

立法會
Legislative Council

LC Paper No. LS92/06-07

**Paper for the House Committee Meeting
on 29 June 2007**

**Legal Service Division Report on
Attachment of Income Order
(Application to Government and Miscellaneous Amendments) Bill 2007**

I. SUMMARY

- 1. Object of the Bill** To amend the Guardianship of Minors Ordinance (Cap. 13), Separation and Maintenance Orders Ordinance (Cap. 16) and Matrimonial Proceedings and Property Ordinance (Cap. 192) (the Attachment of Income Order (AIO) legislation) to provide for the application of AIOs to the Government as an income source and make some clerical and consequential amendments.
- 2. Comments** In a decided case, the Court held that no attachment order can be made in respect of any wages or salary paid by the Government in view of paragraph (a) of the proviso to section 23(1) of the Crown Proceedings Ordinance (Cap. 300) (CPO). In light of the decision of that case, the Bill seeks to amend the AIO legislation to make it explicit that an AIO can be made against the wages or salary payable to a maintenance payer by the Government, notwithstanding proviso (a) to section 23(1) of the CPO. The Bill also makes provisions to validate all AIOs already made against wages or salary paid by the Government before this Bill is passed into law and commences operation.
- 3. Public Consultation** The Administration has consulted major stakeholders affected by the proposal. They have not raised any objection to the proposal.
- 4. Consultation with LegCo Panel** The Panel on Home Affairs (the Panel) was briefed at its meeting on 13 April 2007 on the proposal to amend the AIO legislation. Members were in general supportive of the proposal.
- 5. Conclusion** The Legal Service Division is waiting for the Administration's reply to clarify some legal and drafting points relating to the Bill. Members may decide whether they wish to form a bills committee to study the Bill in detail.

II. REPORT

Object of the Bill

To amend the Guardianship of Minors Ordinance (Cap. 13), Separation and Maintenance Orders Ordinance (Cap. 16) and Matrimonial Proceedings and Property Ordinance (Cap. 192) (MPPO) (collectively referred to as the Attachment of Income Order (AIO) legislation) by-

- (a) providing for the application of AIOs to the Government as an income source;
- (b) providing that the Crown Proceedings Ordinance (Cap. 300) (CPO) does not preclude the court from making an AIO in respect of the wages or salary payable by the Government;
- (c) validating any AIO made in respect of the wages or salary payable by the Government before the commencement of the Attachment of Income Order (Application to Government and Miscellaneous Amendments) Ordinance 2007 (upon enactment of the Bill); and
- (d) making some clerical and consequential amendments.

LegCo Brief Reference

- 2. File Ref: HAB/CR/1/19/95 issued by the Home Affairs Bureau on 13 June 2007.

Date of First Reading

- 3. 27 June 2007.

Comments

- 4. Under the AIO Scheme, the court can make an AIO under the AIO legislation requiring an income source¹ to deduct a specified amount from a maintenance payer's income, and pay the deductions direct to a maintenance payee.

¹ "Income source" is defined under rule 2 of the AIO Rules (Cap. 13 sub. leg. A) as a person by whom the income of the maintenance payer is payable.

5. According to paragraph 4 of the LegCo Brief, the policy intent of the AIO legislation is to make the earnings of a maintenance payer attachable and the AIO legislation would apply to the income source of the maintenance payer, irrespective of whether the source of income is the Government or not. The AIO legislation, however, contains no express provision stating that it applies to the Government as an income source. While the legislation specifically provides that an AIO may be made despite section 66 of the Employment Ordinance (Cap. 57) (EO)² which prohibits the attachment of wages of an employee, no similar provision exists to override paragraph (a) of the proviso to section 23(1) of the CPO³, which prohibits the attachment of wages or salary payable to any officer of the Crown (the term has not yet been adapted in the adaptation of laws exercise but should be construed as Government in accordance with Schedule 8 to the Interpretation and General Clauses Ordinance (Cap. 1)). In the absence of an express provision to apply the AIO legislation to the Government and to override the relevant prohibition proviso in the CPO, the relevant provisions have been subject to different interpretations by the court until the Court of Appeal's decision in *L and L* [2007] 1 HKLRD 236.

6. In *L and L*, which was concerned with an appeal by the husband, a civil servant, in ancillary relief proceedings under the MPPO, the Court held that no attachment order can be made in respect of any wages or salary paid by the Government in view of paragraph (a) of the proviso to section 23(1) of the CPO.

