

Bills Committee on Interest on Arrears of Maintenance Bill 2001
Matters Arising from the Meeting of 14 January 2003

A. Application and Enforcement Procedures for Payment of Surcharge on Maintenance Arrears

At the meeting of 14 January 2003, the Administration was asked to illustrate the detailed procedures for Maintenance Payees to seek and enforce a surcharge on arrears of maintenance.

Application for Surcharge

2. We intend to make use of currently available enforcement proceedings. That means a maintenance payee may attach an application for surcharge to any concurrent enforcement proceedings. These include judgment summons, attachment of income order, garnishee proceedings and charging order to enforce the maintenance order under which arrears have accrued. **Annexes A to D** illustrate with flowcharts the aforesaid procedures for Members' ease of reference.

3. Application for surcharge may also be by way of summons. We propose making available alternative modes of service for such summons to cater for the possibility that the maintenance payer in question will try to evade service of the summons. Under our proposal as stated in clause 20B6 (a)-(b) of the second draft of the Committee Stage Amendments ("CSA") at **Annex F**, apart from personal service, the payee could choose to serve on the legal representative acting for the

maintenance payer, if represented, or to the last known address of the maintenance payer, if unrepresented. If the payer fails to attend the hearing or if the service has been unsuccessful, the court could direct service in such manner as appropriate, or make an order of surcharge in the absence of the payer at the hearing if it is satisfied with the payee's efforts to serve the documents in the first attempt.

4. If the court makes an order of surcharge in the absence of the payer, the payer may apply to the court to set aside or vary the judgment or to appeal against the judgment after he has knowledge of the pronouncement of the judgment. The court will take into consideration all relevant matters, including all applicable legal requirements and Articles 10 and 11 of the Hong Kong Bills of Rights Ordinance (Cap. 383), in exercising its discretion to confirm, set aside or vary the judgment or to allow or dismiss the appeal, as the case may be.

5. The relevant procedures are set out at **Annex E**.

Enforcement of Payment of Surcharge

6. As for enforcement of payment of surcharge, a maintenance payee could choose the enforcement proceedings available under the law which best fit the circumstances, i.e. either of the procedures set out at **Annexes A to D** where application for surcharge is attached to concurrent enforcement proceedings, and where application for surcharge is by way of summons, the procedures set out at **Annex E** if enacted.

B. Appeal against the Order to pay the Interest/Surcharge

7. At the meeting on 14 January, some Members were of the view that it might prejudice a judgment debtor's chance to appeal if he/she had to pay up the interest or surcharge or both before his/her appeal would be heard.

8. Our original intention was to pre-empt abuse of the appeal mechanism by the maintenance payer to delay payment. We appreciate Members' concern that the maintenance payer's right to appeal should not be obstructed by lack of money. On re-consideration, we propose that a maintenance payer, in the capacity of a Judgment Debtor, may follow the existing procedures as provided in Section 63 of the District Court Ordinance (Cap. 336) and appeal against the interest and/or the surcharge order. In other words, the following clauses in the first draft of CSA would be deleted: clauses 9C(6)-(7), 20B(6)-(7), 28AB (6)-(7) and 53B(6)-(7).

C. Use of "may" or "shall" in the proposed new clause 9C(3) in the first draft of the CSA

9. Our intention is for the court to have the discretion or power to make an order for surcharge or not to make the order. Therefore we used "may" in the earlier draft of the CSA to represent this discretion or power. On re-consideration, we have amended this provision to read "if the court makes an order requiring the judgment debtor to pay a surcharge, it shall specify in the order the amount of surcharge and the

date of payment” in the interest of clarity. This provision is now at clause 9C(12) of the second draft of the CSA.

