

**Bills Committee on Interest on Arrears of Maintenance Bill 2001  
Matters Arising from the Meeting of 13 February 2003**

**A. Application for Surcharge by Maintenance Payees through  
Summons**

At the meeting of 13 February 2003, some Members expressed their concerns over the user-friendliness of the newly proposed summons procedures for application for surcharge. They asked for the application forms so that they could gauge their user-friendliness. In response to Members' request, we have submitted to the Bills Committee vide our letter of 28 February 2003 the standard summons forms with our annotations and suggested wordings for completion by maintenance payees, together with a draft affidavit in support of the application for surcharge. A copy of each of the forms is at **Annex A**.

**B. Views of the Hong Kong Bar Association, the Law Society of  
Hong Kong and the Hong Kong Family Law Association to the  
Committee Stage Amendments (CSAs) proposed by the  
Administration**

2. As requested by the Bills Committee, we have sought the views of the Hong Kong Bar Association ("Bar Association"), the Law Society of Hong Kong ("Law Society") and the Hong Kong Family Law Association ("Family Law Association") on the CSAs proposed by the Administration.

**(a) Family Law Association**

3. The Family Law Association has no additional comments in regards to the proposed bill. We understood that the Association is agreeable to the latest proposal from the Administration. A copy of the Association's response is at **Annex B**.

**(b) Law Society**

4. The Family Law Committee of the Law Society supports in principle the introduction of interest on maintenance arrears, but points to the possible resource implications on the court arising from the need to calculate the interests for unrepresented litigants. The Committee considers that the imposition of interest and surcharge might be too onerous in that in the majority of cases there is simply insufficient money to pay the maintenance. It asks for information on comparable jurisdictions that provides for surcharge on non-payment of maintenance. A copy of the Law Society's letter is at **Annex C**.

***The Administration's Response***

*(i) Resources Implications on the Court arising from the Need to Calculate Interest for Unrepresented Litigants*

5. In our proposal, maintenance arrears are to be treated as judgment debts. The existing law already provides for interest on judgment debts. Nevertheless, we appreciate that calculation of interest on maintenance arrears in most cases will be tedious because of the recurrent nature of the payment and the irregular payment patterns in

such cases.

6. Upon passage of the bill, we will prepare publicity material to introduce the new interest and surcharge mechanisms. We will illustrate the calculation methods with examples, so that unrepresented litigants can work out the interest involved and alleviate the reliance on the Family Court Registry's assistance in calculating the interest. We also intend to organise a seminar for Government and non-governmental organisation personnel on the subject in due course.

*(ii) Surcharge Arrangement in Comparable Jurisdictions*

7. We have studied the practices of the United Kingdom ("U.K.") and Australia. In U.K., while penalties in the form of "additional sum" may be imposed on non-resident parents for maintenance defaults, the maintenance payer will not be subject to both interest and the "additional sum". We are not aware of provision for surcharge in the Australian statute.

8. While similar surcharge arrangements are not found in the aforesaid jurisdictions, we have to bear in mind that the Bill aims to deter defaults in maintenance. Surcharge is proposed as a deterrent against blameworthy conduct of a maintenance payer who repeatedly defaults without reasonable excuse. Surcharge is not automatic: the payee has to apply and to state his/her case to the court in support of the application.

**(c) Bar Association**

9. We understood that the Bar Association would have comments on the latest CSAs proposed by the Administration. We are still awaiting a reply from the Association.

**C. The Administration's View on the Proposal of Setting the Surcharge Ceiling at 100%**

10. In our paper for the Bills Committee meeting on 14 January, we pointed out that the proposed surcharge ceiling of 30% is comparatively higher than that in other late payments like tax and Government rent. However, this may be justified on the grounds that the surcharge is not automatic, that it is mean to be a deterrent against the maintenance payer's blameworthy conduct of defaulting repeatedly without reasonable excuse. On the other hand, we need to take account that the payee would have already been compensated for his/her loss in interest on maintenance arrears by the automatic interest at judgment rate.

11. We noted the Law Society's concern that the surcharge proposal may lead the maintenance payer to simply opt to disappear. Hence, the Administration would like to await the Bar Association's comments before taking a view.

#### **D. The Arrangements of the Consequential Amendments**

12. We appreciate Members' concern on the technical nature of the bill, where the user-friendliness of the instruments, such as legal forms, is crucial to the operation of the proposed arrangements. We will incorporate in the CSAs a section on the consequential amendments, which are mainly on the changes to the relevant legal forms in the Rules of the High Court (Cap.4A), Attachment of Income Order Rules (Cap. 13A), Matrimonial Cause Rules (Cap.179A), and the Rules of the District Court (Cap. 336H). While we are fine-tuning the CSAs and will provide the latest version to the Bills Committee shortly, we have prepared at **Annex D** a set of the legal forms with our proposed amendments marked thereon for Members' reference.

