

3rd draft : 07.03.2003

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	(a) In the heading, by deleting " Section " and substituting " Sections ".
	(b) By deleting "is added" and substituting "are added".
	(c) In the proposed section 20A(1) - (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".
	(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".

(e) By deleting the proposed section 20A(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 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 dates 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 shall set out the grounds in the application."

(f) In the proposed section 20A, by deleting -
"(4) In determining"
and substituting -

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

(g) In the proposed section 20A, 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 the 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 the manner described in subsections (3), (4), (5), (6), (7), (8) and (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 accrued;
 - (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), then -

(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

surchage 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 vary or 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,
vary or 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
the order under section 63 of the District

Court Ordinance (Cap. 336).".

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- (a) In the heading, 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 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 dates 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 shall set out the grounds in the application.".

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

"(4) In determining"

and substituting -

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

(g) In the proposed section 9B, 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 the 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 the manner described in subsections (3), (4), (5), (6), (7), (8) and (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 accrued;

- (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), then -

(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 vary or 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,

vary or 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 the order under section 63 of the District Court Ordinance (Cap. 336).".

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- (a) In the heading, by deleting "**Section**" and substituting "**Sections**".
 - (b) In the proposed section 53A(1) -
 - (i) by adding "and section 53B" after "this section";
 - (ii) 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 dates 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 shall set out the grounds in the application."

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

"(4) In determining"

and substituting -

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

(f) In the proposed section 53A, 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 the 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 the manner described in subsections (3), (4), (5), (6), (7), (8) and (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 accrued;
- (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), then -

(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 vary or 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,

vary or 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 the order under section 63 of the District Court Ordinance (Cap. 336).".

- 11
- (a) In the heading, 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, to enforce arrears of maintenance which became due for more than 12 months, the interest under subsection (2) shall 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 dates 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.

(7) 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 shall set out the grounds in the application."

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

"(4) In determining"

and substituting -

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

(g) In the proposed section 28AA, 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 the 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), (4), (5), (6), (7), (8) and (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 accrued;
- (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), then -

(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 vary or 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,
vary or 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 to enforce arrears
of maintenance which became due for more
than 12 months, the surcharge under
subsection (1) shall 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 the order under section 63 of the District Court Ordinance (Cap. 336).".

New By adding after "CONSEQUENTIAL AMENDMENTS" -

"The Rules of the High Court

11A. Definitions

Order 1, rule 4(1) of the Rules of the High Court (Cap. 4 sub. leg.) is amended, by adding the following definition -

"judgment rate" (判定利率) means the rate of interest determined by the Chief Justice under section 49(1)(b) of the Ordinance;".

11B. Application for order

Order 49, rule 2 is amended, by adding after paragraph (b) -

"(ba) if the amount remaining unpaid under the

judgment or order is arrears of maintenance,
stating -

- (i) the interest¹ payable in respect of the arrears of maintenance that the judgment creditor is entitled to under section 20A(2) of the Guardianship of Minors Ordinance (Cap. 13), section 9B(2) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53A(2) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AA(2) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be;
- (ii) the surcharge payable in respect of the arrears of maintenance under section 20B(1) of the Guardianship of Minors Ordinance (Cap. 13), section 9C(1) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53B(1) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AB(1) of the Matrimonial

¹ I prefer to qualify "interest" in this way instead of defining "interest" to avoid confusion with Order 50, r1(3)(d) which refers to "interest to be charged" and forms 75 & 76 which refer to "interest thereon at statutory rate".

Proceedings and Property Ordinance
(Cap. 192), as the case may be;".

**11C. Order imposing a charge on
a beneficial interest**

Order 50, rule 1(3) is amended, by adding after
paragraph (b) -

"(ba) if the amount unpaid under the judgment or
order is arrears of maintenance, stating -

- (i) the interest payable in respect
of the arrears of maintenance
that the judgment creditor is
entitled to under section 20A(2)
of the Guardianship of Minors
Ordinance (Cap. 13), section
9B(2) of the Separation and
Maintenance Orders Ordinance
(Cap. 16), section 53A(2) of the
Matrimonial Causes Ordinance
(Cap. 179) or section 28AA(2) of
the Matrimonial Proceedings and
Property Ordinance (Cap. 192), as
the case may be; and
- (ii) the surcharge payable in respect
of the arrears of maintenance
under section 20B(1) of the
Guardianship of Minors Ordinance

(Cap. 13), section 9C(1) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53B(1) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AB(1) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be;" .

