

CAN BAIL BE PAID BY INSTALMENTS IN MALAYSIA?

INTRODUCTION

Under the Malaysian law, the principle of “**innocent until proven guilty**” forms the foundation of the criminal justice system. Bail plays a crucial role in upholding this principle by ensuring that a charged person is not unnecessarily deprived of their liberty before the conclusion of a trial.



WHAT IS BAIL?

Bail is a temporary release of a charged person upon depositing sufficient securities to the Court and an undertaking by the bailor to ensure the attendance of the accused/charged person throughout the trial.

BAIL VS BOND

It is important to distinguish between “**bail**” and “**bond**,” terms which are often used interchangeably. Bail refers to the release granted to the charged person, whereas a bond is the formal financial undertaking that guarantees the accused’s attendance in court.

WHO IS A BAILOR?

A bailor is generally an adult aged 18 and above who is a Malaysian citizen, although for non-citizen accused persons, the court may impose specific conditions, and in cases involving foreign accused persons, the bailor must be a Malaysian citizen. The bailor must fully understand and comply with all conditions set by the court and be financially able to provide the bail amount fixed. The main responsibility of **a bailor is to ensure that the accused attends court on all dates fixed by the court.** If the bailor fails to comply with any of the bail conditions, the court has the power to forfeit the bail.



USUAL CONDITIONS OF BAIL

The imposition of bail conditions serves to balance the charged person’s liberty with the interests of justice, particularly the need to secure attendance at trial. Common “usual conditions of bail” typically include the surrender of the charged person’s passport to the court, thereby restricting international travel and reducing flight risk. In addition, the court often requires the charged person to report periodically to a designated police station, ensuring continued monitoring and compliance. A monetary bail sum is also imposed, the quantum of which depends on factors such as the nature and seriousness of the offence, the charged person’s financial means, and the likelihood of absconding. Furthermore, courts frequently require one or more sureties.

Furthermore, our Firm had the opportunity to represent a client in respect of whom bail was granted on a global basis for all five charges, in the total sum of RM300,000.00. The Court imposed a requirement of two Malaysian citizen sureties. The accused was also directed to report to the Securities Commission office on the first Monday of every month, on a bi-monthly basis. In addition, the accused’s international passport was ordered to be surrendered to the Court and shall remain in the Court’s custody until the disposal of the case.

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However, when bail is fixed at a high amount, an important question arises: is freedom only available to those who can afford to pay immediately, or can the law accommodate payment by instalments?

In Malaysia, the law on bail is governed by **Chapter XXXVIII of the Criminal Procedure Code ("CPC")**. Under **Section 389 CPC**, the Court has discretion to determine the amount of bond. Importantly, the provision also states that the amount of the bond must be fixed with due regard to the circumstances of the case and must not be excessive. Meanwhile, **Section 390 CPC** provides that before a person is released on bail, a bond for a sum deemed sufficient by the court or police must be executed.

This leads to a practical concern: what happens when the bond amount is set so high that the accused is unable to pay it in full? In such situations, the possibility of paying bail by instalments becomes relevant.

Although the CPC does not expressly provide for payment of bail by instalments, Malaysian Courts have, in practice, exercised their discretion to allow such arrangements in appropriate cases.

For instance, in **Ramlee & Anor v Public Prosecutor [1969] 1 MLJ 42**, the Court allowed bailors to settle the bail sum by instalments after the accused failed to attend court. More recently, in 2018, **Dato' Seri Najib Razak** was granted bail of RM1,000,000.00 with the High Court permitting payment in two instalments. Similarly, **Tan Sri Muhammad Shafee Abdullah** was allowed to complete his bail payment in stages.

Further guidance can be seen in **Soo Shiok Liong v Pendakwa Raya [1993] 2 MLJ 381**, where the High Court outlined several factors to be considered when fixing bail. One key principle is that bail should not be punitive in nature, but rather serve to secure the attendance of the accused at trial. Therefore, the bail amount should not be set so high that it effectively keeps the accused in custody before trial. This reflects the court's discretion in fixing bail, which must be exercised fairly by taking into account the relevant factors in each case.

In short, these cases demonstrate that the courts are prepared to adopt a flexible approach where necessary. Allowing bail to be paid by instalments helps ensure that the purpose of bail is achieved without imposing undue hardship on the accused.

CONCLUSION

In conclusion, while there is no specific statutory provision in Malaysia that expressly allows bail to be paid by instalments, the courts have the discretion to permit such arrangements. This reflects a balanced approach, one that safeguards the accused's right to liberty while ensuring their attendance in court. Ultimately, it reinforces the principle that justice should not depend solely on one's financial ability.

REFERENCES

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