

## 勞資審裁處

### 勞資審裁處的工作

勞資審裁處為市民解決勞資雙方的金錢糾紛，程序簡單快捷，所需費用不多，而索償款額並無上限。

勞資審裁處專門處理因不遵守《僱傭條例》（第57章）或《學徒制度條例》（第47章）的規定而引起的申索，亦處理涉及違反僱傭合約條款的申索（不論違反的是在香港履行的合約條款，還是違反適用《往香港以外地方就業合約條例》（第78章）的合約條款）；此外，亦處理違反學徒合約條款的申索。

司法機構必須保持公正中立，因此本機構職員不會提供任何法律意見，或就個別案件的進行或勝訴機會作出評論。

### 勞資審裁處受理哪些申索？

僱員提出的申索中最常見的包括：

- 欠薪
- 僱主終止合約時沒有給予規定通知而應支付的代通知金
- 法定假期薪酬、年假薪酬或休息日薪酬
- 遣散費、長期服務金或終止僱傭金

- 年終酬金、雙糧或年終花紅
- 佣金
- 建築及建造業僱員向總承判商及前判次承判商追討不超過兩個月的工資

僱主提出的申索中常見的包括：

- 僱員辭職或終止僱傭合約時應支付的代通知金

勞資審裁處祇處理有最少一名申索人的申索額超過港幣8,000元的，或申索人超過10名的申索。申索人不超過10名，而每人的申索額都不超過8,000元的申索，會由小額薪酬索償仲裁處處理。小額薪酬索償仲裁處位於九龍長沙灣道303號長沙灣政府合署十樓，查詢可致電2927 8000。

根據《時效條例》（第347章），關乎簡單合約或侵權行為的訴訟及某些其他訴訟，在訴訟因由產生之日起計滿6年後，不得提出。

### 申索可否不經勞資審裁處達成和解？

勞資雙方應盡量嘗試透過調解以解決糾紛。勞工處勞資關係科樂意隨時協助僱主和僱員雙方盡快達成和解。如需調解服務的資料，可致電勞工處查詢（熱線電話：2717 1771）。

如調解不成功，擬申索人可考慮向勞資審裁處入稟申索。

### 申索人如決定提交申索書，應怎麼辦？

手續十分簡單，擬申索人可致電勞資審裁處的二十四小時電話預約系統（電話：2625 0056），或利用司法機構的網頁（網址為 [www.judiciary.gov.hk](http://www.judiciary.gov.hk)）預約提交申索書的時間。

提交申索書當日，申索人須帶同香港身份證及勞工處案件轉介編號（如適用的話），到勞資審裁處登記處報到。登記處會把一份預約當事人名單交給申索人以核實其姓名、地址及香港身份證號碼。

申索人亦應核實被申索人（即被告人）的姓名、名稱及地址。被告人可以是個人、商號或公司。這些資料必須正確無誤，以確保申索書副本可有效送達被告人。此外，申索人必須注意，郵政信箱號碼並不能視作有效地址。

- 如被告人是有限公司，申索人應提供其註冊辦事處的地址。申索人可到公司註冊處查核有關資料（地址：香港金鐘道66號金鐘道政府合署高座十三樓，查詢電話：2234 9933），也可透過互聯網登入公司註冊處的網上查冊中心（網址：[www.icris.cr.gov.hk](http://www.icris.cr.gov.hk)），或利用公司註冊處網站（網址：[www.cr.gov.hk](http://www.cr.gov.hk)）的超連結登入。

- 如被告人是獨資經營人或業務合夥人，申索人應提供其經營業務的主要地址及 / 或獨資經營人或合夥人的住址。申索人可到稅務局商業登記署查核有關資料（地址：香港告士打道五號稅務大樓四樓，查詢電話：187 8088），也可透過互聯網登入網址www.gov.hk作出申請。

審裁處會根據申索人所提供的資料，編制：

- （表格1）申索書標題：載有申索人與被告人的姓名和地址。
- （表格2）申索書：詳列申索內容，包括申索理由、申索項目及款額。

申索人如以個人身分提出申索，須其本人在表格2上簽署。如申索是由僱主向僱員提出的，則須由商號的獨資經營人 / 合夥業務的合夥人 / 法團公司的董事、秘書或其他獲授權的職員簽署。代表公司簽署的人士須持有授權書。

