



Civil Litigation and Dispute Resolutions Unit

Public Officers' Law Seminar :
Understanding the Law
26th and 27th October 2016

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- Introduction to the Litigation & Dispute Resolutions Unit (LDRU);
- Government Debt-Collection & the Process;
- The Civil Litigation Process;
- Suits against the Government;
- Case Studies;
- Alternative Disputes Resolutions;
- Protection for Child and Young Person under CYPA (CAP 219)



Introduction to the Litigation & Dispute Resolutions Unit



- LDRU – A Unit within the Civil Division;
- Situated at the 1st Floor New Law & Court Building
- Capacity : 7 Officers – 12 Support Staffs



Introduction to the Litigation & Dispute Resolutions Unit

Function:

- Debt Recovery;
- Representing the Government if being sued;
- Conducting and managing civil litigation and/ or arbitration on behalf of the Government;
- Representing the Attorney General in matters and proceedings under the Legal Profession Act (Cap 132);
- Representing the Government in matters concerning children protections under the Children Young Person Act;



LDRU's List of Clients

CLIENTS	CASES
Municipal Boards	Municipal Rates, Building/Stall Rents
Ministry of Finance (MOF) (Treasury)	Recovery Matters; Car/House Loan/ Overpaid Salary, Bonus, Allowance, Accidents with Government Vehicle
Telecom (MOF)	Telecom Bills
Public Work Department (PWD)	Damage / Lost of Government Property
Hospital (Ministry of Health)	Ward Bills
Radio Television Brunei (RTB)	Advertisement I Rental of Building
Ministry of Education	Scholarship Claims
MISCELLANOUS (MISC.)	
Department Electrical Services	Electricity Bills
Ministry of Welfare Youth & Sport	Rental of Building
Ministry of Industry & Primary Resource	Rental of Building, Loan schemes
Economic Planning and Development	Finance Scheme
Others	Miscellaneous Cases, e.g. Recovery of Balance of Advances.



Introduction to the Litigation & Dispute Resolutions Unit

“Going to court should be a last resort.....”

