

## **LEGISLATIVE COUNCIL BRIEF**

### **ATTACHMENT OF INCOME ORDER (AMENDMENT) RULES 2001**

#### **INTRODUCTION**

This brief explains the Attachment of Income Order (Amendment) Rules 2001 at **Annex** (Amendment Rules), made by the Chief Justice to provide for the court procedures to implement the Attachment of Income Order (Amendment) Ordinance (Amendment Ordinance).

#### **BACKGROUND**

2. An attachment of income order (AIO) is a court order that requires an “income source” (e.g. an employer) to deduct maintenance payment from a maintenance payer’s income and pay the deductions direct to the maintenance payee. An AIO may be made under section 20 of the Guardianship of Minors Ordinance (Chapter 13 of the Laws of Hong Kong), section 9A of the Separation and Maintenance Orders Ordinance (Chapter 16) and section 28 of the Matrimonial Proceedings and Property Ordinance (Chapter 192). Pursuant to sub-section 6 of each of the above-mentioned sections, the Chief Justice made the Attachment of Income Order Rules (AIO Rules) to provide for the relevant court procedures.

3. The Amendment Ordinance was gazetted on 13 July 2001. It provides for the following –

- (a) relaxing the circumstances in which an AIO may be issued; and
- (b) empowering the court to dispense with or relax any procedure or abridge any time limit specified in the rules under certain

circumstances.

4. To provide for the changes to court procedures necessitated by the Amendment Ordinance, the Chief Justice has made the Amendment Rules, which will be gazetted on 7 December 2001.

## **THE AMENDMENT RULES**

### **Procedures and information to be furnished**

5. At present, the court may make an AIO on the application of a maintenance payee. Under the Amendment Ordinance, an AIO can also be made on the application of a maintenance payer, on the joint application of the maintenance payer and payee and on the court's own motion. The Amendment Ordinance also provides for an additional circumstance in which the court can make an AIO, i.e. the court has reasonable grounds to believe that the maintenance payer will not make full and punctual payment. The changes necessitate amendments to the relevant procedures and information to be furnished to the court. They are provided for in Sections 4, 5, 6, 11(a) and 16(1), (2), (4) and (5) of the Amendment Rules.

### **Court to make an AIO in the same hearing when a maintenance order is made**

6. Under the Amendment Ordinance, the court may make an AIO in the same hearing in which a maintenance order is made. Sections 7 and 16(6) of the Amendment Rules provide for the procedures to adopt when one party seeks or both parties seek an AIO to be made in the same hearing in which a maintenance order is made. If the court intends to make an AIO in such a situation, it will have to exercise its power to do so on its own motion. The reasons are as follows –

- (a) under the relevant primary legislation, an application for AIO has to be made either by the “maintenance payer”, “designated payee” or both;
- (b) until a maintenance order has been made, there does not exist a

“maintenance payer” or “designated payee” as defined in the primary legislation; and

- (c) if, after a maintenance order has been made, the maintenance payer and designated payee apply for an AIO, the application has to be made by summons or originating summons. As it takes time to process the application, the court will not be able to make the AIO in the same hearing in which the maintenance order is made.

**“Designated payee”, “specified payee” and “relevant person”**

7. The Amendment Ordinance introduces the term “specified payee” to denote the payee named in an AIO. While the “specified payee” will normally be the “designated payee” (the payee named in a maintenance order), there can be cases where the “specified payee” is not the “designated payee”. An example is when the court orders the payment of an AIO to be made to the Director of Legal Aid pursuant to Section 18A of the Legal Aid Ordinance.

8. As a result, some of the references to “designated payee” in the AIO Rules will have to be replaced by “specified payee” or “relevant person” (Section 2(b) of the Amendment Rules). The replacements are guided by the following principles –

- (a) payments under an AIO must be made to the “specified payee”. Also, an income source is required to deal with the “specified payee” only, because he may or may not have the address of the “designated payee” – hence, sections 9, 10(a) and 16(7)(b) and (9)(b) of the Amendment Rules;
- (b) an application for variation or discharge of an AIO should be made by the “designated payee” but not the “specified payee” because the purpose of an AIO is to protect the interests of the designated payee; and
- (c) for matters that may affect the interests of both “designated payee” and “specified payee”, the existing references to “designated payee” will be changed to “relevant person” – hence, sections 8,

10(b), 11(b), 12 and 13(b)(i) and (d) of the Amendment Rules.

### **The maintenance payer's obligation to notify changes in employment and apply for a new AIO**

9. In response to a suggestion made by the Legislative Council (LegCo) Bills Committee on the Amendment Ordinance, the Administration has agreed that where an AIO has to be discharged as a result of the maintenance payer changing his employment, the onus should be on him to notify the designated payee of the employment change and to apply for a new AIO (or alternatively to explain why he does not wish to make such an application). The proposed arrangement is provided for in Sections 10(c) and 13(d) of the Amendment Rules.

### **The court to dispense with procedure and abridge time limit**

10. The Amendment Ordinance empowers the court to dispense with or relax any procedure or abridge any time limit specified in the rules under certain circumstances. The flexibility is provided for in section 15 of the Amendment Rules.

## **PUBLIC CONSULTATION**

11. The Hong Kong Bar Association and Law Society of Hong Kong have been consulted on the Amendment Rules. The former has no comment. The latter commented on two technical points, on which the Home Affairs Bureau has clarified to the Society.

## **BASIC LAW IMPLICATIONS**

12. The Department of Justice advises that the Amendment Rules are consistent with the Basic Law.

## **HUMAN RIGHTS IMPLICATIONS**

13. The Department of Justice advises that the Amendment Rules are consistent with the human rights provisions of the Basic Law. This legislative exercise is a positive step towards the implementation of

Article 27(4) of the United Nations Convention on the Rights of the Child, which requires parties to the Convention to “take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child”.

### **BINDING EFFECTS OF THE LEGISLATION**

14. The Amendment Rules will not affect the current binding effect of the three Ordinances mentioned in para.2 above.

### **FINANCIAL AND STAFFING IMPLICATIONS**

15. By making it easier for some maintenance payees to collect maintenance, the Amendment Rules could possibly reduce the number of single-parent families having to apply for Comprehensive Social Security Assistance owing to failure in receiving maintenance payments. However, the number of such cases cannot be estimated at this stage.

16. There are no other financial or staffing implications.

### **LEGISLATIVE TIMETABLE**

17. The Amendment Rules will be tabled in the LegCo on 12 December 2001. After negative vetting by the LegCo, the Secretary for Home Affairs will publish in the Gazette a commencement notice to bring the Amendment Rules and Amendment Ordinance into effect.

### **PUBLICITY**

18. A press release will be issued and a spokesman will be available to answer enquiries.

### **ENQUIRY**

19. Enquiries on this brief should be directed to Mr Ng Hon-wah, Principal Assistant Secretary for Home Affairs, at telephone number 2835 1383.

**Home Affairs Bureau  
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