



ADMIRALTY COURT

USER GUIDE



ACKNOWLEDGEMENTS

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FOREWORD

The idea of a user guide to the Admiralty Court in Malaysia was first mooted at a shipping conference organised by the Judiciary, at the inception of the formation of the Admiralty Court in Kuala Lumpur, in 2010. Admiralty or maritime law is very much a specialist subject, and the number of advocates and solicitors who practice in this field is small. It was primarily with a view to facilitating access to a larger proportion of the Malaysian Bar, and to encourage more practitioners to venture into this interesting area of the law, that this guide was authored.

The User Guide to the Admiralty Court is largely, if not entirely, a work of the specialist Admiralty Bar. Considerable time and thought has been expended in the production of this guide, and it provides a comprehensive and detailed account of the methodology to be adopted in commencing and conducting an admiralty proceeding. Of particular importance are the checklists and procedure detailed in the guide, which are of invaluable assistance to the young or first time practitioner. For example, the drafting, obtaining and execution of a warrant of arrest may well appear to be daunting to those inexperienced in this field, but the guide provides the requisite assurance, by detailing meticulously the important issues that have to be considered and undertaken. While the Guide is premised on the relevant provisions of the Courts of Judicature Act 1964 and the Rules of Court 2012, more specifically Order 70, it explains how these provisions are applied practically in the course of shipping practice.

Another notable feature of the User Guide is that it is one of the first, if not the only publication that provides relevant and significant direction on how to undertake shipping work in the Admiralty Court. It is hoped that this guide will be the first of many such publications to assist practitioners in various other fields.

The Admiralty Court is still in its infancy. However publications such as this, enhance the quality and standards of our legal profession. This in turn, serves to contribute to the standing of the Admiralty Court that strives to attain a reputation for being a forum that is transparent, fair and efficient.

Nallini Pathmanathan
Judge of the Court of Appeal
October 2016

1. INTRODUCTION

- 1.1 This Guide is intended to provide general direction on the conduct of proceedings in the Admiralty Court and the established practice of the Court within the framework of the Courts of Judicature Act 1964, Rules of Court 2012 and relevant Practice Directions. This Guide is not intended in any way to override the Rules of Court or Practice Directions made under them, or as fettering the discretion of the Registrars or Judges of the Admiralty Court.

2. ABOUT THE ADMIRALTY COURT

(i) Framework

- 2.1 The Admiralty Court Kuala Lumpur was launched by the former Chief Justice of Malaysia, The Right Honourable Tun Dato' Seri Zaki Bin Tun Azmi, on 30th September 2010.
- 2.2 The Admiralty Court is fully supported by the Government of Malaysia and the Malaysian maritime industry. It plays a pivotal role in creating a dependable link between the maritime industry and the law. The Admiralty Court functions as a specialist Court that responds to disputes with efficiency, skill and speed, to ensure that maritime litigants' rights are effectively protected and enforced. The Admiralty Court is located and centralised in Kuala Lumpur with the capacity and the expertise to resolve all types of maritime claims of domestic and international content.
- 2.3 In this specialist Court, cases are heard by specialist Judges that have many years of experience in dealing with maritime and commercial law. The Admiralty Court has a dedicated Admiralty Registry for the filing of Admiralty papers, staffed by highly trained personnel including Court Bailiffs. There is a duty Admiralty Registrar acting as Sheriff at all times, conversant with admiralty law, practice and procedure, who is contactable outside Court working hours in matters of urgency.
- 2.4 The Admiralty Sheriff is appointed by the Admiralty Court and is responsible for the arrest and sale of ships which are the subject of proceedings in the Admiralty Court. Details of the Admiralty Registry and Admiralty Sheriff are found in Appendix A to this Guide.

(ii) **The Admiralty Court Users' Committee**

2.5 The Admiralty Court's ability to meet the special problems and continually changing legal needs of the maritime industry and shipping community depends in part upon a steady flow of information and constructive suggestions exchanged between the Court, the Admiralty Bar, litigants and professional institutions. All concerned with the Admiralty Court are encouraged to make the fullest use of this important channel of communication. Correspondence raising matters for the consideration of the Committee or suggestion for changes or improvements to the Admiralty Court should be addressed to the Admiralty Court Users' Committee, detailed in Appendix B to this Guide.

3. SOURCE OF RELEVANT SHIPPING AND ADMIRALTY PROVISIONS

- Bill of Lading Act 1855 (UK).
- Carriage of Goods by Sea Act 1950 (Act 527).
- Merchant Shipping Ordinance 1952 (No. 70 of 1952) (as amended by Merchant Shipping (Amendment and Extension) Act 2011 (Act 1393) (West Malaysia).
- Penang Port Commission Act 1955 (Act 140).
- Civil Law Act 1956 (Act 67).
- Merchant Shipping Ordinance 1960 of Sabah (Sabah Ord. No. 11 of 1960).
- Merchant Shipping Ordinance 1960 Sarawak (Sarawak Ord. No. 2 of 1960).
- The Port Authorities Ordinance 1961 (No.1 of 1961) (Sarawak).
- Port Authorities Act 1963 (Act 488).
- Courts of Judicature Act 1964 (Act 91).
- Environmental Quality Act 1974 (Act 127).
- Bintulu Port Authority Act 1981 (Act 243).
- Sabah Ports Authority Enactment 1981 (No.17 of 1981).
- Senior Courts Act 1981 (UK) (formerly known as the Supreme Court Act 1981).
- Ports (Privatisation) Act 1990 (Act 422).
- Sabah Ports (Privatisation) Enactment 1998 (No.2 of 1998).
- Arbitration Act 2005 (Act 646).
- Practice Direction No. 2 of 2007 (Admiralty).

- Merchant Shipping (Liability and Compensation for Oil and Bunker Oil Pollution) Act 1994 (Act 515) [by virtue of - Merchant Shipping (Oil Pollution) (Amendment) Act 2011 (A1394)].
- Practice Direction No. 1 of 2012 (Admiralty).
- Order 70 Rules of Court 2012.
- Mediation Act 2012 (Act 749).
- Territorial Sea Act 2012 (Act 750).
- Practice Direction No. 4. of 2016 (Mediation).

4. ADMIRALTY JURISDICTION OF THE HIGH COURT

4.1 By virtue of section 24(b) of the Courts of Judicature Act 1964 and subject to sections 20 to 24 of the United Kingdom Supreme Court Act 1981 (now known as Senior Courts Act 1981), the Admiralty Court shall have jurisdiction to hear and determine any of the following questions:-

- (a) any claim to the possession or ownership of a ship or to the ownership of any share therein;
- (b) any question arising between the co-owners of a ship as to possession, employment or earnings of that ship;
- (c) any claim in respect of a mortgage of or charge on a ship or any share therein;
- (d) any claim for damage received by a ship;
- (e) any claim for damage done by a ship;
- (f) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or in consequence of the wrongful act, neglect or default of -
 - i. the owners, charterers or persons in possession or control of a ship; or
 - ii. the master or crew of a ship, or any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible,being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship, or in the embarkation, carriage or disembarkation of persons on, in or from the ship;
- (g) any claim for loss of or damage to goods carried on a ship;

- (h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;
- (i) any claim in the nature of salvage (including any claim arising by virtue of the application, by or under section 51 of the Civil Aviation Act 1949, of the law relating to salvage to aircraft and their apparel and cargo);
- (j) any claim in the nature of towage in respect of a ship or an aircraft;
- (k) any claim in the nature of pilotage in respect of a ship or an aircraft;
- (l) any claim in respect of goods or materials supplied to a ship for her operation or maintenance;
- (m) any claim in respect of the construction, repair or equipment of a ship or in respect of dock charges or dues;
- (n) any claim by a master or member of the crew of a ship for wages (including any sum allotted out of wages or adjudged by a superintendent to be due by way of wages);
- (o) any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;
- (p) any claim arising out of an act which is or is claimed to be a general average act;
- (q) any claim arising out of bottomry;
- (r) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for droits of Admiralty.

4.2 The jurisdiction applies:-

- (a) in relation to all ships or aircraft, whether Malaysian or not and whether registered or not and wherever the residence or domicile of their owners may be;
- (b) in relation to all claims, wherever arising (including, in the case of cargo or wreck salvage, claims in respect of cargo or wreck found on land); and
- (c) so far as they relate to mortgages and charges, to all mortgages or charges, whether registered or not and whether legal or equitable, including mortgages and charges created under foreign law.

5. EXERCISE OF THE ADMIRALTY JURISDICTION

5.1 Section 21 of the UK Supreme Court Act 1981 sets out the mode of exercise of the admiralty jurisdiction, which may take the form of action *in rem* or action *in personam*.

6. ACTION IN REM

6.1 An admiralty action *in rem* is an action against the *res* (thing), which is usually a ship but may also include other kinds of maritime properties or *res*, like cargo or freight. The action *in rem* is characterised by service on, and arrest of, the *res*. The Defendant to an action *in rem* is the owner of the *res*. Unless released, the *res* will in due course be judicially sold by the Admiralty Court, free of all encumbrances. The proceeds of judicial sale of the *res* are then used to satisfy the Plaintiff's claim and the claims of other parties, if any, according to an established order of priorities.

7. ACTION IN PERSONAM

7.1 The admiralty action *in personam* is similar to a non-admiralty civil action. To commence an admiralty action *in personam* the claim in question must come within the subject matter of the admiralty jurisdiction recognised under paragraph 4.1 above.

8. OTHER MARITIME CLAIMS HEARD BY THE ADMIRALTY COURT

8.1 By virtue of Practice Direction No. 1 of 2012, the Admiralty Court shall also hear the following maritime claims:-

- (a) claims relating to carriage of goods by sea;
- (b) limitation of actions for maritime claims, including actions seeking to limit liability or for extension of time where the limit of liability or the time for commencement of proceedings is prescribed by maritime convention or legislation;
- (c) disputes pertaining to marine insurance and reinsurance contracts, including marine insurance agents and brokerage contracts;
- (d) disputes arising from shipbuilding agreements, including issues with regard to the construction, design, maintenance and repair of ships;
- (e) disputes arising from the sale and purchase of ships;
- (f) civil claims arising out of marine pollution;
- (g) marine or shipping-related agency, freight and multimodal transport and warehousing of goods at any port in Peninsular Malaysia;
- (h) claims related to ship financing and documentary credit for the carriage of goods by sea;
- (i) death or personal injury, loss or damage arising out of a marine activity in or about a marine facility, which includes ports, docks, berths, or any form of structure defined as a “ship” under maritime law;
- (j) civil claims arising from any breach of any marine regulations, notices, by-laws, rules or guidelines;
- (k) disputes pertaining to the welfare of any seaman, including wages and contract of service;

- (l) applications in connection with maritime arbitrations, including applications for the preservation of assets pending maritime arbitration and the review, setting aside and enforcement of maritime arbitration awards;
- (m) appeals in respect of a maritime claim determined by the Subordinate Courts;
- (n) subject to the consent of all parties, any appeal in respect of a maritime claim from a Subordinate Court of Malaya may be transferred to the Admiralty Court.

The Practice Direction No. 1 of 2012 and Practice Direction No. 2 of 2007 are at Appendix C and Appendix D to this Guide.

9. ADMIRALTY SHERIFF

9.1 By virtue of section 12 of the Courts of Judicature Act 1964, the Deputy Registrar and the Senior Assistant Registrars of the High Court at Kuala Lumpur are the Admiralty Sheriff and Assistant Sheriffs, respectively. Other administrative assistants such as Bailiffs, process servers and other subordinate officers shall assist the Admiralty Sheriff or the Assistant Sheriffs in carrying out their duties.

9.2 The functions and obligations of the Admiralty Sheriff are set out in the Rules of Court 2012, which include:

- (a) serving writs *in rem* and executing arrest warrants on ships or other maritime property;
- (b) taking all appropriate steps to retain safe custody of, and to preserve, a ship or maritime property under arrest, including:-
 - i. removing from the ship, cargo that is under arrest;
 - ii. removing cargo from a ship that is under arrest; and
 - iii. moving the ship that is under arrest.
- (c) arranging for the release of a ship or other maritime property pursuant to an Order of Court or instrument of Release;
- (d) arranging for the valuation and sale of a ship or other maritime property pursuant to an Order of Court;
- (e) filing a return of the sale, and an account of the sale and documents in support of the account for taxation;

- (f) arranging for the payment of the proceeds of the sale of a ship or other maritime property into the Court.

