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SMALL CLAIMS PROCEDURE

IN MALAYSIA

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INTRODUCTION

The small claims procedure is a simplified and alternative method of commencing and dealing with a civil proceeding in respect of a small claim. The purpose of this procedure is to quicken the process of settlement of minor disputes in a cheaper way. Nonetheless, although the process is simpler than ordinary court proceedings, it can be quite complicated for one who is not familiar with legal jargon. Some of the examples of the claims that can be filed in the Magistrates Courts using the small claim procedure are: refund of money paid for goods which are defective, refund of salaries paid for work that failed to be carried out, claims for commissions due, and claims for payment on services, facilities or repairing work.

Although representation by a lawyer is not allowed but one may consult a lawyer pertaining to his case at his own cost. Also, a party to any suit in this Court shall not be represented by a lawyer except where

the defendant is required by law to be represented by an authorized person. For example if the defendant who the plaintiff is suing is an artificial person e.g. a company, then the defendant can be represented by a manager or any staff authorized and working with the company.

In Malaysia, small claims procedure is governed by Order 93 of Rules of Court 2012. The proceeding is heard in the Magistrates' Court between an individual as a plaintiff (the proceeding is not applicable to a company or an agent or assignee of debts) and a defendant. According to Order 93 rule 2, the amount in dispute or the value of the subject matter should not exceed RM 5,000.

Before filing the claim, the settlement could be done in an informal way through a session between the parties including meeting up for a discussion or by sending a demand letter to the other party to resolve the claim or debt. After the limit time in the demand letter lapses, the case could proceed to the Court.

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THE PROCESS OF SMALL CLAIMS

For Plaintiff

1. Under Order 93 rule 3, the claim shall be made in Form 198 which could be obtained at the nearest Magistrate Court.
2. The plaintiff must fill in his particulars in the first part of the form (plaintiff's column).
3. In the second part, the plaintiff must fill in the full name of the defendant and his last known address (defendant's column).
4. In the third part, the plaintiff must indicate the exact amount claimed and it shall not exceed RM 5,000. The particulars of the claim must be included and must specify the relevant date and the basis of the claim (how and when the claim has arisen).
5. Upon completion of the filling in the particulars, the plaintiff must sign and thumbprint the form personally. The form must be filed in 4 copies in the Registry of the Second Class Magistrates' Court and the filing fee is RM 20. The Registry will put the seal of the Court on the four copies of the form together with a hearing date. Plaintiff and defendant need to appear on the hearing date that is stated in the form. A copy of the form will be returned to the plaintiff.
6. Plaintiff may serve the form to the defendant by personal service or by prepaid registered post addressed to the last known address of the defendant. It must be served as soon as possible to evade delay in the proceeding. At this stage, if the defendant offers any settlement terms or out of court settlement, the plaintiff can still withdraw his case, before the final hearing. The plaintiff should write to the defendant stating that he is accepting the offer, attend the court at the given date and inform the Magistrate.
7. The plaintiff must ensure his attendance at the trial because the plaintiff is actually initiating the case. If the plaintiff fails to appear, the Court will strike out the case unless the plaintiff is unable to attend due to a strong excuse (supported by evidence) or due to medical condition and produces the medical certificate from a government hospital or clinic. The plaintiff could also refile the case.
8. If the plaintiff wins the case, the Court may at its discretion award costs not exceeding RM100. However cost for advocacy is not allowed by the Court.

For Defendant

1. Order 93 rule 6(1) highlights that once the defendant receives the sealed form from the plaintiff, if the defendant disputes the claim, he must specify the defence in Form 199. The defendant must specify why he disputes the claim and if he has a counterclaim, the particulars and the amount must be stated in the form.
2. Upon completion of the filling in of the particulars, the defendant must sign and thumbprint the form personally. The defendant shall file it in four copies in the Court Registry within 14 days after the service of the claim.
3. Defendant may serve the form to the plaintiff by personal service or by prepaid registered post addressed to the plaintiff's address.
4. Where the defendant fails to show up during the trial, the Court may give judgment in default to the plaintiff. However if the defendant appears during the trial but did not file the defence form (Form 199), the Court may either give judgment in default to the plaintiff or in its discretion adjourn the hearing to allow the defendant to file the defence.

If the party sued fails to comply with the order or judgment (judgment debtor), the party who has obtained the judgment may file a notice to show cause and serve to the judgment debtor by personal service or by prepaid registered post and he has to pay up within 10 days from the receipt of the notice. If the defendant fails to pay, he has to appear in the Court to show cause. In accordance with Order 93 rule 16(2), the Magistrate may:-

- i. order a writ of seizure and sale where a bailiff will assess the defendant's goods, seize them and auction them off. The proceeds will cover the debt;
- ii. allow the defendant more time to settle the judgement or allow payment of debts by instalments;
- iii. order the defendant to be imprisoned.

However if the defendant fails to appear on the date stated in the notice, a warrant of arrest will be issued by the Court.

Because the small claims procedure involves laymen who are usually unfamiliar with the legal jargon and the formality, the court will hold the session in a relaxed and informal manner. The normal rules of evidence are applicable whereby the Court shall consider the documentary or other evidence submitted by the parties. At the end of the trial, the decision of the Magistrate will come up as an enforceable judgment or order.

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