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**Circular No 152/2012
Dated 12 July 2012**

To Members of the Malaysian Bar

Rules of Court 2012 and Court Forms: Update on 12 July 2012

Reference is made to Circular No 142/2012 dated 2 July 2012 and Circular No 146/2012 dated 3 July 2012.

We wish to reiterate that the Bar Council Task Force on Combined Rules of Court (Task Force”), together with the Attorney General’s Chambers (“AGC”) and the Judiciary finalised the Rules of Court 2012 (“Rules”) and Court Forms on 21 June 2012.

On 26 June 2012, the Statutory Rules Committees for the High Court and the Subordinate Courts chaired by the Chief Justice, comprising the Judiciary; AGC; Presidents of the Malaysian Bar, Sabah Law Association and the Advocates’ Association of Sarawak convened a meeting to approve the Rules and Court Forms, which will come into effect on 1 Aug 2012.

The Rules and Court Forms will replace the Rules of the High Court 1980 and the Subordinate Courts Rules 1980.

Members can access the Rules and Court Forms at <http://www.federalgazette.agc.gov.my> or at the following links:

- (a) Click here for the Bahasa Malaysia version; and
- (b) Click here for the English version.

We urge Members to take cognisance of the Rules and Court Forms as it would have tremendous ramifications and implications in the way litigation is practised in the courts in Malaysia.

Whilst the Rules and Court Forms have been gazetted, some typographical/editorial errors have been detected and these are in the process of being corrected by the Drafting Division of the AGC. We will in due course, provide Members with a list of the corrections that have been made to the Rules since the date of the gazette. Members are urged to forward any other errors to the officers named below for the Task Force’s further action.

We append the following documents for Members’ easy reference:

- (a) A press statement dated 2 July 2012 issued by the Judiciary; and
- (b) Summary of Substantive Changes to the Rules.



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www.internationalmlc.com

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Should you require any clarification, please do not hesitate to contact Sumitha Shaanthinni Kishna (03-2050 2090; sumitha@malaysianbar.org.my) or Vilashini Vijayan (03-2050 2095; vila@malaysianbar.org.my).

Thank you.

Cecil Abraham
Chairperson
Task Force on Combined Rules of Court



**PEJABAT KETUA HAKIM NEGARA
MAHKAMAH PERSEKUTUAN MALAYSIA
ISTANA KEHAKIMAN
PUTRAJAYA**

**SIARAN AKHBAR
KAEDAH-KAEDAH MAHKAMAH 2012**

Adalah dimaklumkan bahawa Jawatankuasa Kaedah-Kaedah yang ditubuhkan di bawah seksyen 17 Akta Mahkamah Kehakiman 1964 dan seksyen 3 Akta Kaedah Mahkamah Rendah 1955 yang terdiri daripada wakil Badan Kehakiman, Jabatan Peguam Negara, Majlis Peguam, Persatuan Peguam Sarawak, Persatuan Undang-Undang Sabah dan dipengerusikan oleh YAA Ketua Hakim Negara telah memperkenalkan **Kaedah-Kaedah Mahkamah 2012 (*Rules of Court 2012*)** bagi menggantikan Kaedah-Kaedah Mahkamah Tinggi 1980 (*Rules of the High Court 1980*) dan juga Kaedah-Kaedah Mahkamah Rendah 1980 (*Subordinate Courts Rules 1980*). Kaedah Mahkamah baru menggabungkan Kaedah-Kaedah yang terpakai bagi kes sivil di Mahkamah Tinggi dan Mahkamah Rendah.

Tujuan Kaedah-Kaedah Mahkamah 2012 ini dibuat adalah untuk memudahkan dan menyeragamkan prosedur sivil di Mahkamah serta meningkatkan mutu penyampaian sistem keadilan di Malaysia. Diantara ciri-ciri baru yang dibuat ialah;

- i- prosidur sivil di Mahkamah Tinggi dan Mahkamah Rendah diseragamkan dan dipermudahkan.
- ii- untuk pertama kalinya, teks sah bagi kaedah-kaedah ini dibuat dalam Bahasa Malaysia.
- iii- cara memulakan kes di Mahkamah telah dipermudahkan daripada 4 cara kepada hanya 2 cara iaitu melalui writ saman (*writ of summons*) atau saman pemula (*originating summons*) sahaja.
- iv- permohonan interlokutori di kedua-dua Mahkamah diseragamkan dengan hanya menggunakan notis permohonan dan tidak lagi saman dalam kamar (*summons in chambers*)

