

LEGISLATIVE COUNCIL BRIEF

ATTACHMENT OF INCOME ORDER (AMENDMENT) BILL

INTRODUCTION

At the meeting of the Executive Council on 13 March 2001, the Council ADVISED and the Chief Executive ORDERED that the Attachment of Income Order (Amendment) Bill at **Annex A** should be introduced into the Legislative Council (LegCo).

BACKGROUND AND ARGUMENT

2. In order to address the difficulties encountered by maintenance payees in collecting and enforcing maintenance payments, an Inter-departmental Working Group (WG) reviewed the law and administrative measures affecting maintenance payees. The WG published its report in May 2000 and it was presented to the LegCo Panel on Home Affairs on 2 June 2000. A summary of the recommendations, which have been accepted by the Administration, is at **Annex B**.

3. Amendments to the Ordinances dealing with maintenance are required to implement two of the WG's recommendations. The present Bill is to implement the recommendation concerning the AIO Scheme (item 1(a) in Annex B).

AIO Scheme

4. An AIO is a court order requiring an "income source" (e.g. an employer or a tenant) to deduct the maintenance payment from the maintenance payer's income, and pay the deductions direct to the maintenance payee. It enables a maintenance payee to receive punctual payments without being subject to the maintenance payer's mercy. The AIO Scheme started to operate in April 1998. During the last two years,

i.e. 1999 and 2000, only 35 AIOs were issued while the court had issued 904 judgment summonses in connection with maintenance arrears.

5. The WG considered that the Scheme was not as effective as it should be mainly because the circumstances in which an AIO could be issued were restrictive. At present –

- (a) an AIO cannot be made by the court before a maintenance payer has defaulted in payment; and
- (b) even after his default, the court can issue an AIO only where it is satisfied that there is no reasonable excuse for the default.

6. Such restriction undermines the effectiveness of the Scheme in achieving its objective of protecting maintenance payees from irresponsible payers. The WG recommended relaxing the circumstances in which AIOs can be made.

7. Another aspect requiring improvement is that when considering an application for an AIO, the court has to comply with the elaborate procedures laid down in the Attachment of Income Order Rules. The requirement has, in some cases, unnecessarily protracted the time taken to make an AIO. The WG recommended that the court should have flexibility in applying the Rules.

THE BILL

8. The Bill seeks to amend three Ordinances that provide for maintenance payments, i.e. the Guardianship of Minors Ordinance, Separation and Maintenance Orders Ordinance, and Matrimonial Proceedings and Property Ordinance.

9. **Part II: Amendment of the Guardianship of Minors Ordinance (clause 2).** Clause 2 provides for a relaxation in the circumstances in which an AIO can be made. If the proposed amendment is enacted, subject to the condition that there is income capable of being attached, an AIO can be made where a maintenance order has been made and where (a) the court is satisfied that the

maintenance payer has without reasonable excuse failed to make any payment pursuant to a maintenance order, or (b) the court has reasonable ground to believe that the maintenance payer will not make full and punctual payment in compliance with a maintenance order, or (c) the maintenance payer and payee agree to make an AIO. Also, an AIO can in future be made in the same hearing in which a maintenance order is made or varied and it can be made by the court on its own motion or on application by the maintenance payer, payee, or both.

10. Clause 2 also provides for the court to be empowered to dispense with or relax any procedures or abridge any time limits currently specified in the Attachment of Income Order Rules where the court is satisfied that it is fair and reasonable to do so in a particular case.

11. **Part III: Amendment of the Separation and Maintenance Orders Ordinance (clause 3).** The proposed amendments are similar to those under Part II, i.e. paragraphs 9 and 10 above.

12. **Part IV: Amendment of the Matrimonial Proceedings and Property Ordinance (clause 4).** The proposed amendments are similar to those under Part II, i.e. paragraphs 9 and 10 above.

PUBLIC CONSULTATION

13. The WG's report containing the recommendations was released in May 2000 to all LegCo Members, six District Councils (which previously discussed the difficulties in collecting and enforcing maintenance), 23 non-governmental organizations (NGOs), the Hong Kong Bar Association (Bar Association), Law Society of Hong Kong (Law Society), and Hong Kong Family Law Association. Representatives of the Administration subsequently attended three forums organized by the NGOs. We have also briefed the Social Welfare Advisory Committee on the WG's report. There has not been any adverse reaction to the WG's proposal concerning the AIO Scheme.

14. The Bar Association and Law Society were consulted on the proposals set out in the Bill. Both have endorsed the idea that it should be made easier for the court to issue AIOs.

