



**BOWMANS**

THE VALUE OF KNOWING



**GUIDE – ENFORCEMENT  
AND DEFENCE OF MARITIME  
CLAIMS IN SOUTH AFRICA**





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# Our Shipping and Logistics Practice

Bowmans has more than 125 years of experience in the specialist field of maritime law. We are based near the ports of Cape Town and Durban, but operate throughout South Africa, and have an intimate understanding of the unique aspects of the South African jurisdiction – one of the world's most favoured jurisdictions for the arrest of vessels.

Through our offices in various African jurisdictions as well as the strong relationships we enjoy with firms across the rest of Africa, we are able to advise or source maritime law advice for clients throughout Africa.

We provide efficient and cost-effective enforcement and defence of all maritime-related claims, ship arrests and emergency responses.

Our team at Bowmans is internationally recognised as offering leading expertise throughout all major South African and

regional ports. This reputation has been built on more than a century of experience, 24-hour availability and speed of response.

The firm has been involved in numerous significant cases, including many of the major casualties in South Africa. Recent examples include the collisions involving the “Chemstar Jewel” and the “Sunrise Jade”, the fires aboard the “APL Austria”, “Tai Shan” and the “Maersk Londrina”, the sinking of the “Kiani Satu”, the grounding of the “Smart” and the loss of containers overboard the “Seroja Lima”.

In addition to our casualty work, we regularly conduct litigation to enforce maritime claims on behalf of our clients. Recently we represented the successful appellant in the “Seaspan Grouse” before the Supreme Court of Appeal, in a matter concerning the status of protective writs under South African law and following from the financial collapse of Hanjin Shipping.

As in the case of the firm as a whole, the team represents a wide range of international and South African clients, including major ship owners, P&I Clubs, hull and cargo underwriters and banks involved in ship financing. Through the significant growth of the firm in the last decade, Bowmans has strengthened its ability to offer clients a broad range of services, not only with regard to maritime and admiralty issues but other aspects such as commodities, aviation, energy, oil and gas and environmental law.

Our expertise covers the whole range of maritime legal services, including:

- Access and examination orders
- Arrests, attachments and security arrests
- Bills of lading
- Cargo claims
- Carriage of goods
- Charterparties
- General average
- Judicial sales and mortgage foreclosures
- Liens
- Marine resources
- Maritime casualties, collisions, grounding and salvage
- P&I, hull and cargo insurance
- Personal injuries
- Pollution
- Salvage and stowaways
- Shipbuilding and repair
- Ship sale and purchase
- Ship finance

# A Guide to the Enforcement and Defence of Maritime Claims in South Africa

## 1. INTRODUCTION

This guide contains some brief details and information which we hope will be of general use in relation to the enforcement, or defence, of maritime claims in the Republic of South Africa. It contains only a summary and does not pretend to be exhaustive. Where necessary, further information and advice should be sought. This guide is based on the law and practice as of September 2019.

References to “the Act” are to the Admiralty Jurisdiction Regulation Act 105 of 1983, which came into force on 1 November 1983, as amended. References to the “Rules” are to the Rules Regulating the Conduct of

Admiralty Proceedings in terms of the Act, which came into force in May 1997. For ease of reference, the Act and Rules have been included in this guide.

## 2. SOME KEY ASPECTS OF THE SOUTH AFRICAN JURISDICTION

Some of the aspects of the South African jurisdiction which might be of interest to you and those for whom you act:

- Access to documentation, including the retention and copying of relevant documents necessary for determining a maritime claim – obtainable at short notice via an *ex-parte* application.
- Orders for the examination, testing or inspection of any ship, cargo or

any other thing and, in exceptional circumstances, for the taking of evidence which might be considered necessary or desirable, for the purpose of determining any claim which has been or may be brought before a Court, arbitrator or referee in South Africa or elsewhere in the world.

- Associated ship arrests – arguably the best jurisdiction for “piercing the corporate veil” of one-ship companies.
- Security arrests for the purposes of obtaining security for arbitration or any proceedings contemplated, pending or current, anywhere in the world.
- The prospect of breaking tonnage limitation in terms of the 1957 Convention, which has been incorporated into our law (the onus is still on the owner to prove absence of “actual fault and privity”).
- Quick and relatively simple arrest *in rem* proceedings – obliging the owner to provide security up to the value of the ship.
- *In personam* attachment proceedings – obliging the owner to provide security for the full amount of the claim.
- Procedures for enforcing claims against bareboat and time charterers.
- Quick and efficient judicial sales.

## 3. ESSENTIALS FOR THE ENFORCEMENT OF A MARITIME CLAIM IN SOUTH AFRICA

These may be summarised as follows and are more fully dealt with below:

- The claim must be a “maritime claim” as defined in Section 1 of the Act.
- The Court must have or be conferred with jurisdiction which, in an action against a foreigner, is generally effected by an arrest or attachment of his or her vessel or other property in South Africa or within its territorial waters.

The 32 categories of “maritime claims” defined in section 1 of the Act, which are subject to the admiralty jurisdiction of the High Court, include all of those itemised in article 1 of the 1952 Arrest Convention and many others. A “catch-all” provision gives the Court jurisdiction over any matter which, by virtue of its nature or subject matter, is a marine or maritime matter. Neither the place where the claim arose, nor the flag of the vessel, nor the residence, domicile or nationality of its owner or of the claimant, is relevant to the question of whether or not the South African Courts have admiralty jurisdiction.

#### 4. PROCEDURES FOR THE ENFORCEMENT OF MARITIME CLAIMS

The Act provides for two separate forms of proceedings:

- Proceedings *in personam*, in which the person or the debtor or wrongdoer is cited as the Defendant.
- Proceedings *in rem*, in which the ship, bunkers, cargo, equipment or freight against or in respect of which the claim lies, is cited as the Defendant.

In addition, *in rem* proceedings can be brought against a container if the claim arises out of or relates to the use of that container in or on a ship or the carriage of goods by sea or by water or otherwise in that container.

#### 5. PROCEEDINGS IN PERSONAM

The prerequisite is that the Defendant be personally liable to the Plaintiff for the maritime claim concerned, whether contractually or delictually (in tort). Unless the Defendant is domiciled or resident within South Africa or has consented to the jurisdiction (consent being a wide concept which can include contract), it is necessary that property within the Court's area of jurisdiction be attached "to found or confirm" the Court's jurisdiction.

#### 5.1 The property attached

The property which can be attached includes all property which can be arrested in proceedings *in rem*, as described in paragraph 6.1 below. However, contrary to the *in rem* procedure, there is no limited list of property which can be attached to found or confirm jurisdiction; any property can be attached, whatever its nature and whatever its value, including intangible property, such as the right to claim payment of debts, provided that the Sheriff can make an effective attachment and the property in question has some commercial value.

#### 5.2 Procedure

Application must be made to a judge for an order of attachment. This is done on the strength of an affidavit, containing the following essential allegations:

- that the claim is a maritime claim for which the Defendant is liable and that the Court will have jurisdiction pursuant to the proposed attachment;
- that the property sought to be attached is property belonging to the Defendant or in respect of which he or she has an attachment interest;
- whether any security has been given in respect of the claim and the reasons for the Court's aid being required;

- the source of the signatory's information and that the contents of the affidavit are true and correct; and
- the reasons, if any, for urgency.

#### 5.3 Evidence

The evidence to be placed before the Court will depend on the time available. In cases of urgency, the information can be conveyed to us by email or even telephone and an attachment can be obtained within a matter of hours, the affidavit being deposed to by ourselves.

If time permits, relevant documents should be transmitted electronically as attachments or by courier. Affidavits by the Plaintiff or its representative, generally to be prepared by us, would similarly be obtained, if time permits. These can also, in the case of urgency, be transmitted by email.

#### 5.4 Authority

Formal powers of attorney are not required at the attachment stage and it is merely necessary that we are properly authorised by the Plaintiff to bring the application to enable us to make this averment in the affidavit.

#### 5.5 Counter-security

There is no automatic requirement obliging the Plaintiff who wishes to attach property to furnish counter-security. A Defendant has to bring a formal counter-application for such security and show the existence of a *prima facie* counter-claim and a genuine and reasonable need for security.

#### 5.6 Setting aside of attachments

An attachment is granted in the form of an interim order which calls upon all interested persons to show cause, on a date stated in the order, why the attachment should not be confirmed. This procedure for judicial review has the advantage of giving a Defendant an automatic right to a hearing at which he or she has the opportunity, after filing opposing affidavits, to contest the attachment. It also means that the Plaintiff knows at an early stage of the proceedings whether or not his or her attachment is to be contested and if so, the question of jurisdiction and other preliminary issues can be resolved expeditiously; if not, the main action can proceed without delay.

## 5.7 Release

The Defendant is entitled to the release of his or her property upon giving security for the amount of the claim for which it has been attached, but has the right to apply for a reduction in the amount of the security. It has been held that a P&I Club letter of undertaking constitutes sufficient security under the Act, including for the purposes of securing the release of a vessel under arrest. Security may also be furnished by way of a bank guarantee issued by a South African bank or by a foreign bank provided the guarantee is negotiable in South Africa.

## 6. PROCEEDINGS IN REM

The prerequisites are:

### EITHER

that the Plaintiff has a maritime lien over the property to be arrested;

### OR

that the owner of the property to be arrested would be personally liable to the Plaintiff (as in the case of an action *in personam*);

### OR

in a limited number of cases, where the Colonial Court of Admiralty could have proceeded *in rem*;

### AND

that property, against or in respect of which the claim lies, be arrested;

### AND

the Court will also recognise any other appropriate remedy allowed in law.

## 6.1 The property arrested

This is restricted to one or more of the following categories of property:

- the ship, with or without her equipment, furniture, stores or bunkers;
- the whole or any part of the equipment, furniture, stores or bunkers;
- the whole or any part of the cargo; the freight;
- any container, if the claim arises out of or relates to the use of that container in or on a ship, or the carriage of goods by sea or by water or otherwise in that container;
- a fund constituted by the proceeds of the judicial sale of any of the foregoing.

## 6.2 Procedure

Neither an affidavit nor an application to Court is required. The arrest is obtained on the strength of a certificate by the Plaintiff or his or her attorney, containing essentially the same information and averments as are included in an affidavit in support of an application for attachment, as described in 5.2. The warrant of arrest is served by the Sheriff on the property arrested and application can then be made for the arrest to be set aside. (No date is fixed for this when the warrant is issued, as in the case of attachments).

The warrant of arrest informs the Defendant that the property arrested will be released upon security being provided for the amount of the claim or the value of the property, whichever is lower. Simultaneously, with the issue of the warrant of arrest, a summons is issued and served. The proceedings are therefore commenced with the service of the warrant and summons commencing action and the Defendant must thereafter file his or her defence.

## 6.3 Evidence, authority and counter-security

The position for attachments *in personam* with regard to evidence,

authority and counter-security also applies in broad terms to arrests *in rem*. The form of security for the release of the property arrested is the same as in the case of an attachment.

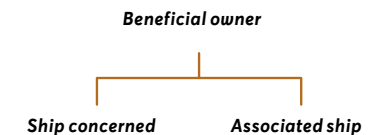
## 7. ASSOCIATED SHIP ARRESTS

A Plaintiff may, by means of the provision for the arrest or attachment of an “associated ship” instead of the ship in respect of which the maritime claim arose, be in a position within certain defined bounds, to pierce the corporate veil of “one-ship” companies.

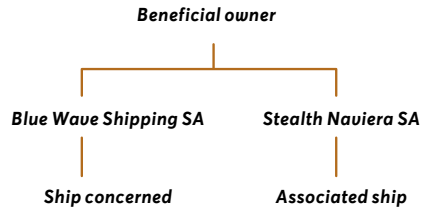
Any “maritime claim” (which is very widely defined) can be enforced by an associated ship arrest, save for claims relating to mortgages.

An associated ship arrest may take three forms:

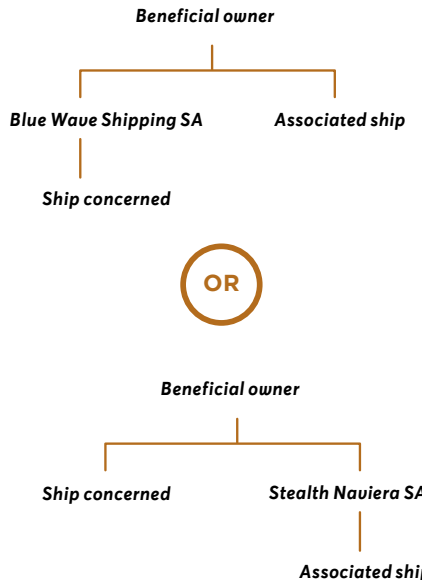
1. By the arrest of a ship in the same ownership as the ship against or in respect of which the claim lies (a “sister ship” arrest):



- By the arrest of a ship owned by a company controlled by a person who controlled the company which owned the ship concerned:



- A combination of 1 and 2 - where one of the ships is owned by the beneficial owner personally and the other by him or her through the company:



**7.1 Chronological criteria with regards to ownership/ control**

1. Sister ships

- The ship concerned must have been owned by the beneficial owner at the time the claim arose, but need no longer be so owned at the time of arrest.
- The associated ship must be owned by the beneficial owner at the time of the commencement of the action, but need not have been so owned at the time the maritime claim arose.