10. COMMENCING AN ADMIRALTY PROCEEDING

- 10.1 Order 70 of the Rules of Court 2012 prescribes the procedures applicable to enforce admiralty claims, including the arrest of maritime property.
- 10.2 A proceeding which is an action *in rem* under the admiralty jurisdiction is commenced by filing a writ in action *in rem* in the Court and paying the relevant fees. Details of the procedure to be followed and the forms to be used are set out in Order 70 of the Rules of Court 2012 and Admiralty Practice Directions No: 2 of 2007 and No: 1 of 2012.
- 10.3 Order 70 of the Rules of Court 2012 provides that an admiralty action *in personam* must be in Form 2 of Appendix A to the Rules of Court 2012 and the words “Admiralty action *in personam*” must be inserted above the space for the number of the writ [see: Appendix E to this Guide]. Separate writs must be issued if a party intends to commence proceedings *in rem* and *in personam*.
- 10.4 A writ *in rem* or *in personam* is valid for six (6) months and may by Order of Court be extended five (5) times not exceeding six (6) months at any one time, upon an application made before its expiry, with an affidavit in support showing that efforts have been made to effect service of the writ.
- 10.5 Where the proceeding is an action *in rem* against a ship or other maritime property on a ship, the Rules of Court 2012 provides that service is effected by the Admiralty Sheriff by securely affixing a sealed copy of the writ to a mast or some other conspicuous part of the ship. Where the action *in rem* is against other maritime property that is not at the time of service on board the ship, service is effected by securely affixing a sealed copy of the writ to the property or to a package or container containing the property. The Rules of Court 2012 also provide for service where it is not possible to gain access to the ship or property, or where the action *in rem* is against the proceeds of the sale of the ship or property that has been paid into the Court. Substituted service is not possible in an action *in rem*.

- 10.6 Where the proceeding is an action *in personam*, service of a sealed copy of the writ must be effected in the usual way in accordance with the Rules of Court 2012.
- 10.7 Order 12 of the Rules of Court 2012 applies to both admiralty proceedings *in rem* and *in personam* with regard to the entry of appearance to a writ.

11. ARREST OF MARITIME PROPERTY

11.1 Immediately after an action *in rem* is commenced, a request supported by an affidavit may be made for an arrest warrant to be issued in respect of the ship or other maritime property concerned. The request is filed together with an undertaking to the Court to pay on demand the fees and expenses incurred by the Admiralty Sheriff in relation to the arrest.

(i) Arrest as of right

11.2 The Plaintiff may seek the issuance of a warrant of arrest by way of a Praecipe in Form 148 of the Appendix A to the Rules of Court 2012 upon issuance of writ *in rem* and the Defendant upon filing a counterclaim. [see: Appendix E to this Guide]. The issuance of warrant of arrest in an action *in rem* is conditional upon a writ *in rem* having been issued in that action. A Plaintiff is generally entitled to the warrant of arrest as of right, subject to the compliance of the rules and applicable law and the Admiralty Court has no discretion to refuse the issue of a warrant of arrest.

(ii) Arrest only with leave of court

- 11.3 A warrant of arrest may not be issued as of right in the case of:
- (a) property whose beneficial ownership has, since the issue of the writ, changed as a result of a sale or disposal by any Court exercising admiralty jurisdiction;
 - (b) an action *in rem* against a foreign ship belonging to a port of a State having a consulate in Malaysia, being an action for possession of the ship or for wages, until notice that the action has been begun has been sent to the consul; and
 - (c) an action *in rem* in which there is a claim arising out of bottomry until the bottomry bond and, if the bond is in a foreign language, a notarial translation thereof is produced to the Registrar.

(iii) Affidavit in support of arrest warrant

- 11.4 To obtain the issue of a warrant of arrest, the party requesting must file an affidavit. Every affidavit must comply with the requirements of Order 70 rules 4(6) to (9) of the Rules of Court 2012.
- 11.5 A warrant of arrest is executed in the same way as a writ is served. It may be executed at the same time as the writ is served, or at some later time. The Admiralty Court is able to execute a warrant of arrest on any day anywhere within the territorial waters of Malaysia.
- 11.6 A party seeking the issue of a warrant of arrest may request that the execution of it be withheld. An interested person in relation to a ship or maritime property that is the subject of a warrant of arrest may apply to the Admiralty Court for the warrant to be discharged, not to be executed at all or not to be executed within a specified time.
- 11.7 The ship or maritime property described in a warrant is under arrest from the time the warrant is executed until the ship or maritime property is released by Admiralty Court from arrest or sold by Order of Court. Any person removing the ship or maritime property, without leave to do so, may be in contempt of Court.

12. CAVEATS AGAINST ARREST

- 12.1 A person who wishes to prevent the arrest of a ship or other property can lodge a Praecipe for caveat against arrest in Form 149 of Appendix A to the Rules of Court 2012 in the Admiralty Registry [see: Appendix E to this Guide]. A caveat against arrest is valid for six (6) months. Successive caveats may be entered upon expiry. The caveator agrees to enter appearance and put up bail to prevent an arrest of the ship. Although the caveat does not guarantee that an arrest will not be effected, it nevertheless acts as a deterrent to arrest. Unless the arresting party can demonstrate that there was a good and sufficient reason for arresting despite the caveat, the Court may order the arresting party to pay damages to the caveator for any loss arising out of the arrest, as well as the discharge of the warrant of arrest.
- 12.2 The Register of caveats against arrest is maintained by the Admiralty Registry and the Caveat Book is open for inspection.
- 12.3 A list of the current caveats against arrest is available on the Admiralty Court's website.

13. CHECKLIST TO COMMENCE AN ACTION *IN REM* AND ISSUE A WARRANT OF ARREST

13.1 Jurisdictional requirements:

- (a) claim comes within any of the questions or claims under section 20(2) of the UK Supreme Court Act 1981; and
- (b) satisfies either:
 - (i) section 21(2) of the UK Supreme Court Act 1981;
 - (ii) section 21(3) of the UK Supreme Court Act 1981; or
 - (iii) section 21(4) of the UK Supreme Courts Act 1981.

13.2 Procedural requirements – cause papers required to be filed in Court:

- (a) Commencement of an admiralty action:
 - (i) Form 146 - Writ in action *in rem* (O 70 r 2) [see: Appendix C to this Guide];
 - (ii) Form 150 - Praecipe for service of writ *in rem* by Sheriff (O 70 r 7(3)) [see: Appendix E to this Guide].
- (b) For arrest:
 - (i) Form 148 - Praecipe for Warrant of Arrest (O 70 r 4) [see: Appendix E to this Guide];
 - (ii) Affidavit Leading to Warrant of Arrest (O 70 r 4);
 - (iii) Undertaking as to Sheriff's Costs and Expenses (O 70 rr 7 and 9);
 - (iv) Form 147 - Warrant of Arrest (O 70 r 4) [see: Appendix E to this Guide];
 - (v) Certificate of Urgency; and
 - (vi) Court Deposit of RM15,000.00 towards Sheriff's costs and expenses (Practice Direction No. 2 of 2007) [see Appendix C to this Guide].

- 13.3 Procedure in the issuance, service and execution of writ *in rem* and warrant of arrest:
- (a) Before a warrant of arrest is issued, a search of the Caveat Book is conducted by the arresting party to ascertain whether there is a caveat against arrest in force.
 - (b) The arresting party or its solicitors shall prepare and hand over six (6) copies of the sealed writ *in rem* and warrant of arrest to the Admiralty Sheriff/Court Bailiff to effect service and for execution upon the ship or maritime property.
 - (c) The Admiralty Sheriff/Court Bailiff may prepare cover letters of notice of the due service and execution of the writ *in rem* and warrant of arrest to the relevant maritime authorities such as the Malaysian Marine Department, Malaysian Maritime Enforcement Agency, Port Authorities, Malaysian Immigration Department and Malaysian Royal Customs, as the case may be. The notices are delivered to the appropriate maritime authorities by the Admiralty Sheriff/Court Bailiff.
 - (d) The arresting party's solicitor or its agent shall accompany and assist the Admiralty Sheriff/Court Bailiff for the purpose of service and execution of the writ *in rem* and warrant of arrest on the ship at berth or at sea within Malaysian territorial waters.
 - (e) If the service is effected at sea, proper information of the location of the ship must be obtained, and a safe launch boat to the ship must be provided by the arresting party.
 - (f) Upon embarking on the ship, the Admiralty Sheriff/Court Bailiff shall explain to the Master of the ship the reason for boarding the ship.
 - (g) A copy each of the writ *in rem* and warrant of arrest shall be served and executed by the Admiralty Sheriff/Court Bailiff on the ship in accordance with the prescribed mode of service and execution of warrant of arrest under the Rules of Court 2012.
 - (h) The Admiralty Sheriff/Court Bailiff may request the Master/ship's local agent to hand over all original copies of ship's statutory documents to the offices of Director of Marine Department until the ship is released from arrest by Admiralty Court.

- (i) within two (2) days after the execution of the warrant of arrest, the Admiralty Sheriff/Court Bailiff shall file in the Admiralty Court an affidavit of service of the writ in rem and execution of the warrant of arrest.

14. STANDARD DIRECTIONS TO THE ADMIRALTY SHERIFF UPON EXECUTION OF THE WARRANT OF ARREST

- 14.1 The Admiralty Sheriff, with the consent of the arresting party or its solicitors, may at any time:-
 - (a) take all appropriate steps to retain custody of and preserve the ship, its machinery and equipment or property;
 - (b) move the ship up to five (5) nautical miles within the limits of the port where she is lying under arrest, either for her safety or to comply with the requirements of the Marine Department or Port Authority; and
 - (c) supply the minimum victuals, domestic fuel and fresh water necessary for a maximum of five (5) days to avoid immediate hardship to the crew, pending an application to the Admiralty Court for directions.

15. OMNIBUS APPLICATION

- 15.1 The Admiralty Court may make orders at any stage of a proceeding in relation to the preservation, management or control of a ship or maritime property, including the loading and unloading of cargo, that is under arrest. The Admiralty Sheriff or an interested party may, as soon as possible after arrest, apply for directions with respect to the ship or maritime property under arrest by the Admiralty Court.
- 15.2 With leave of Admiralty Court, a local shipping agent may be appointed by the arresting party to assist the Sheriff in the custody and care of the ship throughout the period of arrest till appraisalment and sale of the ship by the Admiralty Court.

16. CAVEATS AGAINST RELEASE AND PAYMENT

- 16.1 A caveat against release and payment out of proceeds of sale of the ship, in Form 153 of Appendix A to the Rules of Court 2012, may be filed in the action in which the warrant of arrest was issued [see: Appendix E to this Guide]. A caveat against release and payment is valid for six (6) months beginning with the date of its entry but the person at whose instance a caveat was entered may withdraw it by filing a praecipe in Form 154 of the Appendix A to the Rules of Court 2012 [see: Appendix E to this Guide]. Successive caveats may be entered upon expiry. If there is a caveat against release in force in relation to the ship or property under arrest, before a Release is issued, the party entitled to its issue shall give notice to the party at whose instance the caveat against release was entered or his solicitor requiring it to be withdrawn.
- 16.2 The Register of caveats against release and payment is maintained by the Admiralty Registry and the Caveat Book is open for inspection.
- 16.3 A list of the current caveats against release and payment is available on the Admiralty Court's website.