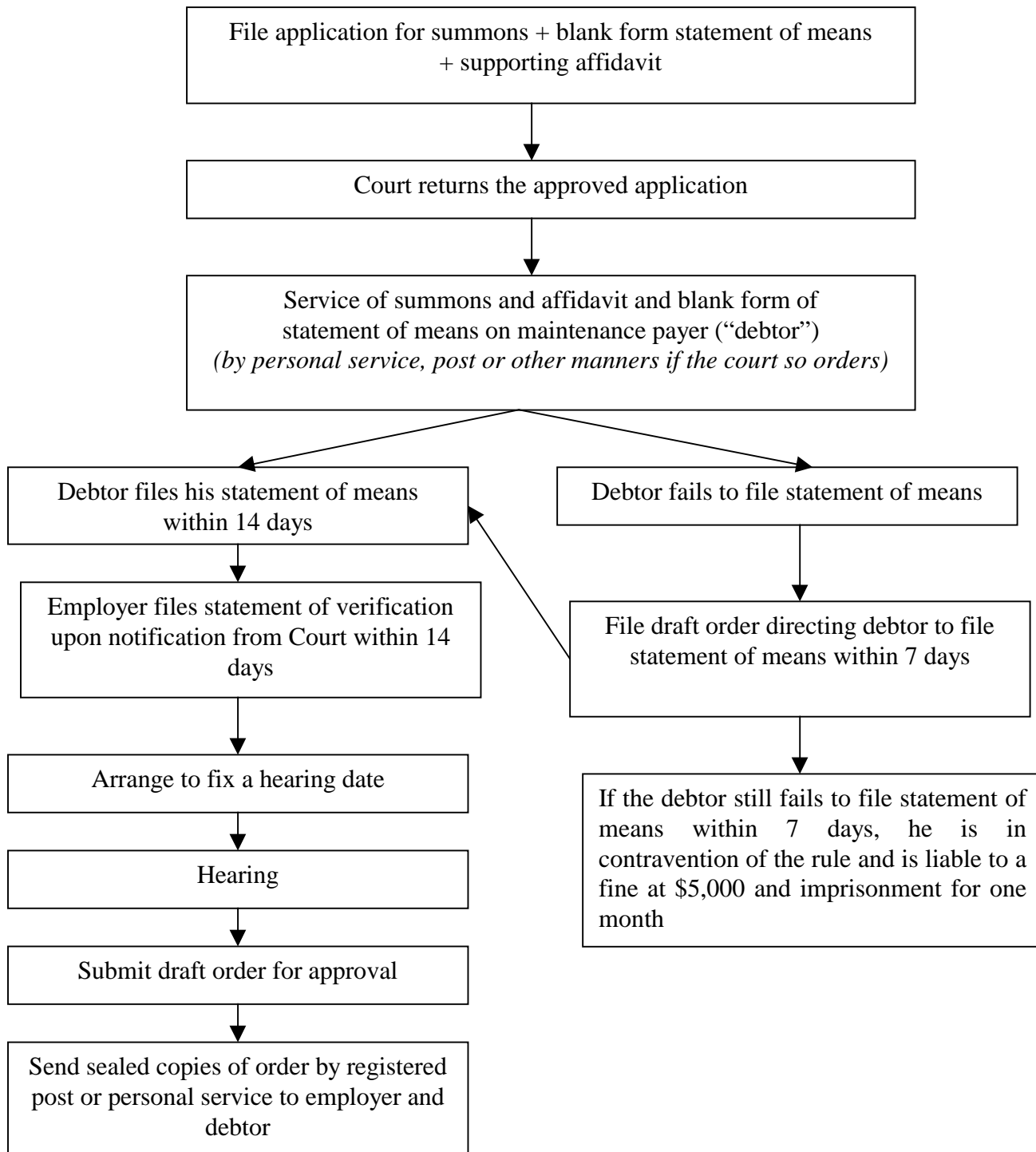
Home Affairs Bureau

February 2003

Attachment of Income Order 扣押入息令

(Attachment of Income Order Rules, Cap. 13A)

(Application made by the designated payee)^{1, 2}

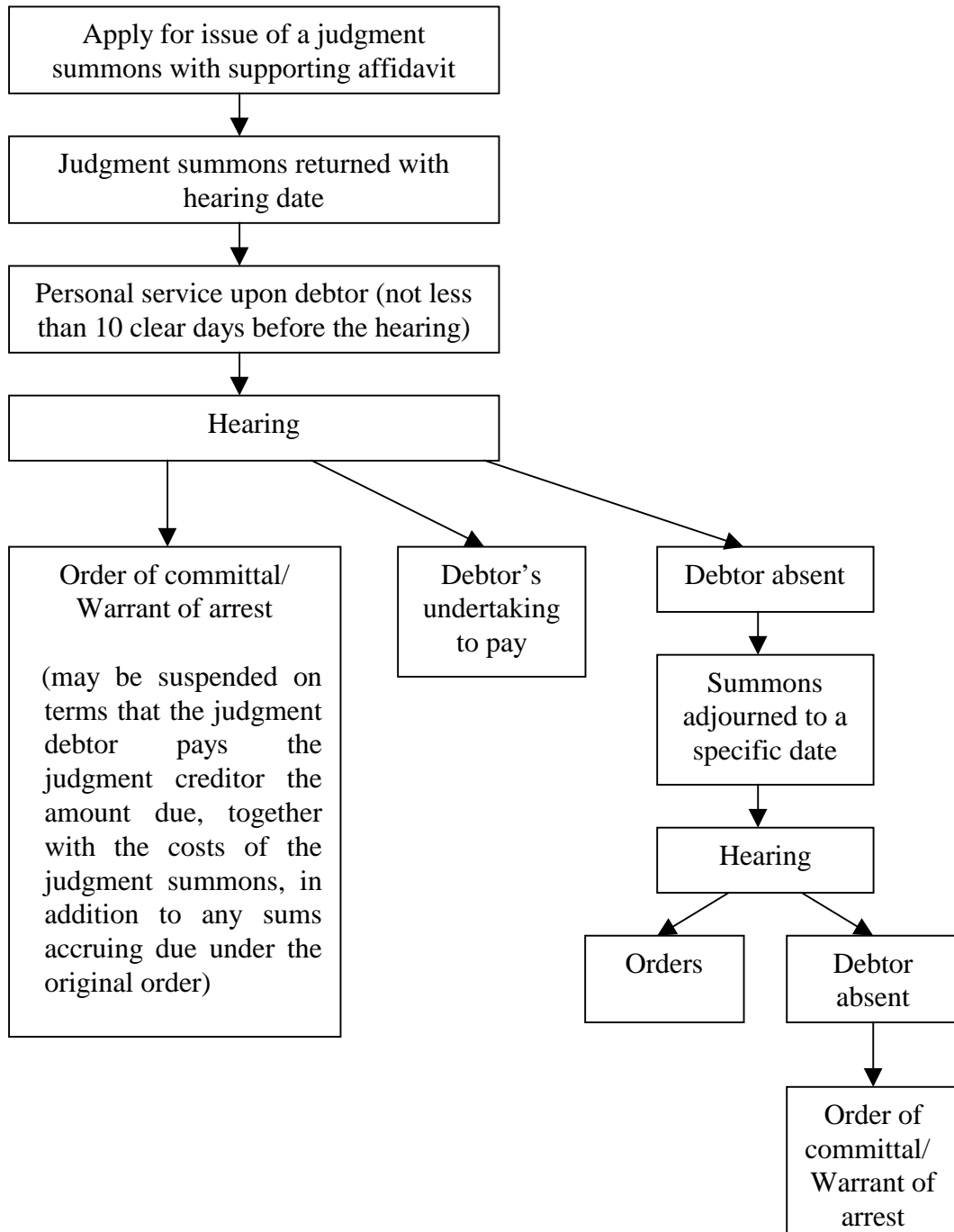


¹ Application for Attachment of Income Order can be made by designated payee, maintenance payer, jointly by maintenance payer and designed payee. Court could also make attachment order on its own motion (Rule 3, 3A-3C).

