



Strategic Geography, Strategic Jurisdiction: Leveraging Malaysia's Commercial And Maritime Advantage

12 October 2026

For more information, please contact:

Datuk D P Naban

naban@rdslawpartners.com

Austen Emmanuel Pereira

austen@rdslawpartners.com

Bahari Yeow Tien Hong

bahari@rdslawpartners.com

Farah Shuhadah Razali

farah@rdslawpartners.com

Tan Sri Datuk Harmindar Singh Dhaliwal

harmindar@rdslawpartners.com

Kenny Lam Kian Yip

kenny@rdslawpartners.com

Lim Zhi Jian

jian@rdslawpartners.com

Michael Soo

michaelsoo@rdslawpartners.com

Rosli Dahlan

rosli@rdslawpartners.com

Steven Perian KC

speriankc@rdslawpartners.com

Vinayak Sri Ram

vinayak@rdslawpartners.com

The International Commercial and Admiralty Division at the High Court of Malaya in Kuala Lumpur is being established because Malaysia's competitive advantage is no longer merely where it sits geographically, but whether the world can trust the legal infrastructure surrounding the commerce that passes through it.

A port is where ships arrive. A jurisdiction is where commercial confidence arrives.

For centuries, maritime power was measured by fleets, naval strength and control of sea lanes. Today, the equation is more sophisticated. A country's maritime strength is measured not only by the number of ships that pass through its waters, or the volume of cargo handled by its ports, but also by something less visible and perhaps more consequential:

When commerce encounters difficulty, where will the parties turn for certainty?

This is the question at the heart of Malaysia's maritime opportunity.

International Commercial And Admiralty Division (ICAD)

Announced during the Opening of the Legal Year 2026 by the Right Honourable Chief Justice of Malaysia, Tun Wan Ahmad Farid Wan Salleh, the initiative signals a deliberate policy direction to enhance judicial efficiency in cross-border

commercial disputes and to reinforce investor confidence in Malaysia's legal infrastructure.¹

Malaysia occupies an extraordinary geographical position. Straddling the Straits of Malacca and the South China Sea, it sits along one of the world's great arteries of international commerce. Its ports connect East and West; its waters sit at the intersection of major shipping routes; and its proximity to Singapore, Indonesia, Thailand and the wider ASEAN market gives it an inherently strategic position.

Geography creates only potential. Jurisdiction converts that potential into commercial value. This is precisely why Malaysia's maritime advantage, through ICAD should be viewed through a wider lens, and not simply as a question of ports and shipping.

The Malaysian judiciary has recently taken a significant institutional step towards strengthening Malaysia's position as a regional dispute resolution centre through the establishment of ICAD. It reflects a broader recognition that modern international commerce increasingly requires specialised judicial forums capable of handling complex, high-value, cross-border disputes with speed, commercial sophistication, and procedural flexibility. It seeks to convert Malaysia's strategic geographical into commercial value under the overarching theme of commercial certainty as economic infrastructure.

The sea brings commerce. The law gives commerce confidence. International commerce does not stop when a vessel enters Malaysian waters. Sometimes, that is when the real dispute begins.

Cargo may be damaged. A charterparty may unravel. Freight may remain unpaid. A vessel may need to be arrested. Security may be required. Arbitration may be commenced in another jurisdiction. Sanctions may affect performance. Multiple jurisdictions may compete for relevance. At that moment, geography alone is no longer sufficient.

The question becomes whether Malaysia possesses a legal system capable of responding swiftly, predictably and fairly. Malaysian admiralty jurisprudence suggests that it does.

Tested By The Past, Ready For The Future

Before asking whether Malaysia can become a premier international commercial and admiralty dispute-resolution jurisdiction, it is worth asking a more fundamental question. Has Malaysia already demonstrated that it possesses the legal capacity to meet the challenge? The answer is found not in aspiration, but in precedent.

Over the years, Malaysian courts have confronted disputes involving vessel arrest, cargo claims, admiralty jurisdiction, arbitration, security and wrongful arrest. These decisions reveal a commercial and maritime jurisprudence that has not merely

¹ [2026] 1 MLJ i

followed commercial developments, but has grappled with the difficult boundaries between judicial power, commercial necessity and procedural fairness.

In *Ocean Gain Shipping Pte Ltd v Owner and/or Charterer of Demise of Vessel "Dong Nai" registered at Haiphong Port, Vietnam*,² the Court demonstrated both the reach and discipline of Malaysian admiralty jurisdiction. The High Court recognised its jurisdiction under section 24(b) of the Courts of Judicature Act 1964, while simultaneously making clear that the extraordinary remedy of arrest carried corresponding responsibilities. The Court set aside the writ and the warrant of arrest, found that the arresting party had pursued claims it knew to be baseless and held that wrongful arrest could attract damages, applying the test of *mala fides* or gross negligence implying malice was established.

