



2005/03

ADMIRALTY RULES 2005

Hon. F. Goodwin, KBE

Queen's Representative

ORDER IN EXECUTIVE COUNCIL

At Avarua, Rarotonga this 8th day of June 2005

Present:

HIS EXCELLENCY THE QUEEN'S REPRESENTATIVE IN EXECUTIVE COUNCIL

PURSUANT to Section 102 of the Judicature Act 1980-81 as substituted by Section 2 of the Judicature Amendment Act 1981, and section 10 of the Admiralty Act 2004, His Excellency the Queen's Representative acting by and with the advice and consent of the Executive Council and with the concurrence of the Rules Committee hereby makes the following rules.

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RULES

- 1. **Short Title** - These Rules may be cited as the Admiralty Rules 2005.
- 2. **Interpretation** - (1) In these Rules unless the context otherwise requires-
 "the Act" means the Admiralty Act 2004;
 "action in rem" means an admiralty action in rem;
 "Code" means the Code of Civil Procedure 1981;
 "Registry" means the Registry of the Court;
 "Register of Admiralty Proceedings" means the separate register held at the Registry;
 "limitation action" means an action by ship owners or other persons under the Shipping Act 1998 for the limitation of the amount of their liability in connection with a ship or other property.

(2) Expressions not defined in these Rules but defined in the Act have, in these Rules, the meanings so defined.

PART 1
PRELIMINARY PROVISIONS

- 3. **Application of these Rules** - These Rules apply to -
 (a) Proceedings in the admiralty jurisdiction of the Court; and
 (b) Appeals in the Court of Appeal arising out of that admiralty jurisdiction whether commenced before, on, or after the date of commencement of these Rules.

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4. Application of other rules and practice of Court - The provisions of the Code and the general practice of the Court, apply where these Rules apply except so far as they are modified by or inconsistent with the Act or these Rules.

5. Directions where procedure not prescribed - (1) If a party wishes to take a step in a proceeding and the manner and form of the procedure is not prescribed by these Rules or any other Rules or by the general practice of the Court, that party may apply to the Court or a Judge for directions.

(2) A step in a proceeding is properly taken if it is taken in accordance with the directions given on an application under subclause (1).

6. Forms - (1) The prescribed forms must be used wherever appropriate.

(2) If a form has not been prescribed for any application under these Rules to the Court, the application must be in the form of an interlocutory application and any order made on that application must be in the form prescribed for an order made on an interlocutory application under these Rules.

(3) If subclause (2) does not apply, the parties may frame a form for the special purpose of the particular case or the Court may frame the form.

(4) Variations to a prescribed form are permitted if the circumstances of any particular case so require.

PART 2 COMMENCEMENT OF PROCEEDINGS

7. Types of action and issue of notice of proceeding - (1) Actions may be in personam or in rem, or both in personam and in rem.

(2) An action shall be commenced by a notice of proceeding -

(a) issued out of the Court; and

(b) endorsed, before being issued, with a concise statement of:

(i) the nature of the claim; and

(ii) the relief or remedy required; and

(iii) the amount claimed (if any); and

(c) using unless the circumstances otherwise require, the general heading set out in Form 1.

(3) The concise statement referred to in subclause (2) is not a statement of claim within the meaning of these Rules.

(4) An action in any case is to be treated as having commenced when a notice of proceeding complying with subclause (2) is filed in that case.

8. Actions in personam and service out of jurisdiction (1) An action in personam shall be commenced by a notice of proceeding in Form 2.

(2) The action must be intituled as in Form 1.

(3) Section 8A and 8B of the Judicature Act 1980-81, and any Rules made thereunder; and any relevant Rules of the Code, shall apply in relation to service out of the jurisdiction in an action in personam.

9. Actions in rem and service out of jurisdiction - (1) An action in rem shall be commenced by a notice of proceeding in Form 4.

(2) The action shall be intituled as in Form 3.

(3) No proceedings in rem concerning any claim against the Crown may be brought.

(4) A notice of proceeding in rem may not be served out of the jurisdiction, but a

notice of proceeding that is both in rem and in personam may be served out of the jurisdiction in so far as it is in personam.

(5) Section 8A and 8B of the Judicature Act 1980-81, and any Rules made thereunder; and any relevant Rules of the Code, shall apply to service out of the jurisdiction in an action under subclause (4).

(6) An action that is both in rem and in personam, or notice of an action that is both in rem and in personam, must be intituled as in Form 1 and be commenced by a notice of proceeding in Form 5.

10. Service of notice of proceeding in action in rem – (1) The notice of proceeding in an action in rem must be served as follows:

- (a) on a ship or on cargo or other property on board a ship:
 - (i) by attaching a sealed copy of the notice adjacent to the bridge or some conspicuous part of the ship, or adjacent to an entrance way to the superstructure or accommodation section of the ship; and
 - (ii) by leaving a copy of the notice with the person apparently in charge of the ship, if that person is available at the time of service.
- (b) on cargo or other property not on board a ship:
 - (i) by attaching a sealed copy of the notice to that cargo or other property; and
 - (ii) by leaving a copy of the notice attached to that place.
- (c) on freight in the hands of an individual:
 - (i) by showing the person a sealed copy of the notice; and
 - (ii) by leaving a copy of the notice with that person.
- (d) on proceeds in Court:
 - (i) by showing the Registrar a sealed copy of the notice; and
 - (ii) by leaving a sealed copy of the notice with the Registrar.
- (e) on inaccessible cargo or other property:
 - (i) by showing a sealed copy of the notice to any person appearing to be in charge of that cargo or other property; and
 - (ii) by leaving a copy of the notice with that person.
- (f) in any case, by taking such other steps as the Court may order.

(2) The notice of proceeding must be served by or on behalf of the plaintiff or the plaintiff's solicitor on any person at whose instance a caveat against arrest is entered under Rule 16 and a sealed copy of the notice must be delivered to the address for service given in the request for the caveat as soon as the plaintiff or the plaintiff's solicitor becomes aware that the caveat is in force.

(3) The notice of proceeding may be served on a Sunday, Good Friday or Christmas Day, or any public holiday, as well as on any other day.

(4) An affidavit of service exhibiting a sealed copy of the notice of proceeding and deposing to the time, place, and method of service must be filed.

(5) In an action in rem, service of a notice of proceeding or a warrant of arrest is not required if the solicitor for a person interested in the defendant undertakes in writing to:

- (a) accept service; and
- (b) enter an appearance; and
- (c) give security or pay money into Court instead of giving security.

11. Appearance – (1) A party intending to defend an action must enter an appearance in person, or by a solicitor, by filing a memorandum in Form 6 within the time and at the place directed in the notice of proceeding.

- (2) The time for entering an appearance is:
- (a) for a notice of proceeding to be served within the jurisdiction, within 14 days after the day of service;
 - (b) for a notice of proceeding to be served outside the jurisdiction, within the time fixed by any order granting leave to serve the notice outside the jurisdiction.

(3) The provisions of this rule apply, with all necessary modifications, to an added or substituted defendant, to a third or further party who is served with a third party notice, and to an intervener who has obtained leave to intervene in an action.