17. RELEASE OF AN ARRESTED MARITIME PROPERTY

- 17.1 A ship or property may be released from arrest where:
- (a) the party who obtained the arrest consents in writing to the release;
 - (b) a bail bond in the required form as in Form 155 of Appendix A to the Rules of Court 2012 [see: Appendix E to this Guide] and amount is filed in the Court;
 - (c) the party who obtained the arrest agrees to accept letters of undertaking from a Protection and Indemnity (P&I) Club or a local bank guarantee;
 - (d) the required amount is paid into the Court;
 - (e) the proceeding is discontinued or dismissed; or
 - (f) the Admiralty Court orders the release on just terms.
- 17.2 The ship or property will only be released if satisfactory arrangements have been made for the payment of the Admiralty Sheriff's costs and expenses incurred in connection with its custody while under arrest.

- 17.3 For the purpose of the release, an instrument of release in Form 151 and a praecipe requesting issue of a release in Form 152 of Appendix A to the Rules of Court 2012 [see: Appendix E to this Guide] must be filed in the Admiralty Registry.

18. ISSUE OF DOCUMENTS WHEN THE ADMIRALTY REGISTRY IS CLOSED AND RELEASE OF VESSEL OUT OF OFFICE HOURS

- 18.1 The Deputy Registrar acting or Senior Assistant Registrars of the High Court at Kuala Lumpur acting as Admiralty Sheriff or Assistant Sheriffs will be on duty after office hours on rotation to attend to urgent matters relating to an arrest or release of a ship or maritime property. Their contact details after office hours are in Appendix F to this Guide.
- 18.2 Parties interested in a ship or maritime property under arrest by Court may obtain information from the relevant authorities identified in Appendix G to this Guide on the requirements or compliance of all relevant by-laws, rules and regulations affecting the ship or maritime property whilst under arrest by Court.

19 APPRAISEMENT AND SALE OF A SHIP OR MARITIME PROPERTY

- 19.1 Order 70 rules 21 and 22 of the Rules of Court 2012 prescribe the procedures to be followed in a judicial sale of a maritime property.
- 19.2 Appraisement and sale of the ship or maritime property may be ordered upon entry of judgment in default or pending trial (*pendente lite*). The Admiralty Court has a wide discretion to order a sale *pendente lite* due to escalating Sheriff's costs of keeping a ship under arrest.
- 19.3 Appraisement is the official valuation of the ship or maritime property by a Court appointed valuer in order to prevent it from being sold at too low a price. The Admiralty Sheriff is required under the commission for appraisement and sale to sell at the highest price that can be obtained for the ship or maritime property.

- 19.4 Upon receiving the gross proceeds of sale of the ship or maritime property, the Admiralty Sheriff is required to pay the proceeds into Court, to the credit of the proceedings. The proceeds of sale are placed on deposit and may be credited with interest.
- 19.5 The Admiralty Sheriff's account relating to the sale must be taxed by the High Court Registrar and any person interested in the proceeds of sale may be heard on the taxation.
- 19.6 A party applying for a commission for the appraisal and sale of any property under an Order of Court must file in the Admiralty Registry a Praecipe for commission for appraisal and sale in Form 156, together with the commission for appraisal and sale in Form 157 of Appendix A to the Rules of Court 2012 [see: Appendix E to this Guide Book].

20. PRIORITIES

- 20.1 When the sum total of all the claims against the ship or maritime property exceeds the funds in Court representing the proceeds of sale of the *res*, it is necessary for the Admiralty Court to ascertain the relative priorities between the different claimants.
- 20.2 The relative priority between claims is a vital issue when the sum total of the claims exceeds the value of the *res*, as it determines the order in which these various competing claims will be satisfied out of the funds.

21. ORDER OF PRIORITIES

- 21.1 If there are various claims to the proceeds of sale of the *res*, the *prima facie* ranking of claims in order of priority is as follows:-
- (a) statutory claimants, namely through powers conferred by the port legislation of Malaysia on harbour and port authorities to detain and sell ships for unpaid dues;

- (b) Admiralty Court's commission upon judicial sale;
- (c) Admiralty Sheriff's expenses and costs;
- (d) costs of the producer of the fund (usually arresting party's legal costs);
- (e) maritime liens (except for possessory liens which accrue before the maritime liens);
- (f) possessory liens;
- (g) mortgages; and
- (h) statutory liens, ranking *pari passu*.

22. INSPECTION OF A SHIP

22.1 The Admiralty Court may, on the application of any party, make an Order for the inspection by the assessors (if the action is tried with assessors), or by any party or witness, of any ship or other property, whether movable or immovable, the inspection of which may be necessary or desirable for the purpose of obtaining full information or evidence, in connection with any issue in the action.

23. COLLISION

23.1 Collision claims are claims for damage or loss of life or personal injury arising out of a collision between ships; or the carrying out or omission to carry out a manoeuvre of ships.

23.2 The procedural rules relating to collision claims are to be found in Order 70 of the Rules of Court 2012 and the relevant Practice Directions.

23.3 The proceedings are commenced by the Plaintiff issuing and serving a writ on the Defendant. The Defendant then has fourteen (14) days in which to enter appearance. If he fails to do so, the Plaintiff may apply for a default judgment against him.

- 23.4 Unless the Admiralty Court otherwise orders, the Plaintiff must, within two (2) months after service of the writ on the Defendant, and the Defendant must within two (2) months after entering an appearance in the action, and before any pleading is served, lodge in the Admiralty Registry a “Preliminary Act” containing a statement of the incident as prescribed under Order 70 rule 17(1) of the Rules of Court 2012. The Preliminary Act is filed in a closed envelope and sealed by the Court Registrar and is not opened until pleadings are closed or the parties sign their consent to do so, or the Admiralty Court so orders.
- 23.5 A Plaintiff must serve a notice of filing his Preliminary Act on every Defendant who has entered an appearance within three (3) days of the service of the memorandum of appearance or upon filing his Preliminary Act, whichever is the later. Similarly, a Defendant shall, upon filing his Preliminary Act, serve notice that he has done so on the Plaintiff and on every other Defendant who has entered an appearance.
- 23.6 All parties will then be informed of the pre-trial case management hearing for directions by the Admiralty Judge.
- 23.7 The pre-trial case management shall determine whether the trial is to be with or without assessors and such other directions including where appropriate the witnesses who may be called at the trial, whether they are expert witnesses or not.
- 23.8 If the Plaintiff fails to lodge his Preliminary Act within the prescribed period, the Defendant may apply to the Admiralty Court to dismiss the action. The Admiralty Court upon hearing the application may dismiss the action or make such other order on such terms as it thinks just. If the Defendant fails to lodge his Preliminary Act within two (2) months after entering an appearance, the Plaintiff may apply for judgment.
- 23.9 If Defendant does not appear at the hearing, and the Admiralty Court is of the opinion that judgment should be given for the Plaintiff provided he proves his case, the Admiralty Court must order the Plaintiff’s Preliminary Act to be opened and require him to satisfy Court that his claim is well founded. If the Plaintiff duly satisfies the Admiralty Court including by affidavit evidence, the Admiralty Judge may enter judgment for the claim with or without a reference to the Registrar and may order the property against which the action is brought to be appraised and sold and the proceeds to be paid into Court, or may make such Order as it thinks just.

24. LIMITATION ACTION

- 24.1 A shipowner may limit his liability in accordance with the relevant applicable Merchant Shipping laws.
- 24.2 Where there is only one claimant, a shipowner will normally plead limitation as part of his defence or counterclaim, rather than commence a limitation action since the question of limitation only has to be dealt with as between the owner and the sole claimant. However, where there are several claims made or apprehended, the question of limitation ought to be dealt with between the owner and all the claimants, and also between the claimants *inter se* by way of a limitation action.
- 24.3 The person seeking limitation relief is the Plaintiff in the limitation action who must be identified by name in the writ. He must make one of the persons with a claim against him in respect of the casualty to which the action relates, a Defendant to the limitation action and may name all or any of the other parties claiming as Co-Defendants. At least one of the Defendants to the action must be named in the writ by his name.
- 24.4 The writ must be served on one or more of the Defendants who are named by their names therein, and need not be served on any other Defendant. The Defendants who have been served must then enter appearance in the action.
- 24.5 A shipowner may constitute a limitation fund by paying into Court the Ringgit Malaysia equivalent of the number of special drawing rights or gold francs (as the case may be) to which he claims to be entitled to limit his liability under any Merchant Shipping laws, together with interest thereon from the date of the occurrence giving rise to his liability to the date of payment into Court.
- 24.6 On making any payment into Court for the purpose of the limitation action, the shipowner must give notice in writing to every Defendant, specifying the date of payment in, the amount paid in, the amount of interest included therein, the rate of such interest and the period to which it relates. The shipowner must also give notice in writing to every Defendant of any excess amount and any interest thereon paid out to him.

- 24.7 Order 70 rules 36 to 38 of the Rules of Court 2012 prescribes the procedure to be followed in the application for a decree or directions in a limitation action, proceedings under decree and for setting aside a decree of limitation.
- 24.8 Claimants shall proceed to file their claims and serve a copy of their respective claims on every party pursuant to Order 70 rules 39 to 41 of the Rules of Court 2012.

25. MARITIME ARBITRATION

- 25.1 It is common for parties to agree to refer their maritime dispute to arbitration. For a dispute to proceed to arbitration, the parties must enter into an agreement in writing to refer the dispute to arbitration. The arbitration agreement can take the form of a clause within a substantive contractual document executed by the parties before any dispute has arisen, or may be specifically agreed to by parties after the dispute has arisen.
- 25.2 The Arbitration Act 2005 applies to an arbitration, including international arbitration, if the seat of arbitration is in Malaysia, unless parties provide for other procedural laws to apply. The Arbitration Act 2005 is modeled on the UNCITRAL International Commercial Arbitration Model Law, and incorporates internationally recognised arbitration principles, including party autonomy and the competence of the arbitral tribunal to determine its jurisdiction and procedure.

(i) New York Convention 1958

- 25.3 As Malaysia is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, proceedings commenced in the Admiralty Court in contravention of an arbitration agreement will be stayed by the Admiralty Court where a party opposing such Court proceedings makes an application to Court before taking any other steps in the proceedings, unless the arbitration agreement is found to be null and void, inoperative or incapable of being performed.

(ii) Arrest to satisfy Arbitration Award

- 25.4 Where admiralty proceedings in the Admiralty Court are stayed in recognition of an arbitration agreement, the Admiralty Court empowered by section 10 of the Arbitration Act 2005 may, if in those proceedings a ship or maritime property has been arrested, order that the property arrested be retained as security for the satisfaction of any award in the arbitration in respect of that dispute, or order that the stay be conditional on the provision of equivalent security for the satisfaction of any such award. The Admiralty Court in granting a stay of the proceedings, may impose any conditions as it deems fit.
- 25.5 Notwithstanding an arbitration agreement, a party may apply to the Admiralty Court, before or during the arbitral proceedings for the arrest of a ship or maritime property pursuant to the admiralty jurisdiction of the Court as security for the amount in dispute in the arbitration, whether the arbitration is in Malaysia or elsewhere, under section 11 of the Arbitration Act 2005. In such circumstances, the Admiralty Court although effecting an arrest, will not proceed to determine the merits of the dispute. The substantive dispute will be resolved by arbitration.

(iii) Arbitration Proceedings

- 25.6 The manner in which maritime disputes are arbitrated depends on the parties agreement. Parties may choose for the arbitration to be administered by an institution such as the Kuala Lumpur Regional Centre for Arbitration (KLRCA), or have it stand for resolution on an *ad hoc* basis.
- 25.7 Although based in Kuala Lumpur, the KLRCA is an international organisation established in 1978 under the auspices of the Asian-African Legal Consultative Organisation (AALCO) to facilitate the resolution of disputes. It accords the parties with viable means for maritime dispute resolution by providing for a competitive scale of Arbitral Tribunal's fee and administrative costs.
- 25.8 The KLRCA has several sets of arbitration rules to cater to the different needs of the parties. In particular, the KLRCA Fast Track Rules, revised in 2013, adopts arbitral best practices that respond to the requirements of the maritime industry; specifically in terms of speed and the capping of costs, premised on whether the dispute is to be determined based on documents only or with witnesses at an oral hearing. A sample arbitration clause that may be inserted in any substantive contract is found in Appendix H to this Guide.

