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申請把裁斷或命令 作廢、覆核和上訴

Application to set aside,
review and appeal

法庭服務簡介
Guide to Court Services

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小額錢債審裁處
Small Claims Tribunal



申請把裁斷或命令作廢、覆核和上訴

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1. 申請把裁斷或命令作廢

- 1.1 如果申索人在審訊或任何聆訊中缺席，審裁官可以因訴訟程序中無人作出行動而把申索剔除。
- 1.2 如果被告人在審訊或任何聆訊中缺席，審裁官可以因被告人缺席而判決被告人敗訴。
- 1.3 在上述任何一種情況中，缺席的一方如不同意審裁官所作出的命令，可以即時向本審裁處申請把有關的命令作廢。申請人必須填寫表格8D（《要求把裁決/命令作廢的申請書》），解釋缺席的理由和提出證明。
- 1.4 本審裁處在收到申請書後會排期聆訊。在該聆訊中，審裁官可以：
 - 無條件批准申請或有條件批准申請（例如申請人須要把申索款項或反申索款項 [視乎哪一項適用] 繳存本審裁處）；或
 - 駁回申請。
- 1.5 請注意，無論審裁官是否批准把命令作廢，原本缺席的一方通常都會被判要支付有關的聆訊的訟費予沒有缺席的一方。
- 1.6 表格8D可以向本審裁處的登記處或資訊中心索取，也可以到司法機構的網址下載。此外，有關表格也可以透過本審裁處的互動音頻電話錄音系統經由傳真取得。

- 1.7 如果申索人純粹由於在聆訊中缺席而被剔除其申索，可以重新提出申索而無須申請把剔除申索的命令作廢。

2. 覆核和上訴的程序

- 2.1 如果訴訟任何一方不滿審裁官的命令或判決，可以有以下兩個做法：

- 向本審裁處申請覆核；或
- 向高等法院原訟法庭申請上訴許可。

2.2 向本審裁處申請覆核

- (1) 如果選擇覆核，便應該填寫表格8C《訴訟一方要求覆核裁決/命令的申請書》（“8C申請”），詳列所有申請理由。申請人必須在審裁官作出有關命令或裁決後7天內把上述表格提交本審裁處，以及繳付法例訂明的費用。上述期限必須嚴格遵守。表格8C可以向本審裁處的登記處或資訊中心索取。
- (2) 申請人提交了表格8C後，通常會交由原審審裁官擇日進行覆核聆訊。
- (3) 如果申請人不滿意覆核的結果，可以向高等法院原訟法庭申請上訴許可。

2.3 向高等法院原訟法庭申請上訴許可

- (1) 如果選擇上訴，首先必須在限期內向高等法院司法常務官提交表格9以申請上訴許可。申請上訴許可的期限是：(i)申請人收到裁決書或書面命令後7天內；或(ii)如果申請人在這7天內向審裁官申請有關裁決或命令的書面理由，則須要在收到書面理由後7天內提出申請。不過，如果申請人能夠提出充份理由，高等法院司法常務官可以把期限延長。
- (2) 表格9可以向高等法院書記主任辦事處索取。
- (3) 訴訟各方都可以聘請律師進行上訴。
- (4) 請注意，除非上訴涉及法律觀點，或申索事項超越本審裁處的司法管轄權範圍，否則高等法院原訟法庭不會給予上訴許可。原訟法庭沒有權力推翻或更改原審審裁官就案件事實所作的裁定。原訟法庭一旦拒絕給予上訴許可，便是最終的決定。

3. 應該申請覆核還是提出上訴

3.1 以下列表或許能夠協助你決定究竟應該申請覆核還是提出上訴：

覆核
在小額錢債審裁處進行
通常會由原審審裁官處理
不能聘請律師
訟費通常不高
審裁官不受他先前的事實的裁斷所約束
上訴須要向高等法院原訟法庭提出

上訴
在高等法院原訟法庭進行
由一名原訟法庭法官審理
訴訟各方可以聘請律師進行上訴
訟費可以很昂貴
原訟法庭法官沒有權力推翻或更改本審裁處就案件事實所作的裁斷
進一步上訴須要向上訴法庭提出