(4) If two or more defendants to an action enter an appearance by the same solicitor at the same time, only one memorandum need be completed and filed.

(5) A party not entering an appearance within the time fixed by the notice of proceeding may, by consent of the other parties or by leave of the Judge, enter an appearance at any time on such terms as the Judge may order, but a party may not enter an appearance after judgment has been entered except with the leave of a Judge.

(6) A defendant to an action may enter a conditional appearance in the action, but a conditional appearance has effect as an unconditional appearance unless:

- (a) a Judge otherwise orders; or
- (b) the defendant applies to the Court, within the time fixed for the purpose, for an order under subclause (7) and the Court makes an order under that subclause.

(7) A defendant to an action may at any time before entering an appearance in the action, or, if the defendant has entered a conditional appearance, within 10 days after the day on which that conditional appearance is entered, apply to the Court for an order:

- (a) setting aside the notice of proceeding or service of the notice on the defendant; or
- (b) declaring that the notice has not been duly served on the defendant; or
- (c) discharging any order giving leave to serve the notice on the defendant out of the jurisdiction.

(8) On the filing of a memorandum of appearance, the Registrar must enter an appearance in the Register of Admiralty Proceedings, and must return to the party filing the memorandum a duplicate copy showing the date of filing.

(9) The party filing the memorandum must, as soon as practicable, serve the duplicate copy on the plaintiff, and must immediately serve office copies on those other parties who have entered appearances.

(10) At the end of every memorandum of appearance there must be an endorsement stating:

- (a) whether the appearance is filed by the party appearing in person or by the party's solicitor, as the case may be; and
- (b) if applicable, the solicitor's name and address, and the name of the solicitor's firm (if any); and
- (c) if applicable, the name and address of the solicitor acting as agent in the proceeding of the solicitor filing the appearance or of the agent's firm (if any); and
- (d) an address for service.

(11) In an action in rem, the appearance must state:

- (a) the name and address for service of the party appearing and the capacity in which that party appears, whether as owner or part owner or otherwise; and
- (b) the port of registry or port to which the ship belongs;

and each statement is prima facie evidence of the matters stated in it.

(12) A solicitor who, on behalf of any person, undertakes in writing to give security or to pay money into Court instead of bail in an admiralty action in rem, and fails to fulfill that undertaking, is liable to attachment.

(13) If the last day for entering an appearance falls on a Saturday, a Sunday, or a holiday, the memorandum may be filed on the next day following that Saturday, Sunday, or holiday which is not a holiday.

(14) A memorandum of appearance may be filed by post; and

- (a) the appearance is not to be treated as having been entered until the memorandum is actually received by the Registrar;
- (b) the duplicate copy to be returned to the party filing the memorandum may be returned by post.

12. Pleadings – (1) Every action must be heard with pleadings, unless the Court or a Judge otherwise orders.

(2) Unless the Court or a Judge gives leave to the contrary, the plaintiff must:

- (a) file in Court and serve a full and explicit statement of claim on each defendant; and
- (b) take the steps specified in paragraph (a) either when the notice of proceeding is served on that defendant or at any time after service of the notice on that defendant, but in no case later than 14 days after that defendant enters an appearance.

(3) If preliminary acts are required under Rule 24, then, unless the Court or a Judge orders the action to be tried without pleadings, the plaintiff must file in Court and serve a statement of claim on each defendant within 14 days after the latest date on which the preliminary act of any party to the action is filed.

(4) Subclause (3) overrides subclause (2) to the extent that there is a conflict between the application of those provisions in any case.

13. Statement of defence - Every defendant who enters an appearance in, and intends to defend, an action must, unless the Court or a Judge gives leave to the contrary, file in Court and serve a statement of defence on the plaintiff within 30 days after the day on which a statement of claim is served on the defendant.

PART 3 **PROVISIONS RELATING TO ARREST OF PROPERTY**

14. Warrant of arrest – (1) After the issue of a notice of proceeding or counterclaim in rem, the plaintiff or the defendant to the notice or counterclaim may, by an application in Form 7, apply for the issue of a warrant of arrest of the property against which the action or counterclaim is brought.

(2) If 2 or more ships owned by the same person are named as defendant in an action arising from a cause of action concerning 1 ship only, a warrant of arrest may issue against 1 ship only, and the plaintiff must name that ship in the application for the warrant of arrest.

(3) The party applying for the issue of a warrant of arrest must cause a search to be made in the Registry to determine whether any caveat against the issue of the warrant is in force.

(4) In support of the application for a warrant of arrest, there must be filed:

- (a) An affidavit deposing to:
 - (i) the name and description of the party at whose instance the warrant is to issue; and
 - (ii) the nature of the claim; and
 - (iii) the name or nature of the property to be arrested; and
 - (iv) the extent to which the claim has been satisfied, the amount

claimed paid into Court, or security for payment of the claim which has been given to the Registrar; and

(v) whether any caveat against the issue of a warrant of arrest has been filed and, if so, whether a copy of the notice of proceeding or a notice requiring payment of security has been served on the caveator; and

(vi) any other relevant information known to the applicant at the time the application is made; and

(b) An indemnity to the Registrar in Form 8 and security to the satisfaction of the Registrar for the fees, expenses, and harbour dues (if any) of the Registrar or any of the Registrar's appointed officer and agent or Constable.

(5) The Registrar may from time to time require additional security to cover fees, expenses, and harbour dues (if any) referred to in subclause (4)(b).

(6) Subject to compliance with the preceding provisions of this rule, the Registrar must complete the certificate on the application for a warrant of arrest and must issue a warrant of arrest in Form 9.

(7) The warrant must be served by the Registrar, or any person lawfully authorised (whether generally or specially for the purpose) to act as the Registrar, in the manner prescribed by these Rules for the service of a notice of proceeding in an action *in rem*, and the property is to be treated as having been arrested when the warrant has been served in the prescribed manner.

(8) The warrant may be served on a Sunday, Good Friday, or Christmas Day, or any public holiday, as well as on any other day.

(9) The Registrar may, by fax or other means of communication, send notice to the Registrar's appointed officer or agent, or to a Constable, and may instruct the recipient of the notice to execute the warrant.

(10) It is contempt of Court for any person, after notice to that person of the issue of a warrant of arrest of a ship, to –

- (a) move; or
- (b) give instructions to move; or
- (c) allow to be moved,

that ship from where it is lying, without the consent of the Registrar

(11) The Registrar may, in the case of any emergency or special circumstances, issue a warrant of arrest forthwith if the Registrar:

- (a) is satisfied that a notice of proceeding has been issued and that there is either an emergency or special circumstances which justify the immediate issue of a warrant of arrest; and
- (b) is given such indemnity as the Registrar may require against any claim arising out of the issue of a warrant of arrest.

(12) The Registrar may, instead of completing the certificate on the application for warrant of arrest, endorse the application to the effect that the warrant is issued under subclause (6).

(13) A warrant of arrest is valid for 6 months commencing on the day of issue unless sooner withdrawn, but successive warrants may be issued.

(14) The Registrar must give notice of the arrest of property by serving on any person or by affixing on a conspicuous part of the property a notice in Form 10; and service may be effected by the Registrar's duly appointed officer or agent, or a Constable.

(15) Subclauses (4)(b) and (12)(b) do not require the Crown to give any indemnity or security in the cases mentioned in either of those subclauses.

(16) In the application of this rule:

- (a) subclause (2) overrides subclause (1); and
- (b) subclause (12) overrides subclause (6);

to the extent that there is a conflict between the application of those provisions in any case.

15. Application for directions concerning property under arrest – (1) The Registrar or any party to an action in rem may apply to the Court for directions concerning any property under arrest (including directions for the removal of the property).

(2) The person applying must give notice of the application to all parties to the action unless the Court orders otherwise.

16. Caveat against arrest - (1) A person may prevent the arrest of any property by filing in the Registry a request in Form 11 signed by the person or the person's solicitor undertaking:

(a) to enter an appearance in any action that may be commenced against the property described in the request; and

(b) within 3 days after receiving notice that such an action has been commenced, to give security to the satisfaction of the Registrar in the sum specified in the request or to pay that sum into Court.

(2) Immediately on the filing of such a request, the Registrar must enter a caveat in the Register of Admiralty Proceedings.

(3) If the amount claimed in the action does not exceed the amount specified in the undertaking, the caveator must pay into Court or give security for the amount claimed within 3 days after the day of service of the notice of proceeding or counterclaim.

(4) If the caveator fails to pay into Court or give security in accordance with this rule, and the party seeking the issue of a warrant of arrest suffers any loss as a result, the Court may order the caveator to pay to that party damages for that loss unless the caveator shows good and sufficient reason for that failure.

(5) Neither any provision of these Rules nor the entry of a caveat under this rule prevents a party from taking out a warrant for the arrest of property, but, if a caveat is entered under this rule against the arrest of the property and a party has that property arrested, that party is liable for costs and damages unless the party shows good and sufficient reason for the arrest.

(6) A caveat under this rule is valid for 6 months commencing on the day after the date on which it is entered unless sooner withdrawn, but successive caveats may be entered.

(7) A caveat under this rule may be withdrawn at any time by the filing of a notice of withdrawal signed by the caveator or the caveator's solicitor but the withdrawal does not affect any rights or obligations that may have accrued at the date of the withdrawal.

(8) The Court may of its own motion or on application set aside a caveat under this rule.

17. Release of property under arrest – (1) Unless the property arrested is sold under an order of the Court, property arrested under a warrant of arrest may be released only under the authority of an instrument of release ("a release") in Form 12 issued out of the registry where the action in which the warrant was issued is proceeding.

(2) A party at whose instance any property was arrested may, before an appearance is entered in the action, file a notice withdrawing the warrant of arrest and, if the party files the notice, a release must be issued for that property unless such action contravenes subclause (3) or subclause (7).

(3) Unless the Court otherwise orders, a release must not be issued for property if a caveat against release of that property is in force.

(4) A release may be issued at the instance of a party interested in the property under arrest if the Court so orders or, unless the Court orders otherwise, if all the other parties to the action in which the warrant of arrest was issued consent.

(5) Unless a caveat against release is in force, the Registrar may issue a release either on payment into Court of the amount claimed in the notice of proceeding together with the costs of issue and execution of the warrant of arrest, or on security (including a bail bond in Form 13) for those amounts first given to the satisfaction of the Registrar.

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- (6) Before a release is issued, the party entitled to its issue must:
- (a) if a caveat against release of the property in question is in force, give notice to the party at whose instance it was entered or that party's solicitor requiring that the caveat be withdrawn; and
 - (b) file a request for the issue of a release.

(7) Before property under arrest is released in compliance with a release issued under this rule, the party at whose instance it was issued must, in accordance with the directions of the Registrar, either pay the costs, charges, and expenses due in connection with the care and custody of the property while under arrest or give a written undertaking to pay those costs, charges, and expenses.

(8) The Court, on the application of any party who objects to directions given to that party by the Registrar under subclause (7), may vary or revoke the directions.

(9) Subclause (5) overrides subclause (1) to the extent that there is a conflict between the application of those provisions in any case.

18. Caveat against release and payment – (1) A person may prevent the release of property under arrest in an action in rem or the payment out of Court of any money in Court representing the proceeds of sale of that property, or both that release and that payment, by filing in the Registry a request in Form 14.

(2) On the filing of the request, the Registrar must enter in the Register of Admiralty Proceedings a caveat against the issue of a release for that property or, as the case may be, against the payment out of Court of that money, or against both that release and that payment.

(3) The caveator must serve a copy of the caveat on every party to the action.

(4) A party who delays the release of property by entry of a caveat is liable in damages to any person having an interest in the property, unless that party shows to the satisfaction of the Court good and sufficient reason for having the caveat entered.

(5) A caveat under this rule is valid for 6 months commencing on the day after the date of entering, unless sooner withdrawn, but successive caveats may be entered.

(6) A caveat under this rule may be withdrawn by filing a notice of withdrawal signed by the caveator or the caveator's solicitor.

(7) The Court may of its own motion or on application set aside a caveat under this rule.

19. Discharge of cargo under arrest from ships not under arrest and of cargo not under arrest – (1) If a ship is not under arrest but cargo on board the ship is, persons interested in the ship who wish to discharge the cargo under arrest may, without intervening in the action, request the Registrar to take the appropriate steps, and the Registrar must apply to the Court under Rule 14 for the appropriate order if:

(a) the Registrar considers the request reasonable; and

(b) the applicant gives to the Registrar a satisfactory undertaking in writing to pay on demand the fees and expenses incurred by the Registrar or any of the Registrar's appointed officer or agent, or Constable in taking the desired steps.

(2) If the interested persons are unable or unwilling to arrange for an undertaking under subclause (1) to be given, they may intervene in the action in which the cargo is under arrest and apply for an order for discharge of the cargo and for directions as to the fees and expenses incurred by the Registrar or any of the Registrar's appointed officer or agent, or Constable in discharging and storing the cargo under the order.

(3) If a ship is under arrest but cargo on board the ship is not, persons interested in cargo who wish to secure its discharge may follow 1 or other of the procedures specified in this rule.

PART 4
SECURITY AND PAYMENT OUT OF COURT

20. **Security** – (1) The amount and form of any security required under these Rules may be determined by the Court or a Judge on an application by any party.

(2) If security is being given by a person not ordinarily resident within the jurisdiction, that person must:

- (a) unless otherwise ordered by the Court, submit to the jurisdiction of the Court for all purposes relating to the security and its enforcement; and
- (b) give an address for service within the jurisdiction of the Court.

21. **Payment out of Court** - (1) No money paid into Court in any action may be paid out of Court except under subclause (2) or by order of the Court or a Judge.

(2) With the written consent of all parties to the action and of any caveator and of any intervener under Rule 22, the Registrar may authorise money to be paid out of Court.

PART 5
LEAVE TO INTERVENE IN PROCEEDINGS

22. **Interveners** – (1) If property against which an action in rem is brought is under arrest or money representing the proceeds of sale of that property is in Court, a person who has an interest in that property or money but who is not a defendant to the action may on application to the court for leave to intervene, intervene in the action. This application:

- (a) may be made *ex parte* or on notice to every other party; and
- (b) must contain a clear and concise statement of the material facts upon which the intervening party relies for his or her intervention.

(2) On being granted leave, the intervener must file papers appropriate to the proceeding and serve those papers on every other party.

PART 6
SALE OF ARRESTED PROPERTY

23. **Appraisalment and sale of property** – (1) The Court may either before or after final judgment, order that any property under the arrest of the Court:

- (a) be appraised; or
- (b) be sold with or without appraisalment, and either by public auction or by private contract.

(2) If the property is deteriorating in value, the Court may order that it be sold immediately.

(3) If the property sold is of small value, the Court may, if it thinks fit, order that it be sold without a commission of sale being issued.

(4) A commission for the appraisalment and sale of any property under an order of the Court must not be issued until the party applying for it has filed a request in Form 15.

(5) The commission for the appraisalment must be in Form 16 and must, unless the Court otherwise orders, be executed by the Registrar or the Registrar's duly appointed officer or agent or Constable.

(6) A commission for appraisalment and sale may not be executed until an undertaking in writing, satisfactory to the Registrar, to pay the Registrar's fees and expenses on demand has been lodged in the Registrar's office.

(7) The Registrar must pay into Court the gross proceeds of the sale of any

property sold by the Registrar under a commission for sale, and must bring into Court the account relating to the sale (with vouchers in support).

PART 7
PRELIMINARY ACTS

24. Preliminary acts to be filed in collision cases – (1) In an action arising out of a collision between ships, unless the Court otherwise orders:

- (a) the plaintiff must file a preliminary act within 30 days after the issue of the notice of proceeding;
- (b) the defendant must file a preliminary act within 30 days after entering an appearance in the action and before any pleading is filed or served.

(2) A preliminary act is a document containing a statement of the following particulars:

- (a) the names of the ships which came into collision and their ports of registry;
- (b) particulars (referring to the period immediately before the collision) of the person in command, the persons on the bridge, and the persons keeping a lookout on the plaintiff's ship (if the plaintiff is filing a preliminary act) and on the defendant's ship (if the defendant is filing a preliminary act);
- (c) the date and time of the collision;
- (d) the place of the collision;
- (e) the direction and force of the wind;
- (f) the state of the weather including visibility;
- (g) the state, direction, and force of the tidal or other current;
- (h) the ship's course and speed through the water when the other ship was first seen or immediately before any measures were taken in connection with its presence, whichever was the earlier;
- (i) the lights (if any) carried by the ship;
- (j) the distance and bearing of the other ship if and when its echo was first observed by radar;
- (k) the distance, bearing, and approximate heading of the other ship when first seen;
- (l) the other ship's light or combination of lights (if any) when first seen;
- (m) the other lights or combination of lights (if any) of the other ship that were subsequently seen before the collision, and the time of the sighting;
- (n) the alterations (if any) made to the ship's course and speed after the earlier of the 2 times referred to in paragraph (h) up to the time of the collision, and the times of those alterations, and the measures (if any), other than alterations of course or speed, taken to avoid the collision, and times of those measures;
- (o) the parts of each ship that first came into contact and the approximate angle between the 2 ships at the moment of contact;
- (p) the sound signals or other signals (if any) given, and the times of those sound signals or other signals;
- (q) the sound signals or other signals (if any) heard or seen from the other ship, and the times of hearing or seeing those sound signals or other signals.

(3) The Registrar must seal every preliminary act and file it in a closed envelope (which must be sealed with the official stamp of the Court and show the date of filing), and, unless

the Court or a Judge otherwise orders, the envelope must not be opened until the pleadings are closed and a consent signed by each of the parties to the opening of the preliminary acts is filed.

(4) Every party filing a preliminary act concerning a collision must, within 3 days after it is filed, serve notice of the filing on every other party who has filed a preliminary act concerning the same collision.

(5) If the Court orders that the preliminary acts be opened, the Court may also order that the action be tried without pleadings.

(6) If the Court or a Judge orders the action to be tried without pleadings, the Court or a Judge may also order each party, within such period as may be specified in the order, to file a statement of the grounds on which the party charges any other party with negligence in connection with the collision and to serve a copy of the statement on that other party.

25. Proceedings against party in default where other party fails to lodge preliminary act –

(1) If, in an action referred to in Rule 24(1), the plaintiff fails to lodge a preliminary act within the prescribed period, any defendant who has lodged a preliminary act may apply to the Court for an order to dismiss the action and the Court may by order dismiss the action or make such other order on such terms as it thinks just.

(2) If, in an action referred to in Rule 24(1) that is an action in personam, a defendant fails within the prescribed period to lodge a preliminary act and the plaintiff has lodged a preliminary act, Rule 26 applies as if the defendant's failure to lodge a preliminary act within that period were a failure to enter an appearance or to file a statement of defence within the periods respectively fixed by or under these rules for doing those things.

(3) If, in an action referred to in Rule 24(1) that is an action in rem, a defendant fails to lodge a preliminary act within the prescribed period, the plaintiff (if the plaintiff has lodged a preliminary act) may apply to the Court by motion for judgment against that defendant and the plaintiff need not file or serve a statement of claim or an affidavit before the hearing of the motion.

(4) On the hearing of the motion under subclause (3), the Court may make such order as it thinks just, and, if the defendant does not appear on the hearing and the Court considers that judgment should be given for the plaintiff provided the plaintiff proves the plaintiff's case, the Court must order that the plaintiff's preliminary act be opened and require the plaintiff to satisfy the Court that the plaintiff's claim is well founded.

(5) The plaintiff's evidence may, unless the Court otherwise orders, be given by affidavit without any order or direction.

(6) If the plaintiff in accordance with a requirement under subclause (4) satisfies the Court that the plaintiff's claim is well founded, the Court may give judgment for the claim and, at the same time, may order that the property against which the action is brought be appraised and sold and the proceeds to be paid into Court or make such order as it thinks just.

(7) The Court may, on such terms as it thinks just, set aside any judgment entered under this rule.

(8) In this rule, references to the prescribed period are to be construed as references to the period within which, by virtue of Rule 24(1) or of any order of the Court or a Judge, the plaintiff or defendant, as the context of the reference requires, is required to lodge a preliminary act.

PART 8
JUDGMENT BY DEFAULT

26. Judgment by default in actions in personam – (1) The relevant Rules of the Code shall apply to actions in personam.

(2) A plaintiff is entitled to proceed to judgment if the defendant fails, within the time fixed by or under these Rules, either to enter an appearance or to file a statement of defence, as the case may be, but judgment in such a case must not exceed the amount endorsed on the notice of

proceeding or claimed in the statement of claim concerning the demand for costs.

