

LN260e

Attachment of Income Order

(Amendment) Rules 2001

(Made under section 20(6) of the Guardianship of Minors

Ordinance (Cap. 13), section 9A(6) of the Separation

and Maintenance Orders Ordinance (Cap. 16)

and section 28(6) of the Matrimonial

Proceedings and Property

Ordinance (Cap. 192))

1. Commencement

These Rules shall come into operation on a day to be appointed by the Secretary for Home Affairs by notice published in the Gazette.

2. Interpretation

Rule 2 of the Attachment of Income Order Rules (Cap. 13 sub. leg.) is amended---

(a) by repealing the definitions of "designated payee" and "maintenance payer";

(b) by adding---

"relevant person" (有關人士) means---

(a) the designated payee; or

(b) if the specified payee is not the designated payee, both the designated payee and specified payee;".

3. Rule added

The following is added---

"2A. Application for attachment order to be made by summons or originating summons

An application for an attachment order shall be made by a summons or an originating summons."

4. Requirements relating to application

made by designated payee

Rule 3 is amended---

(a) by repealing subrule (1) and substituting---

"(1) This rule applies to an application for an attachment order by the designated payee.";

(b) by repealing subrule (2)(f) and (g) and substituting---

"(f) if the application is made on the ground that the maintenance payer has defaulted in payment---

(i) that the maintenance payer has defaulted in payment and that, to the honest belief of the designated payee, there is no reasonable excuse for that default; and

(ii) particulars of the default, including the amount in default and the arrears accrued at the date of the affidavit;

(g) if the application is made on the ground that the maintenance payer will not make full and punctual payment---

(i) that, to the honest belief of the designated payee, the maintenance payer will not make full and punctual payment in compliance with the related maintenance order; and

(ii) the reasons for such a belief;".

5. Rules added

The following are added---

"3A. Requirements relating to joint application made by maintenance payer and designated payee

(1) This rule applies to an application for an attachment order jointly by the maintenance payer and the designated payee.

(2) The application shall be supported by an affidavit made jointly by the applicants stating---

(a) the name and address of each applicant;

(b) particulars of the related maintenance order;

(c) the name and address of the income source;

(d) the nature of the income to be attached; and

(e) the terms of the attachment order that the applicants invite the court to make.

(3) The application shall be accompanied by---

(a) a statement of means in Form 1 in the Schedule, signed by the maintenance payer; and

(b) subject to subrule (4), a statement of verification completed and signed by the income source, or if there is more than one income source, each income source, in the same form as that attached to Form 3 in the Schedule.

(4) If the statement of verification referred to in subrule (3)(b) is not available, the application shall be accompanied by a statement of the maintenance payer setting out the efforts made to obtain the statement of verification and the reasons for it not being available.

3B. Requirements relating to application

made by maintenance payer

(1) This rule applies to an application for an attachment order by the maintenance payer.

(2) The application shall be supported by an affidavit made by the maintenance payer stating---

(a) the name and address of the maintenance payer and the name and address of the

designated payee;

(b) particulars of the related maintenance order;

(c) the name and address of the income source;

(d) the nature of the income to be attached;

(e) the terms of the attachment order that the maintenance payer invites the court to make; and

(f) the grounds for the application.

(3) The application shall be accompanied by---

(a) a statement of means in Form 1 in the Schedule, signed by the maintenance payer; and

(b) subject to subrule (4), a statement of verification completed and signed by the income source or, if there is more than one income source, each income source, in the same form as that attached to Form 3 in the Schedule.

(4) If the statement of verification referred to in subrule (3)(b) is not available, the application shall be accompanied by a statement of the maintenance payer setting out the efforts made to obtain the statement of verification and the reasons for it not being available.

(5) The maintenance payer shall, as soon as reasonably practicable after making the application, serve on the designated payee a copy of the summons and affidavit together with a copy of---

(a) the statements referred to in subrule (3)(a) and (b); or

(b) the statement referred to in subrule (3)(a) and the statement on the efforts made to obtain the statement of verification referred to in subrule (4).

3C. Making of attachment order by

court on its own motion

(1) Where the court intends to make an attachment order on its own motion, the court may make an order in Form 2A in the Schedule directing the maintenance payer---

(a) to file in court, within the period specified in the order, a statement of means in Form 1 in the Schedule signed by him; and

(b) to serve a copy of the statement on the designated payee as soon as reasonably practicable after filing it.

(2) The court may, before making an attachment order, order the maintenance payer to provide information which the court considers necessary."

