

Shipping & International Trade

Admiralty Actions: Service of Warrants of Arrest and Writs on Agent; Dispensation of Security Guard

Introduction

In light of the impact of the COVID-19 pandemic, all industries have had to make changes to the way they operate. The maritime and shipping industry has also had to adapt to ensure safe and responsible practices, especially in the context of Singapore since our economy is dependent on keeping our ports and sea-lanes open and safe.

With regard to the movement of shore-based personnel (including lawyers and service clerks serving documents on ships), the Maritime and Port Authority of Singapore ("**MPA**") has introduced enhanced regulations on COVID-19 testing and safe entry. This requires such individuals to produce a valid negative COVID-19 test result within 72 hours before boarding a vessel, to undergo swab tests at prescribed days following disembarkation, and to check-in and check-out using SafeEntry@Sea.

In keeping with these efforts, the Supreme Court of Singapore has acknowledged the concerns involved in the requirement of in-person service of documents against a ship (such as the risk of exposure to the COVID-19 virus and the subsequent requirements of testing and potential isolation), and is addressing these by introducing temporary alternative methods of service and dispensation of the deployment of security guards on arrested ships.

From **22 January 2021** until further notice,¹ service of Warrants of Arrest or Writs in an *in rem* action against a ship, freight or cargo may be effected by leaving or transmitting the same to the agent of the ship. In the same vein, security guards are also not required to be deployed on board an arrested ship with effect from **15 January 2021** until further notice.

These changes have been introduced to respond to the concerns and after swift consultation between the Supreme Court's Admiralty Court Users Committee and other key stakeholders of the maritime and shipping industry including the MPA, the Singapore Shipping Association and the Attorney-General's Chambers. The adoption of these temporary measures underscores the responsiveness of the Singapore Courts to the needs of the maritime industry and the legal profession, as well as the ability of stakeholders to collaborate in the development of flexible and functional solutions.

¹ This temporary measure is available from 22 January 2021 and during the "relevant period" when Part 3 of the Second Schedule to the COVID-19 (Temporary Measures) (Control Order) Regulations 2020 or regulations 61A, 61B and 61C of the Maritime and Port Authority of Singapore (Port) Regulations are in force. These regulations set out various temporary control measures to contain the spread of COVID-19 ("**Prescribed Control Measures**").

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In this Update, we provide a summary of the requirements of the newly-introduced alternative methods of service and practical steps for complying with these requirements, as well as a discussion of the effect of the dispensation of security guards for ship arrests.

Alternative Service

Ordinarily, service of a Warrant of Arrest or a Writ in an action *in rem* against a ship, freight or cargo would have to be effected under Order 70 rule 10 of the Singapore Rules of Court ("**ROC**") by having process server personnel (be it a lawyer or service clerk) attend onboard the ship, thereby in today's context risking potential exposure to COVID-19 via the crew of the ship or *vice versa*. As part of the control measures to combat COVID-19, personnel would have to undergo swab tests before and after boarding a ship to effect service.

Law firms would have to grapple with the issue of whether such personnel should be isolated from their workforce as a matter of precaution pending the results of post-boarding swab tests. Further, ship arrests are usually done on very short notice so that the pre-boarding swab test requirement provides a challenge because the ship may have departed by the time the test results are available.

Introduction of temporary alternatives

Temporary alternatives have since been introduced via amendments to the ROC and the Supreme Court Practice Direction ("**SCPD**") which came into effect on 22 January 2021. The alternatives essentially allow service of the relevant documents on the *agent* of the ship instead of by attending onboard the ship.

The new Order 70 rule 10A of the ROC states that during the "relevant period",² service of a Warrant of Arrest or Writ in an action *in rem* may be effected by:

- (a) Leaving a copy of the Warrant of Arrest or Writ with the agent of the ship or, where the agent of the ship is a body corporate, at the agent's registered or principal office; and
- (b) By transmitting the Warrant of Arrest or Writ by fax or electronic mail to the agent.

The new paragraph 124(5) of the SCPD further clarifies that the solicitors representing arresting parties must make reasonable efforts to notify the following persons and entities in writing of the service as soon as practicable:

- (a) The owner of the ship;
- (b) The demise charterer (if any) of the ship;
- (c) The Master of the ship;

² The "relevant period" is from 22 January 2021 until such time that the Prescribed Control Measures remain in place.

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- (d) The manager of the ship; and
- (e) If the ship is in a shipyard — the shipyard.

Rationale and safeguards

The introduction of these amendments heralds a safer and more practical way to effect service and to conduct ship arrests during these pandemic times. These measures serve to protect the health and safety of law firm personnel, thereby also promoting operational continuity, by removing the need for them to board the relevant ship.

The new measures raise the following key questions:

- (a) Why service upon the ship's agent is made an alternative temporary measure amidst the pandemic; and
- (b) How one is to ensure that the ship's agent would notify the Master or shipowner of the service of process.

Why ship's agent

The ship's agent often serves as the only local connection to the ship as the manager or owner of the ship will typically be based in a foreign jurisdiction. Therefore, where circumstances require, Singapore laws impose statutory duties on the ship's agent (together with the owner or Master of a ship) to account for liabilities for non-compliance with the local law.