申索人填寫有關表格可選擇用中文或英文。審裁處告示板已張貼填妥的表格樣本，以供參考。

登記及核實資料後，調查主任會接見申索人，以錄取供詞及有關申索的其他資料。

## 提交申索涉及什麼費用?

申索額	提交申索書費用
2,000元或以下	20元
2,001元 - 5,000元	30元
5,001元 - 10,000元	40元
10,000元以上	50元

審裁處將所需文件送達被告人，會以每個地址計算收費港幣10元。

如申索成功，申索人除獲判經裁斷的款項外，可請求審裁處判予申索所招致的訟費。如申索失敗，則可能要支付被告人的訟費。

如申索人能提出充分及有效的理由，審裁處可削減、免除或延遲收取《勞資審裁處（費用）規則》附表所指明的任何費用，理由須以書面方式向勞資審裁處的司法常務主任提出。

## 提交申索書後會怎樣?

審裁處的登記處會給予申索人一份表格3 - 「聆訊日期地點通知書」。審裁處會安排在申索書提交後10至30天內進行聆訊。審裁處也會安排將表格1、表格2及表格3的副本送達各被告人。

調查主任會就有關申索進行調查，並要求被告人出席會面和擬備抗辯書及證人供詞。雙方須於首次聆訊前把供詞及支持申索的文件之副本送達對方。調查主任向雙方收集了書面證據和事實後，會擬備一份事實摘要，列出雙方的指稱及已解決和未解決的爭議，在聆訊日期前呈交審裁官。

## 如申索書未能送達被告人會怎樣？

如申索書未能送達被告人，審裁處會要求申索人再次提供被告人的正確地址，及在有需要時核實該地址。如仍無法送達，審裁處可下令採用其他方式（例如：登報）將申索書送達被告人。

## 申索書送達後會怎樣？

被告人可能：

- 同意繳付全部款額；
- 同意付款，但要求在一定的時限內分期繳付；
- 同意申索的數額，但表示無力支付；
- 對整項申索或其部分提出異議，另外提出或不提出反申索；  
或
- 不理會申索。

## 如被告人同意全數繳付申索款額

被告人向調查主任表示同意全數繳付申索額後，須以書面加以確認，並須在聆訊日之前盡快全數清繳。

審裁處會分別向雙方發出一份裁斷書。有關款項收妥後，審裁處的會計處便會通知申索人到該處領取。在這種情況下不會進行聆訊。

## 如被告人承認該申索，但未能即時付款

調查主任會將被告人提出的付款建議告知申索人，讓申索人考慮。如雙方同意在某指定日期付款或同意分期繳付，調查主任便會擬備一份和解條款表格供雙方簽署。一般而言，如判定債務人拖欠任何一期還款，則判定債權人可申請強制執行裁斷，以追收尚欠的判定金額。審裁官批准和解後，審裁處便會發出一份裁斷書。這種情況亦無需進行聆訊。

但如雙方未能就付款方式或日期達成協議，則雙方均須出席聆訊。被告人須向審裁官申請給予時間繳付或分期繳付。審裁官會就被告人應如何繳款，定出合理的方法。

## 如被告人同意申索的數額，但表示無力支付

被告人須以書面方式通知審裁處。在此情況下，雙方仍須出席聆訊。

## 如被告人對整項申索或其部分提出異議

調查主任會就該申索及被告人提出的反申索進行調查。申索人和被告人均須就其指稱提交供詞及有關文件。

## 如被告人不理會申索

如審裁官信納申索書已送達被告人，而申索人提出的申索又屬真實，審裁官便可在被告人缺席的情況下判申索人勝訴。

## 需等候多久審裁處才聆訊申索？

審裁處一向致力盡早審結案件。任何一方如能提出充分理由又取得對方的書面同意，便可向審裁處申請更改聆訊日期。

## 聆訊

審裁處進行聆訊，無須跟其他大多數法庭一樣，謹守一般依循的嚴格證據規則。任何一方都不可由律師代表。不過審裁處可批准在已登記的職工會或僱主協會中擔任職位的人士作為代表應訊，但該代表須得到申索人或被告人的書面授權。任何一方如欲委託代表出席聆訊，須以書面詳列理由向審裁官提出申請。

## 首次聆訊的情況會怎樣？

首次聆訊在法庭進行，雙方必須出席。如申索人不出席，審裁處可剔除其申索。如申索書已送達被告人但被告人不出席，而申索人又能提出足夠證據支持其申索，則審裁處可在被告人缺席的情況下判申索人勝訴。

審裁官會在庭上解釋事件的爭論點及有關的法律，嘗試協助雙方達成和解。如雙方願意探討和解的可能性，審裁官可指示調解主任協助雙方進行磋商。在調解主任面前達成的任何和解條款均須由雙方簽署，並呈交審裁官批核。審裁官批准和解條款後，便會在庭上按該等條款作出命令。

