

本局檔號 OUR REF. : HAB/CR/1/19/95 Pt. 24
來函檔號 YOUR REF : LS/B/20/06-07
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By Fax

10 September 2007

Mr Stephen Lam
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong
(Fax: 2877 5029)

Dear Mr Lam,

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

I refer to your letter dated 7 September 2007 seeking further clarifications on our Paper of September 2007 on the Attachment of Income Order (Application to Government and Miscellaneous Amendments) Bill 2007 (“the Bill”). Our response to the points you raised are set out below.

Consulate-General

Whether the local service company is the income source of the staff member recruited through that company is a matter of fact to be determined in each circumstance. I am afraid that we are unable to exhaust all employment arrangements and hence are unable to rule out the possibility mentioned (i.e. a staff member employed through a local service company

which may not be the income source of the staff member).

As explained in paragraph 3 of the Paper, as long as staff members of consulate are paid by the foreign governments, the income source of these staff members is Foreign States. Hence, AIO legislation does not apply to the staff members insofar as the payment from the Foreign State is concerned.

Overseas company

Under rule 11(2) of the AIO Rules (Cap. 13A), an income source who fails, without reasonable excuse, to comply with an AIO commits an offence and is liable to a fine at level 2. As mentioned in paragraph 4 of the Paper, all overseas companies which establish a place of business in Hong Kong are required to register under Part XI of the Companies Ordinance (CO) (Cap. 32). They are required to keep registered the name and address of a person resident in Hong Kong who is authorized to accept service of process or notice on its behalf (section 333A of CO)¹. These companies are the income source of employees of the companies and are subject to the AIO legislation. Court documents may be served on these companies' authorized representatives in Hong Kong in accordance with the provisions in the Rules of High Court (Cap. 4A) or the relevant provisions of the CO.

Yours sincerely,

(Mrs Alice Cheung)
for Secretary for Home Affairs

c.c. DoJ (Attn: Ms Phyllis Poon) (Fax: 2521 3275)

¹ If an overseas company which establishes a place of business in Hong Kong fails to register under Part XI of CO, the company, and every officer or agent of the company who authorizes or permits the default, shall be liable to a fine and, for continued default, to a daily default fine according to section 340 of CO.