

**Difficulties encountered by divorcees
in collecting maintenance payments**

Introduction

The purpose of this paper is to inform the LegCo's Panel on Home Affairs of the progress of a review being undertaken by HAB with a view to addressing the difficulties encountered by divorcees in collecting maintenance payments.

Background

2. During the past few years, legislators and social service groups have voiced the difficulties encountered by divorcees in collecting maintenance payments. Now and then, there have been media reports of divorcees being subject to violence when asking their ex-spouses for payment. Some divorcees have said that the court procedures to recover arrears are cumbersome. In view of such difficulties, some divorcees may prefer not to claim maintenance but instead, to rely on the Comprehensive Social Security Assistance. Some groups have suggested that in order to address these difficulties, a maintenance board, modelled on the Child Support Agencies overseas, should be established to collect maintenance on behalf of divorcees.

3. In February 1997, the then Legislative Council passed a motion to urge the Government to establish a maintenance board. The then Secretary for Home Affairs outlined the existing assistance provided by the Government to maintenance payees, including CSSA and legal aids for those who passed the means test. Based on the operational experience of Child Support Agencies overseas, he had reservations about the effectiveness of the proposed maintenance board in collecting maintenance. Instead, he undertook to introduce legislation to address the difficulties encountered by maintenance payees. The relevant legislation was enacted in June 1997 which, among other things, empowered the court to issue Attachment of Income Orders (“AIO”) where a maintenance payer had defaulted in payment without reasonable excuse.

4. In early 1998, the then Provisional Legislative Council formed a committee to examine the Attachment of Income Order Rules (“AIOR”) made by the Chief Justice, which provided for the court procedures in processing applications for AIOs. When examining the AIOR, the committee made some suggestions, some of which were outside the ambit of the AIOR, e.g. the suggestion to set up a maintenance board to collect maintenance payment and to increase the penalty for contravening the AIOR to a level above that stipulated in the relevant parent legislation. HAB undertook to review the AIOR and the various points raised by members after the AIOR had been in operation for one year. The AIOR, incorporating some amendments made by the Provisional Legislative Council, took effect on 3 April 1998.

5. The undertaking was included in the Administration's 1998 policy commitments under the Policy Objective "The Rights of the Individual". The commitment is to review the existing law and administrative practices which affect divorcees and children who live on alimony to identify areas for improvement. The target is to formulate recommendations by end 1999.

The review

6. The review is now in progress. Its scope, as stated in the policy commitment, covers not just the AIOR and the proposal for a maintenance board, but also other relevant law and administrative practice. The specific questions which the review seeks to answer include the following:-

- (a) whether the AIO scheme is effective and what improvements, if any, should be made to the relevant court procedures;
- (b) what improvements, if any, should be made to the court procedures relating to judgement summons for recovery of maintenance arrears;
- (c) whether there is a case for establishing a maintenance board to collect maintenance payments on behalf of maintenance payees;
- (d) what measures should be undertaken to enhance maintenance payers' voluntary acceptance of their responsibilities; and

- (e) what other measures should be undertaken to address the difficulties of maintenance payees who do not receive payments due to them.

7. HAB, which leads the review, has been taking the following actions:-

- (a) discuss with the Judiciary and the bureaux and departments concerned, in particular the Department of Justice, Health and Welfare Bureau, Legal Aid Department and Social Welfare Department;
- (b) study the relevant literature, including the research reports prepared by the Legislative Council Secretariat on the performances of Child Support Agencies in United Kingdom, Australia, New Zealand and United States of America;
- (c) collect the views of 13 social service groups (which have previously written to HAB on matters relating to divorcees and children) on the effectiveness of the AIO scheme and areas requiring improvement - they have all responded;
- (d) collect the views of the Law Society of Hong Kong, the Bar Association and the Family Law Association on the AIO scheme and other matters within the scope of the review - the Law

Society has replied and the views of the other two bodies are awaited; and

- (e) attend the meetings of those Provisional District Boards which have initiated discussions on matters within the scope of the review - we have received invitations to attend the meetings of the relevant committees of Yuen Long PDB, Tuen Muen PDB, Southern PDB, Wan Chai PDB and Kwai Tsing PDB. We have provided each of the committees with a paper as per sample at Annex.

Way forward

- 8. HAB is continuing with the collection and analysis of information required for the review. Our plan is to present our recommendations to the LegCo's Panel on Home Affairs before the end of the year.

Advice sought

- 9. This paper is presented to Members for information. We welcome any views which Members may have on the review and the measures to help the divorcees. We will take such views into consideration in our review.

Home Affairs Bureau

June 1999

Assistance Rendered to Maintenance Payees

Introduction

This paper aims at providing information on the above subject to members of the Community Affairs Committee of the Kwai Tsing Provisional District Board for discussion of a proposal of requesting the Government to set up a maintenance board at its meeting on 15 June 1999.

