

FACING A DIVORCE? HERE'S HOW AN INTERIM ORDER CAN HELP YOU

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Under the **Law Reform (Marriage and Divorce) Act 1976** (“the Act”), when a marriage breaks down and divorce, nullity, or judicial separation petitions are filed, either party may seek interim or interlocutory orders. Interim orders serve as temporary measures to provide financial support and protection to spouses and children pending the final determination of their matrimonial proceedings. Interim orders remain in effect until the court finalizes the case and the court grants an order.



MAINTENANCE OF SPOUSE



Under **Section 77(1)(a) of the Act**, the court may order a man to pay maintenance to his wife during the course of any matrimonial proceedings. Alternatively, in a case where the husband is incapacitated from earning a livelihood by reason of mental or physical injury or ill health, the court may make a provision for the wife to provide the husband with maintenance (**Section 77(2) of the Act**)

The court, in considering the application and determining the amount of any maintenance to be paid, must base its assessment on the means and needs of the parties, regardless of the income, but shall have regard to the degree of responsibility which the court apportions to each party for the breakdown of the marriage (**Section 78 of the Act**). Despite this, the means and needs of the parties must be assessed objectively by a few considerations as mentioned in **V Sandrasagaran a/l Veerapan Raman v Dettarassar Velentine Souvina Marie [1998] 5 CLJ 474** as follows:-

- The duration of the marriage;
- If there are children in the marriage;
- The age of parties;
- Whether the petitioner had financially supported the marriage;
- The parties' earning power; and/or
- Whether the divorce would have affected the respondent's position financially.

MAINTENANCE OF SPOUSE



To assess the means and needs of both parties, the court usually requires:-

- Proof of income, allowances, expenses, savings, and pensions/ EPF funds;
- If the spouse is self-employed, a statutory declaration (SD) as proof of income; and
- Full and honest disclosure of income, property, debts, and expenditures.

In the case of **Leow Kooi Wah v Philip Ng Kok Seng & Anor [1997] 3 MLJ 133, Rules 61(2) and 65(4) of the Divorce and Matrimonial Proceedings Rules 1980** (“the Rules”) impose upon the parties a spontaneous duty to exercise utmost good faith in making the fullest disclosure of relevant information.

Further, the court may vary or rescind any existing maintenance order at any time upon an application by either spouse (**Section 84 of the Act**). This can happen if:-

- The order was based on misrepresentation or a mistake of fact, or
- There has been a material change in circumstances.

MAINTENANCE OF SPOUSE



Lump Sum Payment of Maintenance

During matrimonial proceedings, courts may award lump sum maintenance to a wife. While the Act doesn't explicitly provide for this, Malaysian courts have consistently allowed it by considering the 'clean break' principle.

A 'clean break' principle is applied in **Leow Kooi Wah v Philip Ng Kok Seng & Anor [1997] 3 MLJ 133**, wherein the court clarified that maintenance is meant to support the wife and children's immediate financial needs, not as a separate or additional entitlement, but to ensure they are supported during the proceedings, especially when circumstances require it.

MAINTENANCE OF CHILDREN



Under **Section 93(1)(c) of the Act**, the court may order a man to pay maintenance for the benefit of his child during the pendency of any matrimonial proceedings. In doing so, the court may order a woman to contribute towards the maintenance of her child if the court finds that, having regard to her means, it is reasonable to do so (**Section 93(2) of the Act**).

Claiming maintenance during matrimonial proceedings is crucial to prevent the wife and children from facing financial hardship, especially since such proceedings can be lengthy. The court in **Ling Sui Ching v Chen Kui Siang [2018] MLJU 1203**, awarded maintenance for the wife and children, along with expenses for the car used by them, covering monthly instalments, maintenance, road tax, and insurance from the date of the application.

Moreover, in the case of **Diana Clarice Chan Chiing Hwa v Tiong Chiong Hoo [2002] 2 MLJ 97**, the maintenance awarded by the Court of Appeal included the period of one (1) year preceding the application for which the husband had failed to maintain the wife and children due to the filing of a divorce petition.