Jawatankuasa Kaedah-kaedah dan Jawatankuasa kecil Kaedah-Kaedah yang ditubuhkan ini telah bersidang sebanyak 15 kali semenjak tahun 2009 bagi menyediakan dan memuktamadkan draf akhir Kaedah-Kaedah Mahkamah 2012. Akhirnya, Kaedah-Kaedah Mahkamah tersebut telah diluluskan oleh kedua-dua Jawatankuasa Kaedah-Kaedah Mahkamah pada 26 Jun 2012 dan akan dikuatkuasakan mulai 1 Ogos 2012 .

Para pengamal undang-undang dan orang ramai boleh mendapatkan salinan Kaedah-Kaedah Mahkamah 2012 di laman web www.federalgazette.agc.gov.my, www.kehakiman.gov.my atau www.malaysianbar.org.my

Disediakan oleh:
Che Wan Zaidi bin Che Wan Ibrahim
Pegawai Khas I kepada
YAA Ketua Hakim Negara

2 Julai 2012.

Summary of Substantive Changes

(1)	Order 3 r 3	RHC provision for exclusion of court vacation period from computation of time for service of pleadings is deleted.
(2)	Order 3 r 6	RHC provision for Notice of Intention to Proceed after one year-delay is deleted.
(3)	Order 5	<p>Mode of commencement of proceedings. The only general modes of commencement of proceedings will now be either writ or originating summons (“OS”). The difference between writ and OS is predicated on the existing distinction, ie substantial dispute of fact.</p> <p>There will be no more originating motion or petition, ie <u>Orders 8 and 9 have been deleted</u>, but there will still be saving provisions for specific matters, eg winding up, matrimonial and probate matters.</p> <p>Order 5 r 2 of RHC which specifies the type of proceedings that must be commenced by writ, is deleted. It is replaced by a general statement that proceedings in which substantial disputes of fact are likely, must be begun by writ.</p>
(4)	Order 6 r 6	Subrule (1) which states that “no requirement for leave to issue writ, notice of which is to be served out of jurisdiction”, is deleted. Notice of writ to be served out of jurisdiction still requires leave of court under Order 11.
(5)	Order 12 r 4	<p>The time limit for entering appearance is now 14 days, regardless of whether in local jurisdiction, not in local jurisdiction, or in East Malaysia. The eight-day, 12-day or 10-day time limits no longer apply.</p> <p>In addition, it will now take 14 days to enter appearance for writ served out of jurisdiction.</p>
(6)	Order 12 r 6–11	RHC provision relating to entry of conditional appearance is deleted and replaced with new Rules 9 and 10, ie an Entry of Appearance (“Appearance”) is not a waiver of irregularity. If a defendant wants to apply to set aside writ for irregularity or stay of proceedings on the grounds of forum, he/she must do so within the time specified for serving defence. Time to file defence is extended to 14 days from dismissal of the application to set aside.
(7)	Order 12 r 8	This provision is deleted and a new Rule 12 is introduced which provides that Appearance need not be entered for OS.
(8)	Order 15 r 13A	New provision is introduced: notice of action to non-parties.
(9)	Order 15 r 18–28	Provisions relating to actions by paupers are deleted.

(10)	Order 17 r 7A	New provision is introduced: withdrawal or admission of interpleader.
(11)	Order 18 r 5	RHC provision relating to service of pleadings during court vacation is deleted.
(12)	Order 18 r 12(1A)	New provision is introduced: No party shall quantify any claim or counterclaim for general damages.
(13)	Order 18 r 22	Subrule (4): trial without pleadings is deleted.
(14)	Order 20 r 6	Provision relating to amendment during court vacation is deleted.
(15)	Order 20 r 12	New provision on amendment of pleadings by agreement of parties introduced: if both parties consent, any pleading may be amended before commencement of trial.
(16)	Order 22	Payment into court is deleted, and replaced by Order 22B Offer to settle.
(17)	Order 22B	New provisions relating to Offer to Settle are introduced.
(18)	Order 23	Security for Costs: new Rule 1(2A), 1(2B) and 1(2C) introduced.
(19)	Order 24	<p>Order 24 r 1 and 2 are deleted: no more mutual discovery and discovery without order.</p> <p>Order 24 r 3 has been changed to incorporate a new subrule (4).</p> <p>There is a new Order 24 r 7(3) and (4).</p> <p>Order 24 r 7A is introduced for discovery against other persons.</p> <p>Order 24 r 8A is introduced: duty of discovery throughout proceedings.</p> <p>There are additions to Order 24 r 12(1).</p> <p>There are changes to Order 24 r 16: deletion of subrules (2), (3) and (4); and addition of subrule (5).</p> <p>The provisions on “committal if fail to abide by order for discovery”, have been removed.</p>
(20)	Order 25	Summons for Directions is deleted.
(21)	Order 26	<p>Interrogatories: Rule 1 is changed to include the requirement for answers to be given in not less than 14 days.</p> <p>A new Order 26 r 6(2) is added to cover insufficient answers, ie asking for further and better particulars.</p>

