

Practitioners Affairs

FL0204/02/55668
HAB/CR/1/19/96 II

16 January, 2002

The Chairman
Bills Committee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road, Central, Hong Kong

Dear Sir/Madam,

Re: Legislative Council Brief for the Interest on Arrears of Maintenance Bill 2001

The Law Society's Family Law Committee was consulted by the Home Affairs Bureau on the policy of awarding interest on arrears of maintenance payment. The Law Society endorsed the policy and suggested it would be appropriate to adopt judgment rate to calculate interest on arrears.

After perusal of the Bill concern has been expressed by practitioners on the calculation of interest. I attach an example of the complications that practitioners, and indeed members of the Legal Aid Department, will face in calculating the interest on arrears of maintenance payment. The Law Society is of the opinion that additional provisions are required on apportionment of arrears of principal to assist with the calculation of principal and interest. This is obvious when the judgment debtor has a long history of either defaulting on payment, or habitually making irregular payment of maintenance. The Bill as currently drafted is not user-friendly. The computation of the interest on arrears will be a complicated and time consuming exercise with serious cost implications for the class of people the legislation is intended to benefit.

The Law Society would be willing to discuss this matter further.

Yours sincerely,

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Director of Practitioners Affairs
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cc Betty Chan, Legal Aid Department
Mr. Andrew Cheung, Home Affairs Bureau

Encl.



Interest on Arrears of Maintenance Bill 2001 ("the Bill")

The Law Society of Hong Kong's Family Law Committee has the following observations on the Bill as follows:

1. Arrears of Maintenance

Arrears of maintenance are not like other judgment debts as the amount of arrears may vary from time to time. These payments are usually paid on a monthly basis and so when arrears occur any payment by the judgment debtor will require an apportionment exercise. The payment will have to be apportioned to repay the arrears on the outstanding maintenance first and then any surplus will be apportioned to subsequent maintenance outstanding. It should be acknowledged that many maintenance payers make irregular payments of maintenance.

The Bill does not contain any provision for apportionment of arrears, only the formula to calculate the interest on the arrears. The following example will serve as an illustration of the difficulties private practitioners and the staff of the Legal Aid Department will face when attempting to calculate interest on arrears of maintenance.

The example is hypothetical but in fact is a rather typical situation assuming that the provisions in the current Bill has been in force at all material times:

- i) The Maintenance Payer (JD) was ordered to pay the Maintenance Payee (JC) periodical payments at the rate of \$5000 per month commencing from 1.6.2000 and thereafter payment on the 1st day of each and every succeeding month.**
- ii) JD has failed to make adequate payments since the date of the Order. A Judgment Summons was issued against JD and was heard on 25.2.2001. Payments made by JD from 1.6.2000 to 25.2.2001 were as follows:**

Dates of payment	13.6.2000	\$3000
	26.8.2000	\$2000
	9.10.2000	\$8000
	23.12.2000	\$2000
Total amount paid:		\$15,000

Amount due:	\$45,000
Total arrears	\$30,000
Interest:	?

- iii) Upon hearing the Judgment Summons on 25.2.2001 the Judge made a committal order against JD, and an interest order in favour of the JC.

The committal order was suspended on condition that:

JD settle the arrears of periodical payments together with interest thereon at judgement rate from their respective due dates of payment. The JD was also ordered to pay fixed costs for the enforcement proceedings in the sum of \$5000. The arrears were to be paid by monthly instalments of \$2000 each commencing from 1.3.2001 and thereafter payment on the 1st day of each and every succeeding month until full payment.

The Judge reminded JD that the \$2000 per month was to be paid by him on top on the recurring maintenance of \$5000 per month due under the original maintenance order.

- iv) JD made the following payments during the period from 1.3.2001 to 1.2.2002:

Dates and amount of payment:

1.3.2001	\$7000
3.4.2001	\$5000
6.5.2001	\$7500
3.7.2001	\$8000
1.9.2001	\$3000
15.10.2001	\$2000

- v) Questions for consideration:
- What is the amount of arrears of maintenance and interest payable by JD as at 25.2.2001?
 - What is the amount of arrears of maintenance and interest owing by JD as at 1.2.2002?

2. The Law Society considers that further consideration is required on the practical problem of apportionment which the current Bill has failed to address.

The Law Society of Hong Kong
 Family Law Committee
 15 January 2002
 55697