

**INTEREST AND SURCHARGE ON ARREARS  
OF MAINTENANCE ORDINANCE 2003**

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**HONG KONG SPECIAL ADMINISTRATIVE REGION**

ORDINANCE NO. 18 OF 2003

L.S.

TUNG Chee-hwa  
Chief Executive  
29 May 2003

An Ordinance to amend the Guardianship of Minors Ordinance, the Separation and Maintenance Orders Ordinance, the Matrimonial Causes Ordinance and the Matrimonial Proceedings and Property Ordinance.

[ ]

Enacted by the Legislative Council.

**PART I**

PRELIMINARY

**1. Short title and commencement**

(1) This Ordinance may be cited as the Interest and Surcharge on Arrears of Maintenance Ordinance 2003.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Home Affairs by notice published in the Gazette.

**PART II**

GUARDIANSHIP OF MINORS ORDINANCE

**2. Interpretation**

Section 2 of the Guardianship of Minors Ordinance (Cap. 13) is amended by adding—

““maintenance order” (贍養令) means an order made—

- (a) under section 10(2)(b), 11(1)(b)(ii), 12(b)(ii) or 13(2)(b), (3)(a) or (4) for periodical payments; or
- (b) under section 10(2)(c), 11(1)(b)(iii) or 12(b)(iii) for secured periodical payments; or

- (c) under section 10(2)(a), 11(1)(b)(i), 12(b)(i) or 13(2)(a) for payment of a lump sum;”.

### 3. Attachment of income to satisfy order

Section 20(1AA) is amended by repealing the definition of “maintenance order”.

### 4. Sections added

The following are added in Part IV—

#### “20A. Interest on arrears of maintenance

- (1) In this section and section 20B—  
“commencement date” (生效日期) means the date on which the Interest and Surcharge on Arrears of Maintenance Ordinance 2003 (18 of 2003) comes into operation;  
“judgment creditor” (判定債權人) means a person entitled to enforce a maintenance order;  
“judgment debtor” (判定債務人) means a person liable under a maintenance order.
- (2) Where a maintenance order has been made against a judgment debtor, and the judgment debtor fails to make full and punctual payment in compliance with the maintenance order, the judgment creditor is entitled to interest in respect of arrears of maintenance which accrue on or after the commencement date.
- (3) For the purposes of subsection (2)—  
(a) the arrears in respect of each periodical payment, secured periodical payment or payment of a lump sum, as the case may be, under a maintenance order shall be treated as a judgment debt for the purposes of section 50 of the District Court Ordinance (Cap. 336);  
(b) the interest under subsection (2) shall be calculated in accordance with that section 50; and  
(c) for the purposes of that section 50, the date on which payment is due as specified by the maintenance order shall be treated as the date of the judgment.
- (4) The judgment debtor is liable to pay the interest under subsection (2).

(5) If any payment under a maintenance order is not paid and interest in respect of the arrears has accrued under subsection (2), and subsequently the judgment debtor makes payment, the payment is deemed to be made in the following order in or towards the discharge of—

- (a) interest accrued under subsection (2);
- (b) surcharge payable under section 20B;
- (c) if there are any proceedings instituted for enforcing the maintenance order, the costs ordered by the court to be paid under those proceedings;
- (d) any sums from time to time falling due under the maintenance order, with the sums discharged in the reversed chronological sequence of the dates on which payment is due (that is, the most recent arrears will be discharged first);
- (e) if the court makes an order in any proceedings instituted for enforcing the maintenance order, the amount of the maintenance in arrears, whether in one amount or by instalments, payable by the judgment debtor under the order.

(6) A judgment debtor who considers that he has reasonable grounds not to pay the interest under subsection (2) may, within a reasonable time after having knowledge of the requirement to pay, apply by summons to the court not to pay the interest, and shall set out the grounds in the application.

(7) If an application is made under subsection (6), in deciding whether to require the judgment debtor to pay interest and, if so, the amount of interest, the court shall take into account all the circumstances of the case, including (but not limited to) the following—

- (a) whether the judgment debtor has a reasonable excuse for his failure to comply with the maintenance order;
- (b) whether the judgment debtor has evaded service of court documents;
- (c) the judgment debtor's past record and conduct in connection with the making of maintenance payments to the judgment creditor pursuant to the maintenance order or an undertaking in any proceedings;
- (d) whether the judgment debtor has given the judgment creditor a reasonable explanation for his failure to comply with the maintenance order; and
- (e) the judgment debtor's ability to pay.

(8) A judgment debtor who is aggrieved by a requirement under subsection (7) to pay interest may appeal to the Court of Appeal against the decision under section 63 of the District Court Ordinance (Cap. 336).

**20B. Surcharge on arrears of maintenance**

(1) Where a maintenance order has been made against a judgment debtor, and the judgment debtor, without reasonable excuse, repeatedly fails to make full and punctual payment in compliance with the maintenance order, the court may, on application made by the judgment creditor, make an order requiring the judgment debtor to pay to the judgment creditor a surcharge in respect of the total arrears of maintenance which accrue on or after the commencement date.

(2) The application for a surcharge under subsection (1) may be made—

- (a) in proceedings instituted for enforcing the maintenance order; or
- (b) in a manner described in subsections (3), (4), (5), (6), (7), (8) and (9).

(3) For the purposes of subsection (2)(b), the application for a surcharge shall be made by a summons supported by an affidavit of the judgment creditor stating—

- (a) the name of the judgment creditor and the address for service of the documents relating to the application;
- (b) the name and the address for service or last known address of the judgment debtor;
- (c) the particulars of the maintenance order;
- (d) the total arrears of maintenance due and unpaid and the date on which the arrears first accrued;
- (e) a request for an order requiring the judgment debtor to pay surcharge at a rate to be decided by the court under subsection (11);
- (f) a request for fixing a date, time and place for the hearing of the application;
- (g) a request for an order requiring the judgment debtor to pay to the judgment creditor the surcharge claimed if the judgment debtor does not appear at the hearing.