*Home Affairs Bureau*

*March 2003*

IN THE DISTRICT COURT OF HONG KONG  
SPECIAL ADMINISTRATIVE REGION  
MATRIMONIAL CAUSES  
SUIT NO. \_\_\_\_\_ OF  
\_\_\_\_\_

BETWEEN

Petitioner <sup>1</sup>  
(Name)

and

Respondent <sup>2</sup>  
(Name)

To \_\_\_\_\_ of \_\_\_\_\_  
(Maintenance payer's name) (Address)

SUMMONS

YOU ARE HEREBY SUMMONED to appear before H.N./Deputy Judge  
in Chambers sitting at Family Court, on \_\_\_\_\_ /F., Court No. \_\_\_\_\_, Wanchai Law  
Courts, Wanchai Tower, No. 12 Harbour Road, Wanchai, Hong Kong on \_\_\_\_\_ day,  
the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ at \_\_\_\_\_ o'clock  
in the fore/afternoon on the hearing of an application on the part of the  
Petitioner/Respondent for an Order to be made that -

*A surcharge on maintenance arrears be paid* <sup>3</sup>

And you are to take notice that if you do not appear the Court may consider and deal  
with the application in a summary way.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

This summons was taken out by the said Petitioner/Respondent

who resides at \_\_\_\_\_  
(Maintenance payee's address)

\_\_\_\_\_  
Petitioner/Respondent  
(Name and Signature)

Notes :

<sup>1</sup> "Petitioner" refers to the party that initiated the divorce proceedings. The petitioner can be a maintenance payer or a maintenance payee.

<sup>2</sup> "Respondent" is the other party in the divorce proceedings.

<sup>3</sup> If the maintenance payee applies for a surcharge order in person, it is not necessary for him/her to quote the statutes under which the application is made.

**Affidavit/Affirmation\* in support of Application  
for Surcharge on Maintenance Arrears  
Made by the Maintenance Payee**

I, \_\_\_\_\_ (name of maintenance payee), presently residing at \_\_\_\_\_  
(full residential address), do swear/solemnly and sincerely declare and affirm\* as follows :

1. Name of maintenance payer : \_\_\_\_\_  
Address for service/Last known address of the maintenance payer : \_\_\_\_\_  
\_\_\_\_\_

2. Particulars of the maintenance order  
Date : \_\_\_\_\_  
Contents (e.g. amount of maintenance payable, payment dates) : \_\_\_\_\_  
\_\_\_\_\_

3. The maintenance payer has defaulted in payment. Particulars of the default :  
Total arrears of maintenance due and unpaid : \_\_\_\_\_  
The date on which the arrears first accrued : \_\_\_\_\_  
Other relevant information (if applicable) : \_\_\_\_\_  
\_\_\_\_\_

4. Requests made to the Court :

(a) I hereby apply to the Court for an order requiring the maintenance payer to pay surcharge in respect of the maintenance arrears mentioned in paragraph 3 at a rate to be decided by the Court under Section 20B(11) of the Guardianship of Minors Ordinance (Cap. 13)/ Section 9B(11) of the Separation and Maintenance Orders Ordinance (Cap. 16)/ Section 53B(11) of the Matrimonial Causes Ordinance (Cap. 179)/ Section 28AB(11) of the Matrimonial Proceedings and Property Ordinance (Cap. 192);

\_\_\_\_\_  
\* Delete as appropriate

- (b) I also request a date, time and place to be fixed for the hearing of the application; and
- (c) If the aforementioned maintenance payer fails to appear at the hearing fixed under paragraph 4(b), I request an order requiring the maintenance payer to pay me the surcharge claimed in his/her absence.

\_\_\_\_\_  
(Signature of Maintenance Payee)

Sworn/Affirmed\* at \_\_\_\_\_  
\_\_\_\_\_, this \_\_\_\_\_ day  
of \_\_\_\_\_, \_\_\_\_\_,  
before me,

Commissioner for Oaths

**Note : The maintenance payee shall serve the following documents on the maintenance payer :**

- A. A sealed copy of the summons;
- B. A copy of this affidavit; and
- C. A notice of the hearing (either endorsed on the summons or a separate notice).

\_\_\_\_\_  
*\* Delete as appropriate*

Annex B

香港家庭法律協會  
**THE HONG KONG FAMILY LAW ASSOCIATION**

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6 Duddell Street  
Central, Hong Kong  
Fax No. 2810 6089

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Mr. Jonathan Mok 2843 2244

**Hon. Secretary**

Miss Wendy Lam 2533 2529

26 February 2003

**BY FAX – 2573 8461**

Mrs. Nancy Hui

Secretary for Home Affairs

Government Secretariat

Home Affairs Bureau

31<sup>st</sup> Floor, Southorn Centre

130 Hennessy Road

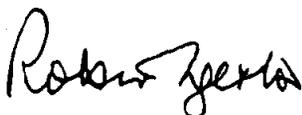
Wan Chai, Hong Kong

Dear Mrs. Hui,

**Re: Interest on Arrears of Maintenance Bill 2001**Thank you very much for your letter of 14<sup>th</sup> February 2003.

Family Law Association has no additional comments in regards to the proposed Bill.

Yours sincerely,



Robin Egerton  
Chairman

349055/es



THE

**LAW SOCIETY**  
 OF HONG KONG

香 港 律 師 會

Practitioners Affairs

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 Our Ref : FL0204/03/66380  
 Your Ref : HAB/CR/1/19/96Pt.5  
 Direct Line :

4 March 2003

 Mrs. Nancy Hui  
 Home Affairs Bureau  
 31/F Southorn Centre  
 130 Hennessy Road, Wanchai  
 Hong Kong

Dear Mrs. Hui,

**Re: Committee Stage Amendments to the Interest on Arrears of Maintenance Bill  
 2001**

I refer to your letter dated 14 February 2003 in connection with the captioned matter.

