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13 February 2017

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Mr Colin Chui
Clerk to Panel on Welfare Services
Legislative Council Complex
1 Legislative Council Road, Central
Hong Kong

Dear Mr Chui,

**Follow-up to Legislative Council Panel on Welfare Services meetings
held on 22 February and 13 June 2016**

I refer to Members' request at the meetings of the Legislative Council Panel on Welfare Services held on 22 February 2016 and 13 June 2016 for the Government to provide supplementary information on the enforcement situation of maintenance orders, including figures on successful and unsuccessful cases in recovery maintenance in arrears.

Having consulted the Judiciary, Legal Aid Department, Social Welfare Department and Census and Statistics Department, we have prepared at **Annex** a note on the enforcement of maintenance orders and relevant statistics that are available for Members' information.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Karyn Chan'.

(Karyn CHAN)
for Secretary for Home Affairs

c.c. The Judiciary Administrator
Director of Legal Aid
Director of Social Welfare

Commissioner for Census and Statistics

(Attn: Mr Carton YAU)
(Attn: Ms Doris LUI)
(Attn: Ms Constance CHAN)
(Attn: Miss Mandy CHAN)
(Attn: Mr Matthew WONG)

Enforcement situation of maintenance order

The Government is committed to enhancing the effectiveness of the system of collection of maintenance payments and enforcement of maintenance orders. The measures taken to date include –

- (a) relaxing the requirement for the Court to make Attachments of Income Order (“AIO”)¹ to make the issuance procedure more flexible;
- (b) imposing interest or surcharge against defaulting maintenance payers;
- (c) upon request from legal professionals who could provide sufficient information, allowing designated government departments (i.e. Immigration Department, Transport Department and Housing Department) to disclose the addresses of maintenance payers against whom legal actions will be taken to recover arrears in maintenance; and
- (d) launching publicity and education programmes to enhance public understanding of the responsibilities of maintenance payers, rights of maintenance payees and services available to them when they are unable to receive maintenance payments.

Statistics related to the enforcement of maintenance orders

2. The Judiciary and Legal Aid Department (“LAD”) are involved in the enforcement of maintenance orders. The Judiciary conducts hearing for applications for maintenance orders. 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 proceedings to enforce the judgment or order. The enforcement proceedings include Judgment Summons, Charging Orders²,

¹ A court order that requires an income source (e.g. an employer) to deduct from the maintenance payer’s income and pay the deductions directly to the maintenance payee.

² A court order by which the shares or property of an individual or a company of a judgment debtor stands charged with the payment of the amount due under a judgment with interest and costs.

Garnishee Orders³, AIOs and Writ of Fieri Facias⁴.

3. The Judiciary advised that the receiving parties in matrimonial and family cases would usually take out Judgment Summons in the Family Court to enforce the arrears of maintenance and costs. The number of Judgment Summons hearings and applications for AIOs in the past five years are shown in Tables A and B below.

Table A – Number of Judgment Summons hearings

	2012	2013	2014	2015	2016
Number of Judgment Summons hearings	847	898	832	797	844

Table B – Number of applications for Attachment of Income Order (“AIO”)

	2012	2013	2014	2015	2016
Number of applications	24	17	24	11	12
Number of AIOs made	16	25	13	17	7

Note: AIOs might not be made in the same year as the applications were received.

According to the Judiciary, information on applications for maintenance orders, granting of maintenance orders, cases of default in maintenance payments and interest or surcharge imposed against defaulting maintenance payers is not available.

4. LAD provides legal aid for eligible applicants who pass both the means and merits tests to recover arrears of maintenance, most commonly by applying to court for Judgment Summons. The number of Judgment Summons issued for cases handled by in-house lawyers of LAD is shown in Table C below. The number decreased in 2014 and 2015 mainly because more maintenance cases had been assigned to lawyers in private

³ A court order by which a third party (the garnishee, such as bank) who holds money for a judgment debtor is directed to attach whole or part of the judgment debt to the judgment creditor, and the garnishee is ordered to pay the judgement creditor the amount of any debt due or accruing due to the judgment debtor.

