



Civil Litigation and Dispute Resolutions Unit

Public Officers' Law Seminar :
Understanding the Law
11th November 2017

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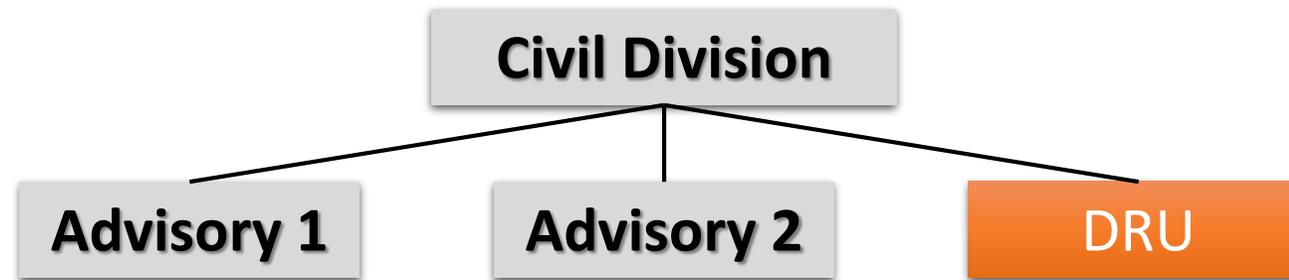


CONTENTS

- a) Introduction to the Debt Recovery Unit;
- b) Debt
- c) The Process: Check List;
- d) The Court Process;
- e) Other means of execution; and
- f) Bad Debts



Introduction to the Debt Recovery Unit, Civil Division



- DRU – A Unit within the Civil Division;
- DRU is situated at the 1st Floor The Law Building & Courts
- Capacity :8 Officers – 5 Support Staffs



Introduction to the Debt Recovery Unit

- Function
 - Debt Recovery (core)
 - Representing the Attorney General in matters and proceedings under the Legal Profession Act (Cap 132), the Laws of Brunei Darussalam
 - Advisory



What is debt?

- **Debt** is money owed by one party to another;
- Government Debt: incurs when Government facilities/ services is provided and there is monthly payment to be made for that facilities however payment is not made/defaulted/ settled;
- For example : car loan facilities, housing loan facilities, medical services, rent, etc
- Any revenue owed to the Government; incase where overpaid allowance/ salary, collection of tax/ duty



Limitation

Under section 3 Limitation Act CAP 14, the Laws of Brunei Darussalam

- **Application to the Government**
- *3. (1) Except as otherwise expressly provided in this Act, and without prejudice to section 49 of this Act, this Act shall not apply to proceedings by or against the Government.*
- *(2) For the removal of doubt, it is declared that this Act shall not apply to — (a) any proceedings by the Government for the recovery of any tax or duty or interest on any tax or duty;*
- *(b) any forfeiture proceedings under any written law relating to customs or excise; or*
- *(c) any proceedings in respect of the forfeiture of a ship.*