- 25.9 The parties may agree for the dispute to be resolved by a single arbitrator or by a panel of arbitrators, usually three (3) in number. Parties may select the arbitrator of their choice or from the KLRCA panel of arbitrators.
- 25.10 In the absence of consensus on the arbitrator to be appointed, and no specific appointing authority is named in the arbitration agreement; where the seat of arbitration is Malaysia, the Director of the KLRCA will be the appointing authority.
- 25.11 The Arbitral Tribunal does not have to be legally qualified or resident in Malaysia. Dependent on the nature of the dispute or potential dispute, parties may agree to the specific skills required of the arbitrator. By an amendment to the Legal Profession Act 1976, restrictions to foreign lawyers entering Malaysia on work do not apply to arbitrators and representatives of parties entering Malaysia for purposes related to arbitral proceedings.
- 25.12 Arbitral awards can be recognised and enforced by the Admiralty Court as a Judgment, under section 38 of the Arbitration Act 2005 or challenged to have set aside under section 37. Grounds for refusing recognition and enforcement of the arbitration award are premised on the New York Convention, which do not permit the Admiralty Court to review matters of fact established in the arbitration.
- 25.13 The Arbitration Act 2005 provides for references on questions of law to the Admiralty Court either under sections 41 or 42. Parties to an international arbitration may opt in to have sections 41 and 42 apply to their arbitration agreement, and parties to a domestic arbitration may opt out of such application. Order 69 of the Rules of Court 2012 provides the procedure in Court for matters relating to arbitration.

26. MARITIME MEDIATION

(i) Introduction

- 26.1 Admiralty Court Judges and Registrars actively manage cases so that they are quickly and efficiently resolved. Parties to a Court action should expect that in the early stages of the case, the Judge and Registrar would consider whether alternative dispute resolution, including mediation, is likely to assist.

- 26.2 Mediation is a structured voluntary negotiation process in which a neutral independent person, known as a mediator, assists the parties to identify and assess options, and facilitates an agreement that may be reached by the parties to resolve their dispute. It is an alternative to a determination of the dispute by a Judge who imposes a decision on the parties.
- 26.3 The mediation itself is flexible and can be tailored to suit the circumstances of each case. Mediators may assist negotiations by asking questions, encouraging open joint discussion or through private sessions, offering different perspectives and expressing issues in alternative ways. Parties may be encouraged to identify and test the consequences of potential solutions. It is common for the mediator to meet with the parties jointly and separately, and further mediation sessions can be scheduled if necessary.
- 26.4 Ordinarily a Court initiated mediator will be an independent Admiralty Judge or Registrar of the High Court who has been accredited as having adequate mediation qualifications, skills, knowledge and experience. The parties do not in this model pay for the mediator's skills and time. Parties may agree to use an external mediator at their own expense. In appropriate cases, with the agreement of parties, the Admiralty Court is prepared to consent to the outside persons with relevant skills on an *ad hoc* basis. They would assist in the resolution of matters using mediation or early neutral evaluation. The engagement of such persons would generally be through professional or industry associations.
- 26.5 Apart from the Malaysian Mediation Centre (MMC) established by the Bar Council of Malaysia in 1999 and the Kuala Lumpur Regional Centre for Arbitration (KLRCA) , dealing with commercial disputes, in accordance with the mediation rules there are also *ad hoc* maritime mediations conducted by senior practitioners of the Malaysian Shipping and Admiralty Bar. Both the Mediation Practice Direction No. 4 of 2016 for the practice and the procedure of Court-initiated Mediation, and the Mediation Act 2012, have significantly encouraged parties to resolve disputes by mediation.
- 26.6 Generally, all maritime claims brought in the Admiralty Court, regardless of their complexity or number of parties, are eligible to be referred to mediation. The following factors, among others, may indicate whether the dispute is particularly suited to mediation:-

- (a) willingness of parties to participate in mediation;
- (b) need for parties to find a way to preserve their relationship;
- (c) existence of non-monetary factors;
- (d) possibility for a negotiated outcome that better suits the needs and interests of the parties than a Judge's determination; and
- (e) possibility that a Judge's determination will not end the dispute.

(ii) Benefits of mediation

26.7 Mediation offers many benefits over a trial by a Judge, including saving of time and costs as compared to a protracted litigation with appeals, flexibility in that parties have more control over the outcome, less formal and stressful than appearing in Court, confidentiality of the subject matter of the dispute is preserved, parties are more likely to be satisfied with the result and to comply with the settlement terms as agreed by all parties.

(iii) Who attends mediation?

26.8 Since parties are in ultimate control of any decision to resolve their dispute, it is essential that people who attend the mediation have sufficient knowledge of the relevant issues in dispute, and the authority to make decisions on how it might be settled.

26.9 A party may ask to bring someone for support, if he is not legally represented.

26.10 If attending on behalf of a company or an organisation, the Court requires the attendee to be an authorised officer who is able to make a decision about how the dispute might be settled, and to enter into an agreement on behalf of the company or organisation.

(iv) How to prepare for mediation?

26.11 Parties may prepare for mediation by considering the following:-

- (a) issues that are in dispute, including the facts and source of conflict;
- (b) what would they say at the start of the mediation to assist in resolving the dispute;
- (c) the importance of the issues to the parties and the respective interests that need to be preserved or pursued and how these may be different to an outcome sought through a trial;
- (d) the possible outcome if the matter were to proceed to a trial, including the monetary value of damages claimed and any limits on the Court to grant the relief sought;
- (e) how much costs have already been incurred or are likely to be incurred and whether these might be recovered in full;
- (f) the strength and weakness of the party's case;
- (g) identify the other party's aspirations and how these might be accommodated in any offer to settle;
- (h) possible contents of an offer; and
- (i) the best way to communicate this information, both to the mediator and the other party.

26.12 The Court action may be settled in full or in part, or parties may not be able to reach an agreement, in which case the claim will proceed in Court before another Admiralty Judge who was not the Mediator.

26.13 If agreement is reached about part or all of the dispute, the details of that agreement will usually be recorded and signed by all parties before the end of mediation. Once the agreement is finalised, the parties will normally notify the Admiralty Judge of the settlement and proceedings will be discontinued by consent of the parties.

27. ADMIRALTY PRACTICE REFERENCE

- Halsbury's Laws of Malaysia on Admiralty (Issue 2013)
- Atkin's Court Forms Malaysia In Civil Proceedings on Admiralty (Issue 76)
- Malaysian Civil Procedure 2015 (White Book) Annotations on Order 70 Rules of Court 2012 - Admiralty Proceedings.
- The Supreme Court Practice 1999 (UK)
- British Shipping Laws, Volumes No: 1, 6 and 14
- Nigel Meeson, Admiralty Jurisdiction and Practice (2nd Ed, 2000)
- D C Jackson, Enforcement Of Maritime Claims (1985); (3rd Ed, 2000)

Notice

This Guide is for information only and is not intended as legal advice. Professional advice should always be obtained before applying the information to any particular circumstances.

Appendix A

Particulars of the Admiralty Registry and Admiralty Sheriff:

Sheriff's Contact Details
Mohd Zamir Bin Mohd Suhaimee Sheriff The High Court of Admiralty Kuala Lumpur Kuala Lumpur Courts Complex Jalan Duta 50592 Kuala Lumpur Mobile: +6013 488 9884 Email :zamir@kehakiman.gov.my

Appendix B

Bar Council Contact Details
Shipping and Admiralty Law Committee Bar Council Malaysia No 13,15 & 17 Leboh Pasar Besar 50050 Kuala Lumpur Tel : +603 2050 2050 Email : council@malaysianbar.org.my

Appendix C

Practice Direction No. 2/2007 Admiralty Actions

The practice described below shall be followed in relation to Admiralty matters in the High Court of Malaya with effect from 1 February 2007.

A. General

For the purpose limited to the directions herein, the words appearing hereinafter shall have the following meaning:

“*High Court*” shall refer to the High Court of Malaya;

“*Registry*” shall refer to the Registry of the High Court;

“*Registrar*” shall refer to the Senior Assistant Registrar or Deputy Registrar of the High Court;

“*Sheriff*” shall bear the same meaning as in section 12 of the Courts of Judicature Act 1964;

“*Caveator*” means the person by whom or on whose behalf a praecipe for caveat against release and payment out is filed.

B. Registry

1. Writs of Summons in relation to admiralty actions *in rem* and *in personam* bearing general endorsements of claim shall be accepted by the Registry for issue. Statements of claims may be filed in due course in accordance with Order 18 rule 1 of the Rules of the High Court 1980 [now Rules of Court 2012].
2. Writs of Summons in Actions *in Rem* shall be sealed and issued out of the Registry within the day of filing, where the urgency of the matter is stated in a Certificate of Urgency filed together with such Writ.
3. Praecipes for the issue of a Warrant of Arrest filed in relation to a Writ of Summons in Action *in Rem* shall be processed, and Warrants of Arrest issued within the day of filing.

4.
 - a) The execution of a warrant of Arrest and/or service of a Writ of Summons in Action *in Rem* by the Sheriff shall be within the day of issue. Where it is not possible for the Sheriff to effect service of the Writ and/or execution of the Warrant of Arrest, the Sheriff shall appoint his authorized officer to effect service of the Writ and/or attend to the execution of the warrant on the Sheriff's behalf.
 - b) Where a Release of the *res* arrested is to be effected, the Sheriff shall issue the instrument of release within the day of filing and may permit solicitors of either the Plaintiff or Defendant to attend to the service of the instrument of release on the Sheriff's behalf.
5. Where circumstances require that the Writ of Summons in Action *in Rem* and/or Warrant of Arrest and/or Release from arrest be issued on a particular day, though after the hours of the Registry, upon the written undertaking of the applicant's solicitors to file the necessary documents and make all necessary payments thereon on the next working day of the Registry, the Registrar shall immediately process the relevant documents for issue, and where necessary direct the Sheriff to effect service and/or execution, and/or release thereof.
6. Where the Registrar who is in charge of processing the relevant papers in relation to an admiralty action *in rem* or *personam* is unavailable, and the circumstances require the issue and/or execution of Court process on a particular day, any other Registrar of the High Court may process the relevant papers for issue, and where necessary, attend to the execution and/or service thereof.
7. Where the Writ of Summons in Action *in Rem* and/or Warrant of Arrest and/or release has been issued by any Registry and the service and/ or execution of such Writ and/or Release is required to be effected within the local jurisdiction of another High Court where the *res* is situated:

- (i) Where the Writ of Summons in Action *in Rem* and/or Warrant of Arrest and/or release has been issued by any Registry and the service and/ or execution of such Writ and/or Release is required to be effected within the local jurisdiction of another High Court where the *res* is situated: The Sheriff of the Court issuing such Writ or Warrant or Release may request the assistance of the Sheriff of the other High Court;
- (ii) A sealed copy of the Writ Summons in Action *in Rem* and/ or Warrant of Arrest and/or Release shall be sent by way of facsimile by the issuing Court, together with a letter of request for assistance, to the executing Court. The original copies of such documents faxed shall be dispatched by courier and/or hand delivered by solicitors of the applicant to the executing Court to reach the executing Court for immediate execution and/or service thereof;
- (iii) The Sheriff of the executing Court shall notify in writing the Sheriff of the issuing Court within two working days of such service and/or execution of the Writ or Warrant or Release as the case may be;
- (iv) The Sheriff of the issuing Court or his officer may, upon the unavailability of the Sheriff or his officers at the executing court, travel outside the local jurisdiction of the issuing Court at the expense of the arresting party to effect service of the Writ of Summons in Action *in Rem* and/or execution of the Warrant of Arrest and/or Release. The Sheriff of the Court nearest to which the *res* subjected to the admiralty action is situated shall be duly notified in writing by the issuing Court of such service and/or execution thereof.

