

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

Government Notice R571 in Government Gazette 17926 of 18 April 1997 (as corrected by Government Notice R655 in Government Gazette 17968 of 2 May 1997)

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.

INDEX

Rule

1. Definitions
2. Summons
3. Provisional sentence proceedings
4. Arrest and release
5. Attachment to found or confirm jurisdiction
6. Service in rem
7. Service in personam and service of any other process
8. Notice of intention to defend
9. General rules as to pleadings
10. Claim in reconvention
11. Third parties
12. Close of pleadings
13. Request for further particulars
14. Preliminary procedures [Website note: See our historical review of the use of Admiralty Examiners]
15. Discovery of documents
16. Pre-trial procedure
17. Trial
18. Applications
19. Variation of periods of time and non-compliance
20. Vexatious or irregular proceedings
21. Property arrested or attached, judicial sales and the appointment of referees
22. Filing, delivery and preparation of papers
23. Representative actions and limitations of liability
24. Exclusion of certain rules of the Uniform Rules
25. Directions by the court
26. Repeal of rules
27. Commencement

First Schedule

FORMS

1. Summons
2. Warrant of arrest
3. Summons: Provisional sentence

RULES OF COURT
[The Admiralty Rules]

1 Definitions

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

'Act' means the Admiralty Jurisdiction Regulation Act, 1983 (Act 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 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 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 not 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 and of all the persons who have given notice in terms of subrule (4)

(a) and have not consented to the release.

(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.

[Para. (b) corrected by GN R655 of 2 May 1997.]

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 one year has expired since the date when it was issued unless the court has, before the expiry of the period of one 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: Provide 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 any may 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 be notice served upon him or her require him or her to deliver that pleading within 5 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 matter 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 grounds 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: Provided 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 a 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.

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 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 the 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 only 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 on 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 the 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 one 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 and any affidavit of the applicant shall be filed at least 5 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, to 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;

(d) that an appraiser identified in the order be appointed for the purpose of appraising the value of the property in question;

(e) that an 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;

(f) what the date or period for the sale of the property shall be;

(g) that the auctioneer advertise, arrange and conduct the sale in such manner as the court may direct;

(h) that the sheriff take such steps as the court may direct for the preservation of the property pending the sale;

(i) that the auctioneer shall be entitled to such commission and such other remuneration and reimbursement as may be stated in the order;

(j) that the order be served and published in the manner stated in the order;

(k) that the proceeds of the sale shall be dealt with as provided in the order;

(l) that a referee identified in the order be appointed if the court deems such an appointment appropriate under the circumstances;

(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;

(n) that the sale be on such conditions as the court may order;

(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.

(5) (a) When the court has granted an order for the sale of any property, no person may later than 10 days prior to the date of the sale apply to the court for the stay or postponement 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.

(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 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.

(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.

(7) (a) The proceeds and amounts referred to in subrule (6) shall constitute a fund in court and shall be dealt with as follows:

- (i) The fund shall be held by or on behalf of the registrar on such terms as the court may direct.
 - (ii) In any action against the fund all process, notices or other documents with regard to such action shall be served on the registrar of, if already appointed, the referee.
 - (iii) Any party having an interest in the fund may be joined in or may join in any proceedings against the fund.
- (b) Any party having an interest in the fund may at any time apply to the court for an order appointing a referee to receive claims against the fund and to make recommendations to the court with regard to such claims.

(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.

(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.

(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.

(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 in personam or for any amount for which no security is held.

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 that 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 an 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 Courts Act, 1995 (Act 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 not 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 one 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 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.

First Schedule -

FORMS

**FORM 1 – SUMMONS IN THE SUPREME COURT OF SOUTH AFRICA DIVISION
EXERCISING ITS ADMIRALTY JURISDICTION**

CASE No.:
NAME OF SHIP:
IN THE MATTER BETWEEN: PLAINTIFF

AND DEFENDANT

Admiralty action in rem/in personam/in rem and in personam To the above-named defendant:
TAKE NOTICE that the Plaintiff claims against the defendant:
(Concise terms of the cause of action of the plaintiff)

.....
.....
.....

If you wish to defend the action, you must withindays give notice of your intention so to defend. That notice must be filed with the registrar and served on the plaintiff's attorney and must contain an address in accordance with rule 19 of the Uniform Rules.

If you do not so give notice within the set time or within any extended time which the court may allow if you make application for an extension of time, or if you do not thereafter deliver your plea or a claim in reconvention as provided by the rules regulating the conduct of the admiralty proceedings, proceedings may continue and judgment may be given against you without further reference to you.

DATED atthis day of 19....

.....
.....