The Law Society's Family Law Committee ("the Committee") discussed the Committee Stage Amendments ("CSAs"), in particular the second draft attached to your letter and has the following comments :-

#### 1. Automatic Interest on Arrears of Maintenance

The Committee supports in principle the introduction of interest on arrears of maintenance.

The CSAs as drafted implicitly acknowledge the computation of the interest will be a complex matter. Members of the Bills Committee should bear this important fact in mind and that its introduction can result in the following:

The percentage of unrepresented litigants in the Family Court is approximately 50%. The introduction of this legislation should not have the indirect consequence of increasing the workload of the Family Court Registry whereby the overstretched staff and Family Judges will be required to calculate the interest for the judgment creditors. There is an obvious resource implication in relation to unrepresented litigants which must be considered.

#### 2. Surcharge Arrangements

The proposal to introduce a surcharge is a new development. It is a penalty for non-performance. The Committee discussed the surcharge at length and can only see it being relevant to a very small minority of cases each year. This proposal together with the imposition of interest can lead to the payer "simply opting to disappear" as in the majority of cases there is simply insufficient money to pay the maintenance.

President	Vice-Presidents	Council Members			Secretary General
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					Patrick R. Moss

The Committee would like to have information on comparable jurisdictions which have imposed a surcharge for non-payment of maintenance. What is the percentage and success rate of the surcharge in these comparable jurisdictions?

The existing remedy of contempt and the threat of imprisonment are considered to be an effective deterrent. The Committee considers there are other effective measures which could be considered e.g. in several states in the USA non-paying spouses are barred from holding a driving licence until arrears of maintenance are paid up.

**3. The “Surcharge Ceiling”**

The Committee does not consider the citation of the Industrial Training (Construction Industry) Ordinance (Cap. 317) to be appropriate. This Ordinance involves the construction industry and contractual obligations. It is not relevant to the failure to pay maintenance which can be caused by a wide variety of case specific factors.

**4. The Proposed Summons Proceedings**

No comment.

**5. Additional Comments**

**a) Variation of Judgment**

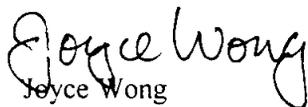
In the penultimate paragraph on page 3 of your letter you indicated the payer may apply to the court set aside or “**vary the judgment**”. Please indicate where this right is reflected in the CSAs?

**b) Application for Stay or Review**

There is no provision for a stay of the proceedings or for a right to review? The CSAs only provide for the right of appeal pursuant to Section 63 of the District Court Ordinance, which is an existing right in any event and citation of this section is redundant. An appellant can only appeal on a **point of law**, and the imposition of a surcharge is in fact a discretionary power given to the judge. It is highly unlikely for an applicant to be granted leave to challenge this exercise of discretion and so the “safeguard” is illusory. The costs of launching an appeal are also significant. It would be fairer and more cost effective to consider the introduction of a right to stay the proceedings pending a review of the decision on the surcharge.

We trust these comments can assist the Bills Committee in its deliberations.

Yours sincerely,



Joyce Wong  
Director of Practitioners Affairs  
e-mail: dpa@hklawsoc.org.hk

The Legal Forms Marked with Amendments  
Proposed by the Administration

The Rules of the High Court (Cap. 4A) Appendix A

No. 72

Garnishee order to show cause

(O. 49 r. 1)

In the High Court of Hong Kong

19 ....., No. ....

(Mr. Justice ..... Judge in chambers)

Between	A.B.	Judgment creditor
	AND	
	C.D.	Judgment debtor
	F.G.	Garnishee

Upon reading the affidavit of .....filed the ..... day of ..... 19 .....

It is ordered by (Mr. Justice ..... ) that all debts due or accruing due from the above-mentioned garnishee to the above-mentioned judgment debtor (in the sum of \$ ..... ) be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the High Court on the ..... day of ..... 19 ..... for the sum (or to answer an order made in the High Court on the ..... day of ..... 19 .....; ordering payment by the said judgment debtor to the above-named judgment creditor of the sum) of \$ ..... (debt and \$ ..... costs) and interest at the judgment rate calculated from the date on which maintenance payment is due to the date of payment and surcharge at a rate to be decided by the Court, as referred to in Order 49, rule 2(ba)(i) and (ii) (together with the costs of the garnishee proceedings) on which judgment (or order) the sum of \$ ..... remains due and unpaid.

And it is ordered that the said garnishee attend Mr. Justice ..... in Chambers, at the High Court, in Hong Kong on the ..... day of ..... 19 ..... at ..... o'clock, on an application by the said judgment creditor that the garnishee do pay to the said judgment creditor the debt due from the said garnishee to the said judgment debtor, or so much thereof as may be sufficient to satisfy the said judgment (or order), and interest at the judgment rate calculated from the date on which maintenance payment is due to the date of payment and surcharge at a rate to be decided by the Court, as referred to in Order 49, rule 2(ba)(i) and (ii) together with the costs of the garnishee proceedings.

Dated the ..... day of ..... 19 .....

To the above-named garnishee  
and judgment debtor.