(4) On receipt of the summons and affidavit, the court shall fix a date, time and place for the hearing of the application.

(5) The judgment creditor shall serve a sealed copy of the summons and a copy of the affidavit, together with a notice of the hearing, on the judgment debtor.

(6) Without prejudice to any enactment relating to the service of documents and save as is otherwise expressly provided, the summons, affidavit and notice may—

- (a) be personally served on the judgment debtor; or
- (b) be sent—

- (i) if the judgment debtor is represented, by post to the solicitor acting for that judgment debtor, or by leaving the same with the solicitor; or
  - (ii) if the judgment debtor is unrepresented, by post to the address for service given by him or his last known address, or by leaving the same at the address for service or the last known address of that judgment debtor; or
- (c) be served in such other manner as the court directs.
- (7) If the judgment debtor fails to appear at the hearing of the application on the date fixed under subsection (4), then—
- (a) if the court is satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor;
  - (b) if the court is not satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may adjourn the hearing to a date, time and place as it thinks fit.
- (8) The judgment creditor shall serve a notice of the adjourned hearing on the judgment debtor.
- (9) If the judgment debtor fails to appear at the adjourned hearing on the date fixed under subsection (7)(b), the court may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor.
- (10) If the judgment debtor, within a reasonable time after having knowledge of the order made under subsection (7)(a) or (9), applies by summons to vary or set aside the order, the court may, if it is satisfied that there is reasonable excuse for the judgment debtor's failure to—
- (a) appear at the hearing; and
  - (b) make full and punctual payment in compliance with the maintenance order,
- vary or set aside the order on such terms as it thinks fit.
- (11) The amount of surcharge payable by the judgment debtor under subsection (1) shall not exceed 100% of the total arrears of maintenance calculated from the date on which the arrears first accrued to the date of payment of the surcharge.
- (12) If the court makes an order requiring the judgment debtor to pay a surcharge, it shall specify in the order the amount of surcharge payable by the judgment debtor and the date of payment.

(13) A surcharge payable under this section is recoverable as a civil debt due to the judgment creditor by the judgment debtor. An action under this subsection may be brought in the District Court even though the amount to be recovered otherwise exceeds the limit of jurisdiction of the District Court.

(14) A judgment debtor who is aggrieved by an order to pay a surcharge may appeal to the Court of Appeal against the order under section 63 of the District Court Ordinance (Cap. 336).”.

### PART III

#### SEPARATION AND MAINTENANCE ORDERS ORDINANCE

##### 5. Interpretation

Section 2 of the Separation and Maintenance Orders Ordinance (Cap. 16) is amended by adding—

““maintenance order” (贍養令) means an order made—

- (a) under section 5(1)(c) or (d) or 9(1) for periodical payments;
- or
- (b) under section 5(1)(c) or (d) for payment of a lump sum;”.

##### 6. Attachment of income to satisfy order

Section 9A(1AA) is amended by repealing the definition of “maintenance order”.

##### 7. Sections added

The following are added—

###### “9B. Interest on arrears of maintenance

(1) In this section and section 9C—

“commencement date” (生效日期) means the date on which the Interest and Surcharge on Arrears of Maintenance Ordinance 2003 (18 of 2003) comes into operation;

“judgment creditor” (判定債權人) means a person entitled to enforce a maintenance order;

“judgment debtor” (判定債務人) means a person liable under a maintenance order.



(2) Where a maintenance order has been made against a judgment debtor, and the judgment debtor fails to make full and punctual payment in compliance with the maintenance order, the judgment creditor is entitled to interest in respect of arrears of maintenance which accrue on or after the commencement date.

(3) For the purposes of subsection (2)—

- (a) the arrears in respect of each periodical payment or payment of a lump sum, as the case may be, under a maintenance order shall be treated as a judgment debt for the purposes of section 50 of the District Court Ordinance (Cap. 336);
- (b) the interest under subsection (2) shall be calculated in accordance with that section 50; and
- (c) for the purposes of that section 50, the date on which payment is due as specified by the maintenance order shall be treated as the date of the judgment.

(4) The judgment debtor is liable to pay the interest under subsection (2).

(5) If any payment under a maintenance order is not paid and interest in respect of the arrears has accrued under subsection (2), and subsequently the judgment debtor makes payment, the payment is deemed to be made in the following order in or towards the discharge of—

- (a) interest accrued under subsection (2);
- (b) surcharge payable under section 9C;
- (c) if there are any proceedings instituted for enforcing the maintenance order, the costs ordered by the court to be paid under those proceedings;
- (d) any sums from time to time falling due under the maintenance order, with the sums discharged in the reversed chronological sequence of the dates on which payment is due (that is, the most recent arrears will be discharged first);
- (e) if the court makes an order in any proceedings instituted for enforcing the maintenance order, the amount of the maintenance in arrears, whether in one amount or by instalments, payable by the judgment debtor under the order.

(6) A judgment debtor who considers that he has reasonable grounds not to pay the interest under subsection (2) may, within a reasonable time after having knowledge of the requirement to pay, apply by summons to the court not to pay the interest, and shall set out the grounds in the application.

