

**Proposed Amendments to the
Attachment of Income Order (AIO) Legislation :**

**Supplementary information requested by Members at
the LegCo Panel on Home Affairs Meeting held on 13 April 2007**

***Applicability of the AIO legislation to offices of the Central People's
Government (CPG) in Hong Kong***

The AIO legislation does not apply to offices of the Central Peoples Government (CPG) in Hong Kong. By virtue of Section 66 of the Interpretation and General Clauses Ordinance (Cap. 1), an Ordinance does not bind the State¹ unless there is an express provision or necessary implication that the State is bound thereby. There is neither an express provision nor any necessary implication in the AIO legislation that the State is bound thereby.

***Applicability of AIO legislation to local employees of consulates
established in Hong Kong***

2. An AIO is directed against an income source (by whom the income is payable). In the case of consular officers/employees, the income source for their posts would generally be their respective States. The AIO legislation does not have extra-territorial effect, and it does not

¹ "State" is defined in section 3 of Cap. 1 as follows:

"State" includes only –

- (a) the President of the People's Republic of China;
- (b) the Central People's Government;
- (c) the Government of the Hong Kong Special Administrative Region;
- (d) the Central Authorities of the People's Republic of China that exercise functions for which the Central People's Government has responsibility under the Basic Law;
- (e) subordinate organs of the Central People's Government that-
 - (i) on its behalf, exercise executive functions of the Central People's Government or functions for which the Central People's Government has responsibility under the Basic Law; and
 - (ii) do not exercise commercial functions, when acting within the scope of the delegated authority and the delegated functions of the subordinate organ concerned; and
- (f) subordinate organs of the Central Authorities of the People's Republic of China referred to in paragraph (d), that-
 - (i) on behalf of those Central Authorities, exercise executive functions of the Central People's Government or functions for which the Central People's Government has responsibility under the Basic Law; and
 - (ii) do not exercise commercial functions, when acting within the scope of the delegated authority and the delegated functions of the subordinate organ concerned."

apply to an income source outside Hong Kong. As such, local employees of consulates established in Hong Kong are not subject to the AIO legislation.

Relevant findings of the Thematic Household Survey Report No. 29

3. At the request of the Home Affairs Bureau, a Thematic Household Survey (THS) managed by the Census and Statistics Department was conducted during June to August 2006 to collect information on enforcement of maintenance order. Some 10 000 households within a scientifically selected sample were successfully enumerated. Based on the information collected from the interviewed households, the situation related to all households and the entire population in Hong Kong was inferred. The relevant findings of the Thematic Household Survey Report on Enforcement of Maintenance Order are as follows –

	Items	Result
(a)	No. of persons aged 16 or above who had been divorced/ separated	227 100
(b)	No. of divorced/separated persons who had applied for a maintenance order (as % of (a))	51 000 (22.5%)
	b(i) No. of persons who had successfully obtained a maintenance order (as % of (b))	40 100 (78.6%)
	b(ii) No. of persons who had not successfully obtained a maintenance order (as % of (b))	4 500 (8.8%)
	b(iii) Results of application not yet known (as % of (b))	6 400 (12.6%)
(c)	No. of persons who had maintenance arrangement (as % of (a))	41 400 (18.2%)
	c(i) No. of persons who had a maintenance order (as % of (a))	40 100 (17.7%)
	c(ii) No. of persons who had a maintenance agreement with their ex-spouse (as % of (a))	1 300 (0.6%)

(d)	No. of persons who were awarded non-nominal maintenance	22 200
	d(i) No. of persons who had received maintenance in full (as % of (d))	11 200 (50.3%)
	d(ii) No. of persons who had not received maintenance in full (as % of (d))	11 000 (49.7%)
(e)	Out of d(ii), no. of persons who had not taken legal action	9 000 (81.7%)
(f)	Reasons for not taking legal actions by the 9 000 persons referred to in (e) above <i>(multiple answers allowed)</i>	
	(i) Ex-spouse unable to pay maintenance	45.9%
	(ii) Believed that ex-spouse would not pay maintenance	27.6%
	(iii) Application procedures for legal proceedings too complicated	24.6%
	(iv) Had no financial problem and no urgent need to recover the arrears of maintenance	21.1%
	(v) Unable to contact the ex-spouse	15.9%
	(vi) Could not afford the time	13.6%

Note: The figures were rounded to the nearest hundred for presentation purpose, but actual figures without rounding were used in compiling the percentage shares.

Reasons of unsuccessful applications for a maintenance order

4. As advised by the Judiciary, the court would decide whether or not to make a maintenance order having regard to the background and financial position of the parties concerned. The circumstances surrounding each application differ and the reasons for not making a maintenance order could not be generalized.

The number of cases in which the mechanism of enlisting the assistance of the Immigration Department in searching their records for the address of maintenance payers had been triggered to recover default maintenance payments.

5. There is an agreed arrangement between the Immigration Department (ImmD) and The Law Society of Hong Kong whereby if a

lawyer requires a maintenance payer's address for the purpose of taking legal action against the latter to recover maintenance arrears, the lawyer can request ImmD to search their records and provide the maintenance payer's address if available². As ImmD also accedes to requests from legal practitioners for release of personal records for various purposes (3 157 requests were acceded to in 2006), they did not maintain separate statistics on requests made for the purpose of enforcement of maintenance orders.

Samples of forms in relation to the application of AIOs

6. The following forms relevant to the application of AIOs are enclosed for Members' information –

- (a) Summons for an Attachment of Income Order (Appendix 1);
- (b) Oath/Affirmation relating to Application Made by the Maintenance Payer (Appendix 2);
- (c) Statement of Means of the Maintenance Payer (Appendix 3).