Justice Minister Lord Faulk



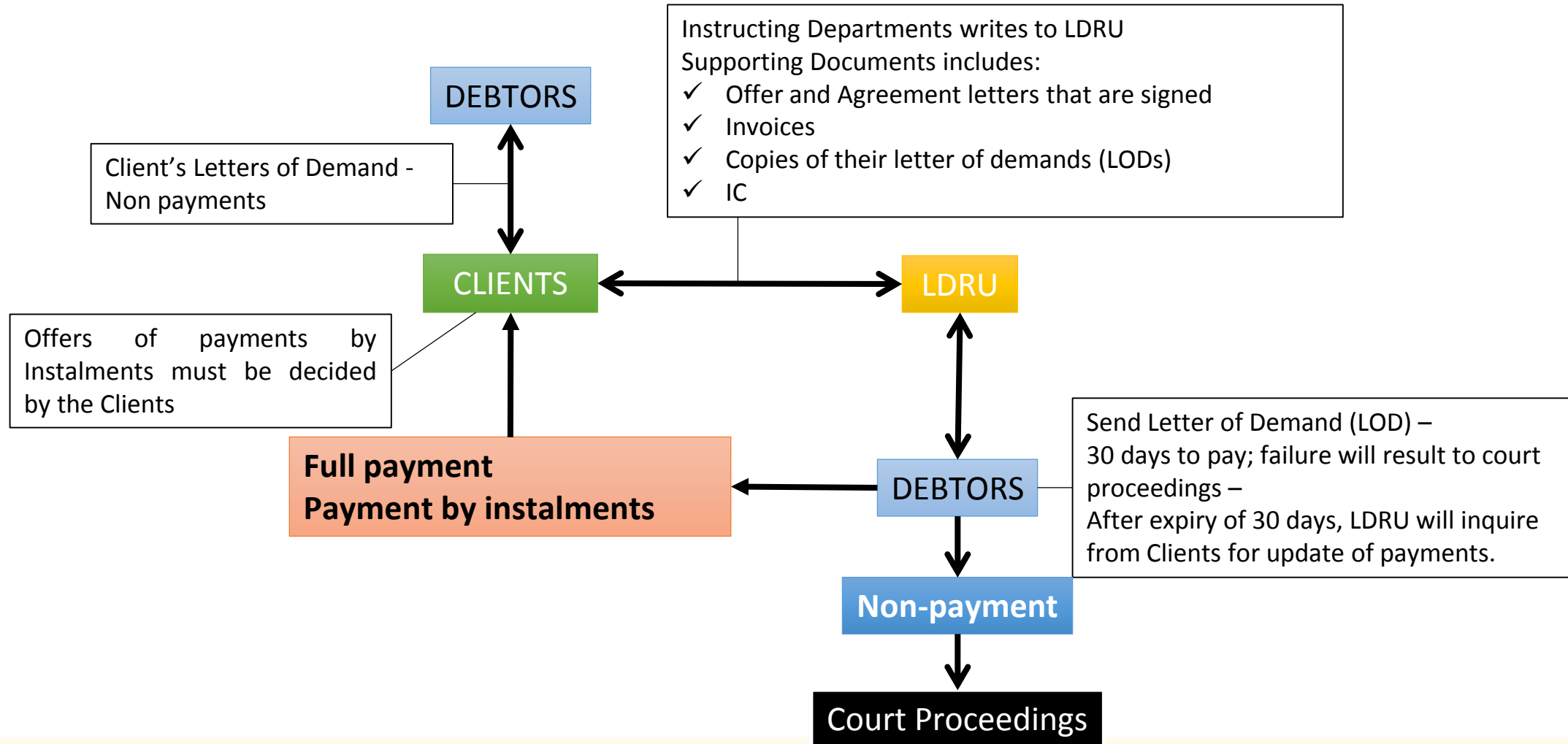
Check list: Debt Recovery

- Parties/ debtor : person or a corporation/Syarikat Sdn Bhd;
- if the Parties are still alive or have passed away or no longer in operation : Probate Officer, Register of Companies;
