



# **PRACTICE GUIDE ON ACCESS TO JUSTICE - SMALL CLAIMS**

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## PRACTICE GUIDE ON ACCESS TO JUSTICE - SMALL CLAIMS

### A. PURPOSE OF THE GUIDE

1. The purpose of this Practice Guide is to provide a set of guidelines on how the Judicial Dispute Resolution (JDR) process may be applied and implemented while advancing access to justice in respect of small claims.
2. These guidelines should be implemented and adapted in each jurisdiction as appropriate to promote the overarching objective of early, amicable, cost-effective and fair resolution of court disputes in full or in part so that judicial time is saved.
3. These guidelines are not intended to be exhaustive. The legal framework and court procedures of each jurisdiction are to be considered when applying these guidelines.

### B. SMALL CLAIMS AND ACCESS TO JUSTICE

#### (i) *What constitutes "small claims"?*

4. "Small claims" are essentially civil disputes with relatively low monetary value, and the maximum amount that a party may claim for under the small claims process varies across each jurisdiction.
5. The small claims process provides a quicker and more inexpensive way of resolving lower value disputes and is appropriate for simple and straightforward cases that often do not involve relatively complex or complicated issues. As such, the small claims process may only be applicable to certain types of disputes (for example, an action for the payment of money or recovery of personal property, disputes relating to poor service or a faulty product, or disputes with a landlord/ tenant).

#### (ii) *How do "small claims" enhance "access to justice"?*

6. Enhancing access to justice ensures that there is a fair and efficient administration of justice that is accessible and meets the needs of all. This goes beyond the courts' traditional adjudicative role of only interpreting and applying the law in each case in a fair and principled way that ensures respect for the constitutional and institutional space of each branch of government.
7. Court proceedings are often expensive, time-consuming and subject to technical and procedural complexities. Recovery of small claims might therefore not be worth the effort, taking into account possible prohibitive costs which might well exceed the amount the successful plaintiff/ claimant could recover. The potential

plaintiff/ claimant may also be deterred from seeking redress through the courts due to the possible long delays before their complaint is heard and dealt with, and the necessity of having to deal with the formal procedures and legal jargon.

8. The small claims process enhances access to justice by providing an efficient, effective and inexpensive avenue for the swift resolution of small claims. For example, as part of the small claims process, proceedings could be conducted in an informal manner; court procedures could be simplified; the cost structure of the small claims process could be made more affordable to the wider public; and the participation of lawyers at small claims hearings could be restricted. The preclusion of lawyers at the hearings could be compensated by, for example, providing readily available information and designing processes that are manageable for the layperson.

### C. MANAGING SMALL CLAIMS

9. Some jurisdictions may have specialised courts or tribunals (for example, a Small Claims Court or a Small Claims Tribunal), or a separate track in the civil courts, to manage small claims and determine such disputes more quickly and at a lower cost, thereby avoiding the need for lengthy and expensive lawsuits.
10. Should there be cases with more complex and complicated legal issues, or cases which exceed the prescribed amount (to be heard in the specialised courts/ tribunals, or on the small-claims track), these are best dealt with in the usual civil courts, or on a different track, which remain accessible and of which parties can still avail themselves.
11. Typically, there will usually be a limit on the claim amount although the monetary jurisdiction of a court or tribunal may be varied if circumstances justify (for example, inflation and rising costs of living may justify an upward revision of the monetary jurisdiction so as to remain responsive to the changing needs of the community).
12. There may also be a time limit (for example, two years) as to when a small claim has to be filed by in order to be heard in a specialist court or tribunal, or to follow the small-claims track. If such a limitation period is imposed, it should ideally give parties sufficient time to negotiate and settle their disputes amicably, whilst ensuring that there remains enough time for them to proceed with their claims should an amicable settlement not be reached.
13. The judges who run the specialised courts/ tribunals, or hear cases on the small-claims track, should ideally be specially trained to ensure that the processes are effective in enabling the parties to ventilate the specific type of dispute in issue, while having the necessary dispute resolution and case management competencies to address the needs of the parties and manage laypersons (who may not be familiar with legal principles).