Home Affairs Bureau
June 2007

² The same arrangement exists between The Law Society of Hong Kong and Transport Department, as well as Housing Department respectively.

IN THE DISTRICT COURT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION
MATRIMONIAL CAUSES/JOINT APPLICATION/MISCELLANEOUS PROCEEDINGS
CASE NO. OF

Appendix 1

BETWEEN

and

Petitioner/1st Applicant

Respondent/2nd Applicant

To _____ of _____

SUMMONS FOR AN ATTACHMENT OF INCOME ORDER

The Petitioner/Respondent/1st Applicant/2nd Applicant intends to apply to the court for an attachment of income order. Notice will be given to you of the place and time fixed for the hearing of the application. [The application will be heard by H.H. Judge/Deputy Judge in Chambers sitting at Family Court, on _____ /F., Court No. _____, Wanchai Law Courts, Wanchai Tower, No. 12 Harbour Road, Wanchai, Hong Kong on _____ day, the _____ day of _____ at _____ o'clock in the fore/afternoon.]

And you are to take notice that you must file in Court and serve the payee a statement of means in Form 1 (to be served together with this summons) within 14 days of service of this summons. And you are to take notice if you do not appear the Court may consider and deal with the application in a summary way.

Dated this _____ day of _____

Registrar

This summons was taken out by the said Petitioner/Respondent

who resides at _____

Petitioner/Respondent

Attachment of Income Order

**Oath/Affirmation* relating to Application
Made by the Designated Payee**

I, _____ (name), presently residing at _____

(full residential address), do swear/solemnly and sincerely declare and affirm* as follows:

1. Name of maintenance payer: _____
Last known address: _____

2. Particulars of the related maintenance order
Date: _____
Contents: _____

3. The case number of the proceedings under which the above maintenance order was made: _____

4. Date and means of service of the above maintenance order: _____

(In case the maintenance order has not been served, the reason for its non-service:

_____)

(Note: For Items 5 and 6, please complete ONE only)

5. * The maintenance payer has defaulted in payment and I honestly believe that there is no reasonable excuse for that default. Particulars of the default (e.g. the amount in default, date of default and the arrears accrued at the date of this affidavit):

* Delete as appropriate

6. * I honestly believe that the maintenance payer will not make full and punctual payment in compliance with the related maintenance order. The reasons for such a belief are as follows: _____

7. I have/have not* instituted any proceedings to enforce the maintenance order mentioned in Item 2 above. If the proceedings have been instituted, the particulars of the proceedings (e.g. case number of judgment summons, distress warrant, etc.) are as follows: _____

8. I know/do not know* the name and address of the maintenance payer's income source and the nature of the income. If known, the particulars are as follows:

Name: _____

Address: _____

Nature (e.g. salary, commission, etc.): _____

Sworn/Affirmed* at _____, this _____ day of _____, before me.

Commissioner for Oaths

* Delete as appropriate

Note: The designated payee shall serve the following documents on the maintenance payer:

- A. A sealed copy of the summons;
- B. A copy of this affidavit; and
- C. A statement of means in the same format as that in Annex A.

[Empty rectangular box]

3. Other existing or anticipated financial commitments -

\$

Mortgage instalments/Rent

Tax

Deductions from wages

Others (specify)

[Empty rectangular box]

[Empty rectangular box]

[Empty rectangular box]

[Empty rectangular box]

Signature of Maintenance Payer

Name in Block Letters

Date

Note: If income is received from more than one income source, please furnish the information of each and every income source in a separate annex.

Annex No. _____

Name of the income source:

Address of the income source:

Nature of the income receivable from the named income source (e.g. wages, dividends, rents):

Amount and frequency of the income receivable from the named income source:

Identifying particulars (e.g. staff number, bank account number or share certificate number):

Copy of supporting documents attached:

Signature of Maintenance Payer

Name in Block Letters

Date

STATEMENT OF MEANS OF THE MAINTENANCE PAYER
IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION/IN THE COURT OF FIRST INSTANCE
OF THE HIGH COURT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION

In the Matter of an Application by
/a Motion of the Court under section 20 of the Guardianship of Minors Ordinance (Cap. 13)/section 9A
of the Separation and Maintenance Orders Ordinance (Cap. 16)/section 28 of the Matrimonial
Proceedings and Property Ordinance (Cap. 192)

Between

Applicant
(Designated Payee)

AND

Respondent
(Maintenance Payer)

I (Maintenance Payer) of
(full name)

(full residential address)

set out hereunder the particulars of my income and expenses and I understand that the particulars
furnished in the annex to Part I will be sent to the income source for verification by the Court -

Part I

1. My income (e.g. wages, rents and dividends) -

Table with 5 columns: Name of the Income Source, Nature of Income, Amount, Frequency (e.g. Daily/Weekly/Monthly), Annex No.

Part II

2. My monthly principal expenses -

\$

Food and household expenses

Transport

Medical/Insurance

Three empty rectangular boxes for entering expense amounts.

Others (specify)

3. Other existing or anticipated financial commitments -

\$

Mortgage instalments/Rent

Tax

Deductions from wages

Others (specify)

Signature of Maintenance Payer _____

Name in Block Letters _____

Date _____

Note: If income is received from more than one income source, please furnish the information of each and every income source in a separate annex.

Annex No. _____

Name of the income source: _____

Address of the income source: _____

Nature of the income receivable from the named income source (e.g. wages, dividends, rents): _____

Amount and frequency of the income receivable from the named income source: _____

Identifying particulars (e.g. staff number, bank account number or share certificate number): _____

Copy of supporting documents attached: _____

Signature of Maintenance Payer _____

Name in Block Letters _____

Date _____