7. In light of the decision in *L and L*, the Bill proposes to-

- (a) amend the AIO legislation to make it apply to the Government as an income source by expressly stipulating that an AIO can be made against the wages or salary payable to a maintenance payer by the Government, notwithstanding proviso (a) to section 23(1) of the CPO; and

² "No order for the attachment of wages, or, in the case of an employee to whom Part IIA applies, any end of year payment or proportion thereof, of an employee shall be made by any court:

Provided that a civil debt due to the Government under any enactment may be recovered from the wages of an employee by attachment or otherwise."

³ "(1) Where any money is payable by the Crown to some person who, under any order of any court, is liable to pay any money to any other person, and that other person would, if the money so payable by the Crown were money payable by a subject, be entitled under rules of court to obtain an order for the attachment thereof as a debt due or accruing due, or an order for the appointment of a sequestrator or receiver to receive the money on his behalf, the Supreme Court may, subject to the provisions of this Ordinance and in accordance with rules of court, make an order restraining the first-mentioned person from receiving that money and directing payment thereof to that other person, or to the sequestrator or receiver:

Provided that no such order shall be made in respect of-

- (a) any wages or salary payable to any officer of the Crown as such;
- (b) any money which is subject to the provisions of any enactment prohibiting or restricting assignment or charging or taking in execution."

- (b) validate all AIOs already made against wages or salary paid by the Government before the commencement of the Attachment of Income Order (Application to Government and Miscellaneous Amendments) Ordinance 2007.

8. The Bill also amends the AIO legislation to make some clerical and consequential amendments.

Public Consultation

9. According to paragraph 12 of the LegCo Brief, the Administration has consulted major stakeholders affected by the proposal, including civil servants, staff employed by the Government on non-civil service terms, judges, judicial officers, officers of the ICAC and staff of the Hong Kong Monetary Authority, mostly through the relevant staff consultative channels. They have not raised any objection to the proposal.

Consultation with LegCo Panel

10. The Panel on Home Affairs (the Panel) was briefed at its meeting on 13 April 2007 on the proposal to amend the AIO legislation.

11. While Members were supportive of the proposal, they requested the Administration to ensure that the AIO legislation would be applicable to any officer of statutory bodies (such as the Equal Opportunities Commission, The Ombudsman, etc.) as well as to the staff members of organisations (such as the Independent Police Complaints Council) which were independent from the Government but whose staff members were civil servants. The Administration assured Members that the views and advice of the Civil Service Bureau and the Department of Justice had been solicited in this regard to ensure that the proposal included officers of the above-mentioned bodies.

12. In a Supplementary Information Note (LC Paper No. CB(2)2188/06-07(01)) provided by the Administration at the request of the Panel's meeting on 13 April 2007, the Administration confirms that the AIO legislation does not apply to offices of the Central People's Government in Hong Kong. By virtue of section 66 of the Interpretation and General Clauses Ordinance, an Ordinance does not bind the State⁴ unless there is an express provision or unless it appears by necessary implication that the State is bound thereby. The Administration is of the view that there is neither an express provision nor any necessary implication in the AIO legislation that the State is bound thereby.

Conclusion

13. The Legal Service Division is waiting for the Administration's reply to clarify some legal and drafting points relating to the Bill. Members may decide whether they wish to form a bills committee to study the Bill in detail.

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Bill/B/20/06-07

⁴ Under section 3 of the Interpretation and General Clauses Ordinance, "State" is defined to include only-

- “(a) the President of the People's Republic of China;
- (b) the Central People's Government;
- (c) the Government of the Hong Kong Special Administrative Region;
- (d) the Central Authorities of the People's Republic of China that exercise functions for which the Central People's Government has responsibility under the Basic Law;
- (e) subordinate organs of the Central People's Government that-
 - (i) on its behalf, exercise executive functions of the Central People's Government or functions for which the Central People's Government has responsibility under the Basic Law; and
 - (ii) do not exercise commercial functions, when acting within the scope of the delegated authority and the delegated functions of the subordinate organ concerned; and
- (f) subordinate organs of the Central Authorities of the People's Republic of China referred to in paragraph (d), that-
 - (i) on behalf of those Central Authorities, exercise executive functions of the Central People's Government or functions for which the Central People's Government has responsibility under the Basic Law; and
 - (ii) do not exercise commercial functions, when acting within the scope of the delegated authority and the delegated functions of the subordinate organ concerned;”