8. So far as may be practicable, all applications or motions filed together with a Certificate of Urgency in relation to the following matters in an admiralty action *in rem* shall be heard and disposed of by the Registrar and/or Judge (as the case may be) on an expedited basis, and shall be granted a return date not exceeding three working days :
- (i) Conditional Appearance;
 - (ii) Bail Bond;
 - (iii) Quantum of Security;
 - (iv) Setting Aside of Writ;
 - (v) Release of *Res* from Arrest;
 - (vi) Intervention;
 - (vii) Inspection of Ship;
 - (viii) Judgement by Default;
 - (ix) Appraisalment and Sales of *Res*;
 - (x) Discharge of Cargo
 - (xi) Order of Directions arising out of, or in relation to the *res* under Arrest, including matters pertaining to master and crew
9. So far as may be practicable, where the Judge or the Registrar to whom the action has been assigned is unavailable to hear and dispose of the matter falling within paragraph (8) above expeditiously, any other Judge or Registrar of the High Court may do so as directed by the Head Judge.
10. In relation to applications under paragraph (8) above, time for service of the relevant application, and the filing of affidavits, shall be abridged as considered just by the Judge or Registrar hearing the matter, against the recognized necessity of an early and urgent disposal of the matter.
11. In relation to matters aforesaid, particularly arising in relation to paragraphs (2), (3) and (8) above, Court papers may be filed in the English language, with copies in the national language to be filed within fourteen days thereafter.
12. When it is desired to file an affidavit by a non-English speaking deponent, an affidavit in the English Language duly interpreted to the deponent with an appropriate jurat to that effect shall be filed accompanied by a translated text thereof in the national language by a qualified translator.

13. An affidavit leading to Warrant of Arrest affirmed immediately before the date of issuance of a Writ of Summons in Action *in Rem* shall be acceptable for the purpose of Order 70 rule 4 (3), (6) and (7) of the Rules of the High Court 1980 [now Rules of Court 2012].
14. The file maintained by the Court and copies of all papers filed in an admiralty action *in rem*, subject to Order 70 rule 17 (2) of the Rules of the High Court 1980 [now Rules of Court 2012], shall be made available on an immediate and urgent basis to persons requesting to conduct a search thereon, upon payment of the prescribed fee.

C. Sheriff

15.
 - a) In admiralty action *in rem*, before a Warrant of Arrest is executed on the *res*, the Sheriff may request the party at whose instance the Warrant of Arrest was issued to deposit in Court a sum of Ringgit Malaysia Fifteen Thousand (RM15,000.00) as initial deposit but all fees, costs and expenses which may be incurred by the Sheriff or on his behalf in respect of the arrest of the *res* and care and custody of it while under arrest shall be borne solely by the arresting party.
 - b) A written undertaking pursuant to Order 70 rule 9 (3) of the Rules of the High Court 1980 [now Rules of Court 2012] to pay on demand the fees of the Sheriff and all expenses incurred by him or on his behalf in respect of the arrest of the *res* shall be given by the party at whose instance the Warrant of Arrest was issued.
 - c) In accordance with the said undertaking, the Sheriff may from time to time request the party at whose instance the Warrant of Arrest was issued to lodge into the credit of the proceedings within seven (7) working days of such requests such sums as is necessary towards his fees, costs and expenses.
 - d) In default of payment into Court of such sum as requested, the Sheriff or any interested party may forthwith apply to Court for directions with respect to the *res* under arrest including an order for the immediate release of the *res* under arrest.
 - e) The Sheriff shall within 21 days after the release of the *res* from arrest or its sale, bring into Court the accounts relating to his fees, costs and all expenses incurred by him or on his behalf in respect of the arrest of the property and the care and custody of it while under arrest for taxation, unless agreed by all parties including interveners and caveators.

16. Notwithstanding that the *res* subjected to an admiralty action *in rem* is outside port limits, so long as such *res* is ascertained to be within the territorial waters of West Malaysia, the Sheriff may effects service of a Writ of Summons in Action *in Rem* or execute a Warrant of Arrest against such *res*.
17. The Sheriff shall, unless the Court otherwise orders, take all appropriate steps to retain custody of, and preserve, the ship, her machinery and equipment or property and shall have power to move the ship within the limits of the port where she is lying under arrest, either for her own safety or to comply with the requirement of the port authority.
18. Notwithstanding the Practice Direction No. 1 of 2001, Order 25 of the Rules of the High Court 1980 shall continue to apply in admiralty actions. [This paragraph is no longer applicable as Order 25 is deleted under Rules of Court 2012].

Appendix D

Practice Direction No. 1 of 2012 Admiralty and Maritime Claims

The Right Honourable Chief Justice instructed the practice described below shall be followed in relation to Admiralty and Maritime matters at the High Court of Malaya and High Court of Sabah and Sarawak with effect from 1st March 2012.

A. General

1. For the purpose of this Practice Direction -

“*Admiralty Court Kuala Lumpur*” means the High Court of Malaya at Kuala Lumpur designated to hear Maritime Claims;

“*any other High Court*” means the High Court sitting at a place other than Kuala Lumpur;

“*Register of Maritime Claims Cause Book*” means the book maintained by the Registry of the Admiralty Court Kuala Lumpur in which details of all writs of summons relating to Maritime Claims filed in the Admiralty Court Kuala Lumpur and any other High Court shall be recorded;

“*Register of Central Maritime Warrants and Caveats Book*” means the book maintained by the Registry of the Admiralty Court Kuala Lumpur in which all information in the Admiralty Court Kuala Lumpur and any other High Court relating to warrants of arrest issued and caveats lodged in respect of any ship or other property is entered;

“*Webpage of Caveats and Warrants*” means the webpage providing information on Caveats, Warrants of Arrest and details of Judges and Court officers and staff designated to have conduct of Maritime Claims, and which is located at <http://efiling.kehakiman.gov.my>, or at such other address as may be notified from time to time.

B. Maritime Claims

2. The Admiralty Court Kuala Lumpur and any other High Court shall hear all matters pertaining to the following, which in this Practice Direction are collectively referred to as “Maritime Claims”:

- (a) claims and disputes relating to the 18 categories of Admiralty matters identified by reference to paragraph 24(b) of the Courts of Judicature Act 1964 [Act 91] read together with the relevant provisions in the English Supreme Court Act 1981 [now known as Senior Courts Act 1981];
- (b) claims relating to carriage of goods by sea;
- (c) limitation of actions for maritime claims, including actions seeking to limit liability or for extension of time where the limit of liability or the time for commencement of proceedings is prescribed by maritime convention or legislation;
- (d) disputes pertaining to marine insurance and reinsurance contracts, including marine insurance agents and brokerage contracts;
- (e) disputes arising from shipbuilding agreements, including issues with regard to the construction, design, maintenance and repair of ships;
- (f) disputes arising from the sale and purchase of ships;
- (g) civil claims arising out of marine pollution;
- (h) marine or shipping-related agency, freight and multimodal transport and warehousing of goods at any port in Peninsular Malaysia;
- (i) claims related to ship financing and documentary credit for the carriage of goods by sea;
- (j) death or personal injury, loss or damage arising out of a marine activity in or about a marine facility, which includes ports, docks, berths, or any form of structure defined as a “ship” under maritime law;
- (k) civil claims arising from any breach of any marine regulations, notices, by-laws, rules or guidelines;

- (l) disputes pertaining to the welfare of any seaman, including wages and contract of service
 - (m) applications in connection with maritime arbitrations, including applications for the preservation of assets pending maritime arbitration and the review, setting aside and enforcement of maritime arbitration awards;
 - (n) appeals in respect of a maritime claim determined by the Subordinate Courts.
3. Subject to the consent of all parties, any appeal in respect of a maritime claim from a Subordinate Court in Malaya may be transferred to the Admiralty Court Kuala Lumpur.

C. The Registry of the Admiralty Court Kuala Lumpur

4. Where any Admiralty -
- a) writ of summons;
 - b) warrant of arrest;
 - c) instrument of release; or
 - d) caveat against arrest or caveat against release is filed, issued, entered or withdrawn (as the case may be) at any other High Court other than the Admiralty Court Kuala Lumpur, the respective Registrar of such High Court shall notify the Registrar of the Admiralty Court Kuala Lumpur of such event on the day of its filing or, if filed after 3 p.m. by noon the following day. A copy of the writ of summons, warrant of arrest, instrument of release or caveat so filed shall be dispatched to the Registry of the Admiralty Court Kuala Lumpur for record purposes within 2 working days of such event.
5. All Maritime Claims which have been filed in any other High Court in Malaya shall only be transferred to the Admiralty Court Kuala Lumpur by consent of all parties.

6. The Admiralty Court Kuala Lumpur registry shall maintain a Register of Maritime Claims Cause Book. Complete details of all writ of summons relating to Maritime Claims filed in the Admiralty Court Kuala Lumpur and any other High Court shall be recorded in the Register of Maritime Claims Cause Book.
7. The Registry of the Admiralty Court Kuala Lumpur shall maintain a Register of Central Maritime Warrants and Caveats Book. Complete details of all admiralty warrants of arrest, caveats against arrest or caveats against release lodged with the registry of the Admiralty Court Kuala Lumpur and any other High Court shall be recorded in the Register of Central Maritime Warrants and Caveats Book.
8. The Deputy Registrar of the Admiralty Court Kuala Lumpur shall ensure that all information on admiralty warrants of arrest, release and caveat is entered into the Webpage of Caveats and Warrants.
9. The Admiralty Court Kuala Lumpur shall hear all applications from the Sheriff or the Assistant Sheriffs Kuala Lumpur with regard to admiralty matters relating to any property under arrest, including applications for an omnibus order.

D. The Administration of Warrants of Arrest

10. All applications for warrants of arrest *in rem* actions shall be heard by the Admiralty Court Judge or any other High Court Judge or, as may be directed, the Deputy Registrar or the Senior Assistant Registrar of the High Court.
11. A warrant of arrest is valid for 12 months beginning with the date of its issuance. This does not prevent the issuance of a new warrant of arrest if the writ of summons remains valid.
12. In respect of Maritime Claims in an action *in rem* in which a certificate of urgency has been filed and the warrant of arrest requires immediate execution, the arresting party shall file the necessary cause papers and documents through the e-filing system, where e-filing procedures are in place at the relevant High Court. The Deputy Registrar of the High Court shall be informed immediately upon the e-filing of such cause papers. Counsel for the arresting party shall thereafter attend Court on the day of such e-filing with printed form of all documents e-filed for the documents to be processed and issued and the warrant of arrest executed.

13. A Senior Assistant Registrar of the High Court at Kuala Lumpur shall be on duty after office hours on rotation to attend to urgent matters relating to an arrest. For any other High Court, a Deputy Registrar or a Senior Assistant Registrar shall be on duty after office hours to attend to all urgent matters relating to an arrest.
14. Where the warrant of arrest is to be executed immediately, the arresting party's representative shall accompany the Sheriff or the Assistant Sheriff or the Bailiff to execute the warrant of arrest against the property. In circumstances where the execution of the warrant of arrest causes difficulties, the Sheriff or the Assistant Sheriff or the Bailiff may secure the assistance of the Harbour Master and/or the Marine police in executing the warrant of arrest.
15. The document of release of a property under arrest may be served by solicitors of either party to the proceedings on the property, without the attendance of a Court officer, at the option of the releasing party. An affidavit of service of the document of release shall be affirmed and filed in Court by the relevant solicitors effecting such service.
16. Guards shall only be appointed by the arresting party upon an application by the arresting party to Court for an appropriate Order. The costs of appointing guards shall be borne by the arresting party directly. The reasonable and proper costs of appointing the guards shall stand as Sheriff's expenses.

E. Sheriff

17. The Deputy Registrar and the Senior Assistant Registrars of the High Court Kuala Lumpur are the Admiralty Court Kuala Lumpur's Sheriff and Assistant Sheriffs, respectively. Other administrative assistants such as bailiffs, process servers and other subordinate officers shall assist the Sheriff or the Assistant Sheriffs in carrying out their duties. In the context of Maritime Claims, the Sheriff or the Assistant Sheriffs must execute all warrants of arrest and serve all writ of summons, orders, notices, commands and other process of any Court which are given to him by the Court for that purpose, and he must make a return of the warrants of arrest, writs of summons, orders, notices, commands and other process, together with the manner of the execution or service, to the Court from which the process is issued.