The broader message to international commerce emerging from this case is significant. Malaysia offers powerful remedies, but not unaccountable remedies. The credibility of a jurisdiction lies in the limits it places upon its own power.

That principle became even more apparent in *Asia Pacific Parcel Tankers Pte Ltd v The Owners of the Ship or Vessel "Normar Splendour"*.³ The Court considered whether admiralty jurisdiction could be used to arrest a vessel as security for an arbitral award. The High Court emphasised the statutory limits of Malaysian admiralty jurisdiction and regarded the failure to disclose the arbitration provision as material.

The significance of *Normar Splendour* goes beyond the particular vessel. It illustrates a fundamental principle of a sophisticated commercial jurisdiction. The strength of judicial power is measured not merely by what the court can do, but by its willingness to refuse what it should not do.

The same discipline was applied recently in *1st Containers (UK) Ltd v The Owners of the Ship or Vessel MV of the Port of Panama*.⁴ The High Court held that its admiralty jurisdiction cannot be invoked to obtain security for a foreign judgment, set aside an arrest at Port Klang that was in substance an attempt to enforce a Rotterdam judgment, and declined to follow *The Rena K*. Yet it refused damages for wrongful arrest, because a genuine, if mistaken, view of the law is not malice.

This distinction is fundamental to investor confidence. A jurisdiction where everything is possible may ultimately be a jurisdiction where nothing is certain. In other words, a jurisdiction where the rules are clear, remedies are meaningful and judicial power is exercised according to principle is altogether different.

From Right, To Discretion, To Responsibility

The jurisprudence continued to develop in *Premium Vegetable Oils Sdn Bhd v The Owners and/or Demise Charterers of the Ship or Vessel "Ever Concord"*,⁵ where Atan

² [1996] 4 MLJ 454

³ [1999] 6 MLJ 652

⁴ [2025] MLJU 4599

⁵ [2021] 9 MLJ 936

Mustaffa Yussof Ahmad JC (as his Lordship then was) considered the requirements surrounding the arrest of a vessel. His Lordship distinguished the ordinary statutory right to arrest from a discretionary remedy, holding that under the Rules of Court 2012, once Order 70 rule 4 is complied with, a warrant of arrest issues as of right and there is no further requirement of full and frank disclosure.

This distinction becomes particularly important when maritime law intersects with arbitration.

In *Unicuous Energy Pte Ltd v The Owners and/or Demise Charterers of the Ship or Vessel "Alpine Mathilde"*,⁶ Ong Chee Kwan J (as his Lordship then was) considered precisely such an intersection.

"*Alpine Mathilde*" case brought together many of the realities of contemporary international commerce. A vessel, international sanctions, blocked cargo, a charterparty, a London arbitration and an application for security.

The Court recognised that section 11(1)(c) of the Arbitration Act 2005 (AA 2005) provides a mechanism for interim measures, including the preservation of assets through arrest. However, where the Court's discretion is invoked, the applicant must approach the Court with candour and full and frank disclosure.

The subsequent "*Alpine Mathilde*" judgment⁷ on wrongful arrest sharpened that principle further. The Court held that deliberate or misleading non-disclosure, or conduct amounting to gross negligence or recklessness, could support an award of damages for wrongful arrest.

Building Confidence Through Certainty, Choice And Discipline

The next part of this Article will shift the focus from arrest of vessel to the determination of an arbitral dispute and to the enforcement of an international award. The purpose is to explore the common denominator, namely confidence in Malaysia's legal system.

The strength of a dispute-resolution jurisdiction is ultimately measured not merely by the existence of legislation or institutions but by the confidence that commercial parties can place in the entire dispute-resolution ecosystem. The ecosystem extends from the commencement of proceedings, to the making of an award, and ultimately to its recognition and enforcement.

Two recent decisions of the Federal Court illustrate this development particularly well.

In *ING Bank NV & Anor v Tumpuan Megah Development Sdn Bhd*,⁸ the Federal Court considered the relationship between the Reciprocal Enforcement of Judgments Act 1958 (REJA) and the AA 2005 in the enforcement of a foreign arbitral award. The Court rejected the proposition that the AA 2005 displaced REJA.

⁶ [2023] MLJU 2819

⁷ [2024] MLJU 532

⁸ [2025] 8 CLJ 873

It recognised that the two statutes provide separate and independent avenues for the recognition and enforcement of foreign arbitral awards. Under REJA, a foreign arbitral award which has been converted into a confirmation judgment in a reciprocating jurisdiction may be registered and enforced in Malaysia. Alternatively, the award may be enforced directly under the AA 2005.

