

# ADMIRALTY COURT GUIDE

(Rules of Court 2014 Edition)



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# I – V

## COMMENCEMENT AND ARREST WARRANT



\*Photograph courtesy of the Maritime and Port Authority of Singapore.

## **Admiralty Court Guide**

### **I. INTRODUCTION**

1. This 3<sup>rd</sup> Edition of the Admiralty Court Guide (Rules of Court 2014 Edition) applies to all cases under the Admiralty docket of the Supreme Court conducted under the Rules of Court (Cap. 322, R 5, 2014 Ed.) as in force immediately before 1 April 2022 (“**Rules of Court**”). This guide supplements Order 70 of the Rules of Court and the Supreme Court Practice Directions 2013 issued for the purposes of that Order. In the event of any conflict, the Rules of Court and the Supreme Court Practice Directions 2013 will take precedence.

### **II. ISSUE OF WRIT**

2. Admiralty actions are begun by writ and can be *in personam* or *in rem*. Counsel should comply with the forms provided in the Rules of Court for the different types of Admiralty actions.<sup>1</sup>

### **III. ISSUE OF WARRANT OF ARREST**

3. Any party in an action *in rem* may, at the same time when filing an *in rem* writ or at any time after the issue of the writ, apply for the issue of a warrant of arrest against the property in respect of which the action or any counterclaim in the action is brought.<sup>2</sup>

#### **A. Considerations Prior to Seeking a Warrant of Arrest**

4. Prior to arresting a vessel, the party seeking a warrant of arrest (the “**Arresting Party**”) should consider whether it is viable to do so. The Arresting Party should consider the following contingencies.
5. Where the vessel is loaded with cargo, the Arresting Party should consider whether there are potential issues with the discharge of the cargo. In the event that the vessel is not released within a short period of time after arrest, any cargo onboard the vessel may need to be discharged at potentially significant costs. The Arresting Party should consider the timing and costs of such discharge.
6. Where there is an order for the sale of the vessel without the cargo and the cargo owners later abandon the cargo, the Sheriff may need to discharge the cargo and dispose of it. Though the costs of discharging may be ordered to rank as Sheriff’s expenses, the Arresting Party is answerable at first instance to the Sheriff for the costs of discharging and disposing of the

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<sup>1</sup> Order 70 rule 2(1)-(2) of the Rules of Court.

<sup>2</sup> Order 70 rule 4 of the Rules of Court.

cargo in these circumstances. The Arresting Party should consider the timing and costs of such discharge.

7. Prior to effecting the arrest, the Arresting Party may wish to take into account the cargo operations of the vessel and consider whether it would be practicable to allow the vessel to discharge its cargo first.
8. The Arresting Party should also consider whether the value of the vessel is sufficient to cover the costs of the arrest and the discharge of the cargo. In the event that the sale proceeds are insufficient to satisfy these costs, the Sheriff may call upon the Arresting Party's solicitor's undertaking to satisfy these costs. This may be especially pertinent where the vessel's port dues are substantial or where the cost of engaging security services is significant, for example in the scenario of a lengthy arrest.
9. Solicitors are reminded that the undertaking to be given to the Sheriff is not to be taken lightly. For example, a vessel may accrue a large amount of port dues during the arrest. Upon the sale of the vessel, the outstanding port dues will rank as Sheriff's expenses and may exceed the value of the vessel.<sup>3</sup> In such a situation, the Sheriff will look to the Arresting Party to pay any outstanding port dues that cannot be recovered from the sale proceeds. If necessary, the Sheriff will call on the undertaking given by the Arresting Party's solicitors.
10. Lastly, before seeking a warrant of arrest against a vessel, the Arresting Party or its solicitors should check the list of arrested vessels on the Singapore Courts website to see if the vessel is already under arrest.<sup>4</sup>

**B. Documents to be filed prior to attending before the Duty Registrar**

11. An Admiralty writ *in rem* may be filed prior to or together with the application for a warrant of arrest. The writ will be issued before the application for the warrant of arrest is processed, to ensure that the Admiralty suit number can be allocated and reflected on the request for a warrant of arrest, the affidavit leading to arrest, and the undertaking to the Sheriff.
12. The Arresting Party must file the following documents together:
  - (1) A request for a warrant of arrest;
  - (2) An affidavit leading to arrest;<sup>5</sup> and

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<sup>3</sup> In contrast, where the vessel is released, the outstanding port dues will ordinarily be borne by the owner of the vessel.

<sup>4</sup> See "List of vessels currently under Sheriff's arrest" available at: <https://www.judiciary.gov.sg/services/sheriff-services-admiralty-actions>.

<sup>5</sup> Order 70 rule 4(3) of the Rules of Court.

(3) An undertaking by the Arresting Party's solicitors.<sup>6</sup>

13. Where the action is for the possession of a vessel or for wages, and the vessel to be arrested is a foreign ship registered in a port of a state which has a consulate in Singapore, solicitors are reminded that notice should be given to the consul once the writ has been issued, failing which a warrant of arrest will not be issued against the vessel unless the Court otherwise grants leave.<sup>7</sup>
14. The affidavit leading to arrest must set out all the particulars required under the Rules of Court.<sup>8</sup> Solicitors are reminded that where the action is for the possession of a vessel or for wages, and the vessel to be arrested is a foreign ship registered in a port of a state which has a consulate in Singapore, the affidavit should exhibit a copy of the notice to the consul.

**C. Attendance before the Duty Registrar**

15. In general, the Arresting Party will attend before the Duty Registrar by video conferencing using Zoom. Further information and instructions on how to download and use Zoom, and how to make a request to attend before the Duty Registrar over Zoom, can be found in the "Guide on the Use of Video Conferencing and Telephone Conferencing" ("**Zoom Guide**") available on the Singapore Courts website.<sup>9</sup> Solicitors are reminded to connect to Zoom at the appointed date and time of the Duty Registrar hearing.
16. The Arresting Party must procure a search of the record of caveats to ascertain whether any caveats against arrest have been lodged against the property to be arrested.<sup>10</sup> The caveat search should be conducted no more than 15 minutes before the hearing of the application for the warrant of arrest.<sup>11</sup> Solicitors may choose to have their clerks conduct the caveat search just prior to their attendance before the Duty Registrar, and have the search result emailed to the Sheriff's office at 'SUPCT\_Sheriff@judiciary.gov.sg'. The Duty Registrar will be notified once the search results have been received from the solicitors' office. Alternatively, solicitors may present the caveat search through the 'Share Screen' function on Zoom to the Duty Registrar, and undertake to file the caveat search within 24 hours (for a weekday arrest) or a reasonably longer period (for a weekend or public holiday arrest).

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<sup>6</sup> Order 70 rule 9(3) of the Rules of Court; Paragraph 124(2) and 125 of the Supreme Court Practice Directions 2013.

<sup>7</sup> Order 70 rule 4(4) of the Rules of Court.

<sup>8</sup> Order 70 rule 4(6)-(7) of the Rules of Court.

<sup>9</sup> Please see the Zoom Guide at p7 on making a request to attend before the Duty Registrar over Zoom.

<sup>10</sup> Order 70 rule 4(2) of the Rules of Court.

<sup>11</sup> Paragraph 129 of the Supreme Court Practice Directions 2013.

