The much anticipated Rules of Court 2012 (ROC) came into effect on 1 August 2012. The ROC, in combining the Subordinate Court Rules 1980 and the Rules of the High Court 1980, aims to streamline civil procedure in the Subordinate Courts and High Courts.

In this article, we examine some of the significant amendments as a result of the ROC.

**Jurisdiction**

Under the ROC, certain Orders will apply to the High Court only. These include Orders 30 (Receivers), 31 (Sales of immovable property by order of court), 43 (Accounts and Inquiries), 44 (Proceedings under judgments and orders on the equity side), 50 (Charging orders, stop orders), 51 (Receivers: Equitable execution), 51A (Rateable distribution), 53 (Judicial Review), 56 (Appeals from Registrar of the High Court to a Judge in Chambers), 66 (Obtaining evidence for foreign court), 67 (Reciprocal Enforcement of Judgments), 69 (Arbitration), 70 (Admiralty), 71 (Non-contentious Probate), 72 (Contentious Probate), 80 (Administration and similar actions), 82 (Debenture holders’ action: Receiver’s register) and 83 (Charge actions), 86 (Inheritance (Family Provision) Act 1971), 87 (Trade Marks Act 1976), 88 (Companies Act 1965) and 89 (Summary Proceedings for Possession of Land). Additionally, all actions or proceedings under the Companies Act 1965 and the National Land Code 1965 shall only commence in the High Court.

Amendments have also been made to the Subordinate Courts Act 1948 to enhance the monetary jurisdiction of the Magistrates’ Court from RM25,000 to RM100,000 whilst the Sessions Court will see their monetary jurisdiction increased from RM250,000 to RM1 million. The amendments will also empower the Sessions Court to grant injunctions, declarations, specific performance orders, rescission of contracts and cancellation or rectification of instruments. The amendments, which were made pursuant to the Subordinate Courts (Amendment) Act 2010, have yet to come into force. When it is enforced, those orders in the ROC relevant to declarations and injunctions will apply accordingly to the Sessions Court.

---

1 The firm’s Head of the Dispute Resolution Practice Group, Tan Sri Dato’ Cecil Abraham, is the Chairman of the Bar Council Task Force on the Combined Rules whilst Mr Nantha Balan, Partner in the Dispute Resolution Practice Group, is a member of the Task Force.
IN THE INTEREST OF JUSTICE
It has been emphasised that the interest of justice is the main consideration in enacting the ROC. The newly introduced Order 1A states that mere technical non-compliance of the ROC no longer plays an important role in determining the outcome of proceedings. The judge is now empowered to put forward the interests of a litigant as opposed to disposing of a case on a mere technicality. This will have a broad equitable impact on the enforcement of the ROC.

COMMENCEMENT OF PROCEEDINGS
The commencement of legal proceedings has now been simplified under Order 5 of the ROC. The previous modes for filing civil cases in court were by writ of summons, originating summons, petition and originating motion. Order 5 has reduced the modes to writ and originating summons. With regard to interlocutory applications, Order 32 provides that the mode of application is now by way of ‘notice of application’. ‘Summons-in-chambers’ is therefore, no longer applicable.

TIMELINES
The time limit for entering an appearance is 14 days for writs served within Peninsular Malaysia. If the writ is served out of jurisdiction, a time limit of 21 days is provided. In either case, the court may exercise its discretion to extend time.

On a further issue of timelines, Order 29 rule 1(2BA) has been amended where the hearing date of the inter partes application must be fixed within 14 days of the date of the ex parte Order, in comparison to 21 days under the previous Rules of the High Court 1980. A defendant may also now, by virtue of Order 29 rule 1(2), make an ex parte application for an injunction. Previously a defendant could make only an inter partes application for an injunction.

When the Subordinate Courts (Amendment) Act 2010 comes into force, Order 29 will apply to the Sessions Court as well.

DAMAGES NOT TO BE QUANTIFIED
One of the most significant changes under the new regime is Order 18 rule 12(1A) which ensures that general damages shall not be quantified in claims or counterclaims2. This enables the court, where the action is being heard, to be the one and final arbiter of awarding the amount of general damages.

2 The decisions in Skrine & Co v MBF Capital Bhd & Anor & Other Appeals [1998] 3 MLJ 649 and Dr Mohd Yusof bin Ismail v Hj Ismail bin Mohd Nor [2011] 5 MLJ 900 which left the decision of quantification of general damages to the parties, are no longer good law.
**JUDICIAL REVIEW**

The scope of judicial review has also been enlarged through substantial changes under the provisions of Order 53 of the ROC. The time period to make such an application now extends to three months, from the previous 40 days.

Under the former Order 53 rule 2(4), a person adversely affected by the decision of any public authority was entitled to make an application for judicial review. The ROC has now liberalised the scope for judicial review where “any person who is adversely affected by the decision, action or omission in relation to the exercise of the public duty or function shall be entitled to make the application”.

The focus has, therefore, shifted from the decision maker, which is the public authority, to the nature of the decision, in that it should arise out of a duty or function which has a ‘public’ element.

**Costs**

Order 59 of the ROC is significant as the courts are granted the discretion to award a gross sum as costs, rather than having the costs taxed. Costs may also be determined at any stage but are to be paid after the conclusion of the proceedings unless there is an order to the contrary. In exercising its discretion, 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, which should include the particulars of the work done, such as the value of getting up and all disbursements reasonably incurred, will be annexed to the submission. Order 59 also introduces provisions to reflect the Calderbank offer of compromise which also applies in Australia and the United Kingdom.

**Conclusion**

In summary, the restructuring of the ROC has been hailed as a new era of efficient administration of justice in Malaysia. The principal outcome of this new regime is not only to eliminate archaic rules of procedure, but also to ensure that the overriding objective is achieved. Regard therefore, should be paid to Order 2 rule 1(2) which reads as follows:

> These Rules are a procedural code and subject to the overriding objective of enabling the court to deal with cases justly. The parties are required to assist the court to achieve this overriding objective.

It remains to be seen whether ultimately litigants, their lawyers and the courts are prepared to give effect to the spirit and essence of the ROC.

---


4 See Bar Council Circular No 152/2012: Summary of Substantive Changes.

5 This is based on the English case of Calderbank v Calderbank [1975] 3 All ER 333 where it refers to an offer made to settle the dispute which is “Without Prejudice Save as to Costs”. 