

No. S 26

CONSTITUTION OF BRUNEI DARUSSALAM
(Order under section 83(3))

EMERGENCY (ADMIRALTY JURISDICTION) ORDER, 1996

In exercise of the power conferred by section 83(3) of the Constitution of Brunei Darussalam, His Majesty The Sultan and Yang Di-Pertuan hereby makes the following Order :-

Citation
and
commence-
ment

1. (1) This Order may be cited as the Emergency (Admiralty Jurisdiction) Order, 1996.

(2) This Order shall come into force on 1st. day of October, 1996.

Inter-
pretation.

2. (1) In this Order, unless the context otherwise requires -

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"collision regulations" means regulations under section 103 of the Merchant Shipping Act ;

"goods" includes baggage ;

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"master" has the same meaning as in the Merchant Shipping Act ;

"ship" includes any description of vessel used in navigation ; and includes a hovercraft ;

"towage" and "pilotage", in relation to an aircraft, mean towage and pilotage while the aircraft is waterborne.

(2) Nothing in this Order shall -

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(a) be construed as limiting the jurisdiction of the High Court to refuse to entertain an action for wages by the master or a member of the crew of a ship, not being a Brunei Darussalam ship ;

(b) affect the provisions of the Merchant Shipping Act which confer power on a receiver of wreck to detain a ship in respect of a salvage claim ; or

(c) authorise proceedings in rem in respect of any claim against the Government of Brunei Darussalam, or the arrest, detention or sale of any of His Majesty's ships or His Majesty's aircraft or of any cargo or other property belonging to the Government of Brunei Darussalam.

3. (1) The Admiralty jurisdiction of the High Court shall be as follows, that is to say –

Admiralty
jurisdiction
of High Court.

- (a) jurisdiction to hear and determine any of the questions and claims mentioned in subsection (2) ;
 - (b) jurisdiction in relation to any of the proceedings mentioned in subsection (3) ;
 - (c) any other Admiralty jurisdiction which it had immediately before the commencement of this Order ; and
 - (d) any jurisdiction connected with ships or aircraft which is vested in the High Court apart from this section.
- (2) The questions and claims referred to in subsection (1)(a) are –
- (a) any claim to the possession or ownership of a ship or to the ownership of any share therein ;
 - (b) any question arising between the co-owners of a ship as to possession, employment or earnings of that ship ;
 - (c) any claim in respect of a mortgage of or charge on a ship or any share therein ;
 - (d) any claim for damage received by a ship ;
 - (e) any claim for damage done by a ship ;
 - (f) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or in consequence of the wrongful act, neglect or default of –
 - (i) the owners, charterers or persons in possession or control of a ship ; or
 - (ii) the master or crew of ship, or any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible,

being an act, neglect or default in the navigation or management of a ship, in the loading, carriage or discharge of goods on, in or from the ship, or in the embarkation, carriage or disembarkation of persons on, in or from the ship ;

- (g) any claim for loss of or damage to goods carried in a ship ;
- (h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship ;
- (i) any claim in the nature of salvage (including any claim arising by virtue of the application, by or under any law, of the law relating to salvage to aircraft and their apparel and cargo) ;
- (j) any claim in the nature of towage in respect of a ship or an aircraft ;
- (k) any claim in the nature of pilotage in respect of a ship or an aircraft ;
- (l) any claim in respect of goods or materials supplied to a ship for her operation or maintenance ;
- (m) any claim in respect of the construction, repair or equipment of a ship or dock charges or dues ;
- (n) any claim by a master or member of the crew of a ship for wages (including any sum allotted out of wages or adjudged by a superintendent to be due by way of wages) ;
- (o) any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship ;
- (p) any claim arising out of an act which is or is claimed to be a general average act ;
- (q) any claim arising out of bottomry ;
- (r) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure.

(3) The proceedings referred to in subsection (1)(b) are –

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- (a) any application to the High Court under the Merchant Shipping Act, other than an application under section 46 of that Act for the appointment of a person to act as a substitute for a person incapable of acting ;
- (b) any action to enforce a claim for damage, loss of life or personal injury arising out of –

- (i) a collision between ships ;
 - (ii) the carrying out of or omission to carry out a manoeuvre in the case of one or more of two or more ships ; or
 - (iii) non-compliance, on the part of one or more of two or more ships, with the collision regulations ;
- (c) any action by shipowners or other persons under the Merchant Shipping Act for the limitation of the amount of their liability in connection with a ship or other property.

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(4) The jurisdiction of the High Court under subsection (2)(b) includes power to settle any account outstanding and unsettled between the parties in relation to the ship, and to direct that the ship, or any share thereof, shall be sold, and to make such other order as the court thinks fit.

(5) The reference in subsection (2)(i) to claims in the nature of salvage includes a reference to such claims for services rendered in saving life from a ship or an aircraft or in preserving cargo, apparel or wreck as, under the Merchant Shipping Act or any law relating to civil aviation are authorised to be made in connection with a ship or an aircraft.

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(6) The preceding provisions of this section apply –

- (a) in relation to all ships or aircraft, whether Bruneian or not and whether registered or not and wherever the residence or domicile of their owners may be ;
- (b) in relation to all claims, wherever arising (including, in the case of cargo or wreck salvage, claims in respect of cargo or wreck found on land) ; and
- (c) so far as they relate to mortgages and charges, to all mortgages or charges, whether registered or not and whether legal or equitable, including mortgages and charges created under foreign law.