如雙方未能達成和解，審裁官可將該申索押後，另訂日期進行提訊或審訊。審裁官可命令雙方在指定日期內把進一步的文件

證據及證人供詞呈交調查主任，並可命令雙方將已呈交的文件（包括證人供詞）送達對方。

## 其後的聆訊會怎樣？

雙方均須出席其後的所有聆訊。如申索人不出席，則審裁官可剔除其申索。如申索書已送達被告人但被告人不出席，而申索人又能提出足夠證據支持其申索，則審裁處可在被告人缺席的情況下判申索人勝訴。

審訊時，審裁官會：

- 聆聽雙方的案情；
- 給予申索人和被告人向對方及對方證人發問的機會；
- 有需要時，命令雙方提供進一步證據或傳召其他證人，及將案件押後續審；
- 在聆訊結束時宣告判決，或另定日期宣告判決。

審裁處擬備了一份名為《預備審訊須知》的小冊子，詳列有關的須知事項。如有需要可向勞資審裁處登記處索取，或從司法機構的網頁[www.judiciary.gov.hk](http://www.judiciary.gov.hk) 下載。

## 聆訊之後

### 申索人如因缺席聆訊以致其申索被剔除應怎麼辦？

申索人可在聆訊後7天內或在審裁處容許延長的期限內，向審裁處申請將剔除令作廢及恢復審理其申索。審裁處只會在申索人能夠提出充分理由時才會批准有關申請，並可能同時訂定附加條件。

申索人如申請恢復其案件，應填寫一式兩份的表格18 - 「恢復申索申請書」，並須向審裁處的登記處繳付規定的費用45元。此表格可向審裁處的登記處索取，也可從司法機構的網頁 [www.judiciary.gov.hk](http://www.judiciary.gov.hk) 下載。

#### **被告人可否反對審裁處在他/她缺席聆訊的情況下作出的判決？**

可以。被告人可在聆訊後7天內或在審裁處容許延長的期限內，並在該處認為適當的情況下，向審裁處申請將該裁斷作廢。

被告人如申請將裁斷或命令作廢，應填寫一式兩份的表格19 - 「要求將裁斷/命令作廢的申請書」，並向審裁處的登記處繳付規定的費用45元。被告人可向審裁處的登記處索取該表格，也可從司法機構的網頁 [www.judiciary.gov.hk](http://www.judiciary.gov.hk) 下載。

#### **可以覆核判決嗎？**

可以。但覆核判決的申請必須在裁斷日起計7天之內，向審裁處提交。

申請覆核的一方應填寫一式兩份的表格13 - 「一方要求覆核裁斷/命令申請書」，並須向審裁處的登記處繳付規定的費用45元。此表格可向審裁處的登記處索取，也可從司法機構的網頁 [www.judiciary.gov.hk](http://www.judiciary.gov.hk) 下載。

覆核時，審裁官可將整項申索或其部分重新處理或重新聆訊，而對原來的裁斷或命令可予以維持、更改、或推翻。在一般情況下，審裁處不會更改按照和解協議作出的命令。

審裁處擬備了一份名為《覆核及上訴》的小冊子，詳列了提出覆核和上訴的須知事項。此小冊子可向勞資審裁處登記處索取，或從司法機構的網頁 [www.judiciary.gov.hk](http://www.judiciary.gov.hk) 下載。

#### **申索人或被告人是否都可以提出上訴？**

可以，但只能以裁斷或命令在法律上有錯為理由，或以裁斷或命令超越了勞資審裁處的司法管轄權為理由，提出上訴。

任何一方均可在裁斷書或命令送達之日起計7天之內，或在高等法院司法常務官基於充分理由而容許延長的期限內，向高等法院原訟法庭申請上訴許可，即請求法庭批准其提出上訴。上訴許可的申請人應填寫表格14 - 「基於法律論點而提出的上訴許可申請書」。有關人士可向審裁處的登記處或高等法院書記主任辦事處索取該表格。申請人將該表格提交高等法院書記主任辦事處時，須繳付規定的費用。高等法院書記主任辦事處的地址為香港金鐘道38號高等法院大樓地下。

高等法院原訟法庭拒絕批予上訴許可的決定是最終的決定。如上訴許可獲批予，高等法院原訟法庭便會進行上訴聆訊及作出裁定。

#### **可否對高等法院原訟法庭的決定提出上訴？**

可以。申索人或被告人都可在高等法院原訟法庭作出決定之日起計7天內，向上訴法庭申請上訴許可。上訴法庭如認為擬提出的上訴涉及對公眾有普遍重要性的法律問題，可批予上訴許可。