Taking into account the objective and nature of the COVID-19 control measures in place and the statutory and commercial role of the ship's agent vis-à-vis the Master or owner of the ship, the local ship's agent would in these unprecedented times be the appropriate party to receive service of a Warrant of arrest or Writ in an action *in rem*, on a temporary basis.

Notification to Master or shipowner

Singapore law does not impose any legal duty on the ship's agent to notify an owner or Master of a ship upon receiving service of a Warrant of Arrest or Writ in an action *in rem* against a ship. Nonetheless, it should be highlighted that, on a practical basis, it would be highly likely that that an agent would in the ordinary course have to notify the ship's Master or owner of any such service. Once a Warrant of Arrest is served on the ship, the ship would be tagged by MPA and would not be able to obtain port clearance to leave Singapore. Being responsible for obtaining such clearance, the agent can be expected to inform

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the ship's Master or the principal accordingly. The Master, as an employee of the shipowner, can then be expected to inform the owner of the same.

Even in the service of an *in rem* Writ, where there is no arrest and thus no obstacle to obtaining port clearance to leave Singapore, certain additional safeguards have been put in place to avoid a situation where the Master or shipowner is not informed of the service. As stated above, the solicitors representing the arresting party are required by the SCPD to make reasonable efforts to notify the ship's Master, owner or charterer, as the case may be.

Practical steps

Parties seeking to effect service of these documents on a ship should take note of the requirements of the new alternative service options and should ensure that the formal and substantive criteria are complied with.

In serving documents on the agent of a ship, parties may also wish to include a cover letter setting out the scope and content of the notification, the effect of service, and the obligation of the agent to inform the Master and owner of the ship. For a specimen cover letter that parties may refer to as a guide for effecting service, please see Annex A at the end of this Update.

Dispensation of Security Guard

When a ship is arrested, a security guard would ordinarily have to be deployed on board the ship for the duration of the arrest, thereby incurring the risk of infection via exposure to the ship's Master and crew.

With effect from 15 January 2021 and until further notice, the Sheriff's Office will dispense with the requirement to deploy a security guard on board an arrested ship. Instead, any law practice that has arrested a ship is to engage ship watch services, and provide daily updates to the Sheriff's Office on the location of the ship.

Although there will not be the physical presence of a security guard to secure the arrest of a ship during this period, it should be noted that the port clearance procedures remain in place to in effect shackle the arrested ship – while under arrest, the ship will not be able to obtain port clearance to leave Singapore.

Further, while a security guard may not be present to physically watch over the ship, the requirement for law practices arresting a ship to engage ship watch services ensures that an electronic eye is kept on the arrested ship.

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Concluding Words

The efficient introduction of these measures demonstrates the ability of the Singapore Courts and the relevant stakeholders to proactively respond to the needs of the maritime and shipping industry, particularly during these extraordinary times. The new measures are expected to greatly benefit law practitioners and relieve them from unnecessarily risky practices.

Singapore is once again a frontrunner in introducing temporary modifications to its ship arrest procedures, putting it ahead of other popular arrest jurisdictions in the region. For example, the ship arrest procedure in Hong Kong, a fellow major maritime jurisdiction, has not undergone significant change in response to the pandemic. In Australia, while modifications have been made to address the pandemic, parties still will have to seek an order from a judge for a dispensation to effect service of a Warrant of Arrest by electronic communication on the Master of the ship.

As the new measures are put into practice in Singapore, industry members should feel free to provide feedback on the effectiveness of the measures and any practical issues they may encounter. The responsiveness of the Courts means that the feedback received will also be swiftly considered and acted on where appropriate.

If you have any further queries, please feel free to contact our team. The team includes Leong Kah Wah, Head of Dispute Resolution at Rajah & Tann Singapore, who serves as the President of the Maritime Law Association of Singapore and has been closely involved in the development of these amendments, as well as Kendall Tan, Partner of Rajah & Tann Singapore's Shipping & International Trade Practice, who serves on the Admiralty Court Users' Committee of the Supreme Court.

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Annex A – Specimen Cover Letter

Admiralty Action *In Rem* No. [Insert Suit No.] In Respect of the Ship or Vessel [Insert Name of Ship]

Dear Sirs,

1. We act for the Plaintiff in the above captioned matter. We understand you are the agent in Singapore for the vessel [Insert Name of Vessel] (the "**Vessel**").
2. Our client has issued an admiralty Writ *in rem* against the Vessel in the Singapore High Court. Our client has also applied for and obtained a Warrant of Arrest against the Vessel.
3. Pursuant to Order 70, Rule 10A of the Rules of Court, the Writ *in rem* and Warrant of Arrest are deemed to have been served on the Vessel if service of the same is effected on its agent.
4. Please now find enclosed by way of service:
 - (a) The Writ *in rem* against the Vessel;
 - (b) The Warrant of Arrest; and
 - (c) A Notice of arrest of the Vessel.(collectively, the "**Arrest Papers**")
5. We recommend that you extend a copy of the Arrest Papers to the Master and Owners of the Vessel immediately and inform them that the Vessel has been arrested and placed under the custody of the Sheriff of Singapore.
6. If either you or the Master and Owners have any queries arising from the foregoing, you may direct them to the lawyers having carriage of this matter. The relevant contact details are set out below:

[Insert Contact Details]

Yours faithfully,

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