|  |
| --- |
| Judgment in default of appearance guidelines |
| **Commercial Registry** |

**CONTENTS**

[1. Background 3](#_Toc54181703)

[2. Documents required 3](#_Toc54181704)

[3. Preparation of default judgment 3](#_Toc54181705)

[4. Further information 3](#_Toc54181706)

[4.1. A claim for debt 3](#_Toc54181707)

[4.2. A claim for damages 3](#_Toc54181708)

[4.3. Calculating interest 4](#_Toc54181709)

[4.4. Calculating costs 5](#_Toc54181710)

[5. Frequently asked questions 5](#_Toc54181711)

[5.1. How do I file my judgment on Citec Confirm? 5](#_Toc54181712)

[5.2. What happens once my judgment has been accepted for filing on Citec Confirm? 6](#_Toc54181713)

[5.3. What happens if my judgment is rejected for filing on Citec Confirm? 6](#_Toc54181714)

[5.4. What happens after interlocutory judgment is granted? 6](#_Toc54181715)

# Background

The following default judgment guidelines apply when a defendant has failed to file a *Notice of appearance* within the prescribed time.

# Documents required

Applications for judgments in default of appearance *must* include the following documents:

* the default judgment in the appropriate prescribed form (Form 60G-60L), reflecting the remedy being sought
* an affidavit proving service of the sealed originating process on the defendant/s with all relevant exhibits – r21.01(3)(b).

For more information on how to prepare your affidavit of service, please see the Commercial Registry affidavit of service guidelines.

# Preparation of default judgment

When preparing your default judgment, please ensure that:

* a check is conducted on Court Connect to ensure a notice of appearance has not already been filed
* the time for the defendant/s to file a notice of appearance has elapsed
* the proper basis and overarching obligations certifications have been filed
* a sealed copy of the originating process is exhibited to the affidavit of service - r6.17(3) and r6.17(4)
* the ‘Date Entered’ (date of order) is left *blank*
* the defendant/s against whom judgment is sought is identifiable on the face of the judgment
* the ‘How Obtained’ section must state that the judgment is in default of appearance
* the amounts of the claim, interest and costs are correctly calculated and are accurate in both the subtotals and the grand total.

# Further information

## A claim for debt

A plaintiff is held strictly to the claim indorsed on the prayer for relief on the writ and statement of claim.

Judgment can only be entered for a fixed amount where the claim is for a debt – r21.03(1)(a).

If the defendant has made payment/s toward the debt, the judgment must state the original claim minus credits paid.

## A claim for damages

If the claim is for damages, interlocutory judgment will be entered against the defendant/s for *damages to be assessed* in accordance with r21.03(1)(b).

Where the claim is for damages, judgment *cannot* be entered for a fixed amount (even if outlined in the statement of claim).

If damages are claimed in a fixed amount, and you do not wish for the sum to be assessed, you are required to seek leave to amend the statement of claim to specify the recovery of a *debt*, as opposed to *damages*.

**Example:**

John is a florist who supplies flowers on a weekly basis to DB and CO Pty Ltd (DB) to decorate their office. DB have not paid their account for 12 months and owe a total of $105,000. John then brought a claim against DB for damages; who have failed to file a notice of appearance.

John no seeks to enter judgment for damages (in accordance with the statement of claim) in the fixed amount of $105,000.

John cannot enter a default judgment for the fixed amount, as the remedy sought in the statement of claim/prayer for relief is for damages.

If John wishes to enter judgment for the fixed amount, he will be required to seek leave to amend his statement of claim to specify the recovery of a debt, as opposed to damages.

Alternatively, John can enter an interlocutory judgment for damages to be assessed using the appropriate form.

## Calculating interest

A plaintiff is entitled to interest where the claim is made for the recovery of a debt – r21.03(1)(a).

Interest is calculated at the current Victorian penalty interest rate, unless clearly pleaded otherwise. For current and historical rates of Victorian penalty interest, please refer to the County Court’s Costs Scale for Default Judgments which can be located in the fees section of the County Court website.