15. In view of the possible impact of the AIO Scheme on the relationship between employers and employees, the Home Affairs Bureau circulated to the Labour Advisory Board an information paper concerning the proposed relaxation of the circumstances in which an AIO can be made. The Board has no special views on the proposal.

BASIC LAW IMPLICATIONS

16. The Department of Justice (DoJ) advises that the Bill does not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

17. DoJ advises that the Bill is consistent with the human rights provisions of the Basic Law. This legislative exercise is a positive step towards the implementation of Article 27(4) of the United Nations Convention on the Rights of the Child, which requires parties to the Convention to “take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child”.

BINDING EFFECTS OF THE LEGISLATION

18. The amendments will not affect the current binding effect of the three Ordinances.

FINANCIAL AND STAFFING IMPLICATIONS

19. By making it easier for some maintenance payees to collect maintenance, the Bill could reduce the amount of Comprehensive Social Security Assistance (CSSA) payable to single-parent families who have to rely on CSSA because of failure in receiving maintenance. The amount of reduction, however, cannot be estimated at this stage.

20. There are no other financial or staffing implications.

LEGISLATIVE TIMETABLE

21. The legislative timetable will be as follows –

Publication in the Gazette	23 March 2001
First Reading and commencement of the Second Reading debate	4 April 2001
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

PUBLICITY

22. A press release will be issued on 21 March 2001. A spokesman will be available to handle media and public enquiries.

ENQUIRY

23. Enquiries on this LegCo brief may be directed to Mr Ng Hon-wah, Principal Assistant Secretary for Home Affairs, at telephone number 2835 1383.

Home Affairs Bureau
21 March 2001
HAB/CR/1/19/95 Pt.3

A BILL

To

Amend the Guardianship of Minors Ordinance, the Separation and Maintenance Orders Ordinance and the Matrimonial Proceedings and Property Ordinance.

Enacted by the Legislative Council.

PART I

PRELIMINARY

1. Short title and commencement

(1) This Ordinance may be cited as the Attachment of Income Orders (Amendment) Ordinance 2001.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Home Affairs by notice published in the Gazette.

PART II

GUARDIANSHIP OF MINORS ORDINANCE

2. Attachment of income to satisfy order

Section 20 of the Guardianship of Minors Ordinance (Cap. 13) is amended -

(a) by repealing subsections (1) and (2) and substituting -

"(1AA) In this section -

"attachment order" (扣押令) means an order made under subsection (1);

"designated payee" (指定受款人) means, in relation to a maintenance order, the person named in that order as the person to whom the maintenance payments are to be made;

"maintenance order" (贍養令) means an order made -

- (a) under section 10(2)(b), 11(1)(b)(ii), 12(b)(ii) or 13(2)(b), (3)(a) or (4) for periodical payments; or
- (b) under section 10(2)(c), 11(1)(b)(iii) or 12(b)(iii) for secured periodical payments; or
- (c) under section 10(2)(a), 11(1)(b)(i), 12(b)(i) or 13(2)(a) for payment of a lump sum by instalments;

"maintenance payer" (贍養費支付人) means, in relation to a maintenance order, the person against whom that order is made;

"specified payee" (指明受款人) means, in relation to an attachment order, the person named in that order as the person

to whom an amount attached by that order is to be paid.

(1) Where a maintenance order has been made against a maintenance payer and -

- (a) (i) a court is satisfied that the payer has without reasonable excuse failed to make any payment which he is required to make by the maintenance order; or
- (ii) a court is satisfied that there are reasonable grounds to believe that the payer will not make full and punctual payment in compliance with the maintenance order; or
- (iii) the payer and designated payee agree to the making of an order under this section; and

- (b) there is any income capable of being attached payable to the payer,

the court may, in accordance with rules made under subsection (6), order the income to be attached as to the whole or part of the amount payable under the maintenance order and the amount attached to be paid to the specified payee.

(1A) For the purpose of subsection (1)(a)(ii), in deciding whether there are reasonable grounds to believe that the maintenance payer will not make full and punctual payment in compliance with the maintenance order, the court shall take into account all the circumstances of the case, including (but not limited to) -

- (a) the payer's past record in discharging his reasonable financial obligation towards the designated payee before any maintenance order is made;
- (b) the payer's past conduct in connection with the making of maintenance payments to the payee pursuant to the maintenance order or an

undertaking in any proceedings; and

- (c) the risk of the payer dissipating his property.";

- (b) by adding -

"(2A) The court may, at any time after an maintenance order has been made, including in the same hearing in which the maintenance order is made or varied, make an attachment order.