(22)	Order 28	<p>OS: Rule 2 is deleted because no appearance is required for OS.</p> <p>Rule 3 is deleted and replaced by Rule 3A.</p> <p>New Rule 3B to cover applications disputing jurisdiction, and for setting aside the OS.</p> <p>New Rule 3C to cover affidavits in support, affidavits in reply and subsequent affidavits, within seven days, 21 days and 14 days respectively.</p>
(23)	Order 29	<p>Rule 1(2) is amended to also allow a defendant to make an <i>ex-parte</i> application.</p> <p>Order 29 r 1(2BA) is amended to state that the Court must fix the <i>inter partes</i> date within 14 days of the <i>ex-parte</i> Order, and not 21 days as under RHC.</p> <p>Order 29 r 1(3) is amended to state that if originating process is not issued within two days of the Order, the injunction may be discharged.</p>
(24)	Order 30	<p>Receivers: Rule 6(2) is amended to remove “8% interest” and replaced with “as Chief Judge may direct from time to time”.</p>
(25)	Order 31	<p>Subrules (2) and (3) of Rule 2 are deleted.</p>
(26)	Order 32	<p>Mode of application is now by “notice of application”, not “summons in chambers”.</p> <p>Rule 7 is deleted.</p> <p>Rule 9 replaces the words “Chief Justice” with “Chief Judge”.</p> <p>Rule 13 deals with service of affidavits, and clarifies that an affidavit in reply is to be served 14 days from the sealed copy of the application. If a deponent of affidavit is out of Malaysia, the time for service is 21 days, not 14 days.</p>
(27)	Order 34	<p>Case management has been substantially changed, and to encapsulate all pre-trial directions.</p>
(28)	Order 35	<p>Order 35 r 2(2) allows an application to be made to set aside judgement or order obtained in absence of one party within 14 days of Order. Factors to consider are set out in r 2(3).</p>
(29)	Order 35A	<p>Provisions on witness statements are deleted because it is covered in Order 34 and Order 38 r 2.</p>
(30)	Order 37	<p>Assessment of Damages: new rules 1(4) to (7).</p>
(31)	Order 38	<p>Rule 2 provides for witness statements and evidence at trial and in proceedings by affidavits.</p>

		<p>Rules 4 and 6 deleted.</p> <p>Rule 14: “writ of subpoena” now to be known as “subpoena”.</p>
(32)	Order 40A	New provision: Experts of Parties.
(33)	Order 41	<p>Affidavits: Rule 1(4A) has been deleted.</p> <p>New provision: Rule 13, “language of affidavit”. An affidavit may be filed in English if a deponent affirms his/her affidavit outside jurisdiction.</p>
(34)	Order 42	<p>New Rule 1A: proceedings heard <i>in camera</i>.</p> <p>Rule 12 now does not specify the interest rate post judgement and leaves it to the Chief Judge.</p> <p>New Rule 12A covers compensation sum on judgement debts for Islamic finance matters.</p>
(35)	Order 43	<p>Accounts: new Rule 2 to provide that accounts can be ordered for counterclaim.</p> <p>New subrules (3) to (6) of Rule (3) for directions on account taking.</p> <p>New Rule 5A for procedure to be complied with before taking of accounts and inquiries.</p>
(36)	Order 44	Rule 18: interest to be charged is now at a rate to be determined by the Chief Judge.
(37)	Order 45	<p>Rule 1 is amended to reflect that “charging order” and “appointment of receiver” cannot be done in lower courts.</p> <p>New Rules 1(2A) and 11A.</p>
(38)	Order 47	Order 47 r 6 is amended to state how the application is to be made and what is to be contained in the affidavit.
(39)	Order 49	Rule 1 is amended to include new subrule (3).
(40)	Order 51A	Rule 4(d) is amended to change from six months to 12 months.
(41)	Order 53	<p>Judicial Review: Rule 3(6) states that the time period to make an application has been changed from 40 days to 3 months.</p> <p>New subrules (7) and (8) of Rule 3: court can extend time but it must be <i>inter partes</i>.</p>