27. Default in filing and service of statement of claim - (1) If the plaintiff is required by these Rules to file in Court a statement of claim and to serve it on a defendant, and the plaintiff fails to do either of those things:

- (a) the defendant may, after the expiration of the period fixed by or under these Rules for filing the statement of claim, apply to the Court for an order to dismiss the action; and
- (b) the Court may by order dismiss the action or make an order on such terms as it thinks just.

(2) This rule applies to actions in personam and to actions in rem.

(3) The Court may, on such terms as it thinks just, set aside or vary any default judgment entered under this rule.

28. Third parties - If a third party fails to enter an appearance, the Code shall apply as if the failure to enter an appearance were a failure to file a statement of defence.

29. Judgment by default in actions in rem - (1) If a notice of proceeding is served under Rule 9 on a party at whose instance a caveat against arrest has been issued, and:

- (a) the sum claimed in the action begun by the notice of proceeding does not exceed the amount specified in the undertaking given by that party or that party's solicitor to procure the entry of that caveat; and
- (b) that party or that party's solicitor does not within 14 days after service of the notice of proceeding fulfill that undertaking;

the plaintiff may, on filing an affidavit verifying the facts on which the action is based, apply to the Court for judgment by default.

(2) Judgment given under subclause (1) may be enforced by:

- (a) arrest of the property against which the action was brought;
- (b) committal of the party at whose instance the caveat against that property was entered.

(3) A plaintiff to an action in rem may apply to the Court for judgment by default if:

- (a) the defendant to the action fails to enter an appearance within the time fixed for appearing; and
- (b) not less than 14 days has passed since the notice of proceeding was served; and

the plaintiff has filed an affidavit proving due service of the notice of proceeding, a statement of claim (where one has not already been filed), and an affidavit verifying the facts on which the action is based.

(4) A plaintiff to an action in rem may apply to the Court for judgment by default if:

- (a) the defendant to the action fails to file and serve a statement of defence on the plaintiff within the period fixed by or under these Rules for filing and service of the defence; and
- (b) the plaintiff has filed:

- (i) an affidavit stating that no defence was served on the plaintiff by that defendant during the period referred to in paragraph (a); and
- (ii) an affidavit verifying the facts on which the action is based.

(5) A party making a counterclaim in an action in rem may apply to the Court for judgment by default if:

- (a) the defendant to the counterclaim fails to file and serve a defence to

- the counterclaim on the party making the counterclaim within the period fixed by or under these Rules for the filing and service of the defence to a counterclaim; and
- (b) the party making the counterclaim has filed:
- (i) an affidavit stating that no defence to the counterclaim has been served on that party by the defendant during that period; and
 - (ii) an affidavit verifying the facts on which the counterclaim is based.
- (6) An application to the Court under this rule must be made by motion, and, if at the hearing the Court is satisfied that the applicant's claim is well founded, it may give judgment for the claim, and, at the same time, it may:
- (a) order the property against which the action, or, as the case may be, the counterclaim is brought to be appraised and sold and the proceeds to be paid into Court; or
 - (b) make such other order as it thinks just.
- (7) In default actions in rem, evidence may, unless the Court otherwise orders, be given by affidavit.
- (8) The Court may, on such terms as it thinks just, set aside or vary any judgment entered under this rule.

PART 9 **PRIORITY OF CLAIMS**

30. Determination of priority of claims where Court orders sale of ship – (1) If in an action in rem against a ship the Court orders the ship to be sold, any party who obtains judgment against the ship or the proceeds of sale of the ship may, on obtaining judgment, apply to the Court by motion for an order determining the order of priority of the claims against the proceeds of the sale of the ship.
- (2) In making an order for the sale of a ship, the Court may further order:
- (a) that the order of priority of the claims against the proceeds of sale of the ship not be determined until after the expiration of 90 days, or of such other period as the Court may specify, beginning with the day on which the proceeds of sale are paid into Court;
 - (b) that any party to the action or to any other action in rem against the ship or the proceeds of sale of the ship may apply to the Court in the action to which that party is a party to extend the period specified in the order;
 - (c) that, within 7 days after the date of payment into Court of the proceeds of sale, the Registrar must send for publication in the *Gazette* and such newspaper (if any), such notice in or in similar form to Form 17 as the Court may direct.
- (3) If the order for sale contains a further order referred to in subclause (2), an application for an order determining priorities may be made only after the expiration of such period as has been specified by the Court under paragraph (a) or paragraph (b) of that subclause.
- (4) The Registrar must lodge in the registry a copy of each newspaper in which the notice referred to in subclause (2)(c) appeared.
- (5) The expenses incurred by the Registrar in complying with an order of the Court under this rule must be included in the Registrar's expenses relating to the sale of the ship.
- (6) An application to the Court to extend the period referred to in subclause (2)(a) must be served on each party who has begun an action in rem against the ship or the proceeds of sale of the ship.

(7) Subclause (3) overrides subclause (1) to the extent that there is a conflict between the applications of those provisions in any case.

PART 10 LIMITATION OF LIABILITY

31. Actions for limitation of liability – (1) This rule applies to proceedings for relief under Section 197 of the Shipping Act 1998.

(2) The proceedings must be in the form of an admiralty action in personam.

(3) In the action the person seeking relief is the plaintiff and must be described in the notice of proceeding by name and not described merely as the owner of, or as bearing some other relation to, a particular ship or other property.

(4) For the purposes of this rule:

(a) “name” includes a firm name or the name under which a person carries on business;

(b) if any person with a claim against the plaintiff concerning the casualty to which the action relates has been described for the purposes of that claim merely as the owner of, or as bearing some other relation to, a ship or other property, that person may be described in that way as defendant to the notice of proceeding and, if described in that way, is to be treated for the purposes of this rule to have been named in the notice of proceeding by that person's name.

(5) The plaintiff must make defendant to the action such 1 or more of the persons with claims against the plaintiff concerning the casualty to which the action relates as the plaintiff thinks fit, and must describe those defendants in the notice of proceeding by name.

(6) If the plaintiff thinks fit, all other persons with claims against the plaintiff concerning the casualty to which the action relates, described generally and not by their names, may be included as defendants to the notice of proceeding.

(7) The notice of proceeding must be served on 1 or more of the defendants who are named by their names, and need not be served on any other defendant.

(8) Within 7 days after the entry of appearance by 1 of the defendants named by their names in the notice of proceeding, or, if none of them enters an appearance, within 7 days after the time fixed for appearing, the plaintiff, without filing a statement of claim, must apply to the Court by notice of motion for an order limiting the plaintiff's liability or, in default of such an order, for directions as to the further proceedings in the action, and the following provisions apply:

(a) the application must be supported by an affidavit or affidavits proving:

(i) the plaintiff's case in the action; and

(ii) if none of the defendants named in the notice of proceeding by their names has entered an appearance, service of the notice of proceeding on at least 1 of the defendants so named; and

(iii) the names of all the persons (other than defendants to the action who are named in the notice of proceeding by their names) who, to the knowledge of the plaintiff, have claims against the plaintiff concerning the casualty to which the action relates; and

(iv) the address of each of those persons, if known to the plaintiff.