14. Examples of some jurisdictions that have either a small-claims track in the civil courts, or a specialist tribunal/ court are set out below.

(i) ***Small-claims track in the civil courts***

15. In the United Kingdom, for example, the small-claims track is generally for lower value and less complicated claims with a value of up to £10,000 (although there are some exceptions). A judge will take into account what has been stated in the claim, defence and directions questionnaires, and will look specifically at the disputed amount, the remedy sought, the likely complexity and other matters before deciding whether a case should be allocated to the small-claims track or to another track.

(ii) ***Specialised tribunals/ courts***

16. In Singapore, for example, eligible claims are filed in the Small Claims Tribunals, which can hear disputes arising from contracts for the sale of goods or for the provision of services; certain types of property damage claims; claims relating to a contract for the lease of residential premises that does not exceed 2 years; claims founded on a specified unfair practice; or other statutory claims under written law. However, the total value of the claims is not to exceed S\$20,000.00 (or S\$30,000.00 if all parties to the proceedings consent in writing) and the claims are to be filed within 2 years of the event which creates the cause of action (i.e. the set of facts which entitles the plaintiff/ claimant to start a court action against the other party). Further, the claim has to be served in Singapore on the respondent, and a party would not be able to file a small claim if the claim involves employment matters, or damages to any property arising from or in connection with the use of a motor vehicle or caused by a neighbour.

(iii) ***Restricting the participation of lawyers***

17. To ensure that costs are kept to a minimum and that parties would not be at a disadvantage because they are not able to afford legal representation, some jurisdictions (for example, Malaysia and Singapore) exclude legal representation and require the parties to the proceedings to present their own case, thereby reducing the need to pay legal fees.

18. Parties may still consult a lawyer but cannot be represented by lawyers during the hearing itself, thereby levelling the playing field between the disputing parties when they argue their cases in court.

19. The defendant/ respondent, especially if it is a company or partnership, may be required by law to be represented by an authorised person. If so, the defendant/ respondent may have legally-trained employees or experienced laypersons (if there are/ have been similar claims made against that defendant/ respondent) which could put the plaintiff/ claimant at a significant disadvantage.

20. There is therefore a need to simplify the small claims process (for example, by conducting proceedings in an informal manner or having simplified court procedures) to keep the playing field level.

#### **D. CASE MANAGEMENT TECHNIQUES FOR SMALL CLAIMS**

##### **(i) *Self-help mechanisms***

###### **(a) Readily available information**

21. Courts can provide readily available and accessible self-help guides and information on the small claims process on the courts' websites, or on pamphlets which are available at the counters in the Courts, so as to assist in addressing the asymmetries in information that laypersons may face.
22. For example, in Malaysia, information on small claims is published on the Malaysian Judiciary's website; in Singapore, information on the Small Claims Tribunals and the small claims process is published on the Singapore Courts' website; and in the United Kingdom, guidance about making small claims is published on the government website.

###### **(b) Online filing and case management systems**

23. Technology can be harnessed to provide practical assistance to lay court users. Courts can put in place conflict avoidance measures in the online filing and case management systems such that even before the cases are filed in court, parties have the opportunity to address, reduce or avoid conflict altogether without having to invoke the formal judicial process. For example, some jurisdictions may have a pre-filing assessment to ensure that a potential plaintiff/ claimant is ready to proceed with filing a claim (with the necessary supporting documents) and to allow them to better ascertain the viability of their intended claim and whether the claim could be filed in the Small Claims Court/ Tribunal, or could be allocated to the small-claims track in the civil courts.
24. With an online system, parties can file a small claim, submit documents, make payments and choose their preferred court date (giving parties more flexibility) without having to come physically to court. Parties can also have a quick and easy access to the case file and other court information anytime, anywhere, thereby affording parties greater convenience.
25. To assist a potential plaintiff/ claimant with navigating the online system, courts may have a hotline (listed on the courts' website and/or available on brochures) for a lay court user to call, or have trained officers to guide the lay court user through the filing process in their own mother tongue, should the court user decide to go down in person to court.