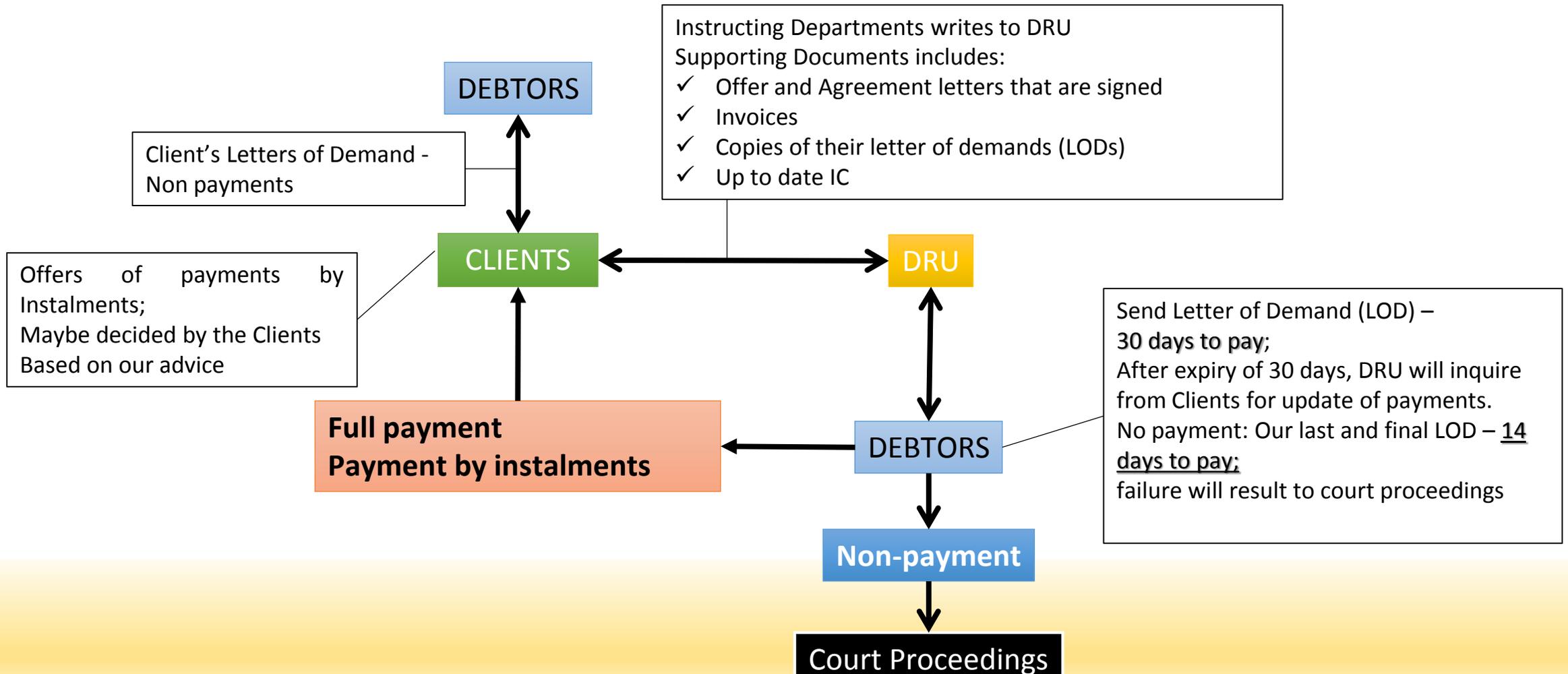


DRU's List of Clients

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 Rental of Building
Ministry of Education	Scholarship Claims
MISCELLANEOUS (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.



