

C058-E

A BILL To Amend the Guardianship of Minors Ordinance, the Separation and Maintenance Orders Ordinance, the Matrimonial Causes Ordinance and the Matrimonial Proceedings and Property Ordinance.

Enacted by the Legislative Council.

PART I

Preliminary

1. Short title and commencement

(1) This Ordinance may be cited as the Interest on Arrears of Maintenance Ordinance 2001.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Home Affairs by notice published in the Gazette.

PART II

Guardianship of Minors Ordinance

2. Interpretation

Section 2 of the Guardianship of Minors Ordinance (Cap. 13) is amended by adding---

"maintenance order" (贍養令) means an order made---

(a) under section 10(2)(b), 11(1)(b)(ii), 12(b)(ii) or 13(2)(b), (3)(a) or (4) for periodical payments; or

(b) under section 10(2)(c), 11(1)(b)(iii) or 12(b)(iii) for secured periodical payments; or

(c) under section 10(2)(a), 11(1)(b)(i), 12(b)(i) or 13(2)(a) for payment of a lump sum;".

3. Attachment of income to satisfy order

Section 20(1AA) is amended by repealing the definition of "maintenance order".

4. Section added

The following is added in Part IV---

"20A. Interest on arrears of maintenance

(1) In this section---

"commencement date" (生效日期) means the date on which the Interest on Arrears of Maintenance Ordinance 2001 (of 2002) comes into operation;

"judgment creditor" (判定債權人) means a person entitled to enforce a maintenance order;

"judgment debtor" (判定債務人) means a person liable under a maintenance order;

"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.

(2) Where a maintenance order has been made against a judgment debtor, and the judgment debtor fails to make full and punctual payment in compliance with the maintenance order, the court may, on an application made by the judgment creditor in any proceedings instituted on or after the commencement date for enforcing the maintenance order, require the judgment debtor to pay interest in respect of arrears of maintenance which accrue on or after the commencement date.

(3) The amount of interest for the purpose of subsection (2) shall not exceed the total of the amounts which are calculated in accordance with the following formula---

$$\frac{A \times B \times C}{365}$$

where---

A represents the amount unpaid in respect of each periodical payment, each secured periodical payment or payment of a lump sum, as the case may be, under the maintenance order; and

B represents the judgment rate prevailing on the due day for payment specified by the maintenance order; and

C represents the number of days, from the day following the due day for payment specified by the maintenance order to the day of actual payment of the amount unpaid.

(4) In determining whether to require the judgment debtor to pay interest and, if so, the amount of interest, the court shall take into account all the circumstances of the case, including (but not limited to) the following---

(a) whether the judgment debtor has a reasonable excuse for his failure to comply with the maintenance order;

(b) whether the judgment debtor has evaded service of court documents;

(c) the judgment debtor's past record and conduct in connection with the making of maintenance payments to the judgment creditor pursuant to the maintenance order or an undertaking in any proceedings;

(d) whether the judgment debtor has given the judgment creditor a reasonable explanation for his failure to comply with the maintenance order; and

(e) the judgment debtor's ability to pay."

PART III

Separation and Maintenance Orders Ordinance

5. Interpretation

Section 2 of the Separation and Maintenance Orders Ordinance (Cap. 16) is amended by adding---

"maintenance order" (贍養令) means an order made---

- (a) under section 5(1)(c) or (d) or 9(1) for periodical payments; or
- (b) under section 5(1)(c) or (d) for payment of a lump sum;"

6. Attachment of income to satisfy order

Section 9A(1AA) is amended by repealing the definition of "maintenance order".

7. Section added

The following is added---

"9B. Interest on arrears of maintenance

(1) In this section---

"commencement date" (生效日期) means the date on which the Interest on Arrears of Maintenance Ordinance 2001 (of 2002) comes into operation;

"judgment creditor" (判定債權人) means a person entitled to enforce a maintenance order;

"judgment debtor" (判定債務人) means a person liable under a maintenance order;

"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.

(2) Where a maintenance order has been made against a judgment debtor, and the judgment debtor fails to make full and punctual payment in compliance with the maintenance order, the court may, on an application made by the judgment creditor in any proceedings instituted on or after the commencement date for enforcing the maintenance order, require the judgment debtor to pay interest in respect of arrears of maintenance which accrue on or after the commencement date.

(3) The amount of interest for the purpose of subsection (2) shall not exceed the total of the amounts which are calculated in accordance with the following formula---

$$A \times B \times C$$

365

where---

A represents the amount unpaid in respect of each periodical payment or payment of a lump sum, as the case may be, under the maintenance order; and

B represents the judgment rate prevailing on the due day for payment specified by the maintenance order; and

C represents the number of days, from the day following the due day for payment specified by the maintenance order to the day of actual payment of the amount unpaid.

(4) In determining whether to require the judgment debtor to pay interest and, if so, the amount of interest, the court shall take into account all the circumstances

of the case, including (but not limited to) the following---

- (a) whether the judgment debtor has a reasonable excuse for his failure to comply with the maintenance order;
- (b) whether the judgment debtor has evaded service of court documents;
- (c) the judgment debtor's past record and conduct in connection with the making of maintenance payments to the judgment creditor pursuant to the maintenance order or an undertaking in any proceedings;
- (d) whether the judgment debtor has given the judgment creditor a reasonable explanation for his failure to comply with the maintenance order; and
- (e) the judgment debtor's ability to pay."