2. Company-owned associated ships

- The associated ship must be owned by the relevant company and that company must be controlled by the beneficial owner at the time of commencement of the action. (“Company” is very widely defined to include virtually any legal entity).
- The ship concerned need only have been owned by the beneficial owner and the company need only have been controlled by the beneficial owner when the maritime claim arose, and not necessarily at the time of the arrest.

- Directly owned associated ships, where the ship concerned is owned by the company

- The associated ship must be owned by the beneficial owner at the time of the arrest.
- The company need only have been controlled by the beneficial owner and the ship concerned need only have been owned by the “company” when the maritime claim arose, and not necessarily at the time of the arrest.

**7.2 Chartered ships**

The provisions for the arrest of associated ships also apply to “associated ships” of a charterer or a subcharterer who, for the purpose of such an arrest, is deemed to be the owner of the ship in respect of any maritime claim for which the charterer or subcharterer, and not the owner, is alleged to be liable.

**7.3 Claims in personam**

The Act has been amended to allow associated ship attachments (ie in respect of claims *in personam*), the important consequences of which are:

- that to obtain the release of the ship, the full claim will have to be secured and not merely the value

of the ship as is the case in an arrest *in rem*; and

- that a ship may arguably be attached to found jurisdiction (and to obtain security) in an action against the beneficial owner of the ship personally, if he or she owns the shares or controls the company which runs the ship, thereby piercing the corporate veil.

**8. ARRESTS FOR SECURITY FOR PROCEEDINGS ELSEWHERE**

A Plaintiff who is already engaged in arbitration or legal proceedings elsewhere than in South Africa, but who is concerned about the efficacy of a favourable decision, because of his or her opponent’s poor financial position or because of other difficulties in enforcing the decision, may in certain circumstances obtain an arrest of property simply for the purposes of obtaining security, pending the outcome of the proceedings elsewhere.

The Act requires that:

- the person seeking the arrest has a claim enforceable either by an action *in personam* against the owner of the property concerned, or an action *in rem*; and
- the claim is or may be the subject of arbitration or other proceedings

contemplated, pending or current, either in South Africa or elsewhere.

If the above requirements are satisfied, the Applicant is entitled to a security arrest in its favour, in the absence of persuasive countervailing arguments by the Respondent. The procedure is accordingly by application to Court, and the Registrar cannot issue a warrant of arrest on the strength of a certificate, as in the case of *in rem* arrests in the normal course.

In cargo laden and lately laden on board the MV “Thalassini Avgi” vs MV “Dimitris” 1989 (3) SA 820 (A), the Supreme Court of Appeal laid down the requirements which an Applicant must meet in order to obtain a security arrest:

- that he or she has a claim enforceable by an action *in rem* against the ship in question or against the ship of which the ship in question is an associated ship – this has been extended to actions *in personam*;
- that he or she has a *prima facie* case in respect of such a claim, which is enforceable in the nominated country or countries of his or her choice; and
- that he or she has a genuine and reasonable need for security.

In *Bocimar NV v Kotor Overseas Shipping Ltd* 1994 (2) SA 563 (A), the

Court indicated that this need for security is to be determined according to the usual civil standard of proof, ie on a balance of probabilities. This burden is more onerous than the *prima facie* case indicated above, which the Applicant must make out in respect of the merits of his or her claim.

### 9. ATTACHMENT OF BUNKERS

The South African Court has held that a time charterer is the owner of the bunkers aboard a chartered vessel and that it is accordingly possible for a creditor of the charterer to attach the bunkers in order to enforce his or her claim. The question of whether or not an attachment will be possible in the particular circumstances will however depend upon the wording of the charterparty in question.

### 10. DAMAGES FOR WRONGFUL ARREST

Section 5(4) provides as follows:

“Any person who makes an excessive claim or requires excessive security or without reasonable and probable cause obtains the arrest of property or an order of Court, shall be liable to any person suffering loss or damages as a result thereof for that loss or damage.”

Prior to the amendment of this section in June 1992, the test was “good cause”

and not “reasonable and probable cause”. The amendments have narrowed the ambit of the section and reduced a Plaintiff’s risk of being held liable for damages for wrongful arrest.

### 11. FORCED SALES AND RANKING OF CLAIMS

The number of forced sales in South Africa indicates that it is one of the favoured jurisdictions for the foreclosure of mortgages and for the determination and distribution of claims against the owners of vessels in financial straits. In the absence of delays occasioned by the intervention of other interested parties, the appraisal, sale and transfer of the vessel to its new owners can take place within six to eight weeks from the date of the Court Order for the sale.

In order to avoid any suggestion of difficulty or uncertainty regarding currency fluctuations, or possible exchange control limitations on payments, it is possible to obtain an order providing for payment to be made and for the fund comprising the proceeds of the sale to be held in US Dollars offshore.

Interest earned will be accumulated for the benefit of creditors. There are in fact no exchange control provisions

inhibiting the sale of a foreign vessel to a non-resident, nor have the authorities, to our knowledge, intervened in the distribution of the proceeds of the sale of a vessel – sold to a non-resident introducing foreign currency – amongst non-resident claimants; the Treasury may, however, impose conditions where a South African ship is sold to a non-resident or a foreign ship is sold to a South African resident.

#### 11.1 Sale procedure

The Court may at any time order that any property which has been arrested or attached be sold, and the proceeds held as a fund in the Court or otherwise dealt with. If a vessel’s owners fail to provide security, the Court may order the vessel’s sale after judgment by default if the proceedings are unopposed, or – in appropriate circumstances – pending the outcome of defended proceedings, on the grounds that the vessel is a wasting asset and it is in the interests of all concerned that she be sold.

Pending the sale, the ship under arrest remains in the custody of the Sheriff, who is authorised to take all such steps as the Court may order or as appear to him or her to be appropriate for the “custody and preservation of the property including the removal and storage of any cargo and the removal, disposal and storage of perishable goods which have been arrested or attached”.



The Sheriff must, however, consult with any persons who have arrested or attached property and must also act in accordance with any relevant order of Court. It is important to note that the Rules do not make provision for the payment of the expenses of preserving the property under arrest pending the release or sale thereof, and there may be circumstances under which the Sheriff may require the creditors detaining the vessel to advance sufficient funds to enable him or her to meet such costs.

In light of the decision by the South African Supreme Court of Appeal in the “Argun” matter, there is a possibility that in certain circumstances arresting creditors may be held liable for the Sheriff’s expenses reasonably incurred in the preservation of the vessel whilst under arrest, as well as the Sheriff’s reasonable remuneration in relation to such expenses.

The continued arrest of a vessel at the instance of an arresting creditor could be made conditional upon that arresting creditor reimbursing the Sheriff for the latter’s reasonable expenses and remuneration. In our view, this state of affairs would only arise in the event of the owners terminating the mandate of the vessel’s agents and abandoning the funding of the ongoing operational and

preservation expenses of the vessel, at which time the arresting creditors would be entitled to release the vessel to avoid liability for these costs.

The Court is empowered to give, and invariably gives, specific directions as to the terms of and the manner in which the ship shall be sold.

These include, *inter alia*:

- the appointment of agents;
- the repatriation of the crew;
- the manning of the vessel by a skeleton crew;
- the removal and storage of the cargo;
- the preservation of the vessel;
- the appraisalment of the vessel;
- the advertising of the sale thereof;
- the engaging of auctioneers and their commission scale;
- the time within which the vessel must be sold; and
- the fixing of a reserve price.

The Court will furthermore approve of the detailed conditions of sale under which prospective purchasers are to be invited to submit tenders or in terms whereof the vessel is to be auctioned. The Court will also stipulate the manner in which the purchase price is payable on the day of the sale, whilst the balance thereof may be secured by way of an irrevocable banker’s guarantee or letter

of credit in favour of the Registrar of the Court, pending the directions of the Court as to the distribution of the proceeds of the sale.

After the vessel has been valued, she is put up for sale either by tender or more usually by public auction. If the highest offer exceeds the appraised value of the vessel, it will normally not be necessary to revert to the Court for confirmation of the sale.

On the other hand, should the highest bid be less than the appraised value, the Court may be approached with a view to its confirming the sale at such a lower purchase price, should circumstances warrant such confirmation.

### 11.2 Ranking of claims

Where a fund arises from the sale of an associated ship there will be three queues:

- ranking first, direct claims against the ship sold;
- ranking second, claims arising in respect of sister ships (owned by the same party); and
- ranking third, claims in respect of associated ships.

Interest on any claim and the cost of enforcing it are deemed to form part of the claim, for the purposes of ranking.

Notwithstanding the provisions as to ranking, any undertaking or security given for a particular claim must be applied in satisfaction of that claim.

## 12. INSPECTIONS AND EXAMINATIONS

The South African Courts have the power to make an order for the examination, testing or inspection by a person of any ship, cargo, documents or any other thing and for the taking of the evidence of any person, if this is necessary or desirable for the purposes of determining any maritime claim or defence to any such claim which has been or may be brought before a Court, arbitrator or referee in South Africa (Section 5(5) of the Act).

The Court also has discretion, in exceptional circumstances, to exercise these powers in respect of actions instituted or to be instituted elsewhere than in South Africa, and our Court may make such orders for the purposes of arbitration or legal proceedings elsewhere in the world, either at the time of granting an order for the arrest of a ship for security for proceedings elsewhere, or even in the absence of any arrest.

Against the background of these powers, our Court has been prepared to order that evidence of crew be taken

on oath pursuant to an application by, for example, cargo interests and/ or charterers for the purposes of determining a maritime claim in respect of proceedings contemplated elsewhere than in South Africa. Such an order would, as a matter of practical application, entail a directive prohibiting (or interdicting) the crew from leaving the jurisdiction of the Court until such time as the evidence has been taken. In each instance, the willingness of the Court to make such an order will depend on the totality of the circumstances of the case – or, put differently, the “factual matrix” upon which the application is based.

Admiralty Rule 14 provides the framework for the taking of such evidence on commission. In this regard, the Rule affirms the Court’s discretion as to the appointment of a commissioner, and determines his or her duties and powers and the dates and venues of any possible hearings.

It also directs that any person giving evidence shall be liable to examination and cross-examination by any interested parties, and that these examinations should occur in the same manner as if the evidence was being heard at the trial of the matter. These procedures could be invaluable for

determining the cause of cargo damage and for the taking of crew members’ evidence (if favourable) prior to their repatriation to foreign countries.

In appropriate circumstances, it may be possible to obtain such an order without notice to the person whose property or documents are to be examined, where for example, there would be a risk that evidence would be lost if notice were given.

### 13. TIME BARS

An action may be deemed to have commenced for the purposes of the interruption of a time bar:

- by the issue of a warrant of arrest and summons *in rem*;
- by the making of an application for the attachment of property to found jurisdiction;
- by the service of any process by which the action is instituted; or
- by giving security for the claim.

The attachment of property to found jurisdiction or the service of the process *in rem* must take place within 12 months of the date of issue or granting of such attachment order, but the Court has the power to extend this period.

### 14. PROVISIONAL SENTENCE SUMMONS

This specialised form of Summons (Writ), which has been part of the non-admiralty ordinary practice in the High Court of South Africa for some time, has been introduced into the admiralty jurisdiction of the High Court. This form of Summons is utilised where the Plaintiff is proceeding with a cause of action based on a liquid document, a copy of which must be attached to the Summons. A liquid document is essentially a written acknowledgment of unconditional liability for the payment of a fixed sum of money to the Plaintiff, and it is signed by the Defendant or its agent. It may take many forms, a few of the more common documents being cheques, bills of exchange, acknowledgements of debt and mortgage bonds.

Through the Provisional Sentence Summons procedure, the Defendant is called upon to appear on a specified date to answer the claim brought on the liquid document. Should the Defendant fail to enter into this application process, or if his or her opposition to the application is unsuccessful, the Court has the power to enter a provisional or final sentence in favour of the Plaintiff. A Defendant

may only oppose the application by either alleging the invalidity of or placing in question the identity of the signature on the document, or by raising a defence on the merits of the matter, such as that the amount claimed has already been paid.

Where the Defendant’s opposition to the provisional sentence application is unsuccessful, a provisional sentence will be entered in favour of the Plaintiff, and the Defendant will only be permitted to enter the principal case once he or she has satisfied the amount of the judgment and taxed costs. Further, should the Defendant fail to enter the principal case within two months of the granting of provisional sentence, the provisional judgment becomes final. Should the Plaintiff’s provisional sentence application be refused, then the principal case will continue to run according to the ordinary rules relating to pleadings in an opposed action.

This procedure will be of particular relevance to mortgagee banks in admiralty matters as it affords them a powerful weapon with which to pursue their claim against the mortgagors. It should, however, be noted that mortgage documents are not always liquid documents, and that should the mortgagor’s liability need to be determined by reference to another

document, then the said mortgage will not constitute a liquid document. Each individual case and document needs to be analysed to determine whether it complies with the requirements of a liquid document or not, for the purposes of provisional sentence.

### 15. TONNAGE LIMITATION IN SOUTH AFRICA

While South Africa has never ratified the International Convention relating to the Limitation of Liability of Owners of Seagoing Ships (Brussels 1957), the Merchant Shipping act No. 57 of 1951 clearly incorporates most of the important provisions thereof. A party wishing to limit its liability under South African law must prove that the loss or damage was caused “without its actual fault or privity”.