*The Rules of the High Court (Cap. 4A) Appendix A*

No. 73

**Garnishee order absolute where garnishee owes more than judgment debt**

(O. 49 rr. 1, 4)

In the High Court of Hong Kong

19 ....., No. ....

(Mr. Justice ..... Judge in chambers)

Between	A.B.	Judgment creditor
	AND	
	C.D.	Judgment debtor
	F.G.	Garnishee

Upon hearing the solicitors for the judgment creditor and the garnishee, and upon reading the affidavit of ..... filed herein, and the order to show cause made herein dated the ..... day of ..... 19 ....., whereby it was ordered that all debts due or accruing due from the above-named garnishee to the above-named judgment debtor should be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the High Court on the ..... day of ..... 19 ..... for the sum (or to answer an order made in the High Court dated the ..... day of ..... 19 ..... ordering payment by the said judgment debtor to the above-named judgment creditor of the sum) of \$ ..... (debt and \$ ..... costs) and interest at the judgment rate calculated from the date on which maintenance payment is due to the date of payment and surcharge at a rate to be decided by the Court, as referred to in Order 49, rule 2(ba)(i) and (ii) (together with the costs of the garnishee proceedings) on which judgment (or order) the sum of \$ ..... remained due and unpaid:

It is ordered that the said garnishee do forthwith pay to the said judgment creditor \$ ..... being so much of the debt from the said garnishee to the said judgment debtor as is sufficient to satisfy the said judgment debt, \$..... interest and \$..... surcharge, as referred to in Order 49, rule 2(ba)(i) and (ii) and costs, together with \$ ..... the costs of the garnishee proceedings, and that the said garnishee be at liberty to retain \$ ..... for his costs of this application out of the balance of the debt due from him to the judgment debtor.

Dated the ..... day of ..... 19 .....

(L.N. 251 of 1997; 25 of 1998 s. 2)

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*The Rules of the High Court (Cap. 4A) Appendix A*

No. 74

**Garnishee order absolute where garnishee owes less than judgment debt**

(O. 49 rr. 1, 4)

In the High Court of Hong Kong

19 ....., No. ....

(Mr. Justice ..... Judge in chambers)

Between	A.B.	Judgment creditor
	AND	
	C.D.	Judgment debtor
	F.G.	Garnishee

Upon hearing the solicitors for the judgment creditor and the garnishee, and upon reading the affidavit of ..... filed herein, and the order to show cause made herein dated the ..... day of ..... 19 ....., whereby it was ordered that all debts due or accruing due from the above-named garnishee to the above-named judgment debtor should be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the High Court on the ..... day of ..... 19 ..... for the sum (or to answer an order made in the High Court dated the ..... day of ..... 19 ..... ordering payment by the said judgment debtor to the above-named judgment creditor of the sum) of \$ ..... (debt and \$ ..... costs) and interest at the judgment rate calculated from the date on which maintenance payment is due to the date of payment and surcharge at a rate to be decided by the Court, as referred to in Order 49, rule 2(ba)(i) and (ii) (together with the costs of the garnishee proceedings) on which judgment (or order) the sum of \$ ..... remained due and unpaid:

It is ordered that the said garnishee (after deducting therefrom \$ ..... for his costs of this application) do forthwith pay to the said judgment creditor \$ ..... the debt due from the said garnishee to the said judgment debtor and \$..... interest and \$..... surcharge, as referred to in Order 49, rule 2(ba)(i) and (ii). And that the sum of \$ ..... the costs or the judgment creditor of this application be added to the judgment debt and be retained out of the money recovered by the said judgment creditor under this order and in priority to the amount of the judgment debt.

Dated the ..... day of ..... 19 .....

(L.N. 251 of 1997)

*The Rules of the High Court (Cap. 4A) Appendix A*

No. 75

**Charging order: notice to show cause**

*(O. 50, r. 1)*

In the High Court of Hong Kong

19 ....., No. ....

(Mr. Justice ..... Judge in chambers)

Between

A.B.

Plaintiff

AND

C.D.

Defendant

Upon hearing the ..... and upon reading the affidavit of ..... filed herein the ..... day of ..... 19 ..... whereby it appears that by a judgment (or order) made in the Court of First Instance on the ..... day of ..... 19 ..... the defendant was ordered to pay to the plaintiff the sum of \$ ..... and \$ ..... costs on which judgment (or order) the sum of \$ ..... remains due and unpaid and that the defendant has a beneficial interest in the asset specified in the schedule hereto:

It is ordered by (Mr. Justice/Master ..... ) that unless sufficient cause to the contrary be shown before (Mr. Justice/Master ..... at the High Court of Hong Kong, 38 Queensway, Hong Kong) on the ..... day of ..... 19 ....., at ..... o'clock, the defendant's interest in the said asset shall, and it is ordered that in the meantime it do, stand charged with the payment of \$ ..... due on the said judgment (or order) and (interest thereon at the statutory rate) interest at the judgment rate calculated from the date on which maintenance payment is due to the date of payment and surcharge at a rate to be decided by the Court, as referred to in Order 50, rule 1(3)(ba)(i) and (ii) together with the costs of this application.

Dated the ..... day of ..... 19 .....