(7) If an application is made under subsection (6), in deciding whether to require the judgment debtor to pay interest and, if so, the amount of interest, the court shall take into account all the circumstances of the case, including (but not limited to) the following—

- (a) whether the judgment debtor has a reasonable excuse for his failure to comply with the maintenance order;
- (b) whether the judgment debtor has evaded service of court documents;
- (c) the judgment debtor's past record and conduct in connection with the making of maintenance payments to the judgment creditor pursuant to the maintenance order or an undertaking in any proceedings;
- (d) whether the judgment debtor has given the judgment creditor a reasonable explanation for his failure to comply with the maintenance order; and
- (e) the judgment debtor's ability to pay.

(8) A judgment debtor who is aggrieved by a requirement under subsection (7) to pay interest may appeal to the Court of Appeal against the decision under section 63 of the District Court Ordinance (Cap. 336).

### **9C. Surcharge on arrears of maintenance**

(1) Where a maintenance order has been made against a judgment debtor, and the judgment debtor, without reasonable excuse, repeatedly fails to make full and punctual payment in compliance with the maintenance order, the court may, on application made by the judgment creditor, make an order requiring the judgment debtor to pay to the judgment creditor a surcharge in respect of the total arrears of maintenance which accrue on or after the commencement date.

(2) The application for a surcharge under subsection (1) may be made—

- (a) in proceedings instituted for enforcing the maintenance order; or
- (b) in a manner described in subsections (3), (4), (5), (6), (7), (8) and (9).

(3) For the purposes of subsection (2)(b), the application for a surcharge shall be made by a summons supported by an affidavit of the judgment creditor stating—

- (a) the name of the judgment creditor and the address for service of the documents relating to the application;
- (b) the name and the address for service or last known address of the judgment debtor;
- (c) the particulars of the maintenance order;

- (d) the total arrears of maintenance due and unpaid and the date on which the arrears first accrued;
- (e) a request for an order requiring the judgment debtor to pay surcharge at a rate to be decided by the court under subsection (11);
- (f) a request for fixing a date, time and place for the hearing of the application;
- (g) a request for an order requiring the judgment debtor to pay to the judgment creditor the surcharge claimed if the judgment debtor does not appear at the hearing.

(4) On receipt of the summons and affidavit, the court shall fix a date, time and place for the hearing of the application.

(5) The judgment creditor shall serve a sealed copy of the summons and a copy of the affidavit, together with a notice of the hearing, on the judgment debtor.

(6) Without prejudice to any enactment relating to the service of documents and save as is otherwise expressly provided, the summons, affidavit and notice may—

- (a) be personally served on the judgment debtor; or
- (b) be sent—
  - (i) if the judgment debtor is represented, by post to the solicitor acting for that judgment debtor, or by leaving the same with the solicitor; or
  - (ii) if the judgment debtor is unrepresented, by post to the address for service given by him or his last known address, or by leaving the same at the address for service or the last known address of that judgment debtor; or
- (c) be served in such other manner as the court directs.

(7) If the judgment debtor fails to appear at the hearing of the application on the date fixed under subsection (4), then—

- (a) if the court is satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor;
- (b) if the court is not satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may adjourn the hearing to a date, time and place as it thinks fit.

(8) The judgment creditor shall serve a notice of the adjourned hearing on the judgment debtor.

(9) If the judgment debtor fails to appear at the adjourned hearing on the date fixed under subsection (7)(b), the court may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor.

(10) If the judgment debtor, within a reasonable time after having knowledge of the order made under subsection (7)(a) or (9), applies by summons to vary or set aside the order, the court may, if it is satisfied that there is reasonable excuse for the judgment debtor's failure to—

(a) appear at the hearing; and

(b) make full and punctual payment in compliance with the maintenance order,

vary or set aside the order on such terms as it thinks fit.

(11) The amount of surcharge payable by the judgment debtor under subsection (1) shall not exceed 100% of the total arrears of maintenance calculated from the date on which the arrears first accrued to the date of payment of the surcharge.

(12) If the court makes an order requiring the judgment debtor to pay a surcharge, it shall specify in the order the amount of surcharge payable by the judgment debtor and the date of payment.

(13) A surcharge payable under this section is recoverable as a civil debt due to the judgment creditor by the judgment debtor. An action under this subsection may be brought in the District Court even though the amount to be recovered otherwise exceeds the limit of jurisdiction of the District Court.

(14) A judgment debtor who is aggrieved by an order to pay a surcharge may appeal to the Court of Appeal against the order under section 63 of the District Court Ordinance (Cap. 336).”.

## PART IV

### MATRIMONIAL CAUSES ORDINANCE

#### 8. Sections added

The Matrimonial Causes Ordinance (Cap. 179) is amended by adding—

##### “53A. Interest on arrears of maintenance

(1) In this section and section 53B—

“commencement date” (生效日期) means the date on which the Interest and Surcharge on Arrears of Maintenance Ordinance 2003 (18 of 2003) comes into operation;

“judgment creditor” (判定債權人) means a person entitled to enforce a maintenance order;

“judgment debtor” (判定債務人) means a person liable under a maintenance order;

“maintenance order” (贍養令) means an order made in the matrimonial cause for the payment of money.

(2) Where a maintenance order has been made against a judgment debtor, and the judgment debtor fails to make full and punctual payment in compliance with the maintenance order, the judgment creditor is entitled to interest in respect of arrears of maintenance which accrue on or after the commencement date.

(3) For the purposes of subsection (2)—

- (a) the arrears in respect of each periodical payment, secured periodical payment or payment of a lump sum, as the case may be, under a maintenance order shall be treated as a judgment debt for the purposes of section 50 of the District Court Ordinance (Cap. 336);
- (b) the interest under subsection (2) shall be calculated in accordance with that section 50; and
- (c) for the purposes of that section 50, the date on which payment is due as specified by the maintenance order shall be treated as the date of the judgment.