The right to limit extends to the owner of a ship, whether registered in South Africa or not, the charterer, any person interested in or in possession of the ship, and a manager or operator of the ship. In this regard, South Africa has not acceded to the 1976 Convention which calculates the limitation fund according to a system of tonnage layers rather than per ton, and more importantly does away with “fault and privity” of the

ship owner by shifting the onus of proof onto the claimant to prove wilful intent by the ship owner. Two important questions arise in connection with the “fault or privity” requirement as applied in South Africa, namely:

- Whose fault or privity can be considered to be that of the owner or charterer; for example directors, managers or superintendents of a modern ship owning corporate structure?
- What is the degree of culpability attaching to the owner, ie how much involvement does the owner need to have on a day-to-day basis in the running of his or her vessel, and how much can be delegated to other staff?

Our Court’s attitude to these questions is set out in the “St Pardarn”, a 1986 decision of the Cape Provincial Division in which the Court held that the fault or privity need not be that of a director, but could be that of someone further down the management level of a ship owning company, and further that fault or privity was a reference to negligence which must have caused or contributed to the loss. The South African Courts have held that they expect the same degree of effective management (supervision and control) of a ship’s day

to day activities as has been laid down in the “Lady Gwendolen” and subsequent English decisions. There is thus an ever-increasing onus in the duty of care/supervision by a ship owner before the Courts are prepared to accept an absence of fault or privity on the said owner’s behalf.

Following the Shipping General Amendment Act (No. 23 of 1997), South Africa now fixes the amount of tonnage limitation with reference to Special Drawing Rights (SDRs). A ship owner is entitled to limit his or her liability in the following amounts, dependent on whether there has been a loss of life or personal injury, or whether there has only been loss of or damage to property, or whether there has been both loss of life or personal injury and loss of or damage to property:

- in the case of claims for damages in respect of loss of life or personal injury only, the shipowner’s liability will be limited to 206.67 SDRs for each ton of the ship’s gross registered tonnage;
- in the case of claims for damages in respect of loss of or damage to property only, the shipowner’s liability will be limited to 66.67 SDRs for each ton of the ship’s gross registered tonnage; and

- in the case of claims for damages in respect of loss of life or personal injury and also claims for damages in respect of loss of or damage to property, the shipowner’s liability will be limited to 206.67 SDRs for each ton of the ship’s gross registered tonnage, with 140 SDRs of the 206.67 to enjoy priority in respect of the claim for loss of life or personal injury.

SDRs are converted into South African currency as determined by the International Monetary Fund on the date on which judgment is given and can be proved by a certificate issued by the South African Treasury.

The current system produces limitation figures which, while not insignificant, are both considerably less than the excessive figures achieved under the previous Gold Franc regime applicable in South Africa, and also those limitation amounts applicable under the 1976 Convention. Despite this, South Africa remains a jurisdiction favourable to Plaintiffs having claims which may be subject to tonnage limitation in that, due to the retention of the “fault and privity” system, it is more difficult for the ship owner to limit his or her liability to the amounts set out above.

# Admiralty Jurisdiction Regulation Act 105 of 1983

[ASSENTED TO 8 SEPTEMBER, 1983]

[DATE OF COMMENCEMENT:

1 NOVEMBER, 1983]

(Afrikaans text signed by the State President)

as amended by:

Admiralty Jurisdiction Regulation Amendment Act 87 of 1992  
 General Law Amendment Act 139 of 1992  
 Wreck and Salvage Act 94 of 1996  
 South African Maritime Safety Authority Act 5 of 1998  
 Sea Transport Documents Act 65 of 2000  
 Judicial Matters Amendment Act 66 of 2008

## ACT

*To provide for the vesting of the powers of the Admiralty Courts of the Republic in the provincial and local divisions of the Supreme Court of South Africa, and for the extension of those powers; for the law to be applied by, and the procedure applicable in, those divisions; for the repeal of the Colonial Courts of Admiralty Act, 1890, of the United Kingdom, in so far as it applies in relation to the Republic; and for incidental matters.*

## ARRANGEMENT OF SECTIONS

1. Definitions
2. Admiralty jurisdiction of Supreme Court
3. Form of proceedings
4. Procedure and rules of Court
5. Powers of Court
6. Law to be applied and rules of evidence
7. Disputes as to venue or jurisdiction
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- 10A. Power of Court regarding claims against fund
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12. Appeals
13. Amendment of section 2 of Act 57 of 1951
14. Jurisdiction of Magistrates' Courts not affected
15. Act to bind the State
16. Repeal of laws
17. Short title and commencement

## SCHEDULE

### 1. Definitions

(1) In this Act, unless the context indicates otherwise—

“admiralty action” means proceedings in terms of this Act for the enforcement of a maritime claim whether such proceedings are by way of action or by way of any other competent procedure, and includes any ancillary or procedural measure, whether by way of application or otherwise, in connection with any such proceedings;

“container” means a container for the carriage of goods by sea, including any such container which is empty or otherwise temporarily not being used for such carriage;

“fund” means a fund mentioned in section 3 (11);

“maritime claim” means any claim for, arising out of or relating to—

- (a) the ownership of a ship or a share in a ship;
- (b) the possession, delivery, employment or earnings of a ship;
- (c) any agreement for the sale of a ship or a share in a ship, or any agreement with regard to the

ownership, possession, delivery, employment or earnings of a ship;

(d) any mortgage, hypothecation, right of retention, pledge or other charge on or of a ship, and any bottomry or respondentia bond;

(e) damage caused by or to a ship, whether by collision or otherwise;

(f) loss of life or personal injury caused by a ship or any defect in a ship or occurring in connection with the employment of a ship;

(g) loss of or damage to goods (including the baggage and the personal belongings of the master, officers or seamen of a ship) carried or which ought to have been carried in a ship, whether such claim arises out of any agreement or otherwise;

(h) the carriage of goods in a ship, or any agreement for or relating to such carriage;

(i) any container and any agreement relating to any container;

(j) any charter party or the use, hire, employment or operation of a ship, whether such claim arises out of any agreement or otherwise;

(k) salvage, including salvage relating to any aircraft and the sharing or



- apportionment of salvage and any right in respect of property salvaged or which would, but for the negligence or default of the salvor or a person who attempted to save it, have been salvaged, and any claim arising out of the Wreck and Salvage Act, 1996;
- (l) towage or pilotage;
- (m) the supplying of goods or the rendering of services for the employment, maintenance, protection or preservation of a ship;
- (n) the rendering, by means of any aircraft, ship or other means, of services in connection with the carrying of persons or goods to or from a ship, or the provision of medical or other services to or in respect of the persons on being taken to or from a ship;
- (o) payments or disbursements by a master, shipper, charterer, agent or any other person for or on behalf of or on account of a ship or the owner or charterer of a ship;
- (p) the remuneration of, or payments or disbursements made by, or the acts or omissions of, any person appointed to act or who acted or failed to act—
- (i) as an agent, whether as a ship's, clearing, forwarding or other kind of agent, in respect of any ship or any goods carried or to be carried or which were or ought to have been carried in a ship; or
- (ii) as a broker in respect of any charter, sale or any other agreement relating to a ship or in connection with the carriage of goods in a ship or in connection with any insurance of a ship or any portion or part thereof or of other property referred to in section 3 (5); or
- (iii) as attorney or adviser in respect of any matter mentioned in subparagraphs (i) and (ii);
- (q) the design, construction, repair or equipment of any ship;
- (r) dock, harbour or similar dues, and any charge, levy or penalty imposed under the South African Maritime Safety Authority Act, 1998, or the South African Maritime Safety Authority Levies Act, 1998;
- (s) the employment of any master, officer or seaman of a ship in connection with or in relation to a ship, including the remuneration of any such person, and contributions in respect of any such person to any pension fund, provident fund, medical aid fund, benefit fund, similar fund, association or institution in relation to or for the benefit of any master, officer or seaman;
- (t) general average or any act claimed to be a general average act;
- (u) marine insurance or any policy of marine insurance, including the protection and indemnity by any body of persons of its members in respect of marine matters;
- (v) the forfeiture of any ship or any goods carried therein or the restoration of any ship or any such goods forfeited;
- (w) the limitation of liability of the owner of a ship or of any other person entitled to any similar limitation of liability;
- (x) the distribution of a fund or any portion of a fund held or to be held by, or in accordance with the directions of, any Court in the exercise of its admiralty jurisdiction, or any officer of any Court exercising such jurisdiction;
- (y) any maritime lien, whether or not falling under any of the preceding paragraphs;
- (z) pollution of the sea or the sea-shore by oil or any other substance on or emanating from a ship;
- (aa) any judgment or arbitration award relating to a maritime claim, whether given or made in the Republic or elsewhere;
- (bb) wrongful or malicious proceedings in respect of or involving any property referred to in section 3 (5), or the wrongful or malicious arrest, attachment or detention of any such property, wherever any such proceedings, arrest, attachment or detention took place, and whether in the Republic or elsewhere, and any loss or damage contemplated in section 5 (4);
- (cc) piracy, sabotage or terrorism relating to property mentioned in section 3 (5), or to persons on any ship;
- (dd) any matter not falling under any of the previous paragraphs in respect of which a Court of Admiralty of the Republic referred to in the Colonial Courts of Admiralty Act, 1890 (53 and 54 Vict c. 27), of the United Kingdom, was empowered to exercise admiralty jurisdiction immediately before the commencement of this Act, or any matter in respect of which a Court of the Republic is empowered to exercise admiralty jurisdiction;

- (ee) any other matter which by virtue of its nature or subject matter is a marine or maritime matter, the meaning of the expression marine or maritime matter not being limited by reason of the matters set forth in the preceding paragraphs; and
- (ff) any contribution, indemnity or damages with regard to or arising out of any claim in respect of any matter mentioned above or any matter ancillary thereto, including the attachment of property to found or confirm jurisdiction, the giving or release of any security, and the payment of interest;

“Minister” means the Minister of Justice;

“rules” means the rules made under section 4 or in force thereunder;

“ship” means any vessel used or capable of being used on the sea or internal waters, and includes any hovercraft, power boat, yacht, fishing boat, submarine vessel, barge, crane barge, floating crane, floating dock, oil or other floating rig, floating mooring installation or similar floating installation, whether self-propelled or not;

“this Act” includes the rules.

- (2) (a) An admiralty action shall for any relevant purpose commence—
  - (i) by the service of any process by which that action is instituted;
  - (ii) by the making of an application for the attachment of property to found jurisdiction;
  - (iii) by the issue of any process for the institution of an action *in rem*;
  - (iv) by the giving of security or an undertaking as contemplated in section 3 (10)(a).
- (b) An action commenced as contemplated in paragraph (a) shall lapse and be of no force and effect if—
  - (i) an application contemplated in paragraph (a)(ii) is not granted or is discharged or not confirmed;
  - (ii) no attachment is effected within twelve months of the grant of an order pursuant to such an application or the final decision of the application;
  - (iii) a process contemplated in paragraph (a)(iii) is not served within twelve months of the issue thereof;
  - (iv) the property concerned is deemed in terms of section 3 (10)(a)(ii) to have been released and discharged.

- (3) For the purposes of an action *in rem*, a charterer by demise shall be deemed to be, or to have been, the owner of the ship for the period of the charter by demise.

## 2. Admiralty jurisdiction of Supreme Court

- (1) Subject to the provisions of this Act, each provincial and local division, including a circuit local division, of the Supreme Court of South Africa shall have jurisdiction (hereinafter referred to as admiralty jurisdiction) to hear and determine any maritime claim (including, in the case of salvage, claims in respect of ships, cargo or goods found on land), irrespective of the place where it arose, of the place of registration of the ship concerned or of the residence, domicile or nationality of its owner.
- (2) For the purposes of this Act the area of jurisdiction of a Court referred to in subsection (1) shall be deemed to include that portion of the territorial waters of the Republic adjacent to the coastline of its area of jurisdiction.

## 3. Form of proceedings

- (1) Subject to the provisions of this Act, any maritime claim may be enforced by an action *in personam*.

