

立法會
Legislative Council

LC Paper No. CB(2)33/07-08
(These minutes have been
seen by the Administration)

Ref : CB2/BC/10/06

Bills Committee on Attachment of Income Order
(Application to Government and Miscellaneous Amendments) Bill 2007

Minutes of the third meeting
held on Tuesday, 11 September 2007, at 2:30 pm
in Conference Room B of the Legislative Council Building

Members present : Hon CHOY So-yuk, JP (Chairman)
Hon Albert HO Chun-yan
Hon James TO Kun-sun
Hon Miriam LAU Kin-ye, GBS, JP

Members absent : Hon Margaret NG
Hon CHAN Yuen-han, SBS, JP

Public Officers attending : Mr Donald TONG
Deputy Secretary for Home Affairs (1)

Mrs Alice CHEUNG
Principal Assistant Secretary for Home Affairs (2)

Ms Phyllis POON
Government Counsel

Clerk in attendance : Miss Betty MA
Chief Council Secretary (2) 4

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mr Chris LAI
Senior Council Secretary (2) 7

Action

I. Meeting with the Administration

[Legislative Council Brief, the Bill, LC Paper Nos. LS92/06-07, LS113/06-07, CB(2)2388/06-07(01), CB(2)2538/06-07(01) to (02), CB(2)2674/06-07(01) to (03), CB(2)2692/06-07(01) and CB(2)2700/06-07(01)]

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. Deputy Secretary for Home Affairs (1) (DS(HA)(1)) briefed members on the Administration's consolidated response to the issues raised at the last meeting (LC Paper No. CB(2)2674/06-07(01)).

3. While expressing concern about the possible detriment to the maintenance payees brought by actions taken by the maintenance payers to set aside the attachment of income orders (AIOs) concerned in the absence of retrospective validation, members were concerned whether the retrospective validation of the AIOs would set a precedent that such a provision could be used lightly.

4. To address members' concern, Ms Miriam LAU suggested amending the Bill to the effect that the provisions in the AIO legislation would be applicable to the AIOs already issued to the Government as from the commencement date of the Attachment of Income Order (Application to Government and Miscellaneous Amendments) Ordinance 2007 ("Amendment Ordinance") (upon enactment of the Bill). It would be for individual maintenance payers who were civil servants to decide whether to apply to the court to set aside the AIOs concerned in the light of the Court of Appeal's decision in *L v L* and to claim against the Government for wrongful deduction of wages or salary. Members supported the suggestion and the Administration agreed to positively consider and provide responses for the Bills Committee's consideration at the next meeting.

Admin

5. DS(HA)(1) said that in the light of the concern raised by the assistant legal adviser in his letter dated 2 August 2007, the Administration proposed to add a transitional provision to the effect that where before the commencement of the Amendment Ordinance (upon enactment of the Bill), an application for an AIO in respect of the wages or salary payable to a maintenance payer by the Government had been commenced but not yet determined, the application was to be determined in accordance with section 20 of Cap. 13, section 9A of Cap. 16 or section 28 of Cap. 192 as amended by the Amendment Ordinance.

Admin

Action

II. Any other business

6. To allow time for the Administration to prepare the draft Committee Stage amendments to the Bill, members agreed to postpone the next meeting originally scheduled for 25 September 2007 to early October 2007. The Chairman said that members would be notified of the meeting date in due course.

7. There being no other business, the meeting ended at 3:35 pm.

Council Business Division 2
Legislative Council Secretariat
10 October 2007

**Proceedings of the third meeting of the
Bills Committee on Attachment of Income Order
(Application to Government and Miscellaneous Amendments) Bill 2007
on Tuesday, 11 September 2007, at 2:30 pm
in Conference Room B of the Legislative Council Building**

| Time marker | Speaker(s) | Subject(s) | Action required |
|-----------------|-----------------------------------|---|-----------------|
| 000000 - 001119 | Chairman ALA4 | Opening remarks by the Chairman | |
| 001120 - 002420 | Admin | Administration's consolidated response to the issues raised by members at the meeting on 23 July 2007 | |
| 002421 - 003320 | ALA4 | Assistant legal adviser's views on the Administration's response on the validation provisions | |
| 003321 - 004305 | Ms Miriam LAU ALA4 Admin | <p>Ms Miriam LAU's enquiry/suggestion about –</p> <p>(a) assistant legal adviser's views on the Government's obligation to deduct the maintenance payers' salary for the benefit of the maintenance payee in the light of the Court of Appeal's decision in <i>L v L</i> (paragraph 8 of the LC Paper No. LS113/06-07); and</p> <p>(b) other options to assist the maintenance payees to recover arrear payments from Government employees in the light of the decision in <i>L v L</i>, e.g. obtaining written consent from the Government employees or applying for judgment summons.</p> <p>The Administration's response that it was open-minded in considering other feasible options, but considered that the validation provisions would be the most effective way to ensure continued compliance with the AIOs already issued to the Government and to protect the interests of maintenance payees.</p> | |
| 004306 - 004921 | Mr Albert HO Chairman Admin | <p>Views of Mr Albert HO that –</p> <p>(a) it was unnecessary to introduce the validation provisions in the Bill; and</p> <p>(b) consideration should be given to assisting the maintenance payees to re-apply for an AIO in the light of the decision in <i>L v L</i></p> <p>The Administration's response that given the heavy caseload of the court, the latter would take some time to consider the application and grant a new AIO, and in this process the interest of the maintenance payees would likely be adversely affected.</p> | |

| Time marker | Speaker(s) | Subject(s) | Action required |
|--------------------|--|--|--|
| 004922 - 005742 | Ms Miriam LAU Mr Albert HO Admin | Discussion on Ms Miriam LAU's suggestion of amending the Bill to the effect that the provisions in the AIO legislation would be applicable to the AIOs already issued to the Government as from the commencement date of the Attachment of Income Order (Application to Government and Miscellaneous Amendments) Ordinance 2007 (upon enactment of the Bill) The Administration's response that it would consider Ms LAU's proposal and provide replies for the Bills Committee's consideration | Admin to follow up (para. 4 of minutes) |
| 005743 - 010005 | Chairman Ms Miriam LAU Admin | The Administration's advice that it would add a transitional provision to the Bill in the light of the assistant legal adviser's concern raised in his letter dated 2 August 2007 | Admin to follow up (para. 5 of minutes) |
| 010006 - 010104 | Chairman Admin | Issues to be followed up and the date of next meeting | |

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