

內地與香港司法法律規則銜接高峰論壇

Forum on the Interface of Judicial and Legal Rules between Mainland and Hong Kong

最高人民法院及香港特別行政區政府律政司合辦

Co-organised by the Supreme People's Court and the Department of Justice of the HKSARG

《內地婚姻家庭案件判決（相互承認及強制執行） 條例》分享會

Sharing session on the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance

周偉雄 大律師 Enzo Chow, Barrister-at-law

香港 Hong Kong



內地與香港特別行政區法院婚姻家庭案件相互認可和強制執行新機制
New mechanism for reciprocal recognition and enforcement in matrimonial and
family cases between the Courts of Mainland and the Hong Kong Special Administrative Region

內地與香港司法法律規則銜接高峰論壇

Forum on the Interface of Judicial and Legal Rules between Mainland and Hong Kong

最高人民法院及香港特別行政區政府律政司合辦

Co-organised by the Supreme People's Court and the Department of Justice of the HKSARG

黎 v. 凌 (2017) 5 HKLRD 629

- 父親為香港永久居民。
- 母親來自中國內地。
- 雙方於香港結婚，並育有一名於中國廣州出生的子女。
- 母親單方面在未有父親的同意下，把子女帶回內地。
- 父親在香港的家事法庭(Family Court)曾作出申請希望管養(custody)子女，並希望子女能被帶回香港。



內地與香港特別行政區法院婚姻家庭案件相互認可和強制執行新機制

New mechanism for reciprocal recognition and enforcement in matrimonial and family cases between the Courts of Mainland and the Hong Kong Special Administrative Region

內地與香港司法法律規則銜接高峰論壇

Forum on the Interface of Judicial and Legal Rules between Mainland and Hong Kong

最高人民法院及香港特別行政區政府律政司合辦

Co-organised by the Supreme People's Court and the Department of Justice of the HKSARG

黎 v. 凌 (2017) 5 HKLRD 629

- 父親繼續離婚程序。法庭頒予父親離婚暫准判令(decree nisi of divorce)但押後最終管養權(final custody)相關的事宜，原因如下：
- 法庭未能作出最後裁決，原因是母親跟子女都在中國內地。法庭無法考慮子女的長遠安排(long term arrangement)或最佳安排(best interests)：子女並不在香港，及無法得知其所在地
- 未能得知子女的狀況(circumstances)
- 父親向羅湖人民法院提出離婚及管養權申請，法庭拒絕受理
- 父親就家事法庭法官拒絕作出最終管養權裁決的決定提出上訴

內地與香港特別行政區法院婚姻家庭案件相互認可和強制執行新機制

New mechanism for reciprocal recognition and enforcement in matrimonial and family cases between the Courts of Mainland and the Hong Kong Special Administrative Region



內地與香港司法法律規則銜接高峰論壇

Forum on the Interface of Judicial and Legal Rules between Mainland and Hong Kong

最高人民法院及香港特別行政區政府律政司合辦

Co-organised by the Supreme People's Court and the Department of Justice of the HKSARG

黎 v. 凌 (2017) 5 HKLRD 629

上訴法庭(Court of Appeal) 批准申請的條件：

批准父親的申請

- 父親需承諾若母親決定來港反對管養權申請，他需要為母親提供住宿；及
- 於回港的7天內需向法庭申請就子女的安排索取指示。



內地與香港特別行政區法院婚姻家庭案件相互認可和強制執行新機制

New mechanism for reciprocal recognition and enforcement in matrimonial and family cases between the Courts of Mainland and the Hong Kong Special Administrative Region

內地與香港司法法律規則銜接高峰論壇

Forum on the Interface of Judicial and Legal Rules between Mainland and Hong Kong

最高人民法院及香港特別行政區政府律政司合辦

Co-organised by the Supreme People's Court and the Department of Justice of the HKSARG

於內地離婚：

- 一對夫婦於內地辦理離婚
- 他們二人在內地及香港均有資產
- 特別是在香港有一個聯名擁有的房產(registered in joint names)
- 內地法院下令丈夫支付妻子一筆過¥700,000.00的金額



內地與香港特別行政區法院婚姻家庭案件相互認可和強制執行新機制
New mechanism for reciprocal recognition and enforcement in matrimonial and family cases between the Courts of Mainland and the Hong Kong Special Administrative Region

內地與香港司法法律規則銜接高峰論壇

Forum on the Interface of Judicial and Legal Rules between Mainland and Hong Kong

最高人民法院及香港特別行政區政府律政司合辦

Co-organised by the Supreme People's Court and the Department of Justice of the HKSARG

於內地離婚：

- 內地法院亦下令丈夫需要支付妻子每個月¥5000作為子女的生活費。
- 內地法院拒絕處理有關位於香港的房產。
- 丈夫及後搬到香港，亦沒有按照命令支付有關款項
- 妻子到底可以如何追討有關款項？
- 到底可以怎樣處理位於香港的房產？



內地與香港特別行政區法院婚姻家庭案件相互認可和強制執行新機制
New mechanism for reciprocal recognition and enforcement in matrimonial and family cases between the Courts of Mainland and the Hong Kong Special Administrative Region

內地與香港司法法律規則銜接高峰論壇

Forum on the Interface of Judicial and Legal Rules between Mainland and Hong Kong

最高人民法院及香港特別行政區政府律政司合辦

Co-organised by the Supreme People's Court and the Department of Justice of the HKSARG

於內地離婚：

- 指明命令(specified order)的定義是否包括內地法院所作的命令？
- 提出登記申請的時限？
- 第8(4)條：須在不遲於該命令被違反當日之後或該判決生效當日之後（視乎情況而定）的兩年內提出。



