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Rules of Court (Amendment) 2020 — Embracing Remote Communication Technology

The highly anticipated Rules of Court (Amendment) 2020 (**Amended Rules**), which marks the third set of amendments to the Rules of Court 2012 (**RC 2012**), have been issued by the Malaysian Courts' Rules Committee. The Amended Rules come into effect tomorrow, 15 December 2020.

It is starkly clear that the highlight of the Amended Rules is the recognition and codification of remote communication technology into the RC 2012. The amendments to the Courts of Judicature Act 1964, Subordinate Courts Act 1948 and Subordinate Courts Rules Act 1955 were similarly gazetted on 22 October 2020, to allow court proceedings to be conducted using remote communication technology. This is in line with the judiciary's plan to conduct virtual court hearings and trials, and to promote more efficient means of service by using electronic communication.

Here are the key changes introduced by the Amended Rules:

1. Definition of "Remote Communication Technology" (r 2)

Remote communication technology is defined as "*a live video link, a live television link or any other electronic means of communication*".

2. Insertion of "O 33A: Proceedings Through Remote Communication Technology" (r 4)

To facilitate the process of online proceedings, the Court may —

- On its own motion or upon an application made by any party, direct that any cause or matter under the RC 2012 be conducted through remote communication technology: O 33A r 2, RC 2012.
- Direct that any person, witness or prisoner as witness or party, to attend proceedings or give evidence by way of remote communication technology: O 33A r 3, RC 2012.

- Enable the public to see and hear the proceedings, either by broadcasting for members of the public, or, by recording the proceedings to keep an audio-visual record: O 33A r 5, RC 2012.

It is, however, important to bear in mind that the court also has the power to revoke, suspend or vary the direction made pursuant to O 33A r 2, if —

- × the remote communication technology stops working and causes unreasonable delay;
- × it is necessary for the court to do so to ensure the proceedings are conducted fairly;
- × there has been a material change in circumstances; and
- × it is necessary in the interests of justice: O 33A r 4, RC 2012.

3. “Judgment” includes a judgment or order delivered through remote communication technology (r 7)

The Amended Rules ensure that O 42 of the RC 2012 equally applies to judgments and orders delivered via remote communication technology — *see the insertions of O 42 r 1(5) and r 1A(2), RC 2012*. Procedurally, where a judgment or order is delivered remotely, such facts shall be reflected in the judgment or order: O 24, r 5(3), RC 2012.

4. Service of originating process by way of electronic communication (r 3)

Previously, a writ was to be served personally or sent by way of prepaid AR registered post to the defendant’s last known address. The Amended Rules now allow for service to be effected by means of electronic communication: O 10 r 1(1), RC 2012.

5. Service of documents (not being a document which requires personal service) (rr 9 and 10)

Ordinary service of any document, not being a document which is required to be personally served, may be effected by means of electronic communication — *see insertion of O 62 r 6(1)(cc), RC 2012*.

The Amended Rules also introduce the service of documents by using the electronic filing service — *see insertion of O 63A r 17, RC 2012*. In this regard, the Registrar may, with the approval of the Chief Justice, establish an electronic filing service and make provision for specified documents to be filed, served, delivered or otherwise conveyed using that service. This provision applies equally to documents which do not require personal service, as well as documents that are required to be served personally, to which a party has agreed to be served using the electronic filing service.

6. Service on ships to be effected by way of electronic communication (r 12)

The insertion of O 70 r 10(1A) of the RC 2012 allows for service of the writ in an action in *rem* or a warrant of arrest to be effected by affixing the writ or warrant outside any suitable part of the ship's superstructure, and followed immediately with electronic communication by email or other means to the owners/demised charterers of the ship.

7. Amendments to conduct of pre-trial case management (r 5)

Pursuant to the Amended Rules, the court may, at pre-trial case management, give the appropriate orders and directions regarding the manner in which the proceedings are to be conducted — *see insertion of O 34 r 2(2)(u), RC 2012*. This would include proceedings by way of remote technology communication.

Judges of the High Court are also given the discretion to refer parties to mediation if an issue that can be resolved by way of mediation is identified — *see insertion of O 34 r 2(1A), RC 2012*. In fact, all running down cases are now subject to mediation — *see insertion of O 34 r 2(1B), RC 2012*.

8. Adjournment of pre-trial case management and trial: Not more than three times (rr 5 and 6)

Notably, in the interest of expediting the disposal of matters, the Amended Rules now prescribe a pre-trial case management and trial may be adjourned not more than three times, unless the circumstances otherwise require: O 34 r 5 and O 35 r 3, RC 2012.

The Amended Rules may be viewed [here](#).

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