

# DEBT RECOVERY

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**Debt recovery is a process of recovering debts from individuals, businesses or companies in the event they refuse or fail to pay their debts.**

## WHAT CAN BE CONSIDERED A DEBT !

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Debts may arise out of loans from financial institutions, friendly loans between individuals. Tenants may owe rent to their landlords and others.

As for businesses concerned with the buying and selling of goods, debts may arise from goods or property that have been delivered but remain unpaid by the purchaser. If you are a service provider, you may also sue for outstanding or unpaid fees for services rendered.

Contact us :  
[enquiry@vimalapartners.com](mailto:enquiry@vimalapartners.com)  
011-10599495

# What to do if your debtor is an Individual?

The process starts with ascertaining the following documents:-

## 1. Address of the Debtor.

Can be conducted at the National Registration Department (NRD), NRIC search to determine the registered address of the debtor.

## 2. Determine the Financial Status of Debtor

A bankruptcy search can be conducted at the Malaysian Insolvency Department (MID) to check whether the individual has been declared bankrupt by the court of law.

## 3. May seek to negotiate with Debtor for an amicable settlement

A lawyer can be engaged to send a Letter of Demand to the debtor's residential address. The letter of demand is an official legal document sent by the creditor to the debtor requesting outstanding payment. This includes several details such as debt in question and the ascertained period for the debtor to settle the amount (7-14 days).

# What to do if your debtor is a company or organization ?

This process is relatively similar to that of an individual.

## 1. A company search.

The Companies Commission of Malaysia (CCM) website to get the registered address of the organization and ascertain the business.

## 2. Determine the solvency of the company.

Conduct a solvency search to determine the solvency of the company can be made with the Malaysian Insolvency Department (MID).

## 3. May seek to negotiate with Debtor for an amicable settlement

A lawyer can be engaged to send a Letter of Demand to the debtor's residential address. The letter of demand is an official legal document sent by the creditor to the debtor requesting outstanding payment. This includes several details such as debt in question and the ascertained period for the debtor to settle the amount (7-14 days).

#### 4. Filing a legal claim.

If negotiations and other attempts to recover the debt are unsuccessful, then one may have to resort to a legal claim. When it comes to filing a legal claim for debt recovery, the faster, the better. The quicker the lawsuit is filed, the higher is the chance for debt recovery. Claims can be filed either for commercial debt or consumer debt.

## C O U R T   J U D G E M E N T

For a lawsuit, there are three possible judgment scenarios:

### 1. The first case scenario

This condition arises when the debtor does not defend the claim. This is an easy situation and gives a speedy remedy. The court is most likely to rule in favor of the creditor and directs the debtor to repay back the debt money within a stipulated time frame. This process is relatively quick and can happen within a short period of 2 to 3 months.

### 2. The second case scenario

The debtor (or his legal representative) presents himself in court and defends the claims.

In scenarios like these, to get a speedy remedy, you can opt to file an application for "Summary Judgment".

**Summary judgment is a shortcut remedy.**

**In order to file it, you need to have clear and valid documents to prove your financial relationship with the debtor. For example, emails or text messages where the debtor admitted the debt, invoices and delivery orders acknowledged by the debtor, etc.**

**The outcome of the results will be dependent on the validity of the material proofs presented.**

**If the "Summary Judgment" application is accepted, the Court will issue an order in favor of the claimant within five to six months of filing.**

**If the summary judgment application is dismissed, the final option is to for a trial.**

### **3. The third case scenario**

**Going on the trial is the last case scenario of a judgment.**

**The time duration is dependent on the complexity of the case.**

**It usually takes 9 to 10 months for less complicated cases. For highly complex cases, the time period can extend to a year.**

**The Court requires you to provide all the necessary documents and call witnesses to testify. Once the trial is complete, the Court will give a judgment on whether to allow or dismiss the claim.**

## How to Enforce the Judgment?

In the event that the court gives a favorable judgment, it does not necessarily provide a clear cut guarantee that the debtor will pay you. In a good number of cases, the court judgment needs to be enforced when the debtor is responding in an unfriendly and unethical manner.

## E N F O R C E M E N T S

### BANKRUPTCY PROCEEDINGS:

Bankruptcy Proceedings can be initiated if the individual debtor owes you RM 50,000.00 and above.

This is a popular method as it involves putting sheer pressure on the debtor to pay back the debt.

If declared bankrupt, all the future financial transactions of the debtor would be at a standstill. In most cases, the debtor will try their best to pay back the debt. After all, no one really wants themselves to be declared bankrupt as it will affect their daily lives and reflects poorly on their reputation.

The process begins with a Bankruptcy Notice that is filed by the creditor to claim back the debt. Once it has been approved, the rest will be taken care of by the insolvency department. This might take some time as other creditors will also be involved in this case. The creditors will get a chance of repayment based on the individual's assets available for liquidation.

Thus, in short, it will be similar to selling off all the personal assets, including property, household goods, vehicles, etc. in order to clear off the debts.

Once the proceedings are completed, the debtor is relieved of all his debt obligations.

### **WINDING UP PROCEEDINGS:**

Winding Up Proceedings can be initiated if the debt owed to the creditor is by a company and is for RM 10,000.00 and above. These are applicable in scenarios where the debtor is a company.

A winding-up petition is presented to the court by the debtor. The court will generally take four to five months to review the petition and approve it.

If approved, a winding-up order is passed, which will force an insolvent company into compulsory liquidation.

Under these circumstances, all the company assets are collected and sold off to pay the debts. The remaining amount, if any, is distributed among the shareholders of the company.

### **GARNISHEE PROCEEDINGS:**

Garnishing proceeding is one of the robust and effective means of realizing a judgment debt. Here, the debtor's accounts can be garnished so that all monies in the accounts will be utilised to pay off the debt. Garnishment can also apply to ongoing receipts like salaries.

For example, let's suppose if the debtor is an employee of a particular company. You could file a suit to garnish his salary and direct his employer to pay you a certain percent of his monthly salary.

If a company receives payments directly from a person or from a source, the amount could be redirected to you until the debt is paid off.

Another popular method is to garnish the debtor's bank account. In this case, you need to know the exact bank details of the debtor such as account number, account name, etc. You could file an application in the court to extract money from the account until your debt is paid off.

### **JUDGMENT DEBTOR SUMMONS ("JDS"):**

Judgment Debtor Summons is an excellent legal remedy that is most popularly known to 'drag' the debtor to the court and force them to disclose all their financial status.

In the event where the debtor is a company, the JDS application will drag the directors of the company to court. The court will then direct all the individual directors of the company to disclose all their assets, properties and bank accounts, business revenue, source of income, etc.

The court will examine all the details and direct the debtor to pay back the amount as per the discretion of the court. Once filed, this process will generally take up around three to four months.

### **WRIT OF SEIZURE AND SALE:**

Under this process, an application is filed in the court to completely seize all the properties owned by the debtor and put them on sale to pay off the debt. The properties which are seized may include shares, vehicles, land, movable assets, etc.

This process may take five to six months to list down all the properties and evaluate their financial worth.

### **COMMITTAL PROCEEDINGS:**

Under certain circumstances, a recalcitrant debtor who refuses to co-operate with the process can be subjected to committal proceedings. A debtor who is committed can be fined or even imprisoned at the discretion of the courts. However, this usually does not apply to monetary debts, but only apply when the court considers the conduct of the debtor to be recalcitrant to the extent of amounting to a contempt of the Court.