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Commercial Litigation

# Amendments to Malaysian Appellate Court Procedures

## Introduction

On 1 March 2018, a number of changes were made to Malaysia's appellate courts rules.

The changes to the Rules of the Court of Appeal 1994 (the '**RCA 1994**') and the Rules of the Federal Court 1995 (the '**RFC 1995**') bring about new procedures and promote clarity.

In this Update, we explain the key changes. We also explain the practical differences that the changes might make.

## The Changes in a Nutshell

### The RCA 1994

The key amendments to the RCA 1994 are as follows:

- The removal of a fixed nominal payment as security for an appeal;
- New provisions to review the Court's decision where leave to appeal is refused; and,
- New provisions for expeditious hearings of appeals.

### The RFC 1995

The key amendments to the RFC 1995 are as follows:

- Fixed timelines for filing notices of appeal;
- An extension of time to file the record of appeal; and,
- The removal of a fixed nominal payment as security for an appeal.

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### **An Explanation of the Changes**

#### **Amendments to the RCA 1994**

##### *No Fixed Nominal Sum as Security for the Appeal*

The amendments do away with the nominal MYR1,000 payment as security for the costs of the appeal.

Instead, on the application of the respondent, the Court now has the right to determine the sum deposited as security.

Therefore, the amount of security ordered will now depend entirely on the arguments put forward by the respondent and the strength of the evidence available.

##### *New Provisions to Review Refusals of Leave to Appeal*

Aggrieved parties may now review the Court of Appeal's decision refusing leave to appeal. Previously, no such provisions were available.

The new provisions apply only to appeals where the Court of Appeal is the apex court. Broadly, these would be appeals from the Subordinate Courts where the subject matter of the claim is less than MYR250,000.

The provisions allow the affected parties a second bite of the cherry. They also ensure that important questions of law or questions of public importance do not escape the Court's attention.

##### *New Provisions for Expeditious Hearings*

In keeping with the judiciary's stand that justice should be swiftly dispensed, appeals can now proceed even when the order appealed from or grounds of judgment are unavailable. In fact, appeals may now proceed even where the Judge's notes of hearing on the decision appealed from are not yet available.

The amendments should result in a shorter lapse of time between the lodgement and hearing of appeals.

It would also mean that appellants and respondents should be prepared to defend or criticise the findings and judgments appealed from even where they have not sighted the judgment or the Judge's notes of proceedings.

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### Amendments to the RFC 1995

#### Fixed Timelines for Filing Notices of Appeal

The amendments introduce a 14-day deadline to file a notice of appeal, from when leave to appeal is granted. Proceedings where leave is needed will usually involve one of the following two scenarios:

- (i) questions of general principle decided for the first time in Malaysian courts; or,
- (ii) questions of importance upon which a decision of the Federal Court would be to public advantage.

Where no leave to appeal is required, the appellant has 30 days from the date of the decision appealed from to file the notice of appeal. This would generally involve appeals centred on interlocutory applications.

The amendments are a change from the previous position which to some extent left the timelines on the filing of notices of appeal up to the Court's discretion.

#### Extension of Timeline to File Record of Appeal

The amendments bring about a 90-day time period from either (i) the date the decision appealed from was given; or (ii) the date leave to appeal was granted, for parties to file the record of appeal.

This is in stark contrast to the previous mere six-week time period to file the record of appeal.

#### No Fixed Nominal Sum as Security for the Appeal

Just like the RCA 1994 amendments, the RFC amendments do away with the nominal MYR1,000 security for the costs of the appeal.

Again, the Court now has the discretion to decide on the sum to be paid as security.

## Conclusion

The amendments are a welcome change.

They modernise and strengthen the appellate courts' procedures. They also fortify the judiciary's aim of delivering justice in a timely manner.

For further queries or discussions on these changes, please feel free to contact Christopher and Lee Ong's Commercial Litigation team.

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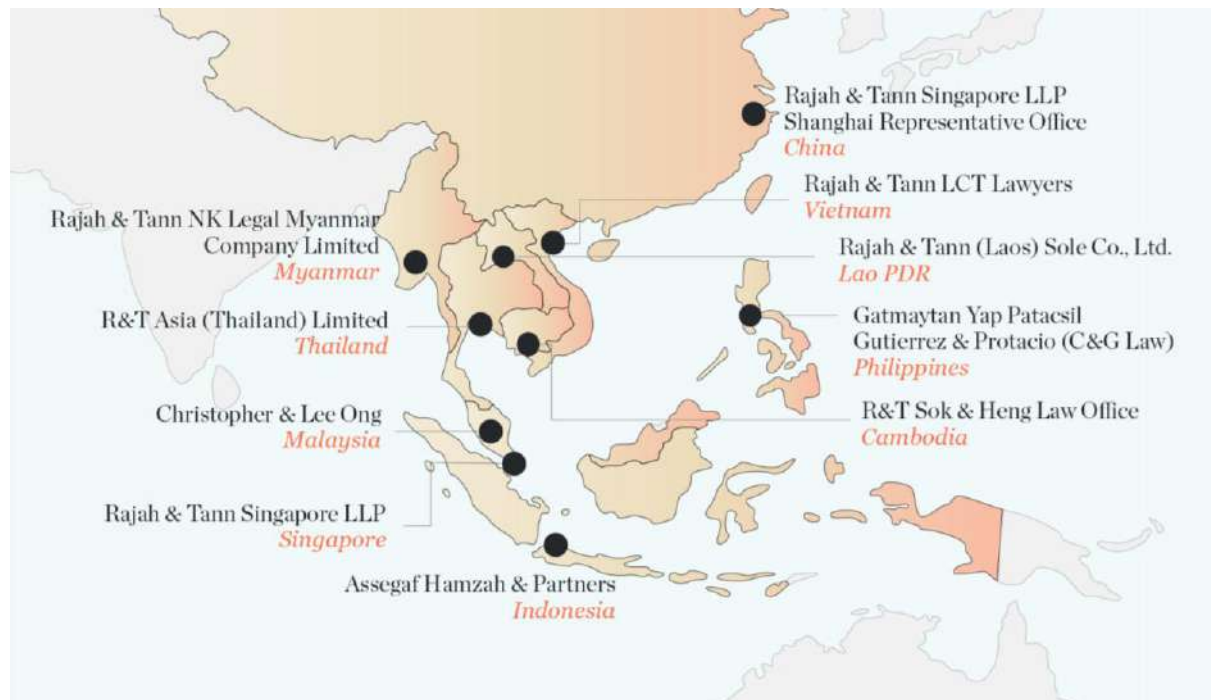
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