

**SUPREME COURT (APPEALS TO PRIVY COUNCIL)
(CHAPTER 158)**

APPEALS FROM THE SUPREME COURT ORDER

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SUBSIDIARY LEGISLATION

APPEALS FROM THE SUPREME COURT ORDER

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**SCHEDULE — MODIFICATIONS OF JUDICIAL COMMITTEE
(GENERAL APPELLATE JURISDICTION) RULES
IN THEIR RELATION TO APPEALS FROM
SUPREME COURT**

SUBSIDIARY LEGISLATION

Order made under section 7

APPEALS FROM THE SUPREME COURT ORDER

Commencement: 1st February 1990
[S 2/1990]

Citation.

1. This Order may be cited as the Appeals from the Supreme Court Order.

Interpretation.

2. In this Order, unless the context otherwise requires —
 - “appeal” includes an application for leave to appeal;
 - “Court” means the Supreme Court;
 - “Judicial Committee” means the Judicial Committee of Her Majesty’s Privy Council.

Conditions of appeal.

3. (1) An appeal shall lie from the Court to His Majesty the Sultan and Yang Di-Pertuan with the leave of the Court granted in accordance with the provisions of paragraph 4 —

- (a) from any final judgment or order in any civil matter where —
 - (i) the matter in dispute in the appeal amounts to, or is of the value of, \$200,000 or upwards;
 - (ii) the appeal involves, directly or indirectly, some claim or question to or respecting property or some civil right of like amount or value; or
 - (iii) the case is from its nature a fit one for appeal; and
- (b) from any interlocutory judgment or order which the Court considers a fit one for appeal.

[Subsidiary]

(2) An appeal shall also lie from the Court to His Majesty the Sultan and Yang Di-Pertuan in the following cases —

(a) in any of the cases referred to in sub-paragraph (1) where the leave of the Court has not been duly obtained; and

(b) in any case arising in a civil matter other than the cases referred to in sub-paragraph (1),

where application for special leave to appeal has been made to His Majesty the Sultan and Yang Di-Pertuan and His Majesty acting on the recommendation of the Judicial Committee has granted special leave to appeal.

(3) The provisions of this paragraph shall apply to appeals as well from decisions given before the coming into operation of this Order as from decisions given thereafter.

(4) Notwithstanding sub-paragraphs (1) and (2), no appeal shall lie from the Court to His Majesty the Sultan and Yang Di-Pertuan in any case arising in a civil matter except between those parties to the proceedings who have at any time before the hearing of the case by the Court of Appeal consented in writing to be bound by an appeal to the Judicial Committee of Her Britannic Majesty's Privy Council in that case, and the appeal shall not affect any party to the proceedings who has not so consented.

[S 45/2005]

Leave to appeal.

4. Application for leave to appeal to His Majesty the Sultan and Yang Di-Pertuan for the purposes of paragraph 3(1) shall be made to the Court within 2 months from the date on which the decision appealed against was given or within such further time as may be allowed by the Court.

Conditional leave to appeal.

5. Leave to appeal under paragraph 3(1) shall, in the first instance, be granted by the Court only —

(a) upon condition of the appellant, within a period to be fixed by the Court but not exceeding 3 months from the date of the hearing of the application for leave to appeal entering into good and sufficient security, to the satisfaction of the Court, in a sum not exceeding \$80,000 for the due prosecution of the appeal and the payment of all such costs as may become payable by the applicant in the event of his not obtaining an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution, or of the Judicial Committee recommending the appellant to pay the costs of the appeal (as the case may be); and

(b) upon such other conditions (if any) as to the time or times within which the appellant shall take the necessary steps for the purposes of procuring the preparation of the record and the despatch thereof to England as the Court, having regard to all the circumstances of the case, may think it reasonable to impose.

Powers of single Judge.

6. A single Judge of the Court shall have power and jurisdiction —

(a) to hear and determine any application to the Court for leave to appeal under paragraph 3(1)(a); and

(b) generally in respect of any appeal pending before His Majesty the Sultan and Yang Di-Pertuan and reference to the Judicial Committee, to make such other order and to give such other directions as he shall consider the interests of justice or the circumstances of the case require:

Provided that any order, direction or decision made or given in pursuance of the power conferred by this paragraph may be varied, discharged or reversed by the Court.

Execution of judgment pending appeal.