17. The existence of a caveat against arrest does not necessarily prevent a warrant of arrest being issued.<sup>12</sup> It is for the Arresting Party to explain to the Court why the warrant of arrest should be issued notwithstanding the caveat against arrest.
18. The Arresting Party must attend before the Duty Registrar and satisfy the Duty Registrar that the Duty Registrar should exercise the Duty Registrar's discretion to grant the warrant of arrest. The following particulars should be highlighted to the Duty Registrar:
  - (1) The nature of the claim or counterclaim;
  - (2) What is the property that is to be arrested;
  - (3) Which limb of Section 3(1) of the High Court (Admiralty Jurisdiction) Act 1961 ("HCAJA") does the claim fall under; and
  - (4) The mode by which the Court's Admiralty jurisdiction is invoked under Section 4 of the HCAJA.
19. Solicitors have a duty to ensure that full and frank disclosure of all material facts has been made to the Duty Registrar regarding the circumstances leading to the arrest and any obvious defences<sup>13</sup> that the defendant would have in seeking to set aside the arrest. Failure to do so may give rise to a ground for setting aside the arrest, and may result in the Arresting Party being liable for damages for wrongful arrest.

**D. After Hours Applications for Arrest**

20. Urgent arrest hearings are sometimes attended to outside of the Court's office hours i.e. weekdays (after 5pm), weekends and public holidays. In the event that the Arresting Party needs to attend before the after-hours Duty Registrar to obtain a warrant of arrest on an urgent basis, the Arresting Party should call the after-hours Duty Registrar at 6332 4351 or 6332 4352. The Arresting Party should inform the after-hours Duty Registrar whether the necessary documents have been filed and the reason for the urgency. The after-hours Duty Registrar will determine if an urgent hearing is necessary, and if so, will inform the Arresting Party of the hearing date, time and venue. The after-hours Duty Registrar will thereafter contact the duty Bailiff.
21. In general, the Arresting Party will attend before the after-hours Duty Registrar by video conferencing using Zoom. If the Arresting Party is required to physically attend the hearing at a venue other than the Court, the Arresting Party shall ensure that it has at least 3 copies of each document required for the Duty Registrar's signature (such as the writ of summons and the warrant of arrest). The onus is on the Arresting Party to ensure that it is able to carry out

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<sup>12</sup> Order 70 rule 5(2) of the Rules of Court.

<sup>13</sup> Defences which are of such weight to deliver the 'knock-out blow' to the claim summarily: see *The "Eagle Prestige"* [2010] 3 SLR 294 at [73] & [75]; *The "Xin Chang Shu"* [2016] 1 SLR 1096 at [47]-[49].



the caveat searches within the time limit prescribed by the Supreme Court Practice Directions 2013.<sup>14</sup>

22. In the event that the Arresting Party needs to activate the after-hours Duty Registrar and duty Bailiff to obtain a warrant of arrest, the solicitors should contact the after-hours Duty Registrar before 10pm on weekdays and before 5pm on weekends and public holidays. Solicitors are to provide an explanation to the after-hours Duty Registrar as to why a warrant of arrest was not obtained during office hours. Solicitors should also note that time will be required, and costs will be incurred, to activate the relevant personnel, and solicitors will need to explain the urgency of the situation such that an after-hours hearing is required.

#### **IV. DOCUMENTS TO BE PROVIDED WITH THE WARRANT OF ARREST**

23. If the Duty Registrar grants the request for the warrant of arrest, the following documents will be provided together with the warrant of arrest:
- (1) A letter from the Sheriff authorising the clerk(s) named by the solicitors to arrest the property;
  - (2) A notice of arrest to be affixed to the property to be arrested;
  - (3) A notification of arrest to the Maritime and Port Authority of Singapore (“MPA”) in the case of a vessel arrest; and
  - (4) A blank template for the Report of Arrest.

#### **V. SERVICE OF THE WRIT / WARRANT OF ARREST**

24. Service of the writ *in rem* and the warrant of arrest against a vessel, or any freight or cargo still loaded on board a vessel, must be in compliance with Order 70 rule 10 of the Rules of Court, and is generally effected by sticking the writ *in rem* and warrant of arrest to the windows in front of the vessel’s wheelhouse using the Supreme Court seals provided by the Sheriff’s office.
25. In respect of an action *in rem* against freight or cargo where the cargo has been landed or transhipped, service of the writ *in rem* and warrant of arrest is effected by:
- (1) Leaving a copy of the writ *in rem* and warrant of arrest on the cargo; or
  - (2) If the cargo is in the custody of a person who will not permit access to it, by leaving a copy of the writ *in rem* and warrant of arrest with that person.<sup>15</sup>

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<sup>14</sup> Paragraph 129 of the Supreme Court Practice Directions 2013.

<sup>15</sup> Order 70 rule 10(2) of the Rules of Court.

26. However, during the relevant period as defined in Order 70 rule 10A(5) of the Rules of Court, service of the writ *in rem* and the warrant of arrest against a vessel, or any freight or cargo still loaded on board a vessel, may alternatively be effected by leaving a copy of the writ and warrant of arrest with the ship's agent and transmitting the writ and warrant of arrest by fax or electronic mail to the ship's agent.<sup>16</sup> As soon as practicable after the writ *in rem* and the warrant of arrest have been served, the Arresting Party's solicitors must also make reasonable efforts to give written notice of the same to the shipowner, the demise charterer (if any), the Master, the ship manager and, if the vessel is in a shipyard, the shipyard.<sup>17</sup> If a warrant of arrest is served on the ship's agent, the Arresting Party's solicitors must annex a copy of the "Explanatory Note to Ship Agents" (see **Annex A1**) to the warrant of arrest.
27. Where the Arresting Party arrests property with respect to which a caveat against arrest is in force, the caveator may apply to Court by summons for an order to discharge the warrant of arrest and for the Arresting Party to pay the caveator damages in respect of loss suffered by the caveator as a result of the arrest. The Court, unless satisfied that there was good and sufficient reason for the arrest, may discharge the warrant of arrest and order damages to be paid by the Arresting Party to the caveator.<sup>18</sup>
28. Solicitors should note that while a letter of authorisation is provided for the execution of a warrant of arrest, **no** letter of authorisation shall be issued by the Sheriff for the service of a writ on a vessel. Solicitor's clerks who have been registered with the Registrar and authorised under Order 62 rule 2 of the Rules of Court to effect personal service may serve Admiralty writs *in rem* on vessels.

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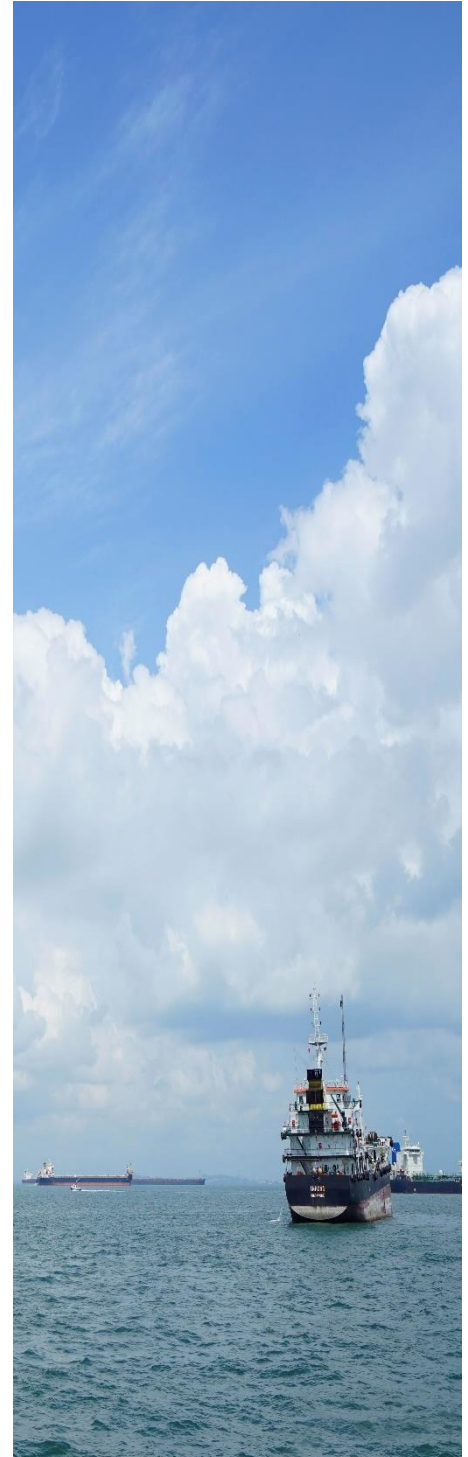
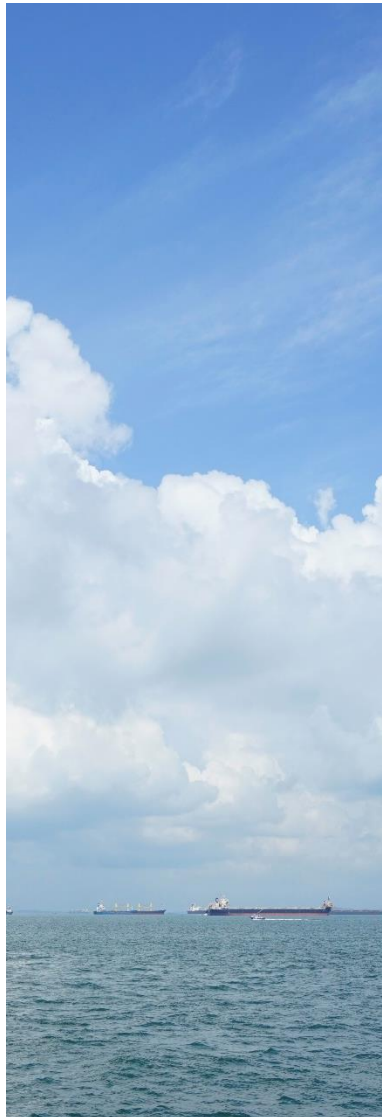
<sup>16</sup> Order 70 rule 10A(1) of the Rules of Court.