11D. Forms

Appendix A is amended -

(a) in Form No. 72 -

(i) in the 2nd paragraph, by adding "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)" after "(debt and \$..... costs)";

(ii) in the 3rd paragraph, by adding "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)"
after "(or order),";

(b) in Form No. 73 -

(i) in the 1st paragraph, by
adding "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)"
after "(debt and \$.....
costs)";

(ii) in the 2nd paragraph, by
adding ", \$..... interest and
\$..... surcharge, as referred
to in Order 49, rule
2(ba)(i) and (ii)" after
"judgment debt";

- (c) in Form No. 74, by adding "and \$..... interest and \$..... surcharge, as referred to in Order 49, rule 2(ba)(i) and (ii)" after "said judgment debtor";
- (d) in Form No. 75, by adding "(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))" after "(interest thereon at the statutory rate)".
- (e) in Form No. 76, by adding "(\$..... interest and \$..... surcharge, as referred to in Order 50, rule 1(3)(ba)(i) and (ii))" after "(interest thereon at the statutory rate)".

12 By deleting everything after "is" and substituting -
"amended -

- (a) in the definition of "related maintenance order", by repealing "20(1AA)", "9A(1AA)" and "28(1AA)" and substituting "2" in all places;
- (b) by adding -

" "judgment rate" (判定利率) means
the rate of interest
determined by the Chief
Justice under section
49(1)(b) of the High Court
Ordinance (Cap. 4) or section
50(1)(b) of the District
Court Ordinance (Cap. 336),
as the case may be;".

New By adding after clause 12 -

**"13. Requirements relating to
application made by
designated payee**

Rule 3(2)(f) is amended -

(a) in subparagraph (i), by repealing
"and" at the end;

(b) by adding -

"(iii) the interest payable in
respect of arrears of
maintenance that the
designated payee is entitled
to under section 20A(2) of
the Guardianship of Minors
Ordinance (Cap. 13), section
9B(2) of the Separation and
Maintenance Orders Ordinance
(Cap. 16), section 53A(2) of

the Matrimonial Causes Ordinance (Cap. 179) or section 28AA(2) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be; and

(iv) the surcharge² payable in respect of arrears of maintenance under section 20B(1) of the Guardianship of Minors Ordinance (Cap. 13), section 9C(1) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53B(1) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AB(1) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be;".

14. Schedule amended

Form 4 in the Schedule is amended -

- (a) by re-numbering "*1.", "*2." and "*3." as "*3.", "*4." and "*5.";

² Under rule 9 of A10 Rules, the court may vary the attachment order (including interest and surcharge) on the application of maintenance payer if he has grounds for not paying interest or surcharge.

- (b) by adding -
 - *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)";
- (c) in the 4th paragraph , by repealing "or 3" where it twice appears and substituting ", 3, 4 or 5";
- (d) in NOTE 2, by repealing "or 3" and substituting ", 3, 4 or 5".

Matrimonial Causes Rules

15. Judgment summons: general provisions

Rule 87 of the Matrimonial Causes Rules (Cap. 179 sub. leg.) is amended -

- (a) in paragraph (1), by adding -
 - "interest" (利息) means interest
in respect of arrears of
maintenance payable under
section 20A(2) of the
Guardianship of Minors
Ordinance (Cap. 13), section
9B(2) of the Separation and
Maintenance Orders Ordinance
(Cap. 16), section 53A(2) of
the Matrimonial Causes

Ordinance (Cap. 179) or
section 28AA(2) of the
Matrimonial Proceedings and
Property Ordinance (Cap.
192), as the case may be;

"judgment rate"³ (判定利率) means
the rate of interest
determined by the Chief
Justice under section
49(1)(b) of the High Court
Ordinance (Cap. 4) or section
50(1)(b) of the District
Court Ordinance (Cap. 336);

"surcharge" (附加費) means a
surcharge in respect of
arrears of maintenance
payable under section 20B(1)
of the Guardianship of Minors
Ordinance (Cap. 13), section
9C(1) of the Separation and
Maintenance Orders Ordinance
(Cap. 16), section 53B(1) of
the Matrimonial Causes
Ordinance (Cap. 179) or
section 28AB(1) of the

³ Modelled on clause 20A(1) of the Bill.