26. In Singapore, the online system also allows parties to e-negotiate a settlement on a secure, confidential platform before coming to court. If an amicable settlement is reached through e-negotiation, parties may apply online for a Tribunal Order directly from the system without having to come to court. If negotiations are at an impasse, either party may also request for e-mediation (which involves an online chat session with a court-appointed mediator) and if both parties agree, the Court will contact the parties to schedule a date and time most suitable for the mediator and parties. The online system also gives the mediator the option to communicate with one party privately, if necessary, during the e-mediation. If the parties are unable to reach a settlement online, the claim will then proceed to the consultation and hearing stages of the small claims process.

(c) Artificial Intelligence (“AI”) assistance

27. Courts can explore the use of artificial intelligence (“AI”) to assist parties, for example, through the use of chatbots which could explain the small claims process and provide clarification on the eligibility criteria, guide users through the filling up of claim forms or explain the next steps in the small claims process.
28. In Singapore, the courts are working with American legal AI start-up Harvey to develop a generative AI program for users of the Small Claims Tribunals to give users an overview of the process, help users file their claims properly and possibly advise on the possible outcome and claim amount, thereby prompting parties to reach a settlement.

(d) Representative or a “Court/ Tribunal Friend”

29. Should individuals require representation, for example because they are minors, of old age, illiterate or infirm in mind or body, or are resident overseas, some jurisdictions allow them to make an application for another individual to be a representative, provided that the latter is not a lawyer and subject always to the court’s approval.
30. Some jurisdictions also have a “Court/ Tribunal Friend” scheme (or a similar arrangement), which allows a party to bring a “Court/ Tribunal Friend” to provide administrative or emotional support during the court proceedings, provided, for example, that the “Court/ Tribunal Friend” is not that party’s lawyer and does not receive any payment or reward for their services.

**(ii) Process**

**(a) Focus on efficiency and expediency**

31. There should be a focus on efficiency and expediency in managing and resolving small claims. For example, the courts may send correspondence or give directions to parties to upload certain documents (or send such documents to the court and the other disputing party) before the first court hearing so that the hearing can proceed in an efficient manner.

**(b) Robust case management**

32. In some jurisdictions (for example, Singapore), parties will need to attend a case management conference/ consultation with a judge/ registrar who will control the process while taking a proactive role in facilitating a settlement of the claim through negotiations and mediation between parties. If a settlement is not reached, the judge/ registrar will then give directions for parties to prepare for a hearing before the judge/ tribunal magistrate. In other jurisdictions (for example, the United Kingdom), a preliminary hearing is held only if the court considers it necessary. Otherwise, automatic directions, which are designed to result in a speedy hearing to resolve the case, apply.
33. The judge/ registrar will set firm and realistic timelines to ensure that each case is managed in an effective and timely manner. This typically involves taking a proactive role in ascertaining the parties' positions, identifying the issues and getting in the relevant evidence. Parties may also be requested to tender specific documents in support of the claim/ counterclaim/ response, or to prepare additional documents to help clarify their respective positions.

**(c) Inquisitorial/ "Judge-led" approach adopted in trials**

34. In some jurisdictions (for example, Malaysia, Singapore and the United Kingdom), the court/ tribunal may adopt a "judge-led" approach when conducting trials in relation to small claims. This approach may be particularly useful when parties are not allowed to be represented by lawyers during a hearing.
35. Adopting a "judge-led" approach may require the court/ tribunal to perform an inquisitorial function by identifying the relevant issues in the claim and ensuring that the relevant evidence is adduced by the parties to the proceedings. This, in turn, will help to focus the attention of the parties on key issues, and lead to cost and time savings.