- What is the debt?;
- Amount;
- Agreement or documents attached;
- Identification Card (IC); address



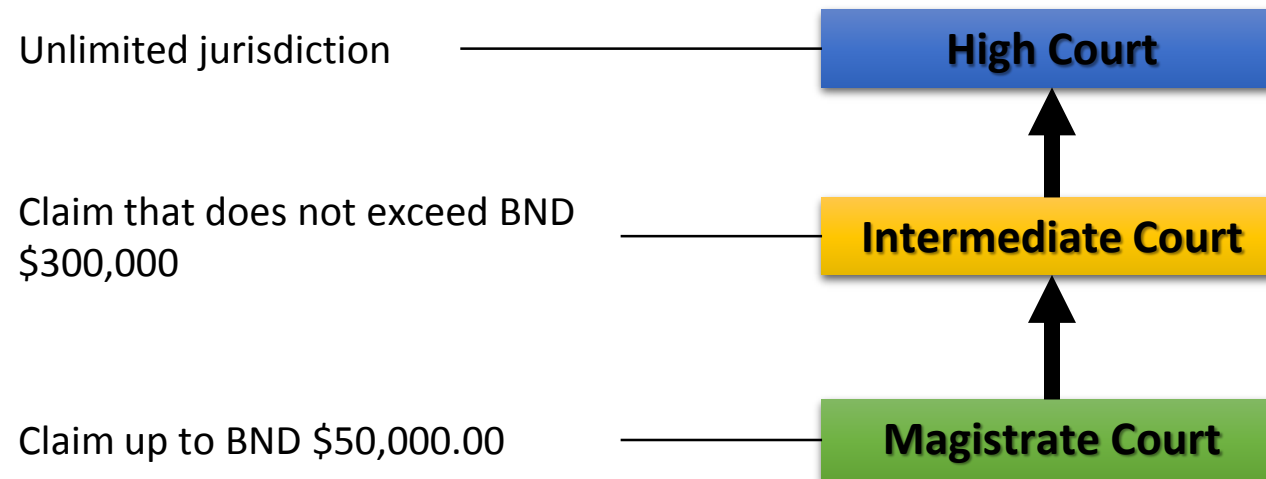
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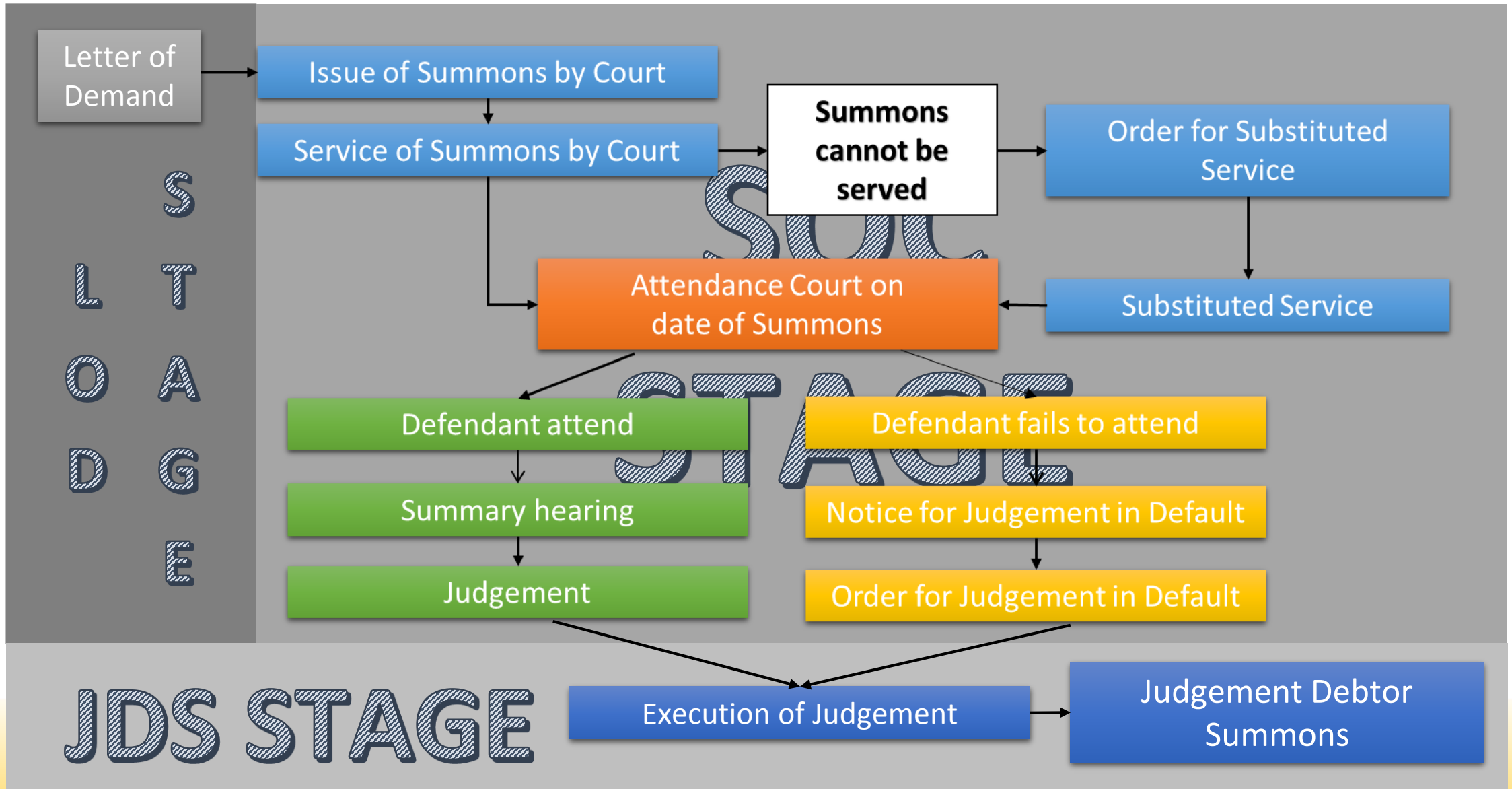