SCHEDULE

(Describe with full particulars the relevant land, securities, funds or trust, stating, in relation to securities, their full title, the amount of them and the name in which they stand and whether the beneficial interest charged is in the securities only or in dividends or interest as well, and stating, in relation to funds in court, the number of the account).

*(L.N. 251 of 1997; 25 of 1998 s. 2)*

*The Rules of the High Court (Cap. 4A) Appendix A*

No. 76

**Charging order absolute**

(O. 50, r. 3)

In the High Court of Hong Kong

19 ....., No. ....

(Mr. Justice ..... Judge in chambers)

Between	<i>A.B.</i>	Plaintiff
	AND	
	<i>C.D.</i>	Defendant

Upon hearing the ..... and upon reading the affidavits of ..... and ..... filed herein the ..... day of ..... 19 ..... and the order to show cause made herein on the ..... day of ..... 19 .....

It is ordered that the interest of the defendant *C.D.* in the asset specified in the schedule hereto stand charged with the payment of \$ ....., the amount due from the defendant to the plaintiff *A.B.* on a judgment (or order) of the Court of First Instance dated the ..... day of ..... 19 ....., and (interest thereon at the statutory rate) (\$..... interest and \$..... surcharge, as referred to in Order 50, rule 1(3)(ba)(i) and (ii)) together with \$ ..... the costs of this application, the said costs to be added to the judgment debt.

Dated the ..... day of ..... 19 .....

SCHEDULE

(Describe with full particulars the relevant land, securities, funds or trust, stating, in relation to securities, their full title, the amount of them and the name in which they stand and whether the beneficial interest charged is in the securities only or in dividends or interest as well, and stating, in relation to funds in court, the number of the account).

STOP NOTICE

To the (describe the person having custody of the security)

Take notice that, in relation to the securities specified in the schedule to this order, you may not, without notice to (name of the plaintiff) at (his address for service) register any transfer, or make any redemption payment, or, in the case of a unit trust, deal with the units, or, where dividends or interest are included in the order, pay any dividend or interest.

SCHEDULE

(L.N. 251 of 1997; 25 of 1998 s. 2)



\*1. The sum of \$..... being interest as referred to in rule 3(2)(f)(iii).

\*2. The sum of \$..... being surcharge as referred to in rule 3(2)(f)(iv)

\*13. The sum of \$..... per week/month\* in respect of current payments under the maintenance order first mentioned.

\*24. The sum of \$..... per week/month\* for ..... consecutive weeks/months\* and a final payment of \$..... \* in respect of arrears of payments under the maintenance order first mentioned.

\*35. The sum of \$..... per week/month\* for ..... consecutive weeks/months\* and a final payment of \$..... \* in respect of costs in connection with the maintenance order first mentioned and this Order.

THE COURT ALSO DIRECTS that during the period when this Order is in force, you may make one further deduction of not exceeding \$ ..... from the said income to defray the administrative expenses reasonably incurred by you in complying with this Order.

If any deduction is authorized under section 32(2) of the Employment Ordinance (Cap 57) to be made by you from the wages of the maintenance payer, and the total of such deduction together with the sums referred to at ~~1, 2 or 3~~ 1, 2, 3, 4, or 5 above exceeds the whole wages of the maintenance payer in respect of that wage period, such deduction shall be accorded priority over the payment referred to at ~~1, 2 or 3~~ 1, 2, 3, 4, or 5 above. (See Note 2)

This Order shall be effective for the period from ..... to .....

Dated this ..... day of .....

Registrar

NOTE 1: If you have ceased to be an income source of the maintenance payer, you should within 7 days from the date of service of this Order upon you or if at any time you cease to be an income source of the maintenance payer within 7 days from such cesser fill in and sign the attached notice and send it to the ..... Court Registry at .....

NOTE 2: This paragraph applies only if the maintenance payer is in your employment and the sums referred to at ~~1, 2 or 3~~ 1, 2, 3, 4, or 5 is to be made out of wages due to the maintenance payer.

\* Delete where inapplicable.

(L.N. 260 of 2001)

**Matrimonial Causes Rules (Cap. 179A ) Appendix**

FORM 22

[Rule 87(3)]

*Praecipe for Issue of Judgment Summons*

IN THE COURT OF FIRST INSTANCE  
(DIVORCE).

[or in the District Court of Hong Kong  
held at

No. of { Matter  
          } Judgment summons

Between  
And  
[and

Petitioner [or Applicant]  
Respondent  
Co-Respondent

Judgment creditor's full name and address .....

Judgment debtor's full name and address .....

I apply for the issue of a judgment summons against the above-named judgment debtor in respect of an order made in this Court [*or as the case may be*] on the                    day of 19                    , for [*state nature of order*].

[*If it be the case I intend to apply to the Court at the hearing of the proposed judgment summons for leave to enforce arrears which became due more than twelve months before the date of the proposed summons*].

I am aware that, if I do not prove to the satisfaction of the Court at the hearing that the judgment debtor has, or has had since the date of the said order, the means to pay the sum in respect of which he has made default and that he has refused or neglected, or refuses or neglects, to pay it I may have to pay the costs of the summons.

[*Add, except where judgment summons is to issue in the District Court in which order was made: I certify that the said order has not been modified or discharged and that there is no order of commitment in this matter which remains unsatisfied.*

I further certify that no writ of fieri facias has been issued to enforce the said order [*or, if a writ of fieri facias has been issued, give details and state what return to it has been made.*].]

