

**Bills Committee on Interest on Arrears of Maintenance Bill 2001  
Matters Arising from the Meeting on 21 March 2003**

**Hong Kong Bar Association's Response**

Please find at **Annex A** a copy of the letter dated 11 March 2003 from the Hong Kong Bar Association. The Association has no comments on our surcharge proposal.

**Surcharge Ceiling**

2. While we share Members' view that the surcharge ceiling should be of a sufficiently high level, if it is meant to be an effective deterrent against blameworthy conduct of defaulting repeatedly without reasonable excuse, we consider that a 100% surcharge ceiling too onerous. We appreciate that the surcharge ceiling in the legislation serves as a reference to the court in determining the surcharge required. However, it has also to be reasonable.

3. In deciding on the nature and amount of payment(s) to be provided in a maintenance order, the court has already taken into account a host of factors involved, including the financial position of the maintenance payer. Pitching the ceiling at too high a level may actually defeat a purpose of the surcharge, i.e. to compensate the payee for the distress, anxiety caused. We noted the comment of the Law Society of Hong Kong in their letter of 4 March that the surcharge "proposal together with the imposition of interest can lead to the payer "simply opting to disappear" as in the in the majority of cases there is simply insufficient money to pay maintenance".

4. As we have pointed out before, a 30% ceiling is already higher than the surcharge on late payment of tax and Government rent (5% for late payment not exceeding 6 months, and 10% thereafter). Furthermore, the payee would have already been compensated for his/her loss in interest on maintenance arrears to certain extent by the automatic interest at judgment rate.

5. We believe a 30% surcharge ceiling could strike a right balance between an adequate deterrent to the maintenance payer and an equitable compensation for distress, anxiety caused to the payee.

### **Committee Stage Amendments**

6. At **Annex B** is the fourth draft of the English and Chinese texts of the Committee Stage Amendments (“CSAs”) for Members’ consideration. As per Members’ request, **Annex C** is the mark-up version of the aforesaid CSAs, in both English and Chinese, where the changes made since the third draft are highlighted for Members’ ease of reference.

### **Computer Software for Calculation of Interest on Maintenance Arrears**

7. We have already undertaken in the meeting of 21 March to develop a software for calculation of interest on maintenance arrears for reference by all parties concerned. We are now discussing with the relevant departments on the way forward. We will report to the Bills Committee once a tentative implementation timetable is available.

*Home Affairs Bureau  
April 2003*



## HONG KONG BAR ASSOCIATION

Secretariat: LG2 Floor, High Court, 38 Queenway, Hong Kong  
 DX-180053 Queenway 1 E-mail: info@hkba.org Website: www.hkba.org  
 Telephone: 2869 0210 Fax: 2869 0189

Your Ref: HAB/CR 1/19/96 Pt. 5

11 March 2003

Mrs. Nancy Hui  
 Government Secretariat  
 Home Affairs Bureau  
 31<sup>st</sup> Floor, Southorn Centre  
 130 Hennessy Road  
 Wan Chai, Hong Kong

**BY FAX (2573 8461) & BY POST**

Dear Mrs. Hui,

### Committee Stage Amendments to the Interest on Arrears of Maintenance Bill 2001

Thank you for your letter dated 14 February 2003. The Bar Association does not wish to comment on the above draft Bill.

Yours sincerely,

Edward Chan, SC  
 Chairman

EC/mc

### 香港大律師公會

香港金鐘道三十八號高等法院低層二樓

#### Chairman 主席：

Mr. Edward Chan, S.C. 陳景生

#### Vice Chairmen 副主席：

Mr. Philip Dykes, S.C. 戴啟思

Mr. Ambrose Ho, S.C. 何潤強

#### Hon. Secretary & Treasurer

名譽秘書及財政：

Mr. Andrew Mak 麥業成

#### Administrator 行政幹事：

Mrs. Margaret W. Lam 林章曼儀

#### Members 執行委員會委員：

Mr. Andrew Bruce, S.C. 布思羅

Mr. Simon Westbrook, S.C. 霍仕博

Mr. Anselmo Reyes, S.C. 高安奉

Mr. Wong Yan Lung, S.C. 黃仁龍

Mr. Jat Sew Tong, S.C. 董紹唐

Mr. Lui Kit Ling 呂傑齡

Mr. Joseph Tse 謝若瑟

Mr. Andrew Li 李耀旭

Mr. Keith Yeung 楊志健

Ms. Lisa Wong 黃國瑛

Mr. Selwyn Yu 余承暉

Mr. Simon Leung 梁健文

Mr. P.Y. Lo 羅沛然

Mr. Lawrence Ng 吳港登

Mr. Richard Khaw 許偉強

Mr. Paul Harris 夏博麟

Mr. Hector Pun 潘 熙

Ms. Janine Cheung 張玉燕

Mr. José-Antonio Maurella 毛美禮

Mr. Donald Leo 雷德龍

4th draft: 19.03.2003

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).".

- 7
- (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 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 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 .....\$". "

~~3rd draft : 07.03.2003~~  
~~4th draft : 19.03.2003~~

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

Maintenance Ordinance 2003 ( of 2003)";

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

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

(d) In the proposed section 20A(2), by deleting everything after "~~with the maintenance~~ order, the" 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(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).".

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 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).".

- 7
- (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 "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;

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

(d) In the proposed section 9B(2), by deleting everything after "~~with the maintenance~~ order, ~~the~~" 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(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).".

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).".

- 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 "~~with the maintenance~~ order, the" 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(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)".

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 "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;

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

(d) In the proposed section 28AA(2), by deleting  
everything after "~~with the maintenance~~ order,  
the" 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(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).".

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. A) 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 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 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 ~~2<sup>nd</sup>~~-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

~~"(debt and \$..... costs)";~~

- (ii) in the ~~3<sup>rd</sup>~~ 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 "~~(or~~ order),";

(b) in Form No. 73 -

- (i) in the ~~1<sup>st</sup>~~ 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 "~~(debt and \$..... costs)";~~

- (ii) in the ~~2<sup>nd</sup>~~ 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 "~~said judgment~~ 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 "~~(interest thereon at the statutory 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 "~~(interest thereon at the statutory rate)~~".

12 By deleting everything after "~~isRules~~" and substituting -

~~"amended"~~ (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 ~~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 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 in the  
Schedule is amended -

- (a) by re-numbering "\*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 4<sup>th</sup> 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 ~~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".

**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 by adding~~  
after the entry relating to "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 eCourt ....." ;

(b) in Form 23, ~~after the item by adding~~  
~~after the entry relating to~~ "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  
eCourt ....." .

**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 ~~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 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 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 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 ~~in-on~~ 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 also for the purpose of  
subparagraph (a) or (b) also 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 ~~2<sup>nd</sup>~~ 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 ~~(debt and "\$.....~~  
"costs)";

(ii) in the ~~3<sup>rd</sup>~~ 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 ~~(or~~ order),";

(b) in Form No. 73-

(i) in the ~~1<sup>st</sup>~~ 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 "~~debt and \$.....~~ costs)";

(ii) in the ~~2<sup>nd</sup>~~-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 "~~said judgment 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  
~~"(interest thereon at the statutory~~  
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 "~~(interest thereon at the~~  
~~statutory~~ rate)".

(2) Appendix D is amended -

(a) in Form No. 1, ~~after the item by~~  
adding after the entry relating to  
"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 .....\$" ~~by adding-~~  
"Surcharge payable in respect of  
the arrears of maintenance at a  
rate to be decided by the  
Court .....\$" ~~by adding-~~

;

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

~~e~~Court .....\$"

~~.~~ " .