

Starboard: Alternative Procedure for Ship Arrests – A Welcome Change

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Introduction

Since the onset of the COVID-19 pandemic, there have been serious concerns about the risks of transmission to those required to board the ship for the purposes of ship arrests.

The new procedures for the service of admiralty writs of summons and warrants of arrest introduced by the Singapore Court on 22 January 2021 are therefore a much welcomed change. These new procedures allow a plaintiff in an admiralty action to, amongst other things, serve the writ or warrant of arrest on the agent of the ship. This new method of service provides a safer alternative to the previous requirement for a lawyer or service clerk to physically serve the writ or warrant of arrest on the ship.

Other changes include the dispensation of the need for a security guard to be on board the arrested vessel for the arrest duration.

Service of a writ or warrant of arrest – Alternative Procedure

During the relevant period, service of a writ or warrant of arrest against a ship, freight or cargo may be effected by the following alternative procedure:-

- a. By leaving a copy of the writ or warrant of arrest with the agent of the ship or, in any case where the agent of the ship is a body corporate, at the registered or principal office of the agent of the ship; and
- b. By transmitting the writ or warrant of arrest in either of the following ways:-
 - i. By FAX to the FAX number (if any) specified by the agent of the ship as the FAX number of the agent;
 - ii. By electronic mail to the electronic mail address (if any) specified by the agent of the ship as the electronic mail address of that agent.

Upon the valid service of the writ or the warrant of arrest in accordance with the alternative procedure:-

- a. The writ or warrant of arrest is deemed to be served on the property against which it is issued; and
- b. The time of service is the later of:-
 - i. The time that the writ or warrant of arrest is left with the agent of the ship in accordance with the above; or
 - ii. The time that the entire writ or warrant of arrest is received by FAX or electronic mail transmitted in accordance with the above (as applicable).

After service is effected on the agent of the ship, the solicitors of the arresting party are required to make reasonable

efforts to notify the following persons and entities in writing of 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;
- d. The manager of the ship; and
- e. The shipyard where the ship is in (if applicable).

This alternative method of service is applicable on or after 22 January 2021 when either or both of the following are in force: (1) Regulations 61A, 61B and 61C of the Maritime and Port Authority Act of Singapore (Port) Regulations (Cap 170A, Rg 7); and/or (2) Part 3 of the Second Schedule to the COVID-19 (Temporary Measures) (Control Order) Regulations 2020 (No S 254/2020).

Report of Arrest

Where a warrant of arrest is served on the agent of the ship by the alternative procedure, the report of the arrest must:-

- a. Have annexed to it a copy of the results of a search showing:-
 - i. The identity of the agent of the ship; and
 - ii. The location of the ship, or where the property is cargo, the ship in which the cargo was carried, within the limits of the port declared under section 3(1) of the Maritime and Port Authority of Singapore Act (Cap 170A), on the date and at the time of the service of the warrant of arrest.

(See also Paragraph 124(6) of the Supreme Court Practice Directions (Amendment No.1 of 2021) which states that the plaintiff must annex a copy of the above search results conducted on the website of the Maritime and Port Authority of Singapore)

- b. State the date and time on which the search mentioned above was conducted.

Judgment in Default

Where a writ is served on the agent of the ship by the alternative procedure, the plaintiff in that action is not entitled to enter final or interlocutory judgment in default of appearance or in defence, unless:-

- a. Within 8 days after service, the plaintiff files a memorandum of service in the prescribed form:-
 - i. Containing all of the following particulars:-
 - A. The day of the week, date and time on which the writ was served;
 - B. Where the writ was served;
 - C. How it was served;
 - D. The person on whom the writ was served and the capacity in which that person was served;
 - ii. To which is annexed a copy of the results of a search showing:-
 - A. The identity of the agent of the ship; and
 - B. The location of the ship or, where the property is cargo, the ship in which the cargo was carried, within the limits of the port declared under section 3(1) of the Maritime and Port Authority of Singapore Act, on the date and at the time of the service of the writ; and

(See also Paragraph 124(6) of the Supreme Court Practice Directions (Amendment No.1 of 2021) which states that the plaintiff must annex a copy of the above search results conducted on the website of the

Maritime and Port Authority of Singapore)

iii. Stating the date and time on which the search mentioned above was conducted; or

b. The Court otherwise orders.

Dispensation of Security Guard

With effect from 15 January 2021 until such further notice, the Sheriff of the Supreme Court of Singapore (Sheriff) has dispensed with the requirement for a security guard to be present on board the ship for the duration of the arrest.

To ensure that the Sheriff is aware of the location of the ship, the solicitors of the arresting party are required to engage shipwatch services and to provide daily updates to the Sheriff's Office on the location of the ship, starting from the day the ship is arrested until the day the ship is released.

Starboard Observations

The Singapore Court has been swift to address the risks posed to solicitors, service clerks and shipmen in the current COVID-19 climate.

It is observed however, that with the new procedures, there is an additional burden placed on the ship's agent to bring any service of process to the attention of the master or owner of the ship urgently.

Arresting parties would also need to ensure the proper service of the writ or warrant of arrest by the method described above. Service on the registered or principal office of the agent of the ship may be difficult after office hours, over the weekends and during public holidays. It also remains to be seen if there may be potential complications as to the validity of the service of the writ or warrant of arrest arising from the new procedures.

Starboard will continue to monitor the developments in this area and bring the relevant updates to you.

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