2. The Government understands the difficulties encountered by divorcees in collecting maintenance payments and measures have been in place to provide them with assistance. However, based on experiences in overseas countries, we are doubtful whether the proposed maintenance board would be more effective in helping the payees, when compared to the existing measures. We are now studying further the question.

Background

3. The following legal and administrative practices have already been in place to help the needy to recover maintenance payments:

- (a) the court is empowered to issue judgment summons for maintenance payers in default to appear before the court. If the court is satisfied that the payers fail to pay without any reasonable excuse, it may issue an

order of committal to put them to custody, or suspend the order to enable them to pay the maintenance arrears;

(b) to enable payees with financial difficulties to recover maintenance payments through legal proceedings, legal aids will be provided to those who meet the eligibility criteria; and

(c) payees in financial difficulties as a result of default in payments by maintenance payers can apply for the Comprehensive Social Security Assistance(CSSA).

4. To provide further assistance to the needy payees, the Government has implemented the following improvements relating to legal and administrative practices in the last two or three years:

(a) in order to shorten the time for instituting court proceedings for the recovery of maintenance arrears, special slots have been reserved in the Family Court diaries for applications relating to judgment summons. The average waiting time for court hearings of judgment summonses has been reduced from three months to two months;

(b) a series of legislation have come into operation since July 1997, amongst which, a maintenance payer is

required to notify the maintenance payee of any change of address;

(c) since April 1998, the Attachment of Income Order (AIO) has provided an alternative for the payees to recover maintenance payments. An AIO allows a maintenance payee to collect the maintenance payment directly from the income source of a payer (such as his employer or tenant) without the need to contact the payer himself; and

(d) in order to further simplify the procedures for legal aid application, the Legal Aid Department has introduced an one-stop service since September 1997. The time required for processing legal aid application for matrimonial cases (including the enforcement of maintenance orders) has thus been reduced.

Members' views on the proposal for setting up a maintenance board

5. When studying the proposal for setting up a maintenance board, the Government has made reference to relevant literature published by overseas governments and a report on "Child Support Agencies in Overseas Countries" issued by the Legislative Council Secretariat in Hong Kong in December 1998, which outlined the operation and performances of Child Support Agencies in U.S.A., U.K., Australia and New Zealand.

6. It can be seen from the report that, although such child support agencies have wide powers, there are many cases where maintenance payments cannot be recovered. According to the report, the successful rates of collecting maintenance payments by child support agencies in these countries are as follows: 21% in the USA, 81% in Australia, 91% in New Zealand and 53% in the United Kingdom. Based on the experience of the overseas agencies, the Government considers that even if similar child support agency is set up in Hong Kong, it may not have a significant effect in addressing the problem of default in maintenance payments. Such an agency may not be more effective than the existing measures (in paragraph 3 above) in helping the people concerned.

7. The Government is reviewing the legal and administrative measures in relation to the collection of maintenance with the aim of offering further help to the maintenance payees. In this review, we will further consider the proposal of setting up a maintenance board.

8. The Government welcomes members' opinions on the above review and hope that they can express their views on the following issues when discussing whether a maintenance board should be set up:

- (a) Are existing measures really ineffective in helping the parties concerned? Which are the areas for

improvements?

(b) If we set up a maintenance board, who will be its clients? What will be its terms of reference? Will it replace the existing measures?

(i) Clients: Who will be the clients of the board? Should the board serve all those who have been issued a maintenance order, or only those whose income and property are less than a certain amount?

(ii) Terms of reference: Other than collecting maintenance on behalf of the payees, the maintenance boards in foreign countries are also responsible for maintenance assessment. What role should the proposed maintenance board in Hong Kong play? In carrying out its functions, will it have the same powers as similar agencies overseas to deduct the payment directly from payer's income (such as salary and tax rebate) without obtaining court orders and to check the records of the Inland Revenue Department?

(iii) Linkage with the existing system: As mentioned above, various measures are in place in Hong Kong to help divorcees recover maintenance payments. Will the setting up of a maintenance

board replace such measures as the CSSA and the legal aid which help those who do not receive maintenance payments due to them?

(iv) Advances: Will the maintenance board have to make advances to meet maintenance payments before it receives them from the maintenance payer?

(v) Charges : As the collection of maintenance payment is a kind of service rendered to the payees, should the maintenance board charge the payee on a cost-recovery basis?

The Way Forward

9. As mentioned in paragraph 7, the Government is reviewing the existing legal and administrative practices which affect those people who live on alimony to identify areas for improvement. We are gathering the views of the organisations concerned (including the two legal professional bodies, the Family Law Association and various women organisations) and will formulate recommendations by end 1999.

Home Affairs Bureau

May 1999