(Address in terms of rule 17 (3) of the Uniform Rules)

.....
Plaintiff's Attorney

To the sheriff:

You are to effect service of this summons and return the original to the registrar with your return of service.

.....
Registrar

(In an edictal citation the note to the sheriff should be omitted and the registrar's signature should follow immediately on that of the plaintiff's attorney.)

FORM 2 - WARRANT OF ARREST

IN THE SUPREME COURT OF SOUTH AFRICA
..... DIVISION
EXERCISING ITS ADMIRALTY JURISDICTION

CASE No.:
NAME OF SHIP:
IN THE MATTER BETWEEN: PLAINTIFF
AND DEFENDANT

Admiralty action in rem/in personam/in rem and in personam
To the above-named defendant:

TAKE NOTICE that summons has been issued in the above-named action, and that by the service of this warrant the
.....
.....
.....

(here set out property---section 3(5) of the Admiralty Jurisdiction Regulation Act, 1983)

is arrested and is to be kept in the custody of the sheriff in terms of rule 21 of the rules regulating the conduct of the admiralty proceedings.

If you wish to obtain the release of the property from arrest, you may do so by giving satisfactory security for the amount of the claim or the value of the property arrested, whichever is the lesser. In the event of a dispute as to the security, you may make application to the court for the resolution of that dispute. You are also entitled to ask that the court impose conditions with regard to the arrest.

.....
Plaintiff's Attorney

To the sheriff:

You are authorised by the warrant of arrest to arrest and keep under arrest the property named herein and you are hereby required duly to serve this warrant and return the original to the registrar with your return of service.

.....
Registrar

FORM 3 - SUMMONS: PROVISIONAL SENTENCE

IN THE SUPREME COURT OF SOUTH AFRICA
..... DIVISION
EXERCISING ITS ADMIRALTY JURISDICTION

CASE No.:
NAME OF SHIP:
IN THE MATTER BETWEEN: PLAINTIFF
AND DEFENDANT

Admiralty action in rem/in personam/in rem and in personam
To the sheriff:

INFORM A B
..... (sex),
..... (occupation), of
..... (residence or place of business), hereinafter called the defendant:

(1) that he or she is hereby called upon immediately to pay to C
D

..... (sex),
..... (occupation), of
..... (residence or
place of business), hereinafter called the plaintiff, an amount of together with interest thereon
at the rate of % per annum as from claimed
by plaintiff

(here set out the cause of action), a copy of which document is annexed hereto;

(2) that failing such payment, he or she is hereby called upon to appear before this court personally or represented by an advocate or attorney permitted to appear in terms of section 4 (2) of the Right of Appearance in Courts Act, 1995 (Act 62 of 1995), at (time) or as soon

thereafter as the matter can be heard at
..... (place) on
..... the day of 19....., to
admit or deny his or her liability for the said claims;

(3) that if he or she denies liability for the same, he or she shall not later than noon on the day of
.....
19..... file an affidavit with the registrar of this court, and serve a copy thereof on plaintiff's attorney, which affidavit shall set forth the grounds of his or her defence to the said claim and, in particular, state whether he or she admits or denies that his or her signature or the signature of his or her agent appears on the said and, if it is the signature of his or her agent, whether he or she acknowledges or denies the authority of his or her agent;
AND INFORM the said defendant further that in the event of his or her not paying the aforementioned amount and interest to the plaintiff immediately and if he or she (the said defendant) further fails to file an affidavit as aforesaid and to appear before this court at the aforementioned time, provisional sentence may forthwith be granted against him or her with costs, but that against payment of the said amount, interest and costs, he or she will be entitled to demand security for the restitution thereof if the said sentence should thereafter be reversed;

AND SERVE a copy of this summons and of the said
..... (document) on the said
..... and then return this summons to
the registrar with your return of service.

DATED AT this day of 19.....

.....
Registrar of the Supreme Court

.....
Plaintiff's Attorney
Address for service:
.....
.....

APPENDIX A
TARIFF OF ALLOWANCES UNDER SECTION 42 OF THE ACT

The tariff of allowances payable to witnesses in civil cases is laid down in GN R2597 of 1 November 1991 (published in Government Gazette 13604), with effect from 1 November 1991.

TARIFF OF ALLOWANCES PAYABLE TO WITNESSES IN CIVIL CASES

Under section 51bis of the Magistrates' Courts Act, 1944 (Act 32 of 1944), and section 42 of the Supreme Court Act, 1959 (Act 59 of 1959), I, Hermanus Jacobus Kriel, acting Minister of Justice, in consultation with the Minister of Finance, hereby prescribe the tariff of allowances in the Schedule.

H.J. KRIEL,
Acting Minister of Justice.