Which court to initiate civil proceedings?





MAGISTRATE COURTS PROCESS FLOWCHART





Check list For Civil Suit

- parties;
- cause of action;
- limitation period;

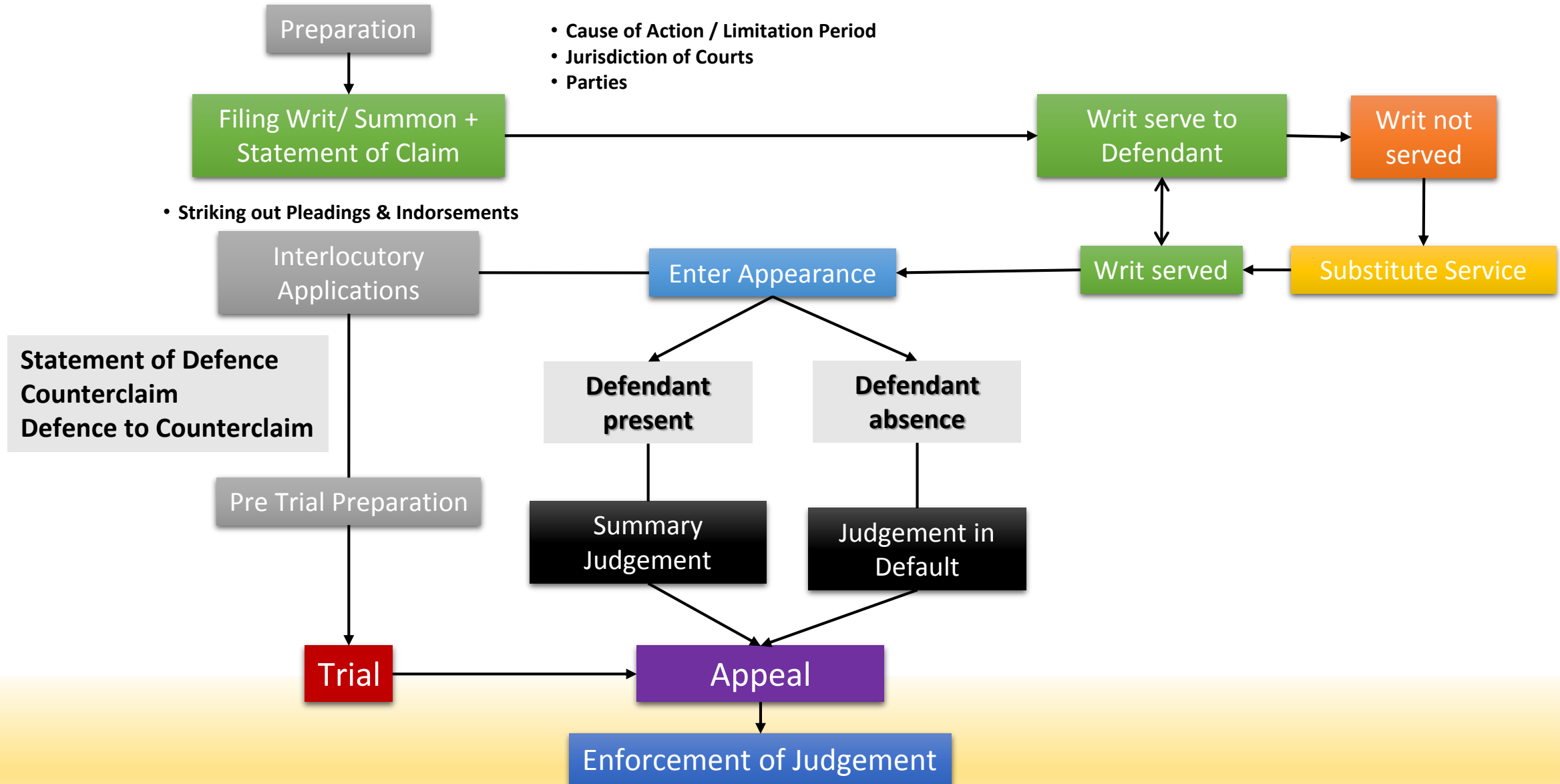


SUITS AGAINST THE GOVERNMENT

- Suit against the government has increased;
- AGC apply for striking out application based on :
 - Immunity
 - No Judicial Review



HIGH COURT & INTERMEDIATE COURT PROCESS FLOWCHART





Suits Against the Government

□ IMMUNITY

Article 84B (2) of the Constitution of Brunei Darussalam ('Constitution') stipulates that any person acting on behalf, or under the authority, of His Majesty the Sultan and Yang Di-Pertuan shall not be liable to any proceedings whatsoever in any court in respect of anything done or omitted to have been done by him in his official capacity;



Suits Against the Government

❑ NO JUDICIAL REVIEW

Article 84C of the Constitution of Brunei Darussalam and section 34 of the Succession and Regency Proclamation:

“Judicial review is and shall not be available in Brunei Darussalam”

Case Studies

✓ Capt (Rtd) Hjh Huraizah binti Hj Duraman & 3 Ors v YB Pehin Datu Singamenteri Col (Rtd) Dato Seri Paduka Haji Awg Mohammad Yasmin bin Haji Umar & 2 Ors

- The Plaintiff was suing the 3 Defendants for their recommendation in the decision to dismiss the Plaintiff from Royal Brunei Armed Forces (RBAF) ;
- The Plaintiff was claiming for damages which are lose of damages and emoluments until her completion of service;
- The Plaintiff was found to be in breach of discipline (drinking alcohol) ;
- His Majesty consented to the Plaintiff's service in the RBAF be terminated;
- The Court found that the decision was made in the exercise of His Majesty's arbitrary power, presumed to have been exercised rightly. The Plaintiff therefore cannot prove that any wrongful act of any of the Defendants caused her dismissal;
- Article 84B(2)
- Article 84 C



Case Studies

- ✓ Yong Teck Sang & 3 Others v Pg Hj Abd Rahman bin PSI PH Ismail (Civil Appeal no: 9 of 2014)
 - The Plaintiffs were suing the Chairman of the Municipal Board and sought declaration to the effect that the Chairman's action had been oppressive and abusive; the definition of original CDs and Dvds sold by the Plaintiff "*is not gazette by the Government and irregularised*"; the Plaintiff had suffered loss and damage in the sum of more than B\$300,000.00 and that the Plaintiff be paid "*all income losses and damages as assessed..*";
 - At all material time the Defendant was **the Chairman of the Municipal Board** of Bandar Seri Begawan.
 - The Municipal Board was the statutory authority for the issue, overseeing and revocation of business operating licences in the government gazette area of BSB;
 - At all material time the Defendant was a public officer acting under the authority of HM the Sultan and the Board under his control was exercising a power granted to it;
 - The claim was brought in respect of something that the Chairman of the Municipal Board could do in his official capacity (administrative decision);
 - The court held that they have no jurisdiction. The Defendant was a public officer acting under the authority of His Majesty the Sultan;
 - The Board under his control was exercising a power granted to it (Art 84B2);
 - What the Plaintiffs were asking for is an action caught under Art 84C(3)(d) and is not available in Brunei Darussalam.



