

立法會
Legislative Council

LC Paper No. LS84/00-01

**Paper for the House Committee Meeting
of the Legislative Council on 20 April 2001**

**Legal Service Division Report on
Attachment of Income Orders (Amendment) Bill 2001**

Objects of the Bill

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) in relation to the making of attachment of income orders.

LegCo Brief Reference

2. HAB/CR/1/19/95 Pt. 3 issued by the Home Affairs Bureau dated 21 March 2001.

Date of First Reading

3. 4 April 2001.

Comments

4. The Bill seeks to implement some of the recommendations made by the Inter-departmental Working Group set up by the Administration to review the law and administrative measures affecting maintenance payees. A summary of the recommendations of the Working Group is in Annex B to the LegCo Brief.

5. Under the existing provisions of the three Ordinances concerned, where a maintenance order has been made and the maintenance payer has without reasonable excuse failed to make any payment, and where there is any income payable to the maintenance payer capable of being attached, the court may order the income to be attached and be paid to the person named in the order ("attachment of income order"). Under such an order a person by whom the income of the maintenance payer is payable ("income source") is required to deduct from the maintenance payer's income such amount as specified in the order and pay the deducted amount to the maintenance payee.

6. The amendments proposed to be made to the three Ordinances concerned are identical. It is proposed to add two more situations for the making of an attachment of income order -

- (a) where the 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; and
- (b) where the maintenance payer and the payee named in the maintenance order agree to the making of an attachment of income order.

7. The Bill also proposes a provision requiring the court, when considering whether there are reasonable grounds to believe that the maintenance payer will not make full and punctual payment, to take into account all the circumstances of the case, including the payer's past record in discharging his financial obligations towards the payee, the payer's past conduct in connection with making maintenance payments to the payee, and the risk of the payer dissipating his property.

8. Under the Bill, certain relaxation in the procedure of making attachment of income orders is proposed. The court may make an attachment of income order at any time after making a maintenance order, including at the same hearing in which the maintenance order was made. The court may make an attachment of income order on its own motion, on application by the maintenance payer or the designated payee, or on application of both of them. The Bill also proposes that the rules made by the Chief Justice under the Ordinances concerned may empower the court to dispense with or relax any procedure or abridge any time limit specified in such rules if the court is satisfied that it is fair and reasonable to do so in the circumstances of the case.

Public Consultation

9. According to paragraphs 13 to 15 of the LegCo Brief, in May 2000 the Administration has informed the Legislative Council, District Councils, various non-governmental organizations, the Bar Association, the Law Society and the Labour Advisory Board the recommendations of the Working Group. The LegCo Brief states that there has not been any adverse reaction to the proposal concerning attachment of income orders, and that the Bar Association and Law Society have endorsed the idea that it should be made easier for the court to issue such orders. In its letter to the House Committee dated 6 April 2001, the Law Society expressed support to the proposed amendments.

Consultation with LegCo Panel

10. At its meeting on 2 June 2000, the Panel on Home Affairs discussed the formation of an intermediary body for the collection of maintenance payments. There was no discussion on the details of the Bill.

Conclusion

11. The effects of the amendments are to relax the circumstances in which the court may make attachment of income orders, and to enable the court to relax procedure and time limit in relation to the application of attachment of income orders. The amendments proposed appear to be not controversial. The legal and drafting aspects of the Bill are in order. Should Members decide to support the policy aspects, the Bill is ready for resumption of Second Reading debate.

Prepared by
LEE Yu-sung
Senior Assistant Legal Adviser
Legislative Council Secretariat
18 April 2001