

立法會
Legislative Council

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Panel on Home Affairs

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 11 June 2010**

**Setting up an intermediary body for
the effective enforcement of maintenance orders**

Purpose

This paper summarises the deliberations on measures to facilitate the effective enforcement of maintenance orders (including the proposal for the setting up of an intermediary body for the collection and enforcement of maintenance payments) by the Panel on Home Affairs on 11 December 2009. Members may refer to LC Paper No. CB(2)474/09-10(04) for discussions on the subject before that date.

Background

2. Having regard to the difficulties encountered by divorcees in collecting maintenance payments, members have been urging the Administration to consider the setting up of an intermediary body for the collection and enforcement of maintenance payments since the idea was first raised at the meeting of the Panel in April 1996.

3. In April 1999, the Administration set up the Inter-departmental Working Group on Review of Law and Administrative Measures affecting Divorcees and Children who are Eligible for Alimony ("the Working Group") to study measures to address problems faced by maintenance payees. In May 2000, the Working Group published a report recommending a series of legislative and administrative measures to improve the system. It also concluded that the setting up of a maintenance board to collect and enforce maintenance payments would unlikely bring, to either the maintenance payees or the taxpayers, any significant benefits over and above those which could be achieved by improving the existing system.

4. The Administration accepted all the recommendations made by the Working Group and presented its report to the Panel in June 2000. It further consulted the Panel on various legislative proposals and administrative measures to enhance the

enforcement of maintenance orders recommended by the Working Group in 2002, 2004, 2007 and 2008 respectively. A summary of members' discussions in these forums are set out in paragraphs 5 to 16 of LC Paper No. CB(2)474/09-10(04) issued to members on 7 December 2009.

Measures for the effective enforcement of maintenance orders

5. Upon the request of the Panel, the Administration briefed members on the implementation of improvement measures to help maintenance payees to collect maintenance payments (including its stance on the establishment of an intermediary body) at its meeting on 11 December 2009. The key views and initiatives, as presented by the Administration, are summarised in the ensuing paragraphs.

Setting up of an intermediary body

6. According to the Administration, maintenance in arrears is a type of civil disputes between parties which are involved in private debts. In circumstances where the maintenance payers do not have the ability to pay, a maintenance board would not necessarily be a solution to recovering maintenance. It would not be appropriate for the Government to proactively interfere by setting up an intermediary body to deal with the collection and payment of maintenance debts.

Legislative measures

7. To combat the problem of maintenance payers deliberately evading the service of the judgment summons¹, the Administration is working on ways to streamline the related court procedures which entail legislative amendments with a view to -

- (a) relaxing the service requirements for the judgment summons to be served personally on the maintenance payers;
- (b) empowering the Court to make an order for the arrest of the maintenance payer pending examination, an order prohibiting him/her from leaving Hong Kong, and an order that he/she be imprisoned until the resumption of the adjourned judgment summons hearing so as to ensure the appearance of the maintenance payer at the resumption of the examination; and
- (c) clarifying that the Court, on hearing a judgment summons, may order

¹ Note: Under Rule 87(1) of the Matrimonial Causes Rules (Cap.179 sub. Leg. A), judgement summons is a summons issued under the Rule of the High Court requiring a judgment debtor to appear and be examined as to his/her means. It is a common device for the enforcement of maintenance orders. It requires the maintenance payer to appear in Court to be examined as to his/her means and explain why he/she does not pay.

payment of maintenance arrears accruing due after the application for the issue of the judgment summons up to the date of the order of commitment.

Administrative measures

8. The Administration has introduced the following measures to ensure a more effective enforcement of the maintenance orders-

- (a) applications for Comprehensive Social Security Assistance ("CSSA") and legal aid have been synchronized to reduce the number of visits required of the applicants to the Social Welfare Department ("SWD") and the Legal Aid Department ("LAD");
- (b) in processing CSSA applications involving divorcees who have not received alimony or whose ex-spouses have defaulted in maintenance payments, SWD will not stop or reduce CSSA payment until the CSSA applicants have successfully recovered the alimony;
- (c) non-governmental organizations ("NGOs") and legal professional bodies have been informed that where the maintenance payers fail to notify the maintenance payees of a change in address, reports to the police station nearest to the maintenance payer's last known address can be made;
- (d) the Law Society of Hong Kong has been requested to inform its members that they can write to request the Immigration Department, Transport Department and Housing Department to search their records free-of-charge for addresses of maintenance payers against whom legal actions will be taken to sue for arrears in maintenance; and
- (e) the Administration has sponsored NGOs to carry out community involvement projects/activities to enhance public awareness of the rights of maintenance payees and services available.

