

**For discussion on
22 May 2017**

**Legislative Council Panel on
Administration of Justice and Legal Services**

**Proposed Arrangement with the Mainland on Reciprocal
Recognition and Enforcement of Judgments on Matrimonial and
Related Matters**

PURPOSE

This paper briefs Members on the latest development on the proposed arrangement with the Mainland on reciprocal recognition and enforcement of judgments on matrimonial and related matters (“**Proposed Arrangement**”).

BACKGROUND

2. In December 2016, the Government briefed Members on its preliminary response to the comments raised by the respondents to the consultation on the Proposed Arrangement.
3. The Government has since further discussed with the Mainland side on the Proposed Arrangement and thereafter further sought the views and comments from the relevant stakeholders on various issues arising.
4. The key features of the latest Proposed Arrangement are set out below.

THE PROPOSED ARRANGEMENT

(a) Scope

5. The Proposed Arrangement will cover the following types of judgments on matrimonial and family matters made by Hong Kong courts:
 - (i) divorce decrees absolute;
 - (ii) decrees of nullity;
 - (iii) orders for maintenance pending suit;

- (iv) maintenance orders, including orders for periodical payments and payment of a lump sum;
- (v) orders for transfer of property and sale of property in matrimonial proceedings;
- (vi) orders made during the lives of parties for alteration of maintenance agreements;
- (vii) orders for financial relief after divorce outside Hong Kong;
- (viii) adoption orders;
- (ix) custody orders, including orders in relation to access to a child;
- (x) injunctions restraining a person from molesting or prohibiting from entering or remaining in the residence of a person in the context of domestic and cohabitation relationships violence.

6. As regards the judgments on matrimonial and family matters made by the Mainland courts, the Proposed Arrangement will cover:

- (i) division of the property of parties to a marriage during the subsistence of the marriage;
- (ii) dissolution of a marriage (which may also involve issues on division of property and custody);
- (iii) disputes on (1) the division of property not divided at the time of the divorce; (2) the division of property discovered after divorce; or (3) the performance of an agreement made during or at the time of the divorce on the division of property;
- (iv) validity of a marriage;
- (v) annulment of a marriage;
- (vi) disputes on an agreement made by the parties to a marriage (including one made prior to the marriage) on maintenance and the division of property including during the subsistence of the marriage;
- (vii) disputes on custody of a child between cohabitees;
- (viii) determination of parentage;
- (ix) disputes on custody of a child;
- (x) disputes on the duty to maintain the other party to a marriage;
- (xi) order for adoption of a child;
- (xii) disputes relating to guardianship of parents over a child;
- (xiii) disputes on the rights of access to a child;
- (xiv) protection order in situations of domestic violence.

(b) Divorce certificates under administrative procedures

7. In addition, a “divorce certificate” obtained through registration with a Mainland administrative authority in the Mainland, which has the

same legal effect as a divorce order granted by a Mainland court, will be covered by the Proposed Arrangement. On the Hong Kong side, an agreement or memorandum for dissolution of customary marriages or modern marriages under Part V of the Marriage Reform Ordinance (Cap.178) and an agreement or memorandum of dissolution of certain marriages celebrated in the Mainland under Part VA of Cap.178 will also be included in the Proposed Arrangement.

(c) **Property adjustment**

8. The Proposed Arrangement will cover orders *in personam* for transfer of property and orders for sale.

9. Noting that the concept of property ownership in a marriage under Mainland law is different from that under Hong Kong law, the Proposed Arrangement will include a provision to the effect that a Mainland judgment ordering that a property be vested in one party to the marriage will be deemed to mean, for the purpose of enforcement in Hong Kong, an order for transfer of the property to that party.

(d) **Power of variation of maintenance orders**

10. The Proposed Arrangement will not include a power on the part of the requested court to vary maintenance orders made by the original court.

(e) **Safeguards**

11. The Proposed Arrangement will provide the following grounds of refusal in respect of an application for recognition and enforcement of a relevant judgment:

- (i) the respondent had not been summoned according to the law of the original court, or had not been given a reasonable opportunity to make submissions or argue his/her case, even if he/she was summoned according to the law of the original court;
- (ii) the judgment was obtained by fraud;
- (iii) the judgment was rendered in a cause of action which was accepted by the original court after the requested court has already accepted the cause of action on the same dispute;
- (iv) the requested court has rendered a judgment on the same dispute, or a foreign court has already rendered judgment on the same dispute and that judgment has been recognised or enforced by

the requested court.

- (v) the Mainland court considers that the recognition and enforcement of the judgment is manifestly contrary to the basic legal principles of Mainland law or the social and public interests of the Mainland; or the Hong Kong court considers that the recognition and enforcement of the judgment is manifestly contrary to the public policy of Hong Kong.

12. In addition, if the judgment involves a minor, the court shall take into account the best interests of the child in deciding the application of the ground under paragraph 11(v).

(f) Level of courts covered

13. The judgments of the District Court or above will be covered by the Proposed Arrangement.

14. In relation to the Mainland side, the Proposed Arrangement will cover the judgments made by the Primary People's Courts of the Mainland or above.

(g) Enforceability and finality of judgments

15. The Proposed Arrangement will apply to judgments which are legally enforceable under the law of the original court.

16. In respect of the Mainland, this means:

- (i) any judgment of the second instance;
- (ii) any judgment of the first instance from which no appeal is allowed or one in respect of which the time limit provided for an appeal therefrom under Mainland law has expired and no such appeal has been filed; and
- (iii) any judgment made in accordance with the procedure for trial supervision.

17. In the case of Hong Kong judgments, those made by the Court of Final Appeal and those by the Court of Appeal, the Court of First Instance of the High Court and the District Court which are legally effective (even if pending an appeal) will be covered. In respect of a judgment made by a Hong Kong court on which appeal is pending, the Mainland court may suspend the recognition and enforcement procedures. Any orders which may be varied by the original court, including a

maintenance order for periodical payment and a custody order, will also be covered in the Proposed Arrangement.

(h) **Procedures for application for recognition and enforcement and related matters**

18. The Proposed Arrangement will provide that the procedure and the time limit for a party to apply for recognition and enforcement of a judgment shall be governed by the law of the requested place.

19. The Proposed Arrangement will allow simultaneous applications for enforcement in both Hong Kong and the Mainland if the assets of the party against whom enforcement is sought are situated in both Hong Kong and the Mainland. The total amount recovered shall not exceed the sum specified in the relevant judgment.

WAY FORWARD

20. The Government intends to finalise the details of the Proposed Arrangement with the Mainland side with the aim of signing the Proposed Arrangement before the end of June this year.

21. The Proposed Arrangement will come into effect after both sides have completed their respective internal procedures. Specifically it will be implemented in the Mainland by way of a judicial interpretation and in Hong Kong by way of legislation. The Proposed Arrangement will not have any retrospective effect.

ADVICE SOUGHT

22. The Government invites Members' views on and support for the Proposed Arrangement.

Department of Justice
May 2017