6. Verification of signed statement

Rule 5(1) is repealed and the following substituted---

"(1) Where the court---

(a) receives the signed statement of means filed under rule 3C or 4; or

(b) receives a statement on the efforts made to obtain the statement of verification

referred to in rule 3A(4) or 3B(4),

the court shall make an order in Form 3 in the Schedule requiring the annex to the signed statement of means to be verified by the income source of the maintenance payer.

(1A) The court shall serve the order on the income source, or if there is more than one income source, serve a separate order accompanied by the relevant annex to the signed statement of means on each income source."

7. Rule added

The following is added---

"5A. Making of attachment order in the same hearing in which related maintenance order is made

(1) The following provision applies where one party seeks or both parties jointly seek an attachment order to be made in the same hearing in which the related maintenance order is made---

(a) the party or parties shall file in court a notice of intention to seek an attachment order to be made in the same hearing in which the related maintenance order is made;

(b) a notice under paragraph (a) shall be in Form 3A in the Schedule and may be filed at any stage of the proceedings before a related maintenance order is made;

(c) if the notice is filed by one party only, he shall serve a copy of the notice on the other party immediately after it is filed in court;

(d) after the related maintenance order is made, the court may---

(i) exercise its discretion to make an attachment order on its own motion in the same hearing in which the maintenance order is made; or

(ii) adjourn the hearing and direct the parties to supply further information.

(2) In this rule, "party" (一方) means a person who will be the designated payee or the maintenance payer on the making of a related maintenance order."

8. Issue of attachment order

Rule 6(4) is repealed and the following substituted---

"(4) The designated payee shall serve a sealed copy of the attachment order, either personally or by registered post on---

(a) the maintenance payer;

(b) the income source to whom the attachment order is directed; and

(c) if the specified payee is not the designated payee, the specified payee."

9. Compliance with order by income source

Rule 7(2)(b), (3)(i) and (ii) and (4) is amended by repealing "designated" wherever it appears and substituting "specified".

10. Obligations of maintenance payer

Rule 8 is amended---

(a) in subrule (1), by repealing "designated" where it secondly appears and substituting "specified";

(b) in subrule (3), by repealing "designated payee" and substituting "relevant person";

(c) by adding---

"(4) Where an attachment order is in force and the maintenance payer ceases to receive any income from the income source to whom the order is directed ("the original income source"), he shall---

(a) if he has a new income source, within 21 days after he ceases to receive any income from the original income source---

(i) notify the court and the relevant person in writing of the cessation, and state in the notice the name and address of the new income source;

(ii) subject to subrule (6), apply in accordance with rule 3B for a new attachment order to be made in respect of the new income source; and

(iii) serve on the relevant person the documents referred to in rule 3B(5);

(b) if he has no new income source, within 21 days after he ceases to receive any income from the original income source, notify the court and the relevant person in writing of the cessation, and state in the notice that he does not have any income capable of being attached.

(5) Notwithstanding subrule (4)(b), if a maintenance payer acquires any new income capable of being attached, he shall, within 21 days after the acquisition---

(a) notify the court and the relevant person in writing of such fact and state in the notice the name and address of the new income source;

(b) subject to subrule (6), apply in accordance with rule 3B for a new attachment order to be made in respect of the new income source; and

(c) serve on the relevant person the documents referred to in rule 3B(5).

(6) A maintenance payer who does not apply under subrule (4)(a)(ii) or (5)(b) for a new attachment order shall, within the period of 21 days referred to in subrule (4)(a) or (5), notify the court and the relevant person in writing and state in the notice that he does not wish to make such an application and the relevant reason."

11. Variation of attachment order

Rule 9 is amended---

(a) in subrule (1), by adding "on its own motion or upon application by an income source or" after "court may,";

(b) in subrule (3)(a), by repealing "designated payee" and substituting "relevant person".

12. Discharge of attachment order

Rule 10(3)(a) is amended by repealing "designated payee" and substituting "relevant person".

13. Offences and penalty

Rule 11 is amended---

(a) in subrule (1)(a), by adding "3C," after "rule";

(b) in subrule (1)(b)---

(i) by repealing "designated payee" and substituting "relevant person";

(ii) by repealing "or";

(c) in subrule (1)(c)---

(i) by repealing "4, 8(3)" and substituting "3C, 4, 8(3), (4), (5) or (6)";

(ii) by repealing the comma at the end and substituting a semicolon;

(d) in subrule (1), by adding---

"(d) fails, without reasonable excuse, to comply with rule 8(4)(a) or (5), unless he complies with rule 8(6); or

(e) fails, without reasonable excuse, to comply with rule 8(4)(b),".

14. Service of documents

Rule 12 is amended---

(a) by repealing "Supreme" and substituting "High";

(b) by repealing "District Court Civil Procedure (General) Rules" and substituting "the Rules of the District Court".