<sup>17</sup> Paragraph 124(5) of the Supreme Court Practice Directions 2013.

<sup>18</sup> Order 70 rule 6 of the Rules of Court.

# VI

## ARREST PROCEDURE



\*Photograph courtesy of the Maritime and Port Authority of Singapore.

**VI. ARREST PROCEDURE**

**A. Boarding the vessel**

29. Where the service of the writ *in rem* and warrant of arrest is to be effected by boarding the vessel, the onus is on the Arresting Party to arrange for its transportation to the vessel. If the Master refuses permission for the Arresting Party to board the vessel, the Arresting Party may seek assistance from the Police Coast Guard to board. The Arresting Party seeking to board the vessel should bear in mind the prevailing MPA regulations regarding shore-based personnel boarding vessels.

**B. Speaking to the Master**

30. Prior to effecting service of the writ *in rem* and warrant of arrest, the Arresting Party should generally speak to the Master or senior officer of the vessel and explain the circumstances and situation. Due care and respect are to be exercised when explaining the effect of the arrest on the vessel and the crew.

**C. Security guard**

31. As of 1 March 2023, the Sheriff's office has dispensed with the default requirement to deploy a security guard on board an arrested vessel for the duration of the arrest. Instead, the solicitors for the Arresting Party are to engage ship watch services, and provide daily updates to the Sheriff's office on the location of the vessel, starting from the day the vessel is arrested until the vessel is released.<sup>19</sup>

32. The Sheriff may require the Arresting Party to deploy a security guard on board the vessel for any part of the duration of the arrest, including in (but not limited to) the following circumstances:

- (1) Where cargo is to be discharged from the vessel;
- (2) Where the vessel is to be moved from berth to anchorage, and/or the other way around;
- (3) Where there is any actual or potential unrest on the vessel; and
- (4) Where there are any other circumstances that may affect the preservation of the vessel.<sup>20</sup>

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<sup>19</sup> Paragraph 124(7) of the Supreme Court Practice Directions 2013.

<sup>20</sup> Paragraph 124(8) of the Supreme Court Practice Directions 2013.

33. If the Sheriff requires the Arresting Party to deploy a security guard on board the vessel for any part of the duration of the arrest, the Arresting Party should inform the Sheriff's office as to which security services agency from the panel of security agencies (see **Annex C**) maintained by the Sheriff would be appointed. The Arresting Party should provide the appointed security services agency with the details of the vessel and make logistical arrangements to transport the security guard from the appointed security services agency to the vessel. The security guard will remain on board the vessel until relieved or for the duration specified by the Sheriff or until further notice. The Arresting Party should inform the Master of the need for the security guard to remain on board, and the security guard's role in ensuring the protection of the vessel while it remains in the custody of the Sheriff. The Arresting Party should also inform the Master that the security guard has the discretion to prevent any party from boarding the vessel if that party does not have the Sheriff's permission to do so. The Arresting Party should ask the Master to provide sleeping quarters and provisions for the security guard.

**D. Steps after effecting service of writ in rem / warrant of arrest on vessel**

(1) Notification to MPA of arrest

34. The Arresting Party should provide the notification of arrest to MPA **after** the vessel has been arrested. This is to ensure MPA is notified and that they will update their system accordingly.

35. Solicitors should note that the notification of arrest should be sent to MPA only **after** the arrest of the vessel has been effected and **not** prior to the arrest of the vessel.

(2) Filing Report of Arrest

36. A Report of Arrest should be completed and filed by the Arresting Party, within 1 working day after the arrest, to inform the Sheriff that the arrest has been effected, so that the Sheriff's office will update its records accordingly.<sup>21</sup>

(3) Filing of Memorandum of Service

37. Where the writ *in rem* has been served on the vessel, a memorandum of service must be filed within 8 days after service on the vessel. Failure to do so will preclude the plaintiff from obtaining Judgment in default except with leave of Court.<sup>22</sup>

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<sup>21</sup> Order 70 rule 9(7) of the Rules of Court.

<sup>22</sup> Order 10 rule 1(4) of the Rules of Court.

(4) Putting Sheriff into funds for expenses

38. The Arresting Party should deposit S\$10,000<sup>23</sup> with the Sheriff by way of a bank draft or cashier's order made in favour of "The Sheriff of Singapore" within 2 working days after the arrest. If the arrested property is released within 2 weeks after the arrest, the deposit (less any expenses payable to the Sheriff) will be returned to the Arresting Party.

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<sup>23</sup> Paragraph 124(4) of the Supreme Court Practice Directions 2013.

## VII – X

# MATTERS FOLLOWING ARREST



\*Photograph courtesy of the Maritime and Port Authority of Singapore.

## VII. RELEASE

39. The requirements under Order 70 rule 12 of the Rules of Court are to be complied with. If the Arresting Party's claim is satisfied or security is provided to secure the claim, a party to the action may apply for the issue of an instrument of release to release the property.<sup>24</sup> The application may be made by any party to the action in which the property was arrested (the "**Releasing Party**"). An undertaking must be filed together with the instrument of release.<sup>25</sup>
40. The Releasing Party must attend before the Duty Registrar by video conferencing using Zoom to satisfy the Duty Registrar that the instrument of release should be issued.<sup>26</sup> The Releasing Party must carry out a caveat search against the arrested property to show that there are no caveats against release filed against the property. A caveat search should be done no more than 15 minutes before attending before the Duty Registrar.<sup>27</sup>
41. Where there is a caveat against release in force, the Releasing Party must give at least 24 hours' prior written notice to the caveator to either withdraw the caveat or arrest the property in another action ("**Prior Written Notice**").<sup>28</sup> If Prior Written Notice has been given, the Court may release the arrested vessel even though the caveat against release is not withdrawn or the caveator has failed to arrest the vessel in another action.<sup>29</sup>
42. Before the arrested property is released, the Releasing Party must, in accordance with the directions of the Sheriff, either:<sup>30</sup>
- (1) Pay the fees of the Sheriff already incurred and lodge with the Sheriff an undertaking by the solicitors of the Releasing Party to pay on demand the other fees and expenses in connection with the arrest, care and custody, and release of the property; or
  - (2) Lodge with the Sheriff an undertaking by the solicitors of the Releasing Party to pay on demand all fees and expenses in connection with the arrest, care and custody, and release of the property, whether incurred or to be incurred.