Dated this                    day of                    19                    .

[Solicitor for the] Judgment Creditor.  
\$

Amount due and unpaid in respect of the order and costs .....

Interest payable in respect of the arrears of maintenance, at the judgment rate calculated from the date on which maintenance payment is due to the date of payment .....

Surcharge payable in respect of the arrears of maintenance at a rate to be decided by the Court .....

Costs of this summons .....

Travelling expenses to be paid to the judgment debtor .....

\_\_\_\_\_  
\_\_\_\_\_

(L.N. 193 of 1974; 25 of 1998 s. 2)

\_\_\_\_\_

**Matrimonial Causes Rules (Cap. 179A) Appendix**

FORM 23

[Rule 87(4)]

*Judgment Summons*

IN THE COURT OF FIRST INSTANCE  
(DIVORCE).

[or in the District Court of Hong Kong  
held at

No. of { Matter  
          } Judgment summons

Between  
And  
[and

Petitioner [or Applicant]  
Respondent  
Co-Respondent

WHEREAS the above-named  
(hereinafter called "the judgment creditor") obtained an order in this Court (*or as the case may be*) on  
the day of 19 , against (hereinafter called the "judgment debtor") for  
[*state nature of order*].

AND WHEREAS default has been made in respect of the sum of \$ payable under the  
said order and the judgment creditor has required this judgment summons to be issued against you, the  
said judgment debtor.

YOU ARE HEREBY SUMMONED to appear personally before the Judge sitting on the  
day of 19 , at o'clock, to be examined on oath touching the means you have or have  
had since the date of the said order to pay the said sum in payment of which you have made default  
and also to show cause why you should not be committed to prison for such default.

[AND TAKE NOTICE that the judgment creditor intends to apply to the Court at the hearing of  
this judgment summons for leave to enforce arrears which became due more than twelve months  
before the date of this summons].

Dated this day of 19 .

\$

Amount due and unpaid in respect of the order and costs .....  
[Interest payable in respect of the arrears of maintenance, at  
the judgment rate calculated from the date on which  
maintenance payment is due to the date of payment .....](#)  
[Surcharge payable in respect of the arrears of maintenance at  
a rate to be decided by the Court .....](#)  
Costs of this summons .....  
Travelling expenses to be paid to the judgment debtor .....  
Sum on payment of which this summons will be discharged .....

\_\_\_\_\_  
\_\_\_\_\_

*Note:* If payment is made too late to prevent the judgment creditor's attendance on the day of  
hearing you may be liable for further costs.

[The judgment creditor's solicitor is ]

*The Rules of the District Court (Cap 336H) Appendix A*

No. 72

**Garnishee order to show cause**

(Order 49 rule 1)

20 ....., No. ....

IN THE DISTRICT COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION

NO. .... OF 20 .....  
(His/Her Honour Judge/Master ..... in chambers)

Between	A.B.	Judgment creditor
	AND	
	C.D.	Judgment debtor
	F.G.	Garnishee

Upon reading the affidavit of ..... filed the ..... day of ..... 20 .....

It is ordered by (His/Her Honour Judge/Master ..... ) that all debts due or accruing due from the above-mentioned garnishee to the above-mentioned judgment debtor (in the sum of \$ ..... ) be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the District Court on the ..... day of ..... 20 ..... for the sum (or to answer an order made in the District Court on the ..... day of ..... 20 .....; ordering payment by the said judgment debtor to the above-named judgment creditor of the sum) of \$ ..... (debt and \$ ..... costs) and interest at the judgment rate calculated from the date on which maintenance payment is due to the date of payment and surcharge at a rate to be decided by the Court, as referred to in Order 49, rule 2(ba)(i) and (ii) (together with the costs of the garnishee proceedings) on which judgment (or order) the sum of \$ ..... remains due and unpaid.

And it is ordered that the said garnishee attend His/Her Honour Judge/Master ..... in Chambers, at the District Court, in Hong Kong on the ..... day of ..... 20 ..... at ..... o'clock in the ..... noon, on an application by the said judgment creditor that the garnishee do pay to the said judgment creditor the debt due from the said garnishee to the said judgment debtor, or so much thereof as may be sufficient to satisfy the said judgment (or order), and interest at the judgment rate calculated from the date on which maintenance payment is due to the date of payment and surcharge at a rate to be decided by the Court, as referred to in Order 49, rule 2(ba)(i) and (ii) together with the costs of the garnishee proceedings.

Dated the ..... day of ..... 20 .....

To the above-named garnishee  
and judgment debtor.

*The Rules of the District Court (Cap 336H) Appendix A*

No. 73

**Garnishee order absolute where garnishee owes more than judgment debt**

(Order 49 rule 1)

20 ....., No. ....

