

Regional Shipping

Shipping Law Updates

The Shipping Law Updates is a publication by our Regional Shipping Group which marshals legal expertise, industry insight, and commercial acumen in the fields of maritime and trade from the diverse talent pool of specialist lawyers at the Rajah & Tann Asia offices. The publication provides a snapshot of the key legal, regulatory, case law and industry developments in the region that have an impact on the shipping industry.



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Regional Shipping

Introduction

In this issue, we report on the amendments to the rules of service of admiralty writs and warrants of arrest in Malaysia to ensure safety amidst the COVID-19 pandemic. We also look at developments in the rules for the registration and licensing of shipbreaking and ship recycling in the Philippines.

Malaysia: Amendment to Rules of Service of Admiralty Writs and Warrants of Arrest

Introduction

"*Times are changed; we also are changed with them*", said the Roman poet *Publius Ovidius Naso*.

In keeping with these wise words, the Rules Committee of the Malaysian Courts have made changes to the method of service of admiralty *in rem* writs and warrants of arrest.

These changes form part of a slew of amendments to ensure that the practice of law in Malaysia remains uninterrupted, despite the restrictions brought about by the COVID-19 pandemic. The changes, drafted with input from the Malaysian Bar's Shipping and Admiralty Law Committee, provide an alternative to the usual method of service of *in rem* writs and warrants.

This Update will discuss the changes and the intentions behind them. The changes came into force on 15 December 2020.

The Usual Position

Actions *in rem* are actions against a *res*, whether a vessel (or ship), cargo or freight. Warrants of arrest are sought by *in rem* claimants to ensure that their claim is secured.

It has therefore long-been the practice in Common Law jurisdictions that the writ and warrant of arrest in an *in rem* claim against a vessel be served on the vessel itself (as distinct from service on the shipowners).

Regional Shipping

This is done by:¹

- (a) Affixing the writ and warrant 'for a short time on any mast of the ship or on the outside of any suitable part of the ship's superstructure'; and,
- (b) 'On removing the writ or warrant, leaving a copy of it affixed on a sheltered, conspicuous part of a ship'.

In practice, this method of service requires the Admiralty Sheriff (and the claimant's solicitors) to liaise with the Master and crew of a vessel to board the vessel, explain the effect of the writ and warrant to the Master and affix the writ and warrant on the vessel; all impossible to do without the cooperation (or at least acquiescence) of and communication with Master and crew.

This method of service however exposes all involved - whether Master and crew, Admiralty Sheriff or claimant's solicitors - to the risk of contracting COVID-19 due to the close working conditions on board vessels and the (often prolonged) discussions that take place. Consequently, shipowners, law firms and court personnel will have to consider whether those involved in the service of the writ and warrant should be (amongst others) isolated from the workforce whilst awaiting swab test results.

The New Provision

The new Order 70 rule 10 (1A) of the Rules of Court reads:²

"Notwithstanding paragraph (1) above, the Court or Registrar may, in exceptional circumstances, direct that the service of the writ in an action in rem or a warrant of arrest be effected by affixing the writ or warrant on the outside of any suitable part of the ship's hull or superstructure and followed immediately thereafter with an electronic communication of a copy thereof by or on behalf of the Sheriff as notice to the owners and/or demise charterers of the ship, the ship's master or managers or local agent, and the relevant marine department, by e-mail or other means." (Emphasis added)

What does this mean?

The amendment (in summary) does away with the requirement to board the vessel when serving the writ and warrant. It allows the Admiralty Sheriff (usually accompanied by the claimant's solicitors) to merely affix the writ and warrant on the hull of the ship, and to then bring notice of the arrest to the owners or demise charterers, etc., by means of electronic communication.

¹ Order 70 rule 10 of the Rules of Court 2012.

² Section 1 of the Rules of Court (Amendment) 2020.

Regional Shipping

The changes eliminate the need for the Admiralty Sheriff (or the claimant's solicitors) to board the vessel, have physical contact with the Master and crew, explain the effect of the legal procedure and generally risk all parties – whether crew, Marshall or solicitors - contracting the COVID-19 virus.

This change, which can be relied on in light of '*exceptional circumstances*', safeguards the interest of all involved by:

- (a) Maintaining the long-standing practice that the writ and warrant be served to the vessel;
- (b) Mitigating the risks associated with that long-standing practice by obviating any need of physical contact between the parties; and,
- (c) Ensuring the speedy notification to all parties concerned with the vessel's employment, of the fact that the vessel is the subject of *in rem* proceedings.