Matrimonial Proceedings and
Property Ordinance (Cap.
192), as the case may be;"

- (b) in paragraph (5)(a), by adding "the interest and surcharge payable," after "costs of the judgment summons,";
- (c) in paragraph (6), by adding "the interest and surcharge payable," after "costs of the judgment summons,";
- (d) by repealing paragraph (8)(a) and substituting -

"(a) all payments made after the date of the order of commitment by the judgment debtor to the judgment creditor in their respective capacities of judgment debtor and judgment creditor shall be deemed to be made in the following order in or towards the discharge of -

- (i) interest;
- (ii) surcharge;
- (iii) the costs of the judgment summons;

- (iv) any sums from time to time falling due under the maintenance order, with the sums discharged in the reversed chronological sequence⁴ of the dates on which payment is due (that is, the most recent arrears will be discharged first);
- (v) if the court makes an order in a judgment summons proceedings, the amount of the maintenance in arrears, whether in one amount or by instalments, payable by the

⁴ "chronological sequence" – see s.5(1)(a) Cap. 134A. "reversed chronological sequence" means last in first out. The most recent arrears will be discharged first.

judgment debtor
under the order;
and".

16. Special provisions as to judgment summons

Rule 88(2) is repealed and the following
substituted -

"(2) Witnesses may be summoned -

(a) to prove the means of the judgment
debtor; and

(b) to provide information relevant to
the court's decision on interest
and surcharge,

in the same manner as witnesses are summoned to
give evidence on the hearing of a cause and writs
of subpoena may for the purpose of subparagraph
(a) or (b) be issued out of the registry in which
the judgment summons was issued."

17. Forms

The Appendix is amended -

(a) in Form 22, after the item "Amount due
and unpaid in respect of the order and
costs....." by adding -

"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";

(b) in Form 23, after the item "Amount due
and unpaid in respect of order and
costs" by adding -

"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".

The Rules of the District Court

18. Definitions

Order 1, rule 4(1) of the Rules of the District
Court (Cap. 336 sub. leg.) is amended, by adding the

following definition -

"judgment rate" (判定利率) means the rate of interest determined by the Chief Justice under section 50(1)(b) of the⁵ Ordinance;".

19. Application for order

Order 49, rule 2 is amended, by adding after paragraph (b) -

"(ba)⁶ if the amount remaining unpaid under the judgment or order is arrears of maintenance, stating -

- (i) the interest payable in respect of the arrears of maintenance that the judgment creditor is entitled to under section 20A(2) of the Guardianship of Minors Ordinance (Cap. 13), section 9B(2) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53A(2) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AA(2) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be;

⁵ "The Ordinance" is defined in Order 1 rule 4 to mean the District Court Ordinance (Cap. 336).

⁶ Order 49 rule 4 provides that when the garnishee does not attend or does not dispute the debt due from him to the judgment debtor, the court may make an order absolute under rule 1 against the garnishee. This is equivalent to the effect of s.20B(3)(g) of the Bill.

and

- (ii) the surcharge payable in respect of the arrears of maintenance under section 20B(1) of the Guardianship of Minors Ordinance (Cap. 13), section 9C(1) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53B(1) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AB(1) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be;".

20. Order imposing a charge on a beneficial interest

Order 50, rule 1(3) is amended, by adding after paragraph (b) -

"(ba) if the amount unpaid under the judgment or order is arrears of maintenance, stating -

- (i) the interest payable in respect of the arrears of maintenance that the judgment creditor is entitled to under section 20A(2) of the Guardianship of Minors Ordinance (Cap. 13), section 9B(2) of the Separation and Maintenance Orders

Ordinance (Cap. 16), section 53A(2) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AA(2) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be; and

- (ii) the surcharge payable in respect of the arrears of maintenance under section 20B(1) of the Guardianship of Minors Ordinance (Cap. 13), section 9C(1) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53B(1) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AB(1) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be;" .

