

HBM/ 2

5 January 2007

YA Hakim / Pesuruhjaya Kehakiman
Mahkamah Tinggi Malaysia
Semenanjung Malaysia.

Timbalan Pendaftar
Mahkamah Tinggi Malaya
Semenanjung Malaysia.

Penolong Kanan Pendaftar
Mahkamah Tinggi Malaya
Semenanjung Malaysia.

Y.A. Dato'/ Datuk/ Tuan/ Puan,

**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;

*Ed. Rizal
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24 JAN 2007

“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.
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 personem 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) 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) Judgment by Default;
- (ix) Appraisement and Sale 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.

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, 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 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 sums 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.



(TAN SRI DATO' SITI NORMA BINTI YAAKOB)
Chief Judge of Malaya
Palace of Justice, Putrajaya.

c.c:

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