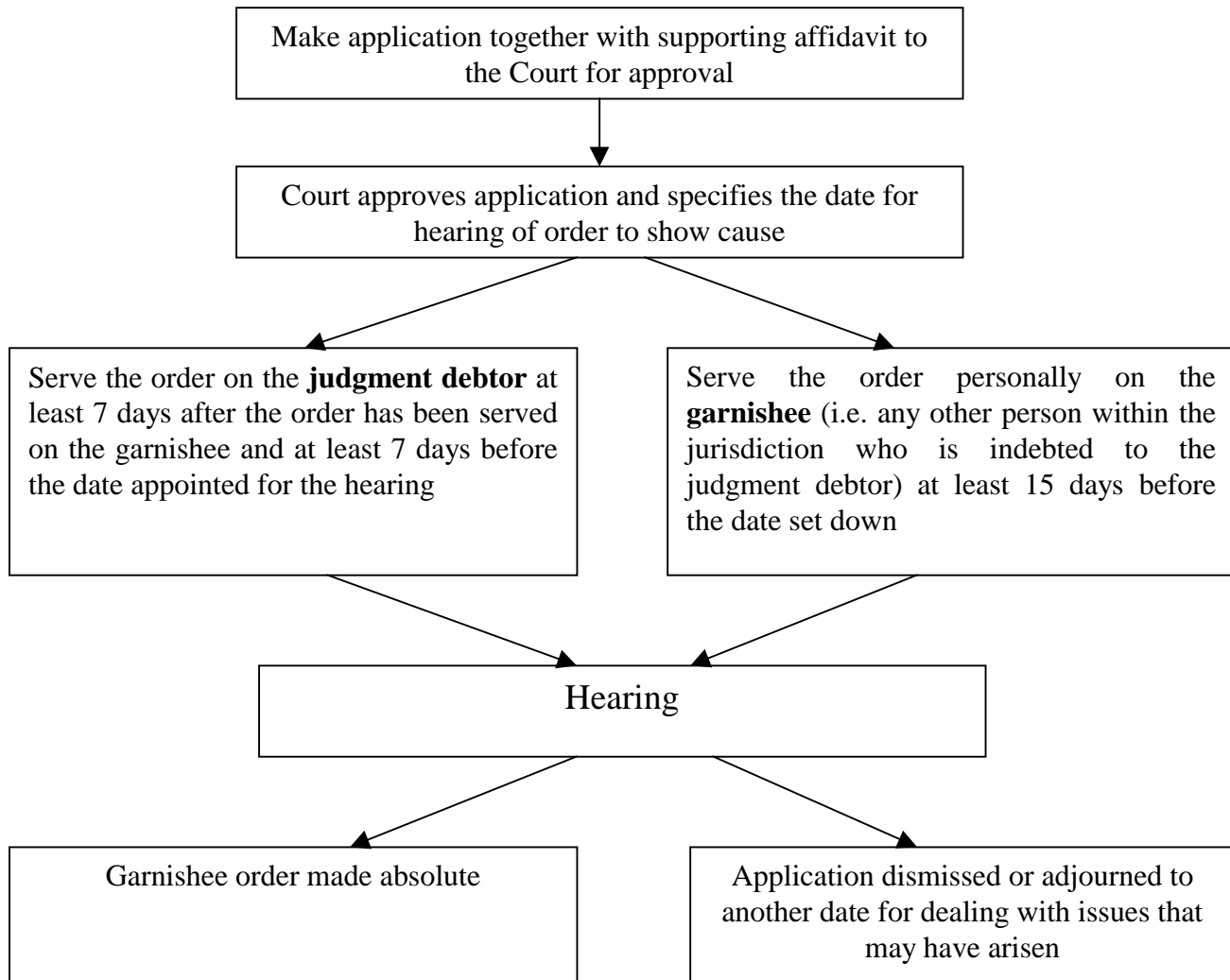
² The Court may dispense with or relax any procedures specified in rules 3 to 8 (Rule 13).

Judgment Summons 判決傳票

(Matrimonial Causes Rules, Cap. 179A, Rule 87)