(d) Virtual hearings

36. Some jurisdictions allow small claims hearings to be conducted virtually (for example, through video calls or Zoom hearings), provided that certain conditions are fulfilled, for example, that all parties to the proceedings consent to the same.
37. Such virtual hearings give parties greater convenience and more accessibility (especially for those with mobility issues), by allowing them to join from anywhere with an internet connection (provided that they are alone in the room, or that only authorised persons are in the same room), thereby reducing travel time and costs, especially for those who may not be in the same city/ country as the court.

**E. COURT ALTERNATIVE DISPUTE RESOLUTION (“ADR”) MODALITIES FOR SMALL CLAIMS**

38. To promote the early, amicable, cost-effective and fair resolution of small claims, apart from the pro-active, judge-led management of cases, the court may employ a whole suite of Court (or Court-led/ Court-initiated) Alternative Dispute Resolution (“ADR”) modalities such as mediation, judge-facilitated negotiations and early neutral evaluation.

*(i) Mediation*

39. The judge/ registrar (who is usually trained as a judicial mediator) may steer the disputing parties towards a settlement through mediation by facilitating constructive discussions between parties and guiding them towards a mutually acceptable settlement which addresses their interests and underlying concerns. Mediation is also more accessible to laypersons because it does not require them to focus on the legal and evidentiary merits of each party’s case and frame their issues in terms of legal arguments, but encourages them to articulate their interests and concerns. During the mediation session, the judge/ registrar focuses on working with parties to propose and craft solutions rather than dwelling on the problem and assigning blame.
40. The mediation of small claims may also be conducted by court-volunteer mediators (who are usually practising lawyers) or external mediators (although a mediator’s fees may be disproportionate to the disputed amount, considering that the claim amount would be of a low value). The court service may also make mediators available for small claims without charging a fee to the parties, as in the United Kingdom.
41. In some jurisdictions, the court may offer mediation to parties prior to a court hearing to help them resolve the dispute. For example, the United Kingdom is currently piloting a scheme under which small claims (where each claim is for

£10,000 or less) are automatically referred to informal telephone mediation, whether or not the parties to the claim consent, while in Singapore, the registrar or tribunal may refer a claim for mediation, with or without the consent of the parties to the claim.

42. Some jurisdictions may also impose a costs sanction if a party unreasonably refuses to participate in the mediation process.

*(ii) Judge-facilitated Negotiations*

43. The judge/ registrar, being well-apprised of the case, is in a good position to determine how to balance the competing objectives of moving the case forward expeditiously and allowing parties to negotiate and settle the case in the interests of saving costs and time.
44. Through the close monitoring of the progress of their negotiations, the judge can give constructive suggestions on how to further negotiations and propose creative solutions for parties to overcome hurdles and limitations that they face.

*(iii) Early Neutral Evaluation ("ENE")*

45. Where legal representation at a small claims hearing is allowed, a court may employ early neutral evaluation ("ENE") as a possible ADR modality to resolve the dispute. The judge/ registrar, who is familiar with the legal and factual issues in dispute, as well as the dynamics between parties, is well-placed to conduct the ENE process. The judge/ registrar will provide an early, objective and realistic assessment of the strengths and weaknesses of each party's case after considering their submissions and available evidence, as well as the applicable laws. The judge/ registrar will then render a considered view on the likely outcome at the trial or hearing. This would, in turn, help to manage the parties' expectations and facilitate the parties in either reaching a settlement or in furthering their settlement negotiations.
46. However, as part of the ENE process usually requires the tendering of written (or the making of oral) submissions (which may include a summary of the legal principles and authorities relied upon by each party), ENE may not be appropriate if parties are not represented by lawyers. There might also be a strain on judicial resources if every small claim goes through the ENE process, given the large number of small claims that are filed in court yearly.