- (2) An action *in personam* may only be instituted against a person—
  - (a) resident or carrying on business at any place in the Republic;
  - (b) whose property within the Court’s area of jurisdiction has been attached by the plaintiff or the applicant, to found or to confirm jurisdiction;
  - (c) who has consented or submitted to the jurisdiction of the Court;
  - (d) in respect of whom any Court in the Republic has jurisdiction in terms of Chapter IV of the Insurance Act, 1943 (Act No. 27 of 1943);
  - (e) in the case of a company, if the company has a registered office in the Republic.
- (3) An action *in personam* may not be instituted in a Court of which the area of jurisdiction is not adjacent to the territorial waters of the Republic unless—
  - (a) in the case of a claim contemplated in paragraph (a), (b), (j) or (u) of the definition of “maritime claim”, the claim arises out of an agreement concluded within the area of jurisdiction of that Court;

- (b) in the case of a claim contemplated in paragraph (g) or (h) of that definition, the goods concerned are or were shipped under a bill of lading to or from a place within the area of jurisdiction of that Court;
- (c) the maritime claim concerned relates to a fund within, or freight payable in, the area of jurisdiction of that Court.
- (4) Without prejudice to any other remedy that may be available to a claimant or to the rules relating to the joinder of causes of action a maritime claim may be enforced by an action *in rem*—
- (a) if the claimant has a maritime lien over the property to be arrested; or
- (b) if the owner of the property to be arrested would be liable to the claimant in an action *in personam* in respect of the cause of action concerned.
- (5) An action in rem shall be instituted by the arrest within the area of jurisdiction of the Court concerned of property of 1 or more of the following categories against or in respect of which the claim lies:
- (a) The ship, with or without its equipment, furniture, stores or bunkers;
- (b) the whole or any part of the equipment, furniture, stores or bunkers;
- (c) the whole or any part of the cargo;
- (d) the freight;
- (e) any container, if the claim arises out of or relates to the use of that container in or on a ship or the carriage of goods by sea or by water otherwise in that container;
- (f) a fund.
- (6) An action in rem, other than an action in respect of a maritime claim referred to in paragraph (d) of the definition of “maritime claim”, may be brought by the arrest of an associated ship instead of the ship in respect of which the maritime claim arose.
- (7) (a) For the purpose of subsection (6) an associated ship means a ship, other than the ship in respect of which the maritime claim arose—
- (i) owned, at the time when the action is commenced, by the person who was the owner of the ship concerned at the time when the maritime claim arose; or
- (ii) owned, at the time when the action is commenced, by a person who controlled the company which owned the ship concerned when the maritime claim arose; or;
- (iii) owned, at the time when the action is commenced, by a company which is controlled by a person who owned the ship concerned, or controlled the company which owned the ship concerned, when the maritime claim arose.
- (b) For the purposes of paragraph (a)—
- (i) ships shall be deemed to be owned by the same persons if the majority in number of, or of voting rights in respect of, or the greater part, in value, of, the shares in the ships are owned by the same persons;
- (ii) a person shall be deemed to control a company if he or she has power, directly or indirectly, to control the company;
- (iii) a company includes any other juristic person and any body of persons, irrespective of whether or not any interest therein consists of shares.
- (c) If at any time a ship was the subject of a charter-party, the charterer or subcharterer, as the case may be, shall for the purposes of subsection (6) and this subsection be deemed to be the owner of the ship concerned in respect of any relevant maritime claim for which the charterer or the subcharterer, and not the owner, is alleged to be liable.
- (8) Property shall not be arrested and security therefor shall not be given more than once in respect of the same maritime claim by the same claimant.
- (9) . . . . .
- (10) (a) (i) Property shall be deemed to have been arrested or attached and to be under arrest or attachment at the instance of a person if at any time, whether before or after the arrest or attachment, security or an undertaking has been given to him or her to prevent the arrest or attachment of the property or to obtain the release thereof from arrest or attachment.
- (ii) Any property deemed in terms of subparagraph (i) to have been arrested or attached, shall be

deemed to be released and discharged therefrom if no further step in the proceedings, with regard to a claim by the person concerned, is taken within 1 year of the giving of any such security or undertaking.

- (b) That security shall for the purposes of sections 9 and 10 be deemed to be the freight or the proceeds of the sale of the property.

- (11) (a) There shall in any particular case be a fund consisting of—
- (i) any security or undertaking given in terms of subsection (10)(a), unless such security or undertaking is given in respect of a particular claim by a particular person;
- (ii) the proceeds of the sale of any property mentioned in subsection (5)(a) to (e), either in terms of any order made in terms of section 9, or in execution or otherwise.
- (b) A fund shall, for all purposes, be deemed to be the property sold or the property in respect of which the security or an undertaking has been given.

- (c) If an action in rem is instituted against or in respect of a fund in terms of subsection (5), the plaintiff shall give notice of the said action to the registrar of the Court or other person holding the fund, and to all persons known by the plaintiff to be interested in the fund.
- (d) The interest of any person in, or any claim by any person against, a fund shall be capable of attachment to found jurisdiction.

#### 4. Procedure and rules of Court

- (1) Subject to the provisions of this Act, the provisions of the Supreme Court Act, 1959 (Act No. 59 of 1959), and the rules made under section 43 of that Act, shall mutatis mutandis apply in relation to proceedings in terms of this Act, except in so far as those rules are inconsistent with the rules referred to in subsection (2).
- (2) The rules of the Courts of Admiralty of the Republic in force in terms of the Colonial Courts of Admiralty Act, 1890, of the United Kingdom, immediately before the commencement of this Act, shall be deemed to be rules made under section 43(2)(a) of the Supreme Court Act, 1959, and shall apply in respect of proceedings in terms of this Act.

- (3) The power of the Chief Justice to make rules under section 43 of the Supreme Court Act, 1959, shall include the power to make rules prescribing the following:

- (a) The appointment of any person or body for the assessment of fees and costs and the manner in which such fees and costs are to be assessed;
- (b) measures aimed at avoiding circuitry or multiplicity of actions;
- (c) the practice and procedure for referring to arbitration any matter arising out of proceedings relating to a maritime claim, and the appointment, remuneration and powers of an arbitrator.

- (4) (a) Notwithstanding anything to the contrary in any law relating to attachment to found or confirm jurisdiction, a Court in the exercise of its admiralty jurisdiction may make an order for the attachment of the property concerned although the claimant is not an incola either of the area of jurisdiction of that Court or of the Republic.
- (b) A Court may make an order for the attachment of property not within the area of jurisdiction of the Court at the time of the application or of the order, and

such an order may be carried into effect when that property comes within the area of jurisdiction of the Court.

- (c) Subject to the provisions of section 3 (3)—
- (i) a Court may make an order for the arrest or attachment, to found jurisdiction, of property not within the area of jurisdiction of the Court if—
- (aa) (aaa) that property is in the Republic or is likely to come into the Republic after the making of the order; and
- (bbb) no Court in the Republic otherwise has jurisdiction in connection with the claim or can otherwise acquire such jurisdiction by an arrest or attachment to found jurisdiction; or
- (bb) other property within the area of jurisdiction of the Court has been or is about to be arrested or attached



- to found jurisdiction in connection with the same claim;
- (ii) any such order may be executed and any arrest or attachment pursuant thereto effected at any place in the Republic as contemplated in section 26 (1) of the Supreme Court Act, 1959 (Act No. 59 of 1959);
- (iii) the arrest or attachment of any property pursuant to any such order shall be an arrest or attachment which shall found the relevant jurisdiction of the Court ordering the arrest or attachment.
- (d) A Court may make an order for the arrest or attachment, to found jurisdiction, of any ship which, if the action concerned had been an action in rem, would be an associated ship with regard to the ship in respect of which the maritime claim concerned arose.

**5. Powers of Court**

- (1) A Court may in the exercise of its admiralty jurisdiction permit the joinder in proceedings in terms of this Act of any person against whom any party to those proceedings has a claim, whether

jointly with, or separately from, any party to those proceedings, or from whom any party to those proceedings is entitled to claim a contribution or an indemnification, or in respect of whom any question or issue in the action is substantially the same as a question or issue which has arisen or will arise between the party and the person to be joined and which should be determined in such a manner as to bind that person, whether or not the claim against the latter is a maritime claim and notwithstanding the fact that he or she is not otherwise amenable to the jurisdiction of the Court, whether by reason of the absence of attachment of his or her property or otherwise.

- (2) A Court may in the exercise of its admiralty jurisdiction—
  - (a) consider and decide any matter arising in connection with any maritime claim, notwithstanding that any such matter may not be one which would give rise to a maritime claim;
  - (b) order any person to give security for costs or for any claim;
  - (c) order that any arrest or attachment made or to be made or that anything done or to be done in terms of this Act or any order of the Court be subject to such conditions as to the Court

appears just, whether as to the furnishing of security or the liability for costs, expenses, loss or damage caused or likely to be caused, or otherwise;

- (dA) notwithstanding the provisions of section 3 (8), order that, in addition to property already arrested or attached, further property be arrested or attached in order to provide additional security for any claim, and order that any security given be increased, reduced or discharged, subject to such conditions as to the Court appears just;

- (d) on application made before the expiry of any period contemplated in section 1 (2)(b) or 3 (10)(a)(ii), or any extension thereof, from time to time grant an extension of any such period;
- (e) order that any matter pending or arising in proceedings before it be referred to an arbitrator or referee for decision or report and provide for the appointment, remuneration and powers of the arbitrator or referee and for the giving of effect to his or her decision or report;
- (f) make such order as to interest, the rate of interest in respect of

any sum awarded by it and the date from which interest is to accrue, whether before or after the date of the commencement of the action, as to it appears just;

- (g) subject to the provisions of any law relating to exchange control, order payment to be made in such currency other than the currency of the Republic as in the circumstances of the case appears appropriate, and make such order as seems just as to the date upon which the calculation of the conversion from any currency to any other currency should be based.

- (3) (a) A Court may in the exercise of its admiralty jurisdiction order the arrest of any property for the purpose of providing security for a claim which is or may be the subject of an arbitration or any proceedings contemplated, pending or proceeding, either in the Republic or elsewhere, and whether or not it is subject to the law of the Republic, if the person seeking the arrest has a claim enforceable by an action *in personam* against the owner of the property concerned or an action in rem against such property or which would be so enforceable but for any such arbitration or proceedings.

- (aA) Any property so arrested or any security for, or the proceeds of, any such property shall be held as security for any such claim or pending the outcome of any such arbitration or proceedings.
- (b) Unless the Court orders otherwise any property so arrested shall be deemed to be property arrested in an action in terms of this Act.
- (4) Any person who makes an excessive claim or requires excessive security or without reasonable and probable cause obtains the arrest of property or an order of Court, shall be liable to any person suffering loss or damage as a result thereof for that loss or damage.
- (5) (a) A Court may in the exercise of its admiralty jurisdiction at any time on the application of any interested person or of its own motion—
- (i) if it appears to the Court to be necessary or desirable for the purpose of determining any maritime claim, or any defence to any such claim, which has been or may be brought before a Court, arbitrator or referee in the Republic, make an

- order for the examination, testing or inspection by any person of any ship, cargo, documents or any other thing and for the taking of the evidence of any person;
- (ii) in making an order in terms of subparagraph (i), make an order that any person who applied for such first-mentioned order shall be liable and give security for any costs or expenses, including those arising from any delay, occasioned by the application and the carrying into effect of any such order;
- (iii) grant leave to any such person to apply for an order that any such costs or expenses be considered as part of the costs of the proceedings;
- (iv) in exceptional circumstances, make such an order as is contemplated in subparagraph (i) with regard to a maritime claim which has been or may be brought before any Court, arbitrator, referee or tribunal elsewhere than in the Republic, in which case subparagraphs (ii) and (iii) shall mutatis mutandis apply.

- (b) The provisions of this Act shall not affect any privilege relating to any document in the possession of, or any communication to or the giving of any evidence by, any person.

## 6. Law to be applied and rules of evidence

- (1) Notwithstanding anything to the contrary in any law or the common law contained a Court in the exercise of its admiralty jurisdiction shall—
- (a) with regard to any matter in respect of which a Court of Admiralty of the Republic referred to in the Colonial Courts of Admiralty Act, 1890, of the United Kingdom, had jurisdiction immediately before the commencement of this Act, apply the law which the High Court of Justice of the United Kingdom in the exercise of its admiralty jurisdiction would have applied with regard to such a matter at such commencement, insofar as that law can be applied;
- (b) with regard to any other matter, apply the Roman-Dutch law applicable in the Republic.
- (2) The provisions of subsection (1) shall not derogate from the provisions of any law of the Republic applicable

to any of the matters contemplated in paragraph (a) or (b) of that subsection.

- (3) A Court may in the exercise of its admiralty jurisdiction receive as evidence statements which would otherwise be inadmissible as being in the nature of hearsay evidence, subject to such directions and conditions as the Court thinks fit.
- (4) The weight to be attached to evidence contemplated in subsection (3) shall be in the discretion of the Court.
- (5) The provisions of subsection (1) shall not supersede any agreement relating to the system of law to be applied in the event of a dispute.

## 7. Disputes as to venue or jurisdiction

- (1) (a) A Court may decline to exercise its admiralty jurisdiction in any proceedings instituted or to be instituted, if it is of the opinion that any other Court in the Republic or any other Court or any arbitrator, tribunal or body elsewhere will exercise jurisdiction in respect of the said proceedings and that it is more appropriate that the proceedings be adjudicated upon by any such other Court or by such arbitrator, tribunal or body.

(b) A Court may stay any proceedings in terms of this Act if it is agreed by the parties concerned that the matter in dispute be referred to arbitration in the Republic or elsewhere, or if for any other sufficient reason the Court is of the opinion that the proceedings should be stayed.

(2) When in any proceedings before a provincial or local division, including a circuit local division, of the Supreme Court of South Africa the question arises as to whether a matter pending or proceeding before that Court is one relating to a maritime claim, the Court shall forthwith decide that question, and if the Court decides that—

(a) the matter is one relating to a maritime claim, it shall be proceeded with in a Court competent to exercise its admiralty jurisdiction, and any property attached to found jurisdiction shall be deemed to have been attached in terms of this Act;

(b) the matter is not one relating to a maritime claim, the action shall proceed in the division having jurisdiction in respect of the matter: Provided that if jurisdiction was conferred by the attachment of property by a person other than an incola of the Court, the Court may order

the action to proceed as if the property had been attached by an incola, or may make such other order, including an order dismissing the action for want of jurisdiction, as to it appears just.