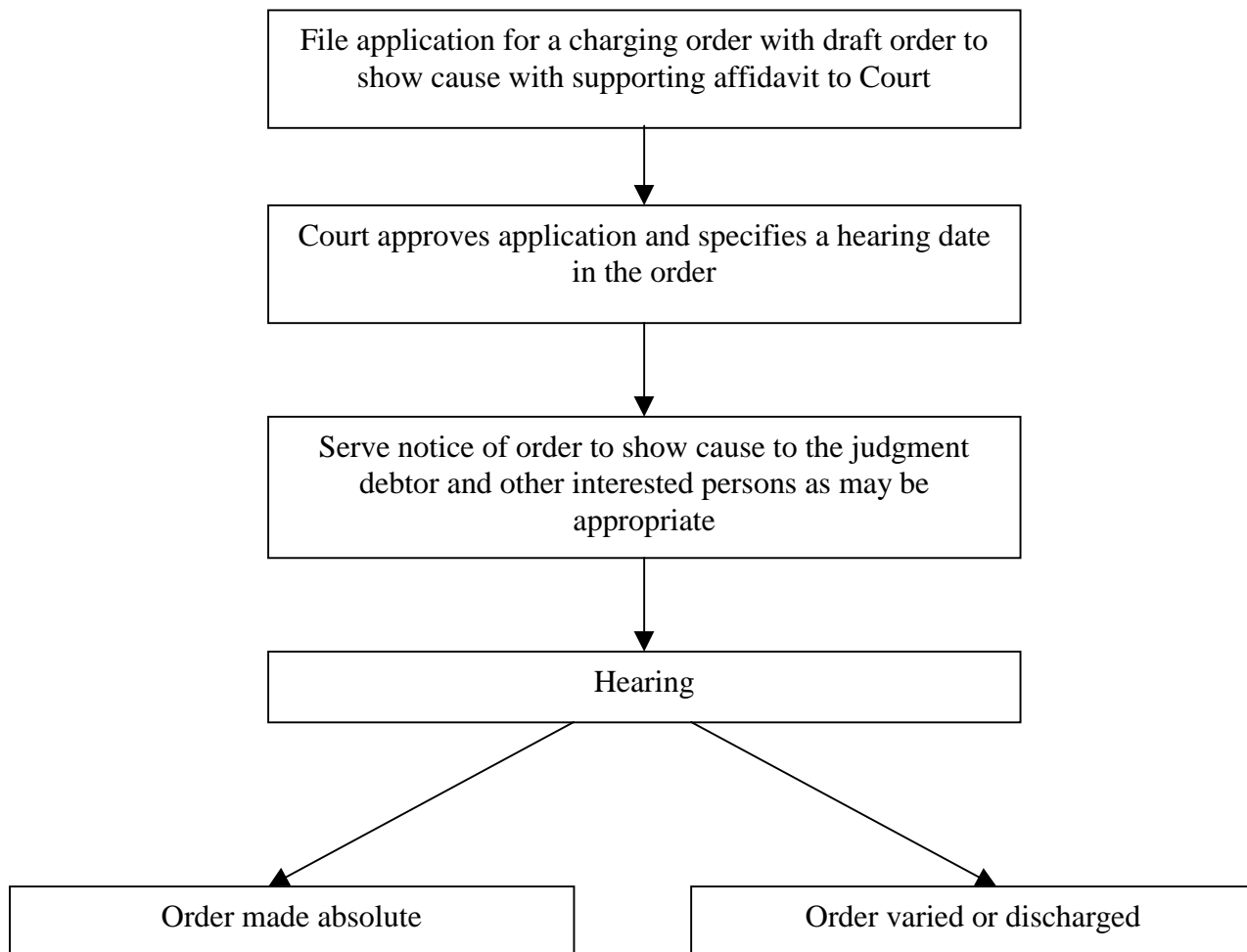


Garnishee Proceedings 第三債務人的法律程序
(Rules of the District Court, Cap. 336H, Order 49)

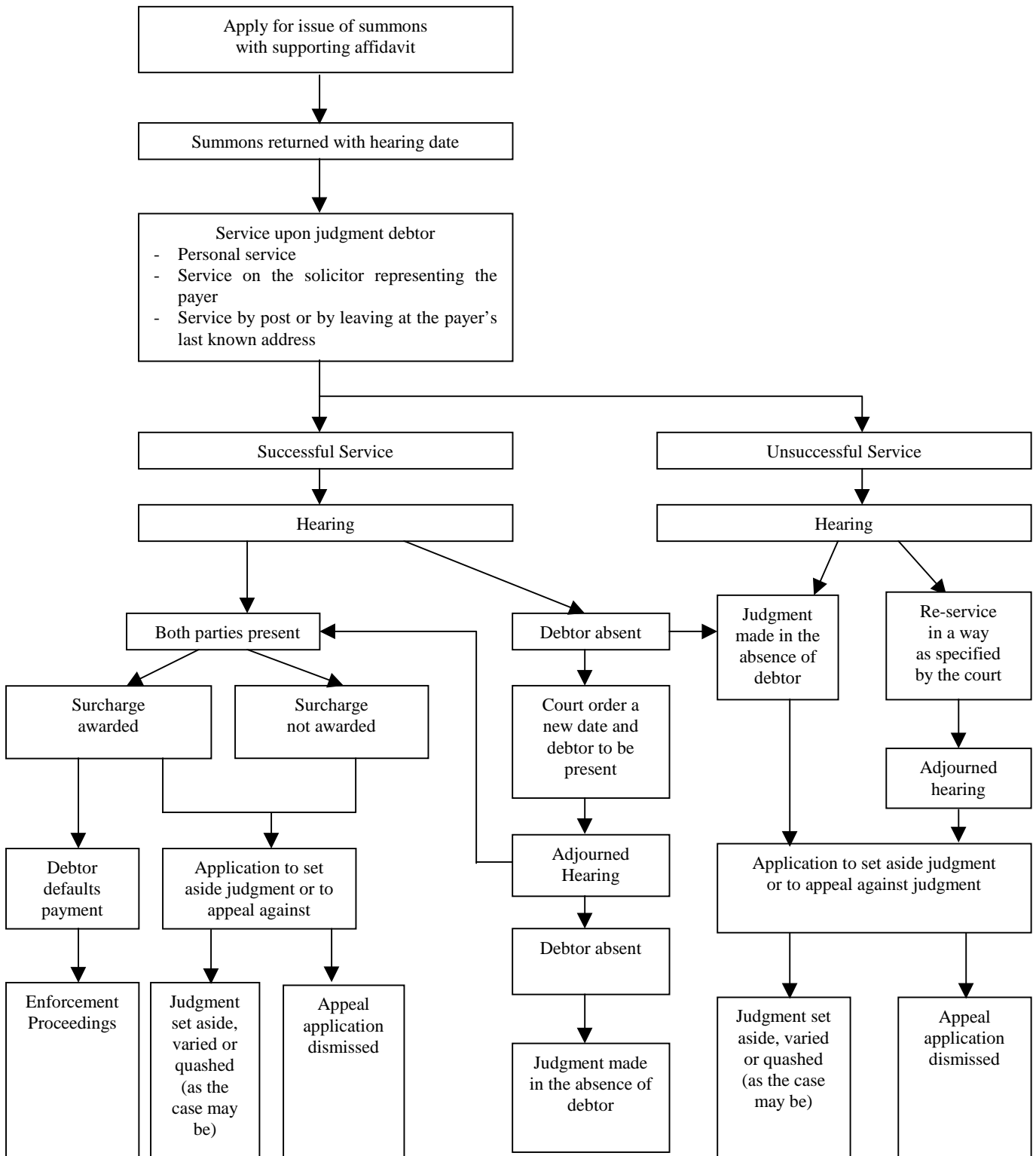


Charging Order 押記令

(Rules of the District Court, Cap. 336H, Order 50)



Proposed Procedures for Application of Surcharge by Summons



2nd draft: 11.02.2003

INTEREST ON ARREARS OF MAINTENANCE BILL 2001

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Home Affairs

<u>Clause</u>	<u>Amendment Proposed</u>
4	<p>(a) By deleting "Section" and substituting "Sections".</p> <p>(b) By deleting "is added" and substituting "are added".</p> <p>(c) In the proposed section 20A(1) -</p> <ul style="list-style-type: none">(i) by adding "and section 20B" after "this section";(ii) in the definition of "judgment debtor", by deleting the semicolon and substituting a full stop;(iii) by deleting the definition of "judgment rate". <p>(d) In the proposed section 20A(2), by deleting everything after "with the maintenance order," and before "interest" and substituting "the judgment creditor is entitled to".</p> <p>(e) By deleting the proposed section 20A(3) and</p>

substituting -

"(3) For the purposes of subsection

(2) -

(a) the arrears in respect of each periodical payment, secured periodical payment or payment of a lump sum, as the case may be, under a maintenance order shall be treated as a judgment debt for the purposes of section 50 of the District Court Ordinance (Cap. 336);

(b) the interest under subsection (2) shall be calculated in accordance with that section 50; and

(c) for the purposes of that section 50, the date on which payment is due as specified by the maintenance order shall be treated as the date of the judgment.