		Rule 6: the words “ <i>Within 14 days after leave has been granted</i> ” has been replaced with “ <i>After leave has been granted</i> ” thereby permitting such applications to be filed during the course of the judicial review proceedings.
(42)	Order 55	New procedure for Appeals to High Court from Subordinate Courts.
(42A)	Order 55A	New procedure for Appeals to High Court under Written Law.
(43)	Order 56	Time period for appeal from Registrar to Judge is changed from 10 days to 14 days.
(44)	Order 57	New provisions for mechanism of transfer from lower court to high court and vice versa.
(45)	Order 59	<p>Costs: substantial changes have been made to this Order.</p> <p>It provides the Court discretion to award a gross sum as costs rather than having the costs taxed. Costs to be determined at any stage but to be paid after conclusion of the proceedings unless there is an order to the contrary.</p> <p>In exercising its discretion as stated above, the Court shall invite parties to submit on the issue of costs. The submissions on costs shall be tendered as part of the substantive submission of the case. A bill of costs will be annexed to the submission and the bill of costs shall include particulars of the work done including the value of getting up and all disbursements reasonably incurred.</p> <p>With the discretion vested in the Court as stated above, the provisions regarding the taxation of bill of costs have been removed.</p> <p>It introduces a provision to reflect the <i>Calderbank</i> offers of compromise.</p> <p>It introduces a new table for disbursements for proceedings in the High Court and the Subordinate Courts.</p> <p>It introduces a new scale of costs for proceedings in the Subordinate Courts.</p> <p>The allocatur fee is fixed at 4% of the costs that is allowed by the court. There will be a separate Order drawn up for costs so that the extraction of the main Order/Judgment will not be held up by non-payment of allocatur fees.</p>
(46)	Order 62	Service of Documents: new provision for service by facsimile.
(47)	Order 63	Rule 1: new provision for documents to be printed on both sides.
(48)	Order 63A	New provision for electronic filing.

(49)	Order 65	New Rule 2A is introduced.
(50)	Order 69	Arbitration: provisions have been substantially redrafted.
(50A)	Order 70	Admiralty proceedings – substantial changes
(51)	Order 74	New Rule 11A to D for Judgement Debtor Summons.
(52)	Order 76	The terms “ <i>guardian ad litem</i> ” and “ <i>next friend</i> ” are replaced with “litigation representative”.
(53)	Order 83	<p>Charge Actions:</p> <p>Rule 2(2) — to serve the notice of appointment for the hearing and a copy of the affidavit in support of the summons in no less than four clear days before the day fixed for the first hearing of the summons.</p> <p>Rule 2(3) — where plaintiff claims delivery of possession, affidavit served on the defendant must be indorsed with a notice informing the defendant that the plaintiff intends at the hearing to apply for an order to the defendant to deliver up to the plaintiff possession of the charged property.</p> <p>Rule 2(4) — where the hearing is adjourned and the defendant was absent from the hearing, then, subject to any directions given by the Court, the plaintiff must serve a written notice of the adjourned hearing, together with a copy of any further affidavit intended to be used at the hearing, on the defendant not less than two clear days before the day fixed for the hearing.</p> <p>Rule 3(3) has been amended to now only require particulars of the amount due under the charge as at the date of the OS.</p>
(54)	Order 85A	Hire Purchase: adopted from Subordinate Courts Rules.
(55)	Order 86A	Employment Act: adopted from Subordinate Courts Rules.
(56)	Order 92	<p>Rule 1(3): An affidavit in a foreign language shall be filed with translation and by annexing the affidavit to an affidavit by the translator.</p> <p>Rule 1(4): in urgent cases, the use of English is allowed, provided a Bahasa Melayu version is filed in 2 weeks’ time.</p>
(57)	Order 93	Small claims procedure: adopted from Subordinate Courts Rules.
(58)	Order 94	Repeal, Saving and Transitional Provisions (Appendix C): deals with the status of actions that are pending, and Appendix C sets out the specific actions where the former modes of commencement have been retained.