(4) The judgment debtor is liable to pay the interest under subsection (2).

(5) If any payment under a maintenance order is not paid and interest in respect of the arrears has accrued under subsection (2), and subsequently the judgment debtor makes payment, the payment is deemed to be made in the following order in or towards the discharge of—

- (a) interest accrued under subsection (2);
- (b) surcharge payable under section 53B;
- (c) if there are any proceedings instituted for enforcing the maintenance order, the costs ordered by the court to be paid under those proceedings;
- (d) any sums from time to time falling due under the maintenance order, with the sums discharged in the reversed chronological sequence of the dates on which payment is due (that is, the most recent arrears will be discharged first);
- (e) if the court makes an order in any proceedings instituted for enforcing the maintenance order, the amount of the maintenance in arrears, whether in one amount or by instalments, payable by the judgment debtor under the order.

(6) A judgment debtor who considers that he has reasonable grounds not to pay the interest under subsection (2) may, within a reasonable time after having knowledge of the requirement to pay, apply by summons to the court not to pay the interest, and shall set out the grounds in the application.

(7) If an application is made under subsection (6), in deciding whether to require the judgment debtor to pay interest and, if so, the amount of interest, the court shall take into account all the circumstances of the case, including (but not limited to) the following—

- (a) whether the judgment debtor has a reasonable excuse for his failure to comply with the maintenance order;
- (b) whether the judgment debtor has evaded service of court documents;
- (c) the judgment debtor's past record and conduct in connection with the making of maintenance payments to the judgment creditor pursuant to the maintenance order or an undertaking in any proceedings;
- (d) whether the judgment debtor has given the judgment creditor a reasonable explanation for his failure to comply with the maintenance order; and
- (e) the judgment debtor's ability to pay.

(8) A judgment debtor who is aggrieved by a requirement under subsection (7) to pay interest may appeal to the Court of Appeal against the decision under section 63 of the District Court Ordinance (Cap. 336).

### **53B. Surcharge on arrears of maintenance**

(1) Where a maintenance order has been made against a judgment debtor, and the judgment debtor, without reasonable excuse, repeatedly fails to make full and punctual payment in compliance with the maintenance order, the court may, on application made by the judgment creditor, make an order requiring the judgment debtor to pay to the judgment creditor a surcharge in respect of the total arrears of maintenance which accrue on or after the commencement date.

(2) The application for a surcharge under subsection (1) may be made—

- (a) in proceedings instituted for enforcing the maintenance order; or
- (b) in a manner described in subsections (3), (4), (5), (6), (7), (8) and (9).

(3) For the purposes of subsection (2)(b), the application for a surcharge shall be made by a summons supported by an affidavit of the judgment creditor stating—

- (a) the name of the judgment creditor and the address for service of the documents relating to the application;
- (b) the name and the address for service or last known address of the judgment debtor;
- (c) the particulars of the maintenance order;
- (d) the total arrears of maintenance due and unpaid and the date on which the arrears first accrued;
- (e) a request for an order requiring the judgment debtor to pay surcharge at a rate to be decided by the court under subsection (11);
- (f) a request for fixing a date, time and place for the hearing of the application;
- (g) a request for an order requiring the judgment debtor to pay to the judgment creditor the surcharge claimed if the judgment debtor does not appear at the hearing.

(4) On receipt of the summons and affidavit, the court shall fix a date, time and place for the hearing of the application.

(5) The judgment creditor shall serve a sealed copy of the summons and a copy of the affidavit, together with a notice of the hearing, on the judgment debtor.

(6) Without prejudice to any enactment relating to the service of documents and save as is otherwise expressly provided, the summons, affidavit and notice may—

- (a) be personally served on the judgment debtor; or
- (b) be sent—
  - (i) if the judgment debtor is represented, by post to the solicitor acting for that judgment debtor, or by leaving the same with the solicitor; or
  - (ii) if the judgment debtor is unrepresented, by post to the address for service given by him or his last known address, or by leaving the same at the address for service or the last known address of that judgment debtor; or
- (c) be served in such other manner as the court directs.

(7) If the judgment debtor fails to appear at the hearing of the application on the date fixed under subsection (4), then—

- (a) if the court is satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor;

(b) if the court is not satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may adjourn the hearing to a date, time and place as it thinks fit.

(8) The judgment creditor shall serve a notice of the adjourned hearing on the judgment debtor.

(9) If the judgment debtor fails to appear at the adjourned hearing on the date fixed under subsection (7)(b), the court may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor.

(10) If the judgment debtor, within a reasonable time after having knowledge of the order made under subsection (7)(a) or (9), applies by summons to vary or set aside the order, the court may, if it is satisfied that there is reasonable excuse for the judgment debtor's failure to—

(a) appear at the hearing; and

(b) make full and punctual payment in compliance with the maintenance order,

vary or set aside the order on such terms as it thinks fit.

(11) The amount of surcharge payable by the judgment debtor under subsection (1) shall not exceed 100% of the total arrears of maintenance calculated from the date on which the arrears first accrued to the date of payment of the surcharge.

(12) If the court makes an order requiring the judgment debtor to pay a surcharge, it shall specify in the order the amount of surcharge payable by the judgment debtor and the date of payment.

(13) A surcharge payable under this section is recoverable as a civil debt due to the judgment creditor by the judgment debtor. An action under this subsection may be brought in the District Court even though the amount to be recovered otherwise exceeds the limit of jurisdiction of the District Court.

(14) A judgment debtor who is aggrieved by an order to pay a surcharge may appeal to the Court of Appeal against the order under section 63 of the District Court Ordinance (Cap. 336).”.

