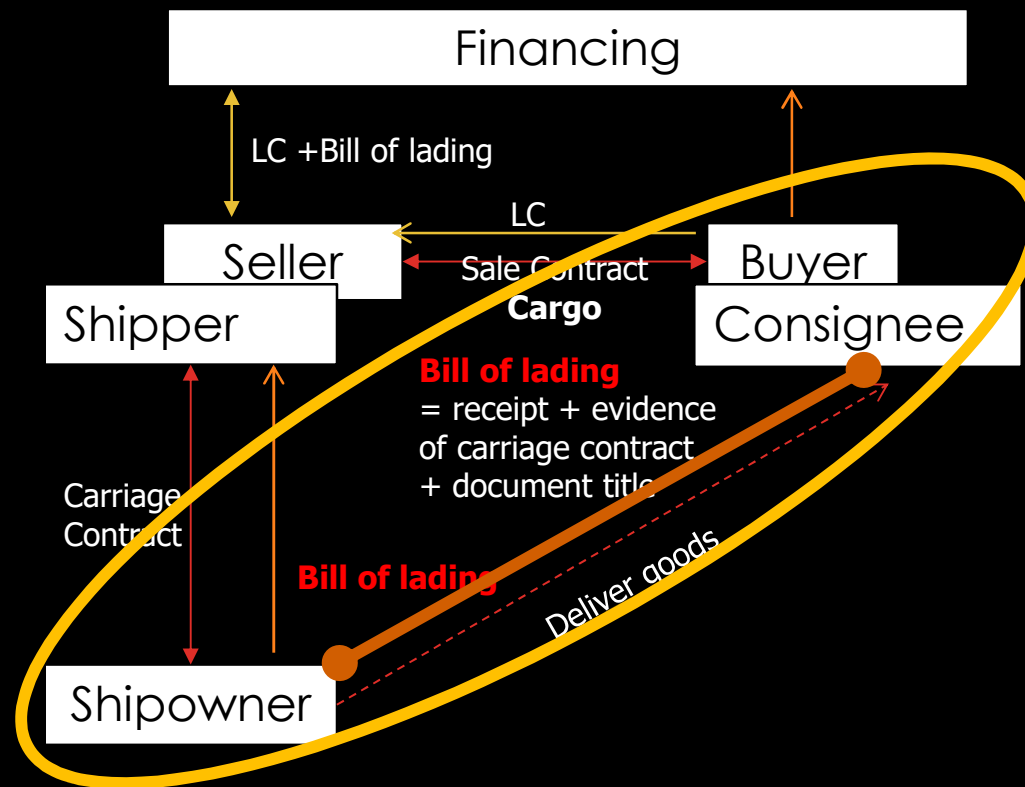
To resound a single voice for Maritime Malaysia

Resonating Excellence

Maritime Law Amendment and Reform

Why Now and Who Benefits?
*–The Case for Uniform Maritime
Laws*





TRADE – MARITIME INTERDEPENDENCY

- Efficient Sea Transportation and Logistics promotes Trade by reducing cost and time, and secure delivery of cargo.
- About 98% of cargo volume in international trade is handled by sea.
- Increased Trade loops back to generate greater demand for Sea Transportation and Logistics services

➤ ***Facilitating Trade benefits the Sea
Transportation and Logistics Sector***



TRADE – MARITIME INTERDEPENDENCY

4 pillars of Trade Facilitation –

- Transparency
- Simplification
- Harmonisation
- Standardisation

ROLE OF LAW –BUSINESS ENVIRONMENT

- Decisions to trade/import products from a country turn on quality, costs and safety.
 - The legal framework impacts on transactional costs and safety
 - Lowering transactional costs and enhancing safety through
 - a) Rule of law ie sound and efficient legal system
 - b) Legal certainty in enforcement of contractual and property rights
- that are **harmonised and standardised** facilitate trade and benefit Maritime activities.

WHY REGULATORY FRAMEWORK?

- a) promotes uniformity and efficiency
 - b) reduces risks and uncertainty surrounding contract enforcement and property rights, and thereby transaction costs
 - c) fuels confidence and inspires economic growth
 - d) promotes positive investment climate
- ***enhances trade, the import/export of products, and maritime activities.***





WHY NOW?