(b) at least 7 clear days before the hearing of the application, the motion and every affidavit in support of the motion must be served on any defendant who has entered an appearance;

(c) if at the hearing of the application it appears to the Court that it is not disputed that the plaintiff has a right to limit the plaintiff's liability,

the Court must make a decree limiting the plaintiff's liability and fix the amount to which the liability is to be limited;

- (d) if at the hearing of the application it appears to the Court that any defendant does not have sufficient information to enable the defendant to decide whether or not to dispute that the plaintiff has a right to limit the plaintiff's liability, the Court must:
 - (i) give such directions as appear to be appropriate for enabling the defendant to obtain such information; and
 - (ii) adjourn the hearing.
- (e) if on the hearing or resumed hearing of the application the Court does not make a decree limiting the plaintiff's liability, the Court must give such directions as to the further proceedings in the action as appear to be appropriate;
- (f) any defendant who, after directions have been given under paragraph (e), ceases to dispute the plaintiff's right to limit the plaintiff's liability must immediately file a notice to that effect in the registry of the Court and serve a copy on the plaintiff and on any other defendant who has entered an appearance;
- (g) if every defendant who disputes the plaintiff's right to limit the plaintiff's liability serves a notice on the plaintiff under paragraph (f), the plaintiff may apply to the Court for an order limiting the plaintiff's liability; and paragraphs (b) and (c) apply to an application under this paragraph as they apply to an application under the preceding provisions of this subclause.

(9) If the only defendants in the action are those named in the summons by their names and all those persons have been served:

- (a) any order limiting the plaintiff's liability:
 - (i) need not be advertised; and
 - (ii) operates only to protect the plaintiff against claims by the persons so named or persons claiming through or under those persons:
- (b) in any case not covered by paragraph (a), any order limiting the plaintiff's liability:
 - (i) must be advertised by the plaintiff in such manner and within such time as the order may provide; and
 - (ii) must fix a time within which persons with claims against the plaintiff concerning the casualty to which the action relates may enter an appearance in the action (if they have not already done so) and file their claims, and, in cases to which subclause (10) applies, file a motion, if they think fit, to set the order aside.
- (c) the time to be allowed under paragraph (b)(ii) must, unless the Court otherwise orders, be not less than 2 months from the latest date allowed for the appearance of the advertisement and, after the expiration of the time so allowed, leave of the Court is required to enter an appearance, file a claim, or to make an application to set aside the order.

(10) If an order limiting the plaintiff's liability fixes a time in accordance with subclause (9)(b);

- (a) any person with a claim against the plaintiff concerning the casualty to which the action relates who:
 - (i) is not named in the notice of proceeding as a defendant to the

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action; or
 (ii) if so named, was not served with the notice of proceeding and has not entered an appearance
 may, within that fixed time after entering an appearance, apply on notice for the order to be set aside:

- (b) the application must be supported by an affidavit or affidavits showing that the defendant in question has a bona fide claim against the plaintiff concerning the casualty in question and that the defendant has sufficient prima facie grounds for the contention that the plaintiff is not entitled to the relief given to the plaintiff by the order;
- (c) at least 7 clear days before the hearing of the motion, the application and every affidavit in support of the application must be served on the plaintiff and on any defendant who has entered an appearance;
- (d) on the hearing of the application, the Court, if satisfied that the defendant in question has a bona fide claim against the plaintiff and sufficient prima facie grounds for the contention that the plaintiff is not entitled to the relief given to the plaintiff by the order, must set the order aside and give such direction as to the further proceedings in the action as appear appropriate.

PART 11
MISCELLANEOUS PROVISIONS

32. Inspection of ship, etc - Without limiting its powers under these Rules, the Court may, on the application of any party, make an order for the inspection by a Court expert, or by any party or witness, of any ship or other property, whether real or personal, if the inspection is necessary or desirable for the purpose of obtaining full information or evidence in connection with any issue in the action.

33. Consent orders - Any agreement in writing, between the parties to a cause or matter, that is dated and signed by the parties or their solicitors may be filed if the Registrar thinks it is reasonable to file the agreement and thinks that a Judge would under the circumstances have allowed it to be filed, and, on its filing, the agreement becomes an order of the Court.

34. Registrar may seek Court's assistance and parties may seek review of Registrar's decision - (1) The Registrar may apply to the Court for orders to assist the Registrar in the performance or exercise of any function, duty, right, or power conferred or imposed on the Registrar by these Rules, and the Court may make such orders in relation to the performance or exercise of that function, duty, right, or power as the Court thinks fit.

(2) Any party to a proceeding who is affected by a decision of the Registrar under these Rules may apply by interlocutory application to review that decision, and the Court may make such order as it thinks just.

35. General Rules as to Pleadings:

(1) No pleading in any matter shall be required unless notice of intention to defend is delivered therein.

(2) If any party fails to deliver any pleading within the times specified in these Rules, any other party may by notice served upon him or her require him or her to deliver that pleading within 5 days after the day upon which the notice was delivered.

(3) Any party failing to deliver the pleading within the time stated in the notice referred to in (b) or within such further period as may be agreed between the parties or may be ordered by the Court shall be in default of filing such proceeding and shall be *ipso facto* barred.

(4) Any pleading in any matter may be delivered or served on the Court or other party by fax or email subject to the following;

- (a) In the case of a fax, the provision of a transmission report indicating a successful transmission shall be sufficient proof of delivery or service of the document;
- (b) In the case of an email, a confirmation from the internet service provider that the email was received by the intended recipients shall be sufficient proof of delivery or service of the document.

Provided always that the faxed or emailed pleading or document shall be substituted by an original pleading or document within 14 days (or such further period as may be agreed between the parties or ordered by the Registrar of the date of transmission. Should the faxed or emailed pleadings or documents not be substituted in accordance herewith, the pleading or document shall be struck out.

These Rules are administered by the Ministry of Justice

2005/03

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SCHEDULE

(Rule 7)

(Form 1)

GENERAL HEADING FOR ACTION IN PERSONAM

AD No. /

IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
IN ADMIRALTY

Between

[Insert name of plaintiff]

Plaintiff

And

[Insert name of defendant]

Defendant

(Form 2)

(Rule 8)

NOTICE OF PROCEEDING IN PERSONAM*[General heading as in Form 1]*To *[insert name of defendants(s)]*

1. Unless, within 14 days after the service of this notice of proceeding on you (which period begins on the day after the day of service), you cause an appearance to be entered for you in the office of this Court at Rarotonga, the plaintiff may proceed in the plaintiff's action without having it heard in Court and judgment may be given in your absence.
2. The trial of the action, if a trial is necessary, will take place at the Court at Rarotonga at a time to be fixed by the Court.
3. This notice of proceeding was issued by *[Insert full name]* appearing in person. My address for service is at *[Insert address]*.

OR

This notice of proceeding was issued by *[Insert full name]* solicitor for the above named plaintiff(s). My firm is *[Insert name]* of *[Insert address]*. My address for service is *[Insert address]*.

*Where the plaintiff's solicitor is acting by an agent, the name and the agent should be shown as well as the name, firm, and address of principal.

Given under the seal of the High Court of the Cook Islands at Rarotonga this day of
.....20 .

