

**ATTACHMENT OF INCOME ORDER (APPLICATION
TO GOVERNMENT AND MISCELLANEOUS
AMENDMENTS) BILL 2007**

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A BILL

To

Amend the Guardianship of Minors Ordinance, the Separation and Maintenance Orders Ordinance and the Matrimonial Proceedings and Property Ordinance to—

- (a) provide for the application of attachment of income orders to the Government as an income source;
- (b) provide that paragraph (a) of the proviso to section 23(1) of the Crown Proceedings Ordinance (Cap. 300) does not preclude the court from making an attachment of income order in respect of the wages or salary payable by the Government;
- (c) validate any attachment of income order made in respect of the wages or salary payable by the Government before the commencement of this Ordinance;
- (d) make clerical amendments to certain provisions; and
- (e) provide for matters necessary for the purposes in paragraphs (a), (b) and (c) and for consequential amendments.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Attachment of Income Order (Application to Government and Miscellaneous Amendments) Ordinance 2007.

PART 2

AMENDMENTS TO GUARDIANSHIP OF MINORS ORDINANCE

2. Interpretation

Section 2 of the Guardianship of Minors Ordinance (Cap. 13) is amended, in the Chinese text, in the definition of “贍養”, by repealing “內。” and substituting “內；”。

3. Attachment of income to satisfy order

- (1) Section 20(1AA) is amended by adding—
““income source” (入息來源) means a person by whom the income of the maintenance payer is payable and includes the Government;”.
- (2) Section 20(3) is repealed and the following substituted—
“(3) An attachment order is an authority to an income source to make the payment in accordance with the order, and the receipt of the specified payee is a good discharge to that income source.”.
- (3) Section 20 is amended by adding immediately before subsection (4)—
“(3A) Without limiting the generality of subsection (1), that subsection applies to income that is wages or salary payable to a maintenance payer by the Government, and accordingly paragraph (a) of the proviso to section 23(1) of the Crown Proceedings Ordinance (Cap. 300) is not to be construed as precluding the court from making an attachment order in respect of such wages or salary.”.
- (4) Section 20(4) is repealed and the following substituted—
“(4) Without limiting the generality of subsection (1), that subsection applies to income that is wages payable to a maintenance payer by a person other than the Government, and accordingly section 66 of the Employment Ordinance (Cap. 57) is not to be construed as precluding the court from making an attachment order in respect of such wages.”.
- (5) Section 20(6)(c) is repealed and the following substituted—
“(c) the obligations on the part of the income source;”.
- (6) Section 20 is amended by adding—
“(9) Any attachment order made by the court before the commencement of the Amendment Ordinance in respect of the wages or salary payable to a maintenance payer by the Government is deemed to be valid as if the Amendment Ordinance had commenced before the order was made unless the court, whether before or after

the commencement of the Amendment Ordinance, discharges the attachment order or declares it to be invalid.

(10) In subsection (9)—

“Amendment Ordinance” (《修訂條例》) means the Attachment of Income Order (Application to Government and Miscellaneous Amendments) Ordinance 2007 (of 2007).”.

PART 3

AMENDMENTS TO SEPARATION AND MAINTENANCE ORDERS ORDINANCE

4. Interpretation

Section 2 of the Separation and Maintenance Orders Ordinance (Cap. 16) is amended, in the Chinese text, in the definition of “慣性酗酒者”, by repealing “人。” and substituting “人；”.

5. Attachment of income to satisfy order

(1) Section 9A (1AA) is amended by adding—

““income source” (入息來源) means a person by whom the income of the maintenance payer is payable and includes the Government;”.

(2) Section 9A(3) is repealed and the following substituted—

“(3) An attachment order is an authority to an income source to make the payment in accordance with the order, and the receipt of the specified payee is a good discharge to that income source.”.

(3) Section 9A is amended by adding immediately before subsection (4)—

“(3A) Without limiting the generality of subsection (1), that subsection applies to income that is wages or salary payable to a maintenance payer by the Government, and accordingly paragraph (a) of the proviso to section 23(1) of the Crown Proceedings Ordinance (Cap. 300) is not to be construed as precluding the court from making an attachment order in respect of such wages or salary.”.

(4) Section 9A(4) is repealed and the following substituted—

“(4) Without limiting the generality of subsection (1), that subsection applies to income that is wages payable to a maintenance payer by a person other than the Government, and accordingly section 66 of the Employment Ordinance (Cap. 57) is not to be construed as precluding the court from making an attachment order in respect of such wages.”.

(5) Section 9A(6)(c) is repealed and the following substituted—
“(c) the obligations on the part of the income source;”.

(6) Section 9A is amended by adding—

“(9) Any attachment order made by the court before the commencement of the Amendment Ordinance in respect of the wages or salary payable to a maintenance payer by the Government is deemed to be valid as if the Amendment Ordinance had commenced before the order was made unless the court, whether before or after the commencement of the Amendment Ordinance, discharges the attachment order or declares it to be invalid.

(10) In subsection (9)—

“Amendment Ordinance” (《修訂條例》) means the Attachment of Income Order (Application to Government and Miscellaneous Amendments) Ordinance 2007 (of 2007).”.

PART 4

AMENDMENTS TO MATRIMONIAL PROCEEDINGS AND PROPERTY ORDINANCE

6. Interpretation

Section 2(1) of the Matrimonial Proceedings and Property Ordinance (Cap. 192) is amended, in the Chinese text, in the definition of “管養、管養權”, by repealing “視。” and substituting “視；”.