### A. After Hours Hearing for Release

43. Urgent release hearings are sometimes attended to outside of the Court's office hours i.e. weekdays (after 5pm), weekends and public holidays. In the event that the Releasing Party needs to attend before the after-hours Duty Registrar to obtain an instrument of release on an

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<sup>24</sup> Order 70 rule 12(1) of the Rules of Court.

<sup>25</sup> Paragraph 125 of the Supreme Court Practice Directions 2013.

<sup>26</sup> Please see the Zoom Guide at p7 on making a request to attend before the Duty Registrar over Zoom.

<sup>27</sup> Paragraph 129 of the Supreme Court Practice Directions 2013.

<sup>28</sup> Paragraph 126A(1) of the Supreme Court Practice Directions 2013.

<sup>29</sup> Order 70 rule 12(2)(b) of the Rules of Court; Paragraph 126A(2) of the Supreme Court Practice Directions 2013.

<sup>30</sup> Order 70 rule 12(5)(a)-(b) of the Rules of Court.



urgent basis, the Releasing Party should call the after-hours Duty Registrar at 6332 4351 or 6332 4352. The Releasing Party should inform the after-hours Duty Registrar as to whether the necessary documents have been filed and the reason for the urgency. The after-hours Duty Registrar will determine if an urgent hearing is necessary, and if so, will inform the Releasing Party of the hearing date, time and venue. The after-hours Duty Registrar will contact the duty Bailiff.

44. In general, the Releasing Party will attend before the after-hours Duty Registrar by video conferencing using Zoom. If the Releasing Party is required to physically attend the hearing at a venue other than the Court, the Releasing Party shall ensure that it has at least 3 copies of each document required for the Duty Registrar's signature (such as the instrument of release). The onus is on the Releasing Party to ensure that it is able to carry out the caveat searches within the time limit prescribed by the Supreme Court Practice Directions 2013.<sup>31</sup>
45. In the event that the Releasing Party needs to activate the after-hours Duty Registrar and duty Bailiff to obtain an instrument of release, the solicitors should contact the after-hours Duty Registrar before 10pm on weekdays and before 5pm on weekends and public holidays. Solicitors are to provide an explanation to the after-hours Duty Registrar as to why an instrument of release was not obtained during office hours. Solicitors should also note that time will be required, and costs will be incurred, to activate the relevant personnel, and they will need to explain the urgency of the situation such that an after-hours hearing is required.

#### **VIII. OMNIBUS ORDERS**

46. To provide for the preservation and maintenance of the vessel and the Master and crew of the vessel, any party to the action may apply to Court for an omnibus order. Sample prayers for omnibus applications can be found at **Annex B – Standard Prayers for Applications for Appraisement and Sale and Omnibus prayers**. The omnibus order may provide that, amongst other things:
- (1) The Sheriff be at liberty to appoint an agent to handle all matters in relation to the preservation and maintenance of the vessel, her machinery and equipment, and her Master and crew, and for the expenses incurred to be treated as Sheriff's expenses;
  - (2) The Sheriff be at liberty to remove such moveable equipment or other property of the vessel as the Sheriff thinks fit, and to store the same in safe-keeping in such premises as the Sheriff shall approve, and to take custody of and retain the vessel's log books, certificate of registry and other certificates and documents;

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<sup>31</sup> Paragraph 129 of the Supreme Court Practice Directions 2013.

- (3) The Sheriff be at liberty, at the Sheriff's discretion and at any time, to move the vessel within the port limits of Singapore, to move the vessel to any shipyard in Singapore for berthing, or to move the Vessel to any anchorage, for safety, to comply with the requirements of the Maritime and Port Authority of Singapore, or pursuant to any request from a shipyard or a port operator arising from the commercial need for a berth, on the footing that all costs and expenses thereby incurred shall be treated as Sheriff's expenses;
- (4) The Sheriff and/or the applicant be at liberty to pay the wages of and repatriate the officers and crew of the vessel, and be at liberty to employ a skeleton or replacement crew on board the vessel in accordance with the requirements and regulations of the Maritime and Port Authority of Singapore, and the wages and repatriation expenses of the said officers and crew and of the skeleton or replacement crew be treated as Sheriff's expenses; and
- (5) The Sheriff and/or the applicant be at liberty to effect port risk insurance on the vessel and the expenses thereto incurred be treated as Sheriff's expenses, and that the Sheriff of Singapore be named as the co-assured, as the case may be.

47. Where the vessel is arrested in a shipyard, the Arresting Party should note paragraph 124A of the Supreme Court Practice Directions 2013 which requires the Arresting Party to apply for an omnibus order within 14 days after the arrest or within 3 days after a request by a shipyard to move the vessel (whichever is the earlier).

**A. Appointment of agents**

48. If the party applying for the omnibus order wishes to nominate a particular agent to act as the Sheriff's agent, the party should seek the Sheriff's consent and, if the Sheriff consents, state the agent's name in the prayer to appoint an agent. If no agent is nominated, the Sheriff shall appoint an agent from a panel of agents maintained by the Sheriff.

**B. Extent of expenses covered by omnibus order**

49. Parties should note that not all expenses incurred in the course of the arrest will be considered Sheriff's expenses. If there is any doubt as to whether the expenses would be treated as Sheriff's expenses, the party seeking to claim such expenses as Sheriff's expenses should apply by summons for a Court order recognising such expenses as Sheriff's expenses.

## IX. INTERVENERS

50. A party that has a sufficient interest in the property arrested in an action *in rem* or money lying in Court representing the property may apply by way of *ex parte* summons supported by an affidavit for leave to intervene in the action.<sup>32</sup> Where leave is granted, the party must enter an appearance in the action within the time specified in the order granting leave.<sup>33</sup>
51. An intervener is only entitled to conduct the action to the extent that it obtains leave of Court to do so.<sup>34</sup>

## X. PERMISSION FOR PARTIES TO BOARD ARRESTED VESSEL

52. A vessel that has been arrested pursuant to a warrant of arrest remains in the custody of the Sheriff. As such, parties seeking to board the vessel must obtain permission from the Sheriff prior to boarding the vessel. If the Sheriff has not given permission, the security guard on board the vessel (if any) may prevent the party from boarding the vessel.
53. Permission from the Sheriff may be obtained by filing a Request via eLitigation stating the purpose of the boarding, the date and time of the boarding, and the details of the persons going on board the vessel.