⁴ A command directing the bailiff to seize in execution such of the judgment debtor’s goods, chattels and other property as are authorized to be seized by the law and from these goods to sell so much of the same as may be sufficient to satisfy the judgment debt, the costs of execution and interest until payment.

practice on LAD’s Panel (“panel lawyers”) since early 2014. LAD does not maintain statistics on the number of Judgment Summons proceedings issued for cases handled by panel lawyers because panel lawyers would exercise their professional judgement in taking the appropriate mode of enforcement proceedings and such information is not captured by LAD’s system.

Table C – Number of Judgment Summons proceedings issued for cases handled by in-house lawyers of LAD

	2011	2012	2013	2014	2015
Number of Judgment Summons proceedings issued	146	153	150	116	75
Case closed	134	126	121	84	17
No. of successful cases (%)	103 (77%)	92 (73%)	83 (69%)	62 (74%)	8 (47%)
No. of unsuccessful cases (%)	31 (23%)	34 (27%)	38 (31%)	22 (26%)	9 (53%)

Note: The figures for 2016 are not yet available.

LAD will also inform legal aid applicants that they may seek assistance from the Social Welfare Department (“SWD”) if they are facing financial difficulties.

5. Among the applications for legal aid, some are referred to LAD by SWD according to the referral mechanism established between SWD and LAD to better facilitate Comprehensive Social Security Assistance (CSSA) applicants to file claims for maintenance or seek assistance to enforce maintenance orders. The number of such referrals is shown in Table D below.

Table D – Number of CSSA applicants referred to LAD by SWD to seek assistance to file claims for maintenance or to enforce maintenance orders

	2012	2013	2014	2015	2016
No. of referrals for application for maintenance order	171	103	119	162	213
No. of referrals for enforcing maintenance order	30	21	23	42	58

Thematic household survey on enforcement of maintenance orders

6. To facilitate the Government's review of relevant policy and measures, the Home Affairs Bureau has commissioned five rounds of thematic household survey to collect information on the enforcement of maintenance orders since 2001. The key findings of the three more recent rounds of the survey completed in 2006, 2010 and 2016 are summarised in paragraphs 7-12 below.

7. In each of the latest three rounds of survey, some 10 000 households within a scientifically selected sample of quarters were successfully enumerated, constituting an overall response rate of 75% each time. Within each enumerated household, all persons aged 16 and over who had ever been divorced or separated (excluding foreign domestic helpers) (i.e. target respondents) were interviewed. The estimated number of persons ever divorced or separated in the latest three rounds of survey and the corresponding percentage among all persons aged 16 and over are given in Table E below. However, as the target respondents may not be willing to reveal that they had ever been divorced or separated, the number of persons ever divorced or separated might be subject to under-reporting and the related figures should be interpreted with caution.

Table E – Number of persons ever divorced or separated and percentage among all persons aged 16 and over

	Survey completed in –		
	2006	2010	2016
Number of persons ever divorced or separated	227 100	256 300	362 200
Percentage among all persons aged 16 and over	4.0%	4.5%	6.0%

8. It is noted from Table F below that the percentage of persons ever divorced or separated who had applied or intended to apply for a maintenance order from the court decreased over the years (i.e. from 25.7% in 2006 to 24.1% in 2010 and 16.9% in 2016), while the percentage of those who had a maintenance agreement with ex-spouse among those who had neither applied nor intended to apply for a maintenance order fluctuated between 6.5% and 26.2%.

Table F – Percentage of persons ever divorced or separated
by whether they had applied or intended to apply
for a maintenance order

	Survey completed in –		
	2006	2010	2016
Percentage of those who –			
(a) had applied for a maintenance order	22.5%	19.7%	16.1%
(b) intended to apply for a maintenance order	3.2%	4.4%	0.8%
(c) had neither applied nor intended to apply for a maintenance order (Among (c), percentage of those who had a maintenance agreement with ex-spouse)	74.3% (26.2%)	75.9% (6.5%)	83.1% (21.3%)

9. As shown in Table G below, for those who had neither applied nor intended to apply for a maintenance order⁵, the most commonly cited reason for not applying or intending to apply for a maintenance order was “no such need” (cited by about half of them). Other more commonly cited reasons included “both parties agreed not to require each other to provide maintenance” (16.2% in 2016) and “considered that men should not receive maintenance” (11.7% in 2016).