Practical Steps

Perhaps the most practical step to be taken by a claimant in an *in rem* claim is to take note of the new requirement and ensure that both the spirit and letter of the law is complied with.

The claimant should then also ensure that the affidavit of service (usually sworn by the Admiralty Sheriff or the claimant's solicitors) accurately reflects the manner in which the writ and warrant was served.

This can be done by ensuring the affidavit details the time and place that the writ and warrant was served and exhibits the relevant excerpts of the electronic communication that took place with the shipowners or the demise charterers, etc. of the vessel.

Conclusion

It is heartening to know that Malaysia (in line with other Common Law jurisdictions such as Singapore and Australia) has brought into force changes to ensure that the service of *in rem* writs and warrants of arrest are unimpeded by the pandemic. These changes – reflecting both long-standing practice and incorporating modern technology – will benefit practitioners and industry players alike.

Regional Shipping

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The Philippines: Registration and Licensing of Shipbreaking and Ship Recycling

The Philippines' Maritime Industry Authority (MARINA), the Philippine government office in charge of accrediting shipbuilding and shipbreaking enterprises, has issued Memorandum Circular No. SR-2020-01 ("MC 2020-01") prescribing the rules for the registration and licensing of shipbreaking and ship recycling.

Under MC 2020-01, entities are required to obtain a "one-time" certificate of registration from MARINA before engaging in shipbreaking or ship recycling activities. In addition to the certificate of registration, MARINA will issue licences to entities engaged in shipbreaking and ship recycling. The license is a pre-requisite for the availment of incentives and is effective for five years (subject to the annual submission of the required documents). One of the incentives available to shipbreaking and ship recycling entities is value-added tax exemption on importation of certain goods.

MC 2020-01 provides two classes for entities engaged in shipbreaking and ship recycling. Class A entities may dismantle or scrap ships more than 80 meters in length while Class B entities can work on ships no longer than 80 meters.

Entities intending to engage in shipbreaking and ship recycling activities are required to possess the following:

- (a) The articles of incorporation state that the entity is authorised to engage in shipbreaking and ship recycling;
- (b) Paid-up capital of at least Php25,000,000.00 (for Class A entities, the requirement is Php50,000,000);

Regional Shipping

- (c) Ownership or possession (through a lease with a term of at least five years) of the site where the shipbreaking and ship recycling facility will be built;
- (d) ISO 9001:2015 certification;
- (e) Certification issued by a government recognised organisation or a certification body accredited by accreditation bureaus associated with Pacific Accreditation Cooperation; and
- (f) Compliance with (i) the Department of Labor and Employment's guidelines on occupational safety and health in the shipbuilding, shipbreaking and shiprepair industries, and (ii) the Department of Environment and Natural Resources's (DENR) procedures and standards for the management of hazardous wastes.

MC 2020-01 provides that shipbreaking and ship recycling enterprises are required to do the following before dismantling a ship: (a) submit a shipbreaking or ship recycling plan to MARINA, and (b) obtain a shipbreaking and ship recycling permit from MARINA. Additionally, entities importing ships for the purpose of shipbreaking and ship recycling are required to obtain authorisation to import from MARINA. The imported ship shall be inspected by MARINA before issuing the shipbreaking and ship recycling permit.

Shipbreaking and ship recycling activities may only be undertaken at the registered yard. MARINA, however, may allow on-site shipbreaking activities for the following reasons:

- (a) Danger to navigation caused by the ship;
- (b) The repositioning of the ship is unsafe;
- (c) Unavailability of a MARINA-registered shipbreaker;
- (d) Marine pollution may be caused by the ship; and
- (e) Other cases requiring immediate attention and warranting public interest.

On-site shipbreaking activities should be covered by a "Special Permit for on-site shipbreaking" issued by Marina and other permits issued by relevant government agencies.

Our C&G team, in conjunction with our Singapore colleagues from Rajah & Tann Singapore LLP, has had occasion lately to advise on various practical and fiscal aspects of transboundary movement and responsible treatment of old tanker tonnage that was designated for breaking-up potentially in Indonesia or the Philippines.

Regional Shipping

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About the Regional Shipping Group

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Find out more about our Regional Shipping Group [here](#).

If you would like to find out how we may assist you, do touch base with us at shippinglaw@rajahtann.com or our team members below.

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