IN THE DISTRICT COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION

NO. .... OF 20 .....  
(His/Her Honour Judge/Master ..... in chambers)

Between	A.B.	Judgment creditor
	AND	
	C.D.	Judgment debtor
	F.G.	Garnishee

Upon hearing the solicitors for the judgment creditor and the garnishee, and upon reading the affidavit of ..... filed herein, and the order to show cause made herein dated the ..... day of ..... 20 ....., whereby it was ordered that all debts due or accruing due from the above-named garnishee to the above-named judgment debtor should be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the District Court on the ..... day of ..... 20 ..... for the sum (*or* to answer an order made in the District Court dated the ..... day of ..... 20 ..... ordering payment by the said judgment debtor to the above-named judgment creditor of the sum) of \$ ..... (debt and \$ ..... costs) and interest at the judgment rate calculated from the date on which maintenance payment is due to the date of payment and surcharge at a rate to be decided by the Court, as referred to in Order 49, rule 2(ba)(i) and (ii) (together with the costs of the garnishee proceedings) on which judgment (*or* order) the sum of \$ ..... remained due and unpaid:

It is ordered that the said garnishee do forthwith pay to the said judgment creditor \$ ..... being so much of the debt from the said garnishee to the said judgment debtor as is sufficient to satisfy the said judgment debt, \$..... interest and \$..... surcharge, as referred to in Order 49, rule 2(ba)(i) and (ii) and costs, together with \$ ..... the costs of the garnishee proceedings, and that the said garnishee be at liberty to retain \$ ..... for his costs of this application out of the balance of the debt due from him to the judgment debtor.

Dated the ..... day of ..... 20 .....

*The Rules of the District Court (Cap 336H) Appendix A*

No. 74

**Garnishee order absolute where garnishee owes less than judgment debt**

(Order 49 rule 1)

20 ....., No. ....

IN THE DISTRICT COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION

NO. .... OF 20 .....  
(His/Her Honour Judge/Master ..... in chambers)

Between	A.B.	Judgment creditor
	AND	
	C.D.	Judgment debtor
	F.G.	Garnishee

Upon hearing the solicitors for the judgment creditor and the garnishee, and upon reading the affidavit of ..... filed herein, and the order to show cause made herein dated the ..... day of ..... 20 ....., whereby it was ordered that all debts due or accruing due from the above-named garnishee to the above-named judgment debtor should be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the District Court on the ..... day of ..... 20 ..... for the sum (*or* to answer an order made in the District Court dated the ..... day of ..... 20 ..... ordering payment by the said judgment debtor to the above-named judgment creditor of the sum) of \$ ..... (debt and \$ ..... costs) and interest at the judgment rate calculated from the date on which maintenance payment is due to the date of payment and surcharge at a rate to be decided by the Court, as referred to in Order 49, rule 2(ba)(i) and (ii) (together with the costs of the garnishee proceedings) on which judgment (*or* order) the sum of \$ ..... remained due and unpaid:

It is ordered that the said garnishee (after deducting therefrom \$ ..... for his costs of this application) do forthwith pay to the said judgment creditor \$ ..... the debt due from the said garnishee to the said judgment debtor and \$..... interest and \$..... surcharge, as referred to in Order 49, rule 2(ba)(i) and (ii). And that the sum of \$ ..... the costs of the judgment creditor of this application be added to the judgment debt and be retained out of the money recovered by the said judgment creditor under this order and in priority to the amount of the judgment debt.

Dated the ..... day of ..... 20 .....

*The Rules of the District Court (Cap 336H) Appendix A*

No. 75

**Charging order: notice to show cause**

(Order 50 rule 1)

IN THE DISTRICT COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION

NO. .... OF 20 .....  
(His/Her Honour Judge/Master ..... in chambers)

Between	A.B.	Plaintiff
	AND	
	C.D.	Defendant

Upon hearing the ..... and upon reading the affidavit of ..... filed herein the ..... day of ..... 20 ..... whereby it appears that by a judgment (or order) made in the District Court on the ..... day of ..... 20 ..... the defendant was ordered to pay to the plaintiff the sum of \$ ..... and \$ ..... costs on which judgment (or order) the sum of \$ ..... remains due and unpaid and that the defendant has a beneficial interest in the asset specified in the schedule hereto:

It is ordered by (His/Her Honour Judge/Master ..... ) that unless sufficient cause to the contrary be shown before (His/Her Honour Judge/Master ..... ) at the District Court of the Hong Kong Special Administrative Region, (Wan Chai Law Courts, Wan Chai Tower, No. 12, Harbour Road, Wan Chai, Hong Kong) on the ..... day of ..... 20 ....., at ..... o'clock in the ..... noon, the defendant's interest in the said asset shall, and it is ordered that in the meantime it do, stand charged with the payment of \$ ..... due on the said judgment (or order) and (interest thereon at the statutory rate) (interest at the judgment rate calculated from the date on which maintenance payment is due to the date of payment and surcharge at a rate to be decided by the Court, as referred to in Order 50, rule 1(3)(ba)(i) and (ii)) together with the costs of this application.

Dated the ..... day of ..... 20 .....

SCHEDULE

*(Describe with full particulars the relevant land, securities, funds or trust, stating, in relation to securities, their full title, the amount of them and the name in which they stand and whether the beneficial interest charged is in the securities only or in dividends or interest as well, and stating, in relation to funds in court, the number of the account).*

*The Rules of the District Court (Cap 336H) Appendix A*

No. 76

**Charging order absolute**

(Order 50 rule 3)

IN THE DISTRICT COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION

NO. .... OF 20 .....  
(His/Her Honour Judge/Master ..... in chambers)

Between	A.B.	Plaintiff
	AND	
	C.D.	Defendant

Upon hearing the ..... and upon reading the affidavits of ..... and ..... filed herein the ..... day of ..... 20 ..... and the order to show cause made herein on the ..... day of ..... 20 .....