7. Where the judgment appealed from requires the appellant to pay money or do any act, the Court shall have power, when granting leave to appeal, either to direct that the judgment shall be carried into execution or that the execution thereof shall be suspended pending the appeal, as to the Court shall seem just, and in case the Court shall direct the judgment to be carried into execution, the person in whose favour it was given shall, before the execution thereof, enter into good and sufficient security, to the satisfaction of the Court, for the due performance of such Order as His Majesty the Sultan and Yang Di-Pertuan on the recommendation of the Judicial Committee shall think fit to make thereon.

Preparation of record.

8. (1) The preparation of the record shall be subject to the supervision of the Court, and the parties may submit any disputed question arising in connection therewith to the decision of the Court, and the Court shall give such directions thereon as the justice of the case may require.

(2) The Registrar, as well as the parties and their legal agents, shall endeavour to exclude from the record all documents (more particularly such as are merely formal) that are not relevant to the subject matter of the appeal and generally, to reduce the bulk of the record as far as practicable, taking special care to avoid the duplication of documents and the unnecessary repetition of headings and other merely formal parts of documents; but the documents omitted to be copied or printed shall be enumerated in a list to be placed after the index or at the end of the record.

[Subsidiary]

(3) Where in the course of the preparation of a record, one party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant and the other party nevertheless insists upon it being included, the record, as finally printed (whether in Brunei Darussalam or in England) shall, with a view to the subsequent adjustment of the costs of and incidental to such document, indicate in the index of papers or otherwise, the fact that, and the party by whom, the inclusion of the document was objected to.

(4) The reasons given by Judges of the Court for or against any judgment pronounced in the course of the proceedings out of which the appeal arises shall be communicated by them in writing to the Registrar, and shall be included in the record.

Reproduction of record.

9. (1) The record shall be printed in accordance with the provisions contained in Schedule A entitled “Rules as to Reproduction of Documents” (being Schedule A of the Judicial Committee (General Appellate Jurisdiction Rules)).

(2) Where the record is printed in Brunei Darussalam, the Registrar shall, at the expense of the appellant, transmit to the Registrar of the Privy Council thirty copies of such record, one of which copies he shall certify to be correct by signing his name on, or initialling, every eighth page thereof and by affixing thereto the seal of the Court.

(3) Where the record is to be printed in England or elsewhere, the Registrar shall, at the expense of the appellant, transmit to the Registrar of the Privy Council one certified copy of such record, together with an index of all the papers and exhibits in the case. No other certified copies of the record shall be transmitted to the agents in England by or on behalf of the parties to the appeal.

(4) Where part of the record is printed in Brunei Darussalam and part is to be printed in England or elsewhere, sub-paragraphs (2) and (3) shall, as far as possible, apply to such parts as are printed in Brunei Darussalam and such as are to be printed in England or elsewhere respectively.

Consolidation of appeals.

10. Where there are two or more applications for leave to appeal arising out of the same matter and the Court is of opinion that it would be for the convenience of the Judicial Committee and all parties concerned that the appeals should be consolidated, the Court may direct the appeals to be consolidated and grant leave to appeal by a single order.

Rescinding leave to appeal.

11. Where an appellant, having obtained an order granting him conditional leave to appeal, and having complied with the conditions imposed on him by such order, fails thereafter to apply with due diligence to the Court for an order granting him final leave to appeal, the Court may, on an application in that behalf made by the respondent, rescind the order granting conditional leave to appeal, notwithstanding the appellant's compliance with the conditions imposed by such an order, and may give such directions as to the costs of the appeal and security entered into by the appellant as the Court shall think fit, or make such further or other order in the premises as, in the opinion of the Court, the justice of the case requires.

Notice to other parties.

12. (1) On an application for final leave to appeal, the Court may enquire whether notice or sufficient notice of the application has been given by the appellant to parties concerned and, if not satisfied as to the notices given, may defer the granting of the final leave to appeal, or may give such other directions in the matter as, in the opinion of the Court, the justice of the case requires.

(2) The Registrar shall, with all convenient speed, transmit to the Registrar of the Privy Council a certificate to the effect that the respondent has received notice, or is otherwise aware, of the order of the Court granting final leave to appeal and of the transmission of the record to England.

Prosecution of appeal.

13. An appellant who has obtained final leave to appeal shall prosecute his appeal in accordance with the rules for the time being regulating the general practice and procedure in appeals to the Judicial Committee.

Withdrawal of appeal.