## PART V

### MATRIMONIAL PROCEEDINGS AND PROPERTY ORDINANCE

#### 9. Interpretation

Section 2(1) of the Matrimonial Proceedings and Property Ordinance (Cap. 192) is amended by adding—

““maintenance order” (贍養令) means an order made—



- (a) under section 4(1)(a), 5(2)(a), 8(5) or (6)(a) or (d) or 15(4) or (5) for periodical payments; or
- (b) under section 4(1)(b), 5(2)(b), 8(6)(b) or (e) or 15(4) or (5) for secured periodical payments; or
- (c) under section 4(1)(c), 5(2)(c) or 8(6)(c) or (f) for payment of a lump sum;”.

#### 10. Attachment of income to satisfy order

Section 28(1AA) is amended by repealing the definition of “maintenance order”.

#### 11. Sections added

The following are added before section 28A—

##### “28AA. Interest on arrears of maintenance

- (1) In this section and section 28AB—
  - “commencement date” (生效日期) means the date on which the Interest and Surcharge on Arrears of Maintenance Ordinance 2003 (18 of 2003) comes into operation;
  - “judgment creditor” (判定債權人) means a person entitled to enforce a maintenance order;
  - “judgment debtor” (判定債務人) means a person liable under a maintenance order.
- (2) Where a maintenance order has been made against a judgment debtor, and the judgment debtor fails to make full and punctual payment in compliance with the maintenance order, the judgment creditor is entitled to interest in respect of arrears of maintenance which accrue on or after the commencement date.
- (3) Subject to subsection (5) and for the purposes of subsection (2)—
  - (a) the arrears in respect of each periodical payment, secured periodical payment or payment of a lump sum, as the case may be, under a maintenance order shall be treated as a judgment debt for the purposes of section 50 of the District Court Ordinance (Cap. 336);
  - (b) the interest under subsection (2) shall be calculated in accordance with that section 50; and

(c) for the purposes of that section 50, the date on which payment is due as specified by the maintenance order shall be treated as the date of the judgment.

(4) The judgment debtor is liable to pay the interest under subsection (2).

(5) If the court grants leave, on the application of a judgment creditor for leave under section 12, to enforce arrears of maintenance which became due for more than 12 months, the interest under subsection (2) shall be calculated from the date specified by the court as being the date on which the judgment creditor is entitled to enforce the payment of the arrears.

(6) If any payment under a maintenance order is not paid and interest in respect of the arrears has accrued under subsection (2), and subsequently the judgment debtor makes payment, the payment is deemed to be made in the following order in or towards the discharge of—

- (a) interest accrued under subsection (2);
- (b) surcharge payable under section 28AB;
- (c) if there are any proceedings instituted for enforcing the maintenance order, the costs ordered by the court to be paid under those proceedings;
- (d) any sums from time to time falling due under the maintenance order, with the sums discharged in the reversed chronological sequence of the dates on which payment is due (that is, the most recent arrears will be discharged first);
- (e) if the court makes an order in any proceedings instituted for enforcing the maintenance order, the amount of the maintenance in arrears, whether in one amount or by instalments, payable by the judgment debtor under the order.

(7) A judgment debtor who considers that he has reasonable grounds not to pay the interest under subsection (2) may, within a reasonable time after having knowledge of the requirement to pay, apply by summons to the court not to pay the interest, and shall set out the grounds in the application.

(8) If an application is made under subsection (7), in deciding whether to require the judgment debtor to pay interest and, if so, the amount of interest, the court shall take into account all the circumstances of the case, including (but not limited to) the following—

- (a) whether the judgment debtor has a reasonable excuse for his failure to comply with the maintenance order;
- (b) whether the judgment debtor has evaded service of court documents;

- (c) the judgment debtor's past record and conduct in connection with the making of maintenance payments to the judgment creditor pursuant to the maintenance order or an undertaking in any proceedings;
- (d) whether the judgment debtor has given the judgment creditor a reasonable explanation for his failure to comply with the maintenance order; and
- (e) the judgment debtor's ability to pay.

(9) A judgment debtor who is aggrieved by a requirement under subsection (8) to pay interest may appeal to the Court of Appeal against the decision under section 63 of the District Court Ordinance (Cap. 336).

### **28AB. Surcharge on arrears of maintenance**

(1) Where a maintenance order has been made against a judgment debtor, and the judgment debtor, without reasonable excuse, repeatedly fails to make full and punctual payment in compliance with the maintenance order, the court may, on application made by the judgment creditor, make an order requiring the judgment debtor to pay to the judgment creditor a surcharge in respect of the total arrears of maintenance which accrue on or after the commencement date.

(2) The application for a surcharge under subsection (1) may be made—

- (a) in proceedings instituted for enforcing the maintenance order; or
- (b) in a manner described in subsections (3), (4), (5), (6), (7), (8) and (9).

(3) For the purposes of subsection (2)(b), the application for a surcharge shall be made by a summons supported by an affidavit of the judgment creditor stating—

- (a) the name of the judgment creditor and the address for service of the documents relating to the application;
- (b) the name and the address for service or last known address of the judgment debtor;
- (c) the particulars of the maintenance order;
- (d) the total arrears of maintenance due and unpaid and the date on which the arrears first accrued;
- (e) a request for an order requiring the judgment debtor to pay surcharge at a rate to be decided by the court under subsection (11);
- (f) a request for fixing a date, time and place for the hearing of the application;

(g) a request for an order requiring the judgment debtor to pay to the judgment creditor the surcharge claimed if the judgment debtor does not appear at the hearing.