15. Rule added

The following is added---

"13. Dispensation with procedures and abridgement of time limit

The court may---

(a) dispense with or relax any procedure specified in rules 3 to 8; or

(b) abridge any time limit specified in rules 3 to 8,

if the court is satisfied that it is fair and reasonable to do so in the circumstances of the case.".

16. Forms

(1) The Schedule is amended by adding "3A, 3B, 3C," before "4" within the square brackets at the beginning.

(2) Form 1 in the Schedule is amended---

(a) by repealing "rule 3(3)" and substituting "rules 3(3), 3A, 3B & 3C" within the square brackets;

(b) by adding "/a Motion of the Court" after "an Application by".

(3) Form 2 in the Schedule is amended by repealing "19" where it twice appears.

(4) By adding---

"FORM 2A [rule 3C]

Order to Maintenance Payer to Furnish

Statement of Means

(Heading as in Form 1)

(Before his Honour Judge,

Judge of District Court in Chambers/before

The honourable Mr. Justice/Master in Chambers)

To the above-named Maintenance Payer

Whereas the Court intends to make an Attachment of Income Order on its own motion in respect of your income.

THE COURT HEREBY ORDERS that you do file in Court a statement of means (a blank form annexed) within 7 days of the date of this Order and that you do serve a copy of the statement of means on the above-named Designated Payee.

Dated this day of Registrar".

(5) Form 3 in the Schedule is amended---

(a) by repealing "rule" and substituting "rules 3A, 3B &" within the square brackets;

(b) by repealing the first paragraph and substituting---

"*WHEREAS an application was made to the Court on the day of, by the above-named Designated Payee/jointly by the above-named Designated Payee and the Maintenance Payer for an Attachment of Income Order in respect of income which falls to be paid to the above-named Maintenance Payer residing at

(full residential address).

*WHEREAS the Court intends to make an Attachment of Income Order on its own motion in respect of income which falls to be paid to the above-named Maintenance Payer residing at

(full residential address).";

(c) by repealing "19";

(d) by adding at the end---

"*Delete where inapplicable."

(6) By adding---

"FORM 3A [rule 5A]

Notice of Intention to Seek Attachment of Income

Order to be Made in the Same Hearing in which

A Related Maintenance Order is Made
In the District Court of the Hong Kong Special
Administrative Region/In the Court of
First Instance of the High Court
of the Hong Kong Special
Administrative Region
Between A.B. Petitioner

AND

C.D. Respondent

To:

The Petitioner [or Respondent or both the Petitioner and Respondent] having applied for a related maintenance order in these proceedings.

TAKE NOTICE that the Petitioner [or Respondent or both the Petitioner and Respondent] intend(s), after the related maintenance order is made, to request the Court to make an Attachment of Income Order on its own motion in the same hearing in which the related maintenance order is made.

The following information is supplied to enable the Court to make the Attachment of Income Order---

1. Name and address of the Petitioner

2. Name and address of the Respondent

3. If known to the Petitioner or Respondent, the name and address of the income source

and the nature of the income

4. The grounds for seeking an Attachment of Income Order

Dated this day
of
Registrar".

(7) Form 4 in the Schedule is amended---

- (a) by repealing "19" where it twice appears;
 - (b) by repealing "Designated" and substituting "Specified".
- (8) Form 5 in the Schedule is amended by repealing "19" wherever it appears.
- (9) Form 6 in the Schedule is amended---
- (a) by repealing "19" wherever it appears;
 - (b) by repealing "Designated" where it secondly appears and substituting "Specified".

Andrew LI

Chief Justice

3 December 2001

Explanatory Note

The object of these Rules is to amend the Attachment of Income Order Rules (Cap. 13 sub. leg.) ("the principal Rules") to give effect to the Attachment of Income Orders (Amendment) Ordinance 2001 (20 of 2001). The amendments---

- (a) set out the information to be supplied in an affidavit in support of an application when a designated payee applies for an attachment of income order ("attachment order") on the ground that the maintenance payer will not make full and punctual payment in compliance with the maintenance order (rule 4(b));
- (b) provide for the procedures relating to the making of an attachment order---
 - (i) on the joint application of the maintenance payer and the designated payee (new rule 3A);
 - (ii) on the application of the maintenance payer (new rule 3B); and
 - (iii) on the court's own motion (new rule 3C);
- (c) require the maintenance payer to notify the court and the relevant person of his change of income source and to make application for an attachment order in respect of his new income source (new rule 8(4));
- (d) empower the court to dispense with or relax any procedure or abridge any time limit specified in rules 3 to 8 of the principal Rules (new rule 13); and
- (e) update the references to year in the forms in the Schedule to the principal Rules to take account of the arrival of 2001.