(2B) An attachment order may be made by the court on its own motion or on the application by the maintenance payer or the designated payee or both.";

- (c) in subsection (3) -

- (i) by repealing "order made under this section (an "attachment order")" and substituting "attachment order";

- (ii) by repealing "designated" and substituting "specified";

- (d) in subsection (6)(d) and (e), by adding "費" after "養";

- (e) by adding -

"(6A) Rules made under subsection (6) may empower the court to dispense with or relax any procedure or abridge any time limit specified in the rules if the court is

satisfied that it is fair and reasonable to do so in the circumstances of the case."

PART III

SEPARATION AND MAINTENANCE ORDERS ORDINANCE

3. Attachment of income to satisfy order

Section 9A of the Separation and Maintenance Orders Ordinance (Cap. 16) is amended -

- (a) by repealing subsections (1) and (2) and substituting -

"(1AA) In this section -

"attachment' order" (扣押令) means an order made under subsection (1);

"designated payee" (指定受款人) means, in relation to a maintenance order, the person named in that order as the person to whom the maintenance payments are to be made;

"maintenance order" (贍養令) means an order made -

- (a) under section 5(1)(c) or (d) or 9(1) for periodical payments; or
- (b) under section 5(1)(c) or (d) for payment of a lump sum by instalments;

"maintenance payer" (贍養費支付人) means, in relation to a maintenance order, the person against whom that order is made;

"specified payee" (指明受款人) means, in relation to an attachment order, the person named in that order as the person to whom an amount attached by that order is to be paid.

(1) Where a maintenance order has been made against a maintenance payer and -

- (a) (i) a court is satisfied that the payer has without reasonable excuse failed to make any payment which he is required to make by the maintenance order; or
- (ii) a court is satisfied that there are reasonable grounds to believe that the payer will not make full and punctual payment in compliance with the maintenance order; or

(iii) the payer and designated payee agree to the making of an order under this section; and

(b) there is any income capable of being attached payable to the payer,

the court may, in accordance with rules made under subsection (6), order the income to be attached as to the whole or part of the amount payable under the maintenance order and the amount attached to be paid to the specified payee.

(1A) For the purpose of subsection (1)(a)(ii), in deciding whether there are reasonable grounds to believe that the maintenance payer will not make full and punctual payment in compliance with the maintenance order, the court shall take into account all the circumstances of the case, including (but not limited to) -

(a) the payer's past record in discharging his reasonable financial obligation towards the designated payee before any maintenance order is made;

(b) the payer's past conduct in connection with the making of maintenance payments to the payee pursuant to the maintenance order or an undertaking in any proceedings; and

(c) the risk of the payer dissipating his property.";

(b) by adding -

"(2A) The court may, at any time after an maintenance order has been made, including in the same hearing in which the maintenance order is made or varied, make an attachment order.

(2B) An attachment order may be made by the court on its own motion or on the application by the maintenance payer or the designated payee or both.";

(c) in subsection (3) -

(i) by repealing "order made under this section (an "attachment order")" and substituting "attachment order";

(ii) by repealing "designated" and substituting "specified";

(d) in subsection (6)(d) and (e), by adding "費" after "養";

(e) by adding -

"(6A) Rules made under subsection (6) may empower the court to dispense with or relax any procedure or abridge any time limit specified in the rules if the court is satisfied that it is fair and reasonable to do so in the circumstances of the case."

PART IV

MATRIMONIAL PROCEEDINGS AND PROPERTY ORDINANCE

4. Attachment of income to satisfy order

Section 28 of the Matrimonial Proceedings and Property Ordinance (Cap. 192) is amended -

(a) by repealing subsections (1) and (2) and substituting -

"(1AA) In this section -

"attachment order" (扣押令) means an order made under subsection (1);

"designated payee" (指定受款人) means, in relation to a maintenance order, the person named in that order as the person to whom the maintenance payments are to be made;

"maintenance order" (贍養令) means an order made -

- (a) under section 4(1)(a), 5(2)(a), 8(5) or (6)(a) or (d) or 15(4) or (5) for periodical payments; or
- (b) under section 4(1)(b), 5(2)(b), 8(6)(b) or (e) or 15(4) or (5) for secured periodical payments; or
- (c) under section 4(1)(c), 5(2)(c) or 8(6)(c) or (f) for payment of a lump sum by instalments;

"maintenance payer" (贍養費支付人) means, in relation to a maintenance order, the person against whom that order is made;

"specified payee" (指明受款人) means, in relation to an attachment order, the person named in that order as the person to whom an amount attached by that order is to be paid.