## 如何對審裁處或高等法院原訟法庭的決定提出上訴？

上訴許可申請書須向高等法院司法常務官提交。

除非上訴人打算親自進行上訴，否則在高等法院上訴時應延聘律師及大律師代表出庭。法人團體（例如：有限公司）除獲得高等法院的許可外，必須由律師代表進行上訴。

### 高等法院書記主任辦事處

地址：香港金鐘道38號高等法院大樓地下

電話：2825 4228

傳真：2530 3512

## 繳付經審裁處裁斷的款項

### 判定債權人如何收取經審裁處裁斷的款項？

審裁處可指明判定債務人如何將款項交予判定債權人。如判定債務人沒有付款，判定債權人可向審裁處申請一張裁斷證明書，並在裁斷發出日期起計12個月內向區域法院或其設於審裁處的櫃位把該證明書登記。之後判定債權人便可向區域法院或其設於審裁處的櫃位申請由法庭執達主任執行判決。有關執達服務的詳細資料，可向各法院的詢問處或總務室索取有關的小冊子。

如判定債務人無力付款或已不知所蹤，致使判決無法執行，則判定債權人可考慮向破產欠薪保障基金申請領取特惠金。判定債權人可致電勞工處查詢有關詳情（電話：2717 1771）。

## 如判定債務人已提出上訴許可的申請，判定債權人可否執行判決？

判定債務人已提交上訴許可申請，並不表示有關的裁斷或命令必須擱置。然而，審裁處、高等法院原訟法庭或上訴法庭可定下並根據其認為適當的條件作出命令，暫不執行判決。

審裁處擬備了一份名為《執行勞資審裁處的裁斷》的小冊子，詳列了執行裁斷須知事項和執行情序。此小冊子可向勞資審裁處登記處索取，或從司法機構的網頁[www.judiciary.gov.hk](http://www.judiciary.gov.hk)下載。

## 服務承諾

- 審裁處會在申索書提交後不超過30天內聆訊案件。
- 司法機構會盡可能即時回覆公眾人士的來信。在任何情況下，我們會在接獲來信後10天內先作出簡覆，並在30天內作詳盡答覆。
- 我們致力提供更完善的服務，歡迎各方提出意見及建議，來信請寄香港金鐘道38號高等法院司法機構政務長收。

## 如何聯絡我們？

地址：九龍加士居道36號

電話：2625 0020

傳真：2513 6797 / 2625 0556

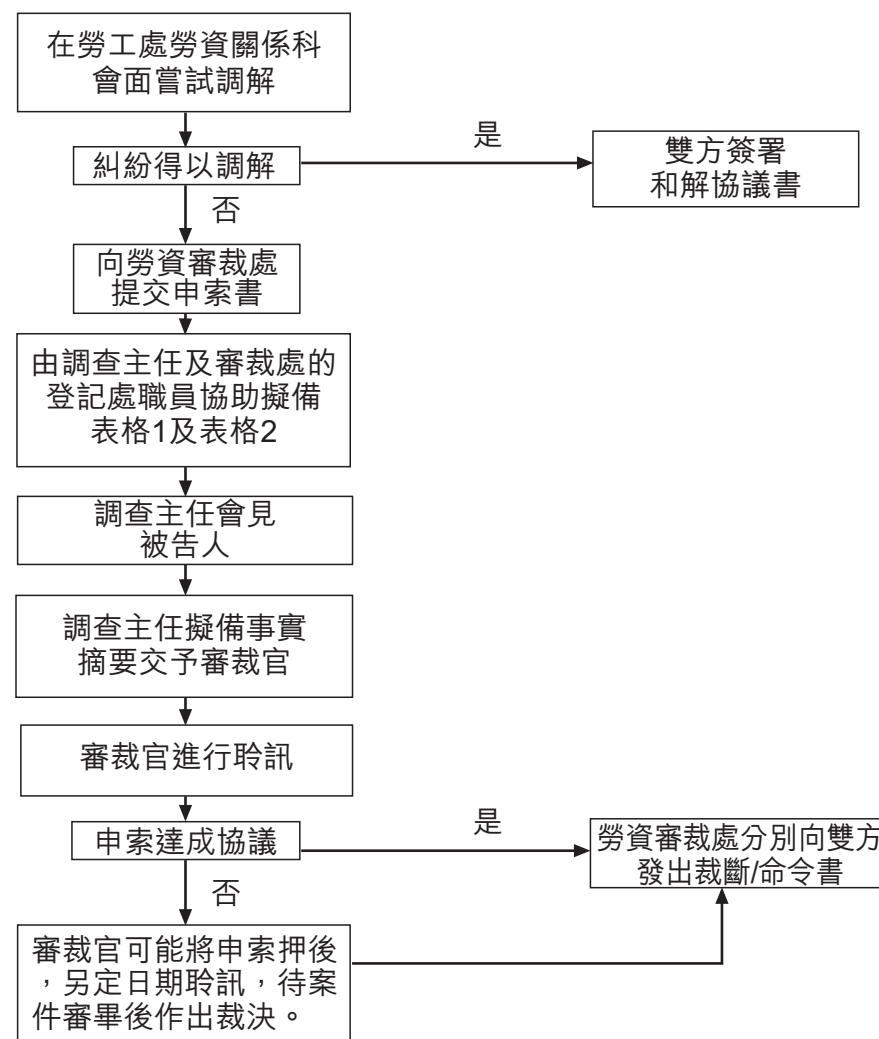
電郵：[labourtribunal@judiciary.gov.hk](mailto:labourtribunal@judiciary.gov.hk)

