

Bill to empower HK courts to order financial relief in overseas divorces to be gazetted

The Matrimonial Proceedings and Property (Amendment) Bill 2010, which empowers the Hong Kong courts to deal with ancillary relief matters in recognition of an overseas divorce decree, will be gazetted tomorrow (June 18).

The purpose of the bill is to empower the High Court and the District Court to order financial relief for a former spouse whose marriage has been dissolved or annulled, or who has been legally separated, in judicial or other proceedings outside Hong Kong.

Under the existing law, a party who has obtained a divorce decree in a jurisdiction outside Hong Kong cannot apply for financial relief from the Hong Kong courts. This may cause hardship to a party where no or insufficient financial provisions have been made under the foreign order.

The bill provides that a party may apply for an order of financial relief if the marriage has been terminated by a court outside Hong Kong unless that party has remarried.

The bill also requires that the leave of the court be obtained before a party applies for financial relief. Leave will only be granted if the court considers that there is substantial ground for the making of the application.

The bill proposes that the jurisdictional basis for the court to consider an application for financial relief is similar to its jurisdiction in divorce proceedings in Hong Kong, namely, either of the parties to the marriage was domiciled or habitually resident in Hong Kong, or had a substantial connection with Hong Kong, on the date of the application for leave or the date when the foreign divorce, annulment or legal separation took effect.

The court is required to consider whether it is appropriate, under all circumstances of the case, for a court in Hong Kong to make an order for financial relief.

While the court is empowered by the bill to make orders for financial provision and property adjustment after leave to apply has been given, the court has to be satisfied that it is appropriate to make such an order.

The bill also contains anti-avoidance provisions to deal with dispositions and transactions that are intended to defeat or prevent applications for financial relief or which reduce such a relief, or in any way interfere with the enforcement of orders for relief.

A spokesman for the Department of Justice said, "During the drafting process, wide consultation was conducted.

"Legal professional bodies including the Law Society of Hong Kong, the Hong Kong Bar Association, the Hong Kong Family Law Association and the Judiciary have been consulted and views of relevant bodies have also been taken into account."

The bill will be tabled at the Legislative Council for first reading and commencement of second reading debate on June 30, 2010.

Ends/Thursday, June 17, 2010