Case Studies

- ✓ **ICCS No. 69 of 2011 Md. Hamizan Bin Salim v Kpl Mohd Khairil Musadey Musa & 3 Ors**
- This is a personal injury claim made by Plaintiff, a recruit of the Royal Brunei Navy who was undergoing military training at Kompeni Rekrut, Institute Latihan ABDB, Perkhemahan Penanjong;
- All 4 defendants are training officers;
- The Plaintiff alleged that he was assaulted (kicked, slapped) sometime in April 2010 and as a result the plaintiff suffered a fractured neck bone;
- The defendants denied ever touching the plaintiff but had only imposed additional exercises (press up, forwards, side roll and raised commando) because he was found to be missing from his platoon 5 after returning from a rifle training at the Penanjong Kem;



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- The defendants' application to strike off the writ on ground of immunity was dismissed by the Deputy Chief Registrar as there is an element of criminality and that the 4 defendants may be acting outside their scope of duty as public officers;
- The COA dismissed the appeal as it finds that the Plaintiff's statement of claim filed discloses a reasonable cause of action that is not barred by constitutional immunity;
- The fact that the plaintiff had a fracture of C-5 and C6, an injury caused during training and in the custody of these defendants;
- The matter was set for trial proper sometime in November 2016.



Case Studies

- ✓ **OS : 57 of 2016 Micaland Sdn Bhd Vs Commissioner of Royal Brunei Police Force**
- The Plaintiff, a Malaysian money lender company who was in transit transporting money from their Limbang main branch to their Miri branch;
- They were stopped by the Custom Officers who found that they did not to have the monies declared;
- The bags of monies were detained under section 115 of the Custom Order, whereby a notice under section 115(3) was issued;
- It was subsequently handed over to the police under section 100(3) Criminal Asset Recovery Order 2012 (CARO);
- the Applicant is claiming the remedy provided under section 47 of CARO for the money seized to be released and not claiming personal damages;
- the remedy of judicial review is not available in Brunei Darussalam without referring to the remedies available to the applicant expressly provided by CARO;



OS : 57 of 2016 Micaland Sdn Bhd Vs Commissioner of Royal Brunei Police Force

- the remedies are as provided under section 47 of CARO;
- Article 84B does not provide unfettered immunity to any persons acting on behalf or under the authority of His Majesty. Immunity is only available provided that there are no written provisions that govern and allow actions being taken against the Government or any officer. In this case, CARO provides for remedies available to the Applicant;
- However, in this case, the police were still investigating the ownership of the seized cash;
- The Court was extremely reluctant to make findings on issues which are intended to be prosecuted later in a criminal court;
- In the event of a conviction, the question of confiscation of cash would normally arise (section 60 CARO and section 367 CPC). Therefore the Appellant's application was dismissed.



Recent case: HCCS: 40 of 2016/ SIC : 150 of 2016

- a suit against the Ministry of Development, the Town and Country Planning and the Authority of Building and Construction Industry;
- The Plaintiffs are land owner and project owners;
- Approval is rescinded;
- TCP found technical issues;
- The Plaintiffs wants the earlier approval to be declared valid;
- LDRU application to strike out their suit was successful
- Art 84B(2) and Art 84C