- (3) The provisions of subsection (2) shall not affect any other objection to the jurisdiction of any Court.
- (4) No appeal shall lie against any decision or order made under subsection (2).
- (5) The Minister may, on the recommendation of the judge president of any provincial division of the Supreme Court of South Africa, submit the question as to whether or not a particular matter gives rise to a maritime claim, to the Appellate Division of the Supreme Court of South Africa and may cause that question to be argued before that division so that it may decide the question for future guidance.

## 8. Arrests

- (1) Where property has been attached to found or to confirm jurisdiction at common law, that property may nevertheless be arrested in connection with a maritime claim, subject to such directions as the Court thinks fit.
- (2) Where property has been attached to found or to confirm jurisdiction

relating to a maritime claim, sections 9, 10 and 11 of this Act shall apply as if the property had been arrested in an action in rem, whether or not the property has been arrested in terms of this Act.

## 9. Sale of arrested property

- (1) A Court may in the exercise of its admiralty jurisdiction at any time order that any property which has been arrested in terms of this Act be sold.
- (2) The proceeds of any property so sold shall constitute a fund to be held in Court or to be otherwise dealt with, as may be provided by the rules or by any order of Court.
- (3) Any sale in terms of any order of Court shall not be subject to any mortgage, lien, hypothecation, or any other charge of any nature whatsoever.

## 10. Vesting of property in trustee, liquidator or judicial manager excluded in certain cases

Any property arrested in respect of a maritime claim or any security given in respect of any property, or the proceeds of any property sold in execution or under an order of a Court in the exercise of its admiralty jurisdiction, shall not, except as provided in section 11 (13), vest in a trustee in insolvency and shall not form part of the assets to

be administered by a liquidator or judicial manager of the owner of the property or of any other person who might otherwise be entitled to such property, security or proceeds, and no proceedings in respect of such property, security or proceeds, or the claim in respect of which that property was arrested, shall be stayed by or by reason of any sequestration, winding-up or judicial management with respect to that owner or person.

## 10A. Power of Court regarding claims against fund

- (1) The Court may make an order with regard to the distribution of a fund or payment out of any portion of a fund or proof of claims against a fund, including the referring of any of or all such claims to a referee in terms of section 5 (2)(e).
- (2) (a) If an order is made referring all such claims to a referee or if the Court so orders, all proceedings in respect of claims which are capable of proof for participation in the distribution of the fund shall be stayed and any such claim shall be proved only in accordance with such order.
- (b) The costs of any proceedings already instituted but which have been stayed in terms of paragraph (a) shall be added to any relevant claim proved in accordance with any such order.

(3) (a) Notwithstanding the provisions of section 11 (2) and (9), any claimant submitting as proof of a claim a default judgment may be required by the referee or other person to whom the claim is submitted or by any person having an interest in the fund, to furnish evidence justifying the said judgment.

(b) If a claimant is in terms of paragraph (a) required to furnish such evidence, the judgment alone shall not be sufficient proof of the claim.

(c) Any person other than a referee so requiring a claimant to furnish such evidence shall be liable for any costs incurred by such claimant in so doing, unless the claimant fails to justify the said judgment or a Court otherwise orders.

(4) (a) A claim which is subject to a suspensive or resolute condition or otherwise not yet enforceable or is voidable may be proved, where appropriate, on the basis of an estimate or valuation, but no distribution shall be made in respect thereof until it has become enforceable or no longer voidable.

(b) The Court may make an order as to the time when a claim contemplated in paragraph

(a) which has not become enforceable or is voidable shall no longer be taken into account for the purposes of the distribution in question or no longer be regarded as voidable.

## 11. Ranking of claims

(1) (a) If property mentioned in section 3 (5)(a) to (e) is sold in execution or constitutes a fund contemplated in section 3 (11), the relevant maritime claims mentioned in subsection (2) shall be paid in the order prescribed by subsections (5) and (11).

(b) Property other than property mentioned in paragraph (a) may, in respect of a maritime claim, be sold in execution, and the proceeds thereof distributed, in the ordinary manner.

(2) The claims contemplated in subsection (1)(a) are claims mentioned in subsection (4) and confirmed by a judgment of a Court in the Republic or proved in the ordinary manner.

(3) Any reference in this section to a ship shall, where appropriate, include a reference to any other property mentioned in section 3 (5) (a) to (e).

(4) The claims mentioned in subsection (2) are the following, namely—

(a) a claim in respect of costs and expenses incurred to preserve the property in question or to procure its sale and in respect of the distribution of the proceeds of the sale;

(b) a claim to a preference based on possession of the property in question, whether by way of a right of retention or otherwise;

(c) a claim which arose not earlier than 1 year before the commencement of proceedings to enforce it or before the submission of proof thereof and which is a claim—

(i) contemplated in paragraph (s) of the definition of “maritime claim”;

(ii) in respect of port, canal, other waterways or pilotage dues, and any charge, levy or penalty imposed under the South African Maritime Safety Authority Act, 1998, or the South African Maritime Safety Authority Levies Act, 1998;

(iii) in respect of loss of life or personal injury, whether

occurring on land or on water, directly resulting from employment of the ship;

(iv) in respect of loss of or damage to property, whether occurring on land or on water resulting from delict, and not giving rise to a cause of action based on contract, and directly resulting from the operation of the ship;

(v) in respect of the repair of the ship, or the supply of goods or the rendering of services to or in relation to a ship for the employment, maintenance, protection or preservation thereof;

(vi) in respect of the salvage of the ship, removal of any wreck of a ship, and any contribution in respect of a general average act or sacrifice in connection with the ship;

(vii) in respect of premiums owing under any policy of marine insurance with regard to a ship or the liability of any person arising from the operation thereof; or

(viii) by any body of persons for contributions with regard to the protection and indemnity of its



members against any liability mentioned in subparagraph (vii);

- (d) a claim in respect of any mortgage, hypothecation or right of retention of, and any other charge on, the ship, effected or valid in accordance with the law of the flag of a ship, and in respect of any lien to which any person mentioned in paragraph (c) of the definition of “maritime claim” is entitled;
- (e) a claim in respect of any maritime lien on the ship not mentioned in any of the preceding paragraphs;
- (f) any other maritime claim.

(5) The claims mentioned in paragraphs (b) to (f) of subsection (4) shall rank after any claim referred to in paragraph (a) of that subsection, and in accordance with the following rules, namely—

- (a) a claim referred to in the said paragraph (b) shall, subject to paragraph (b) of this subsection, rank before any claim arising after it;
- (b) a claim of the nature contemplated in paragraph (c) (vi) of that subsection, whether or not arising within the period

of 1 year mentioned in the said paragraph, shall rank before any other claim;

- (c) otherwise any claim mentioned in any of the subparagraphs of the said paragraph (c) shall rank *pari passu* with any other claim mentioned in the same subparagraph, irrespective of when such claims arose;
- (d) claims mentioned in paragraph (d) of subsection (4) shall, among themselves, rank according to the law of the flag of the ship;
- (e) claims mentioned in paragraph (e) of subsection (4) shall, among themselves, rank in their priority according to law;
- (f) claims mentioned in paragraph (f) of subsection (4) shall rank in their order of preference according to the law of insolvency;
- (g) save as otherwise provided in this subsection, claims shall rank in the order in which they are set forth in the said subsection (4).

(6) For the purposes of subsection (5), a claim in connection with salvage or the removal of wreck shall be deemed to have arisen when the salvage operation or the

removal of the wreck, as the case may be, terminated, and a claim in connection with contribution in respect of general average, when the general average act occurred.

- (7) A Court may, in the exercise of its admiralty jurisdiction, on the application of any interested person, make an order declaring how any claim against a fund shall rank.
- (8) Any person who has, at any time, paid any claim or any part thereof which, if not paid, would have ranked under this section, shall be entitled to all the rights, privileges and preferences to which the person paid would have been entitled if the claim had not been paid.
- (9) A judgment or an arbitration award shall rank in accordance with the claim in respect of which it was given or made.
- (10) Interest on any claim and the costs of enforcing a claim shall, for the purposes of this section, be deemed to form part of the claim.
- (11) In the case of claims against a fund which consists of the proceeds of the sale of, or any security or undertaking given in respect of, a ship (hereinafter referred to as the

ship giving rise to the fund) which is an associated ship in relation to the ship in respect of which the claims arose, the following rules shall apply, namely—

- (a) all claims which fall under paragraphs (b) to (e) of subsection (4) and which arose in respect of a ship in relation to which the ship giving rise to the fund is such an associated ship as is contemplated in section 3 (7)(a)(i), shall rank immediately after claims which fall under the said paragraphs and which arose directly in respect of the ship giving rise to the fund concerned and after any claims which fall under paragraph (f) of subsection (4) and which arose from, or are related directly to, the operation of (including the carriage of goods in) the ship giving rise to the fund concerned;
- (b) all claims which fall under the said paragraphs (b) to (e) and which arose in respect of a ship in relation to which the ship giving rise to the fund is such an associated ship as is contemplated in section 3 (7)(a)(ii) or (iii) shall rank immediately after any claims mentioned in paragraph (a) of this subsection

or, if there are no such claims, immediately after claims which fall under the said paragraphs and which arose directly in respect of the ship giving rise to the fund concerned; and

(c) the provisions of subsections (5) and (9) shall apply with regard to any claim mentioned in paragraph (a) or (b).

(12) Notwithstanding the provisions of this section, any undertaking or security given with respect to a particular claim shall be applied in satisfaction of that claim only.

(13) Any balance remaining after the claims mentioned in paragraphs (a) to (e) of subsection (4) and the claims mentioned in subsection (11) have been paid, shall be paid over to any trustee, liquidator or judicial manager who, but for the provisions of section 10, would have been entitled thereto or otherwise to any other person entitled thereto.

## 12. Appeals

A judgment or order of a Court in the exercise of its admiralty jurisdiction shall be subject to appeal as if such judgment or order were that of a provincial or local division of the Supreme Court of South Africa in civil proceedings.

## 13. Amendment of section 2 of Act 57 of 1951, as amended by section 3 of Act 30 of 1959, section 31 of Act 69 of 1962, section 1 of Act 40 of 1963, section 1 of Act 13 of 1965, section 1 of Act 42 of 1969, section 1 of Act 24 of 1974, section 1 of Act 5 of 1976 and section 1 of Act 3 of 1981

Section 2 of the Merchant Shipping Act, 1951 (Act No. 57 of 1951), is hereby amended by the substitution in subsection (2) for the definition of “Superior Court” of the following definition:

“‘Superior Court’ means a division of the Supreme Court of South Africa, save in sections 43, 45, 89, 292, 330 and 356 (1) (xxxv), where it means a Court exercising its admiralty jurisdiction under the Admiralty Jurisdiction Regulation Act, 1983;”.

## 14. Jurisdiction of Magistrates’ Courts not affected

This Act shall not derogate from the jurisdiction which a Magistrate’s Court has under sections 131, 136 and 151 of the Merchant Shipping Act, 1951.

## 15. Act to bind the State

This Act shall bind the State.

## 16. Repeal of laws

(1) The laws mentioned in the Schedule are hereby repealed to the extent set out in the third column of the Schedule.

(2) Proceedings instituted before the commencement of this Act shall be proceeded with as if this Act had not been enacted.

(3) For the purposes of subsection (2) proceedings shall be deemed to have commenced upon service of the writ of summons.

## 17. Short title and commencement

This Act shall be called the Admiralty Jurisdiction Regulation Act, 1983, and shall come into operation on a date fixed by the State President by proclamation in the Gazette.

# Admiralty Proceedings Rules

RULES REGULATING THE CONDUCT OF THE ADMIRALTY PROCEEDINGS OF THE SEVERAL PROVINCIAL AND LOCAL DIVISIONS OF THE SUPREME COURT OF SOUTH AFRICA

[GN R571 in GG 17926 of 18 April 1997]

as amended by:

GN R655 in GG 17968 of 2 May 1997  
GN R1026 in GG 19136 of 7 August 1998

The Rules Board for Courts of Law has, under section 6 of the Rules Board for Courts of Law Act, 1985 (Act 107 of 1985), with the approval of the Minister of Justice, made the rules in the Schedule.

## ARRANGEMENT OF REGULATIONS

1. Definitions
2. Summons
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4. Arrest and release
5. Attachment to found or confirm jurisdiction
6. Service in rem

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21. Property arrested or attached, judicial sales and the appointment of referees
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## FIRST SCHEDULE

1. Summons
2. Warrant of Arrest
3. Summons: Provisional Sentence

### 1. Definitions

- (1) In these rules, unless the context otherwise indicates—

“Act” means the Admiralty Jurisdiction Regulation Act, 1983 (Act No. 105 of 1983);

“admiralty proceedings” means proceedings before the Court;

“Court” means a Court exercising admiralty jurisdiction under the Act;

“summons” includes edictal citation;

“Uniform Rules” means the rules made under section 43 of the Supreme Court Act, 1959 (Act No. 59 of 1959), regulating the conduct of the proceedings of the several provincial and local divisions of the Supreme Court of South Africa;

“pleading” includes particulars of claim, plea, claim in reconvention, third party notice and pleadings consequent upon the foregoing, but excludes a request for particulars or answer thereto; and

“warrant” means a warrant of arrest.

