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JAWATANKUASA PEGUAM PULAU PINANG PENANG BAR COMMITTEE

Court Liaison 7/22

30 June 2022

To Members of the Penang Bar,

Issues Pertaining to Matters before YA Tuan Kenneth St James at Penang High Court OCV 2 (Revised)

The Penang Bar Chairman, Ravi Chandran, Bar Council Representative, Lee Guan Tong and Co-Chairperson of the Court Liaison Subcommittee, Gowri Subbaiyah and a Member of the Court Liaison Subcommittee, Norhardi Haron recently met again with the Judicial Commissioner of the Penang High Court, YA Tuan Kenneth St James to bring to his notice the feedback received from Members on the previous directions given by His Lordship. Refer to Circular [Court Liaison 5/22](#).

Members are requested to take note of the **revised** directions given by His Lordship in His Court, as follows:-

No.	Matters	Remarks
1.	Hearing of Appeal/Oriinating Summons/Application	<p>A. Where Written Submissions and Bundle of Authorities have already been filed by Parties based on the directions of the previous Court:-</p> <p><u>Respective Chronology of Facts</u> Parties are required to submit their Respective Chronology of Facts, no longer a Common Chronology of Facts. The Chronology of Facts is merely to provide a timeline as to what happened in the case, and not an admission of the facts stated therein.</p> <p><i>Example:</i></p> <ol style="list-style-type: none">1. dd/mm/yyyy: JV Agreement signed2. dd/mm/yyyy: Plaintiff issued a Notice of Demand to the Defendant3. dd/mm/yyyy: Defendant replied to the Notice of Demand <p>His Lordship has also agreed that if the case is straight forward and does not have many events, counsel may ask to forgo preparing the Chronology of Facts.</p> <p><u>Executive Summary</u></p> <p>a. Post-Trial (case-to-case basis): If the Written Submission is more than 30 pages, Parties are required to file an Executive Summary (which is not more than 5 pages, with font size 12 and 1.15 Line Spacing).</p> <p>b. Appeal, Oriinating Summons, Judicial Review, Other Applications (other than post-trial): If the Written Submission is more than 20 pages, Parties are required to file an Executive Summary (which is not more than 5</p>

	<p>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"> 1. Enclosure Number of the cause paper (e.g. Affidavit) that contains the document that Parties want to refer to; 2. PDF Page Number in that Enclosure, where the referred document can be found. <p><i>Example:</i> <i>Affidavit In Reply date X.X.2022, Encl. 12, page 15</i></p> <p><u>Authority (to support a point and/or argument)</u></p> <ol style="list-style-type: none"> 1. Case Name; 2. Citation; 3. Enclosure Number of the Bundle of Authorities; 4. PDF Page Number where the extract of the relied case can be found; and 5. If it is sufficiently important for Parties' submissions, Parties are encouraged to reproduce the relevant extract. <p><i>Example:</i> <i>"ABC v XYZ Sdn. Bhd [2022] 10 MLJ 100, Enclosure X, page X, para [X]:</i> <i>[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..."</i></p> <p>Parties are no longer required to file an Annexure Bundle or a fresh Bundle of Authorities.</p> <p><u>General suggestion</u> Parties are advised to paginate their Cause Papers and Bundles right from the first page of the Cause Paper or Bundle, even if the first page in the cover page, to ensure that the Hard Copy Page Number tallies with the PDF Page.</p>
	<p>B. Where Written Submissions and Bundle of Authorities have yet to be filed by the Parties.</p> <p>Parties are required to file an <u>Outline of Submissions</u>. The Outline should be no 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"> 1. Parties are no longer required to file an Annexure Bundle. 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.

2.	Pre-Trial Directions	<p>Parties will be directed to file the following Pre-Trial Documents:</p> <ol style="list-style-type: none"> 1. Bundle of Pleadings (BOP) 2. Common Bundle of Documents (CBOD) Only documents that the <i>existence</i> thereof is disputed, and is a relevant issue should be in Part C. 3. Common Core BOD—the key, determinant documents that will be referred to at trial, if the CBOD is 5 volumes or more. 4. Respective Chronology of Facts by both Parties. 5. Agreed Issues to Be Tried (ITBT): which should be no more than 3 issues and signed by both Parties. An ITBT is <u>not</u> every disputed issue of fact, but the determinant issues for the cause of action or the defence. 6. Agreed Facts (AF): Parties are expected to agree to as many AF as possible, and signed by both Parties. Secondary, non-essential facts should also be agreed to, so that those same facts do not have to be formally proven at trial. 7. Respective Summary of Case (SOC) which is no more than 2 pages, signed by the Party filing it. 8. Respective List of Witnesses (LOW) 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 your framework for the preparation of your Witness Statements. LOW should be signed by the Party filing it. <p><i>Example:</i> <i>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.</i></p> <ol style="list-style-type: none"> 9. All these documents are to be filed by a certain date. <ol style="list-style-type: none"> 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. 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. 10. Directions for Witness Statement will then be given. 11. Fixing of Trial dates.
3.	Part-Heard Trials	<p>Parties will be asked to prepare an Agreed Notes of Evidence (NOE) 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 are given the opportunity to notify His Lordship if Parties are not agreeable to prepare the NOE.</p> <p>Parties are no longer required to prepare their respective</p>

		Preliminary Submissions , which are premised on the testimony of the witnesses who have testified thus far.
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> <ol style="list-style-type: none"> 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 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>Note:</p> <ol style="list-style-type: none"> 1. If a Hearing or Trial has to extend beyond 5.00 p.m., it is hoped that Parties will, in any event, stop before 6.30 p.m. 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.

His Lordship has agreed that the above are general directions. They are reviewable on counsel's request on a case-to-case basis.

His Lordship also **welcomes** any feedback or suggestions at any point of time during the proceedings before him that will lead to expediting the proceedings, which will benefit all Parties.

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. Our previous Circular Court Liaison 5/22 is hereby withdrawn.

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

Ravi Chandran and Gowri Subbaiyah
Co-Chairpersons
Court Liaison Subcommittee