(4) The judgment debtor is liable to pay the interest under subsection (2).

(5) If any payment under a maintenance order is not paid and interest

in respect of the arrears has accrued under subsection (2), and subsequently the judgment debtor makes payment, the payment is deemed to be made in the following order in or towards the discharge of -

- (a) interest accrued under subsection (2);
- (b) surcharge payable under section 20B;
- (c) if there are any proceedings instituted for enforcing the maintenance order, the costs ordered by the court to be paid under those proceedings;
- (d) any sums from time to time falling due under the maintenance order, with the sums discharged in the reversed chronological sequence of the date on which payment is due (that is, the most recent arrears will be discharged first);
- (e) if the court makes an order in any proceedings instituted for enforcing the

maintenance order, the amount of the maintenance in arrears, whether in one amount or by instalments, payable by the judgment debtor under the order.

(6) A judgment debtor who considers that he has reasonable grounds not to pay the interest under subsection (2) may, within a reasonable time after having knowledge of the requirement to pay, apply by summons to the court not to pay the interest, and he shall set out the grounds in the application."

(f) In the proposed section 20A(4), by deleting -

"(4) In determining"

and substituting -

"(7) If an application is made under subsection (6), in deciding".

(g) In the proposed section 20A(7), by adding -

"(8) A judgment debtor who is aggrieved by a requirement under subsection (7) to pay interest may appeal to the Court of Appeal against that decision under section 63 of the District Court Ordinance (Cap. 336)."

New (h) By adding after the proposed section 20A-

"20B. Surcharge on arrears of maintenance

(1) Where a maintenance order has been made against a judgment debtor, and the judgment debtor, without reasonable excuse, repeatedly fails to make full and punctual payment in compliance with the maintenance order, the court may, on application made by the judgment creditor, make an order requiring the judgment debtor to pay to the judgment creditor a surcharge in respect of the total arrears of maintenance which accrue on or after the commencement date.

(2) The application for a surcharge under subsection (1) may be made -

(a) in proceedings instituted for enforcing the maintenance order;

or

(b) in a manner described in subsections (3) to (9).

(3) For the purposes of subsection (2)(b), the application for a surcharge shall be made by a summons supported by an affidavit of the judgment creditor stating -

(a) the name of the judgment creditor and the address for service of the documents relating to the application;

- (b) the name and the address for service or last known address of the judgment debtor;
- (c) the particulars of the maintenance order;
- (d) the total arrears of maintenance due and unpaid and the date on which the arrears first accrues;
- (e) a request for an order requiring the judgment debtor to pay surcharge at a rate to be decided by the court under subsection (11);
- (f) a request for fixing a date, time and place for the hearing of the application;
- (g) a request for an order requiring the judgment debtor to pay to the judgment creditor the surcharge claimed if the judgment debtor does not appear at the hearing.

(4) On receipt of the summons and affidavit, the court shall fix a date, time and place for the hearing of the application.

(5) The judgment creditor shall serve a sealed copy of the summons and a copy of the affidavit, together with a notice of the

hearing, on the judgment debtor.

(6) Without prejudice to any enactment relating to the service of documents and save as is otherwise expressly provided, the summons, affidavit and notice may-

(a) be personally served on the judgment debtor; or

(b) be sent -

(i) if the judgment debtor is represented, by post to the solicitor acting for that judgment debtor, or by leaving the same with the solicitor; or

(ii) if the judgment debtor is unrepresented, by post to the address for service given by him or his last known address, or by leaving the same at the address for service or the last known address of that judgment debtor; or

(c) be served in such other manner as the court directs.

(7) If the judgment debtor fails to appear at the hearing of the application on the date

fixed under subsection (4) and -

(a) if the court is satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor;

(b) if the court is not satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may adjourn the hearing to a date, time and place as it thinks fit.

(8) The judgment creditor shall serve a notice of the adjourned hearing on the judgment debtor.

(9) If the judgment debtor fails to appear at the adjourned hearing on the date fixed under subsection (7)(b), the court may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor.

(10) If the judgment debtor within a reasonable time after having knowledge of the

order made under subsection (7)(a) or (9), applies by summons to set aside the order, the court may, if it is satisfied that there is reasonable excuse for the judgment debtor's failure to -

- (a) appear at the hearing; and
- (b) make full and punctual payment in compliance with the maintenance order,

set aside the order on such terms as it thinks fit.

(11) The amount of surcharge payable by the judgment debtor under subsection (1) shall not exceed 30% of the total arrears of maintenance calculated from the date on which the arrears first accrued to the date of payment of the surcharge.

(12) If the court makes an order requiring the judgment debtor to pay a surcharge, it shall specify in the order the amount of surcharge payable by the judgment debtor and the date of payment.

(13) A surcharge payable under this section is recoverable as a civil debt due to the judgment creditor by the judgment debtor. An action under this subsection may be brought in the District Court even though the amount to be

recovered otherwise exceeds the limit of jurisdiction of the District Court.

(14) A judgment debtor who is aggrieved by an order to pay a surcharge may appeal to the Court of Appeal against that order under section 63 of the District Court Ordinance (Cap. 336).".

- 7
- (a) By deleting "**Section**" and substituting "**Sections**".
 - (b) By deleting "is added" and substituting "are added".
 - (c) In the proposed section 9B(1) -
 - (i) by adding "and section 9C" after "this section";
 - (ii) in the definition of "judgment debtor", by deleting the semicolon and substituting a full stop;
 - (iii) by deleting the definition of "judgment rate".
 - (d) In the proposed section 9B(2), by deleting everything after "with the maintenance order," and before "interest" and substituting "the judgment creditor is entitled to".
 - (e) By deleting the proposed section 9B(3) and substituting -
 - "(3) For the purposes of subsection (2) -
 - (a) the arrears in respect of each periodical payment, secured

periodical payment or payment of a lump sum, as the case may be, under a maintenance order shall be treated as a judgment debt for the purposes of section 50 of the District Court Ordinance (Cap. 336);

(b) the interest under subsection (2) shall be calculated in accordance with that section 50; and

(c) for the purposes of that section 50, the date on which payment is due as specified by the maintenance order shall be treated as the date of the judgment.