.....
Registrar

[Note: This notice of proceeding must be served within 12 months after the date of the notice of proceeding, or within 6 months after the date of renewal, if renewed.]

Directions for Entering an Appearance

(a) You may enter an appearance either personally (if suing in person) or by a solicitor at the office of the Court in Rarotonga, by filing a memorandum of appearance (in duplicate) in that office or by posting the memorandum (in duplicate) to the Registrar at that office. The appropriate form may be obtained at the High Court at Avarua, Rarotonga.

(b) If the last day for entering your appearance falls on a Saturday, a Sunday, or a holiday, you may file the memorandum of appearance on the day next following that Saturday, Sunday, or holiday, as the case may be, which is not a holiday.

(Form 3)

(Rule 9)

GENERAL HEADING FOR ACTION IN REM

**IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
IN ADMIRALTY
ACTION IN REM**

AD No. /

Between

See note(a)

Plaintiff(s)

And

See note (b)

Defendant(s)

Notes

(a) Insert name of plaintiff(s), eg, The owners of the Ship "X".

(b) Insert name of defendant(s), eg, The Ship "Y" (or The Ship "Y" and its freight or The Ship "Y" and its cargo and freight or The cargo ex the Ship "Y" or The proceeds of the Ship "Y" or The proceeds of the cargo ex the Ship "Y").]

(Form 4)

(Rule 9)

NOTICE OF PROCEEDING IN REM

*[General heading as in Form 3]*To the owners and all others interested in the *[Insert name of ship or describe property]*.

1. Unless, within 14 days after the service of this notice or proceeding on you (which period begins on the day after the day of service), you cause an appearance to be entered for you in the office of this Court at Rarotonga, the plaintiff may proceed in the plaintiff's action without having it heard in Court, and judgment may be given in your absence, and, if the thing described in this notice of proceeding is then under arrest of the Court, it may be sold by order of the Court.
2. The trial of the action, if a trial is necessary, will take place at the Court at Rarotonga at a time to be fixed by the Court.
3. This notice of proceeding was issued by *[Insert full name]* appearing in person. My address for service is at *[Insert address]*.

OR

This notice of proceeding was issued by *[Insert full name]*, solicitor for the above named plaintiff(s). My firm is *[Insert name]* of *[Insert address]*. My address for service is at *[Insert address*]*.

*Where the plaintiff's solicitor is acting by an agent, the name and address of the agent should be shown as well as the name, firm, and address of the principal.

Given under the seal of the High Court of the Cook Islands at Rarotonga this day of20 .

.....
Registrar

[Note: This notice of proceeding must be served within 12 months after the date of the notice of proceeding, or within 6 months after the date of renewal, if renewed.]

Directions for Entering an Appearance

- (a) You may enter an appearance either personally (if suing in person) or by a solicitor at the office of the Court, by filing a memorandum of appearance (in duplicate) in that office or by posting the memorandum (in duplicate) to the Registrar at that office. The appropriate form may be obtained at the High Court at Avarua, Rarotonga.
- (b) The appearance must state the name and address for service of the party appearing and the capacity in which that party appears, whether as owner or part owner or otherwise, and must also state the port of registry or port to which the ship belongs. Those statements are prima facie evidence of the matters stated in them.
- (c) If the last day for entering your appearance falls on a Saturday, a Sunday, or a holiday, you may file the memorandum of appearance on the day next following that Saturday, Sunday, or holiday, as the case may be, which is not a holiday.

(Form 5)

Rule (9)

NOTICE OF PROCEEDING BOTH IN REM AND IN PERSONAM

[General heading as in Form 1]

OR

This notice of proceeding was issued by [Insert full name], solicitor for the above named plaintiff(s). My firm is [Insert name] of [Insert address]. My address for service is at [Insert address*].

*Where the plaintiff's solicitor is acting by an agent, the name and the agent should be shown as well as the name, firm, and address of principal.

Given under the seal of the High Court of the Cook Islands at Rarotonga this ... day of20

.....
Registrar

[Note: This notice of proceeding must be served within 12 months after the date of the notice of proceeding, or within 6 months after the date of renewal, if renewed.]

Directions for Entering an Appearance

- (a) You may enter an appearance either personally (if suing in person) or by a solicitor at the office of the Court by filing a memorandum of appearance (in duplicate) in that office or by posting the memorandum (in duplicate) to the Registrar at that office. The appropriate form may be obtained at the High Court, Avarua, Rarotonga.
- (b) If you are entering an appearance for the ship [Insert name of ship or describe property], the appearance must state the name and address for service of the party appearing and the capacity in which that party appears, whether as owner or part owner or otherwise, and must also state the port of registry or port to which the ship belongs. Those statements are prima facie evidence of the matters stated in them.
- (c) If the last day for entering your appearance falls on a Saturday, a Sunday, or a holiday, you may file the memorandum of appearance on the day next following that Saturday, Sunday, or holiday, as the case may be, which is not a holiday.

Endorsements to be made on notice of proceeding before issue

The plaintiff claims against the [Insert name of ship or describe property] under sections [Specify] of the Admiralty Act 2004. [Insert summary of claim and amount].

The plaintiff claims against the second defendant under [Insert summary of claim and amount].

(Form 6)

(Rule 11)

MEMORANDUM OF APPEARANCE

[General heading as in Form 1 or Form 3, as the case requires]

Please enter an appearance for [See notes 1-3] in this action.

This appearance is filed by [Insert full name] appearing in person. My address for service is at [Insert address].

Dated this day of 20 .

Directions

If the last day for entering your appearance falls on a Saturday, a Sunday, or a holiday, you may file the memorandum of appearance on the day next following that Saturday, Sunday, or holiday, as the case may be, which is not a holiday.

Notes

1. Enter the name of defendant, defendant's occupation, and place of residence or business. In an action in rem, the appearance must state the name and address for service of the party appearing and the capacity in which that party appears, whether as owner or part owner or otherwise, and must also state the port of registry or port to which the ship belongs. Those statements are prima facie evidence of the matters stated in them (See *Rule 11(11)*.)
2. If the appearance is to a counterclaim, it should state accordingly and the heading to the memorandum should contain the double title of claim and counterclaim. If the appearance is by an added defendant or a third party or an intervener, the memorandum should contain brief particulars of the order or notice served on the party entering the appearance.
3. If the appearance is filed by a solicitor who has another solicitor acting as that solicitor's agent at the place of filing, the name and address for service of the agent or the agent's firm should be added to the name and address for service of the principal or the principal's firm. If the appearance is conditional, add the words "This appearance has effect as an unconditional appearance unless within 10 days after the filing of the appearance application is made to set aside the notice of proceeding or service of the notice of proceeding and an order is made accordingly (See *Rule 11(6)*).

(Form 7)

(Rule 14)

APPLICATION FOR WARRANT OF ARREST

[General heading as in Form 3]

1. The plaintiff applies for a warrant for the arrest of [*Insert name of ship or describe property*].
2. The present location of the property to be arrested is [*Specify location*].
3. This application is accompanied by the affidavits(s) of [*Insert names of deponents*] deposing to the matters referred to in the Rules, and an indemnity to the Registrar.