- When maritime activities are dull, the time is right to
 - ✓ provide impetus for investment
 - ✓ instil confidence
 - ✓ reduce transactional costs
 - ✓ direct minds and attention to new strategies and reform

MARITIME LEGISLATIVE CHANGES

Uniform application of amendment to the following 4 Maritime and related legislations are beneficial to promote Trade and Maritime activities:

1. The Convention on Limitation of Liability of Maritime Claims 1976 and the Protocol of 1996 (LLMC)
2. Carriage of Goods By Sea Act (COGSA)
3. Bills of Lading and Analogous Shipping Documents Act (BOLAA)
4. Sale of Goods Act (SOGA)



LLMC

- LLMC is applicable in Peninsula Malaysia with effect from 1 March 2014.
- Sabah and Sarawak are still on the 1957 Limitation Convention regime –very few countries in the world remain on 1957 Convention
- 1 country – 2 Limitation regimes
 - Gives rise to confusion, uncertainty and forum shopping
 - Increases legal and transactional costs
 - Undermines credibility and maturity of the legal system and maritime industry

LLMC

- LLMC high limit for shipowner ;
 - ✓ but very difficult to break
 - ✓ **claimant to prove** shipowners' intent to cause loss/reckless and with knowledge that loss would result
 - ✓ certainty promotes settlement and reduces litigation costs
- 1957 low limit for shipowner;
 - but very easy to break which means no limit applies
 - **shipowner to prove** absence of actual fault and privity
 - very tedious for shipowner to establish
 - wasted management time and litigation cost very high
 - paying higher premiums for compulsory insurance on higher limit for all ships entering Peninsula/Labuan waters and EEZ but exposed to unlimited liability



LLMC – WHO BENEFITS?

- ❖ Shipowners
- ❖ Traders/ Cargo interests
- ❖ Claimants –fishermen, ports
- ❖ Government of Malaysia, especially in cases of oil spillage

COGSA

- a) Draft Bill ready
- b) To upgrade to 1968 Hague –Visby Convention which is applied by 86 countries and 90% of global shipping tonnage
- c) Malaysia is currently on 1924 Hague Convention – through COGSA 1950 for Peninsula, and 1960 MSO Regulations for Sabah and Sarawak
- d) Significant law that demarcates responsibility and limits of liability of shipowner and exporter/importer

COGSA – Who Benefits?

Amendment promotes certainty to shipowners, and reduces evidential burden on exporters/importers

- ☐ Avoiding expensive litigation and time consuming court preparation
- ☐ Frees resources of traders to compete internationally
- ☐ Provides harmonisation and standardisation with laws of trading partners – enhances confidence in the maritime Malaysia



COGSA – WHO BENEFITS?

- ❖ Shipowners
- ❖ Traders – exporters/importers
- ❖ Indirectly – ports, hauliers, agents, warehouses, ancillary service providers

BOLAA

- a) Draft Bill ready
- b) To remove reliance on the English Bill of Lading Act 1855, that has been superceded in England by the English 1992 Act
- c) To remove the current deficiencies on the right of suit by importers against shipowners in relation to shipments of bulk cargo - Chemical Products, Crude Palm Oil, Grains, Fertilizers, Steel Pipes, Saw timber - about 30% of our exports are under protected

BOLAA

- d) Singapore and Hong Kong too have amended their laws
- e) This loss of right to sue under the existing law is likely to impact on the insurance premium payable by the traders to their insurers.
- f) Inability to enforce property and contractual rights affects foreign buyers costs and confidence to trade with Malaysia

BOLAA – WHO BENEFITS?

- ✓ Provides Traders with a right of recourse against Shipowners
- ✓ Enhances confidence and promotes trade by protecting contractual and property rights
- ✓ Provides harmonisation and standardisation with laws of trading partners



SOGA

- a) Bar Council draft prepared
- b) To be passed in tandem with the BOLAA – both amendments required
- c) Similar to the amendments to the English SOGA by inserting Section 23A, 26A and 26B to the existing 1957 SOGA.



SOGA - WHO BENEFITS?

- ✓ Provides foreign buyers with the right to property in bulk cargo, once good purchased are paid for.
- ✓ Rights of purchasers of bulk cargo not defeated by the insolvency or creditors of sellers.
- ✓ Enhances confidence and promotes trade by protecting contractual and property rights
- ✓ Provides harmonisation and standardisation with laws of trading partners

AJA

- a) Draft to be forwarded soon by IMSML/Bar Council
- b) As a sovereign nation Malaysia should have its own empowering statute governing the Admiralty Jurisdiction of the High Court of Malaya and Sabah & Sarawak
- c) Currently the Courts of Judicature Act 1964 provides that the High Court of Malaya shall have the same jurisdiction as the Courts in England and Wales under the Supreme Court Act 1981 of the UK

AJA

Benefits

- ❑ Malaysia having her own Admiralty Jurisdiction Act is indicative of the maturity of her maritime community, and displays confidence in her self-sufficiency.
- ❑ Reaffirms the rule of law
- ❑ As it stands, we are locked into the state of law in England as it was in 1981; left behind for over 35 years.

Maritime Law Reform and uniform application benefits Malaysia by:

1. Reducing transaction costs
2. Reducing enforcement costs
3. Promoting certainty , safety and the rule of law
4. Increasing confidence to trade
5. Promoting an investment climate



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