

提出申索前須知

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1. 本審裁處的工作是甚麼

1.1 本審裁處處理不超過50,000元的申索。雖然本審裁處也是法庭，但是這裡的規則和程序較大部分其他法庭寬鬆。此外，訴訟各方不可以由律師代表出庭。

2. 甚麼是“小額錢債申索”

2.1 “小額錢債申索”是指涉及款額50,000元或以下的申索。

本審裁處主要處理以下幾類申索：

- 債務
- 服務費
- 財產損毀
- 已售貨物
- 消費者提出的申索

2.2 本審裁處並不受理下列種類的申索：

- 工資
- 收回土地管有權
- 贍養費
- 誹謗

2.3 你不可以為了使申索款額不超越本審裁處的司法管轄權範圍，而把逾50,000元的申索分割成為幾件案件辦理。不過，你可以放棄超過50,000元以上的申索款額，以符合在本審裁處提出申索的限額。

3. 提出申索前須要考慮的事項

3.1 在本審裁處提出訴訟前，你應該先考慮下列問題：

(1) 我可以不提出訴訟而解決糾紛嗎？

向法庭提出訴訟是你迫不得已的最後方法。在向本審裁處提出申索前，你應該考慮可否以其他方式解決你與你想追究的被告人之間的糾紛，例如與對方商討分期還款的安排。

(2) 我能成功收回應收的款項嗎？

即使你獲得勝訴的判決，也不保證你必然會收回應收的款項。

如果被告人的財政狀況良好，但卻拒絕遵行判決，你便須採取進一步行動和支付更多費用以執行判決。

如果被告人的財政狀況不佳，例如失業、破產或正在進行清盤，你就有可能收不回應收的款項。

(3) 我要付甚麼費用？

你須要在案件進行期間的不同階段向本審裁處繳付各項費用。詳情可向本審裁處的登記處查詢，或瀏覽司法機構的網頁。

你可能因為出席聆訊而須要支付交通費，或須要請假而損失工資；你也可能須要付錢聘請專家(例如醫生、測量師或機械技師等)撰寫專家報告和出庭作證。

勝訴的一方有可能討回上述費用。

(4) 我有時間應付訴訟嗎？

處理一宗案件所需的時間視乎多項因素而定，包括案件的複雜程度，以及訴訟各方是否如期遵行本審裁處的指示。即使你已獲得勝訴，也可能須要花更多時間來執行判決。

4. 決定在本審裁處提出申索後應該注意的事項

4.1 本審裁處的職員只可就法庭程序的事宜向你提供協助，但是，他們不能向你提供法律意見，舉個例說，他們不能評論你的申索勝算，或者是你應該起訴誰。如果你想取得法律意見，便應該諮詢你的律師；不過，就算你獲得勝訴，也不能討回你在小額錢債案件中所支付的律師費。

4.2 你亦可以到某些民政事務處透過當值律師服務提供的「免費法律諮詢計劃」，免費取得法律意見。有關詳情，可致電民政事務總署的中央電話諮詢中心查詢，也可以瀏覽當值律師服務的網頁。此外，你也可以向大律師公會的「法律義助服務」計劃求助。

4.3 你應該就有關的法律程序作出充分準備。必須注意，在本審裁處進行民事訴訟可能是一場長期抗戰，由提出申索到排期審訊和作出判決，可能需要很多個月的時間，因此，你在準備證據時可能會感受到巨大的壓力。

4.4 本審裁處的審訊程序與香港其他法庭一樣，也是對抗性的。你除了須要向本審裁處陳述自己的案情外，還要透過盤問對方的證人以證明對方的案情不可信。因此，你應該作出周詳的準備，以進行上述程序。詳情請參閱第5冊《怎樣準備和進行聆訊或審訊》的第4和第5段。