- (2) In the computation of any period of time expressed in days, whether prescribed by these rules, fixed by any order of Court or otherwise determined, only Court days shall be included.

- (3) The definitions in rule 1 of the Uniform Rules shall apply to any word or expression not defined in this rule.

### 2. Summons

- (1) (a) A summons shall be in a form corresponding to Form 1 of the First Schedule and shall contain a clear and concise statement of the nature of the claim and of the relief or remedy required and of the amount claimed, if any.

- (b) The statement referred to in paragraph (a) shall contain sufficient particulars to enable the defendant to identify the facts and contentions upon which the claim is based.

- (2) Subject to the provisions of subrule (3), the summons shall set forth the matters referred to in rule 17(4) of the Uniform Rules.

- (3) A party may be described as the owner or insurer of the a named ship or of the cargo in or formerly in a named ship or as the owner,

master and crew of a ship, or in any other similar manner, and in any such case the party need be further named or described in the pleadings and may sue or be sued as such.

- (4) In the case of an action in rem the property in respect of which the claim lies, as set forth in section 3(5) of the Act, shall be described as the defendant.
- (5) Where proceedings are taken in respect of a maritime claim referred to in paragraph (x) of the definition of “maritime claim” in section 1(1) of the Act for the distribution of any fund, or where property is deemed to have been arrested or attached in terms of section 3(10) of the Act, the fund or the property in respect of which an undertaking is given may be described as the defendant.

### 3. Provisional sentence proceedings

Rule 8 of the Uniform Rules shall apply in respect of provisional sentence proceedings in conjunction with the rules with regard to in rem proceedings, which rules shall apply *mutatis mutandis*.

### 4. Arrest and release

- (1) An arrest in an action in rem shall be effected by the service of a warrant in accordance with these rules or by the giving of security

as contemplated in section 3(10) of the Act.

- (2) (a) A warrant shall be issued by the registrar and shall be in a form corresponding to Form 2 of the First Schedule.
- (b) The registrar may refer to a judge the question whether a warrant should be issued.
- (c) Any such question shall be so referred if it appears from a certificate contemplated in rule 4(3) or if the registrar otherwise has knowledge that security or an undertaking has been given in terms of section 3(10)(a) of the Act to prevent arrest or attachment of the property in question.
- (d) If a question has been so referred to a judge, the judge may authorise the registrar to issue a warrant, or may give such directions as he or she deems fit to cause the question of whether a warrant should be issued to be argued.
- (e) If a question has been so referred to a judge, no warrant shall be issued unless the judge has authorised the registrar to issue a warrant.
- (3) Save where the Court has ordered the arrest of property, the registrar

shall issue a warrant only if summons in the action has been issued and a certificate signed by the party causing the warrant to be issued is submitted to him or her stating—

- (a) that the claim is a maritime claim and that the claim is one in respect of which the Court has jurisdiction or one in respect of which the Court will have jurisdiction on the effecting of the arrest;
- (b) that property sought to be arrested is the property in respect of which the claim lies or, where the arrest is sought in terms of section 3(6) of the Act, that the ship is an associated ship which may be arrested in terms of the said section;
- (c) whether any security or undertaking has been given in respect of the claim of the party concerned to procure the release or prevent the arrest or attachment of the property sought to be arrested and, if so, what security or undertaking has been given and the grounds for seeking arrest notwithstanding the fact that any such security or undertaking has been given; and
- (d) that the contents of the certificate are true and correct to the best of the knowledge, information and belief of the signatory and

the source of any such knowledge and information.

- (4) (a) Any person who intends to institute an action in rem against any property which has been arrested or attached may file with the registrar and serve, in accordance with the provisions of rules 6(2) and (3), a notice of such intention.
- (b) A copy of the notice shall also be served on—
  - (i) the person who caused the arrest of the property to be effected or his or her attorneys;
  - (ii) all parties of record; and
  - (iii) the port captain.
- (c) When such a notice has been filed and served, the property shall not be released from arrest or attachment unless the person desiring to obtain the release of the property has given notice to the person who has filed the notice that he or she desires to obtain the said release.
- (d) Where notice under paragraph (a) has been given and the person who gave such notice has not consented to the release of the property or, in any other case, if the person who caused the arrest of the property to be effected has not consented to the release of

the property, the property shall not be released unless the Court so orders.

- (5) (a) Property under arrest shall be released only in terms of a release warrant directed to the sheriff and issued by the registrar.
- (b) Service of such warrant shall be effected on the property arrested and on all persons referred to in subrule (4)(b).
- (6) Any person giving security or an undertaking in terms of section 3(10) of the Act to prevent the arrest or attachment of property shall appoint an address contemplated in rule 19(3) of the Uniform Rules at which any summons or warrant in an action in rem against the property may be served.
- (7) (a) In cases where no notice has been given under subrule (4), a release warrant shall be issued only—
- (i) with the consent of the person who caused the arrest to be effected; or
- (ii) on the giving of security in a sum representing the value of the property or the amount of the claims of the person who has caused the arrest to be effected.

(b) In cases where notice has been given under subrule (4)(a), a release warrant shall be issued only—

- (i) with the consent of the person who caused the arrest of the property to be effected and the consent of all persons who have given any such notice; or
- (ii) on the giving of security in the sum representing the value of the property or the amount of the claims of the person who caused the arrest of the property to be effected and of all the persons who have given notice in terms of subrule (4)(a) and have not consented to the release.
- (c) Notwithstanding paragraphs (a) and (b), the Court may order the issue of a release warrant.
- (8) A release warrant shall apply only with regard to the particular arrest referred to in the warrant.
- (9) (a) Subject to paragraph (b) any security shall be in a form acceptable to the registrar.
- (b) Any dispute with regard to any release, including any dispute relating to the form or amount of any security or the value of any property, shall be referred to the Court, which may itself resolve the dispute or may give

such directions as it deems appropriate for the resolution of the dispute.

### 5. Attachment to found or confirm jurisdiction

- (1) An application for the attachment of property to found or confirm jurisdiction may be made ex parte, unless the Court otherwise orders.
- (2) The applicant shall, in addition to any other requirement for an application in terms of subrule (1), satisfy the Court mutatis mutandis with regard to the facts and matters referred to in paragraph (a) and (c) of rule 4(3).
- (3) The order of a Court on an application contemplated in subrule (1), which shall be served in the manner set forth in the order, shall order the attachment of the property in question and shall further call upon all interested persons to show cause on the date stated in the order why the order for attachment should not be confirmed.
- (4) (a) A person desiring to obtain the release of property which has been attached to found or confirm jurisdiction may, subject to rule 4(7) and any order made in terms of section 5(2) of the Act, obtain such release on giving security for the claim to the person who caused the said property to be attached or may

apply to the Court for the release of the property on good cause shown.

- (b) Rule 21 shall mutatis mutandis apply in respect of security given in terms of paragraph (a).

### 6. Service in rem

- (1) (a) No summons or warrant shall be served if more than 1 year has expired since the date when it was issued unless the Court has, before the expiry of the period of 1 year, on application, granted leave for the summons or warrant to be served within such further period as the Court may deem fit.
- (b) In an application in terms of paragraph (a) it shall not be necessary to give notice of application to any person who is not on record with the registrar as a party to the matter concerned: Provided that any party to whom notice of the application has not been given and who may be affected by the order granted pursuant thereto may apply to the Court, on notice to the party to whom the order in question has been granted, for the revocation or amendment of the order granted in the absence of that party.
- (2) A summons in an action in rem shall be served on the property in respect

of which the action is brought in the same manner as that in which a warrant is served in accordance with this rule.

(3) A warrant in an action in rem shall be served—

- (a) in the case of a ship or its equipment, furniture, stores or bunkers, by affixing a copy of the warrant to any mast, or to any suitable part of the ship, equipment, furniture, stores or bunkers and by handing a further copy to the master or other person in charge of the ship;
- (b) in the case of cargo, by handing a copy of the warrant to the person in charge of the cargo and, unless the said person will not permit access to the cargo or the cargo has not been landed or it is not practical so to do, by affixing a further copy to the cargo;
- (c) in the case of freight, by handing a copy of the warrant to the person by whom the freight is payable;
- (d) in the case of a container, by handing a copy of the warrant to the person in charge of the container and, unless the said person will not permit access to the container, or the container has not been landed or it is not

practical so to do, by affixing a further copy to the container.

- (e) in the case of a fund, by handing a copy of the warrant to the registrar and, should a referee have been appointed by the Court in respect of the fund in question, by handing a copy of the warrant to the referee;
  - (f) in the case of property deemed to have been arrested in terms of section 3(10)(a) of the Act, by serving the warrant upon the address for service appointed in terms of rule 4(6);
  - (g) in any other manner ordered by the Court.
- (4) If property has been sold, service shall be effected on the person having custody of the proceeds.
- 7. Service in personam and service of any other process**
- (1) Subject to the provisions of this rule and rule 6, service of a summons *in personam* and other process directed to the sheriff shall be effected by the sheriff in the manner set out in rule 4 of the Uniform Rules.
  - (2) It shall be permissible to serve a warrant of arrest and a summons in rem at any time and on any day of the week should circumstances render it necessary to do so.

## 8. Notice of intention to defend

- (1) The provisions of rule 19 of the Uniform Rules, other than the proviso to rule 19(1) of the Uniform Rules, shall, subject to rule 22, *mutatis mutandis* apply to a notice of intention to defend an action in admiralty proceedings.
- (2) Where summons has been issued in an action in rem, any person having an interest in the property concerned may, at any time before the expiry of 10 days from the service of the summons, give notice of intention to defend and may defend the action as a party.
- (3) A person giving notice of intention to defend an action in rem shall not merely by reason thereof incur any liability and shall, in particular, not become liable *in personam*, save as to costs, merely by reason of having given such notice and having defended the action in rem.
- (4) Notice of intention to defend may be given when a summons has been issued, notwithstanding that the summons has not been served upon the person giving notice of intention to defend, or any other person.

## 9. General rules as to pleadings

- (1) No pleading shall be required in an action unless notice of intention to defend is delivered therein.

- (2) (a) In every action in which notice of intention to defend has been delivered, the plaintiff shall within 10 days thereafter deliver his or her particulars of claim.
- (b) The defendant shall, within 10 days after delivery of the particulars of claim, deliver a plea.
- (c) Any party may, consequent upon a pleading delivered by another party to the action, deliver any further pleading within 10 days after the delivery of the preceding pleading: Provided that no replication or subsequent pleading which would be a mere joinder of issue or bare denial of allegations in the previous pleading shall be necessary.
- (d) If any party fails to deliver any pleading within the time limit laid down in this rule or within any extended time allowed in terms hereof, any other party may by notice served upon him or her require him or her to deliver that pleading within five days after the day upon which the notice is delivered.

- (e) Any party failing to deliver the pleading within the time stated in the notice referred to



- in paragraph (d) or within such further period as may be agreed between the parties or as may be ordered by the Court shall be in default of filing such pleading and ipso facto barred.
- (3) (a) Every pleading shall contain a clear and concise statement of the material facts upon which the party relies for his or her claim, defence or answer as therein set forth, with sufficient particularity to enable the opposite party to reply thereto.
- (b) Every plea and subsequent pleading shall admit, deny or confess and avoid all the material facts alleged in the pleading preceding it, or state which facts are not admitted and to what extent.
- (c) It shall not be an objection to any further pleading after a plea or to a replying affidavit or further affidavit after a replying affidavit that it raises new matters or, in the case of any further pleading after a plea, that it constitutes a departure from a previous allegation made by the same party and any such departure shall be deemed to be in the alternative to any such previous allegation.
- (4) Where damages are claimed, it shall not be necessary to state particulars of damage: Provided that the amount and nature of the damages claimed shall be stated.
- (5) (a) No further particulars may be requested for the purposes of pleading and no exception may be taken to any pleading on the ground that it is vague and embarrassing.
- (b) (i) Where any pleading lacks averments which are necessary to sustain an action or defence, the opposing party may within 10 days after receipt of the pleading deliver an exception thereto and may cause it to be set down for hearing.
- (ii) The notice of exception shall clearly and concisely specify the ground upon which the exception is founded.
- (6) A party who, despite due enquiry and endeavour, is unable to furnish a requisite particular in a pleading shall be entitled to state that fact in the pleading: Provide that—
- (a) the party shall in the pleading specify in which respect he or she is unable to furnish such particular;
- (b) the party shall by way of an addendum to the pleading furnish such particular as soon as it

comes to his or her knowledge, but in any case not later than six weeks before the date of the trial; and

- (c) a party who improperly claims in a pleading that he or she is unable to furnish such particular shall be liable for costs to the extent which the Court may order.

- (7) The provisions of this rule shall not affect the powers of the Court in terms of rule 20.
- (8) A Court may in its discretion order, or the parties concerned may agree, that any action be tried without pleadings: Provided that the issues shall be defined in any such order or agreement.

## 10. Claim in reconvention

A defendant and any person giving notice of intention to defend in an action in rem may claim in reconvention against the plaintiff, either alone or with any other person.