(4) On receipt of the summons and affidavit, the court shall fix a date, time and place for the hearing of the application.

(5) The judgment creditor shall serve a sealed copy of the summons and a copy of the affidavit, together with a notice of the hearing, on the judgment debtor.

(6) Without prejudice to any enactment relating to the service of documents and save as is otherwise expressly provided, the summons, affidavit and notice may—

(a) be personally served on the judgment debtor; or

(b) be sent—

(i) if the judgment debtor is represented, by post to the solicitor acting for that judgment debtor, or by leaving the same with the solicitor; or

(ii) if the judgment debtor is unrepresented, by post to the address for service given by him or his last known address, or by leaving the same at the address for service or the last known address of that judgment debtor; or

(c) be served in such other manner as the court directs.

(7) If the judgment debtor fails to appear at the hearing of the application on the date fixed under subsection (4), then—

(a) if the court is satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor;

(b) if the court is not satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may adjourn the hearing to a date, time and place as it thinks fit.

(8) The judgment creditor shall serve a notice of the adjourned hearing on the judgment debtor.

(9) If the judgment debtor fails to appear at the adjourned hearing on the date fixed under subsection (7)(b), the court may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor.

(10) If the judgment debtor, within a reasonable time after having knowledge of the order made under subsection (7)(a) or (9), applies by summons to vary or set aside the order, the court may, if it is satisfied that there is reasonable excuse for the judgment debtor's failure to—

(a) appear at the hearing; and

(b) make full and punctual payment in compliance with the maintenance order,

vary or set aside the order on such terms as it thinks fit.

(11) Subject to subsection (13), the amount of surcharge payable by the judgment debtor under subsection (1) shall not exceed 100% of the total arrears of maintenance calculated from the date on which the arrears first accrued to the date of payment of the surcharge.

(12) If the court makes an order requiring the judgment debtor to pay a surcharge, it shall specify in the order the amount of surcharge payable by the judgment debtor and the date of payment.

(13) If the court grants leave, on the application of a judgment creditor for leave under section 12 to enforce arrears of maintenance which became due for more than 12 months, the surcharge under subsection (1) shall be calculated from the date specified by the court as being the date on which the judgment creditor is entitled to enforce the payment of the arrears.

(14) A surcharge payable under this section is recoverable as a civil debt due to the judgment creditor by the judgment debtor. An action under this subsection may be brought in the District Court even though the amount to be recovered otherwise exceeds the limit of jurisdiction of the District Court.

(15) A judgment debtor who is aggrieved by an order to pay a surcharge may appeal to the Court of Appeal against the order under section 63 of the District Court Ordinance (Cap. 336).”

## PART VI

### CONSEQUENTIAL AMENDMENTS

#### **The Rules of the High Court**

#### **12. Definitions**

Order 1, rule 4(1) of the Rules of the High Court (Cap. 4 sub. leg. A) is amended, by adding—

““judgment rate” (判定利率) means the rate of interest determined by the Chief Justice under section 49(1)(b) of the Ordinance;”

#### **13. Application for order**

Order 49, rule 2 is amended, by adding after paragraph (b)—

“(ba) if the amount remaining unpaid under the judgment or order is arrears of maintenance, stating—

- (i) the interest payable in respect of the arrears of maintenance that the judgment creditor is entitled to under section 20A(2) of the Guardianship of Minors Ordinance (Cap. 13), section 9B(2) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53A(2) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AA(2) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be; and
- (ii) the surcharge payable in respect of the arrears of maintenance under section 20B(1) of the Guardianship of Minors Ordinance (Cap. 13), section 9C(1) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53B(1) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AB(1) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be;”.

#### **14. Order imposing a charge on a beneficial interest**

Order 50, rule 1(3) is amended, by adding after paragraph (b)—

“(ba) if the amount unpaid under the judgment or order is arrears of maintenance, stating—

- (i) the interest payable in respect of the arrears of maintenance that the judgment creditor is entitled to under section 20A(2) of the Guardianship of Minors Ordinance (Cap. 13), section 9B(2) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53A(2) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AA(2) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be; and
- (ii) the surcharge payable in respect of the arrears of maintenance under section 20B(1) of the Guardianship of Minors Ordinance (Cap. 13), section 9C(1) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53B(1) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AB(1) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be;”.

#### **15. Forms**

Appendix A is amended—

- (a) in Form No. 72—

- (i) in the second paragraph, by adding “and interest at the judgment rate calculated from the date on which maintenance payment is due to the date of payment and surcharge at a rate to be decided by the High Court, as referred to in Order 49, rule 2(*ba*)(i) and (ii)” after “costs”;
- (ii) in the third paragraph, by adding “and interest at the judgment rate calculated from the date on which maintenance payment is due to the date of payment and surcharge at a rate to be decided by the High Court, as referred to in Order 49, rule 2(*ba*)(i) and (ii)” after “order,”;
- (b) in Form No. 73—
  - (i) in the first paragraph, by adding “and interest at the judgment rate calculated from the date on which maintenance payment is due to the date of payment and surcharge at a rate to be decided by the High Court, as referred to in Order 49, rule 2(*ba*)(i) and (ii)” after “costs”;
  - (ii) in the second paragraph, by adding “, \$..... interest and \$..... surcharge, as referred to in Order 49, rule 2(*ba*)(i) and (ii)” after “judgment debt”;
- (c) in Form No. 74, by adding “and \$..... interest and \$..... surcharge, as referred to in Order 49, rule 2(*ba*)(i) and (ii)” after “debtor”;
- (d) in Form No. 75, in the second paragraph, by adding “(interest at the judgment rate calculated from the date on which maintenance payment is due to the date of payment and surcharge at a rate to be decided by the Court, as referred to in Order 50, rule 1(3)(*ba*)(i) and (ii))” after “rate”;
- (e) in Form No. 76, in the second paragraph, by adding “(\$..... interest and \$..... surcharge, as referred to in Order 50, rule 1(3)(*ba*)(i) and (ii))” after “rate”.