### 辦公時間

星期一至星期五 上午九時至下午一時  
下午二時至下午五時  
星期六 上午九時至中午十二時  
(公眾假日休息)

司法機構  
二〇〇九年十二月  
(第七版)

### 解決勞資金錢糾紛的程序



## LABOUR TRIBUNAL

### What work does the Labour Tribunal carry out?

The Labour Tribunal offers a quick, informal and inexpensive way of settling monetary disputes between employees and employers. There is no upper limit on the amount of claim.

The Tribunal hears claims arising from the failure of a person to comply with the provisions of the Employment Ordinance (Cap. 57) or the Apprenticeship Ordinance (Cap. 47). It also deals with cases involving breaches of a term of a contract of employment, whether for performance in Hong Kong or under a contract to which the Contracts for Employment Outside Hong Kong Ordinance (Cap. 78) applies, and claims arising from the breach of a term of a contract of apprenticeship.

In order to maintain the impartial role of the Judiciary, our staff will not provide any legal advice or offer any comment on the conduct or merits of specific court cases and proceedings.

### What types of claim does the Tribunal hear?

The most popular items of claim lodged by employees include:

- wages due for work done
- wages in lieu of notice of termination of a contract of employment by an employer without giving the required notice
- pay for statutory holidays, annual leave or rest days

- severance pay, long service payment or terminal payments
- end of year payment, double pay or annual bonus
- commission
- unpaid wages of up to 2 months against the principal contractor and superior sub-contractors in the building and construction industry

Common items of claim lodged by employers include:

- wages in lieu of notice on resignation or termination of contract of employment

The Tribunal only hears cases where the amount of claim exceeds \$8,000 for at least one of the claimants in a claim or where the number of claimants in the claim exceeds 10. Claims lodged by not more than 10 claimants for a sum of money not exceeding \$8,000 per claimant are dealt with by the Minor Employment Claims Adjudication Board, located at 10/F, Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road, Kowloon (Tel: 2927 8000).

The Limitation Ordinance (Cap. 347) stipulates that actions founded on simple contract or on tort and certain other actions shall not be brought after the expiration of 6 years from the date on which the cause of action accrued.

### Can a claim be settled without bringing it to the Tribunal?

It is always advisable to attempt to settle through conciliation. The Labour Relations Division of the Labour Department stands ready to help both parties settle quickly and amicably. The hotline number for advice on conciliation services is 2717 1771.

If conciliation fails, intended claimants can consider bringing their claims to the Tribunal.

### What should a claimant do if he or she decides to file a claim?

The procedure is quite simple. First, call the 24-hour Telephone Appointment Booking System of the Labour Tribunal at 2625 0056 or visit the Judiciary's website at [www.judiciary.gov.hk](http://www.judiciary.gov.hk) to make an appointment for filing of claim.

On the filing date, claimants should report their attendance at the registry with their Hong Kong Identity Card and the referral number of the Labour Department (if applicable). At the registry we would hand the claimant an Appointment Parties' List for verification of his or her name, address and Hong Kong Identity Card number.

The claimant should also verify the name and address of the person, firm or company he or she is claiming against - the defendant. These particulars should be completely accurate so that a copy of the claim can be effectively served on the defendant. A P.O. Box number will not be considered as a valid address.

