

Public consultation on proposed arrangement with Mainland on reciprocal recognition and enforcement of judgments on matrimonial and related matters starts

The Department of Justice (DoJ) today (June 27) launched a seven-week public consultation regarding a proposed arrangement with the Mainland on reciprocal recognition and enforcement of judgments on matrimonial and related matters (the Proposed Arrangement).

The proposal was made in response to issues arising from the increasing number of cross-boundary marriages, the substantial percentage of divorce cases filed in the Family Court of the Hong Kong Special Administrative Region (HKSAR) in relation to marriages which took place in the Mainland, and the enhanced mobility of residents of both the HKSAR and the Mainland.

Although the HKSAR and the Mainland concluded an arrangement on reciprocal recognition and enforcement of civil judgments (REJ) in 2006, it is limited in scope and does not cover family matters.

Furthermore, according to section 56 of the Matrimonial Causes Ordinance (Cap 179), a divorce granted by the Mainland court is recognised in the HKSAR. However, maintenance orders and custody orders granted by a Mainland court are not automatically recognised and enforceable in the HKSAR. The same applies to the recognition and enforcement in the Mainland of maintenance orders and custody orders granted by a court of the HKSAR.

Under the current regime, parties to cross-boundary marriages would incur extra time and costs as well as suffer emotional distress in seeking to enforce in the HKSAR matrimonial judgments obtained in the courts of the Mainland, and vice versa.

The DoJ noted that there have been calls for an extension of the REJ regime between the HKSAR and the Mainland, particularly in relation to matrimonial and related matters. It considers that the Proposed Arrangement would benefit judgment holders by providing a more expeditious and cost-effective way of seeking reciprocal recognition and enforcement in the HKSAR of judgments on matrimonial and related matters obtained in the Mainland, and vice versa.

Specifically, the DoJ invites public views on the following issues:

- (a) the principal types of judgments (including divorce, maintenance and custody orders) to be covered in the Proposed Arrangement;
- (b) whether to include the "divorce certificate" obtained through the registration procedure in the Mainland in the Proposed Arrangement;
- (c) whether to include orders for property adjustment;
- (d) whether to include power of variation of maintenance orders by the courts in the place where the orders are sought to be enforced;
- (e) whether other orders should be included in the Proposed Arrangement;
- (f) the jurisdictional basis of the parties to an application for REJ;
- (g) the level of courts to be covered in the Proposed Arrangement; and
- (h) the finality of judgments.

The consultation paper is now available on the website: www.doj.gov.hk/eng/public/pd_consultationPaper2.html. All submissions should be sent to China Law Unit, Legal Policy Division, Department of Justice, by mail to 5/F, East Wing, Justice Place, 18 Lower Albert Road, Central, Hong Kong; by fax to 3918 4799; or by email

to matrimonial@doj.gov.hk. The consultation will end on August 15, 2016.

Ends/Monday, June 27, 2016