7. Attachment of income to satisfy order

(1) Section 28(1AA) is amended by adding—

““income source” (入息來源) means a person by whom the income of the maintenance payer is payable and includes the Government;”.

(2) Section 28(3) is repealed and the following substituted—

“(3) An attachment order is an authority to an income source to make the payment in accordance with the order, and the receipt of the specified payee is a good discharge to that income source.”.

(3) Section 28 is amended by adding immediately before subsection (4)—

“(3A) Without limiting the generality of subsection (1), that subsection applies to income that is wages or salary payable to a maintenance payer by the Government, and accordingly paragraph (a) of the proviso to section 23(1) of the Crown Proceedings Ordinance (Cap. 300) is not to be construed as precluding the court from making an attachment order in respect of such wages or salary.”.

- (4) Section 28(4) is repealed and the following substituted—
“(4) Without limiting the generality of subsection (1), that subsection applies to income that is wages payable to a maintenance payer by a person other than the Government, and accordingly section 66 of the Employment Ordinance (Cap. 57) is not to be construed as precluding the court from making an attachment order in respect of such wages.”.
- (5) Section 28(6)(c) is repealed and the following substituted—
“(c) the obligations on the part of the income source;”.
- (6) Section 28 is amended by adding—
“(9) Any attachment order made by the court before the commencement of the Amendment Ordinance in respect of the wages or salary payable to a maintenance payer by the Government is deemed to be valid as if the Amendment Ordinance had commenced before the order was made unless the court, whether before or after the commencement of the Amendment Ordinance, discharges the attachment order or declares it to be invalid.
(10) In subsection (9)—
“Amendment Ordinance” (《修訂條例》) means the Attachment of Income Order (Application to Government and Miscellaneous Amendments) Ordinance 2007 (of 2007).”.

PART 5

CONSEQUENTIAL AMENDMENTS

Attachment of Income Order Rules

8. Interpretation

(1) Rule 2 of the Attachment of Income Order Rules (Cap. 13 sub. leg. A) is amended by repealing the definition of “income source” and substituting—

““income source” (入息來源) means a person by whom the income of the maintenance payer is payable and includes the Government;”.

(2) Rule 2 is amended by repealing the definition of “wages” and substituting—

““wages” (工資) has the meaning assigned to it by section 2(1) of the Employment Ordinance (Cap. 57), whether the wages are payable by the Government or any other person.”.

9. Verification of signed statement

Rule 5(2)(a) is amended by adding “the Government,” before “a public body”.

10. Forms

The Schedule is amended, in Form 3, in the fourth paragraph—

- (a) by adding “the Government,” before “a public body”;
- (b) in the Chinese text, by adding “特區政府、” before “貴機構”。

Explanatory Memorandum

Background

Under section 20 of the Guardianship of Minors Ordinance (Cap. 13) (“GMO”), section 9A of the Separation and Maintenance Orders Ordinance (Cap. 16) (“SMOO”) and section 28 of the Matrimonial Proceedings and Property Ordinance (Cap. 192) (“MPPO”) (collectively referred to as “the relevant provisions”), the court has power to make an attachment of income order (“attachment order”). An attachment order requires an income source of a maintenance payer to deduct the amount of maintenance from the income of the maintenance payer and pay it directly to the specified payee. At present, the relevant provisions do not expressly provide whether they apply to income payable by the Government.

The Bill

2. The object of this Bill is to provide that the relevant provisions apply to the Government where it is an income source. As a result, the wages or salary payable by the Government is income capable of being attached.
3. The Bill is divided into 5 parts. Part 1 provides for the short title. Part 2 amends sections 2 and 20 of GMO. Part 3 amends sections 2 and 9A of SMOO. Part 4 amends sections 2(1) and 28 of MPPO. The amendments in Parts 2, 3 and 4 are substantially the same. Part 5 contains the consequential amendments.
4. Clauses 2, 4 and 6 rectify a minor error relating to punctuation.
5. Clauses 3(1), 5(1) and 7(1) add a definition of “income source” to the relevant provisions.

6. Clauses 3(2), 5(2) and 7(2) amend subsection (3) of the relevant provisions to replace “the person by whom the income is payable” by “income source”, which is defined to include the Government.
7. Paragraph (a) of the proviso to section 23(1) of the Crown Proceedings Ordinance (Cap. 300) prohibits any attachment of wages or salary payable by the Government. Clauses 3(3), 5(3) and 7(3) adds a new subsection (3A) to expressly provide that the relevant provisions prevails over paragraph (a) of that proviso and as a result, that paragraph does not preclude the court from making attachment orders in respect of wages or salary payable by the Government.
8. Clauses 3(4), 5(4) and 7(4) amend subsection (4) of the relevant provisions to provide that it applies only to any employee whose income source is not the Government.
9. Clauses 3(5), 5(5) and 7(5) amend subsection (6)(c) of the relevant provisions to replace “the person by whom the income is payable” by “income source”.
10. Clauses 3(6), 5(6) and 7(6) adds the new subsections (9) and (10) to the relevant provisions to validate any attachment order made in respect of the wages or salary payable by the Government before the commencement of the Bill (when enacted). The validation gives legal effect to these orders and reflects the fact that the Government has been complying with these orders before the enactment of the Bill.
11. Clauses 8, 9 and 10 make consequential amendments to the Attachment of Income Order Rules (Cap. 13 sub. leg. A) to give effect to the purpose of the Bill.