14. (1) An appellant who has obtained an order granting him conditional leave to appeal may, at any time prior to the making of an order granting him final leave to appeal, withdraw his appeal on such terms as to costs and otherwise as the Court may direct.

(2) Where an appellant, having obtained final leave to appeal, desires prior to the despatch of the record to England, to withdraw his appeal, the Court may, upon an application in that behalf made by the appellant, grant him a certificate to the effect that the appeal has been withdrawn and the appeal shall thereupon be deemed as from the date of such certificate to stand dismissed without express order of His Majesty the Sultan and Yang Di-Pertuan, and the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as the Court may think fit to direct.

[Subsidiary]**Dismissal for non-prosecution.**

15. Where an appellant, having obtained final leave to appeal, fails to show due diligence in taking all necessary steps for the purpose of procuring the despatch of the record to England, any respondent may, after giving the appellant due notice of his intended application, apply to the Court for a certificate that the appeal has not been effectually prosecuted by the appellant, and if the Court sees fit to grant such a certificate, the appeal shall be deemed, as from the date of such certificate, to stand dismissed for non-prosecution without express order of His Majesty the Sultan and Yang Di-Pertuan, and the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as the Court may think fit to direct.

Substituting parties.

16. (1) Where at any time between the order granting final leave to appeal and the despatch of the record to England, the record becomes defective by reason of the death or change of status of a party to the appeal, the Court may, notwithstanding the order granting final leave to appeal, on an application in that behalf made by any person interested, grant a certificate showing who, in the opinion of the Court, is the proper person to be substituted or entered on the record in place of or in addition to the party who has died or undergone a change of status, and the name of such person shall thereupon be deemed to be so substituted or entered on the record as aforesaid without express order of His Majesty the Sultan and Yang Di-Pertuan.

(2) Where the record subsequently to its despatch to England becomes defective by reason of the death or change of status of a party to the appeal, the Court shall, upon an application in that behalf made by any person interested, cause a certificate to be transmitted to the Registrar of the Privy Council showing who, in the opinion of the Court, is the proper person to be substituted, or entered on the record, in the place of, or in addition to, the party who has died or undergone a change of status.

Form of case.

17. The case shall consist of paragraphs numbered consecutively and shall state, as concisely as possible, the circumstances out of which the appeal arises, the contentions to be urged by the party lodging the case, and the reasons of appeal. Reference by page and line to the relevant portions of the record as printed shall, as far as practicable, be printed in the margin, and care should be taken to avoid, as far as possible, the reprinting in the case of long extracts from the record. The taxing officer, in taxing the costs of the appeal shall, either of his own motion or at the instance of any party, inquire into any unnecessary prolixity in the case, and shall disallow the costs occasioned thereby.

Costs in Brunei Darussalam.

18. Where the Judicial Committee directs a party to bear the costs of an appeal incurred in Brunei Darussalam, such costs shall be taxed by the proper officer of the Court in accordance with the rules for the time being regulating taxation in the Court.

Orders of His Majesty the Sultan and Yang Di-Pertuan.

19. (1) On any appeal or application for special leave to appeal under this Order, His Majesty the Sultan and Yang Di-Pertuan, on receiving from Her Majesty's Government in the United Kingdom the report or recommendation of the Judicial Committee in respect thereof, shall make such order as may be necessary to give effect thereto.

(2) Without prejudice to the generality of sub-paragraph (1), such order may direct that —

(a) such witnesses shall be examined or re-examined and as to such facts as may be specified in the order, notwithstanding any such witness may not have been examined or no evidence may have been given on any such fact in a previous stage of the matter;

(b) the matter which is the subject of the appeal be remitted to the Court and that the Court rehear the matter in such form and either generally or upon certain points only and upon such hearing take such additional evidence though before rejected or reject such evidence before admitted as His Majesty the Sultan and Yang Di-Pertuan shall on the recommendation of the Judicial Committee direct; or

(c) a new trial be held either generally or as to certain points only.

Procedure to enforce order.

20. Any person who desires to enforce or obtain execution of any order of His Majesty the Sultan and Yang Di-Pertuan shall file in the Court a certified copy of the order, and the Court shall thereupon enforce or execute it in the manner and according to the law applicable to the execution of its own judgments.

Costs.

21. The costs incurred in the prosecution of any appeal or application for leave to appeal under this Order shall be paid by such party or parties, person or persons as His Majesty the Sultan and Yang Di-Pertuan may, on the recommendation of the Judicial Committee, by order direct and the amount of any such costs so far as the same relates to costs incurred in England shall be specified in the order and so far as the same relates to costs incurred in Brunei Darussalam shall be taxed by the Registrar of the Court in accordance with Rules of Court.