## 11. Third parties

- (1) If a party alleges that he or she is entitled to claim a contribution from or indemnification against any other person (hereinafter called a “third party”) or that any issue or question in the proceedings to which he or she is a party has arisen or will arise

between him or her and the third party and should be determined in the proceedings, he or she may cause a third party notice to be issued and served upon the third party in accordance with Form 7 of the First Schedule to the Uniform Rules.

- (2) In any third party notice the said question or issue and, if any relief is claimed against the third party, the grounds upon which such relief is claimed shall be stated in the same manner as such grounds would be stated in the particulars of claim.
- (3) A third party notice may after the close of pleadings be issued only with the leave of the Court.
- (4) A third party notice shall be accompanied by copies of all the pleadings issued to date, but the pleadings shall not be annexed to the third party notice.
- (5) (a) A third party shall be deemed to be a defendant to any claim in the third party notice and may deliver any pleadings accordingly.

- (b) A third party may in any such pleadings raise any plea with regard to the claim of the plaintiff in the action.
- (c) Unless a third party in his or her pleadings expressly states the contrary, he or she shall be

deemed to have agreed to be bound by any admission, agreement or compromise made by the defendant with regard to the claim of the plaintiff against the defendant.

- (6) A third party or a defendant in reconvention may in like manner bring in further parties to be appropriately described as, for instance, a fourth party or third party in reconvention, and for the purposes of the proceedings any such further party shall be deemed to be a third party.

## 12. Close of pleadings

Pleadings shall be closed when the time has expired for the delivery of any further pleading and no such pleading has been delivered, or when a pleading has been filed joining issue, without the addition of any further pleading.

## 13. Request for further particulars

- (1) At any time after the close of pleadings a party may deliver a request for further particulars with regard to the pleading of any other party to the action for the purpose of enabling the party delivering the request to prepare for trial.
- (2) (a) Particulars may be requested of a denial or with regard to any matter deemed to have been put in issue.

(b) It shall not be an objection to any such request that the purpose of the request is to obtain an admission of a matter placed in issue.

- (3) Any answer to a request for further particulars shall bind the party giving the answer in relation to all parties to the action and not in relation to the party requesting the particulars.

## 14. Preliminary procedures

- (1) A Court may at any time, whether before or after the issue of summons, make an order under section 5(5) of the Act, including the making of an order for the taking of evidence of any person named or otherwise identified (whether by description or otherwise) in the order, with regard to any matter which may be relevant in any action pending or contemplated in the Republic and may in the order define the issues on which such evidence may be given and prescribe the procedure for the taking of such evidence, which may include—
- (a) the appointment of a commissioner to take the evidence concerned;
- (b) the duties and powers of the commissioner;

(c) directions with regard to the venue of the commission hearing and the recording and preservation of the evidence taken; and

(d) such other matters as the Court may deem fit.

- (2) In respect of any order made in terms of subrule (1) the following shall apply, unless the Court otherwise orders:

- (a) The attorney of record for the party applying for the order shall assist and carry out the directions of the commissioner with regard to the arranging of a venue for the taking of the evidence in terms of the order, for the recording and preservation of that evidence and for securing the attendance of the witnesses referred to in the order for the purpose of taking the evidence.
- (b) Subject to any direction contained in the order for the taking of evidence—
- (i) any person giving evidence may be examined, cross-examined or re-examined; and
- (ii) the examination, cross-examination and re-examination of persons giving evidence shall be conducted in like manner as at the trial of an action or matter.

(c) Any person who applies for an order contemplated in this rule shall give security for any costs or expenses, including those arising from any delay, occasioned by the application and the carrying into effect of any such order.

(d) The cost of obtaining and carrying into effect the order of Court shall form part of the costs of the action in respect of which the relevant order of Court has been issued.

- (3) (a) (i) A plaintiff or a defendant, whether in convention or reconvention, or any third party may, after being served with a summons or giving or receiving notice of intention to defend or receiving a claim in reconvention or a third party notice, request the party issuing or delivering such document and any other opposite party to attend a conference in terms of this rule.
- (ii) For the purposes of this rule, any plaintiff, any defendant who has given notice of intention to defend or any third party who has delivered any pleading shall be deemed to be an opposite party.

(b) The party requesting a conference in terms of paragraph (a) shall in his or her request specify the—

- (i) documents which any opposite party is required to make available at the conference;
- (ii) particulars which any opposite party is required to make available or to give at the conference with regard to the claim or defence upon which the opposite party relies.

(c) Any opposite party may similarly require the party convening the conference to make available and give documents and information in the manner provided in paragraph (b).

(d) Any party may require any other party to disclose and make available any documents and give any available information which might be relevant to a submission of the matter in dispute to arbitration.

(4) If any party fails to attend a conference pursuant to a request made in terms of subrule (3), any other party may apply to the Court for an order that the said party attend such conference.

(5) At the said conference, the party required to do so shall disclose and

make available all the said documents and give the said information at the conference or state an oath in an affidavit to be filed of record—

- (a) why he or she is unable to make available and give the documents or particulars requested;
- (b) alternatively, why he or she objects to making available and giving documents or particulars requested.

(6) In the event of an examination, testing or inspection being held pursuant to the provisions of section 5(5) of the Act, any person entitled to attend such examination, testing or inspection shall be entitled to request a conference for the purpose of clarifying any matter arising from the examination, testing or inspection of any ship, cargo or the contents of any documents or any other thing.

**15. Discovery of documents**

Discovery of documents shall be in accordance with rule 35 of the Uniform Rules: Provided that subrule (5) of rule 35 of the Uniform Rules shall not apply.

**16. Pre-trial procedure**

(1) A Court may, at any time, on the application of any party, make an order and give directions for the

more effective putting into effect of its order with regard to 1 or more of the following matters:

(a) Requiring any person to answer any question on oath either before a person to be nominated in the order or on affidavit or otherwise as the Court may order arising from failure to answer, the inadequacy of any answer to any request for further particulars, failure to make any admission requested in such a request or for the purpose of amplifying any such answer.

(b) The admission of evidence in terms of section 6(3) of the Act, in particular by ordering that evidence specified in the order be taken by way of written statement, whether on oath or not.

(c) The referral of any matter to arbitration or to a referee in terms of section 5(2)(e) of the Act.

(d) The holding of any conference in accordance with rule 37 of the Uniform Rules in connection with any matters set out in the said rule or in the order or the agreement of the parties, subject to any modifications set out in the order or agreement.

(e) The restating or clarification of the issues.

(f) The papers to be placed before the Court for the purpose of the hearing.

(2) The parties may without any order agree on any matter referred to in subrule (1).

(3) An order with regard to any matter referred to in paragraphs (a), (d) or (f) of subrule (1) shall be made only after the close of pleadings, unless the Court is of the opinion that an order should be made before the close of pleadings.

(4) Any agreement in terms of this rule and the proceedings of any conference held in terms of rule 14 shall be recorded in writing and signed by the parties.

**17. Trial**

The procedure in respect of the setting down and hearing of any trial shall be in accordance with the procedure regulated in the Uniform Rules and any rules regulating the conduct of proceedings in the division in respect of which the Court is constituted, or as ordered by the Court, save that the registrar, with the authority of a judge in chambers, may assign fixed dates for any trial.

## 18. Applications

- (1) Subject to this rule, rule 6 of the Uniform Rules shall apply to applications.
- (2) Every application brought on notice of motion shall state—
  - (a) the time within which the respondent shall deliver any affidavits; and
  - (b) the date for the hearing of the application.
- (3) Unless otherwise stated in any rule nisi, the affidavit of any respondent or person called on to show cause shall be filed at least 10 days before the return date of any affidavit of the applicant shall be filed at least five days before the return date.

## 19. Variation of periods of time and non-compliance

- (1) On the application of any person the Court may abridge or extend any period of time and may advance or postpone any date in respect of any matter for which a time or date is laid down in these rules, the Uniform Rules as applicable to admiralty proceedings, any notice or any order of Court or in any other way.

- (2) Any application in terms of subrule (1) may be made on notice to all interested parties.
- (3) If any person has not complied with a notice given in terms of these rules or the Uniform Rules, any interested party may apply in the manner provided for in subrule (2) for an order that there be compliance with the notice.
- (4) (a) If any party has not complied with an order of Court, any interested party may apply for an order that the claim or defence or participation in the action of any person not so complying be set aside and struck out and that the said person be dealt with as being in default.
  - (b) On any such application the Court may so order, or make such other order as the Court deems fit.

## 20. Vexatious or irregular proceedings

- (1) The Court may strike out any proceedings which are vexatious or an abuse of the process of the Court.
- (2) If it appears to the Court on application that there have been any irregular proceedings by any party

or non-compliance with the rules or any order of Court, the Court may make such order as appears to it to be just with regard to the said proceedings or non-compliance, including an order that any such party be deemed to be in default, or that judgment be given against any such party.

## 21. Property arrested or attached, judicial sales and the appointment of referees

- (1) Any property arrested or attached shall be kept in the custody of the sheriff, who may take all such steps as the Court may order or as appear to the sheriff to be appropriate for the custody and preservation of the property, including the removal and storage of any cargo and the removal, disposal and storage of perishable goods which have been arrested or attached, or which are on board any ship which has been arrested or attached.
- (2) In acting under subrule (1), the sheriff shall consult any person or persons who have caused the arrest or attachment of the property to be effected and shall act in accordance with any relevant order of Court.
- (3) (a) The sheriff shall be entitled to reasonable remuneration for effecting any arrest or

attachment to found or confirm jurisdiction and for any act done by him or her in terms of this rule.

(b) Any such remuneration may be less or greater than the corresponding remuneration in any tariff prescribed in the Uniform Rules or elsewhere.

- (4) In terms of section 9 of the Act the Court may, at the instance of any interested party, order that arrested or attached property be sold on such terms and in such manner as the Court may deem fit and may in particular order—
  - (a) that the property be sold by public auction, private tender or treaty or in such other manner as the Court may deem appropriate under the circumstances;
  - (b) that the property be sold without reserve to the highest bidder or that it be sold subject to a reserve price in the amount of the appraisal of the value of the property determined by an appraiser appointed by the Court in such order;
  - (c) that in the event of any reserve price not being achieved, the sale be subject to confirmation by the Court;

- |  |   |   |   |
|--|---|---|---|
| <p>(d) that an appraiser identified in the order be appointed for the purpose of appraising the value of the property in question;</p>   | <p>deems such an appointment appropriate under the circumstances;</p>   | <p>provide the registrar with such security in respect of the costs reasonably incurred by any party in connection with the sale as the Court may deem appropriate.</p>   | <p>a referee to receive claims against the fund and to make recommendations to the Court with regard to such claims.</p>  |
| <p>(e) that the auctioneer identified in the order be appointed to conduct the sale, whether it be by public auction, private tender or treaty or in such other manner as the Court may order;</p> | <p>(m) that the referee, if appointed, shall carry out such duties, have such powers and report to the Court as may be directed in the order;</p>   | <p>(6) The proceeds of any sale and any amount paid as security or otherwise into Court shall be invested in such a manner as the parties may agree or as the Court may order, and such an order may be made notwithstanding the fact that the parties have agreed otherwise.</p> | <p>(8) (a) Claims against the fund shall contain full details of the claim, when it arose and how it is made up, and shall be signed by or on behalf of the party submitting the claim and shall have annexed thereto copies of all relevant documents relating to the claim.</p> |
| <p>(f) what the date or period for the sale of the property shall be;</p>  | <p>(n) that the sale be on such conditions as the Court may order;</p>  | <p>(7) (a) The proceeds and amounts referred to in subrule (6) shall constitute a fund in Court and shall be dealt with as follows:</p>   | <p>(b) A claim shall contain full details of any interest claimed in respect thereof stipulating the rate of interest claimed, the period for which it is claimed, the basis on which it is claimed and whether it is compound, simple or any other form of interest.</p>         |
| <p>(g) that the auctioneer advertise, arrange and conduct the sale in such manner as the Court may direct;</p>   | <p>(o) that the costs of the applicant and any other party interested in, affected by, or referred to in the order be dealt with in such a manner as the Court may direct.</p>  | <p>(i) The fund shall be held by or on behalf of the registrar on such terms as the Court may direct.</p>   | <p>(c) The Court shall make such order as it deems fit with regard to parties, procedure and the payment of any fund, proceeds or amount: Provided that any such payment shall be made in accordance with section 11 of the Act.</p>  |
| <p>(h) that the sheriff take such steps as the Court may direct for the preservation of the property pending the sale;</p>   | <p>(5) (a) When the Court has granted an order for the sale of any property, no person may apply to the Court for the stay or postponement of the sale later than 10 days prior to the date of the sale, unless special or exceptional circumstances exist that justify such a stay or postponement and notice of the application has been given to the auctioneer and the sheriff.</p> | <p>(ii) In any action against the fund, all process, notices or other documents with regard to such action shall be served on the registrar or, if already appointed, the referee.</p>  | <p>(9) Subject to section 11 of the Act, any party shall be entitled to proceed in terms of rules 45 and 46 of the Uniform Rules for the execution of any judgment obtained by him or her <i>in personam</i> or for any amount for which no security is held.</p>                 |
| <p>(i) that the auctioneer shall be entitled to such commission and such other remuneration and reimbursement as may be stated in the order;</p>   | <p>(b) The Court may, when granting a stay or postponement of the sale pursuant to an application in terms of paragraph (a), order the person applying for the stay or postponement to</p>  | <p>(iii) Any party having an interest in the fund may be joined in or may join in any proceedings against the fund.</p>   |   |
| <p>(j) that the order be served and published in the manner stated in the order;</p>   |   | <p>(b) Any party having an interest in the fund may at any time apply to the Court for an order appointing</p>  |   |
| <p>(k) that the proceeds of the sale shall be dealt with as provided in the order;</p>   |   |   |   |
| <p>(l) that a referee identified in the order be appointed if the Court</p>  |   |   |   |