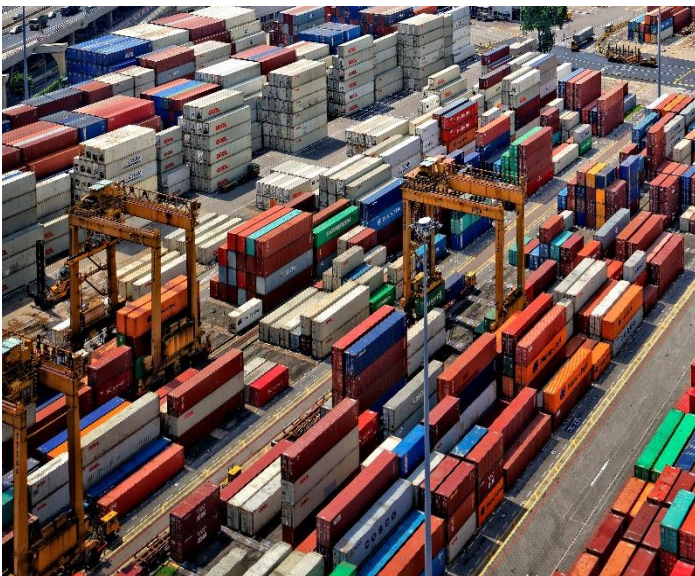
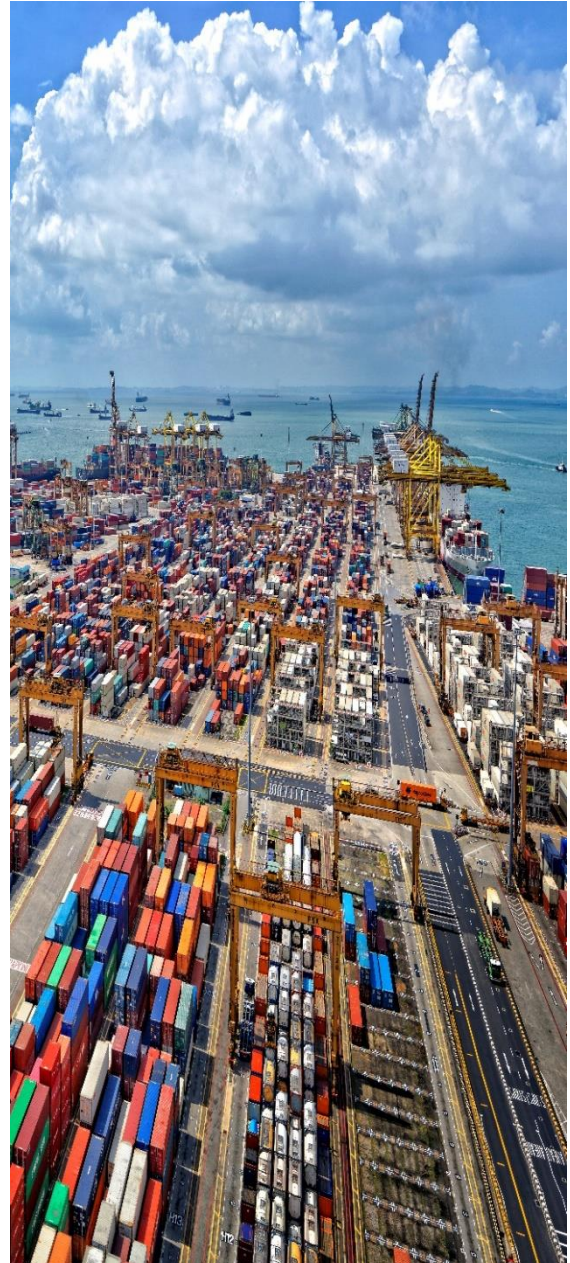
\* Photograph courtesy of the Maritime and Port Authority of Singapore.

<sup>32</sup> Order 70 rule 16(1)-(2) of the Rules of Court.

<sup>33</sup> Order 70 rule 16(3) of the Rules of Court.

<sup>34</sup> *The "San 003"* [1979-1980] SLR(R) 8.

# XI DISCHARGE OF CARGO



\* Photograph courtesy of the Maritime and Port Authority of Singapore

**XI. DISCHARGE OF CARGO**

54. Where the vessel to be arrested pursuant to a warrant of arrest is in the midst of cargo discharge operations, the Sheriff will generally allow the cargo to be discharged before the warrant of arrest is executed. If there is cargo on board the arrested vessel, the cargo owners may wish to apply for the cargo to be discharged. They may do this by intervening in the action pursuant to Order 70 rule 16 of the Rules of Court and applying by summons for an order of Court allowing them to discharge the cargo.

55. Where the cargo owners do not appear, a party to the action seeking to sell the vessel may also seek an order that the cargo be discharged and released to the cargo owners on the production of the original bills of lading and payment of the costs of discharge. In such a situation, the Sheriff would generally require an undertaking from the solicitors of the party seeking the discharge to provide funds and to indemnify the Sheriff for the costs of the cargo discharge and storage (if any).

56. Where cargo onboard a vessel is arrested but the vessel is not under arrest, the shipowner may intervene and apply by way of summons for an order to discharge the cargo under arrest.

**A. Application for discharge of cargo**

57. An application to discharge cargo on board the arrested vessel, or to discharge arrested cargo, should be made by way of summons supported by an affidavit. The party would generally have to satisfy the Court as to why an order to discharge the cargo should be made. If cargo owners are applying for the discharge, they would have to show that they are the parties entitled to take delivery of the cargo.

**B. Expenses incurred in discharge**

58. When a cargo owner applies to discharge the cargo onboard an arrested vessel, any expenses incurred in the cargo discharge are generally to be paid by the cargo owners or recovered from the cargo owners. Such expenses would not be deemed Sheriff's expenses unless the Court is satisfied that such expenses should be included as Sheriff's expenses.

## **XII – XIII**

# **APPRAISEMENT AND SALE**



## **XII. APPRAISEMENT AND SALE**

59. Where no security is put up to procure the release of the arrested property and the property is a wasting asset, a party to the action in which the property is arrested may apply for an order of Court that the property be appraised and sold *pendente lite* (pending Judgment) by the Sheriff.

### **A. Application for appraisal and sale**

60. The application for appraisal and sale *pendente lite* is by way of summons supported by affidavit and is to be heard by a Judge in Open Court. The affidavit should demonstrate how and why the arrested property is a wasting asset and should be sold by way of judicial sale. Upon the order for appraisal and sale being made, the party applying for appraisal and sale must file a Commission for Appraisal and Sale in Form 170 of Appendix A to the Rules of Court.<sup>35</sup> An undertaking by the solicitors of the party applying for appraisal and sale to pay the fees and expenses of the Sheriff on demand must be filed together with the Commission for Appraisal and Sale.<sup>36</sup>

61. Some sample prayers for applications for appraisal and sale of the property can be found at **Annex B – Standard Prayers for Applications for Appraisal and Sale and Omnibus prayers**. These standard prayers are only a guide and solicitors should consider whether they are appropriate or should be varied in their case.

### **B. Appointment of appraisers**

62. The party applying for appraisal and sale *pendente lite* should note paragraph 130A of the Supreme Court Practice Directions 2013, which requires the party applying to include a prayer for the Court to appoint one or more appraisers to value the property. A list of the appraisers maintained by the Sheriff should be annexed to the summons. It should be noted that at least one specific appraiser is to be appointed by the Court during the hearing for appraisal and sale. If the Court does not specifically name an appraiser, the party applying for appraisal and sale should highlight this to the Court and ask the Court to indicate which appraiser it is appointing. The appraiser(s) appointed by the Court will then be named in the Commission for Appraisal and Sale.

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<sup>35</sup> Order 70 rule 22(1) of the Rules of Court.

<sup>36</sup> Order 70 rule 22(3) of the Rules of Court.

