

本局檔號 OUR REF. : HAB/CR/1/19/95 Pt. 24  
來函檔號 YOUR REF : LS/B/20/06-07  
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**By Fax**

5 September 2007

Mr Stephen Lam  
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Legal Service Division  
Legislative Council Secretariat  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong  
(Fax: 2877 5029)

Dear Mr Lam,

**Attachment of Income Order (Application to Government and  
Miscellaneous Amendments) Bill 2007**

I refer to your letters dated 20 July and 2 August 2007 seeking further clarifications on the Attachment of Income Order (Application to Government and Miscellaneous Amendments) Bill 2007 (“the Bill”). Our response to the points you raised are set out below.

New section 20(3A) and (4) of the Guardianship of Minors Ordinance (GMO) (Cap. 13), new section 9A(3A) and (4) of the Separation and Maintenance Orders Ordinance (SMOO) (Cap. 16) and new section 28(3A) and (4) of the Matrimonial Proceedings and Property Ordinance (MPPO) (Cap. 192)

We are not aware of any employees whose wages/salaries are payable by the Government but who are not officers of the Government

within new section 20(3A) of GMO, new section 9A(3A) of SMOO or new section 28(3A) of MPPO.

We have considered the extent of control of the Government on the Hong Kong Monetary Authority (MA). Section 5A of the Exchange Fund Ordinance (Cap. 66) (EFO) provides that the MA assists the Financial Secretary (FS) in the performance of his functions under EFO and performs such functions as the FS may direct. All MA staff are appointed by FS pursuant to section 5A(3) of EFO to assist MA in performing its functions. The FS may delegate to the MA his powers and duties under that Ordinance (section 5B of EFO). Further, emolument of MA staff are charged to the Exchange Fund of the Government (section 6 of EFO). Our legal advice is that MA staff are Government officers for the purpose of section 23 of Cap. 300 and their income source is the Government under the AIO legislation.

Whether the Government is the income source of the staff of the offices mentioned in the second last paragraph of your letter is a matter of fact. For example, if an employee is paid by the funds of a statutory body corporate, their income source is unlikely to be the Government.

However, we would like to stress again that whether the income source is the Government or not, the present formulation of the AIO Amendment Bill covers them all – if the income source is the Government, it will be covered by the new section 20(3A) of the GMO, new section 9A(3A) of SMOO or new section 28(3A) of MPPO; and if the income source is not the Government, it will be covered by the revised section 20(4) of the GMO, revised section 9A(4) of the SMOO and revised section 28(4) of the MPPO.

Savings provision for situations where proceedings for AIO have commenced but have not yet completed before the commencement of the Amendment Ordinance

The new section 20(9) of GMO, new section 9A(9) of the SMOO and new section 28(9) of MPPO seek to validate any AIOs made before the commencement of the Amendment Ordinance in respect of the wages or salary payable to a maintenance payer by the Government. We are grateful for your pointing out of the possible need to cater also for situations where proceedings for AIO have commenced but have not yet completed before the commencement of the Amendment Ordinance. We consider that for clarity and removal of doubt, there should be merits in adding a transitional provision to the effect that where before the commencement of the Amendment Ordinance, an application for an AIO in respect of the wages or

salary payable to a maintenance payer by the Government has been made but has not yet been determined, the application is to be determined in accordance with section 20 of GMO, section 9A of SMOO or section 28 of MPPO as amended by the Amendment Ordinance.

Yours sincerely,

(Mrs Alice Cheung)  
for Secretary for Home Affairs

c.c. DoJ (Attn: Ms Phyllis Poon) (Fax: 2521 3275)