

# 被告人在收到申索書後 可以怎樣做

What a defendant may do  
after receipt of the claim

# 3



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# 被告人在收到申索書後可以怎樣做

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## 1. 如果被告人同意繳付全部/部分申索款項

### 1.1 在未進行簡短提訊及未提交答辯書之前

- (1) 被告人無須經審裁官的許可，就可以把與申索款額相等的款項連同申索人的提交費(作為訟費)繳存予本審裁處。
- (2) 被告人可以在簡短提訊前至少5個工作天郵寄支票到本審裁處，也可以親自或委托他人到本審裁處的會計部繳存上述款項。如果選擇用支票的話，應該發出劃線支票，並在抬頭寫上“香港特區政府”，以及在支票背面寫上申索案件編號、被告人的名稱和聯絡電話。請不要發出期票。如有任何查詢，可致電本審裁處的會計部(電話：2582 5309)。
- (3) 被告人把上述款項繳存予本審裁處後，本審裁處的司法常務官(“司法常務官”)可以把案件從簡短提訊案件表或聆訊案件表(視乎案件被列於哪一個表)中刪除，並會以電話、傳真或郵寄方式通知訴訟各方。至於已繳存予本審裁處的款項，司法常務官會安排以郵寄支票方式轉交收款的一方。
- (4) 如果把案件從簡短提訊案件表/聆訊案件表中刪除可能會對另一方不公平的話，司法常務官可以決定不把案

件刪除。這樣的話，訴訟各方便須要如期應訊，而有關的款項則會由本審裁處保管，直至審裁官作出進一步的命令為止。

### 1.2 在進行簡短提訊或提交答辯書之後

- (1) 被告人必須得到審裁官的許可，才可以把款項繳存予本審裁處。被告人必須先向本審裁處的登記處索取有關的申請表格，把表格填妥，說明他打算繳存的款額，以及這個款額是申索款額的全部或是部分。
- (2) 此外，被告人必須說明他打算繳存的款項是否包括訟費(若有的話)在內。
- (3) 本審裁處會定出聆訊日期，並把被告人的申請書副本連同聆訊通知書送遞予申索人。此外，本審裁處還會把一份同意書送交申索人。如果申索人願意接受被告人繳存予本審裁處的款項以完全和最終解決他的申索，便可以在同意書上簽名作實，然後交回本審裁處。之後，如果訴訟各方接獲本審裁處的通知，便可以無須出席聆訊。
- (4) 審裁官可以隨時作出他認為合適的其他命令。

## **2. 如果被告人同意付款，但是要求延期或分期付款**

- 2.1 被告人須要在簡短提訊中向本審裁處申請延期或分期付款。
- 2.2 被告人必須以表列形式列明每月的收入和開支，以支持他的申請。此外，被告人還必須提供所有能夠支持他的申請的證明文件，例如銀行結單、報稅表、審計報告等。

## **3. 如果被告人反對全部/部分申索，但是並不提出反申索**

- 3.1 被告人應該在簡短提訊前儘早向本審裁處的登記處提交答辯書(信封面請註明“答辯書”)，並把答辯書的副本送交申索人。
- 3.2 被告人須要在答辯書中說明他是否就法律責任及 / 或申索款額提出爭議；如果提出爭議的話，其所依賴的理由。被告人須要就申索人在申索書中所提出的每一項指控逐點回應。

## **4. 如果被告人反對全部/部分申索，並提出反申索**

- 4.1 被告人除了應該把上文第3段中所述的答辯書提交本審裁處的登記處和送達申索人之外，還應該向本審裁處的登記處提交反申索書。
- 4.2 反申索書是由被告人提交的反訴文件。如果被告人除了就申索提出答辯之外，還想根據一些與申索有關連的訴訟因由或事實，向申索人提出獨立的申索，便須要提交反申索書。審裁官會在聆訊中同時處理相互有關的申索和反申索。
- 4.3 如果被告人想提出反申索，便必須填寫反申索書表格，並親自或由代表向本審裁處的登記處提交，本審裁處不接受以郵寄、傳真或電郵等任何其他方式提交的反申索書。
- 4.4 被告人須要繳付法例訂明的提交費。詳情可向本審裁處的登記處查詢，或瀏覽司法機構的網頁。
- 4.5 被告人提交了反申索書後，必須自行把反申索書的副本郵寄給申索人。