(4) The judgment debtor is liable to pay the interest under subsection (2).

(5) If any payment under a maintenance order is not paid and interest in respect of the arrears has accrued under subsection (2), and subsequently the judgment debtor makes payment, the payment is deemed to be made in the following order in or towards the discharge of -

(a) interest accrued under subsection (2);

(b) surcharge payable under section

9C;

- (c) if there are any proceedings instituted for enforcing the maintenance order, the costs ordered by the court to be paid under those proceedings;
- (d) any sums from time to time falling due under the maintenance order, with the sums discharged in the reversed chronological sequence of the date on which payment is due (that is, the most recent arrears will be discharged first);
- (e) if the court makes an order in any proceedings instituted for enforcing the maintenance order, the amount of the maintenance in arrears, whether in one amount or by instalments, payable by the judgment debtor under the order.

(6) A judgment debtor who considers that he has reasonable grounds not to pay the interest under subsection (2) may, within a reasonable time after having knowledge of the requirement to pay, apply by summons to the court not to pay the interest, and he shall set

out the grounds in the application.".

(f) In the proposed section 9B(4), by deleting -

"(4) In determining"

and substituting -

"(7) If an application is made under subsection (6), in deciding".

(g) In the proposed section 9B(7), by adding -

"(8) A judgment debtor who is aggrieved by a requirement under subsection (7) to pay interest may appeal to the Court of Appeal against that decision under section 63 of the District Court Ordinance (Cap. 336)".

New (h) By adding after the proposed section 9B -

"9C. Surcharge on arrears of maintenance

(1) Where a maintenance order has been made against a judgment debtor, and the judgment debtor, without reasonable excuse, repeatedly fails to make full and punctual payment in compliance with the maintenance order, the court may, on application made by the judgment creditor, make an order requiring the judgment debtor to pay to the judgment creditor a surcharge in respect of the total arrears of maintenance which accrue on or after the commencement date.

(2) The application for a surcharge under subsection (1) may be made -

- (a) in proceedings instituted for enforcing the maintenance order;
or
- (b) in a manner described in subsections (3) to (9).

(3) For the purposes of subsection (2)(b), the application for a surcharge shall be made by a summons supported by an affidavit of the judgment creditor stating -

- (a) the name of the judgment creditor and the address for service of the documents relating to the application;
- (b) the name and the address for service or last known address of the judgment debtor;
- (c) the particulars of the maintenance order;
- (d) the total arrears of maintenance due and unpaid and the date on which the arrears first accrues;
- (e) a request for an order requiring the judgment debtor to pay surcharge at a rate to be decided by the court under subsection (11);
- (f) a request for fixing a date, time

and place for the hearing of the application;

- (g) a request for an order requiring the judgment debtor to pay to the judgment creditor the surcharge claimed if the judgment debtor does not appear at the hearing.

(4) On receipt of the summons and affidavit, the court shall fix a date, time and place for the hearing of the application.

(5) The judgment creditor shall serve a sealed copy of the summons and a copy of the affidavit, together with a notice of the hearing, on the judgment debtor.

(6) Without prejudice to any enactment relating to the service of documents and save as is otherwise expressly provided, the summons, affidavit and notice may-

- (a) be personally served on the judgment debtor; or

- (b) be sent -

- (i) if the judgment debtor is represented, by post to the solicitor acting for that judgment debtor, or by leaving the same with the solicitor; or

(ii) if the judgment debtor is unrepresented, by post to the address for service given by him or his last known address, or by leaving the same at the address for service or the last known address of that judgment debtor; or

(c) be served in such other manner as the court directs.

(7) If the judgment debtor fails to appear at the hearing of the application on the date fixed under subsection (4) and -

(a) if the court is satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor;

(b) if the court is not satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may

adjourn the hearing to a date,
time and place as it thinks fit.

(8) The judgment creditor shall serve a notice of the adjourned hearing on the judgment debtor.

(9) If the judgment debtor fails to appear at the adjourned hearing on the date fixed under subsection (7)(b), the court may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor.

(10) If the judgment debtor within a reasonable time after having knowledge of the order made under subsection (7)(a) or (9), applies by summons to set aside the order, the court may, if it is satisfied that there is reasonable excuse for the judgment debtor's failure to -

(a) appear at the hearing; and

(b) make full and punctual payment in compliance with the maintenance order,

set aside the order on such terms as it thinks fit.

(11) The amount of surcharge payable by the judgment debtor under subsection (1) shall not exceed 30% of the total arrears of maintenance

calculated from the date on which the arrears first accrued to the date of payment of the surcharge.

(12) If the court makes an order requiring the judgment debtor to pay a surcharge, it shall specify in the order the amount of surcharge payable by the judgment debtor and the date of payment.

(13) A surcharge payable under this section is recoverable as a civil debt due to the judgment creditor by the judgment debtor. An action under this subsection may be brought in the District Court even though the amount to be recovered otherwise exceeds the limit of jurisdiction of the District Court.

(14) A judgment debtor who is aggrieved by an order to pay a surcharge may appeal to the Court of Appeal against that order under section 63 of the District Court Ordinance (Cap. 336).".

- 8 (a) By deleting "**Section**" and substituting "**Sections**".
- (b) In the proposed section 53A(1) -
- (i) by adding "and section 53B" after "this section";
 - (ii) in the definition of "judgment debtor", by deleting the semicolon and substituting a full stop;

- (iii) by deleting the definition of "judgment rate".
- (c) In the proposed section 53A(2), by deleting everything after "with the maintenance order," and before "interest" and substituting "the judgment creditor is entitled to".
- (d) By deleting the proposed section 53A(3) and substituting -
 - "(3) For the purposes of subsection (2) -
 - (a) the arrears in respect of each periodical payment, secured periodical payment or payment of a lump sum, as the case may be, under a maintenance order shall be treated as a judgment debt for the purposes of section 50 of the District Court Ordinance (Cap. 336);
 - (b) the interest under subsection (2) shall be calculated in accordance with that section 50; and
 - (c) for the purposes of that section 50, the date on which payment is due as specified by the maintenance order shall be treated as the date of the judgment.