**C. Sale by Public Auction or Private Treaty vs. Direct Sale**

63. Parties seeking to apply for an order for appraisalment and sale *pendente lite* should note that the general method of sale is by private treaty. Typically, parties interested in buying the property do so by tendering sealed bids to the Sheriff by a certain deadline. After the deadline, the Sheriff will open the sealed bids and generally accept the highest bid that is above the valuation of the property.
64. In a direct sale scenario, the party applying for appraisalment and sale is asking the Court to sanction the sale of the property to a particular buyer at a particular price. The Court will only order a direct sale in exceptional cases where special circumstances justify the exercise of the Court's discretion.<sup>37</sup>

**XIII. DETERMINATION OF PRIORITIES AND PAYMENT OUT**

65. Following the sale of the property, the sale proceeds would be paid into Court. An application for the determination of order of priorities may not be made until 90 days (or such other period as the Court may specify) after the date the sale proceeds are paid into Court.<sup>38</sup> An application for the determination of order of priorities is heard by a Judge in Open Court.<sup>39</sup>
66. An application for the determination of order of priorities is made by summons,<sup>40</sup> and may be coupled with an application for payment out. The application is generally supported by an affidavit stating the amounts to be paid out, to whom payment should be made and for what purpose. A copy of the summons together with copies of the affidavits in support must be served on all parties referred to in Order 70 rule 11(2) of the Rules of Court (where applicable) not less than 2 clear days before the hearing of the application.<sup>41</sup>
67. The judge hearing the application for the determination of order of priorities may order payment out to satisfy the various claims against the sale proceeds. Payment out is generally ordered pursuant to judgment having been obtained against the vessel. Where the sale proceeds and the judgment sum are in different currencies, the application for payment out should specify: (a) the conversion rate to be applied to the judgment sum, and (b) the equivalent amount to be paid out from the sale proceeds.
68. Solicitors should also note that as far as practicable, all the parties with interests in the sale proceeds of a vessel should attempt to file a single application for payment out that encapsulates the various claims against the sale proceeds. Parties should avoid filing multiple

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<sup>37</sup> *The Turtle Bay* [2013] 4 SLR 615 at [29] and *The Sea Urchin* [2014] SGHC 24 at [10].

<sup>38</sup> Order 70 rule 21(2)(a) of the Rules of Court.

<sup>39</sup> Paragraph 38(3)(h) of the Supreme Court Practice Directions 2013.

<sup>40</sup> Order 70 rule 21(1) of the Rules of Court.

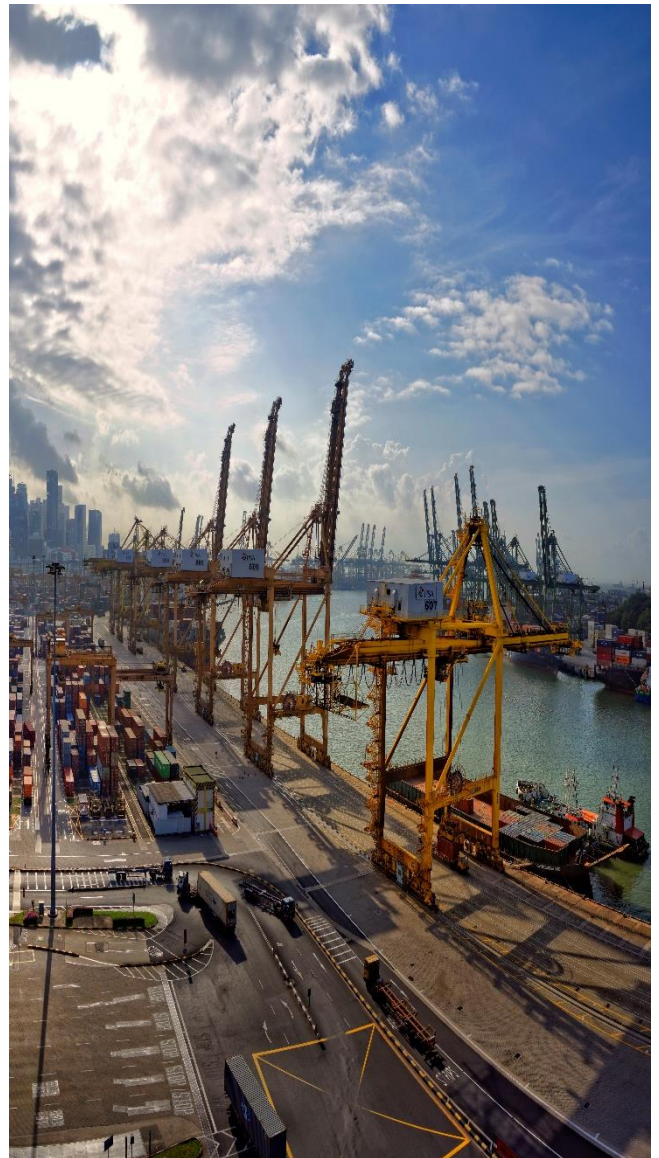
<sup>41</sup> Order 70 rule 20(7AA) of the Rules of Court.



applications for the determination of order of priorities or payment out unless there are very good reasons for doing so. Even if there is a dispute over the priorities of the claims, this does not mean that separate applications must be filed, because the Court can determine the priorities based on the evidence and submissions before it.

## XIV – XV

# CASE MANAGEMENT, ETC.



\*Photograph courtesy of the Maritime and Port Authority of Singapore.

#### **XIV. MISCELLANEOUS**

##### **A. Caveats**

69. A party seeking to prevent the arrest of a vessel may through its solicitors file a caveat against arrest in Form 162 of Appendix A to the Rules of Court.<sup>42</sup> In such situations, unless it can be shown that there are good reasons to allow the arrest of the property against which there is a caveat against arrest, the Duty Registrar is unlikely to issue a warrant of arrest. The solicitors filing the caveat against arrest should be aware that unless limited to a specific claim, the undertaking to provide security (which is required pursuant to the caveat against arrest) extends to any and all claims against the vessel. Where a solicitor fails to comply with an undertaking to give bail or pay money into Court in lieu of bail, the solicitor shall be liable to committal.<sup>43</sup>
70. Where a party wishes to prevent the release of arrested property or payment out of the sale proceeds representing the property, the party may file a caveat against release of the property or payment out in Form 166 of Appendix A to the Rules of Court.<sup>44</sup> This would prevent the property being released or payment out being made without the caveator being notified.
71. If the caveator wishes to take over the arrest of the property, the caveator should begin its own *in rem* action and file its own arrest papers to take over the arrest of the property. If the caveator does not wish to take over the arrest of the property, it should withdraw its caveat by filing a withdrawal of caveat in Form 167 of Appendix A to the Rules of Court.<sup>45</sup>
72. A caveator who fails to withdraw its caveat against release of the property may be liable to pay damages to the party seeking the release of the property, unless there was good and sufficient reason for the caveator to maintain the caveat.<sup>46</sup> The party claiming damages will file a summons for an order requiring the caveator to pay him damages in respect of the loss suffered by him caused by the delay. Such an application will be heard by a Judge in Open Court.<sup>47</sup>

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<sup>42</sup> Order 70 rule 5(1)(a)-(b) of the Rules of Court.

<sup>43</sup> Order 70 rule 8 of the Rules of Court.

<sup>44</sup> Order 70 rule 13(1) of the Rules of Court.

<sup>45</sup> Order 70 rule 14(1) of the Rules of Court.

<sup>46</sup> Order 70 rule 13(2) of the Rules of Court.

<sup>47</sup> Paragraph 38(3)(e) of the Supreme Court Practice Directions 2013.

**B. Sheriff's expenses and Arresting Party's Costs**

73. It should not be assumed by parties that all costs that may be incurred in the arrest are treated as Sheriff's expenses. While the categories of Sheriff's expenses are not exhaustive or inflexible, care must be taken in incurring expenses during the arrest. Where there is any doubt, parties should not simply seek the Sheriff's approval for the expense to be included as Sheriff's expenses. Instead, parties should take out an application to seek the Court's approval for such expenses to be included and ranked as Sheriff's expenses. Solicitors should note that when incurring an item of expenditure during the arrest, it is for the Court to determine if those expenses should be treated as Sheriff's expenses and given priority above all other claims.
74. Solicitors for the Arresting Party should also note that where necessary, the Sheriff will look to the Arresting Party to provide funds for the preservation and maintenance of the vessel and her crew during the arrest. If necessary, the Sheriff will also call upon the undertaking given by the Arresting Party's solicitors.
75. The costs incurred by the Arresting Party for the arrest and the costs incurred in obtaining the order for the appraisal and sale of the vessel rank after Sheriff's expenses in priority. Any party seeking to have any other item of costs incurred treated with priority should explain how the costs were incurred for the benefit of all the claimants of the fund and not primarily for its benefit.<sup>48</sup>

**XV. PTC MATTERS**

**A. Protective writs / writs not served**

76. A writ *in rem* is valid in the first instance for 12 months.<sup>49</sup> A pre-trial conference ("PTC") would be fixed on the assumption that the writ would be served shortly after being issued. Where the plaintiff has issued a protective writ or has not been able to serve a writ on a vessel, the plaintiff's solicitors should write in to Court at least 3 working days before the PTC to ask for an adjournment of the PTC and state that the writ has not been served. The plaintiff should also note that when a long adjournment of the PTC is sought on the ground that the writ has not been served, the Registry will direct the plaintiff to write in to Court to inform the Court when the writ has been served. Those directions are to be complied with.

