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## JAWATANKUASA PEGUAM PULAU PINANG PENANG BAR COMMITTEE

Court Liaison 5/22

24 May 2022

To Members of the Penang Bar,

### Issues Pertaining to Matters before YA Tuan Kenneth Yoong Ken Chinson St James at Penang High Court OCV 2

The Penang Bar Chairman, Ravi Chandran, Bar Council Representative, Lee Guan Tong and Co-Chairperson of the Court Liaison Subcommittee, Gowri Subbaiyah met with Judicial Commissioner of the Penang High Court, YA Tuan Kenneth Yoong Ken Chinson St James on 27 Apr 2022.

Members are requested to take note of the following matters that were discussed during the said meeting and to the directions given by His Lordship in His Court to facilitate the smooth conduct of cases:-

No.	Matters	Remarks
1.	Hearing of Appeal/Originating Summons / Application	<p>a) Written Submissions and Bundle of Authorities that have already been filed by Parties based on the directions previously given under the purview of YA Dato' George Varughese a/l KO Varughese</p> <p>Parties are to file a <u>Common Chronology of Facts</u> and an <u>Executive Summary</u>. The Executive Summary should not be more than five (5) pages, with font size 12 and 1.15 Line Spacing.</p> <p>In the Executive Summary, any reference to a document or an authority is to be made as follows:-</p> <p><u>Document (to prove or support a fact)</u></p> <ol style="list-style-type: none"><li>1. Enclosure Number of the cause paper (e.g. Affidavit) should contains the document that Parties want to refer to;</li><li>2. PDF Page Number in the Enclosure, where the referred document can be found.</li></ol> <p><b>Example:</b> <b><i>Affidavit In Reply date X.X.2022, Encl. 12, page 15</i></b></p> <p><u>Authority (to support a point and/or argument)</u></p> <ol style="list-style-type: none"><li>1. Case Name;</li><li>2. Citation;</li><li>3. Enclosure Number of the Bundle of Authorities;</li><li>4. PDF Page Number, where the extract of the relied case can be found; and</li><li>5. If it is sufficiently important for Parties' submissions, Parties are encouraged to reproduce the relevant extracts.</li></ol>

		<p><b>Example:</b>  <b>“ABC v XYZ Sdn. Bhd [2022] 10 MLJ 100, Enclosure X, page X, para [X]:</b>  <b>[X] It is trite that in order to move the Court to grant a stay of execution, the defendant has to satisfy the Court that there are special circumstances...”</b></p> <p>Parties are no longer required to file an Annexure Bundle or a fresh Bundle of Authorities.</p> <hr/> <p>b) Where Written Submissions and Bundle of Authorities have yet to be filed by the Parties.</p> <p>Parties are required to file a <u>Common Chronology of Facts</u> and an <u>Outline of Submissions</u>. The Outline should not be more than 10 pages, with font size 12 and 1.15 Line Spacing.</p> <p>In the Outline of Submissions, any reference to a document or an authority is to be made as set out above.</p> <ol style="list-style-type: none"> <li>1. Parties are no longer required to file an Annexure Bundle.</li> <li>2. It is suggested that Parties file the Bundle of Authorities first, to ensure that Parties have the Enclosure Number for the Bundle of Authorities. Parties will then have the Enclosure Number and the PDF Page Number to refer to in your Outline of Submissions.</li> </ol>
2.	Pre - Trial Directions	<p>Parties will be directed to file the following Pre-Trial Documents:</p> <ol style="list-style-type: none"> <li>1. <b>Common Bundle of Documents (CBOD)</b> Part A and B. Only documents that are pleaded to be forged should be included in Part C.</li> <li>2. <b>Common Core BOD</b> will be referred for key and/or determinant of documents if the CBOD is five (5) volumes or more.</li> <li>3. <b>Common Chronology of Facts</b> are to be signed by both Parties. Plaintiff are required to send the draft to Defendant. Should there be any disagreements with the way an event described, Parties should make a remark as to how Parties would describe the event.</li> <li>4. <b>Agreed Issues to Be Tried (ITBT)</b> should not be more than three (3) issues and signed by both Parties. An ITBT is <i>not</i> every disputed issue of fact, but the determinant issues for your cause of action or your defence.</li> <li>5. <b>Agreed Facts (AF)</b> Parties are expected to submit as many AF as possible and signed by both Parties. Secondary, non-essential facts should also be agreed to, so that the same facts do not have to be formally proven at trial.</li> <li>6. <b>Summary of Case (SOC)</b> which should not be more than 2 pages, signed by the party filing it.</li> <li>7. <b>List Of Witnesses (LOW)</b> is to be prepared in 2 columns: Left Column contains the Names of the witnesses; and the Right Column contains a Summary of the facts in your pleaded case that <i>that witness</i> will prove at trial. LOW prepared in this manner can constitute you framework for the preparation of your Witness Statements. LOW should be signed by the party filing it.</li> </ol>