(1) Where a maintenance order has been made against a maintenance payer and -

- (a) (i) a court is satisfied that the payer has without reasonable excuse failed to make any payment which he is required to make

by the maintenance order; or

(ii) a court is satisfied that there are reasonable grounds to believe that the payer will not make full and punctual payment in compliance with the maintenance order; or

(iii) the payer and designated payee agree to the making of an order under this section; and

(b) there is any income capable of being attached payable to the payer,

the court may, in accordance with rules made for the purpose of subsection (6), order the income to be attached as to the whole or part of the amount payable under the maintenance order and the amount attached to be paid to the specified payee.

(1A) For the purpose of subsection (1)(a)(ii), in deciding whether there are

reasonable grounds to believe that the maintenance payer will not make full and punctual payment in compliance with the maintenance order, the court shall take into account all the circumstances of the case, including (but not limited to) -

- (a) the payer's past record in discharging his reasonable financial obligation towards the designated payee before any maintenance order is made;
- (b) the payer's past conduct in connection with the making of maintenance payments to the payee pursuant to the maintenance order or an undertaking in any proceedings; and
- (c) the risk of the payer dissipating his property.";

(b) by adding -

"(2A) The court may, at any time after an maintenance order has been made, including in the same hearing in which the maintenance order is made or varied, make an attachment order.

(2B) An attachment order may be made by the court on its own motion or on the application by the maintenance payer or the designated payee or both.";

- (c) in subsection (3) -
 - (i) by repealing "order made under this section (an "attachment order")" and substituting "attachment order";
 - (ii) by repealing "designated" and substituting "specified";
- (d) in subsection (6)(d) and (e), by adding "費" after "養";
- (e) by adding -

"(6A) Rules made for the purpose of subsection (6) may empower the court to dispense with or relax any procedure or abridge any time limit specified in the rules if the court is satisfied that it is fair and reasonable to do so in the circumstances of the case.".

PART V

CONSEQUENTIAL AMENDMENT

Attachment of Income Order Rules

5. Interpretation

Rule 2 of the Attachment of Income Order Rules (Cap. 13 sub. leg.) is amended, in the definition of "related maintenance order" -

- (a) by repealing "order specified" and substituting "maintenance order defined";
- (b) by repealing "(2)" wherever it appears and substituting "(1AA)".

Explanatory Memorandum

The purpose of this Bill is to amend the Guardianship of Minors Ordinance (Cap. 13), the Separation and Maintenance Orders Ordinance (Cap. 16) and the Matrimonial Proceedings and Property Ordinance (Cap. 192) -

- (a) to relax the circumstances in which attachment of income orders can be made under the Ordinances. In addition to the existing ground, the court may make such an order when there are reasonable grounds to believe that the maintenance payer will not make full and punctual payment in compliance with a maintenance order. The court may also make an attachment of income order when the maintenance payer and designated payee agree (clauses 2, 3 and 4); and
- (b) to provide that rules made under the Ordinances may empower the court to dispense with or relax any procedure or abridge any time limit specified in

the rules under certain circumstances (clauses 2, 3 and 4).

Annex B

To address the difficulties encountered by divorcees in collecting and enforcing maintenance, an Inter-departmental Working Group (WG) has made the following recommendations:

- (a) to relax the circumstances for the issue of Attachment of Income Orders;
- (b) to relax the requirement for judgement summonses to be served personally and to enable the court to order payment of maintenance arrears accrued up to the date of court hearing instead of up to the date of application for judgement summonses at present;
- (c) court Bailiffs to serve judgement summonses for maintenance payees who are not legally represented;
- (d) the court to order that maintenance specified in maintenance orders be paid into court in appropriate cases;
- (e) to empower the court to impose a surcharge against defaulting maintenance payers;
- (f) to inform non-governmental organizations and professional bodies that cases of maintenance payers failing to notify the maintenance payees of changes of address can be reported to the police station nearest to the maintenance payer's last known address;
- (g) to request the Law Society to inform its members that they can, with the use of a standard letter, request the Immigration Department, Transport Department, and Housing Department to search their records for addresses of maintenance payers against whom legal actions will be taken to sue for arrears in maintenance;

- (h) to conduct a pilot scheme to synchronize the procedures in processing applications for CSSA and legal aid;
- (i) Social Welfare Department to streamline the procedures in referring single-parent families to obtain timely counseling and family services; and
- (j) to mount publicity and public education measures on matters relating to maintenance.

2. As regards the proposal for a maintenance board, the WG considers that the proposed board will not be able to offer maintenance payees or taxpayers any significant benefits over and above those that can be achieved by improving the existing system. Given this, the WG does not recommend the setting up of such a board.