- Where the defendant is a limited company, the claimant will need to provide the address of its registered office. Claimants can check

this at the Companies Registry, 13/F, Queensway Government Offices, 66 Queensway, Hong Kong (Tel: 2234 9933); or visit the Companies Registry's Cyber Search Centre on the internet (website: [www.icris.cr.gov.hk](http://www.icris.cr.gov.hk) or through a hyperlink on the Companies Registry's website: [www.cr.gov.hk](http://www.cr.gov.hk)).

- Where the defendant is a sole proprietorship or a partnership business, the claimant will need to provide its principal place of business and/or the residential address of the proprietor or partners. Claimants can check this information at the Business Registration Office of the Inland Revenue Department, 4/F, Revenue Tower, 5 Gloucester Road, Hong Kong (Tel: 187 8088); or apply via the website: [www.gov.hk](http://www.gov.hk).

Basing on the information provided by the claimant, we would generate:

- a Title to Claim (Form 1), bearing the names and addresses of both the claimant and the defendant, and
- a Form of Claim (Form 2), showing the details of the claim, including the grounds for the claim, the items and amount of the claim.

A claimant has to sign on Form 2 if he or she is acting as an individual. The sole proprietor of a firm, or a partner of a partnership business, or a director, secretary or other authorised officer of an incorporated company bearing an authorisation letter has to sign on the form if the claim is lodged by an employer against an employee.

Claimants can complete all the necessary forms in Chinese or English. Sample completed forms are on display at the notice boards of the Tribunal.

Next, a Tribunal Officer will interview the claimant to obtain statements and other relevant information.

## How much does it cost to file a claim?

Claim Amount	Filing Fees
\$2,000 or less	\$20
\$2,001 - \$5,000	\$30
\$5,001 - \$10,000	\$40
Over \$10,000	\$50

A fee of \$10 per defendant's address is charged for serving the required documents on the defendant.

If the claim succeeds, the claimant can apply for costs incurred to be reimbursed by the defendant. If the claim does not succeed, the claimant may have to pay costs to the defendant.

The Tribunal may reduce, remit or defer payment of any fees specified in the Schedule under the Labour Tribunal (Fees) Rules if good and valid reasons for so doing are produced in writing to the Registrar, Labour Tribunal.

## What happens after a claimant has filed a claim?

The Tribunal registry will give the claimant a Form 3 – "Notice of Place and Day Fixed for Hearing". The hearing date will be set between 10 and 30 days from the date on which the claim is filed. The Tribunal registry will also arrange for copies of Forms 1, 2 and 3 to be served on each defendant.

The Tribunal Officer will investigate the claim, and will ask the defendant to attend an interview and to prepare defence and witness statements. Before the first hearing, both parties need to serve a copy of their

statements and supporting documents to the other party. After gathering documentary evidence and facts from both parties, the Tribunal Officer will prepare a Summary of Facts stating the allegations of the parties, the issues resolved and the issues in dispute for submission to the Presiding Officer before the hearing date.

## What happens if the Tribunal cannot serve the claim on the defendant?

If a claim cannot be served on the defendant, the claimant will be asked to obtain the defendant's correct address and, if necessary, verify it. If the claim still cannot be served, the Tribunal may order other means of serving the claim, such as by newspaper advertisement.

## What happens after the claim has been served?

The defendant will either:

- agree to pay in full;
- agree to pay but ask for time to do so by instalments;
- agree to the quantum of claim but allege that he or she is unable to pay;
- dispute the claim in part or in whole, with or without filing a counterclaim; or
- ignore the claim.

### **What happens if the defendant agrees to pay the claim in full?**

After informing the Tribunal Officer of his or her intention to pay the claim in full, the defendant will have to confirm his intention in writing and pay the amount of the claim as soon as possible before the hearing date.

The Tribunal will issue an award to both parties. The Tribunal Accounts Office will inform the claimant to collect the money when it is ready. In this case, there will be no hearing.

### **What happens if the defendant admits the claim, but cannot pay immediately?**

The Tribunal Officer will inform the claimant of the defendant's proposal for payment for the claimant's consideration. If both parties agree to a specific payment date or payment by instalments, the Tribunal Officer will prepare a settlement form for both parties to sign. Generally, if the judgment debtor fails to pay any of the instalments, the judgment creditor can apply for execution of the award to recover the unpaid judgment sum. The Tribunal will issue an award after the settlement is approved by the Presiding Officer. No hearing will be required.

If, however, both parties cannot agree on the mode or date of payment, they will have to attend a hearing. The defendant will have to apply for time to pay or apply to pay by instalments. The Presiding Officer will determine a fair method for the defendant to pay.

### **What happens if the defendant agrees to the quantum of claim, but alleges that he or she is unable to pay?**

The defendant needs to inform the Tribunal in writing. Under such circumstances, both parties will need to attend a hearing.