DRU's Process





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

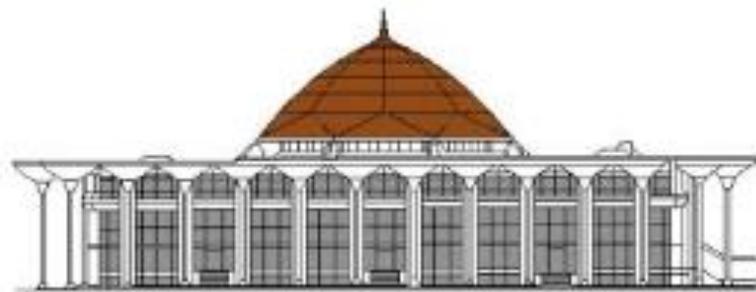
Justice Minister Lord Faulk



Brunei's Court

BANDAR SERI BEGAWAN

TUTONG

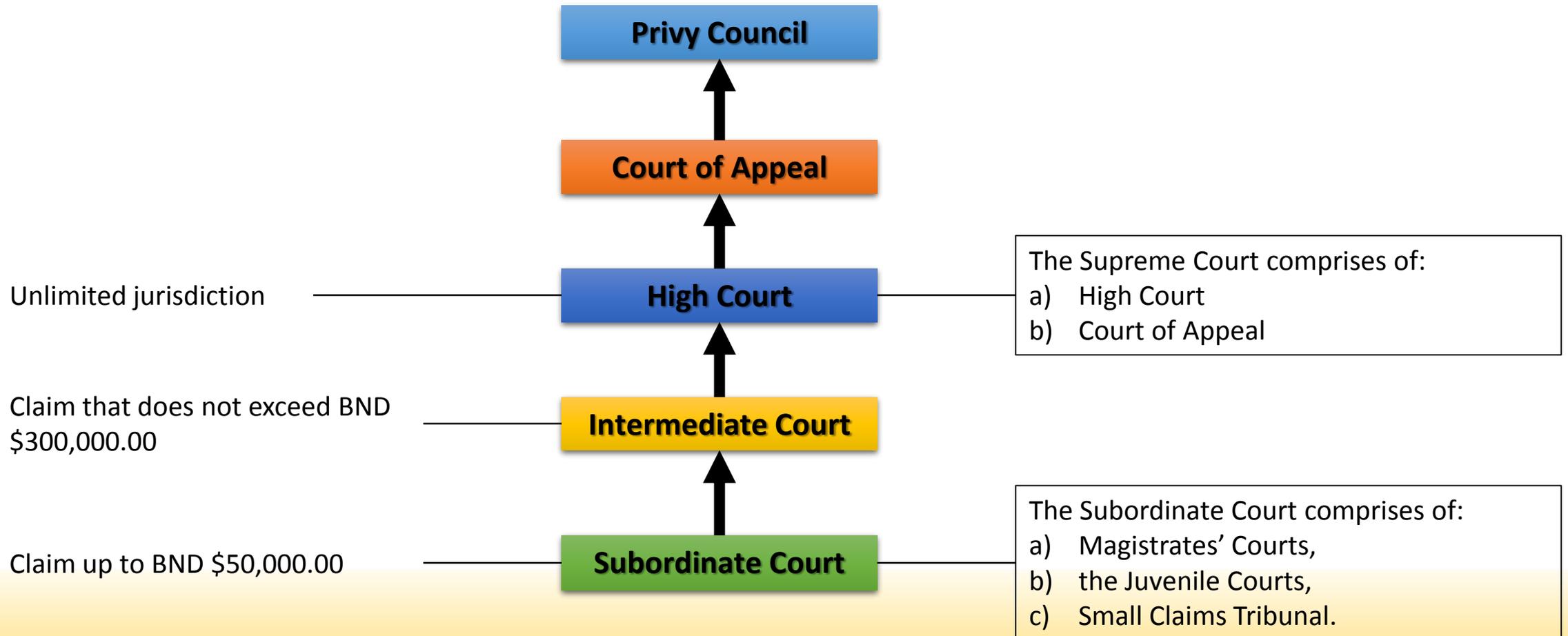


KUALA BELAIT

TEMBURONG



Court Process: Which court to initiate civil proceedings?