## 22. Filing, delivery and preparation of papers

- (1) The registrar shall cause the following records to be kept in a convenient form separately from any records relating to any other proceedings in the division of which he or she is registrar:
- (a) Summonses and warrants issued in and applications which are, or are made with regard to, admiralty proceedings.
- (b) Orders made in admiralty proceedings.
- (c) Any security or undertaking given in terms of section 3(10) of the Act.
- (d) Any notice in terms of rule 4(4).
- (e) Generally, the records of proceedings pending or proceedings before the Court.
- (2) (a) The attorney for a party obtaining the issue of a summons, warrant of arrest or third party notice, or giving notice of intention to defend shall file a power of attorney only if notice is given by any party requiring that such a power of attorney be filed.
- (b) The filing of any written or telex authority filed within 15 days shall be sufficient compliance with such notice, but a formal power of attorney shall be filed within 30 days of the filing of any such authority.
- (3) Every summons, third party notice and warrant—
- (a) shall be signed by the attorney for the party causing it to be issued or, if the party is not represented by an attorney and is a natural person, by that party and shall thereafter be signed and issued by the registrar;
- (b) shall contain an address of the attorney or party referred to in rule 17(3) of the Uniform Rules.
- (4) (a) If the parties are described as set forth in rule 2(3) or if notice of intention to defend is given in an action in rem, the power of attorney may describe the parties as they are described in the action, but in that event there shall be filed with the power of attorney an undertaking by the attorney to pay any costs awarded against the party represented by him or her and any damages awarded against the party under section 5(4) of the Act, which undertaking shall be enforceable by the other parties to the action.
- (b) (i) If any party is described as set forth in rule 2(3), any other party may, by notice, require the plaintiff or any defendant or third party who has given notice of intention to defend to give particulars of the identity of the party or parties so described.
- (ii) The party receiving the said notice shall within 15 days of the receipt thereof give particulars of the parties so described by him or her, or of his or her identity if he or she is the party so described but, subject to any order of the Court, the action shall proceed notwithstanding the fact that the notice has not been complied with.
- (c) The Court may at any time order that security be given in respect of any undertaking under this subrule.
- (5) The title of the proceedings shall consist of a heading indicating the nature of the document, the name of the division of the Supreme Court of South Africa concerned, the number assigned thereto by the registrar, the name of the ship and the names of the parties and, if the proceedings are or are in connection with any action, stating whether the action is an action in rem or *in personam* or in rem and *in personam*.
- (6) All documents filed shall bear the title of the proceedings and shall be filed with a filing sheet stating the nature of the document filed.
- (7) Any pleading and any request for further particulars and any reply thereto shall be signed by the party (if a natural person) or an attorney and shall, if signed by an attorney, also be signed by an advocate or, in the case of an attorney who has under section 4(2) of the Right of Appearance in Court Act, 1995 (Act No. 62 of 1995), the right of appearance in the Supreme Court, only by such attorney.
- (8) (a) When any document is filed as part of the pleadings or as a request for particulars or a reply thereto in an action or as part of the affidavits and papers in an application, it shall be accompanied by an index and the papers delivered shall be numbered in accordance with the index.
- (b) When a previous index has been filed in the proceedings, the person responsible for the delivery of the documents shall continue the index as a running index of the documents delivered by him or her, so that all papers filed and delivered shall, at all times, constitute a paged and indexed series of documents.



- (9) When any amendment is deemed to have been agreed to or has been ordered to be made by the Court in terms of rule 28 of the Uniform Rules, the pleadings shall forthwith be deemed to have been so amended notwithstanding the fact that the amended page has to been delivered in terms of rule 28(7) of the Uniform Rules.
- (10) (a) Subject to the provisions of this rule, pleadings, affidavits and a response to any notice shall be delivered or made within 10 days after delivery of the pleading, affidavit or notice to which they are an answer or response or, in the case of a plea, after the giving of notice of intention to defend.
- (b) The said time may be extended or abridged by an agreement or by an order of the Court.
- (c) Any party unreasonably refusing to agree to an extension of time shall be liable to pay the costs occasioned by an application arising out of any such refusal.
- (d) A pleading or affidavit delivered out of time shall not merely on that account be refused by the registrar or any other party unless the party seeking to deliver the pleading has been barred or the Court orders it to be struck out.

- (e) Any document executed in any place outside the Republic shall be deemed to be sufficiently authenticated for the purpose of use in the Republic in admiralty proceedings if it has been duly authenticated at such foreign place by the signature and seal of office—
- (i) of any person referred to in rule 63(2)(a), (b) or (c) of the Uniform Rules; or
- (ii) of any practising notary in such foreign place.
- (f) Faxed copies of pleadings, affidavits or documents may be used when the original thereof is not available for use: Provided that the Court may mero motu or at the request of any interested party require the original thereof to be produced within such time as the Court may deem fit and may make any relief conditional upon the production of the said original.

### 23. Representative actions and limitations of liability

- (1) In order to avoid a multiplicity of actions, the Court may make an order that any action pending before it be regarded as a test action and that any other action to which 1 or more of the parties to the action so pending are parties and in which the same

questions would arise abide the result of the test action and may make any order as to the procedure and representation in the said action as the Court deems fit.

- (2) Where any person claims to be entitled to a limitation of liability referred to in paragraph (w) of the definition of “maritime claim” in section 1(1) of the Act, the Court may give such directions as it deems fit with regard to the procedure in any such claim, the staying of any other proceedings and the conditions for the consideration of any such claim, which may include a condition that such amount as the Court may order to be paid to abide the result of the consideration of the said claim, or that the claimant be required to admit liability for all or any claims made against him or her, or any other condition which the Court deems fit.

### 24. Exclusion of certain rules of the uniform rules

Rules 9, 13, 17, 18, 20–23, 25, 26, 29, 30, 32, 43–46 and 50–57 of the Uniform Rules shall, subject to the provisions of these rules, not apply to admiralty proceedings.

### 25. Directions by the Court

- (1) The Court may, in any admiralty proceedings mero motu or on the application of any party or

other person having a sufficient interest, give any directions which it considers proper for the disposal of any matter before it.

- (2) Any such direction may deviate from or supplement any provision of these rules, or of the Uniform Rules, or of any other rules relating to the division in question.

### 26. Repeal of rules

These rules and the Uniform Rules (except as excluded in rule 24 of these rules) shall apply to admiralty proceedings to the exclusion, subject to the provisions of these rules, of any other rule of Court, and to the conduct after the commencement of these rules of proceedings started before such commencement.

### 27. Commencement

These rules shall come into operation on 19 May 1997.

- (a) Summonses and warrants issued in and applications which are, or are made with regard to, admiralty proceedings.
- (b) Orders made in admiralty proceedings.
- (c) Any security or undertaking given in terms of section 3(10) of the Act.

- (d) Any notice in terms of rule 4(4).
- (e) Generally, the records of proceedings pending or proceedings before the Court.
- (2) (a) The attorney for a party obtaining the issue of a summons, warrant of arrest or third party notice, or giving notice of intention to defend shall file a power of attorney only if notice is given by any party requiring that such a power of attorney be filed.
- (b) The filing of any written or telex authority filed within 15 days shall be sufficient compliance with such notice, but a formal power of attorney shall be filed within 30 days of the filing of any such authority.
- (3) Every summons, third party notice and warrant—
- (a) shall be signed by the attorney for the party causing it to be issued or, if the party is not represented by an attorney and is a natural person, by that party and shall thereafter be signed and issued by the registrar;
- (b) shall contain an address of the attorney or party referred to in rule 17(3) of the Uniform Rules.
- (4) (a) If the parties are described as set forth in rule 2(3) or if notice of intention to defend is given in an action in rem, the power of attorney may describe the parties as they are described in the action, but in that event there shall be filed with the power of attorney an undertaking by the attorney to pay any costs awarded against the party represented by him or her and any damages awarded against the party under section 5(4) of the Act, which undertaking shall be enforceable by the other parties to the action.

## Our Firm

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We have an enviable track record of providing legal services to the highest professional standards in Africa. We work for clients across numerous African jurisdictions on corporate, finance, competition, taxation, employment, technology and dispute resolution matters.

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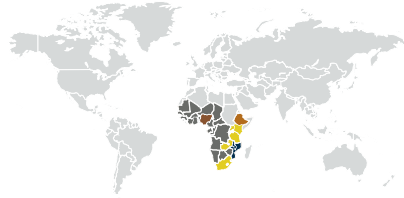
Everywhere we work, we offer clients a service that uniquely blends expertise in the law, knowledge of the local market, and an understanding of their businesses. Our aim is to assist clients to achieve their objectives as smoothly and efficiently as possible while minimising the legal and regulatory risks.

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## Our Presence in Africa



Recognising the size and enormous diversity of Africa, our approach to providing legal services across the continent is intended to offer on-the-ground advice in the countries that matter for our clients. Our presence in Africa is always evolving to meet the changes that are shaping the future of this vast continent.

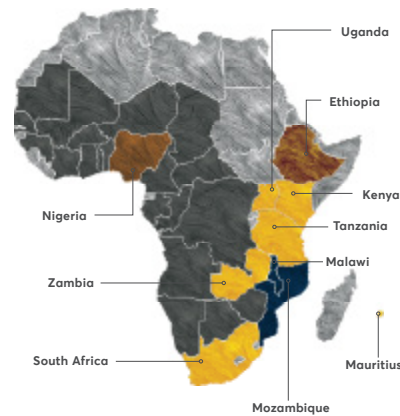
Currently, we have our own offices in six African countries: Kenya (Nairobi), Mauritius (Moka), South Africa (Cape Town, Durban, Johannesburg), Tanzania (Dar es Salaam), Uganda (Kampala) and Zambia (Lusaka).

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- Alliance firms
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## Key Contacts

The following Bowmans contact people are available 24 hours a day for advice and service: +27 21 480 7920.



### CRAIG CUNNINGHAM

Head of Shipping and Logistics  
Cape Town, South Africa

T: +27 21 480 7801

E: [craig.cunningham@bowmanslaw.com](mailto:craig.cunningham@bowmanslaw.com)



### ANDREW PIKE

Head of Ports, Transport and Logistics  
Durban, South Africa

T: +27 31 109 1156

E: [andrew.pike@bowmanslaw.com](mailto:andrew.pike@bowmanslaw.com)



### JEREMY PRAIN

Partner  
Cape Town, South Africa

T: +27 21 480 7811

E: [jeremy.prain@bowmanslaw.com](mailto:jeremy.prain@bowmanslaw.com)



**LANA STOCKTON**

Partner  
Cape Town, South Africa

**T:** +27 21 480 7803

**E:** [lane.stockton@bowmanslaw.com](mailto:lane.stockton@bowmanslaw.com)



**MARK VAN VELDEN**

Partner  
Durban, South Africa

**T:** +27 31 109 1160

**E:** [mark.vanvelden@bowmanslaw.com](mailto:mark.vanvelden@bowmanslaw.com)



# BOWMANS

THE VALUE OF KNOWING

## **Cape Town, South Africa**

**T:** +27 21 480 7800

**E:** [info-cpt@bowmanslaw.com](mailto:info-cpt@bowmanslaw.com)

## **Dar es Salaam, Tanzania**

**T:** +255 76 898 8640

**E:** [info-tz@bowmanslaw.com](mailto:info-tz@bowmanslaw.com)

## **Durban, South Africa**

**T:** +27 31 109 1150

**E:** [info-dbn@bowmanslaw.com](mailto:info-dbn@bowmanslaw.com)

## **Johannesburg, South Africa**

**T:** +27 11 669 9000

**E:** [info-jhb@bowmanslaw.com](mailto:info-jhb@bowmanslaw.com)

## **Kampala, Uganda**

**T:** +256 41 425 4540

**E:** [info-ug@bowmanslaw.com](mailto:info-ug@bowmanslaw.com)

## **Lusaka, Zambia**

**T:** +260 (211) 356638

**E:** [info-zb@bowmanslaw.com](mailto:info-zb@bowmanslaw.com)

## **Moka, Mauritius**

**T:** +230 460 5959

**E:** [info-ma@bowmanslaw.com](mailto:info-ma@bowmanslaw.com)

## **Nairobi, Kenya**

**T:** +254 20 289 9000

**E:** [info-ke@bowmanslaw.com](mailto:info-ke@bowmanslaw.com)



## **Follow us on Twitter:**

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## **Alliance Firms:**

### **Aman Assefa & Associates Law Office, Addis Ababa, Ethiopia**

**T:** +251 11 470 2868

**E:** [info@aacl.com](mailto:info@aacl.com)

### **Udo Udoma & Belo-Osagie, Lagos, Nigeria**

**T:** +234 1 2774920-2, +234 1 2719811-3

**E:** [uubo@uubo.org](mailto:uubo@uubo.org)