Members' views and concerns

Assistance to maintenance payees who could not receive timely payments

9. In view of the hardship faced by maintenance payees who could not receive timely payments, members urged the Administration to adopt active and effective measures to assist them. Some members were particularly concerned about the dire situations encountered by the maintenance payees who had difficulties in maintaining a reasonable standard of living for their families or repaying their mortgage loan as a result of being defaulted in maintenance payments, and yet were ineligible for the safety net provided under the CSSA. These members considered that there was a genuine need to establish an intermediary body with a view to assisting them in overcoming their financial hardship (for example, by advancing the

maintenance in default), and alleviating the torment suffered by these people when they collected the payments from their ex-spouses.

10. The Administration advised that the CSSA Scheme would serve as a safety net for eligible applicants who could not support themselves financially, including those who had not received alimony or whose ex-spouses had defaulted in maintenance payments. Moreover, in processing their applications, SWD would not stop or reduce CSSA payment until the CSSA applicants had successfully recovered the alimony. Regarding the suggestion for the setting up of an intermediary body, the Administration reiterated its stance as set out in paragraph 6.

Role of Legal Aid Department

11. A member considered that the LAD should enhance assistance to divorcees so that they could receive a more reasonable amount of maintenance payments for supporting a decent living for their families, and strengthen its service to those who had limited knowledge about their right for maintenance payments, especially new arrivals and holders of two-way permit.

12. The Administration assured members that when conducting divorce proceedings, all in-house legal aid counsel were aware of the importance of reminding the legally aided divorcees of their right to apply for a maintenance order. In determining the amount of maintenance payments, the court would consider, among others, the needs of the payee, the ability of the payer to pay, the financial situations and claims of both parties, etc. To ensure fairness, the parties concerned would be given chances under the court procedures to present their cases.

Setting up of an intermediary body

13. Members expressed disappointment about the lack of clear progress in the implementation of improvement measures for strengthening the enforcement of maintenance orders by the Administration. In the absence of effective legislative and administrative measures, members reiterated the need for the Administration to re-consider the setting up of an intermediary body to collect and enforce maintenance payments. They also requested the Administration to further review and revert to the Panel the problems encountered by maintenance payees, make recommendations to resolve these problems and draw up a timetable for implementing these measures.

14. Some members held the view that the Government had a social obligation to protect needy people from financial hardship and mental stress, and the setting up of an intermediary body did not represent an intervention into private disputes, as claimed by the Administration. These members also considered that an intermediary body would always be more effective than an individual in recovering arrears of maintenance payments. They urged the Administration to seriously consider their suggestion by making reference to the Legislative Council Secretariat's research report (RP04/98-99), which showed that the collection of maintenance payments through an intermediary body had proven to be very cost-effective and

successful in Australia. A member highlighted the need to strengthen the education on civic responsibility in addressing the issue of evading maintenance payment.

15. The Administration assured members that it had been addressing the issue seriously by introducing various improvement measures to facilitate the enforcement of maintenance orders and the timely collection of maintenance payments. It maintained its position for not setting up an intermediary body for the enforcement of maintenance order.

Statistics relating to maintenance payments

16. Some members considered that statistics relating to maintenance payment, such as the number of applicants for maintenance orders, and the number of default cases where legal procedures had been or were being taken for the recovery of arrears, as well as the average time required for such procedures, would provide an insight in the magnitude of the problem concerning maintenance arrears, and shed light on whether the existing system was effective in the enforcement of maintenance orders. These members requested the Administration to provide the relevant information. The Judiciary's response to members' request is in **Appendix I**.

Latest Development

17. The Administration will revert to the Panel regarding members' suggestions to (a) re-consider the setting up of an intermediary body to collect and enforce maintenance payments; and (b) review the problems encountered by maintenance payees, make recommendations to resolve these problems, and draw up a timetable for implementing these measures at its meeting on 11 June 2010.

Relevant papers

18. A list of relevant papers with their hyperlinks at the LegCo website is in **Appendix II**.

Council Business Division 2
Legislative Council Secretariat
7 June 2010

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電話 TEL: 2825 4244

傳真 FAX: 2501 4636

3 March 2010

Clerk to Home Affairs Panel
Legislative Council Building
8 Jackson Road, Central
Hong Kong
(Attn: Ms Betty Fong)

Dear Ms Fong,

Statistics Relating to Maintenance Payments

Thank you for your letter of 29 December 2009 requesting for statistics relating to maintenance payments. Further to my letter of 29 December 2009, I set out the Judiciary's reply as follows -

(a) Number of applicants for maintenance orders

The Judiciary does not keep such statistics.