(7) Nothing in subsection (6) shall be construed as extending the cases in which money or property is recoverable under any of the provisions of the Merchant Shipping Act.

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4. (1) Subject to section 5, an action in personam may be brought in the High Court in all cases within the Admiralty jurisdiction of that court.

Mode of
exercise
of Admiralty
jurisdiction.

(2) In the case of any such claim as is mentioned in section 3(2)(a), (c) or (r) or any such question as is mentioned in section 3(2)(b), an action

in rem may be brought in the High Court against the ship or property in connection with which the claim or question arises.

(3) In any case in which there is a maritime lien or other charge on any ship, aircraft or other property for the amount claimed, an action in rem may be brought in the High Court against that ship, aircraft or property.

(4) In the case of any such claim as is mentioned in section 3(2)(e) to (q), where –

- (a) the claim arises in connection with a ship ; and
- (b) the person who would be liable on the claim in an action in personam ("the relevant person") was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship,

an action in rem may (whether or not the claim gives rise to a maritime lien on that ship) be brought in the High Court against –

- (i) that ship, if at the time when the action is brought the relevant person is either the beneficial owner of that ship as respects all the shares in it or the charterer of it under a charter by demise ; or
- (ii) any other ship of which, at the time when the action is brought, the relevant person is the beneficial owner as respects all the shares in it.

(5) In the case of a claim in the nature of towage or pilotage in respect of an aircraft, an action in rem may be brought in the High Court against that aircraft if, at the time when the action is brought, it is beneficially owned by the person who would be liable on the claim in an action in personam.

(6) Where, in the exercise of its Admiralty jurisdiction, the High Court orders any ship, aircraft or other property to be sold, the court shall have jurisdiction to hear and determine any question arising as to the title to the proceeds of sale.

(7) In determining for the purposes of subsections (4) and (5) whether a person would be liable on a claim in an action in personam it shall be assumed that he has his habitual residence or a place of business within Brunei Darussalam.

(8) Where, as regards any such claim as is mentioned in section 3(2)(e) to (q), a ship has been served with a writ or arrested in an action in rem brought to enforce that claim, no other ship may be served with a

writ or arrested in that or any other action in rem brought to enforce that claim ; but this subsection does not prevent the issue, in respect of any one such claim, of a writ naming more than one ship or of two or more writs each naming a different ship.

5. (1) This section applies to any claim for damage, loss of life or personal injury arising out of –

Actions
in personam.

- (a) a collision between ships ;
- (b) the carrying out of, or omission to carry out, a manoeuvre in the case of one or more of two or more ships ; or
- (c) non-compliance, on the part of one or more of two or more ships, with the collision regulations.

(2) The High Court shall not entertain any action in personam to enforce a claim to which this section applies unless –

- (a) the defendant has his habitual residence or a place of business within Brunei Darussalam ;
- (b) the cause of action arose within inland waters of Brunei Darussalam or within the limits of a port of Brunei Darussalam ; or
- (c) an action arising out of the same incident or series of incidents is proceeding in the court or has been heard and determined in the court.

In this subsection –

“inland waters” includes any part of the sea adjacent to the coast of Brunei Darussalam certified by the Minister to be waters falling by international law to be treated as within the territorial sovereignty of His Majesty apart from the operation of that law in relation to territorial waters ;

“port” means any port, harbour, river, estuary, haven, dock, canal or other place so long as a person or body of persons is empowered by or under any law to make charges in respect of ships entering it or using the facilities therein, and “limits of a port” means the limits thereof as fixed by or under the law in question ;

“charges” means any charges with the exception of light dues, local light dues and any other charges in respect of lighthouses, buoys or beacons and of charges in respect of pilotage.

(3) The High Court shall not entertain any action in personam to enforce a claim to which this section applies until any proceedings previously brought by the plaintiff in any court outside Brunei Darussalam against the same defendant in respect of the same incident or series of incidents have been discontinued or otherwise come to an end.

(4) Subsections (2) and (3) shall apply to counterclaims (except counterclaims in proceedings arising out of the same incident or series of incidents) as they apply to actions, the references to the plaintiff and the defendant being for this purpose read as references to the plaintiff on the counterclaim and the defendant to the counterclaim respectively.

(5) Subsections (2) and (3) shall not apply to any action or counterclaim if the defendant thereto submits or has agreed to submit to the jurisdiction of the court.

(6) Subject to the provisions of subsection (3), the High Court shall have jurisdiction to entertain an action in personam to enforce a claim to which this section applies whenever any of the conditions specified in subsections (2)(a) to (c) is satisfied, and the rules of court relating to the service of process outside the jurisdiction shall make such provision as may appear to the rule-making authority to be appropriate having regard to the provisions of this subsection.

(7) Nothing in this section shall prevent an action which is brought in accordance with the provisions of this section in the High Court being transferred, in accordance with the enactments in that behalf, to some other court.

(8) For the avoidance of doubt it is hereby declared that this section applies in relation to the jurisdiction of the High Court not being Admiralty jurisdiction, as well as in relation to its Admiralty jurisdiction.

Prize
jurisdiction.

6. The High Court shall have as a prize court –

- (a) all such jurisdiction as is conferred on it by any law relating to prize ; and
- (b) all such other jurisdiction on the high seas and elsewhere as it had as a prize court immediately before the commencement of this Order.

Made this 28th. day of Rabiulakhir 1417 Hijrah corresponding to the 12th. day of September, 1996 Masihi at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM