

政府總部
香港下亞厘畢道



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GOVERNMENT SECRETARIAT

LOWER ALBERT ROAD

HONG KONG

Tel : (852) 2810 2576

Fax : (852) 2537 4718

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16 July 2008

Clerk to Panel
Panel on Administration of Justice and Legal Services
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong
(Attn: Mrs Percy MA)

Dear Mrs Ma,

**Panel on Administration of Justice and Legal Services
Enforcement of judgments in civil cases**

Thank you for your letter of 19 February 2008 to the Chief Secretary for Administration. I am authorized to reply on his behalf. The opportunity is also taken to respond to other enquiries raised by Members of the Legislative Council (LegCo) Panel on Administration of Justice and Legal Services (AJLS Panel) at the meeting held on 28 January 2008.

On the issue of conducting an overall review of the enforcement of judgments, the Department of Justice (DoJ) has referred to the experience in the UK and examined the Comprehensive Review undertaken in England and Wales, which began with the issue of a consultation paper in 1998 and concluded with a White Paper in 2003. It is noted that although the consultation paper sought views on 82 separate questions covering a wide range of issues, the result was a small number of recommendations to make charging orders and attachment of earnings easier to obtain and to provide for the court to be empowered to order disclosure of information on a debtor's whereabouts and employment.

Amendment to give effect to those proposals formed a very small part of the Tribunals, Courts and Enforcement Act 2007. In the light of that experience, it remains the Administration's view that rather than conducting a review of enforcement of judgments generally, it would be more productive to identify specific areas that require attention and to take them forward separately.

In this connection, the two specific areas of concern raised by Members regarding the enforcement of civil judgments are the recovery of maintenance and the enforcement of Labour Tribunal (LT) awards. Relevant bureaux and departments have indeed been actively exploring feasible measures to improve the recovery of maintenance and enforcement of LT awards. Recent progress made in these two areas is described in the ensuing paragraphs.

On the recovery of maintenance, the Home Affairs Bureau (HAB), Labour and Welfare Bureau (LWB), Social Welfare Department, DoJ and the Judiciary have been working together with a view to making improvements in the procedures for the recovery of maintenance for former spouses and children. A number of their proposals have already been implemented administratively and through legislation, including the enactment of the Interest and Surcharge on Arrears of Maintenance Ordinance (which was brought into force in 2005) and provisions to allow the court to attach income from all sources. Reports have been made to the LegCo Home Affairs Panel, most recently on 13 June 2008, in which the HAB briefed Members on the proposals which the HAB and other departments intend to take forward to further improve recovery of maintenance. Regarding proposals for legislative amendments for a more effective enforcement of the judgment summons, the HAB will submit the relevant Amendment Rules to the LegCo for scrutiny in 2009.

On the problem faced by some employees in obtaining the judgment sum awarded by the LT, the Administration has been actively exploring feasible measures to further safeguard the rights of employees. In this connection, the LegCo Manpower Panel discussed the various options floated informally by stakeholders on 24 April 2008. After thorough deliberation by relevant bureaux and departments including the LWB, Labour Department, DoJ and the Judiciary, the following three measures were reported to the Manpower Panel on 8 July 2008 as viable, effective and thus merit adoption –

- (a) making non-compliance with LT awards a criminal offence;
- (b) empowering LT to order defaulting employers to pay additional sums to the employees concerned; and
- (c) empowering LT to order disclosure of the financial details of defaulting employers.

As the above three proposals involve legislative changes and possibly changes to some established procedures, the Administration will continue to work in earnest, with a view to introducing the above measures as soon as practicable.

Regarding the enquiry on previous discussion in the Fight Crime Committee (FCC) on action that might be taken by the court for recovery of debt, according to available records, the matter was raised in the context of the FCC's discussion on the regulation of debt collection practices and the study conducted by the Debt Collection Sub-Committee of the Law Reform Commission on the subject. The FCC has not formed any working group to study issues related to the recovery of debts (including debts arising from court judgments).

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'K. Vivian', written in black ink.

(Miss Vivian KO)
for Director of Administration