4.5 本審裁處的辦公時間(公眾假期除外)如下：

星期一至星期五	上午9時至下午1時 下午2時至5時
星期六	上午9時至中午12時正

5. 這系列的小冊子對你有甚麼幫助

5.1 這系列的小冊子是向訴訟各方概括地介紹本審裁處的民事法律程序，使訴訟各方瞭解正確的程序，知道應該怎樣向本審裁處提出他們的案情、證據和其他資料。

5.2 這系列的小冊子並非概括了本審裁處的民事訴訟常規，其內容只是就有關的程序提供一般的指引。如欲獲得本審裁處所採用的訴訟常規和程序的詳情，可參閱《小額錢債審裁處條例》(香港法例第338章)。你可以到以下網址瀏覽上述條例的中英文版本：

www.legislation.gov.hk/index.htm

5.3 這系列的小冊子共分以下8冊：

第1冊	提出申索前須知
第2冊	怎樣展開申索
第3冊	被告人在收到申索書後可以怎樣做
第4冊	小額錢債案件的一般法律程序須知
第5冊	怎樣準備和進行聆訊或審訊
第6冊	小額錢債案件中的所需文件
第7冊	申請把裁斷或命令作廢、覆核和上訴
第8冊	怎樣執行判決

5.4 下列機構的聯絡資料，對訴訟各方在本審裁處進行訴訟時，可能會有幫助：

司法機構

網址：www.judiciary.gov.hk

小額錢債審裁處

地址：香港灣仔港灣道12號灣仔政府大樓4樓

熱線：2877 4068

傳真：2587 9139 / 2877 0412

小額錢債審裁處的互動音頻電話錄音系統

電話：2877 4068

稅務局商業登記署

地址：香港告士打道5號稅務大樓4樓

電話：1878 088

傳真：2824 1482

網址：www.ird.gov.hk

公司註冊處

地址：香港金鐘道66號金鐘道政府合署高座13樓

電話：2867 2571

傳真：2596 0585

網址：www.cr.gov.hk

當值律師服務

總辦事處地址：香港中環畢打街11號置地廣場
告羅士打大廈2707-8室

電話：2526 5969

傳真：2868 1754

網址：www.dutylawyer.org.hk

民政事務總署中央電話諮詢中心

電話：2835 2500

大律師公會

地址：香港金鐘道38號高等法院低層2樓

電話：2869 0210

傳真：2869 0189

網址：www.hkba.org

破產管理署

地址：香港金鐘道66號金鐘道政府合署高座10樓

電話：2867 2448

傳真：3105 1814

網址：www.oro.gov.hk

有關的機構很多，不能盡錄，可能還有其他機構也可以提供資料或意見予訴訟各方。上述聯絡資料截至本小冊子的付印日期仍然準確。

司法機構
2009年12月
(第一版)

Before you start a claim

Content

1. What work does the Tribunal do
2. What is a “small claim”
3. What to consider before you start a claim
4. Things you should pay attention to if you decide to file a claim with the Tribunal
5. Assistance you can get from this series of pamphlets

1. What work does the Tribunal do

- 1.1 The Tribunal deals with claims not exceeding \$50,000. Although the Tribunal is a court, the rules and procedures are less strict than in most other courts, and no legal representation is allowed.

2. What is a “small claim”

- 2.1 A “small claim” is a claim for money involving \$50,000 or less. The main types of claims handled by the Tribunal are:
 - debts
 - service charges
 - damage to property
 - goods sold
 - consumer claims
- 2.2 The Tribunal does not handle:
 - wages
 - possession of land
 - alimony
 - libel and slander
- 2.3 If your claim exceeds \$50,000, you are not allowed to subdivide it to bring it within the Tribunal’s jurisdiction; however, you can abandon that part of your claim above \$50,000 in order to bring a claim in the Tribunal.

3. What to consider before you start a claim

3.1 You should ask yourself the following questions before taking action in the Tribunal:

(1) Can I settle the disputes without going to court?

Court action should be your last resort. Before you start a claim in the Tribunal, you should consider if you may settle the matter with the intended defendant by other means. For example, you may negotiate an instalment payment with the intended defendant.

(2) Will I get my money?

Even if you win your case and obtain judgment in your favour, there is no guarantee that you will get your money automatically.

If the defendant is financially sound but refuses to comply with the judgment, you will have to take further action and incur further costs to enforce judgment.

If the defendant is financially unsound, e.g. unemployed, bankrupt or in liquidation, you may not get your money.

(3) What are the expenses?

You will have to pay various fees to the Tribunal at various stages of the case. Please approach the Tribunal Registry or browse into the Judiciary's website for details.

You may have to incur costs for travelling, wages in days-off and hiring experts, e.g. doctor, surveyor or mechanic, to prepare expert reports and testify in court.

The party who wins the case may be able to recover the above expenses .

(4) Can I afford the time?