The Federal Court also rejected the characterisation of the REJA route as “judgment laundering”. The apex Court held that the REJA provides a clear and separate statutory avenue for enforcement and that utilisation of that route does not deprive an award creditor of the benefit of the statutory regime.

This is important from an international commercial perspective. Certainty in enforcement is an essential component of confidence in any dispute-resolution centre. An arbitral award is of limited commercial value if the successful party cannot efficiently convert that award into an enforceable remedy. The Federal Court's decision demonstrates that Malaysia's legal framework accommodates different routes to enforcement while respecting the distinct statutory foundations upon which those routes operate.

The decision is also significant in defining the limits of judicial review. Where fraud is raised as a purported jurisdictional challenge, the registering court may examine whether the arbitral tribunal had the jurisdiction or power to determine the dispute. However, that does not permit the court simply to revisit factual findings made by the arbitral tribunal concerning fraud.

If *ING Bank* demonstrates the strength of the destination, *Telekom Malaysia Bhd v Obnet Sdn Bhd*⁹ demonstrates the importance of the journey.

In *Telekom Malaysia Bhd*, the Federal Court considered whether an oral pronouncement on liability in a bifurcated arbitration could constitute a valid decision enabling the tribunal to proceed to quantum. The Court held that where the tribunal determines a substantive issue such as liability, that determination constitutes an award. It must comply with the mandatory requirements of the AA 2005, including the requirement that the award be made in writing and contain reasons.

The Federal Court accepted that an arbitrator is the master of the arbitral proceedings and may choose to bifurcate liability and quantum. But procedural autonomy does not displace statutory discipline. Bifurcation did not relieve the arbitrator from complying with the AA 2005. An oral determination of liability could not therefore serve as a substitute for a written award.

The apex Court's reasoning goes beyond formality. A written and reasoned award provides certainty to the parties, enables the next stage of the arbitration to proceed on a defined basis, and ensures that the tribunal is functus officio in respect of the issue already determined. Without a valid written award on liability, the assessment of damages could not properly proceed.

⁹ [2025] 1 CLJ 17

These two decisions, although arising in different contexts, convey a common message. International dispute resolution depends upon confidence at every stage of the process. Confidence requires not only access to a sophisticated Court or arbitral institution, but also certainty in procedure, respect for party autonomy, disciplined exercise of judicial and arbitral power, and reliable mechanisms for enforcement.

The Lesson Is Powerful.

For ICAD, this is particularly significant. The establishment of the International Commercial and Admiralty Division should be viewed not simply as the creation of a specialised division, but as another important step in the development of Malaysia's broader dispute-resolution infrastructure. The ability to hear sophisticated international commercial disputes must be matched by the ability to produce decisions that are procedurally sound, commercially intelligible and capable of being recognised and enforced.

The lesson from these cases is therefore simple. A successful dispute-resolution hub is built on three pillars, namely choice, certainty and confidence. Malaysia's recent jurisprudence demonstrates that those pillars are increasingly taking root.

Commercial certainty does not mean certainty for one side. It means certainty for everyone. In the context of admiralty, the claimant must know that a genuine maritime claim can be protected. The shipowner must know that its vessel will not be detained without lawful justification. The arbitrating party must know that arbitration cannot simply be used as a device to circumvent the limits of judicial jurisdiction. The international investor must know that the Court will protect legitimate commercial rights while restraining abuse of its process. That is what makes a jurisdiction commercially credible.

This is also why the creation of ICAD is timely. ICAD should not be understood merely as another conference, another institution, or another forum about dispute resolution. Its deeper proposition is more ambitious.

If Malaysia wishes to transform its geographical advantage into a jurisdictional advantage, it must create an ecosystem in which commercial certainty is treated as part of the country's economic infrastructure.

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KUALA LUMPUR

Level 16, Menara 1 Dutamas No. 1, Jalan Dutamas 1,
Solaris Dutamas, 50480 Kuala Lumpur
T: +603 6209 5400
F: +603 6209 5411
enquiry@rdslawpartners.com

PENANG

Suite S-21E & F21st Floor, Menara Northam,
No. 55, Jalan Sultan Ahmad Shah, 10050
Penang
T: +604 370 1122
F: +604 370 5678
generalpg@rdslawpartners.com

JOHOR BAHRU

8-35, Menara Delima Satu, Jalan Forest City 1,
Pulau Satu, 81550 Gelang Patah, Johor Bahru
T: +607 585 6414
F: +607 509 7614
generaljb@rdslawpartners.com