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<sup>48</sup> *Festive Holidays Ltd v The Demise Charterers of the ship "Ocean Glory 1"* [2001] All ER(D) 344.

<sup>49</sup> Order 70 rule 2(4) of the Rules of Court.

**B. Early Discovery of Electronic Track Data**

77. In vessel collision actions, electronic track data stored in the recorders on board vessels or in shore-based recorders<sup>50</sup> are a form of objective evidence. The early discovery of electronic track data will promote settlement and assist in the efficient resolution of vessel collision actions.
78. Parties to a vessel collision action must give discovery of any electronic track data that is or has been in their possession, custody or power:<sup>51</sup>
- (1) In any case where the defendant disputes the jurisdiction of the Court by making an application under Order 12 rule 7(1) of the Rules of Court, within 21 days after disposal of that application; or
  - (2) In any other case, within 21 days after the defendant enters an appearance.
79. In vessel collision actions, the Court at the first PTC will seek a confirmation that the parties have complied with the requirement for early discovery of electronic track data.

**C. Alternative Dispute Resolution**

80. The Court will explore the possibility and feasibility of Alternative Dispute Resolution (“**ADR**”) processes such as mediation at the PTCs. Solicitors are reminded that they have a professional duty to advise their clients about ADR<sup>52</sup> and that ADR should be considered at the earliest possible stage in order to facilitate the just, expeditious and economical disposal of cases.<sup>53</sup> A party who wishes to attempt mediation or other means of ADR can utilise the ADR Offer procedure prescribed under paragraph 35C of the Supreme Court Practice Directions 2013.

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<sup>50</sup> Order 70 rule 1(2) of the Rules of Court.

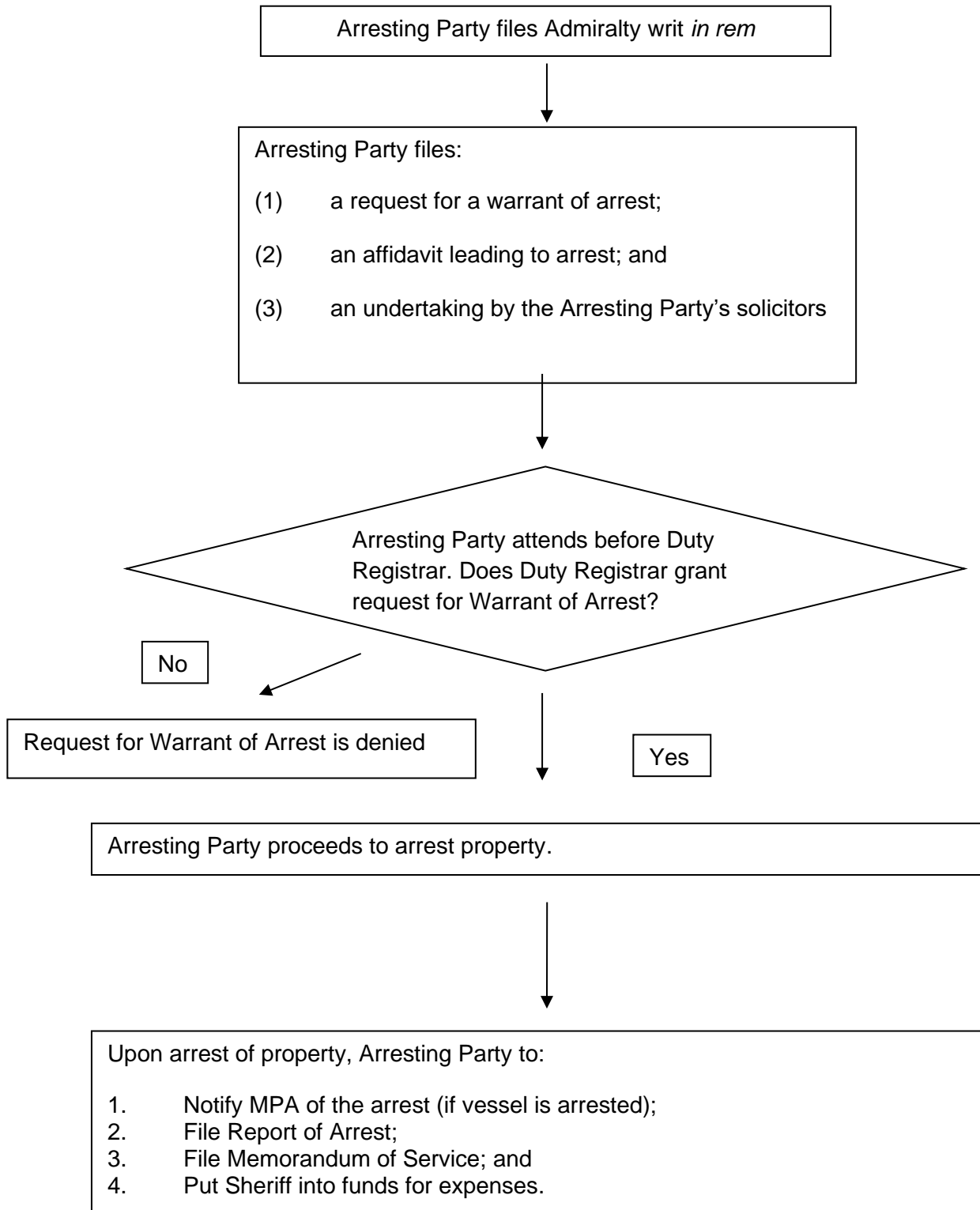
<sup>51</sup> Order 70 rule 19(4) of the Rules of Court.

<sup>52</sup> Paragraph 35B(2) of the Supreme Court Practice Directions 2013.

<sup>53</sup> Paragraph 35B(4) of the Supreme Court Practice Directions 2013.

**ANNEX A**

**Flow Chart for Arrests**



## ANNEX A1

### EXPLANATORY NOTE TO SHIP AGENTS

1. A warrant of arrest or writ *in rem* (the “**Document**”) in an action *in rem* against a ship may be served by leaving a copy of the Document with the agent of the ship at the agent’s registered office address, **and** by fax or email to the agent.

*See Order 70 r. 10A(1)*

2. The agent of the ship is the party that appears on record as the agent of the ship on the Maritime and Port Authority of Singapore’s DIGITALPORT@SG system.

*See paragraph 124(6) of the Supreme Court Practice Directions 2013.*

3. If service of the Document has been effected on the agent of the ship as described in paragraph 1, the Document is deemed to have been duly served on the ship.

*See Order 70 r. 10A(2)*

For the avoidance of doubt, service of the Document on the agent of the ship does not mean that the agent of the ship is a party to the proceedings against the ship.

4. Upon receiving the Document, the agent of the ship should, as soon as practicable, make reasonable efforts to:

- a. **Where the Document, or one of the Documents, received is a warrant of arrest:** Inform the Master of the ship and the agent’s principal (i.e. the party who appointed the agent) that the ship has been arrested by the Singapore Court, and that the ship cannot leave port without the permission of the Singapore Court; and

- b. **In all cases:** Provide to the Master of the ship and the agent’s principal a copy of the Document together with any accompanying enclosures.