### **Attachment of Income Order Rules**

#### **16. Interpretation**

Rule 2 of the Attachment of Income Order Rules (Cap. 13 sub. leg. A) is amended—

- (a) in the definition of “related maintenance order”, by repealing “20(1AA)”, “9A(1AA)” and “28(1AA)” and substituting “2” in all places;

(b) by adding—

““judgment rate” (判定利率) means the rate of interest determined by the Chief Justice under section 49(1)(b) of the High Court Ordinance (Cap. 4) or section 50(1)(b) of the District Court Ordinance (Cap. 336), as the case may be;”.

**17. Requirements relating to application made by designated payee**

Rule 3(2)(f) is amended—

(a) in subparagraph (i), by repealing “and” at the end;

(b) by adding—

“(iii) the interest payable in respect of arrears of maintenance that the designated payee is entitled to under section 20A(2) of the Guardianship of Minors Ordinance (Cap. 13), section 9B(2) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53A(2) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AA(2) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be; and

(iv) the surcharge payable in respect of arrears of maintenance under section 20B(1) of the Guardianship of Minors Ordinance (Cap. 13), section 9C(1) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53B(1) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AB(1) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be;”.

**18. Schedule amended**

The Schedule is amended, in Form 4—

(a) by renumbering “\*1.”, “\*2.” and “\*3.” as “\*3.”, “\*4.” and “\*5.” respectively;

(b) by adding—

“\*1. The sum of \$..... being interest as referred to in rule 3(2)(f)(iii) of the Attachment of Income Order Rules (Cap. 13 sub. leg. A).



- \*2. The sum of \$..... being surcharge as referred to in rule 3(2)(f)(iv) of the Attachment of Income Order Rules (Cap. 13 sub. leg. A).”;
- (c) in the fourth paragraph, by repealing “or 3” where it twice appears and substituting “, 3, 4 or 5”;
- (d) in NOTE 2, by repealing “or 3” and substituting “, 3, 4 or 5”.

### Matrimonial Causes Rules

#### 19. Judgment summons: general provisions

Rule 87 of the Matrimonial Causes Rules (Cap. 179 sub. leg. A) is amended—

- (a) in paragraph (1), by adding—
- ““interest” (利息) means interest in respect of arrears of maintenance payable under section 20A(2) of the Guardianship of Minors Ordinance (Cap. 13), section 9B(2) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53A(2) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AA(2) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be;
- “judgment rate” (判定利率) means the rate of interest determined by the Chief Justice under section 49(1)(b) of the High Court Ordinance (Cap. 4) or section 50(1)(b) of the District Court Ordinance (Cap. 336);
- “surcharge” (附加費) means a surcharge in respect of arrears of maintenance payable under section 20B(1) of the Guardianship of Minors Ordinance (Cap. 13), section 9C(1) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53B(1) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AB(1) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be.”;
- (b) in paragraph (5)(a), by adding “the interest and surcharge payable,” after “costs of the judgment summons,”;
- (c) in paragraph (6), by adding “the interest and surcharge payable,” after “costs of the judgment summons,”;
- (d) by repealing paragraph (8)(a) and substituting—

- “(a) all payments made after the date of the order of commitment by the judgment debtor to the judgment creditor in their respective capacities of judgment debtor and judgment creditor shall be deemed to be made in the following order in or towards the discharge of—
- (i) interest;
  - (ii) surcharge;
  - (iii) the costs of the judgment summons;
  - (iv) any sums from time to time falling due under the maintenance order, with the sums discharged in the reversed chronological sequence of the dates on which payment is due (that is, the most recent arrears will be discharged first);
  - (v) if the court makes an order on a judgment summons, the amount of the maintenance in arrears, whether in one amount or by instalments, payable by the judgment debtor under the order; and”.

## 20. Special provisions as to judgment summons

Rule 88(2) is repealed and the following substituted—

“(2) Witnesses may be summoned—

- (a) to prove the means of the judgment debtor; and
- (b) to provide information relevant to the court’s decision on interest and surcharge,

in the same manner as witnesses are summoned to give evidence on the hearing of a cause, and writs of subpoena may, for the purpose of subparagraph (a) or (b), be issued out of the registry in which the judgment summons was issued.”.

## 21. Forms

The Appendix is amended—

- (a) in Form 22, by adding after the entry relating to “Amount due and unpaid in respect of the order and costs .....”—

“Interest payable in respect of the arrears of maintenance, at the judgment rate calculated from the date on which maintenance payment is due to the date of payment .....  
Surcharge payable in respect of the arrears of maintenance at a rate to be decided by the Court .....”;

- (b) in Form 23, by adding after the entry relating to “Amount due and unpaid in respect of order and costs .....” —
- “Interest payable in respect of the arrears of maintenance, at the judgment rate calculated from the date on which maintenance payment is due to the date of payment .....  
Surcharge payable in respect of the arrears of maintenance at a rate to be decided by the Court .....”.

## The Rules of the District Court

### 22. Definitions

Order 1, rule 4(1) of the Rules of the District Court (Cap. 336 sub. leg. H) is amended, by adding—

““judgment rate” (判定利率) means the rate of interest determined by the Chief Justice under section 50(1)(b) of the Ordinance;”.