The span of a case depends on a number of factors, including the complexity of the case and whether the parties comply with the Tribunal's directions punctually. Even if you win the case, you may have to spend more time to enforce judgment.

4. Things you should pay attention to if you decide to file a claim with the Tribunal

4.1 Tribunal staff can provide assistance on procedural matters only. They will not give you legal advice, e.g. they cannot tell you if you have a good claim or whom you should sue. If you wish to have legal advice, you should consult your own lawyer; however, legal costs incurred in small claim cases will not be recoverable even if you win the case.

4.2 You may be able to get free legal advice through Free Legal Advice Scheme of the Duty Lawyer Service at some District Offices. For details, you can call the Central Telephone Enquiry Centre of the Home Affairs Department. You can also refer to the website of the Duty Lawyer Service. The Free Legal Service

Scheme of the Bar Association may also give you some help.

- 4.3 You should get full preparation for the proceedings. You have to note that civil litigation in the Tribunal may be a long-drawn battle, which will take months before the case is set down for trial and the Tribunal passes judgment. The pressure on the preparation of evidence will be tremendous.
- 4.4 The trial process in the Tribunal is, like other courts in Hong Kong, adversarial. In addition to presenting your own case to the Tribunal, you are expected to discredit the opponent's case through cross-examination. You should therefore make thorough preparation to accomplish these tasks. Please refer to paragraphs 4 and 5 in Pamphlet 5 "How to prepare for and conduct a hearing or trial" for details.
- 4.5 The business hours of the Tribunal (except public holidays) are:
- | | |
|------------------|--|
| 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 |

5. Assistance you can get from this series of pamphlets

- 5.1 Its purpose is to introduce to the litigants the broad outlines of the civil proceedings in the Tribunal. It is designed to give information about the proper procedures of the proceedings, the manner the parties should present their case, evidence and other materials to the Tribunal.
- 5.2 It does not intend to be a summary of the civil practice at the Tribunal. It gives guidelines on the procedures generally. For details on the practice and procedure adopted in the Tribunal, you may refer to the Small Claims Tribunal Ordinance (Chapter 338, Laws of Hong Kong). The English and Chinese versions can be found on the website:
www.legislation.gov.hk/index.htm

5.3 This series of pamphlets includes the following:

Pamphlet 1	Before you start a claim
Pamphlet 2	How to start a claim
Pamphlet 3	What a defendant may do after receipt of the claim
Pamphlet 4	General points to note about small claims proceedings
Pamphlet 5	How to prepare for and conduct a hearing or trial
Pamphlet 6	Documents required in a small claim case
Pamphlet 7	Application to set aside, review and appeal
Pamphlet 8	How to enforce a judgment

5.4 The following is the contact details of various organizations which the parties may find useful to approach when handling a case in the Tribunal:

Judiciary

Website : www.judiciary.gov.hk

Small Claims Tribunal

Address : 4/F, Wanchai Tower, 12 Harbour Road, Hong Kong

Hotline : 2877 4068

Fax : 2587 9139 / 2877 0412

Interactive Voice Recording System of the Small Claims Tribunal

Tel : 2877 4068

Business Registration Office, Inland Revenue Department

Address : 4/F, Revenue Tower, 5 Gloucester Road, Hong Kong

Tel : 1878 088

Fax : 2824 1482

Website : www.ird.gov.hk

Companies Registry

Address : 13/F, Queensway Government Offices, High Block,
66 Queensway, Hong Kong

Tel : 2867 2571

Fax : 2596 0585

Website : www.cr.gov.hk

Duty Lawyer Service

Administration Office address :

Room 2707-8, Gloucester Tower, The Landmark, 11 Pedder Street, Central, Hong Kong

Tel : 2526 5969

Fax : 2868 1754

Website : www.dutylawyer.org.hk

Central Telephone Enquiry Centre, Home Affairs Department

Tel : 2835 2500

Bar Association

Address : LG2, High Court Building, 38 Queensway, Hong Kong

Tel : 2869 0210

Fax : 2869 0189

Website : www.hkba.org

Official Receiver's Office

Address : 10/F, Queensway Government Offices, High Block,
66 Queensway, Hong Kong

Tel : 2867 2448

Fax : 3105 1814

Website : www.oro.gov.hk

The above is not an exhaustive list. There may be other organizations that may offer information or advice for the parties. Contact details are accurate only up to the date of printing.

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