Table G - Major reasons cited for not applying or intending to apply
for a maintenance order

	Survey completed in –		
	2006	2010	2016
(a) No such need	45.1%	59.3%	55.9%
(b) Both parties agreed not to require each other to provide maintenance	23.4%	3.3%	16.2%
(c) Considered that men should not receive maintenance	16.6%	16.5%	11.7%
(d) Ex-spouse unable to pay maintenance	12.4%	10.8%	8.4%

⁵ Excluding those ever divorced / separated persons whose ex-spouse would provide maintenance according to a maintenance agreement.

	Survey completed in –		
	2006	2010	2016
(e) Considered that the ex-spouse would not pay maintenance	5.8%	4.6%	4.8%
(f) Unable to contact the ex-spouse	5.6%	4.6%	2.8%
(g) Had better financial condition than the ex-spouse	7.2%	4.6%	1.6%

Note: Multiple answers were allowed.

10. Among those who had applied for a maintenance order and had already known the results of their applications, the majority were successful in obtaining maintenance orders (90.0% or more) (Table H).

Table H – Successful rate in obtaining a maintenance order

	Survey completed in –		
	2006	2010	2016
Percentage of those who were successful in obtaining a maintenance order	90.0%	94.0%	91.4%

11. The survey results showed that the percentage of those who had received maintenance in full (including those who had received a lump sum maintenance payment or periodic maintenance payments on time during the 12 months before enumeration) increased steadily from 50.3% in 2006 to 53.5% in 2010 and 59.5% in 2016 (Table I). Among those who had not received maintenance payment in full, 11.9% had taken legal actions to recover arrears of maintenance in 2016, representing a decrease of 6.4 percentage points and 8.9 percentage points respectively when compared with the survey results in 2006 and 2010.

Table I – Percentage of persons ever divorced or separated who would receive maintenance* by whether they had received maintenance payment in full and percentage of those who had taken legal actions to recover arrears of maintenance

	Survey completed in –		
	2006	2010	2016
Percentage of those who –			
(a) had received maintenance payment in full [#]	50.3%	53.5%	59.5%
(b) had not received maintenance payment in full (Of (b), percentage of those who had taken legal actions to recover arrears of maintenance)	49.7% (18.3%)	46.5% (20.8%)	40.5% (11.9%)

Notes:

* Including ever divorced / separated persons whose ex-spouse would provide maintenance according to a maintenance agreement, but excluding those who would receive nominal maintenance of \$1 from their ex-spouse or were awaiting the court’s ruling on mode of maintenance payment.

Including those who had received a lump sum maintenance payment or periodic maintenance payments on time during the 12 months before enumeration.

12. As shown in Table J below, for those who had not taken legal actions to recover arrears of maintenance, the top two reasons cited for not taking legal actions were that the respondent “considered that the ex-spouse would not pay the arrears of maintenance” (27.2% in 2016) and “ex-spouse was unable to pay maintenance” (26.5% in 2016). The percentage of those who considered “application procedures for legal proceedings were too complicated” fluctuated between 11.7% and 24.6% over the years.

Table J – Major reasons cited for not taking any legal actions to recover arrears of maintenance

	Survey completed in –		
	2006	2010	2016
(a) Considered that ex-spouse would not pay the arrears of maintenance	27.6%	24.2%	27.2%
(b) Ex-spouse was unable to pay maintenance	45.9%	44.3%	26.5%

	Survey completed in –		
	2006	2010	2016
(c) Application procedures for legal proceedings were too complicated	24.6%	11.7%	22.5%
(d) Unable to contact the ex-spouse	15.9%	21.3%	18.7%
(e) Had no financial problem and no urgent need to recover arrears of maintenance	21.1%	‡	15.2%

Notes:

Multiple answers were allowed.

‡ Statistics are not released due to sampling error.

13. Detailed findings of the survey completed in 2016, together with the population coverage, concepts and definitions of key terms and data limitations, are set out in the Thematic Household Survey Report No. 61 which can be downloaded from the website of the Census and Statistics Department (www.censtatd.gov.hk/hkstat/sub/sp140.jsp?productCode=B1130201).

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