It is ordered that the interest of the defendant C.D. in the asset specified in the schedule hereto stand charged with the payment of \$ ....., the amount due from the defendant to the plaintiff A.B. on a judgment (*or* order) of the District Court dated the ..... day of ..... 20 ....., and (interest thereon at the statutory rate) (\$..... interest and \$..... surcharge, as referred to in Order 50, rule 1(3)(ba)(i) and (ii)) together with \$ ..... the costs of this application, the said costs to be added to the judgment debt.

Dated the ..... day of ..... 20 .....

SCHEDULE

*(Describe with full particulars the relevant land, securities, funds or trust, stating, in relation to securities, their full title, the amount of them and the name in which they stand and whether the beneficial interest charged is in the securities only or in dividends or interest as well, and stating, in relation to funds in court, the number of the account).*

STOP NOTICE

To the (*describe the person having custody of the security*)

Take notice that, in relation to the securities specified in the schedule to this order, you may not, without notice to (*name of the plaintiff*) at (*his address for service*) register any transfer, or make any redemption payment, or, in the case of a unit trust, deal with the units, or, where dividends or interest are included in the order, pay any dividend or interest.

SCHEDULE

*The Rules of the District Court (Cap 336H) Appendix D*

20 ....., No. ....

No. 1

PRAECIPE FOR ISSUE OF JUDGMENT SUMMONS

(Order 90A rule 2)

IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

NO. .... OF 20 .....

{Matter  
{Judgment summons

Between A.B. Applicant  
AND  
C.D. Respondent

Judgment creditor's full name and address .....  
Judgment debtor's full name and address .....

I apply for the issue of a judgment summons against the above-named judgment debtor in respect of an order made in this Court [*or as the case may be*] on the ..... day of ..... 20 ....., for [*state nature of order*].

[*If it be the case* I intend to apply to the Court at the hearing of the proposed judgment summons for leave to enforce arrears which became due more than twelve months before the date of the proposed summons].

I am aware that, if I do not prove to the satisfaction of the Court at the hearing that the judgment debtor has, or has had since the date of the said order, the means to pay the sum in respect of which he has made default and that he has refused or neglected, or refuses or neglects, to pay it, I may have to pay the costs of the summons.

[*Add, except where judgment summons is to issue in the District Court in which order was made:* I certify that the said order has not been modified or discharged and that there is no order of commitment in this matter which remains unsatisfied.

I further certify that no writ of *fieri facias* has been issued to enforce the said order [*or, if a writ of fieri facias has been issued, give details and state what return to it has been made*].

Dated this ..... day of ..... 20 .....

[Solicitor for the] Judgment Creditor

Amount due and unpaid in respect of the order and costs .....	\$
<u>Interest payable in respect of the arrears of maintenance, at the judgment rate calculated from the date on which maintenance payment is due to the date of payment.....</u>	
<u>Surcharge payable in respect of the arrears of maintenance at a rate to be decided by the Court.....</u>	
Costs of this summons .....	\$
Travelling expenses to be paid to the judgment debtor .....	\$
	\$

*The Rules of the District Court (Cap 336H) Appendix D*

No. 2

JUDGMENT SUMMONS

(Order 90A rule 2)

IN THE DISTRICT COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION

NO. .... OF 20 .....

{Matter  
{Judgment summons

Between

A.B.

Applicant

AND

C.D.

Respondent

WHEREAS the above-named .....  
(hereinafter called "judgment creditor") obtained an order in this Court (*or as the case may be*) on  
the ..... day of ..... 20 ....., against ..... (hereinafter called  
"judgment debtor") for [state nature of order].

AND WHEREAS default has been made in respect of the sum of \$ ..... payable  
under the said order and the judgment creditor has required this judgment summons to be issued  
against you, the said judgment debtor.

YOU ARE HEREBY SUMMONED to appear personally before His/Her Honour  
Judge ..... sitting on the ..... day of ..... 20 ....., at ..... o'clock, in  
the ..... noon, at ..... Court situate at ....., to be examined on oath  
touching the means you have, or have had since the date of the said order, to pay the said sum in  
payment of which you have made default and also to show cause why you should not be committed to  
prison for such default.

[AND TAKE NOTICE that the judgment creditor intends to apply to the Court at the hearing of  
this judgment summons for leave to enforce arrears which became due more than twelve months  
before the date of this summons].

Dated this ..... day of ..... 20 .....

Amount due and unpaid in respect of the order and costs .....	\$
<u>Interest payable in respect of the arrears of maintenance, at the judgment rate calculated from the date on which maintenance payment is due to the date of payment.....</u>	
<u>Surcharge payable in respect of the arrears of maintenance at a rate to be decided by the Court.....</u>	
Costs of this summons .....	\$
Travelling expenses to be paid to the judgment debtor .....	\$
Sum on payment of which this summons will be discharged .....	\$

*Note:* If payment is made too late to prevent the judgment creditor's attendance on the day of hearing, you may be liable for further costs.

[The judgment creditor's solicitor is .....]