

4<sup>th</sup> draft : 20.03.2003

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>
1(1)	By deleting "Interest on Arrears of Maintenance Ordinance 2001" and substituting "Interest and Surcharge on Arrears of Maintenance Ordinance 2003".
4	(a) In the heading, by deleting " <b>Section</b> " and substituting " <b>Sections</b> ".
	(b) By deleting "is" and substituting "are".
	(c) In the proposed section 20A(1) -
	(i) by adding "and section 20B" after "this section";
	(ii) in the definition of "commencement date", by deleting "Interest on Arrears of Maintenance Ordinance 2001 ( of 2002)" and substituting "Interest and Surcharge on Arrears of

Maintenance Ordinance 2003 ( of  
2003)";

(iii) in the definition of "judgment  
debtor", by deleting the semicolon and  
substituting a full stop;

(iv) by deleting the definition of  
"judgment rate".

(d) In the proposed section 20A(2), by deleting  
everything after "order, the" and before  
"interest" and substituting "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(4), by deleting -

"(4) In determining"

and substituting -

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

(g) In the proposed section 20A, 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).".

(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 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) By deleting "is" and substituting "are".
  - (c) In the proposed section 9B(1) -
    - (i) by adding "and section 9C" after "this section";
    - (ii) in the definition of "commencement date", by deleting "Interest on Arrears of Maintenance Ordinance 2001 ( of 2002)" and substituting "Interest and Surcharge on Arrears of Maintenance Ordinance 2003 ( of

2003)";

(iii) in the definition of "judgment debtor", by deleting the semicolon and substituting a full stop;

(iv) by deleting the definition of "judgment rate".

(d) In the proposed section 9B(2), by deleting everything after "order, the" and before "interest" and substituting "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(4), by deleting -

"(4) In determining"

and substituting -

"(7) If an application is made under

subsection (6), in deciding".

(g) In the proposed section 9B, 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)".

(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).".

- 8 (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) in the definition of "commencement date", by deleting "Interest on Arrears of Maintenance Ordinance 2001 ( of 2002)" and substituting "Interest and Surcharge on Arrears of Maintenance Ordinance 2003 ( of 2003)";
  - (iii) by deleting the definition of "judgment rate".
- (c) In the proposed section 53A(2), by deleting everything after "order, the" and before "interest" and substituting "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(4), by deleting -  
"(4) In determining"  
and substituting -

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

(f) In the proposed section 53A, 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)."



(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" and substituting "are".
- (c) In the proposed section 28AA(1) -
- (i) by adding "and section 28AB" after "this section";
  - (ii) in the definition of "commencement date", by deleting "Interest on Arrears of Maintenance Ordinance 2001 ( of 2002)" and substituting "Interest and Surcharge on Arrears of Maintenance Ordinance 2003 ( of 2003)";
  - (iii) in the definition of "judgment debtor", by deleting the semicolon and substituting a full stop;
  - (iv) by deleting the definition of "judgment rate".
- (d) In the proposed section 28AA(2), by deleting everything after "order, the" and before "interest" and substituting "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(4), by deleting -  
"(4) In determining"  
and substituting -

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

(g) In the proposed section 28AA, 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).".

(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. A) is amended, 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 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 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;".

**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 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; 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 second 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 High Court, as referred to in Order 49, rule 2(ba)(i) and (ii)" after "costs)";
- (ii) in the third 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 High Court, as referred to in Order 49, rule 2(ba)(i) and (ii)" after "order),";

(b) in Form No. 73 -

(i) in the first 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 High Court, as referred to in Order 49, rule 2(ba)(i) and (ii)" after "costs)";

(ii) in the second 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 "debtor";

(d) in Form No. 75, in the second paragraph, 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 "rate)";

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

12 By deleting everything after "Rules" and substituting

-

"(Cap. 13 sub. leg. A) is 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 -

**"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 surcharge 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**

The Schedule is amended, in Form 4 -

- (a) by renumbering "\*1.", "\*2." and "\*3." as "\*3.", "\*4." and "\*5." respectively;
- (b) by adding -

\*1. The sum of \$..... being interest as referred to in rule 3(2)(f)(iii) of the Attachment of Income Order Rules (Cap. 13 sub. leg. A).

\*2. The sum of \$..... being surcharge as referred to in rule 3(2)(f)(iv) of the Attachment of Income Order Rules (Cap. 13 sub. leg. A).";

- (c) in the fourth 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. A) 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" (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 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  
sequence 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 on a judgment summons, the amount of the maintenance in arrears, whether in one amount or by instalments, payable by the 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, by adding after the entry relating to "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 ....." ;

- (b) in Form 23, by adding after the entry relating to "Amount due and unpaid in respect of 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 ....."

**The Rules of the District Court**

**18. Definitions**

Order 1, rule 4(1) of the Rules of the District Court (Cap. 336 sub. leg. H) is amended, by adding -  
"judgment rate" (判定利率) means the rate of  
interest determined by the Chief Justice  
under section 50(1)(b) of the Ordinance;"

**19. 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 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;".

**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 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; 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), 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 sequence 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 on a judgment summons, 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 second 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 District Court, as referred to in Order 49, rule 2(ba)(i) and (ii)" after "costs)";

(ii) in the third 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 District Court, as referred to in

Order 49, rule 2(ba)(i) and (ii)" after "order),";

(b) in Form No. 73 -

(i) in the first 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 District Court, as referred to in Order 49, rule 2(ba)(i) and (ii)" after "costs)";

(ii) in the second 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 "debtor";

(d) in Form No. 75, in the second paragraph, 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 District Court, as referred to in Order 50, rule 1(3)(ba)(i) and (ii))" after "rate)";

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

(2) Appendix D is amended -

(a) in Form No. 1, by adding after the entry relating to "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 .....\$";

(b) in Form No. 2, by adding after the entry relating to "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 .....\$". "