(4) The judgment debtor is liable to pay the interest under subsection (2).

(5) If any payment under a maintenance order is not paid and interest in respect of the arrears has accrued under subsection (2), and subsequently the judgment debtor makes payment, the payment is deemed to be made in the following order in or towards the discharge of -

- (a) interest accrued under subsection (2);
- (b) surcharge payable under section 53B;
- (c) if there are any proceedings instituted for enforcing the maintenance order, the costs ordered by the court to be paid under those proceedings;
- (d) any sums from time to time falling due under the maintenance order, with the sums discharged in the reversed chronological sequence of the date on which payment is due (that is, the most recent arrears will be discharged first);
- (e) if the court makes an order in any proceedings instituted for

enforcing the maintenance order,
the amount of the maintenance in
arrears, whether in one amount or
by instalments, payable by the
judgment debtor under the order.

(6) A judgment debtor who considers that
he has reasonable grounds not to pay the
interest under subsection (2) may, within a
reasonable time after having knowledge of the
requirement to pay, apply by summons to the
court not to pay the interest, and he shall set
out the grounds in the application."

(e) In the proposed section 53A(4), by deleting -

"(4) In determining"

and substituting -

"(7) If an application is made under
subsection (6), in deciding".

(f) In the proposed section 53A(7), by adding -

"(8) A judgment debtor who is aggrieved by
a requirement under subsection (7) to pay
interest may appeal to the Court of Appeal
against that decision under section 63 of the
District Court Ordinance (Cap. 336)".

New (g) By adding after the proposed section 53A -

"53B. Surcharge on arrears of maintenance

(1) Where a maintenance order has been
made against a judgment debtor, and the judgment

debtor, without reasonable excuse, repeatedly fails to make full and punctual payment in compliance with the maintenance order, the court may, on application made by the judgment creditor, make an order requiring the judgment debtor to pay to the judgment creditor a surcharge in respect of the total arrears of maintenance which accrue on or after the commencement date.

(2) The application for a surcharge under subsection (1) may be made -

- (a) in proceedings instituted for enforcing the maintenance order;
or
- (b) in a manner described in subsections (3) to (9).

(3) For the purposes of subsection (2)(b), the application for a surcharge shall be made by a summons supported by an affidavit of the judgment creditor stating -

- (a) the name of the judgment creditor and the address for service of the documents relating to the application;
- (b) the name and the address for service or last known address of the judgment debtor;

- (c) the particulars of the maintenance order;
- (d) the total arrears of maintenance due and unpaid and the date on which the arrears first accrues;
- (e) a request for an order requiring the judgment debtor to pay surcharge at a rate to be decided by the court under subsection (11);
- (f) a request for fixing a date, time and place for the hearing of the application;
- (g) a request for an order requiring the judgment debtor to pay to the judgment creditor the surcharge claimed if the judgment debtor does not appear at the hearing.

(4) On receipt of the summons and affidavit, the court shall fix a date, time and place for the hearing of the application.

(5) The judgment creditor shall serve a sealed copy of the summons and a copy of the affidavit, together with a notice of the hearing, on the judgment debtor.

(6) Without prejudice to any enactment relating to the service of documents and save as

is otherwise expressly provided, the summons, affidavit and notice may-

(a) be personally served on the judgment debtor; or

(b) be sent -

(i) if the judgment debtor is represented, by post to the solicitor acting for that judgment debtor, or by leaving the same with the solicitor; or

(ii) if the judgment debtor is unrepresented, by post to the address for service given by him or his last known address, or by leaving the same at the address for service or the last known address of that judgment debtor; or

(c) be served in such other manner as the court directs.

(7) If the judgment debtor fails to appear at the hearing of the application on the date fixed under subsection (4) and -

(a) if the court is satisfied that the summons, affidavit and notice

have been duly served on the judgment debtor, it may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor;

(b) if the court is not satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may adjourn the hearing to a date, time and place as it thinks fit.

(8) The judgment creditor shall serve a notice of the adjourned hearing on the judgment debtor.

(9) If the judgment debtor fails to appear at the adjourned hearing on the date fixed under subsection (7)(b), the court may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor.

(10) If the judgment debtor within a reasonable time after having knowledge of the order made under subsection (7)(a) or (9), applies by summons to set aside the order, the court may, if it is satisfied that there is

reasonable excuse for the judgment debtor's failure to -

- (a) appear at the hearing; and
- (b) make full and punctual payment in compliance with the maintenance order,

set aside the order on such terms as it thinks fit.

(11) The amount of surcharge payable by the judgment debtor under subsection (1) shall not exceed 30% of the total arrears of maintenance calculated from the date on which the arrears first accrued to the date of payment of the surcharge.

(12) If the court makes an order requiring the judgment debtor to pay a surcharge, it shall specify in the order the amount of surcharge payable by the judgment debtor and the date of payment.

(13) A surcharge payable under this section is recoverable as a civil debt due to the judgment creditor by the judgment debtor. An action under this subsection may be brought in the District Court even though the amount to be recovered otherwise exceeds the limit of jurisdiction of the District Court.

(14) A judgment debtor who is aggrieved by

an order to pay a surcharge may appeal to the Court of Appeal against that order under section 63 of the District Court Ordinance (Cap. 336).".

- 11 (a) By deleting "**Section**" and substituting "**Sections**".
- (b) By deleting "is added" and substituting "are added".
- (c) In the proposed section 28AA(1) -
- (i) by adding "and section 28AB" after "this section";
 - (ii) in the definition of "judgment debtor", by deleting the semicolon and substituting a full stop;
 - (iii) by deleting the definition of "judgment rate".
- (d) In the proposed section 28AA(2), by deleting everything after "with the maintenance order," and before "interest" and substituting "the judgment creditor is entitled to".
- (e) By deleting the proposed section 28AA(3) and substituting -
- "(3) Subject to subsection (5) and for the purposes of subsection (2) -
 - (a) the arrears in respect of each periodical payment, secured periodical payment or payment of a lump sum, as the case may be,

under a maintenance order shall be treated as a judgment debt for the purposes of section 50 of the District Court Ordinance (Cap. 336);

(b) the interest under subsection (2) shall be calculated in accordance with that section 50; and

(c) for the purposes of that section 50, the date on which payment is due as specified by the maintenance order shall be treated as the date of the judgment.