內地與香港特別行政區法院婚姻家庭案件相互認可和強制執行新機制
New mechanism for reciprocal recognition and enforcement in matrimonial and family cases between the Courts of Mainland and the Hong Kong Special Administrative Region

內地與香港司法法律規則銜接高峰論壇

Forum on the Interface of Judicial and Legal Rules between Mainland and Hong Kong

最高人民法院及香港特別行政區政府律政司合辦

Co-organised by the Supreme People's Court and the Department of Justice of the HKSARG

於內地離婚：

- 位於香港的房產：妻子能在香港提出任何申請嗎？
- 該申請會否被視作“平行申請” (parallel applications)？
- 第27(2)條：如擬在香港法院提起的法律程序，屬根據《婚姻法律程序與財產條例》（第192章）(Matrimonial Proceedings and Property Ordinance (Cap. 192))第IIA部進行的法律程序，則屬例外。



內地與香港特別行政區法院婚姻家庭案件相互認可和強制執行新機制
New mechanism for reciprocal recognition and enforcement in matrimonial and family cases between the Courts of Mainland and the Hong Kong Special Administrative Region

內地與香港司法法律規則銜接高峰論壇

Forum on the Interface of Judicial and Legal Rules between Mainland and Hong Kong

最高人民法院及香港特別行政區政府律政司合辦

Co-organised by the Supreme People's Court and the Department of Justice of the HKSARG

於香港離婚

- 夫妻雙方在香港離婚。
- 於管養權(custody)訴訟結束前，丈夫在沒有得到妻子的同意(consent)下將子女帶回內地。
- 丈夫亦未有就附屬濟助事宜作出所需的財政披露(financial disclosure)。



內地與香港特別行政區法院婚姻家庭案件相互認可和強制執行新機制

New mechanism for reciprocal recognition and enforcement in matrimonial and family cases between the Courts of Mainland and the Hong Kong Special Administrative Region

內地與香港司法法律規則銜接高峰論壇

Forum on the Interface of Judicial and Legal Rules between Mainland and Hong Kong

最高人民法院及香港特別行政區政府律政司合辦

Co-organised by the Supreme People's Court and the Department of Justice of the HKSARG

於香港離婚

- 法庭有作出在審訊離婚訟案期間提供贍養費(maintenance payment)的命令
- 就子女而言，到底妻子能夠作出什麼行動？
- 附件3，第11段。



內地與香港特別行政區法院婚姻家庭案件相互認可和強制執行新機制
New mechanism for reciprocal recognition and enforcement in matrimonial and family cases between the Courts of Mainland and the Hong Kong Special Administrative Region

內地與香港司法法律規則銜接高峰論壇

Forum on the Interface of Judicial and Legal Rules between Mainland and Hong Kong

最高人民法院及香港特別行政區政府律政司合辦

Co-organised by the Supreme People's Court and the Department of Justice of the HKSARG

於香港離婚

- 就在審訊離婚訟案期間提供的贍養費 (maintenance pending suit) 的命令而言，妻子能否嘗試申請於內地執行(enforce)相關命令？
- 條例附件3，第3段。
- 若然丈夫沒有按照程序作出財務狀況披露 (financial disclosure) ？

內地與香港特別行政區法院婚姻家庭案件相互認可和強制執行新機制

New mechanism for reciprocal recognition and enforcement in matrimonial and family cases between the Courts of Mainland and the Hong Kong Special Administrative Region



內地與香港司法法律規則銜接高峰論壇

Forum on the Interface of Judicial and Legal Rules between Mainland and Hong Kong

最高人民法院及香港特別行政區政府律政司合辦

Co-organised by the Supreme People's Court and the Department of Justice of the HKSARG

身份事宜

- 香港法院就根據《父母與子女條例》(Parent and Child Ordinance)所作的有關父母身分的宣告(declaration of parentage)的申請的必須：-
 - (a) 申請人以香港為其居籍(domiciled in Hong Kong)；
 - (b) 在提出申請當日之前的1年期間內，申請人一直慣常居於香港(habitually resident in Hong Kong)；
或
 - (c) 申請人與香港有密切聯繫(substantial connection with Hong Kong)。

內地與香港特別行政區法院婚姻家庭案件相互認可和強制執行新機制

New mechanism for reciprocal recognition and enforcement in matrimonial and family cases between the Courts of Mainland and the Hong Kong Special Administrative Region



內地與香港司法法律規則銜接高峰論壇

Forum on the Interface of Judicial and Legal Rules between Mainland and Hong Kong

最高人民法院及香港特別行政區政府律政司合辦

Co-organised by the Supreme People's Court and the Department of Justice of the HKSARG

特別情況 - 看顧相關命令

- 內地法院，父母雙方離婚(divorce)時，下令母親獲得子女日常照顧權，父親有探視權(access)。
- 在父母雙方同意下，母親將子女帶往香港並在香港居住。
- 內地法院的命令有在香港法院作出相關登記(registration)。
- 後續發現母親有虐待子女。



內地與香港特別行政區法院婚姻家庭案件相互認可和強制執行新機制

New mechanism for reciprocal recognition and enforcement in matrimonial and family cases between the Courts of Mainland and the Hong Kong Special Administrative Region

內地與香港司法法律規則銜接高峰論壇

Forum on the Interface of Judicial and Legal Rules between Mainland and Hong Kong

最高人民法院及香港特別行政區政府律政司合辦

Co-organised by the Supreme People's Court and the Department of Justice of the HKSARG

謝謝



內地與香港特別行政區法院婚姻家庭案件相互認可和強制執行新機制

New mechanism for reciprocal recognition and enforcement in matrimonial and family cases between the Courts of Mainland and the Hong Kong Special Administrative Region