[Subsidiary]

Power to provide appeals be lodged in Registry of the Privy Council.

22. Rules of Court may provide that every appeal and every application for leave to appeal shall be lodged, and all other steps incidental to the appeal or application (except steps which fall to be taken in the Court) shall be taken by the parties in the Registry of the Privy Council.

Pending appeal and applications.

23. (1) Any appeal from the Court to Her Majesty in Council which was pending on the commencement of this Order shall be treated as an appeal to His Majesty the Sultan and Yang Di-Pertuan under this Order.

(2) Any proceeding in any such appeal may be amended in such manner as may appear necessary and proper to bring it into conformity with this Order.

Applications for special leave.

24. (1) Any person who desires to apply for special leave to appeal to His Majesty the Sultan and Yang Di-Pertuan under paragraph 3(2) shall do so with the least possible delay by lodging in the Registry of the Privy Council a petition for special leave to appeal in accordance with the provisions of the Schedule and shall give notice to the other parties who appeared in the Court.

(2) The Registrar of the Court shall, on the application of the said petitioner, provide him with a certified copy of the judgment and order from which special leave to appeal is sought.

Application of Judicial Committee (General Appellate Jurisdiction) Rules.

25. The jurisdiction conferred on the Judicial Committee by this Order shall be exercised in accordance with the Judicial Committee (General Appellate Jurisdiction) Rules, as from time to time amended, but the Rules as so amended shall have effect in their application to that jurisdiction subject to the modifications set out in the Schedule.

SCHEDULE

(paragraph 25)

**MODIFICATIONS OF JUDICIAL COMMITTEE (GENERAL APPELLATE
JURISDICTION) RULES IN THEIR RELATION TO
APPEALS FROM SUPREME COURT**

1. Save as is otherwise provided in this Schedule or where the context otherwise requires, any reference in the Rules to Her Majesty or Her Majesty in Council shall be construed as a reference to His Majesty the Sultan and Yang Di-Pertuan acting on the recommendation of the Committee, and references to Orders of Her Majesty in Council shall be construed accordingly.
2. Paragraph 1 of this Schedule shall not apply to the definition of “Agent” in paragraph (1) of rule 1.
3. For the words “Her Majesty in Council” in the definition of “Party” in paragraph (1) of rule 1 there shall be substituted the words “the Judicial Committee”.
4. For the words “Her Majesty in Council” in the definition of “Record” in paragraph (1) of rule 1 there shall be substituted the words “the Judicial Committee”.
5. For the words “Her Majesty in Council” in paragraph (2) of rule 1 there shall be substituted the words “the Judicial Committee”.
6. For the words “to advise Her Majesty” in rule 3 there shall be substituted the words “to recommend to His Majesty the Sultan and Yang Di-Pertuan”.
7. For the words “to advise Her Majesty” in rule 6 there shall be substituted the words “to recommend to His Majesty the Sultan and Yang Di-Pertuan”.
8. For the words “Her Majesty” in paragraph (5) of rule 11, there shall be substituted the words “His Majesty the Sultan and Yang Di-Pertuan”.
9. For the words “Her Majesty” in paragraph (4) of rule 36 there shall be substituted the words “His Majesty the Sultan and Yang Di-Pertuan”.
10. For the words “Her Majesty” in rule paragraph (1) of rule 56 there shall be substituted the words “His Majesty the Sultan and Yang Di-Pertuan”.
11. For the word “orders” in rule 75 there shall be substituted the word “recommendations”.

LAWS OF BRUNEI

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(Appeals to Privy Council)

[Subsidiary]

SCHEDULE — *(continued)*

12. For the words “given their decision” in rule 77 there shall be substituted the words “announced their recommendation”.

13. The following Rule shall be substituted for rule 80 —

“80. A statement of the amount allowed on the taxation shall, and subject to any appeal to the Judicial Committee, and subject to any recommendation from the Committee to the contrary, be transmitted to His Majesty the Sultan and Yang Di-Pertuan for insertion in His Order determining the appeal or petition.”.

14. The following items in Part II of Schedule B shall be omitted —

“Original Order of Her Majesty in Council determining an Appeal

Any other original Order of Her Majesty in Council

Plain copy of an Order of Her Majesty in Council”.