### 23. Application for order

Order 49, rule 2 is amended, by adding after paragraph (b)—

“(ba) if the amount remaining unpaid under the judgment or order is arrears of maintenance, stating—

- (i) the interest payable in respect of the arrears of maintenance that the judgment creditor is entitled to under section 20A(2) of the Guardianship of Minors Ordinance (Cap. 13), section 9B(2) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53A(2) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AA(2) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be; and
- (ii) the surcharge payable in respect of the arrears of maintenance under section 20B(1) of the Guardianship of Minors Ordinance (Cap. 13), section 9C(1) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53B(1) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AB(1) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be;”.

**24. Order imposing a charge on a beneficial interest**

Order 50, rule 1(3) is amended, by adding after paragraph (b)—

“(ba) if the amount unpaid under the judgment or order is arrears of maintenance, stating—

- (i) the interest payable in respect of the arrears of maintenance that the judgment creditor is entitled to under section 20A(2) of the Guardianship of Minors Ordinance (Cap. 13), section 9B(2) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53A(2) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AA(2) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be; and
- (ii) the surcharge payable in respect of the arrears of maintenance under section 20B(1) of the Guardianship of Minors Ordinance (Cap. 13), section 9C(1) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53B(1) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AB(1) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be;”.

**25. Judgment summons: general provisions**

Order 90A, rule 2 is amended—

(a) in paragraph (1), by adding—

““interest” (利息) means interest in respect of arrears of maintenance payable under section 20A(2) of the Guardianship of Minors Ordinance (Cap. 13), section 9B(2) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53A(2) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AA(2) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be;

“surcharge” (附加費) means a surcharge in respect of arrears of maintenance payable under section 20B(1) of the Guardianship of Minors Ordinance (Cap. 13), section 9C(1) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53B(1) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AB(1) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be.”;

(b) in paragraph (5)(a), by adding “the interest and surcharge payable,” after “costs of the judgment summons,”;

- (c) in paragraph (6), by adding “the interest and surcharge payable,” after “costs of the judgment summons,”;
- (d) by repealing paragraph (8)(a) and substituting—
  - “(a) all payments made after the date of the order of commitment by the judgment debtor to the judgment creditor in their respective capacities of judgment debtor and judgment creditor shall be deemed to be made in the following order in or towards the discharge of—
    - (i) interest;
    - (ii) surcharge;
    - (iii) the costs of the judgment summons;
    - (iv) any sums from time to time falling due under the maintenance order, with the sums discharged in the reversed chronological sequence of the dates on which payment is due (that is, the most recent arrears will be discharged first);
    - (v) if the Court makes an order on a judgment summons, the amount of the maintenance in arrears, whether in one amount or by instalments, payable by the judgment debtor under the order; and”.

## 26. Special provisions as to judgment summons

Order 90A, rule 3(2) is repealed and the following substituted—

“(2) Witnesses may be summoned—

- (a) to prove the means of the judgment debtor; and
- (b) to provide information relevant to the Court’s decision on interest and surcharge,

in the same manner as witnesses are summoned to give evidence on the hearing of a cause, and writs of subpoena may, for the purpose of subparagraph (a) or (b), be issued out of the registry in which the judgment summons was issued.”.

## 27. Forms

(1) Appendix A is amended—

(a) in Form No. 72—

- (i) in the second paragraph, by adding “and interest at the judgment rate calculated from the date on which maintenance payment is due to the date of payment and

- surcharge at a rate to be decided by the District Court, as referred to in Order 49, rule 2(*ba*)(i) and (ii)” after “costs”);
- (ii) in the third paragraph, by adding “and interest at the judgment rate calculated from the date on which maintenance payment is due to the date of payment and surcharge at a rate to be decided by the District Court, as referred to in Order 49, rule 2(*ba*)(i) and (ii)” after “order.”;
- (b) in Form No. 73—
    - (i) in the first paragraph, by adding “and interest at the judgment rate calculated from the date on which maintenance payment is due to the date of payment and surcharge at a rate to be decided by the District Court, as referred to in Order 49, rule 2(*ba*)(i) and (ii)” after “costs”;
    - (ii) in the second paragraph, by adding “, \$..... interest and \$..... surcharge, as referred to in Order 49, rule 2(*ba*)(i) and (ii)” after “judgment debt”;
  - (c) in Form No. 74, by adding “and \$..... interest and \$..... surcharge, as referred to in Order 49, rule 2(*ba*)(i) and (ii)” after “debtor”;
  - (d) in Form No. 75, in the second paragraph, by adding “(interest at the judgment rate calculated from the date on which maintenance payment is due to the date of payment and surcharge at a rate to be decided by the District Court, as referred to in Order 50, rule 1(3)(*ba*)(i) and (ii))” after “rate”;
  - (e) in Form No. 76, in the second paragraph, by adding “(\$ ..... interest and \$..... surcharge, as referred to in Order 50, rule 1(3)(*ba*)(i) and (ii))” after “rate”.
- (2) Appendix D is amended—
- (a) in Form No. 1, by adding after the entry relating to “Amount due and unpaid in respect of the order and costs ..... \$” —
 

“Interest payable in respect of the arrears of maintenance, at the judgment rate calculated from the date on which maintenance payment is due to the date of payment ..... \$  
 Surcharge payable in respect of the arrears of maintenance at a rate to be decided by the Court ..... \$”;
  - (b) in Form No. 2, by adding after the entry relating to “Amount due and unpaid in respect of the order and costs ..... \$” —
 

“Interest payable in respect of the arrears of maintenance, at the judgment rate calculated from the date on which maintenance payment is due to the date of payment ..... \$  
 Surcharge payable in respect of the arrears of maintenance at a rate to be decided by the Court ..... \$”.