INTERIM INJUNCTIONS



a. Prevent the Disposition of Property

To prevent a spouse from disposing of property during matrimonial proceedings, an application for an interim injunction may be filed under **Section 102(1)(a) of the Act**. In urgent cases, this application can be made ex parte, or it may proceed inter partes depending on the circumstances.

In **Devi Vejaya Raman v Krishna Murthi Govindasamy [2017] 3 AMR 842**, the court viewed that the plaintiff was entitled to prevent the defendant from evicting her and the children from the matrimonial home as well as to prevent the defendant from disposing of the matrimonial home. The court in allowing the application, ensured that there is no disposition of property by a spouse within three (3) years before any matrimonial proceedings.

b. Injunction Against Molestation

Under **Section 103 of the Act**, the court can order someone to prevent someone from harassing or forcing themselves on their spouse or ex-spouse while a divorce or family case is ongoing. The court in **Jennifer Patricia a/p Thomas v Calvin Martin a/l Victor [2005] 6 MLJ 728** ruled that a spouse may seek an injunction against molestation even before filing of divorce. The wife in this case followed the required step of obtaining a certificate from the conciliatory body under **Section 106 of the Act**, which was considered as the start of "matrimonial proceedings." This allowed her to apply for protection before formally initiating the divorce process.

INTERIM ORDERS: WHEN DO I APPLY?



Interim orders are temporary measures the court can issue to protect or support a spouse during ongoing matrimonial proceedings. It is well-established that a spouse can apply for an interim order at any stage of these proceedings. Courts have interpreted the phrase "*course of matrimonial proceedings*" broadly to include:

- Obtaining a certificate from the conciliatory body under **Section 106** (as seen in **Jennifer Patricia, supra**), and
- Applying for an exemption from attending counselling at the conciliatory body under **Section 106** (as in **Diana Clarice, supra**).

In order words, a party may apply for interim orders, provided that there are ongoing matrimonial proceedings between the spouses.

These steps are considered part of the process, allowing spouses to seek interim relief even before a petition for divorce is filed.

INTERIM ORDERS: HOW DO I APPLY?



An application for an interim order for ancillary relief shall be made by a notice in **Form 11 of the Rules**

FORM 11

(Rules 56 (2)(a), (b), (3); 57; 58; 61 (2); 62 (1), (4); 65 (1))

NOTICE OF APPLICATION FOR ANCILLARY RELIEF

(Heading as in Form 4)

TAKE NOTICE THAT the petitioner (or respondent) intends to apply to the Court for (here set out the ancillary relief claimed, stating the terms of any agreement as to the order which the court is to be asked to make and, in the case of an application for a property adjustment order or an avoidance of disposition order, stating briefly the nature of the adjustment proposed or the disposition to be set aside).

Notice will be given to you of the place and time fixed for the hearing of the application (or The application will be heard by the in chambers at on day, the day of 19, at o'clock).

(Unless the parties are agreed upon the terms of the proposed order, add in the case of an application for an order for maintenance pending suit or a financial provision order:

TAKE NOTICE ALSO THAT you must send to the registrar, so as to reach him within 14 days after you receive this notice, an affidavit giving full particulars of your properties and income. You must at the same time send a copy of your affidavit to the (solicitor for the) applicant.

If you wish to allege that the petitioner has property or income, you should say so in your affidavit).

Dated this day of 19

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(Solicitor for the) Respondent (or Petitioner)

The **Notice of Application** must be accompanied by an affidavit, which is a sworn statement affirmed by the applicant before a Commissioner for Oaths. This affidavit must include, among other details, the full particulars of:

- Grounds and evidence to support the application ; and
- The facts which give rise to the claim and the necessity of the application.

CONCLUSION

Interim orders provide temporary relief during matrimonial proceedings. They ensure not only financial support and protection for spouses and children but aims to safeguard assets until the case is finally decided by the court. These orders can be sought at any stage, even before a petition is filed. When assessing applications, courts consider the parties' financial means, needs, and overall circumstances, and require full and frank disclosure from both sides.



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