Alternative Dispute Resolution

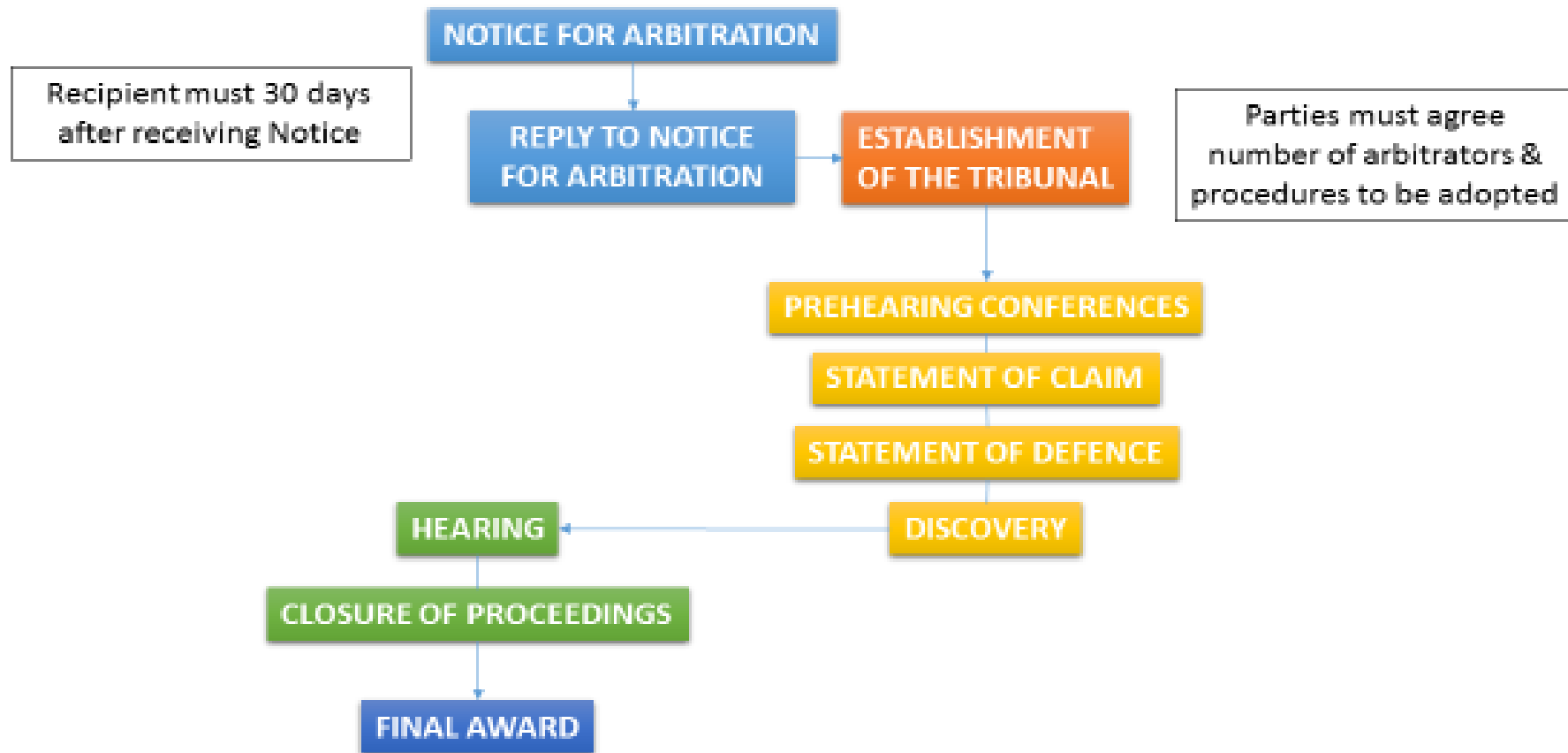
the use of methods such as mediation or arbitration to resolve a dispute without resort to litigation.

the use of arbitration and mediation services in handling commercial issues and disputes as a speedier alternative to the common mode of settling disputes through legal action and proceedings in court.

- Mediation
- Arbitration : (a) SM Seawave Sdn Bhd
- The establishment of the Centre is to provide arbitration facilities and administrative services and mediation to meet the needs of domestic and international consumers;
- Arbitration Act (CAP 175)