The Debt Recovery Process

1

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2

**SOC
STAGE**

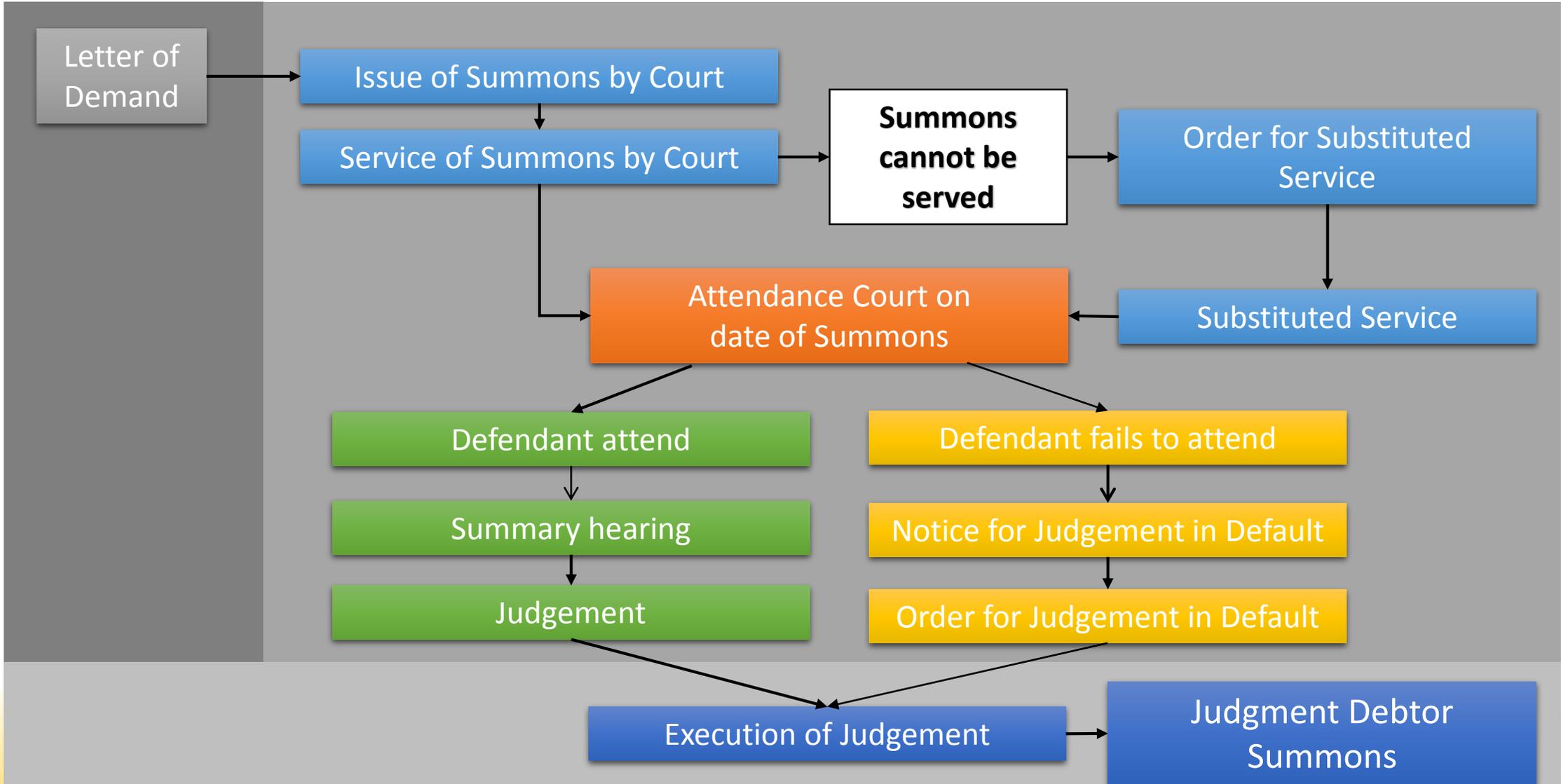
3

JDS STAGE



The Court Process

MAGISTRATE COURTS FLOWCHART





JUDGMENT DEBTOR SUMMONS (JDS) STAGE

- Examination of means;
- Warrant of arrest;
- Warrant of committal;
- Bankruptcy Proceedings (individual);
- Wind up/ in Liquidation (company);
- Writ of Seizure & Sale;
- Stop list;
- Garnishee proceeding;



BAD DEBTS

- a debt that **cannot be recovered**;
- **Provision rule 306 Financial Regulation**

306. Permohonan² bagi mendapatkan kuasa kebenaran untuk mengenyepikan jumlah² hasil, hutang piutang, dan lebeh-bayaran² yang tidak dapat di-perolehi balek hendak-lah di-buat kapada Pegawai Kewangan Negara. Sebab² lengkap bagi kegagalan untuk memungut jumlah² wang yang tidak dapat di-perolehi balek hendak-lah di-berikan.



