

**For discussion on
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Legislative Council Panel on Home Affairs

Proposed Amendments to the Attachment of Income Order Legislation

Purpose

This paper seeks to invite Members' views on the Administration's proposal to amend the Attachment of Income Order (AIO) legislation¹ to the effect that the AIO legislation is applicable to the Government as an income source and is binding on persons whose income source is the Government.

Background

2. On divorce, either party to the divorce who is in need of continuing financial support may apply to the Court for an order requiring payment by the other party towards the maintenance of himself/herself or his/her children or both. Where the maintenance payer defaults in payment, the maintenance payee has to go through time-consuming and complicated court proceedings to enforce the maintenance order. The AIO Scheme, introduced in 1998 to enable a maintenance payee to receive punctual maintenance payments specified in the maintenance order, is designed to address such problem.

3. Under the AIO Scheme, the Court can make an AIO under the AIO legislation enacted in 1997, requiring an income source² to deduct a specified amount (which may be the whole or part of the amount payable under a maintenance order) from a maintenance payer's income, and pay the deductions direct to a maintenance payee. For instance, the employer of a maintenance payer is the income source of an AIO directed against the wages of the maintenance payer. Hence, the maintenance

¹ An AIO may be made under Section 20 of the Guardianship of Minors Ordinance (Cap. 13), Section 9A of the Separation and Maintenance Orders Ordinance (Cap. 16) or Section 28 of the Matrimonial Proceedings and Property Ordinance (Cap. 192). These three provisions are collectively known as the AIO legislation.

² "Income source" is defined in Rule 2 of the Attachment of Income Order Rules (Cap. 13A) as a person by whom the income of the maintenance payer is payable.

payer whose salary is subject to an AIO will only receive salary net of the attachable amount from his employer after the latter, as ordered by the Court, has paid maintenance to the maintenance payee direct. The following must be satisfied before an AIO can be made by the Court:

- (a) a maintenance order has already been made by the Court against a maintenance payer; and
- (b)
 - (i) the Court is satisfied that the payer has without reasonable excuse failed to make maintenance payment as required; or
 - (ii) the Court is satisfied that there are reasonable grounds to believe that the payer will not make full and punctual payment in compliance with the maintenance order; or
 - (iii) the payer and the designated payee agree to the making of an attachment order; and
- (c) there is any income capable of being attached payable to the payer.

4. Since the implementation of the AIO legislation in 1998, a total of 175 AIOs have been issued against the wages of employees in the public sector and the private sector.

The Issue

5. The policy intent of the AIO legislation is that an AIO may be directed against the earnings of a maintenance payer 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 existing AIO legislation, however, contains no express provision that it applies to the Government as an income source. While the legislation specifically stipulates that an AIO may be made despite Section 66 of the Employment Ordinance (Cap. 57) which prohibits the attachment of wages of an employee, no similar provision exists to override proviso (a) to Section 23(1) of the Crown Proceedings Ordinance (Cap. 300) (CPO) which prohibits the attachment of wages or salary payable by the Government. Since there is no clear provision in the AIO legislation expressly providing or implying that it applies to the Government, the

AIO legislation applies to persons whose income source is non-Government only.

6. In the absence of an express provision to apply the AIO legislation to the Government and to override the relevant prohibition provision in the CPO, prior to December 2006 the relevant provisions have been subject to different interpretations by judges in the Family Court. Some judges have refused AIO applications against wages of civil servants on grounds of the prohibition under the CPO, while some have granted AIOs against wages of Government employees. The Government has been complying with AIOs issued by the Court against it as an income source. As at 31 March 2007, the Director of Accounting Services was handling 64 AIOs against the wages of Government employees.

7. On 7 December 2006, the Court of Appeal handed down a judgment which gave a clear ruling that no AIO can be made in respect of wages or salary payable by the Government for the purpose of satisfying a maintenance order in view of proviso (a) to Section 23(1) of the CPO. This judgement has binding effect on the Family Court. To reflect the Government's policy intent to make earnings of all persons attachable, irrespective of whether their source of income is the Government or not, we consider that there is an urgent need to amend the AIO legislation so that maintenance orders against persons whose source of income is the Government can be enforced through AIO procedures as well.

Amendment Proposal

8. We propose that the AIO legislation should be amended to make it apply to the Government as an income source by explicitly stipulating that an AIO can be made against the earnings of those persons whose income source is the Government (including judges, judicial officers, officers of the Independent Commission Against Corruption (ICAC) and staff of the Hong Kong Monetary Authority (HKMA)), notwithstanding proviso (a) to Section 23(1) of the CPO. All AIOs served on the Government in respect of wages will also be validated by the Amendment Bill.

9. This amendment proposal will ensure that the AIO legislation may continue to apply to persons whose income source is Government. It does not create new obligations for maintenance payers

subject to maintenance orders, who are obliged to pay the maintenance payees anyway. The existing implementation arrangements relating to the AIO Scheme applicable to persons whose income source is the Government will continue to apply.

Consultation

10. We have consulted major stakeholders affected by the amendment proposal, including civil servants, staff employed by the Government on non-civil service terms, judges, judicial officers, ICAC officers and staff of HKMA. So far, we have not received any objection to the amendment proposal.

Way Forward

11. Drafting of the AIO Amendment Bill is in progress. Subject to Members' views, we shall proceed to finalize the Amendment Bill with a view to introducing the Bill into the Legislative Council within the 2006-07 legislative session.

Home Affairs Bureau
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