(b) Number of reported cases of default in maintenance payments and the reasons for the default in these cases by category

The Judiciary does not keep such statistics.

(c) Number of cases in (b) where legal procedures have been / are being taken for the recovery of the arrears, and the average time required for such procedures

If a paying party who is ordered by the Court to make payment (including maintenance payment) is in default of payment, the receiving party may take out enforcement

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proceedings to enforce the judgment/order. The enforcement proceedings include Judgment Summons (J/S), Charging Order, Garnishee Order, Writ of Fieri Facias and Attachment of Income Order (AIO). The receiving parties in matrimonial and family cases will usually take out J/S in the Family Court to enforce the arrears of maintenance. The following tables set out the statistics on J/S and AIO. The Judiciary does not keep the statistics for other enforcement proceedings.

The numbers of hearings of J/S to enforce arrears of maintenance in the past three years are as follows -

Year	No. of J/S hearings
2007	1,076
2008	943
2009	1,165

It should be noted that in some cases, more than one J/S may be taken out to enforce arrears for different periods.

The numbers of AIO applications and AIO made in the past three years are as follows -

Year	No. of AIO application	No. of AIO made
2007	29	17
2008	39	30
2009	25	23

There are no readily available statistics on the time required.

Yours sincerely,



(Miss Clara Tang)
for Judiciary Administration

Appendix II

Panel on Home Affairs

Relevant documents on setting up an intermediary body for the effective enforcement of maintenance orders

Committee	Date of meeting	Minutes/Paper/Report	LC Paper No.
Panel on Home Affairs	14.12.1998	Research Report on "Child Support Agencies in Overseas Countries" prepared by Research and Library Services Division	RP04/98-99 http://www.legco.gov.hk/yr98-99/english/sec/library/989rp04.pdf
	8.2.2002	Administration's progress report on implementation of legislative and administrative measures affecting divorcees and children who are eligible for alimony	CB(2)1076/01-02(03) http://www.legco.gov.hk/yr01-02/english/panels/ha/papers/ha0208cb2-1076-3e.pdf
		Background brief on intermediary body for the collection and enforcement of maintenance payments and related issues prepared by Legislative Council Secretariat	CB(2)1076/01-02(04) http://www.legco.gov.hk/yr01-02/english/panels/ha/papers/ha0208cb2-1076-4e.pdf
		Minutes of meeting	CB(2)1278/01-02 http://www.legco.gov.hk/yr01-02/english/panels/ha/minutes/ha020208.pdf
	22.3.2004	Minutes of meeting	CB(2)2000/03-04 http://www.legco.gov.hk/yr03-04/english/panels/ha/minutes/ha040322.pdf

Committee	Date of meeting	Minutes/Paper/Report	LC Paper No.
Panel on Home Affairs	13.4.2007	Administration's paper on proposed amendments to the Attachment of Income Order legislation	CB(2)1503/06-07(01) http://www.legco.gov.hk/yr06-07/english/panels/ha/papers/ha0413cb2-1503-1-e.pdf
		Minutes of meeting	CB(2)1980/06-07 http://www.legco.gov.hk/yr06-07/english/panels/ha/minutes/ha070413.pdf
	13.6.2008	Administration's paper on streamlining court procedures and setting up an intermediary body for the effective enforcement of maintenance orders	CB(2)2215/07-08(01) http://www.legco.gov.hk/yr07-08/english/panels/ha/papers/ha0613cb2-2215-1-e.pdf
		Minutes of meeting	CB(2)2824/07-08 http://www.legco.gov.hk/yr07-08/english/panels/ha/minutes/ha080613.pdf
	11.12.2009	Administration's paper on effective enforcement of maintenance orders	CB(2) 474/09-10(03) http://www.legco.gov.hk/yr09-10/english/panels/ha/papers/ha1211cb2-474-3-e.pdf
		Background brief on setting up an intermediary body for the effective enforcement of maintenance order	CB(2) 474/09-10(04) http://www.legco.gov.hk/yr09-10/english/panels/ha/papers/ha1211cb2-474-4-e.pdf
		Minutes of meeting	CB(2)859/09-10 http://www.legco.gov.hk/yr09-10/english/panels/ha/minutes/ha20091211.pdf

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