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Mrs Percy Ma
Clerk to
Panel on Administration of Justice and Legal Services
Legislative Council Building
8 Jackson Road
Hong Kong

Dear Mrs Ma,

**Panel on Administration of Justice and Legal Services
Enforcement of court judgments in civil cases**

Further to our interim reply of 30 June 2005, I am writing to set out the Administration's response to your letter of 11 March 2005.

To recap, in the light of the problems encountered in the enforcement of court judgments in labour and matrimonial cases, the Panel on Administration of Justice and Legal Services (AJLS Panel) is concerned with the effectiveness of the existing mechanism of enforcement of court judgments in civil cases, and asked the Administration to consider the need for measures to improve enforcement of court judgments in civil cases in general, and in labour and matrimonial cases in particular. We thus invited the Judiciary to provide us with relevant statistics and information on areas with enforcement problems, so as to assist in referring the matters to the bureaux concerned, where appropriate. The Judiciary has recently advised us that its statistics are kept according to enforcement methods (the major ones being Writ of Fieri Facias, Warrant of Distress, Writ of Possession, Garnishee Order and Charging Order), each of which cut across different areas; and thus would not assist in identifying specific policy areas.

In any event, we understand that most statutory enforcement methods for money judgments in civil cases are provided in the High Court Ordinance (Cap 4) and the District Court Ordinance (Cap 336), and the practice and procedures for their application are set out in the Rules of the High Court (Cap 4A) and the Rules of the District Court (Cap 336H). The more commonly used general enforcement methods include the writ of *fieri facias*, garnishee order, charging order, appointment of a receiver in equitable execution, and order of imprisonment following oral examination. Winding-up/ bankruptcy proceedings provided in the Bankruptcy Ordinance (Cap 6) and the Companies Ordinance (Cap 32), while not a method of enforcement per se, is akin to it given its purpose. These general enforcement methods are applicable to money judgments of all types of cases, and are commonly adopted by many overseas common law jurisdictions. They are the fundamentals of the enforcement regime.

As Principal Officials are each responsible for specific policy portfolios, where there are problems in enforcing judgments in specific areas, it is a matter for the relevant bureaux concerned to consider the need to introduce appropriate measures to address the specific problems, taking account of policy and resources considerations. A case in point is the enforcement of maintenance orders in matrimonial cases. Over the years, the Home Affairs Bureau has introduced amendments to the law, and has improved the court procedures and administrative measures affecting maintenance payees to facilitate enforcement of maintenance orders and timely collection of maintenance payment. These include:

- (a) Improvements to the Attachment of Income Order (AIO) Scheme, which guarantees punctual maintenance payment, were introduced on 25 January 2002 through legislative amendments. The circumstances in which an AIO can be made have been relaxed so as to enable more maintenance payees to benefit from the Scheme. Hitherto, an AIO can be made only if the maintenance payer has defaulted payment without reasonable excuse. The court is also given the discretion to dispense with certain steps in the court procedures and shorten time limits specified in the law so as to speed up the processing of AIO applications.
- (b) To combat the problem of default in maintenance payment, the Interest and Surcharge on Arrears of Maintenance Ordinance 2003 was enacted. With effect from 1 May 2005, interest is levied on arrears of maintenance to compensate the maintenance payee for monetary loss due to default by the maintenance payer. To deter repeated default without

reasonable excuse, a defaulter is liable to a surcharge of up to 100% of the total arrears of maintenance. The court is empowered to make an order of surcharge against the defaulting payer in his/her absence. In the event that the defaulter fails to appear at the hearing of the application for surcharge, if the court is satisfied that a sealed copy of the summons, a copy of an affidavit and a notice of the hearing have been duly served on the maintenance payer, it may proceed to hear the application and may make an order requiring the maintenance payer to pay a surcharge to the maintenance payee.

As for labour cases, we also understand that the relevant LegCo Panels and the Economic Development and Labour Bureau, in conjunction with the Judiciary Administrator, have been monitoring the situation closely and pursuing the matter regularly. As the matter has been tackled directly by the respective bureaux, it is both appropriate and effective to continue pursuing the matter in those forums. Similarly, if enforcement problems were identified in other areas in the future, it would be more suitable for the matter to be referred to the relevant bureaux for consideration.

Yours sincerely,

(Mrs Alice Cheung)
for Director of Administration

c.c. Judiciary Administrator
Secretary for Home Affairs
Secretary for Economic Development and Labour