

NEW SUBSIDIARY LEGISLATION ON EXEMPTIONS TO CABOTAGE POLICY GAZETTED

13 June 2024



The Malaysian Government had announced in March this year its intention to reinstate the exemption of cabotage policy for foreign ships involved in submarine cable repair in a bid to attract more foreign investment in the data centre services sector and to spur growth of the digital economy.

Further to the announcement above, the following subsidiary legislation were gazetted under the Merchant Shipping Ordinance 1952 (“MSO”) on 30 May 2024:

1. Revocation of Exemption under Section 65U (“P.U.(B) 197/2024”)¹;
2. Revocation of Exemption under Section 65U (“P.U.(B) 198/2024”)²;
3. Exemption under Section 65U (“P.U.(B) 199/2024”)³; and
4. Exemption under Section 65U (“P.U.(B) 200/2024”)⁴.

(collectively the “Orders”).

The Orders became effective on 1 June 2024.

¹ **P.U.(B) 197/2024** revokes the exemption order dated 30 May 2017 (“P.U.(B) 274/2017”) which allows non-Malaysian ships to provide transport of cargo services:

- a) from any port in Peninsular Malaysia to any port in Sabah, Sarawak and the Federal Territory of Labuan and vice versa;
- b) from any port in Sabah to another port in Sabah; and
- c) from any port in Sarawak to another port in Sarawak

(collectively “**relevant cargo services**”).

² **P.U.(B) 198/2024** revokes the exemption order dated 26 May 2017 (P.U.(B) 275/2017) which exempts Malaysian ships and non-Malaysian ships from having to obtain a licence under section 65L of the MSO to provide the relevant cargo services.

³ **P.U.(B) 199/2024** specifically exempts non-Malaysian cable-laying ships from the prohibition of Section 65KA(1) of the MSO (which prohibits non-Malaysian ships from engaging in domestic shipping) for purposes of installation, maintenance and repair of submarine telecommunication cable landed at any submarine cable landing centre in Malaysian waters.

⁴ **P.U.(B) 200/2024** was gazetted in place of the now revoked P.U.(B) 274/2017. The exemptions are similar except for the following:

- a) non-Malaysian ships are now only allowed to provide cargo transport services in respect of “container ship for service of containerised transshipment cargo, in a non-stop single voyage” as opposed to the general “transport of cargo services” under P.U.(B) 274/2017; and
- b) non-Malaysian ships are now only allowed to provide such services:
 - from a port in Peninsular Malaysia to a port in Sabah and vice versa;
 - from a port in Peninsular Malaysia to a port in Labuan and vice versa; and
 - from a port in Sabah to another port in Sabah.

The Effect of the Orders

The effect of the Orders can be summarised as follows:-

1. While non-Malaysian cable laying ships are now allowed to be engaged in the provision of installation, maintenance and repair of submarine telecommunication cables landed in Malaysian waters, there is no exemption made under section 65L of the MSO, which provides that no ship shall engage in domestic shipping without a licence. Therefore, non-Malaysian cable laying ships will be required to obtain a Domestic Shipping Licence (“**DSL**”);
2. Non-Malaysian ships which were previously allowed to provide the relevant cargo services (as defined in endnote 1) can no longer provide cargo transport services to or from any port in Sarawak.
3. The provision of such cargo services by non-Malaysian ships is now limited to container ship for service of containerised transshipment cargo, in a non-stop single voyage, and do not include goods which are not shipped in containers, but in crates, bags, boxes, drums, barrels or other forms of storage or packaging, often referred to as break bulk cargo; and
4. A DSL is now required for both Malaysian and non-Malaysian ships to provide the relevant cargo services for which DSL was previously exempted.



Comments

While non-Malaysian cable laying ships are now allowed to perform cable installation and maintenance work, it is still subject to the Domestic Shipping Licence Board granting DSLs to these non-Malaysian cable laying ships.

As subsidiary legislation are susceptible to revocation by the relevant Minister in the event there is a change in cabotage policy by the government of the day. the exemptions under P.U. (B) 199/2024 and P.U.(B) 200/2024 may not provide the assurance and certainty sought by foreign investors, given that the previous government has revoked such exemptions before.

As the digital economy grows, demands for data centres and investments in the data centre services sector will continue to grow as well. It is perhaps apt to consider introducing a new provision into the MSO and a subsidiary legislation specifically to provide a framework for expeditious licensing of cable laying ships and other submarine cable repair services.

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