### **What happens if the defendant disputes the claim in part or in whole?**

The Tribunal Officer will investigate the claim as well as any counterclaim put forward by the defendant. Both claimant and defendant will be requested to file statements and relevant documents in support of their allegations.

### **What happens if the defendant ignores the claim?**

The Presiding Officer may enter judgment in the defendant's absence if he or she is satisfied that the claim has been served and that the claims put forward by the claimant are genuine.

### **How long will it take for the Tribunal to hear a claim?**

The aim is to dispose of cases as quickly as possible. Either party may seek the other party's written consent and apply for a change of hearing date if he or she can give good reasons for doing so.

### **Hearings**

The strict rules of evidence that apply in most other courts are not rigidly adhered to in Tribunal hearings. Neither party may be legally represented. The Tribunal may, however, allow an office bearer of a registered trade union or an association of employers who has been authorised in writing by a claimant or defendant to represent the party. Any party who wishes to attend hearing by a representative needs to apply for so doing in writing with reasons for the Presiding Officer's consideration.

### **What will happen at the first hearing?**

Both parties must attend the first hearing, which is conducted in a courtroom. If the claimant is absent, the Tribunal may strike out the claim. If the defendant does not turn up, judgment may be entered in his or her absence if the claim has been served and the claimant can prove the case.

The Presiding Officer will explain the issues and the relevant laws in an attempt to help the parties settle amicably. If the parties agree to explore the possibility of settlement, the Presiding Officer may direct a Settlement Tribunal Officer to assist the parties in negotiation. Any terms of settlement reached before the Settlement Tribunal Officer will be signed by both parties and will be submitted to the Presiding Officer for approval. The Presiding Officer will then make an order in court in accordance with such terms.

If the parties cannot settle, the Presiding Officer may adjourn the claim to another date for mention or trial. The Presiding Officer may order the parties to submit further documentary evidence and witness statements to the Tribunal Officer within a specified period and may order the parties to serve all the submitted documents, including witness statements, to the other party.

### **What will happen at any further hearings?**

Both parties must attend any further hearings. If the claimant is absent, the Tribunal may strike out the claim. If the defendant does not turn up but has been served with the claim, judgment may be entered in his or her absence if the claimant can prove the case.

At trial, the Presiding Officer will

- hear each party's case;
- allow the claimant and the defendant to question each other and their witnesses;
- order the parties to provide further evidence or to call further witnesses and adjourn the hearing to a later date if necessary;
- deliver his judgment at the end of the hearing or fix a date to deliver his judgment.

The Tribunal has prepared a pamphlet called General Guidelines for Preparation for Trial, which provides necessary information in that respect. Parties can obtain a copy of the pamphlet at the Tribunal registry or download it from the Judiciary's website at [www.judiciary.gov.hk](http://www.judiciary.gov.hk) if necessary.

### **After a hearing**

#### **What should a claimant do if he or she fails to turn up for a hearing and the claim is struck out?**

The claimant can apply within 7 days after the hearing or such further period as the Tribunal may allow for the striking-out order to be set aside and the case restored. This will be allowed only for valid reasons and may be subject to conditions set by the Tribunal.

A claimant applying for restoration will need to complete Form 18 – "Application for Restoration of a Claim" in duplicate and to pay a prescribed fee of \$45 at the Tribunal registry. The form is available at the Tribunal registry and the Judiciary's website at [www.judiciary.gov.hk](http://www.judiciary.gov.hk).

**Can a defendant object to the Tribunal's judgment if he or she is absent on the hearing?**

Yes. The defendant can apply for the award to be set aside within 7 days after the hearing or such further period as the Tribunal may allow and on any conditions the Tribunal thinks fit.

A defendant applying to set aside an award or order will need to complete Form 19 – “Application to Set Aside an Award/Order” in duplicate and to pay a prescribed fee of \$45 at the Tribunal registry. The form is available at the Tribunal registry and the Judiciary’s website at [www.judiciary.gov.hk](http://www.judiciary.gov.hk).

**Can a judgment be reviewed?**

Yes, but an application for review of the judgment must be filed within 7 days from the date of the award.

A party applying for review will need to complete Form 13 – “Application for Review of an Award/Order by a Party” in duplicate and to pay a prescribed fee of \$45 at the Tribunal registry. The form is available at the Tribunal registry and the Judiciary’s website at [www.judiciary.gov.hk](http://www.judiciary.gov.hk).