21. Judgment summons: general provisions

Order 90A, rule 2 is amended -

- (a) in paragraph (1) -

- (i) in the definition of "order" by repealing the full stop at the end and substituting

a semicolon;

(ii) by adding -

"interest" (利息) means

interest in respect of
arrears of maintenance
payable under section
20A(2) of the
Guardianship of Minors
Ordinance (Cap. 13),
section 9B(2) of the
Separation and
Maintenance Orders
Ordinance (Cap. 16),
section 53A(2) of the
Matrimonial Causes
Ordinance (Cap. 179) or
section 28AA(2) of the
Matrimonial Proceedings
and Property Ordinance
(Cap. 192), as the case
may be;

"surcharge" (附加費) means a

surcharge in respect of
arrears of maintenance
payable under section
20B(1) of the

Guardianship of Minors
Ordinance (Cap. 13),
section 9C(1) of the
Separation and
Maintenance Orders
Ordinance (Cap. 16),
section 53B(1) of the
Matrimonial Causes
Ordinance (Cap. 179) or
section 28AB(1) of the
Matrimonial Proceedings
and Property Ordinance
(Cap. 192), as the case
may be."

- (b) in paragraph (5)(a), by adding "the interest and surcharge payable," after "costs of the judgment summons,";
- (c) in paragraph (6), by adding "the interest and surcharge payable," after "costs of the judgment summons,";
- (d) by repealing paragraph (8)(a) and substituting -

"(a) all payments made after the date of the order of commitment by the judgment debtor to the judgment creditor in their respective

capacities of judgment
debtor and judgment creditor
shall be deemed to be made
in the following order in or
towards the discharge of -

- (i) interest;
- (ii) surcharge;
- (iii) the costs of the
judgment summons;
- (iv) any sums from time
to time falling due
under the
maintenance order,
with the sums
discharged in the
reversed
chronological
sequence⁷ of the
dates on which
payment is due
(that is, the most
recent arrears will
be discharged
first);
- (v) if the Court makes

⁷ "chronological sequence" – see s.5(1)(a) Cap. 134A. "reversed chronological sequence" means last in first out. The most recent arrears will be discharged first.

an order in a judgment summons proceedings, the amount of the maintenance in arrears, whether in one amount or by instalments, payable by the judgment debtor under the order; and".

22. Special provisions as to judgment summons

Order 90A, rule 3(2) is repealed and the following substituted -

"(2) Witnesses may be summoned -

(a) to prove the means of the judgment debtor; and

(b) to provide information relevant to the Court's decision on interest and surcharge,

in the same manner as witnesses are summoned to give evidence on the hearing of a cause, and writs of subpoena may for the purpose of subparagraph (a) or (b) be issued out of the registry in which the judgment summons was

issued.".

23. Forms

(1) Appendix A is amended -

(a) in Form No. 72-

(i) in the 2nd paragraph, by adding "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)" after (debt and "\$..... costs)";

(ii) in the 3rd paragraph, by adding "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)"

after "(or order),";

(b) in Form No. 73-

(i) in the 1st paragraph, by adding "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)" after "(debt and \$..... costs)";

(ii) in the 2nd paragraph, by adding ", \$..... interest and \$..... surcharge, as referred to in Order 49, rule 2(ba)(i) and (ii)" after "judgment debt";

(c) in Form No. 74, by adding "and \$..... interest and \$..... surcharge, as referred to in Order 49, rule 2(ba)(i) and (ii)" after "said judgment debtor";

(d) in Form No. 75, by adding "(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))" after "(interest thereon at the statutory rate)".

(e) in Form No. 76, by adding "(\$..... interest and \$..... surcharge, as referred to in Order 50, rule 1(3)(ba)(i) and (ii))" after "(interest thereon at the statutory rate)".

(2) Appendix D is amended -

(a) in Form No. 1, after the item "Amount due and unpaid in respect of the order and costs" by adding -

"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" ;

(b) in Form No. 2, after the item "Amount due and unpaid in respect of the order and costs" by adding -

"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" .