18. Upon the issuance of a warrant of arrest the following measures are to be taken by the Sheriff or the Assistant Sheriffs immediately ;
- (a) documents for execution upon the property to be arrested shall be collated, including the sealed warrant of arrest and writ of summons;
 - (b) letters accompanying a copy of the warrant of arrest shall be prepared for issuance to the relevant Marine Department, Customs Department, Immigration Department, Port Authority and licensed terminal operator;
 - (c) the Sheriff or Assistant Sheriff or Bailiff, together with the arresting party's representative, shall proceed to the port nearest the location of the property to be arrested to execute the warrant of arrest;
 - (d) the Sheriff or Assistant Sheriff or Bailiff shall deliver a copy of the warrant of arrest, together with the covering letter, to the relevant Maritime Department, Customs Department, Immigration Department, Port Authority and licensed terminal operator, and thereafter execute the warrant of arrest on the property to be arrested; and if there is any foreign crew on board of an arrested ship, the Sheriff or Assistant Sheriff or Bailiff shall inform the Immigration Department immediately;
 - (e) upon executing the warrant of arrest on the property, the Sheriff or Assistant Sheriff or Bailiff shall prepare and affirm an affidavit on the execution of the warrant of the arrest and service of the writ of summons; and the affidavit shall be filed in the High Court in which the process is issued.
19. The Sheriff or Assistant Sheriff, or the arresting parties on behalf of the Sheriff, may immediately or at any time based on the urgency of the matter apply to Court under Order 70 rule 11 of the Rules of High Court 1980 [now Rules of Court 2012] for an Omnibus Order for directions in respect of the preservation, management or control of the property under arrest in the proceedings. The High Court may, at any stage of proceedings, make appropriate orders with respect to the preservation, management or control of the property under arrest. The Deputy Registrar or the Sheriff or the Assistant Sheriff shall send a copy of any Omnibus Order made to all parties in the action, and to relevant authorities;

20. Upon the grant of an Omnibus Order by Court, the arresting party shall appoint a shipping agent to assist the Sheriff or Assistant Sheriff in the preservation, management or control of the property under arrest. All expenses incurred by the shipping agent shall be paid directly by the arresting party. The shipping agent shall give a report daily on the management and control of the property under arrest to the Sheriff or Assistant Sheriff. All expenses reasonably and properly incurred by the shipping agent and paid by the arresting party shall stand as Sheriff's expenses.
21. The repatriation of the master and/or crew of a ship under arrest shall be arranged as soon as possible by the arresting party upon consultation with the Sheriff or Assistant Sheriff and the Harbour master. In the event of the repatriation of the master and/or crew of a ship under arrest, and the Harbour Master or Marine Department requires that substitute Master and crew be engaged for the ship, the appropriate order of Court shall be obtained prior to the repatriation of the master and/or crew by the arresting party. In matters of urgency, the Sheriff or Assistant Sheriff may direct the arresting party to obtain the appropriate order of Court to repatriate the master and/or crew of a ship under arrest. All costs for repatriation shall be borne by the arresting party and shall stand as Sheriff's expenses.
22. Where a warrant of arrest has been and executed by the Sheriff or Assistant Sheriff or Bailiff against a property, but no further action is taken by the parties in the proceedings, the Sheriff or Assistant Sheriff may direct the arresting party to take the necessary measures pursuant to Order 70 of the Rules of High Court 1980 [now Rules of Court 2012], in default of which, the property arrested shall be released by the Court.

F. Discharge of Cargo

23. Upon arrest of a ship, the ship shall not be allowed to work without the Sheriff's express permission. If the ship has commenced loading before arrest takes place, then immediately after execution of the arrest warrant, the Sheriff or Assistant Sheriff shall direct the master to cease all cargo loading operations. However, if at the time of the arrest, the cargo which is not under arrest is being unloaded by the cargo owners and the Sheriff or Assistant Sheriff allows the unloading to continue, he shall require the cargo owners or demise charterers of the ship or their agents to furnish a letter of indemnity with regard to the Sheriff's liability if there is an accident whilst unloading cargo. However, if unloading is not permitted or ceased at the Sheriff's direction, a person who is entitled to immediate possession of the cargo may have the cargo discharged from the ship without intervening in the action by requesting the Sheriff or Assistant Sheriff or the arresting party to take appropriate steps to enable the cargo to be discharged. If the Sheriff or Assistant Sheriff or the arresting party considers the request to be reasonable and the cargo owners give an undertaking to pay the Sheriff's costs and expenses, the Sheriff or Assistant Sheriff or the arresting party shall apply to Court for appropriate orders. Alternatively, the cargo owners can intervene in the action and apply to the Court to discharge the cargo from the ship. The costs of discharging the cargo shall be the responsibility of the cargo owners.
24. Where a ship is not under arrest but the cargo on board the ship is, and the shipowners wish to discharge the cargo which is under arrest, they may, without intervening in the action, request the arresting party or the Sheriff or Assistant Sheriff to take the appropriate steps to enable the cargo to be discharged. If the arresting party or the Sheriff or Assistant Sheriff considers the request reasonable, and if the applicant gives an undertaking in writing satisfactory to the arresting party or the Sheriff or Assistant Sheriff to bear all costs and expenses of discharge, the arresting party or the Sheriff or Assistant Sheriff shall apply to the Court under Order 70 rule 11 of the Rules of the High Court 1980 [now Rules of Court 2012] for the appropriate order. Alternatively, the ship owners may intervene in the action in which the cargo is under arrest and apply by summons for an appropriate order for the discharge of the cargo and for directions as to the fees and expenses of the Sheriff in and about the discharge and storage of the cargo pursuant to such order.

G. Miscellaneous

25. All Maritime Claims in an action *in personam* shall be filed by the e filing system, where e-filing procedures are in place at the relevant High Court.
26. In respect of Maritime Claims involving collision of ships to which Order 70 rule 17 of the Rules of High Court 1980 [now Rules of Court 2012] applies, parties shall attend Court to file and deliver in a closed envelope to the Deputy Registrar the original Preliminary Act, which shall be duly sealed by the Deputy Registrar and placed in a physical file opened for the action.

Appendix E

Form No 2

WRIT (O 6 r 1)

IN THE HIGH COURT OF MALAYA/SABAH & SARAWAK AT

.....

Admiralty Action In Personam Suit No of 20.....

Between

.....

Plaintiff

and

.....

Defendant

THE RIGHT HONOURABLE CHIEF JUDGE OF MALAYA/SABAH & SARAWAK, IN THE NAME OF THE YANG DIPERTUAN AGONG

To.....

We command you that within fourteen days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in a cause at the suit of and take notice, that in default of your so doing the plaintiff may proceed therein to judgment and execution.

WITNESS Registrar of the Court in.....the.....day of, 20.....

.....
Plaintiff's Solicitors

.....
Registrar, High Court

Memorandum to be Subscribed on the Writ

This writ may not be served more than six calendar months after the above date unless renewed by order of court.

The defendant (or defendants) may appear hereto by entering an appearance (or appearances) either personally or by a solicitor at the Registry of the Court.

A defendant appearing personally may, if he desires, enter his appearance by post, and the appropriate forms may be obtained by sending a Postal Order for RM with an addressed envelope to the Registrar, Court at
.....

Endorsements to be made on writ before issue

Endorsement of claim

The plaintiff's claim is for (if the Plaintiff's claim is for a debt or liquidated demand only, the following endorsement must be added at the foot of that claim:)

And RM (or such sum as may be allowed on taxation for costs, and also, if the plaintiff obtains an order for substituted service, the further sum of RM.....(or such sum as may be allowed on taxation). If the amount claimed and costs be paid to the plaintiff or his solicitor within 8 days after service hereof (inclusive of the day of service), further proceedings will be stayed, but if it appears from the endorsement on the writ that the plaintiff is resident outside the scheduled territories, as defined by the Exchange Control Act 1953, or is acting by order or on behalf of a person so resident, proceedings will only be stayed if the amount claimed and costs is paid into Court within the said time and notice of such payment in is given to the plaintiff or his solicitor.

(If the plaintiff sues, or the defendant is sued, in a representative capacity, this must be stated in the endorsement of claim).

Endorsement as to solicitor and address

This writ is issued by of solicitor for the said plaintiff whose address is (or where the plaintiff sues in person). This writ is issued by the said plaintiff who resides at and is (state occupation) and (if the plaintiff does not reside within the jurisdiction) whose address for service is (.....).

Endorsement as to service

This Writ was served by by way of personal service (or as may) (state manner of service or in accordance with the terms of an order for substituted service) on the Defendant (who is known to me) (or who was pointed out to me by) (or who admitted to me that he was) at (place) on.....the day of, 20.....

Endorsed the.....day of, 20.....

.....
Process Server

Form No 146

WRIT IN ACTION IN REM (O 70 r 2)

THE HIGH COURT OF MALAYA/SABAH & SARAWAK AT.....
Admiralty in rem No of 20.....

Admiralty action in rem against:
(The ship or as may be describing the *res*)

Between

(The owners of the ship or as may be)
.....

Plaintiffs

And

(The owners of the ship.....or as may be)
.....

Defendants

THE HONOURABLE CHIEF JUDGE OF MALAYA/SABAH & SARAWAK, IN
THE NAME OF THE YANG DI-PERTUAN AGONG

To: The (owners of and other) persons interested in the ship of the port
of (or cargo, etc., as may be).

We command you that within fourteen days after the service of this writ,
inclusive of the day of service, you do cause an appearance to be entered for you in an
action at the suit of.....; and take notice that in default of your so doing the
plaintiffs may proceed therein, and judgment may be given in your absence, and
if the *res* described in this writ is then under arrest of the Court it may be sold by
order of the Court.

WITNESS Registrar of the High Court at..... the day of
....., 20.....

.....
Plaintiff's Solicitors

.....
Registrar, High Court.....

Memorandum to be subscribed on the Writ

This writ may not be served more than six calendar months after the above date unless renewed by order of Court.

The defendants may appear hereto by entering appearances either personally or by solicitor at the Registry of the High Court at The defendants appearing personally may, if they desire, enter their appearances by post, and the appropriate forms may be obtained by sending a Postal Order for RM..... with an addressed envelope to the Registrar, High Court

Endorsement to be made on writ before issue

Endorsement of claim

The plaintiffs' claim is for.....

(If the plaintiffs sue, or the defendants are sued, in a representative capacity, this must be stated in the endorsement of claim).

Endorsement as to solicitor and address

This writ is issued by of solicitor for the said plaintiffs whose address is (or where the Plaintiffs sue in person). This writ was issued by the said plaintiffs who resides at and is (state occupation) and (if the plaintiffs do not reside within the jurisdiction) whose address for service is

Endorsement as to service

This writ was served by (state the manner of service in which the service was effected within the named ship, cargo or freight as the case may be) at (place) on the day of, 20..... at a.m./p.m.

Endorsed the day of, 20.....

.....
Process Server

Form No 147

WARRANT OF ARREST (O 70 r 4)

(Title as in Form 146)

THE HONOURABLE CHIEF JUDGE OF MALAYA/SABAH & SARAWAK, IN
THE NAME OF THE YANG DI-PERTUAN AGONG

To the Sheriff,

We hereby command you to arrest the ship..... of the port of
..... or (the cargo now or lately laden therein, together with the freight
due for the transportation thereof) or (and the freight due for the transportation
of the cargo now or lately laden therein) and to keep the same under safe arrest
until you shall receive further orders from us.

Dated the day of, 20....

(Seal)

.....
Registrar

The plaintiffs' claim is for (copy the endorsement from the writ).

Taken out bysolicitors for the.....

Notice of arrest by the Sheriff

To: The Owners, Master, agents, servants, crew and all persons interested in the property under arrest:

(a) The abovenamed ship, cargo or freight (as the case may be) being in the custody of the Sheriff of the High Court and all persons are hereby cautioned not to attempt to remove the same or interfere therewith, without the written authority of the Sheriff or his substitute;

(b) If you wish to obtain the release of property from arrest, you may do so by giving satisfactory security for the amount of the claim or the value of the property arrested, whichever is the lesser. In the event of a dispute as to the security, you may make an application to the Court for the resolution of the dispute.