Bad Debts

- AGC advice:
- Debtor cannot be found;
- Foreigner no longer in Brunei Darussalam;
- Long outstanding cases (no documentary evidence, witness);
- Debtors who has passed away and no letter of administration has been taken out



SURCHARGE



LAWS OF BRUNEI

CONSTITUTIONAL MATTERS III

CONSTITUTION (FINANCIAL PROCEDURE) ORDER

S 101/59

Amended by

S 50/61

2 of 1965

S 264/68

S 166/70

2 of 1972

S 56/74

S 180/74

S 8/76

S 49/76

S 109/79

S 36/84

1984 Ed. Const. III

Amended by

S 20/85

S 39/03

S 63/04

S 70/04

REVISED EDITION 2004

(4th October 2004)



PART III

**CONTROL AND MANAGEMENT OF PUBLIC FINANCES OF
BRUNEI DARUSSALAM**

5. Powers of Minister.
6. Consolidated Fund accounts.
7. Custody and investment of moneys.
8. Trust accounts.
9. Government trust funds.
10. Contingencies Fund.
11. Payment of moneys.
12. Guarantees.
13. Estimates and virement.
14. Yearly statement of accounts.
- 14A. Approval from His Majesty.
15. Write-off.
- 15A. Decision under section 15 to be final and binding.
16. Surcharge.
17. Notification of surcharge.
18. Withdrawal of surcharge.
19. Recovery of surcharge.



LAWS OF BRUNEI

Constitution (Financial Procedure)

CONST. III]

Order

[2004 Ed.

p. 15

Decision under section 15 to be final and binding. [S 63/04]

15A. Where any decision is taken in respect of section 15, such decision shall be final and binding and shall not be debated, challenged or reviewed in the Legislative Council, any court or elsewhere.

Surcharge.

16. If it appears to His Majesty the Sultan and Yang Di-Pertuan, after consultation with the Public Service Commission and the Treasury, that any person who is or was in the employment of the Government of Brunei Darussalam —

[S 63/04]

(a) has failed to collect any moneys owing to the Government for the collection of which he is or was responsible;

(b) is or was responsible for any improper payment of public moneys of Brunei Darussalam or for any payment of such moneys which is not duly vouched; or

[S 63/04]

(c) is or was responsible for any deficiency in, or for the destruction of, any public moneys, stamps, securities, stores or other property of the Government,

and if a satisfactory explanation is not, within a period specified by the Public Service Commission, furnished to that Commission with regard to such failure to collect, improper payment, payment not duly vouched, deficiency or destruction, His Majesty the Sultan and Yang Di-Pertuan may surcharge against that person a sum not exceeding the amount of any such amount not collected, payment, deficiency, or loss of the value of the property destroyed, as the case may be.

[S 63/04]

Notification of surcharge.

17. The Chairman of the Public Service Commission shall notify the head of the department of the person surcharged of any surcharge made under section 16 and such head of department shall thereupon notify the person surcharged.

[S 63/04]



LAWS OF BRUNEI

Constitution (Financial Procedure)

p. 16

2004 Ed.]

Order

[CONST. III

Withdrawal of surcharge.

18. His Majesty the Sultan and Yang Di-Pertuan may at any time withdraw any surcharge in respect of which an explanation satisfactory to His Majesty the Sultan and Yang Di-Pertuan has been received or if it otherwise appears that no surcharge should have been made, and the Chairman of the Public Service Commission shall at once notify the head of department of such withdrawal.

[S 63/04]

Recovery of surcharge.

19. The amount of any surcharge made under section 16, and not withdrawn under section 18, shall be a debt due to the Government from the person against whom the surcharge is made, and such person may be sued and the surcharge recovered, in any court of competent jurisdiction at the suit of the Government; and the Minister may direct that the amount of any surcharge shall be recovered by equal monthly instalments, by deductions from the salary or pension of such person being sued, in amounts not exceeding one-fourth of the total monthly salary or pension, as the case may be, of such person being sued.

[S 63/04]



Way Forward

- Always exhaust **all means of recovering debt**;
- Don't wait for **2-3 months / years** to collect outstanding amount;
- Supporting documents;
- Signed agreements/ contracts/ undertaking;
- Good Practice having "**a guarantor**" in considering installment payment agreement (big amount);
- Latest identification card copy/ passport/ guarantor;
- Current address, phone numbers;
- Ketua Kampong's pengesahan;
- Break down of claim amount;
- Copy of death certificate for letter of Administration inquiry at the Probate Office



QUESTION AND ANSWER SESSION

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THANK YOU