

## **Legislative Council Panel on Home Affairs**

### **Computer Programme for Calculation of Interest and Surcharge on Arrears of Maintenance**

This paper reports the development of a computer programme for calculation of interest and surcharge on arrears of maintenance.

#### **Background**

2. The second reading of the Interest on Arrears of Maintenance Bill 2001 (“the Bill”) was resumed on 21 May 2003. In his speech during the debate at the resumption of the second reading of the Bill, the Secretary for Home Affairs undertook to develop a computer programme to calculate interest and surcharge on arrears of maintenance for reference by different interested parties, including social workers, legal professionals and maintenance payers and payees. He also undertook to present the programme to the Legislative Council on Panel on Home Affairs before commencement of the enacted ordinance.

#### **Interest and Surcharge on Arrears of Maintenance Ordinance 2003**

3. The enacted ordinance, entitled the Interest and Surcharge on Arrears of Maintenance Ordinance 2003 (“ISAMO”) to better reflect the provisions therein, provides for -

##### ***(a) Arrears of Maintenance to be treated as Judgment Debt***

A maintenance order will remain in force until the court makes an order to vary or discharge it, following an application to the purpose. The maintenance order is a form of judgment until the court decides to have it varied or discharged. Arrears under the maintenance order are therefore treated as judgment debts, which carry simple interest at the rate the Court orders, or in the absence of a court order, at the rate the Chief Justice determines by order.

***(b) Surcharge on Arrears of Maintenance***

As a further deterrent against the maintenance payer's blameworthy conduct of defaulting repeatedly without reasonable excuse, a maintenance payee could, in addition to interest, apply to the Court for a surcharge at a rate to be decided by court. The surcharge ceiling is set at 100% of the total arrears of maintenance.

***(c) Summons Proceedings for Surcharge Application***

Apart from the existing enforcement procedures, maintenance payees could also use the specified summons proceedings to apply for a surcharge. The newly provided procedure aims to address the problem of deliberate evasion of personal service by maintenance payers in judgment summons proceedings.

4. The maintenance payer should be in the best position to assess his/her financial position. The onus is, therefore, on the maintenance payer to apply for variation or discharge of the maintenance order when he/she reckons such an action is appropriate. It follows that the maintenance payee has a legitimate and reasonable expectation that he/she will receive full and punctual payment unless an application for variation or discharge of the order has been made. In case of default in maintenance payment, it is not unreasonable for the payee to charge interest on the outstanding amount.

**Computer Programme**

5. We invited tenders for the project in June 2003 and awarded the contract to an IT contractor in July 2003, whereupon the computer programme development began. Given their practical experience in dealing with matrimonial cases, representatives from the Legal Aid Department, the Family Court Registry and the Social Welfare Department were invited to join an ad hoc working group to steer the project.

6. We have invited the Social Welfare Department, some non-governmental organisations which provide services for single-parent families, and the legal professional bodies to send their representatives to briefing sessions where we presented the prototype of the computer programme. Many of the attendees find the prototype user friendly. We have also further fine-tuned the programme in the light of their feedback.

7. The **Annex** of this paper sets out a hypothetical case of arrears of maintenance which we will use to present the functions of the computer programme to Members of the Panel at the meeting to be held on 22 March 2004.

### **Implementation Timetable**

8. We expect that the computer programme will be ready for use by mid 2004. The Secretary for Home Affairs will appoint a commencement date for the ISAMO when the programme is ready. Upon commencement of the ISAMO, we will upload the computer programme onto the website of Home Affairs Bureau. Members of the public can access the webpage and the computer programme through the Internet vide computers at home, at work<sup>1</sup> and at the 5,300 public computers throughout the territory (e.g. in public libraries). For citizens who are not conversant with information technology, they may seek assistance from social workers and in case where matrimonial proceedings are being pursued, their legal representatives or the Family Court Registry.

9. To introduce the new legislation to the general public, we will prepare publicity materials for uploading onto the website of the Home Affairs Bureau and printed materials. We will also organize seminars

---

<sup>1</sup> According to the annual survey on information technology usage and penetration commissioned by the Census and Statistics Department, 67.5% of households and 47.5% of business establishments in Hong Kong were connected to the Internet in 2003.

for various interested parties on the ISAMO and the computer programme.

*Home Affairs Bureau*  
*March 2004*

**Hypothetical Case of Arrears of Maintenance**

**Part A**

**From Commencement of Arrears of Maintenance to the Date of the Enforcement Proceedings**

***Maintenance Order Issued on 20 May 2004***

The maintenance payer is ordered by the court to pay the payee, his ex-wife, periodical payments at the rate of \$4,000 per month commencing from 1 June 2004 and thereafter on the first day of each and succeeding month until further order of the court.

***Payment Made in the Period***

- |                     |         |
|---------------------|---------|
| - 1 June 2004       | \$4,000 |
| - 2 July 2004       | \$2,000 |
| - 8 August 2004     | \$1,000 |
| - 10 September 2004 | \$2,000 |

Upon maintenance payee's application, a judgment summons was issued against the payer and was heard on 15 December 2004.

**Questions:**

As of 15 December 2004, how much of the following items did the maintenance payer default?

- (a) maintenance in the period 1 June 2004 to 15 November 2003;
- and
- (b) interest.

**Part B****From the Commencement Date of the Enforcement Order Onwards*****(a) Order made by the Court at the hearing on 15 December 2004***

The Judge makes a committal order against the maintenance payer and a surcharge order in favour of the payee. The committal order is suspended on the condition that –

the maintenance payer pays \$36,867, which include the followings –

(a)	amount of maintenance in arrears payable (accrued from 1 June 2004 – 15 November 2004)	\$19,068
(b)	interest	\$265
(c)	surcharge (50% of (a))	\$9,534
(d)	costs	\$8,000

To fulfill his obligation, the maintenance payer is to pay the payee monthly instalments of \$2,000 each month commencing 1 January 2005.

In addition, the payer has to continue to pay his ex-wife the current monthly maintenance of \$4,000.

*(b) Payments made by the Payer from 1 January 2005 onwards*

- 1 January 2005	\$6,000
- 5 February 2005	\$4,000
- 20 March 2005	\$7,000
- 1 April 2005	\$7,000

**Questions:**

As of 1 April 2005, how much of the following items did the maintenance payer default on?

- (a) maintenance in the period 1 January 2005 to 1 April 2005;
- (b) interest;
- (c) surcharge;
- (d) costs; and
- (e) maintenance in arrears payable (accrued from 1 June 2004 to 15 December 2003)?