Standard Directions to the Sheriff

The Sheriff, with the consent of the arresting party or its solicitors, may at any time:-

(a) take all appropriate steps to retain custody of and preserve the ship, its machinery and equipment or property;

(b) move the ship up to 5 nautical miles within the limits of the port where she is lying under arrest, either for her safety or to comply with the requirements of the Marine Department or Port Authority;

(c) supply the minimum victuals, domestic fuel and fresh water necessary for a maximum of 5 days to avoid immediate hardship to the crew, pending an application to the Court for directions.

Sheriff's endorsement as to service.

On the day of 20...., the within named ship, cargo or freight (as the case may be), lying at (place) was arrested (by affixing the Warrant for a short time on the mast of the ship or vessel) (state on which part of the outside of the ship's superstructure, as the case may be) (or if the cargo is landed or transhipped by placing the Warrant for a short time on the cargo) and on taking off the process, by leaving a copy thereof fixed in its place.

Endorsed the day of, 20.....

.....
Process Server

Form No 148

PRAECIPE FOR WARRANT OF ARREST (O 70 r 4)

(Title as in Form 146)

We of solicitors for the plaintiffs request
a warrant to arrest (description of property giving name, if a ship).

Dated the day of, 20.....

.....
Solicitors for the plaintiffs

Form No 149

PRAECIPE FOR CAVEAT AGAINST ARREST (O 70 r 5)

(Description of property giving name, if a ship)

We of solicitors for..... of request a caveat against the arrest of (description of property giving name, if a ship) and hereby undertake to enter an appearance in any action that may be begun in the High Court against the saidand, within three days after receiving notice that such an action has been begun, to give bail in the action in a sum not exceeding RM..... or to pay that sum into Court. We consent that the writ and any other document in the action may be left for us at

Dated the day of, 20.....

.....
Solicitors for the.....

Form No 150

PRAECIPE FOR SERVICE OF WRIT IN REM BY SHERIFF (O 70 r 7)

(Title as in Form 146)

We..... of solicitors for the plaintiffs request
that the writ left herewith be duly served on.....

Dated the day of, 20.....

.....
Solicitors for the plaintiffs

Form No 151

RELEASE (O 70 r 12)

(Title as in Form 146)

THE HONOURABLE CHIEF JUDGE OF MALAYA/SABAH & SARAWAK IN
THE NAME OF THE YANG DI-PERTUAN AGONG

To the Sheriff,

Whereas in this action we did command you to arrest the and to
keep the same under safe arrest until you should receive further orders from us.
Now we do hereby command you to release the said from the
arrest effected by virtue of our warrant in this action.

Dated the day of, 20.....

(Seal)

.....
Registrar

Taken out by solicitors for the

Sheriff's endorsement

On.....the day of.....20..... the was
released from arrest pursuant to this Instrument.

(Seal)

.....
Sheriff

Form No 152

PRAECIPE FOR ISSUE OF RELEASE (O 70 r 12)

(Title as In Form 146)

We ofsolicitors for the plaintiffs (or defendants) in this action against (description of property giving name, if a ship), now under arrest by virtue of a warrant issued out of the High Court Registry, request the issue of a release with respect to the said

Dated the day of, 20.....

.....
Solicitors for the.....

Form No 153

PRAECIPE FOR CAVEAT AGAINST RELEASE AND PAYMENT (O 70 r 13)

(Title as in Form 146)

We of solicitors for of request a caveat against the issue of a release with respect to (description of property giving name, if a ship) now under arrest and, should the said property be sold by order of the Court, a caveat against payment out of Court of the proceeds of sale.

Dated the day of, 20.....

.....
Solicitors for the.....

Form No 154

PRAECIPE FOR WITHDRAWAL OF CAVEAT (O 70 r 14)

(Title as in Form 146)

We of solicitors forof
..... request that the caveat (state nature of caveat) entered on the
..... day of....., 20..... on behalf of..... be withdrawn.

Dated theday of, 20.....

.....
Solicitors for the.....

Form No 155

BAIL BOND (O 70 r 15)

(Title as in Form 146)

Whereas this Admiralty action in rem against the abovementioned property is pending in the High Court and the parties to the said action are the above mentioned plaintiffs and defendants:

Now, therefore, we ofand hereby jointly and severally submit ourselves to the jurisdiction of the said Court and consent that if they, the abovementioned defendants (or plaintiffs, in the case of a counterclaim) do not pay what may be adjudged against them in this action, with costs, or do not pay any sum due to be paid by them in consequence of any admission of liability therein or under any agreement by which this action is settled before judgment and which is filed in the said Court, execution may issue against us, our executors or administrators, movable property, for the amount unpaid or an amount of Ringgit whichever is the less.

Dated theday of, 20.....

.....
Solicitors for the.....

This bail bond is signed by the said and,
the sureties, the day of, 20.....

Before me,

.....
Commissioner for Oaths

Form No 156

**PRAECIPE FOR COMMISSION FOR APPRAISEMENT AND SALE
(O 70 r 22)**

(Title as in Form 146)

We of solicitors for the Plaintiffs
(or defendants) request a commission for the appraisement and sale of
(description of property giving name, if a ship) which was ordered by the Court on
the day of, 20....

Dated the day of, 20....

.....
Solicitors for the.....

Form No 157

COMMISSION FOR APPRAISEMENT AND SALE (O 70 r 22)

(Title as in Form 146)

THE HONOURABLE CHIEF JUDGE OF MALAYA/SABAH & SARAWAK, IN
THE NAME OF THE YANG DI-PERTUAN AGONG

To the Sheriff,

Whereas in this action the Court has ordered (description of property giving name, if a ship) to be appraised and sold.

We hereby authorise and command you to choose one or more experienced persons and to swear him or them to appraise the said according to the true value thereof, and such value having been certified in writing by him or them to cause the said to be sold by (private treaty or public auction) for the highest price that can be obtained for it, but not for less than the appraised value unless the Court on your application allows it to be sold for less.

And we further command you, immediately upon the sale being completed, to pay the proceeds thereof into Court and to file the certificate of appraisal signed by you and the appraiser or appraisers, and an account of the sale signed by you, together with this commission.

Witness Registrar of the inthe day of, 20.....

Dated the day of....., 20.....

(Seal)

.....
Registrar

Taken out by (solicitors for) the

Appendix F

After office hours contact details for matters relating to arrest or release of a ship or maritime property:

No.	State	Province	Contact Person
1	WP Kuala Lumpur	Kuala Lumpur	Sheriff The High Court of Admiralty Kuala Lumpur Kuala Lumpur Courts Complex Jalan Duta 50592 Kuala Lumpur Tel : 03-6209 4065 Fax : 03-6209 4612
2	Selangor	Shah Alam	Sheriff Sultan Salahuddin Abdul Aziz Shah Courts Complex Persiaran Pegawai, Seksyen 5 40000 Shah Alam Selangor Darul Ehsan Tel : 03-5510 3543 (Ext 2111) Fax : 03-5510 9411
3	Johor	Johor Bahru	Sheriff High Court of Johor Bahru Menara MSC Cyberport No 5, Jalan Bukit Meldrum 80300 Johor Bahru Tel : 07-221 2022, 226 8153 Fax : 07-226 7804
		Muar	Sheriff High Court of Muar Jalan Temenggong Ahmad 84000 Muar Johor Tel : 06-956 5018 Fax : 06-954 5108

No.	State	Province	Contact Person
4	Perak	Ipoh	Sheriff High Court of Ipoh Jalan Panglima Bukit Gantang Wahab 30507 Ipoh, Perak Tel : 05-255 8568 Fax : 05-254 4664
		Taiping	Sheriff The High Court of Taiping Jalan Kota 34009 Taiping Perak Tel : 05-806 1322 Fax : 05-806 3541
5	Melaka	Bandar Melaka	Sheriff High Court of Melaka Melaka Courts Complex Leboh Ayer Keroh 75450 Ayer Keroh Melaka Tel : 06-231 4033 Fax : 06-231 4030
6	Negeri Sembilan	Seremban	Sheriff High Court of Seremban Seremban Courts Complex 70300 Seremban Negeri Sembilan Tel : 06-603 2115 Fax : 06-601 2198
7	Pulau Pinang	Georgetown	Sheriff High Court of Pulau Pinang Lebuh Light 10200 Pulau Pinang Tel : 04-251 4020 Fax : 04-251 4141

No.	State	Province	Contact Person
	Kedah	Alor Setar	Sheriff High Court of Alor Setar Jalan Suka Menanti 05150 Alor Setar Kedah Tel : 04-735 2900 (Ext 112/113) Fax : 04-730 6404
9	Perlis	Kangar	Sheriff High Court of Kangar Jalan Hospital 01000 Kangar Perlis Tel : 04-977 7210 Fax : 04-979 1111
10	Kelantan	Kota Bharu	Sheriff High Court of Kota Bharu Jalan Hospital 15000 Kota Bharu Kelantan Tel : 09-741 4600 / 09-741 6105 Fax : 09-748 5545
11	Terengganu	Kuala Terengganu	Sheriff High Court of Kuala Terengganu Kuala Terengganu Courts Complex Jalan Sultan Mohamad 21100 Kuala Terengganu Terengganu Tel : 09-622 3020 / 09-627 2410 Fax : 09-622 0722
12	Pahang	Kuantan	Sheriff High Court of Kuantan Kuantan Court Complex Bandar Indra Mahkota 25200 Kuantan Pahang Tel : 09-570 7042 Fax : 09-570 7112

No.	State	Province	Contact Person
		Temerloh	<p>Sheriff High Court of Temerloh Jln Dato' Awang Ngah 28000 Temerloh, Pahang</p> <p>Tel : 09-296 2133, 296 2346/344 Fax : 09-296 4289</p>
13	WP Labuan	Labuan	<p>Mahkamah Majistret Labuan Jalan Kg. Jawa Peti Surat 80549 87015 Wilayah Persekutuan Labuan</p> <p>Tel : 087-410 786 Fax : 087-410 625</p> <p>*****</p> <p>Sheriff High Court of Kota Kinabalu P.O. BOX 10837 88809 Kota Kinabalu Sabah</p> <p>Tel : 088-523 700 Fax : 088-210 055</p>
14	Sarawak	Kuching	<p>Sheriff High Court of Kuching Jalan Gerisik Petra Jaya 93050 Kuching Sarawak</p> <p>Tel : 082-442 228 Fax : 082-311 575</p>
		Miri	<p>Sheriff High Court of Miri Miri Courts Complex Jalan Merdu, 98000 Miri Sarawak</p> <p>Tel : 085-442 353 Fax : 085-420 210</p>

No.	State	Province	Contact Person
		Sibu	Sheriff Sibu Courts Complex Jalan Tun Abang Haji Openg 96000 Sibu, Sarawak Tel : 084-330 442 Fax : 084-319 412
15	Sabah	Kota Kinabalu	Sheriff High Court of Kota Kinabalu P.O. BOX 10837 88809 Kota Kinabalu Sabah Tel : 088-523 743 Fax : 088-251 240
		Sandakan	Sheriff High Court of Sandakan Peti Surat No 51 90700 Sandakan Sabah Tel : 089-675 570 (Ext 113) Fax : 089-673 202

Appendix G

Contact details of relevant authorities on matters affecting the ship or maritime property whilst under arrest by the Admiralty Court.