A formula to calculate interest is as follows:

*Claim amount* ***times*** *interest rate* ***divided by*** *365 days* ***times*** *the amount of days in the date range.*

Other important matters to consider when claiming interest:

* you can only claim interest once from the date of commencement of the proceeding to the date that judgment is filed r21.03(1)(a)
  + the date of commencement of the writ can be found in the filing report results on Court Connect under the heading ‘Filing Date’
  + the date the judgment is entered is the date it is e-Filed on Citec Confirm. *If the judgment is filed after 4:00pm, or on a weekend/public holiday, it is deemed filed the next business day (R3.05(2)).*
* interest may be claimed from a date prior to the date of commencement, provided the date range is clearly pleaded in the statement of claim and prayer for relief
* interest calculations (being the date period, number of days and interest rate) must be shown on the face of the judgment
* if the defendant/s have made payment/s to the claim, your interest must be calculated on the original claim amount up to the date when the first payment was made; thereafter interest will be calculated on the reduced amount and so on until the date of judgment.

**Example:**

Steven has brought a claim of debt for $200,000 against Yellow Store Pty Ltd (YS). As YS have failed to file a notice of appearance, Steven seeks to enter Judgment for the debt of $200,000 as well as interest pursuant to statute (penalty interest rate).

Steven filed his writ on 01/02/2018 at 4:35pm, has served it upon the defendant. Steven is now seeking to enter his judgment on 19/02/2018 at 2:30pm. As Steve filed his writ after 4:00pm his date of commencement is 2/02/2018, however, the date of the judgment remains 19/02/2018 as it was filed before 4:00pm.

Steven outlines his claim and interest on the face of the judgment as follows:

The Judgment of the Court is that:

“The defendant pay the plaintiff the sum of $200,000 for the outstanding claim, $986.30 for interest, and $3040 for costs -

Claim $200,000

Interest $986.30

(2/02/2018–19/02/2018 being 18 days at 10%)

Costs $3040.00

TOTAL $204,026.30

## Calculating costs

Costs can no longer be itemised as the *County Court Costs Scale* has been revoked. Costs are fixed at 80 percent of the applicable rate set out in the *Supreme Court Costs Scale*. The costs claimable increase every financial year.

The current costs claimable in the County Court when entering a default judgment can be found on the County Court [website](https://www.countycourt.vic.gov.au/forms-and-fees/fees-and-costs-civil-proceedings).

# Frequently asked questions

## How do I file my judgment on Citec Confirm?

The judgment is filed using the ‘Additional Filing’ page on Citec Confirm. The judgment, and the affidavit of service (including exhibits) are to be filed together (as one scanned PDF document) using the correct filing code. The appropriate filing codes are set out below:

|  |  |  |
| --- | --- | --- |
| Judgment type | Filing code | Document name |
| Default Judgment for Debt only | 2JDN | Judgment in Default of Appearance Filed |
| Default Judgment for Recovery of Land only | 2JPL | Judgment for Possession of Land Filed |
| Default Judgment for Debt *and* Recovery of Land | 2JDN | Judgment in Default of Appearance Filed |
| Interlocutory Judgment for Damages or Value in default | 2IJN | Interlocutory Judgment in Default of Appearance Filed |
| Interlocutory Judgment for Detention of Goods in Default | 2IJN | Interlocutory Judgment in Default of Appearance Filed |
| Interlocutory Judgment on Counterclaim | 2IJC | Interlocutory Judgment on Counterclaim Filed |

## What happens once my judgment has been accepted for filing on Citec Confirm?

All default judgments receive a Form 28 Filing Confirmation (Court Seal). A copy can be downloaded from your filing results by clicking on the ‘Y’ in the Form 28 column.

A signed copy of the order made by the Registrar will not be provided, however the order will be published on Court Connect.

## What happens if my judgment is rejected for filing on Citec Confirm?

All default judgments receive a Form 28 Filing Confirmation (Court Seal). A copy can be downloaded from your filing results by clicking on the ‘Y’ in the Form 28 column.

A copy of the reasons for the rejection will be available in your filing results page on Citec Confirm, as well as being published on Court Connect.

Once the judgment is corrected, all documents (being the judgment, and affidavit of service (including exhibits)), must be re-filed together using the correct filing code.

## What happens after interlocutory judgment is granted?

The matter will be set down for a trial assessment.

If there is any pending trial listed for any remaining defendant/s, the trial assessment will be heard at that time r51.05.

The damages will be assessed by the Court before a Judicial Registrar or a Judge – r51.01 and r51.04.

The debtor may take part in the trial assessment – r51.02.