

PRACTICE DIRECTIVE NO. 27 IN REGARD TO
ADMIRALTY ARREST WARRANTS IN TERMS OF RULE 4(3)

After receiving representations from the Association of Maritime Practitioners arising from the judgment delivered by P.C. Combrinck J in the *mfv Galaecia* (Case No. A19/2006) and after consultation with the learned judge, the following practice directive is issued:-

The attention of practitioners is drawn to the fact that Rule 2(1)(a) provides for a clear and concise statement of the nature of the claim. The certificate with regard to the warrant in terms of Rule 4(3) provides for a statement by the giver of the certificate that the contents of the certificate are true and correct to the best of the knowledge, information and belief of the signatory. The source of any such knowledge and information must be given.

As the matters to be certified include a statement that the claim is a maritime claim and that the property sought to be arrested is the property in respect of which the claim lies, or, if the arrest is an associated ship arrest, that the ship is an associated ship which may be arrested, it is inherent in the nature of the certificate that the signatory should believe on proper grounds that there is a claim and that it is enforceable by the arrest of the property to be arrested. It follows therefore, in the case of an associated ship arrest, that the certifier believes that the ship is an associated ship. It is therefore necessary that the summons should contain a statement of the facts upon which the claim is based and a statement of the facts on the basis of which it is stated that the ship is an associated ship.

It is desirable that the certificate should be signed by an attorney practising in the Court out of which the warrant is issued. In order to deal with cases of difficulty Rule 4(2)(b) provides that the Registrar may refer to a judge the question whether a warrant should be issued. In the vast majority of cases this is neither necessary, practicable nor desirable. It should be done in any case of difficulty either in regards to the claim or in regard to a question of association. In order to assist the Registrar the responsibility for identifying cases that should be referred to a judge will in the first instance rest on the attorney providing the certificate. When requesting a warrant, therefore, the

attorney should submit in addition to the certificate required by Rule 4(3) a statement that the attorney knows of no circumstances making it desirable to refer the issue of the warrant to a judge. In the absence of such a statement the Registrar will refer the matter to a judge under Rule 4(2)(b).