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Application to set aside, review and appeal

Content

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3. Review or Appeal

1. Application to set aside

- 1.1 If a claimant is absent from any hearings or at trial, his claim may be struck out for want of prosecution.
- 1.2 If a defendant is absent from any hearings or at trial, default judgment may be entered for the claimant.
- 1.3 In either of the above situations, the absent party, if not satisfied with the Tribunal's decision, may apply immediately to set aside the order of striking out or the order of default judgment with the Tribunal. He can do so by completing and filing Form 8D "Application to Set Aside an Award/Order" and set out the reasons for absence with supporting proof.
- 1.4 A hearing will then be fixed by the Tribunal to deal with this application. In the said hearing, the Tribunal may:
 - allow the application unconditionally or with condition, e.g. payment of the claimed sum or counterclaimed sum (where applicable) into court; or
 - dismiss the application.
- 1.5 It should be noted that whether the Tribunal allows the application to set aside or not, the defaulting party will usually be ordered to pay costs of that hearing to the non-defaulting party.

1.6 Form 8D can be obtained from the Tribunal Registry or the Information Centre. It can also be downloaded from the Judiciary's website or obtained by fax via the Interactive Voice Recording System of the Tribunal.

1.7 If a claimant's claim was struck out solely due to his absence, the claimant may file a new claim instead of applying to set aside the order.

2. Procedures on Review & Appeal

2.1 If any party is not satisfied with the order or judgment of the Adjudicator, he may:

- apply to the Tribunal for review; or
- apply to the Court of First Instance of the High Court for leave to appeal.

2.2 Applying to the Tribunal for review

- (1) If a party opts for a review, he should complete and file Form 8C "Application for Review of an Award/Order by a Party" ("8C Application") and set out his full and complete reasons. He must do this within 7 days after the date of the court order or award has been made. The time limit must be observed strictly. Form 8C can be obtained from the Tribunal Registry or the Information Centre. A prescribed fee is required to be paid.

- (2) After the party has filed the 8C application, an Adjudicator, normally the same Adjudicator who presided over the trial, will hear the application.

- (3) If the party is not satisfied with the result of the review, he may apply to the Court of First Instance of the High Court for leave to appeal.

2.3 Applying to the Court of First Instance of the High Court for leave to appeal

- (1) If a party opts to appeal, he must first apply for leave to appeal within time limit by filing Form 9 with the Registrar of the High Court. The time limit is either (i) within 7 days after the date the written award or order is served on him; or (ii) if, within the same 7 days, he applies to the Tribunal for written reasons for the award or order, 7 days from the date the reasons are served on him. The Registrar of the High Court may extend this time limit on good cause.

- (2) Form 9 can be obtained from the Clerk of Court's Office of High Court.

- (3) Parties may engage lawyers to conduct the appeal.

- (4) It should be noted that leave to appeal will not be granted unless the appeal involves a question of law, or the claim/ counterclaim is outside the jurisdiction of the Tribunal. The Court of First Instance has no power to reverse or vary what the Tribunal has determined on questions of fact. Refusal by the Court of First Instance to grant

leave to appeal is final.

3. Review or Appeal

3.1 The following table may help you decide whether to apply for a review or for leave to appeal.

Review
The forum is the Tribunal.
Review will normally be heard by the same Adjudicator who presided over the trial.
No legal representation is permitted.
Costs are generally insignificant.
The Adjudicator is not bound by his previous finding of facts.
Appeal is to the Court of First Instance.

Appeal
The forum is the Court of First Instance.
The appeal will be heard by a Judge of the Court of First Instance.
Parties may engage lawyers to conduct the appeal.
Legal costs can be substantial.
The Judge has no power to reverse or vary the Tribunal's finding of facts.
Further appeal is to the Court of Appeal.

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