Dated this day of 20 .

.....
(Solicitor for) Plaintiff

To the Registrar of the High Court at Rarotonga.

Certificate of Registrar

I certify that according to the records of the Court:

- (a) A notice of proceeding in an action in rem has been issued against [*Insert name of ship or describe property to be arrested*].
- (b) That on [*Insert date*] I made inquiries from the Registry and ascertained that [*State result of enquiries*].
- (c) This application was filed at [*Insert time and date*].

Given under my hand this day of 20 .

.....
Registrar

INDEMNITY TO REGISTRAR

[General heading as in Form 3]

To the Registrar of the High Court at Rarotonga:

The applicant indemnifies you:

- (c) For any fees and expenses (including harbour dues) that may be incurred by you in the execution of the warrant of arrest issued against [*Specify*]; and
- (d) Against any liability arising out of or incidental to any act lawfully done by you in executing that warrant.

Dated this day of 20 .

.....
(Solicitor for) Applicant

(Form 9)

WARRANT OF ARREST

(Rule 14)

[General heading as in Form 3]

To the Registrar's appointed officer or agent, or
To each and every Constable

You are directed to arrest the *[Insert name of ship or describe property]* and keep it under safe arrest until you receive further orders from the Court.

Given under my hand this day of 20

.....
Registrar

This Warrant of Arrest is taken out by *[Insert name of solicitor]*, solicitor for *[Insert name of party]*.

Registrar's appointed officers or agents endorsement as to service
This warrant was executed by *[Insert name of person executing the warrant]* at *[Insert time and date]*.

.....
Registrar's appointed officer or agent. or
Constable

(Form 10)

(Rule 14)

NOTICE BY REGISTRAR OF ARREST OF PROPERTY

[General heading as in Form 3]

[Insert name of ship or describe property]

1. The ship named (or property described) above is in custody or possession of the Registrar of the High Court of the Cook Islands by virtue of a warrant from this Court.
2. All persons are cautioned not to attempt to remove the property or interfere with it without the written authority of the Registrar, or of the Registrar's appointed officer or agent, otherwise they will be in contempt of Court.

Given under the seal of the High Court of the Cook Islands at Rarotonga this ... day of20

.....

Registrar

(Form 11)

(Rule 16)

REQUEST FOR CAVEAT AGAINST ARREST

[NB No general heading]

[Insert name of ship or describe property]

1. I request a caveat be entered against the arrest of the ship named (or property described) above.
2. I undertake to enter an appearance in any action that may be begun against it in the Court.
3. I undertake, within 3 days after receiving notice of an action in the Court concerning the arrested property, to give security to the satisfaction of the Registrar in a sum not exceeding \$[Insert sum] or to pay that sum into Court.
4. My address for service is at [Insert address].

Dated this ... day of20 .

.....
(Solicitor for) Applicant

(Form 12)

(Rule 17)

RELEASE FROM ARREST

[General heading as in Form 3]

To the Registrar's appointed officer and agent, or
To each and every Constable

1. The [Insert name of ship or describe property] has been held under arrest in accordance with a warrant of arrest issued at Rarotonga [Insert date].
2. You are now directed to release the arrested property.
3. The ground for release is [Specify ground, e.g. Court order, payment into Court, etc]

Given under my hand at Rarotonga this day of20 ..

(*OR Given under the seal of the High Court of the Cook Islands this ... day of 20 ..)

.....
Registrar

*If the release is under an order of the Court, it must be issued under the seal of the Court

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(Form 13)

(Rule 17)

BAIL BOND

[Heading as in action]

1. An action in rem against the [Insert name of ship or describe property] is pending in this Court and the parties to the action are [Insert names].
2. I (or We) submit to the jurisdiction of the Court.
3. If the defendant does not satisfy any judgment in this proceeding or does not pay any sum due to be paid by the defendant under any admission of liability in this action or under any settlement agreement which is filed in this Court, then execution may issue against me (or us), my (or our) executors or administrators or assigns, and my (or our) goods and chattels, and the goods and chattels of my (or our) executors, administrators, or assigns, for a sum not exceeding \$[Insert sum].

The Common Seal etc. or
 This bond was signed by
 (sureties)

at..... this day of 20 .
 before me:

A Solicitor of the High Court of the Cook Islands or
 Registrar of the High Court of the Cook Islands or
 A Notary Public

(Form 14)

(Rule 18)

REQUEST FOR CAVEAT AGAINST RELEASE AND PAYMENT

[NB No general heading]

[Insert name of ship or describe property]

I request a caveat be entered against:

- (a) the issue of a release for the arrested property; and
- (b) Payment out of Court of the proceeds of sale (if the Court should order that the arrested property be sold).

Dated this day of 20 .

.....
[Signed]

2005/03

(Form 15)

(Rule 23)

REQUEST FOR COMMISSION FOR APPRAISEMENT AND SALE

[General heading as in Form 3]

I (or We) request a commission for the appraisement and sale of *[Insert name of ship or describe property]* which was ordered by the Court on *[Insert date]*.

Dated this day of 20 .

.....
[Signed]

(Form 16)

(Rule 23)

COMMISSION FOR APPRAISEMENT AND SALE*[Heading as in action]*

To the Registrar of the High Court at Rarotonga,
And to the Registrar's appointed officer and agent.

1. On *[Insert the date]* the Court ordered that the *[Insert name of ship or describe property]* be appraised and sold.
2. The Court directed you to choose one or more experienced persons and to swear them to appraise the property according to its true value.
3. The Court also directed you that, once that value has been certified in writing by the appraiser or appraisers, you are to cause the property to be sold by *[Specify whether sale to be by way of private treaty or public auction]* for the highest price that can be obtained for it, but not for less than the appraised value unless the Court on your application allows it to be sold for less.
4. The Court further directed you that, immediately on the sale being completed, you are to pay the proceeds of the sale into Court and to file in the Court the certificate of appraisal signed by you and the appraiser or appraisers, and an account of the sale signed by you, together with this commission.

Dated this day of 20 .

.....
[Signed]

This Commission is taken out by *[Insert name]*, solicitor for the *[Specify party]*.

(Form 17)

(Rule 30)

NOTICE FOR PRIORITY OF CLAIMS ON SALE OF SHIP

[General heading as in Form 3]

1. The [Insert name of ship or describe property] has been sold and the gross proceeds of such sale, amounting to \$[Insert sum] have been paid into the High Court at Rarotonga.
2. The priority of the claims against the proceeds of sale will not be determined until after [Insert date of expiry period specified in the order for sale].
3. Any person having a claim against the ship or the proceeds of sale of the ship on which that person intends to proceed to judgment should commence an action to enforce that claim before the date specified in paragraph 2 and, if necessary, apply to the Court to extend the period within which the order of priority of claims will not be determined.
4. If the steps referred to in paragraph 3 are not taken, an order determining the priority of claims against the ship or the proceeds of sale of the ship may be made without notice to the person claiming against the ship or the proceeds or sale of the ship.

Given under my hand this day of 20 .

.....
Registrar