

**Speech of the Secretary for Justice
the Hon Wong Yan Lung, SC, JP
at the Legislative Council on 30 June 2010**

**To move the Second Reading of the
Matrimonial Proceedings and Property (Amendment) Bill 2010**

Mr. President,

I move that the Matrimonial Proceedings and Property (Amendment) Bill 2010 be read a second time.

Purpose of the Bill

2. Under the Matrimonial Proceedings and Property Ordinance (Cap. 192) (“the Ordinance”), the court may make an order for financial provision in favour of a spouse on the grant of a decree of divorce or judicial separation. A party cannot apply for financial relief if he/she has obtained a divorce decree in a jurisdiction outside Hong Kong because the Hong Kong courts can no longer grant any decree absolute. In some instances, this may cause hardship to a party particularly if no or insufficient financial provisions have been made under the foreign order.

3. After seeking the views of the legal professional bodies and relevant parties, the Administration has decided to propose certain amendments to the Ordinance in order 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 proceedings outside Hong Kong.

Details of the Bill

4. In preparing the Bill, reference has been made to Part III of the English Matrimonial and Family Proceedings Act 1984 (“1984 Act”). Under the Bill, a new Part IIA will be added to the Ordinance allowing a party to apply for an order of financial relief if his/her marriage has been dissolved or annulled, or if the parties have been legally separated, by a court outside Hong Kong unless that party has remarried. Similar to the 1984 Act, the party applying for financial relief must first obtain the leave

of the court and leave will only be granted if the court considers that there is substantial ground for the making of the application for financial relief.

5. The court is empowered to make interim orders for maintenance, after granting leave, if it appears that the applicant or any child of the family is in immediate need of financial assistance.

6. The jurisdictional basis for the court to consider an application for financial relief is similar to its jurisdiction in divorce proceedings in Hong Kong. Under the Bill, the court will have jurisdiction to entertain an application if either of the parties to the marriage was domiciled in Hong Kong or was habitually resident in Hong Kong for 3 years, 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.

7. Before making an order for financial relief, the court is required to consider whether in all the circumstances of the case, and having paid particular attention to certain specified matters set out in the Bill, it would be appropriate for a court in Hong Kong to make the order.

8. 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.

Rules of Court

9. The Bill proposes to transfer to the Chief Judge of the High Court the rule-making power of the Chief Justice under the Ordinance. Rules of court will also be introduced to the Matrimonial Causes Rules (Cap. 179 sub. leg. A) setting out the procedures for making an application for financial relief under the Bill.

10. The Administration has consulted the legal professional bodies and relevant government bureaux on the amendments proposed and they are supportive of the proposal to amend the Ordinance. The comments of the legal professional bodies and the Judiciary, particularly the jurisdictional basis upon which the court may entertain an application for financial relief, have been taken into account in the drafting of the Bill.

11. Mr. President, the Bill will help to alleviate hardship that may be encountered by parties to a foreign divorce decree who meet the jurisdictional requirements in obtaining supplemental financial provisions.

12. I commend the Bill to this Council.

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