During a review, the claim may be re-opened, or re-heard in whole or in part, and the previous award or order may be confirmed, varied or reversed. However, under normal circumstances, the Tribunal will not vary its order if the order was made in accordance with the terms of settlement agreed by the parties.

The Tribunal has prepared a pamphlet called Review and Appeal, which sets out the information and procedures concerning review and appeal. The pamphlet is available at the Tribunal registry and the Judiciary’s website at [www.judiciary.gov.hk](http://www.judiciary.gov.hk).

**Can both claimant and defendant appeal?**

Yes, but an appeal can be lodged only on the grounds that the award or order is erroneous in point of law or outside the jurisdiction of the Tribunal.

Either party may apply to the Court of First Instance of the High Court for leave, i.e. permission, to appeal within 7 days after the date on which the written award or order was served on him, or within such extended time as may be allowed by the Registrar of the High Court on good cause. Parties applying for leave to appeal will need to complete Form 14 – “Application for Leave to Appeal on Point of Law”. The form is available at the Tribunal registry and the Clerk of Court’s Office of the High Court. The form has to be filed with payment of a prescribed fee at the Clerk of Court’s Office of the High Court, located at G/F, High Court Building, 38 Queensway, Hong Kong.

A refusal by the Court of First Instance to grant leave to appeal is final. If leave is granted, the Court of First Instance will hear and determine the appeal.

**Can a decision of the Court of First Instance be appealed?**

Yes. Both claimant and defendant may apply to the Court of Appeal for leave to appeal within 7 days after the date of the decision of the Court of First Instance. The Court of Appeal may grant leave to appeal if it considers that a question of law of general public importance is involved.

**How does a party appeal against a decision of the Tribunal or the Court of First Instance?**

An application for leave to appeal should be lodged with the Registrar of the High Court.

Unless you wish to conduct the appeal in person, you will need to instruct both a solicitor and a barrister in the High Court. Except where leave has been granted by the High Court, a body corporate such as a limited company must be legally represented in an appeal.

#### **Clerk of Court's Office**

Address: G/F, High Court Building, 38 Queensway, Hong Kong  
Telephone: 2825 4228  
Facsimile: 2530 3512

### **Payment of Award**

#### **How does a judgment creditor get back the money he or she is awarded?**

The Tribunal may specify how the judgment debtor is to make payment to the judgment creditor. If the judgment debtor fails to pay, the judgment creditor may apply to the Tribunal for a Certificate of Award. This may be registered in the District Court or its service counter at the Tribunal within 12 months from the date of the award. The judgment creditor may then apply to the District Court or its service counter at the Tribunal for the court bailiff to enforce the judgment. Further information about these services is contained in a booklet available at the Information Counter or General Registry of all courts.

If the judgment cannot be enforced because the judgment debtor is penniless or has disappeared, the judgment creditor can consider applying for ex-gratia payment from the Protection of Wages on Insolvency Fund. Judgment creditors may call the Labour Department at 2717 1771 for details concerning such application.

#### **Can a judgment creditor enforce the judgment if the judgment debtor has lodged an application for leave to appeal?**

The fact that a judgment debtor has lodged an application for leave to appeal does not mean that enforcement of an award or order must be withheld. However, an order withholding enforcement of judgment may be made by the Tribunal, the Court of First Instance or the Court of Appeal on such terms as the court thinks fit.

The Tribunal has prepared a pamphlet called Execution of Labour Tribunal Awards, which provides information and procedures on how an award can be executed. The pamphlet is available at the Tribunal registry and the Judiciary's website at [www.judiciary.gov.hk](http://www.judiciary.gov.hk).

### **Performance Pledge**

- The Tribunal will list a case for hearing not later than 30 days from the date of filing of claim.
- Wherever possible, the Judiciary will reply at once to correspondence from members of the public. In any case, we will give you an interim reply within 10 days and a full response within 30 days of receiving a letter.
- We welcome all comments and suggestions for improving our services. Please send them to the Judiciary Administrator at the High Court, 38 Queensway, Hong Kong.

### **How to Contact Us?**

Address: 36, Gascoigne Road, Kowloon  
Telephone: 2625 0020  
Facsimile: 2513 6797 / 2625 0556  
Email: [labourtribunal@judiciary.gov.hk](mailto:labourtribunal@judiciary.gov.hk)

## Business Hours

Monday to Friday      9:00 a.m. – 1:00 p.m.  
    2:00 p.m. – 5:00 p.m.  
 Saturday                9:00 a.m. – 12:00 noon  
 (Closed on Public Holidays)

Judiciary  
 December 2009  
 (7th Edition)

## Procedures for Settling Monetary Disputes between Employees and Employers