Alternative Dispute Resolution : Arbitration





**PROTECTIONS FOR CHILDREN AND YOUNG
PERSONS UNDER THE CHILDREN AND YOUNG
PERSONS ACT (CYPA) - CHAPTER 219**



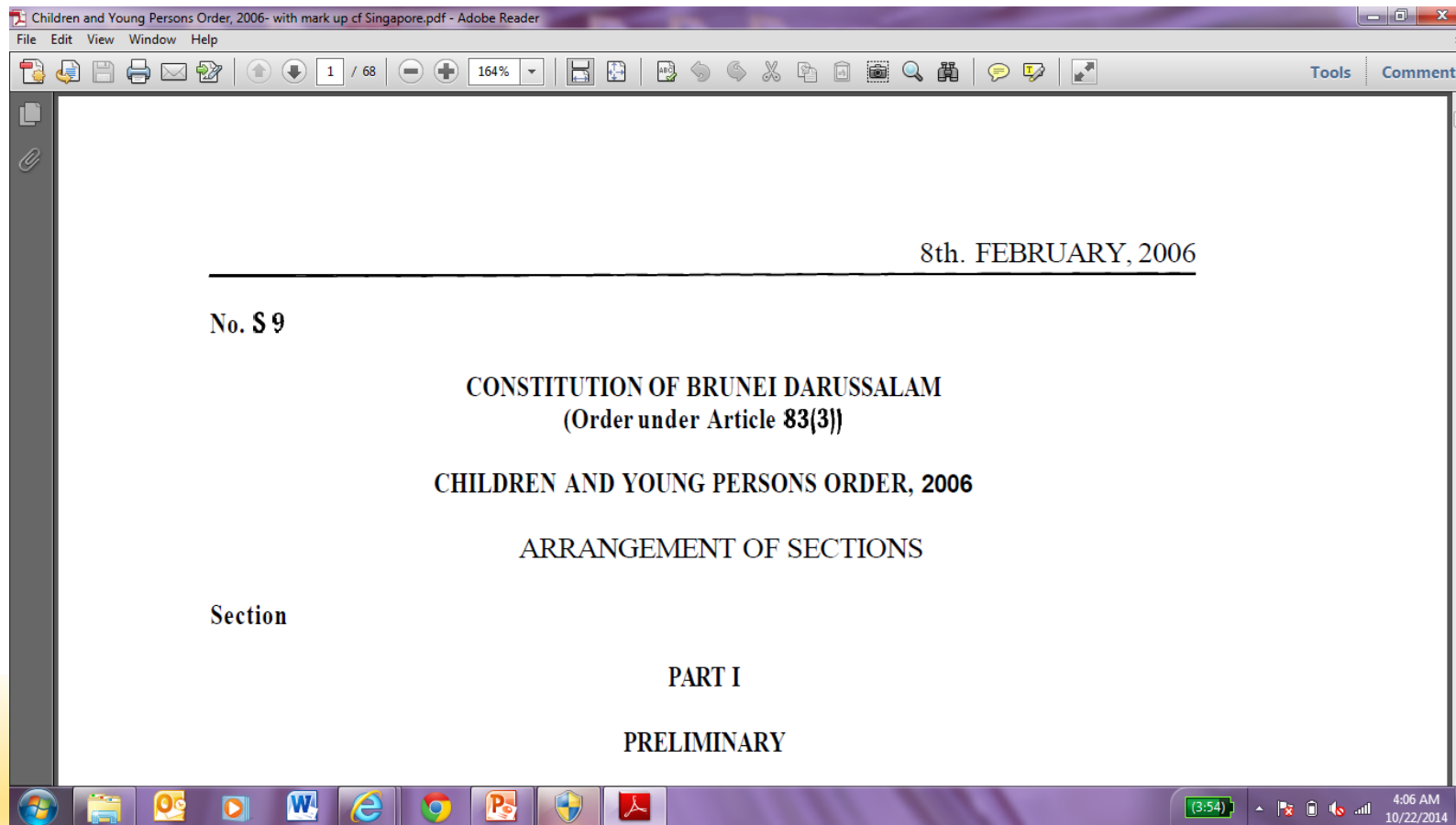
BRUNEI - STATE PARTY AND ACCEDED IN 1995

The screenshot shows a web browser window displaying the United Nations Human Rights website. The browser's address bar shows the URL: www.unhcr.org/EN/ProfessionalInterest/1. The page title is "Convention on the Rights of the Child". The main heading is "Convention on the Rights of the Child". Below the heading, it states: "Adopted for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. Entry into force 2 September 1990, in accordance with article 49." The text continues: "In accordance with the principles proclaimed in the Charter of the United Nations, the inherent dignity and of the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world, and that the peoples of the United Nations have, in the Charter, reaffirmed their faith in human rights and in the dignity and worth of the human person, and have determined to promote and better standards of life in larger freedom,". The page also includes a search bar, a navigation menu, and a sidebar with links to "Committee on the Rights of the Child (CRC)", "Status of ratification and reservation declarations", and "See also".



CHILDREN AND YOUNG PERSONS ACT

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**COMMUNITY DEVELOPMENT DEPARTMENT,
MINISTRY OF CULTURE, YOUTH AND SPORTS
[JABATAN PEMBANGUNAN MASYARAKAT - JAPEM]**



FOR JAPEM TO DEAL WITH PROTECTIONS

- Referral from the Police/Schools/Hospital/Family Members/Guardian/Public lodge a complaint – assigned social worker/officer under JAPEM will do necessary assessment/investigate further the matter.
- If there is an alternative place for the child/young person to stay, the matter will not be referred to AGC for protections.



- If the child/young person are placed at Darussakinah Puteri/Darussakinah Putera (place of safety) after the referral/complaint is lodged, child/young person are only allowed to stay at the place of safety not more than 3 working days.
- JAPEM will indicate AGC if there is a child/young person to be placed at the place of safety.
- If no alternative place for the child/young person to stay, matter will be referred to AGC for the application of protections, for the child/young person to be placed at the place of safety.



HOW TO LODGE A COMPLAINT AT JAPEM

- Walk in to the Office at the Ministry of Culture, Youth and Sports, at 3rd Floor [Bahagian Keluarga, Wanita dan Kanak-Kanak];
- Call 141 (24 hours);
- FB “Jabatan Pembangunan Masyarakat, Kementerian Kebudayaan, Belia dan Sukan”.



