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BY FAX
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Dear Miss CHOI,

**Attachment of Income Order
(Application to Government and Miscellaneous Amendments) Bill 2007**

We are scrutinising the legal and drafting aspects of the Bill. We should be grateful for your clarification of the following points :-

Definition of “income source” under new section 20(1AA) of the Guardianship of Minors Ordinance (Cap. 13), new rule 2 of the Attachment of Income Order Rules (Cap. 13 sub. leg. A), new section 9A(1AA) of the Separation and Maintenance Orders Ordinance (Cap. 16) and new section 28(1AA) of the Matrimonial Proceedings and Property Ordinance (Cap. 192)

To better understand the scope of application of the new definition, would you give us an exhaustive list of :-

- (a) the types of persons to be excluded by virtue of paragraph (a) of the proviso to section 23(1) of the Crown Proceedings Ordinance (Cap. 300); and
- (b) the types of persons whose income source is from the Government under the new definition.

New section 20(3A) and (4) of the Guardianship of Minors Ordinance, new section 9A(3A) and (4) of the Separation and Maintenance Orders Ordinance and new section 28(3A) and (4) of the Matrimonial Proceedings and Property Ordinance

In new section 20(4) of the Guardianship of Minors Ordinance, the term “wages” is referred to. It is understood that the term is taken from the Employment Ordinance (Cap. 57). In relation to income that is wages payable to a maintenance payer which is not subject to section 66 of the Employment Ordinance, there is no problem with the meaning of “wages” because the term is defined under section 2(1) of the Ordinance.

By contrast, in new section 20(3A) of the Guardianship of Minors Ordinance, the terms “wages” and “salary” are referred to. It is understood that the terms are taken from the Crown Proceedings Ordinance. However, both terms are not defined under the Crown Proceedings Ordinance. Without defining the terms, would it cause difficulty to the court in future when it considers what income is subject to the attachment of income order? Further, what is the difference between “wages” and “salary” in this context?

Do you have to subject new section 20(4) of the Guardianship of Minors Ordinance to new section 20(3A) because new subsection (4) excludes the operation of an attachment of income order from Government’s employees? And in turn, would it be more logical to re-number subsection (3A) as (4) and subsection (4) as (3A)?

Similar questions also arise in parallel provisions of the Separation and Maintenance Orders Ordinance and Matrimonial Proceedings and Property Ordinance.

Definition of “wages” in the Attachment of Income Order Rules (Cap. 13 sub. leg. A)

It has been mentioned earlier on in this letter that the term “wages” is not defined under the Guardianship of Minors Ordinance, Separation and Maintenance Orders Ordinance and Matrimonial Proceedings and Property Ordinance. The term is however defined under the Rules which are applicable to the Guardianship of Minors Ordinance, Separation and Maintenance Orders Ordinance and Matrimonial Proceedings and Property Ordinance. Why is salary payable by the Government not defined?

Section 5 of and Form 3 of the Schedule to the Attachment of Income Order Rules

Has the term “public body” as defined under section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) already included the concept of “Government”? The term “public body” as defined includes “any department of the Government” and “any undertaking by or of the Government”.

It is appreciated that your reply in both languages could reach us as soon as possible.

Yours sincerely,

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