5. Aside from the agent of the ship, the Plaintiff’s solicitors must also make reasonable efforts to give notice of the service of the Document to: (a) the owner of the ship, (b) the demise charterer of the ship (if any), (c) the Master of the ship, and (d) the manager of the ship.

*See paragraph 124(5) of the Supreme Court Practice Directions 2013.*

6. Order 70 Rule 10A does not require the agent of the ship to physically serve the Document on the ship.

7. For further information and/or clarification, the agent of the ship should contact the Plaintiff’s solicitors.

## ANNEX B

### STANDARD APPRAISEMENT AND SALE PRAYERS AND OMNIBUS PRAYERS

1. the time for service of this summons be abridged if necessary;
2. the ship or vessel “[VESSEL NAME]” (the “Vessel”) now under arrest in these proceedings be appraised and sold *pendente lite* by the Sheriff via public auction or private treaty, such sale to be on the Sheriff's usual terms and conditions and free and clear of all liens, charges, claims and encumbrances;
3. any fuel, lubricants, bunkers and any other consumables (the “Bunkers”) on board the Vessel be appraised and sold separately by the Sheriff on the Sheriff's usual terms and conditions, the sum realised from the sale of the Bunkers, if any, unless otherwise ordered by the Court, be treated as proceeds of sale of the Vessel and also be paid into Court to the credit of these proceedings
4. [APPRAISER] be appointed and authorised to appraise the Vessel and the Bunkers;
5. the Sheriff and/or [PARTY] be at liberty to give public notice of the sale of the Vessel and Bunkers by advertisement in The Straits Times or such other publication as he or they deem fit, within 28 days upon the filing of the Commission for Appraisalment and Sale, on the footing that all costs expenses and charges incurred in connection therewith shall be treated as and form part of the Sheriff's costs and expenses;
6. the costs and expenses incurred in and about the appraisalment and sale of the said Vessel and the said Bunkers shall be ranked as the Sheriff's costs and expenses;
7. the Sheriff be at liberty to appoint [AGENT'S NAME] to handle all matters in relation to



the preservation and maintenance of the Vessel, her machinery and equipment and her crew, and the costs and charges incurred by the Sheriff's agents be treated as Sheriff's expenses;

8. the Sheriff be at liberty, at his discretion and at any time, to move the Vessel within the port limits of Singapore, to move the Vessel to any shipyard in Singapore for berthing, or to move the Vessel to any anchorage, for safety, to comply with the requirements of the Maritime and Port Authority of Singapore, or pursuant to any request from a shipyard or a port operator arising from the commercial need for a berth, on the footing that all costs and expenses thereby incurred shall be treated as Sheriff's expenses;
9. the Sheriff and/or the **[PARTY]** be at liberty to pay the wages of the officers and crew of the Vessel incurred post-arrest, and repatriate the officers and crew of the Vessel, and be at liberty to employ a skeleton or replacement crew on board the Vessel in accordance with the requirements and regulations of the Maritime and Port Authority of Singapore, and the wages and repatriation expenses of the said officers and crew and of the skeleton or replacement crew be treated as Sheriff's expenses;
10. the Sheriff and/or the **[PARTY]** be at liberty to effect port risk insurance on the Vessel and the expenses thereto incurred be treated as Sheriff's expenses, and that the Sheriff of Singapore be named as the co-assured, as the case may be;
11. the Sheriff or his duly appointed agent be authorised to remove such moveable equipment or other property of the Vessel as he thinks fit and to store the same in safekeeping in such premises as he shall approve and to take custody of and retain the Vessel's log books, certificate of registry and other certificates and documents;
12. the proceeds of sale of the Vessel and Bunkers, after deducting the Sheriff's costs and

expenses, if exceeding the sum of S\$250,000.00, be deposited as soon as possible pursuant to Order 90 Rule 12(4) of the Rules of Court (Cap. 322, R 5, 2014 Ed.) with a reputable bank in Singapore to earn the interest in respect of such deposit;

13. all questions affecting priorities or the validity of the claim of any party to the proceeds of sale of the Vessel, except as herein provided, and all questions affecting the amount of any such claim, shall not be determined until after the expiration of 90 days beginning with the day on which the proceeds of sale are paid into Court;
14. within seven days after the date of payment into court of the proceeds of sale, the Sheriff shall send for publication, in The Straits Times newspaper and the Singapore Government Gazette, a Notice complying with Order 70 rules 21(2)(c) and 21(3) of the Rules of Court (Cap. 322, R 5, 2014 Ed.);
15. the **[PARTY]**'s costs of and incidental to the arrest and preservation of the Vessel and the costs of this application for the sale of the Vessel, are to be agreed or taxed and to rank in priority to all other claims save for the Sheriff's commission and expenses;
16. there be liberty to apply;
17. such further or other order as this Honourable Court deems fit.

**ANNEX C**

**Panel of Security Guards<sup>54</sup>**

S/No.	Name of Security Agency	Price per 12 hour block	Price per 24 hour block	Address	Contact
1	<b>Armour Security &amp; Investigations Pte. Ltd.</b>	<b>\$280.00</b>	<b>\$550.00</b>	<b>23 Woodlands Industrial Park E1, #05-01, Singapore 757741</b>	<ul style="list-style-type: none"> <li>• 6777 7774 (Office)</li> <li>• 8328 1334 (Duty officer)</li> <li>• 9741 0064 (R.Krish)</li> <li>• 9385 2295 (Sofian Amin)</li> </ul>
2	<b>Bulls-Eye Security Services Pte. Ltd.</b>	<b>\$450.00</b>	<b>\$850.00</b>	<b>23 New Industrial Road #08-08, Solstice Business Center, Singapore 536209</b>	<ul style="list-style-type: none"> <li>• 6844 4234 (Office)</li> <li>• 9816 1254 (Parga Singh)</li> </ul>
3	<b>Crete Security Services Pte. Ltd.</b>	<b>\$275.00</b>	<b>\$550.00</b>	<b>1 Yishun Industrial Street 1, #08-36, A'Posh Biz Hub, Singapore 768160</b>	<ul style="list-style-type: none"> <li>• 6883 2100 (Office)</li> <li>• 8500 0239 (24 hour Ops Control Room)</li> <li>• 9116 2444 (Paul Nolasco)</li> <li>• 8684 7728 (Florence May Gerundio, Jennifer Arcilla or Muthiah Ganesan)</li> <li>• 9096 8981 (Sujatha D/O Rajamani)</li> </ul>
4	<b>Focal Investigation &amp; Security Agency Pte Ltd</b>	<b>\$270.00</b>	<b>\$540.00</b>	<b>5001 Beach Road, #04-22, Golden Mile Complex, Singapore 199588</b>	<ul style="list-style-type: none"> <li>• 6221 0110 (24 hour Ops Control Room)</li> <li>• 9799 7995 (Shaun Lam)</li> <li>• 9128 0120 (Raymond Lee)</li> </ul>

<sup>54</sup> Composition of the panel is correct as of 31 August 2023. Please refer to the Singapore Courts website at <https://www.judiciary.gov.sg/services/sheriff-services-admiralty-actions> for any updates to the composition of the Panel.

S/No.	Name of Security Agency	Price per 12 hour block	Price per 24 hour block	Address	Contact
5	Peregrine Security Pte. Limited	\$270.00	\$540.00	2 Sims Close, #07-05, Gemini @ Sims, Singapore 387298	<ul style="list-style-type: none"> <li>• 6744 4133 (Office)</li> <li>• 6747 7551 (24 hour Ops Control Room)</li> <li>• 9022 9768 (Shashank Mesvani)</li> </ul>