## 5. 如果被告人不理會申索

- 5.1 如果被告人缺席簡短提訊，而申索人又能夠提出證據支持他的申索和證明聆訊通知書已經送達被告人，他便可以要求審裁官判被告人敗訴。

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## What a defendant may do after receipt of the claim

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## 1. When a defendant agrees to pay whole/part of the amount claimed

### 1.1 Before call-over and before a statement of defence is filed

- (1) The defendant may, without permission of the Adjudicator, pay into court a sum equal to the claimed amount together with the claimant's filing fee as costs.
- (2) The said payment into court can either be made by cheque payments sent by post to the Tribunal, or in person or by a designated third party at the Accounts Office of the Tribunal at least 5 working days before the call-over date. Cheques should be crossed and made payable to "HKSAR GOVT". Please write down the claim number, the name of the defendant and the contact phone number at the back of the cheque. Please do not issue post-dated cheque. For enquiries, please contact our Accounts Office at 2582 5309.
- (3) Upon payment into court by the defendant, the Registrar of the Small Claims Tribunal ("the Registrar") may remove the case from the call-over list or court list (as the case may be) and inform the parties by telephone, fax or mail. The Registrar shall arrange payment out of the sum paid into court to the receiving party by cheque.
- (4) The Registrar may elect not to remove the case concerned from the call-over/court list if doing so may result in possible unfairness to the other party. If so, parties are required to

attend court as scheduled and monies will be withheld in the Tribunal pending further order of the court.

### 1.2 After call-over or after a statement of defence is filed

- (1) Before a defendant can make payment into court, he must apply in writing by filling out an application form obtainable at the Tribunal Registry, specifying the amount of the proposed payment in and whether it is in full or partial satisfaction of the claim.
- (2) The defendant must also state whether costs, if any, is included in the proposed payment.
- (3) A hearing date will be arranged and a copy of the defendant's application will be forwarded to the claimant with the notice of hearing. A consent form will also be delivered to the claimant. If the claimant wishes to accept the defendant's payment into court as full and final settlement of his claim, the claimant can sign the form and return it to the Tribunal. Parties will not have to attend the scheduled hearing when so informed by the Tribunal.
- (4) At any time, the Adjudicator may make such order as he deems fit.

## **2. When a defendant agrees to pay but asks for time to pay or payment by instalments**

- 2.1 The defendant will have to apply to the Tribunal at call-over for time to pay or for payment by instalments.
- 2.2 To support his application, the defendant must provide a table showing his income and expenditure per month. The defendant must also provide all documentary evidence to support his application, e.g. bank statements, tax returns, audited report, etc.

## **3. When a defendant disagrees with whole/part of the claim but does not have a counterclaim**

- 3.1 The defendant should file a defence with the Tribunal Registry (please mark 'defence' on the envelope) and send the claimant a copy of the same well in advance of the call-over date.
- 3.2 A defence is a document setting out whether the defendant disputes liability and/or the amount of claimant's claim; and if so, why. The defendant has to reply to each and every allegation of the claimant as stated in the claim form paragraph by paragraph.

## **4. When a defendant disagrees with the claim and has a counterclaim**

- 4.1 The defendant should not only file with this Tribunal Registry and serve on the claimant his defence as mentioned in paragraph 3 above, but should also file his counterclaim with the Tribunal Registry.
- 4.2 A counterclaim is a counter-document filed by a defendant who, in addition to seeking to defend against a claim, wishes to make his own separate and independent claim against the claimant for some causes of action related with the claim, or flowing from the facts contained in the claim. A counterclaim will be heard at the same time as the trial on the claim.
- 4.3 If a defendant wishes to file his counterclaim, he must fill in and file Form of Counterclaim with the Tribunal Registry in person or by his representative. Filing of the counterclaim by any other means such as post, fax or email is not acceptable.
- 4.4 Prescribed filing fee is required to be paid. The defendant may approach the Tribunal Registry or browse into the Judiciary's website for details.
- 4.5 After filing the counterclaim, the defendant is required to serve a copy of the same on the claimant himself by post.

## **5. When a defendant ignores the claim**

- 5.1 If the defendant does not appear at call-over, the claimant may apply for judgment against the defendant provided he can satisfy the Tribunal of the claim and that the notice of hearing has been served on the defendant.

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