(4) The judgment debtor is liable to pay the interest under subsection (2).

(5) If the court grants leave, on the application of a judgment creditor for leave under section 12 of the Ordinance, to enforce arrears of maintenance which became due for more than 12 months, the interest under subsection (2) is to be calculated from the date specified by the court as being the date on which the judgment creditor is entitled to enforce the payment of the arrears.

(6) If any payment under a maintenance order is not paid and interest in respect of the

arrears has accrued under subsection (2), and subsequently the judgment debtor makes payment, the payment is deemed to be made in the following order in or towards the discharge of -

- (a) interest accrued under subsection (2);
- (b) surcharge payable under section 28AB;
- (c) if there are any proceedings instituted for enforcing the maintenance order, the costs ordered by the court to be paid under those proceedings;
- (d) any sums from time to time falling due under the maintenance order, with the sums discharged in the reversed chronological sequence of the date on which payment is due (that is, the most recent arrears will be discharged first);
- (e) if the court makes an order in any proceedings instituted for enforcing the maintenance order, the amount of the maintenance in arrears, whether in one amount or by instalments, payable by the

judgment debtor under the order.

(6) A judgment debtor who considers that he has reasonable grounds not to pay the interest under subsection (2) may, within a reasonable time after having knowledge of the requirement to pay, apply by summons to the court not to pay the interest, and he shall set out the grounds in the application."

(f) In the proposed section 28AA(4), by deleting -

"(4) In determining"

and substituting -

"(8) If an application is made under subsection (7), in deciding".

(g) In the proposed section 28AA(8), by adding -

"(9) A judgment debtor who is aggrieved by a requirement under subsection (8) to pay interest may appeal to the Court of Appeal against that decision under section 63 of the District Court Ordinance (Cap. 336)".

New (h) By adding after the proposed section 28AA -

"28AB. Surcharge on arrears of maintenance

(1) Where a maintenance order has been made against a judgment debtor, and the judgment debtor, without reasonable excuse, repeatedly fails to make full and punctual payment in compliance with the maintenance order, the court may, on application made by the judgment

creditor, make an order requiring the judgment debtor to pay to the judgment creditor a surcharge in respect of the total arrears of maintenance which accrue on or after the commencement date.

(2) The application for a surcharge under subsection (1) may be made -

(a) in proceedings instituted for enforcing the maintenance order;
or

(b) in a manner described in subsections (3) to (9).

(3) For the purposes of subsection (2)(b), the application for a surcharge shall be made by a summons supported by an affidavit of the judgment creditor stating -

(a) the name of the judgment creditor and the address for service of the documents relating to the application;

(b) the name and the address for service or last known address of the judgment debtor;

(c) the particulars of the maintenance order;

(d) the total arrears of maintenance due and unpaid and the date on

which the arrears first accrues;

- (e) a request for an order requiring the judgment debtor to pay surcharge at a rate to be decided by the court under subsection (11);
- (f) a request for fixing a date, time and place for the hearing of the application;
- (g) a request for an order requiring the judgment debtor to pay to the judgment creditor the surcharge claimed if the judgment debtor does not appear at the hearing.

(4) On receipt of the summons and affidavit, the court shall fix a date, time and place for the hearing of the application.

(5) The judgment creditor shall serve a sealed copy of the summons and a copy of the affidavit, together with a notice of the hearing, on the judgment debtor.

(6) Without prejudice to any enactment relating to the service of documents and save as is otherwise expressly provided, the summons, affidavit and notice may-

- (a) be personally served on the judgment debtor; or

(b) be sent -

(i) if the judgment debtor is represented, by post to the solicitor acting for that judgment debtor, or by leaving the same with the solicitor; or

(ii) if the judgment debtor is unrepresented, by post to the address for service given by him or his last known address, or by leaving the same at the address for service or the last known address of that judgment debtor; or

(c) be served in such other manner as the court directs.

(7) If the judgment debtor fails to appear at the hearing of the application on the date fixed under subsection (4) and -

(a) if the court is satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may proceed to hear the application and may make an order requiring the

judgment debtor to pay a surcharge to the judgment creditor;

- (b) if the court is not satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may adjourn the hearing to a date, time and place as it thinks fit.

(8) The judgment creditor shall serve a notice of the adjourned hearing on the judgment debtor.

(9) If the judgment debtor fails to appear at the adjourned hearing on the date fixed under subsection (7)(b), the court may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor.

(10) If the judgment debtor within a reasonable time after having knowledge of the order made under subsection (7)(a) or (9), applies by summons to set aside the order, the court may, if it is satisfied that there is reasonable excuse for the judgment debtor's failure to -

- (a) appear at the hearing; and
- (b) make full and punctual payment in

compliance with the maintenance
order,

set aside the order on such terms as it thinks
fit.

(11) Subject to subsection (13), the amount
of surcharge payable by the judgment debtor
under subsection (1) shall not exceed 30% of the
total arrears of maintenance calculated from the
date on which the arrears first accrued to the
date of payment of the surcharge.

(12) If the court makes an order requiring
the judgment debtor to pay a surcharge, it shall
specify in the order the amount of surcharge
payable by the judgment debtor and the date of
payment.

(13) If the court grants leave, on the
application of a judgment creditor for leave
under section 12 of the Ordinance to enforce
arrears of maintenance which became due for more
than 12 months, the surcharge under subsection
(1) is to be calculated from the date specified
by the court as being the date on which the
judgment creditor is entitled to enforce the
payment of the arrears.

(14) A surcharge payable under this section
is recoverable as a civil debt due to the
judgment creditor by the judgment debtor. An

action under this subsection may be brought in the District Court even though the amount to be recovered otherwise exceeds the limit of jurisdiction of the District Court.

(15) A judgment debtor who is aggrieved by an order to pay a surcharge may appeal to the Court of Appeal against that order under section 63 of the District Court Ordinance (Cap. 336).".