PART IV

Matrimonial Causes Ordinance

8. Section added

The Matrimonial Causes Ordinance (Cap. 179) is amended by adding---

"53A. Interest on arrears of maintenance

(1) In this section---

"commencement date" (生效日期) means the date on which the Interest on Arrears of Maintenance Ordinance 2001 (of 2002) comes into operation;

"judgment creditor" (判定債權人) means a person entitled to enforce a maintenance order;

"judgment debtor" (判定債務人) means a person liable under a maintenance order;

"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;

"maintenance order" (贍養令) means an order made in the matrimonial cause for the payment of money.

(2) Where a maintenance order has been made against a judgment debtor, and the judgment debtor fails to make full and punctual payment in compliance with the maintenance order, the court may, on an application made by the judgment creditor in any proceedings instituted on or after the commencement date for enforcing the maintenance order, require the judgment debtor to pay interest in respect of arrears of maintenance which accrue on or after the commencement date.

(3) The amount of interest for the purpose of subsection (2) shall not exceed the total of the amounts which are calculated in accordance with the following formula---

$A \times B \times C$

where---

A represents the amount unpaid in respect of each periodical payment, each secured periodical payment or payment of a lump sum, as the case may be, under the maintenance order; and

B represents the judgment rate prevailing on the due day for payment specified by the maintenance order; and

C represents the number of days, from the day following the due day for payment specified by the maintenance order to the day of actual payment of the amount unpaid.

(4) In determining whether to require the judgment debtor to pay interest and, if so, the amount of interest, the court shall take into account all the circumstances of the case, including (but not limited to) the following---

(a) whether the judgment debtor has a reasonable excuse for his failure to comply with the maintenance order;

(b) whether the judgment debtor has evaded service of court documents;

(c) the judgment debtor's past record and conduct in connection with the making of maintenance payments to the judgment creditor pursuant to the maintenance order or an undertaking in any proceedings;

(d) whether the judgment debtor has given the judgment creditor a reasonable explanation for his failure to comply with the maintenance order; and

(e) the judgment debtor's ability to pay."

PART V

Matrimonial Proceedings and Property Ordinance

9. Interpretation

Section 2(1) of the Matrimonial Proceedings and Property Ordinance (Cap. 192) is amended by adding---

"maintenance order" (贍養令) means an order made---

(a) under section 4(1)(a), 5(2)(a), 8(5) or (6)(a) or (d) or 15(4) or (5) for periodical payments; or

(b) under section 4(1)(b), 5(2)(b), 8(6)(b) or (e) or 15(4) or (5) for secured periodical payments; or

(c) under section 4(1)(c), 5(2)(c) or 8(6)(c) or (f) for payment of a lump sum;".

10. Attachment of income to satisfy order

Section 28(1AA) is amended by repealing the definition of "maintenance order".

11. Section added

The following is added before section 28A---

"28AA. Interest on arrears of maintenance

(1) In this section---

"commencement date" (生效日期) means the date on which the Interest on Arrears of

Maintenance Ordinance 2001 (of 2002) comes into operation;
"judgment creditor" (判定債權人) means a person entitled to enforce a maintenance order;
"judgment debtor" (判定債務人) means a person liable under a maintenance order;
"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.

(2) Where a maintenance order has been made against a judgment debtor, and the judgment debtor fails to make full and punctual payment in compliance with the maintenance order, the court may, on an application made by the judgment creditor in any proceedings instituted on or after the commencement date for enforcing the maintenance order, require the judgment debtor to pay interest in respect of arrears of maintenance which accrue on or after the commencement date.

(3) The amount of interest for the purpose of subsection (2) shall not exceed the total of the amounts which are calculated in accordance with the following formula---

$A \times B \times C$

365

where---

A represents the amount unpaid in respect of each periodical payment, each secured periodical payment or payment of a lump sum, as the case may be, under the maintenance order; and

B represents the judgment rate prevailing on the due day for payment specified by the maintenance order; and

C represents the number of days, from the day following the due day for payment specified by the maintenance order to the day of actual payment of the amount unpaid.

(4) In determining whether to require the judgment debtor to pay interest and, if so, the amount of interest, the court shall take into account all the circumstances of the case, including (but not limited to) the following---

(a) whether the judgment debtor has a reasonable excuse for his failure to comply with the maintenance order;

(b) whether the judgment debtor has evaded service of court documents;

(c) the judgment debtor's past record and conduct in connection with the making of maintenance payments to the judgment creditor pursuant to the maintenance order or an undertaking in any proceedings;

(d) whether the judgment debtor has given the judgment creditor a reasonable

explanation for his failure to comply with the maintenance order; and
(e) the judgment debtor's ability to pay.".

PART VI

Consequential Amendments

Attachment of Income Order Rules

12. Interpretation

Rule 2 of the Attachment of Income Order Rules (Cap. 13 sub. leg.) is amended, in the definition of "related maintenance order", by repealing "20(1AA)", "9A(1AA)" and "28(1AA)" and substituting "2" in all places.

Explanatory Memorandum

The purposes of this Bill are---

- (a) to amend the Guardianship of Minors Ordinance (Cap. 13), the Separation and Maintenance Orders Ordinance (Cap. 16) and the Matrimonial Proceedings and Property Ordinance (Cap. 192) so that the court may make, in respect of a lump sum maintenance order, an attachment of income order regardless of whether the lump sum is to be paid in one amount or by instalments (clauses 2, 3, 5, 6, 9 and 10); and
- (b) to amend the Guardianship of Minors Ordinance, the Separation and Maintenance Orders Ordinance, the Matrimonial Causes Ordinance (Cap. 179) and the Matrimonial Proceedings and Property Ordinance in empowering the court, in case a judgment debtor defaults to pay maintenance specified by a maintenance order, may require him to pay interest in respect of the arrears which accrue on or after the commencement date of this Ordinance (clauses 4, 7, 8 and 11).