		<p><b>Example:</b></p> <p><b>Mr. ABC The Plaintiff's General Manager, who will testify as to the facts that constituted to the breach of the contract, including the conduct of the Defendant in disregarding the reminders given to the Defendant to perform the obligations under clauses 7 and 17 of the contract.</b></p> <p>8. All these documents are to be filed by a certain date.</p> <p>a. Parties will be asked if they intend to file any Interlocutory Application. If the answer is Yes, then Court will make an Order that the Interlocutory must be filed within a certain period of time e.g. within 1 month, or by a certain date.</p> <p>b. From the LOW, we know how many witnesses a party is going to call, and what pleaded facts each witness will testify to prove. Parties will be asked how many hours they will take to Cross-Examine the opposite side's witnesses.</p> <p>9. Directions for <b>Witness Statement</b> will then be given.</p> <p>10. Fixing of <b>Trial</b> dates.</p>
3.	Part Heard Trial	<p>Parties will be asked to prepare an <b>Agreed Notes Of Evidence (NOE)</b> for the Trial up to the day that the Trial paused. These NOE will be used for the continued Trial and ultimately for the Parties' respective Written Submissions.</p> <p>Parties will also be asked to prepare a respective Preliminary Submissions, premised on the testimony of the witnesses who have testified thus far, with an emphasis on:</p> <p>a. What facts of that pleaded case that the witness been able to prove?</p> <p>b. For the opposite side: What have they been able to establish by Cross-examination?</p>
4.	Trial Timing	<p>Hearings and Trials will end for the day at approximately 5.00 p.m., except for circumstances which include these circumstances:</p> <p>a. Witness currently on the stand is about to finish his/her testimony, and it is more practical to have the witness finish testifying rather than for the witness to come back on another day to finish; and/or</p> <p>b. Witness currently on the stand is the last witness, and it is practical to have the witness finish testifying so that the evidence-gathering part of the Trial is completed, rather than to have everyone concerned come back on another day just to complete.</p> <p>Note:</p> <p>1. If a Hearing or Trial had to extend beyond 5.00 p.m., it is hoped that Parties will, in any event, stop before 6.30 p.m.</p> <p>2. Hearings and Trials are now staggered. Each Hearing or Trial is allocated a time slot. This is done for more efficient time-management for all concerned. It is hoped that this measure will help Parties to save time, and to reduce waiting time. Parties will not have to wait long, if at all, for their Hearing or Trial to commence. There will, understandably, sometimes, be Hearing overruns. But your wait should not be long.</p>

His Lordship welcomes any feedback or suggestions at any point of time during the proceeding before him.

Members are requested to take note that all of the above will have a retrospective effect with any previous direction/order given by His Lordship.

Members will be updated as and when we receive any additional information.

**Ravi Chandran and Gowri Subbaiyah**  
**Co-Chairpersons**  
**Court Liaison Subcommittee**