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By Fax

19 July 2007

Mr Stephen Lam
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(Fax: 2869 9468)

Dear Mr Lam,

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

I refer to your letter dated 27 June 2007 seeking our clarifications on the Attachment of Income Order (Application to Government and Miscellaneous Amendments) Bill 2007 (“the Bill”). Our responses to the points you raised are set out below

Definition of “income source” under new section 20(1AA) of the Guardianship of Minors Ordinance (GMO) (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 (SMOO) (Cap. 16) and new section 28(1AA) of the Matrimonial Proceedings and Property Ordinance (MPPO) (Cap. 192)

Paragraph (a) of the proviso to section 23(1) of the Crown Proceeding Ordinance (CPO) (Cap. 300) prohibits any attachment of wages or salary payable to any officer of the Government¹. The expression “income source” is defined in the Bill to mean a person by whom the income of the maintenance payer is payable and includes the Government.

The scope of persons involved is wide. Examples include civil servants, Principal Officials appointed in accordance with the Basic Law, staff employed by the Government on non-civil service terms, judges, judicial officers, officers of the Independent Commission Against Corruption, staff of the Hong Kong Monetary Authority, and even temporary or part-time staff. It would not, therefore, be possible for us to guarantee an exhaustive list lest there may be inadvertent omissions, and more importantly, the list is subject to possible changes over time.

Furthermore, we need to emphasize that such an exhaustive list is not necessary. The aim of the Bill is to provide that paragraph (a) of the proviso to section 23(1) of CPO does not preclude the court from making an attachment of income order (AIO) in respect of the wages or salary payable by the Government. The aim is achieved through the proposed expressed provisions – new section 20(3A) of the GMO, section 9A(3A) of the SMMO and section 28(3A) of the MPPO. Following the amendments, the AIO legislation will apply to the income source of the maintenance payer, irrespective of whether the income source is the Government or not, and whether the income is in the form of wages/salary or otherwise.

New section 20(3A) and (4) of GMO, new section 9A(3A) and (4) of SMMO and new section 28(3A) and (4) of MPPO

Definition of “wages” in the Attachment of Income Order Rules (AIOR)

As mentioned above, the purpose of the new section 20(3A) of GMO seeks to override paragraph (a) of the proviso to section 23(1) of CPO. Since the relevant proviso refers to “wages or salary”, the new section 20(3A) has to refer to “wages or salary” in order to achieve the stated purpose.

Although the terms “wages” and “salary” are not defined in CPO or section 20 of GMO, there should not be any difficulty for the court because section 20 deals with the broad principles. The actual operation of

¹ The term “Crown” in CPO is construed as a reference to the “Government of the HKSAR” under section 2 of Schedule 8 to the Interpretation and General Clauses Ordinance (Cap. 1).

the AIO scheme is provided in the Attachment of Income Order Rules (AIOR) (Cap. 13A) in which the term “wages” is defined. There is no reference to “salary” in AIOR. It is not necessary to define “salary” in the AIOR, or to distinguish between “wages” and “salary” in this context in order to achieve the stated purpose above.

In any case, there is no substantial difference between “wages” and “salary”. According to the Concise Oxford Dictionary, both “wages” and “salary” carry reference to remuneration in respect of work done, or to be done, for or at the disposal of the employer.

The new section 20(3A) of GMO deals with the attachment of income that is payable to a maintenance payer by the Government. The revised section 20(4) of GMO deals with the attachment of income that is payable to a maintenance payer by a person other than the Government. The two situations are independent of one another and it is not necessary to subject the revised section 20(4) to the new section 20(3A). Furthermore, we consider the existing numbering of the two subsections is appropriate.

The above applies to the relevant provisions of SMMO and MPPO.

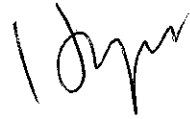
Section 5 of and Form 3 of the Schedule to AIOR

The purpose of making the consequential amendments to section 5 and Form 3 of AIOR by including the “Government” is consistent with the object of the Bill, that is, to apply the Attachment of Income Orders (AIO) legislation to the Government as an income source of the maintenance payer. Notwithstanding the definition of the term “public body”² in the Interpretation and General Clauses Ordinance (Cap. 1), the proposed amendments can clarify beyond doubt that in the case of an income source being the Government, an authorized officer is to sign the statement of verification. They are in line with other ordinances in which “public body” appears alongside with “Government”.

² Under section 3 of Cap. 1, “public body” (公共機構) includes –

- (a) the Executive Council;
- (b) the Legislative Council;
- (c) (Repealed)
- (ca) any District Council
- (cb) (Repealed)
- (d) any other urban, rural or municipal council;
- (e) any department of the Government; and
- (f) any undertaking by or of the Government;

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Alice Cheung', written in a cursive style.

(Mrs Alice Cheung)
for Secretary for Home Affairs