CHRONOLOGY FOR CYPA

JAPEM REFERRED THE CASE TO LDRU, AGC – S.2(2)(A) – (K)



LDRU PREPARE A CASE BACKGROUND



APPLY FOR 2 MONTHS INTERIM ORDER UNDER S.57(5)

NOTE: DURING THE REVIEW, INTERIM ORDER CAN BE EXTENDED UP TO A FEW TIMES



REVIEW



RELEASE



FINAL ORDER UNDER S.57(A) – (E)



FOUNDATIONS OF APPLICATION

S.2(2)(A) - (K)

- a) has been or there is substantial risk – physically or emotionally injured or sexually abused by the guardian;
- b) has been or there is substantial risk – will be physically or emotionally injured or sexually abused and the guardian, knowing such matters, has not protected or is unlikely to protect from such injury or abuse;



- c) the guardian is unfit, or has neglected or is unable, to exercise proper supervision and control over the child/young person and he is falling into bad association, is exposed to moral danger or is beyond control;
- d) the guardian has neglected or is unwilling to provide for the child/young person adequate care, food, clothing and shelter;
- e) has no guardian, or has been abandoned by the guardian and after reasonable inquiries the guardian cannot be found and no other suitable person is willing and able to care for the child/young person ;



- f) needs to be examined, investigated or treated for the purpose of restoring or preserving the child/young person's health and the guardian neglects or refuses to have the child/young person so examined, investigated or treated;
- g) behaves in a manner that is or is likely to be harmful to the child/young person or to any other person and the guardian is unable or unwilling to take necessary measures to remedy the situation or the remedial measures taken by the guardian have failed;
- h) there is such conflict between the child and young person and his guardian, or between his guardians, that family relationships are seriously disrupted, thereby causing him emotional injury;



- i) is a person in respect of whom any of the offences mentioned in the Penal Code (Chapter 22) or any offence of the nature described in CYPA has been or is believed to have been committed and the guardian is the person who committed or is believed to have committed such offence or has not protected or is unlikely to protect him from such offence;



- j) the child or young person is –
 - i. a member of the same household as a child or young person referred to in paragraph (i); or
 - ii. a member of the same household of the person who has been convicted of any of the offences referred to in paragraph (i), and appears to be in danger of the commission upon or in respect of him of a similar offence and his guardian is the person who committed or is believed to have committed such offence or is unable or unwilling to protect him from such offence;

- k) the child or young person is found begging.



INTERIM ORDER UNDER SECTION 57(5)

- Before making an order under subsection 57(1), the Juvenile Court may obtain:
 - ✓ information as to family background, religion, general conduct, home surroundings, school record and medical history;
 - ✓ to enable to deal with the case in the best interests of the child or young person;
 - ✓ for the purpose of obtaining such information, adjourn the case for a period or periods not exceeding 2 months at a time.



FINAL ORDER UNDER SECTION 57(1)

- a) order his guardian to enter into a bond to exercise proper care and guardianship for a period specified by the Court, but that period shall not extend beyond the date on which the child or young person attains the age of 18 years;
- b) make an order placing the child or young person in the custody of a fit person specified by the Court but that period shall not extend beyond the date on which the child or young person attains the age of 18 years;



- c) without making any other order or in addition to an order under paragraph (a) or (b), make an order placing the child or young person under the supervision of a protector, or some other person appointed for the purpose by the Court, for a period specified by the Court, but that period shall not extend beyond the date on which the child or young person attains the age of 18 years;

- d) make an order placing the child or young person in a place of safety for a period of 3 years from the date of the order or until he attains the age of 18 years, whichever is the longer; or



- e) make an order placing the child or young person in the custody of a foster-parent considered suitable by the Permanent Secretary and pending such time, placing the child or young person in a place of safety.

S. 57(2)

A Juvenile Court may, in making any order under subsection (1), impose such conditions or give such directions as it may consider appropriate for the purpose of ensuring the safety and well-being of the child or young person, and every person upon whom such conditions are imposed or to whom such directions are given shall comply with such conditions or directions.



ADDITIONAL ORDERS OF JUVENILE COURT UNDER SECTION 59(1)

Where a child or young person has been dealt with under section 57 or 58, the Juvenile Court may, on its own motion or on the application of the Director or a protector, make an additional order requiring either or both the child or young person and his guardian to undergo such counselling, psychotherapy or other assessment and treatment or to partake in such other activity as it thinks necessary for the purpose of –

- a) resolving any relationship problems between the child or young person and his guardian;



- b) rehabilitating or assisting in the rehabilitation of the child or young person;
- c) enabling the guardian of the child or young person to manage him; or
- d) enhancing, promoting or protecting the physical, social and emotional well-being and safety of the child or young person.



CASES

1. Interim Order – Release
2. Interim Order – Release and return to their respective countries/transfer to a place of safety in their respective countries
3. Interim Order – Final Order
4. Interim Order – Final Order – Interim Order – Final Order



CHECK LIST UNDER CYPA

- Name of the child/young person;
- Age – Date of birth;
- Address;
- Number of siblings;
- School;
- What investigations had been done by JAPEM – The date when the child/young person is placed at the place of safety – Case background.



QUESTION AND ANSWER SESSION

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THANK YOU

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