No.	Malaysia Marine Department	Contact Details:
1	Pengarah Bahagian Kawalan Industri	<p>Bahagian Kawalan Industri Jabatan Laut Malaysia, Ibu Pejabat Laut Peti Surat 12, Jalan Limbungan 42007 Pelabuhan Klang Selangor Darul Ehsan</p> <p>Tel : 603-3346 7777 Fax : 603-3168 5289</p>
2	Pengarah Laut Wilayah Tengah	<p>Jabatan Laut Wilayah Tengah Peti Surat 268 Jalan Foreshore 42000 Pelabuhan Klang Selangor Darul Ehsan Malaysia</p> <p>Tel : 603-3169 5253 Fax : 603-3165 3540</p>
3	Pengarah Laut Wilayah Selatan	<p>Jabatan Laut Wilayah Selatan 81560 Gelang Patah Johor Darul Ta'zim Malaysia</p> <p>Tel : 607-507 2313 Fax : 607-507 3679</p>
4	Pengarah Laut Wilayah Timur	<p>Jabatan Laut Wilayah Timur Jalan Hiliran 20300 Kuala Terengganu Terengganu Darul Iman Malaysia</p> <p>Tel : 609-622 1471 Fax : 609-623 3676</p>

No.	Malaysia Marine Department	Contact Details:
5	Pengarah Laut Wilayah Utara	<p>Jabatan Wilayah Utara Jalan Akuarium Gelugor Peti Surat 765 11700 Pulau Pinang Malaysia</p> <p>Tel : 604-657 9636 Fax : 604-657 5521</p>
6	Pengarah Laut Wilayah Persekutuan Labuan	<p>Jabatan Laut Wilayah Labuan dan Laut China Selatan P.O. Box 815005 Jalan Merdeka 87012 Wilayah Persekutuan Labuan Wilayah Persekutuan Labuan Malaysia</p> <p>Tel : 6087-413 511 Fax : 6087-413 515</p>
7	Pengarah Laut Wilayah Sarawak	<p>Jabatan Laut Sarawak Kompleks Jabatan Laut Lot 683 Seksyen 66 Jalan Utama, Tanah Puteh 93619 Kuching Sarawak Malaysia</p> <p>Tel : 6082-484018 Fax : 6082-346 011</p>
8	Pengarah Laut Wilayah Sabah	<p>Jabatan Laut Sabah Kompleks Jabatan Laut Teluk Salut Jalan Sepanggar Beg Berkunci 2011 88450 Kota Kinabalu Sabah Malaysia</p> <p>Tel : 6088-401 111 Fax : 6088-401 182</p>

No.	Malaysian Maritime Enforcement Agency [Agensi Penguatkuasaan Maritim Malaysia]	Contact Details:
1	Wilayah Utara	<p>Agensi Penguatkuasaan Maritim Malaysia Wilayah Maritim Utara Jabatan Perdana Menteri Plot 1445, Jalan Bukit Malut Kedah Darul Aman</p> <p>Tel : 604-960 9800 Fax : 604-966 0542</p>
2	Wilayah Selatan	<p>Agensi Penguatkuasaan Maritim Malaysia Wilayah Maritim Selatan, Jabatan Perdana Menteri, Tingkat 16, Menara Tabung Haji, Jalan Air Molek, 80720 Johor Bahru, Johor.</p> <p>Tel : 607-2199440 Fax : 607-2199451</p>
3	Wilayah Timur	<p>Agensi Penguatkuasaan Maritim Malaysia Wilayah Maritim Timur, Jabatan Perdana Menteri, Blok A & B, Wisma Belia, Bandar Indera Mahkota, 25200 Kuantan, Pahang Darul Makmur</p> <p>Tel : 609-5717300 Fax : 609-5733569</p>
4	Wilayah Sabah & Labuan	<p>Wilayah Maritim Sabah Dan Labuan Agensi Penguatkuasaan Maritim Malaysia Jabatan Perdana Menteri, Bayview Court, No. 1 Jalan Burung Upih, Signal Hill, Beg Berkunci 2059, 88999 Kota Kinabalu, Sabah</p> <p>Tel : 088-270165 Fax : 088-270105</p>

No.	Malaysian Maritime Enforcement Agency [Agensi Penguatkuasaan Maritim Malaysia]	Contact Details:
5	Wilayah Sarawak	<p>Agensi Penguatkuasaan Maritim Malaysia Wilayah Maritim Sarawak, Jabatan Perdana Menteri, Kompleks Maritim Tun Abang Salahuddin (Komtas), Lot 1128, Jalan Bako, Muara Tebas, 93050 Kuching, Sarawak.</p> <p>Tel : 082-432 500 Fax : 082-432 502</p>

No.	Port Authorities	Contact Details:
1	Port Klang Authority	<p>Jalan Pelabuhan Utara, 42005 Pelabuhan Klang, Selangor, Malaysia</p> <p>PKA Call Centre Tel.: 603 - 3168 8211 Fax.: 603 - 3168 7626 Email : onestopagency@pka.gov.my webmaster@pka.gov.my</p> <p>Dangerous Goods Department Tel.: 603 - 3168 8211 ext 1044</p> <p>Free Zone Department Tel.: 603 - 3168 8211 ext 1016</p>
2	Penang Port Commission	<p>Level 2, Swettenham Pier Cruise Terminal, No. 1A, King Edward Place, 10300 George Town, Penang, Malaysia Tel : 04 2633211 Fax : +604 2626211 Email : sppp@penangport.gov.my</p>
3	Johor Port Authority	<p>Jalan Mawar Merah 2, Pusat Perdagangan Pasir Gudang 2, 81700 Pasir Gudang, Johor.</p> <p>Tel : 607-2534000 Fax : 607-2517684 Email : admin@lpj.gov.my</p>
4	Kuantan Port Authority	<p>Tanjung Gelang, 25720 Kuantan, Pahang Darul Makmur, Malaysia.</p> <p>Tel: 09-585 8000 Fax: 09-583 3866 Email: lpktn@lpktn.gov.my</p>

No.	Port Authorities	Contact Details:
5	Bintulu Port Authority	<p>Tingkat 8, 9 & 10, Menara Kidurong, 12th Mile, Jalan Tg. Kidurong, 97007 Bintulu, Sarawak</p> <p>Tel: 086-253888 or 086-232800 Fax: 086-252929 Email: adminlpb@bpa.gov.my</p>
6	Kuching Port Authority	<p>Jalan Pelabuhan, 93450 Kuching, Sarawak, Malaysia.</p> <p>Tel : 082 482 144 Fax: 082 481 696/082 334 776 Email: hq@kuport.com.my</p>
7	Sabah Ports Authority	<p>SPA Head Office Building, Jalan Tun Fuad, Tanjung Lipat, Locked Bag 2005, 88617 Kota Kinabalu, Sabah, East Malaysia. Tel: 088-538400 Fax: 088-223036</p>

No.	Port Terminal Operators	Contact Details:
1	Westports Malaysia Sdn Bhd	Pulau Indah, 42009 Port Klang, Malaysia. Tel: 603 - 3169 4000 / 3169 4200 Fax: 603 - 3169 4119 Port Police: Tel: 03-3169 4157 Fax: 03-3169 4128
2	Northport (Malaysia) Bhd	Jalan Pelabuhan, Pelabuhan Utara, 42000 Port Klang, Malaysia. Tel: 03 - 3169 8888 Fax: 03 - 3169 8080 E-mail: ccd@northport.com.my
3	Penang Port Sdn Bhd	No.1. Pesara King Edward, Georgetown, 10300 Penang, Malaysia Tel: 04 - 210 2211 (General Line) Fax : 04 - 263 4792 Email : info@penangport.com.my
4	Kuantan Port Consortium Sdn Bhd	Wisma KPC, KM25 Tanjung Gelang, P.O Box 199, 25720 Kuantan, Pahang Darul Makmur, Malaysia Tel: 09 - 586 3888

No.	Port Terminal Operators	Contact Details:
5	Pelabuhan Tanjung Pelepas Sdn Bhd	Block A, Wisma PTP Jalan Pelabuhan Tanjung Pelepas TST 507, 81560 Gelang Patah Johor, Malaysia Tel: 07 - 504 2222 Fax: 07 - 504 2288 Email: ptp@ptp.com.my
6	Johor Port Berhad	Pasir Gudang, 81707 Johor, Malaysia Tel: 07 - 253 5888 Fax: 07 - 251 0980 Email: jpb@johorport.com.my
7	Sabah Ports Sendirian Berhad (Kota Kinabalu)	3rd Floor, SPA Headquarters Building Jalan Tun Fuad, Tg.Lipat 88617 Kota Kinabalu Sabah, Malaysia. Tel: 088-538400 Fax: 088-223036

No.	Malaysian Royal Customs	Contact Details:
1	PERLIS	JABATAN KASTAM DIRAJA MALAY-SIA KOMPLEKS KASTAM NEGERI JALAN KAMPONG PONDOK 01000 KANGAR, PERLIS. Talian Umum: 04-9761420/421
2	KEDAH	JABATAN KASTAM DIRAJA MALAY-SIA, KOMPLEKS KASTAM, PERSIARAN SULTAN ABDUL HAMID 05050 ALOR SETAR, KEDAH Talian Umum: 04-7751212
3	PENANG	JABATAN KASTAM DIRAJA MALAY-SIA PULAU PINANG WISMA KASTAM, 10300 GAT LEBUH CHINA, GEORGTOWN, PULAU PINANG. Talian Umum: 04-2622300
4	PERAK	JABATAN KASTAM DIRAJA MALAY-SIA NEGERI PERAK, WISMA KASTAM, NO 1, JALAN KINTA, OFF JALAN TUN ABDUL RAZAK, 30100, IPOH, PERAK Talian Umum: 05 527 4322
5	SELANGOR	JABATAN KASTAM DIRAJA MALAY-SIA SELANGOR, NO. 1, JALAN PERIGI NENAS 7/11, KS II, TAMAN PERINDUSTRIAN PULAU INDAH, 42907 PELABUHAN KLANG, SELANGOR DARUL EHSAN. Talian Umum : 03 3169 3888
6	NEGRI SEMBILAN	JABATAN KASTAM DIRAJA MALAY-SIA NEGERI SEMBILAN WISMA KASTAM, JALAN PAROI – SENAWANG, KARUNG BERKUNCI NO.16, 70450 SEREMBAN, N.SEMBILAN Talian Umum : 06-6793700

No.	Malaysian Royal Customs	Contact Details:
7	MELAKA	WISMA KASTAM AYER KEROH, PETI SURAT 92, LEBUH AYER KEROH, 75450 MELAKA Talian Umum: 06-2325855
8	JOHOR	No Talian Am : 07 2225666 (Menara Kastam Larkin) No Talian Am : 07 2181666 (Kastam Bangunan Sultan Iskandar) No Faks : 07 227 4906
9	PAHANG	WISMA KASTAM SULTAN AHMAD SHAH BANDAR INDERA MAHKOTA JALAN SUNGAI LEMBING 25200 KUANTAN PAHANG Talian Am: 09 570 6888
10	TERENGGANU	WISMA KASTAM TERENGGANU JALAN BALIK BUKIT 20300 KUALA TERENGGANU TERENGGANU DARUL IMAN Talian Am : 09 - 620 4242
11	KELANTAN	JABATAN KASTAM DIRAJA MALAY- SIA NEGERI KELANTAN, JALAN SULTAN , 15000 KOTA BHARU, KELANTAN. Talian Umum: 09-7411100
12	SARAWAK	JABATAN KASTAM DIRAJA MALAY- SIA SARAWAK WISMA KASTAM, MEDAN RAYA JALAN TUN ABDUL RAHMAN YAAKUB, PETRA JAYA 93050 KUCHING Talian Am: 082 472 133

No.	Malaysian Royal Customs	Contact Details:
13	SABAH	JABATAN KASTAM DIRAJA MALAY- SIA, SABAH WISMA KASTAM JALAN HAJI SAMAN 88100, KOTA KINABALU SABAH Talian Umum: 088-250842
14	WP KUALA LUMPUR	JABATAN KASTAM DIRAJA MALAY- SIA WILAYAH PERSEKUTUAN KUALA LUMPUR KOMPLEKS KASTAM WPKL NO.2, JALAN SS 6/3, KELANA JAYA 47301, PETALING JAYA, SELANGOR DARUL EHSAN. Talian Am: 03 7884 0800
15	WP LABUAN	JABATAN KASTAM DIRAJA MALAY- SIA JALAN MERDEKA PETI SURAT 81003 87020 WILAYAH PERSEKUTUAN LABUAN Talian Umum : 087-592000

Appendix H

KLRCA FAST TRACK MODEL ARBITRATION CLAUSE:

“Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof shall be settled by arbitration in accordance with the Kuala Lumpur Regional Centre for Arbitration Fast Track Rules.”



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