

**For information**

**Paper for the Panel on  
Administration of Justice and Legal Services**

**Pilot Scheme for the Reform of  
Ancillary Relief Procedures in Matrimonial Proceedings**

**Purpose**

This paper informs Members of the outcome of the consultation exercise on the proposed pilot scheme for the reform of ancillary relief procedures in matrimonial proceedings (“the pilot scheme”).

**Background**

2. At the meeting on 27 January 2003, Members considered the proposed pilot scheme, and requested that the Judiciary Administration should consider whether further consultation with the relevant parties, especially women groups, should be conducted before the implementation of the pilot scheme, and that the outcome of the consultation exercise should be reported to the Panel for information.

**Present Position**

3. The Judiciary Administration has issued letters to 19 local women’s organisations and services agencies to invite their views on the pilot scheme. We also consulted the Women’s Commission at its meeting on 8 April 2003. Moreover, the Law Society of Hong Kong and the Hong Kong Bar Association have further consulted their fellow members on the pilot scheme.

**General Comments**

4. The feedback on the pilot scheme has generally been positive. In particular, the procedures under the pilot scheme, which aim to improve efficiency and reduce the adversarial nature of the existing ancillary relief proceedings, are welcomed.

## **Specific Comments from Women Organisations**

5. The Women's Commission and local women organisations have offered specific comments on the details of implementation of the pilot scheme. These specific comments together with our responses are summarised below -

(a) Bringing in Professionals at the Financial Dispute Resolution ("FDR") Hearing

One suggestion is that a panel of professionals, such as bankers or accountants, should be brought in at the FDR hearing to handle financial-related matters. We consider that this would not be necessary since the Family Court at which FDR hearings are conducted is a specialist court, and the Judges presiding over the Court are experienced with the financial issues involved in these cases. Moreover, the primary role of the Court at the FDR hearing is to consider the information and arguments presented by the parties rather than to conduct investigation on its own.

(b) More Definitive Guidelines for Handling Financial Disputes

Another suggestion is that more definitive guidelines for handling financial disputes in divorce cases should be introduced, and that the entitlements of an applicant to his/her spouse's asset should be made clear in the law. We consider that it would be difficult to establish any hard and fast guidelines in this respect, because the circumstances of each case are different and there would always be arguments as to what assets should be taken into account. Pre-marital agreements, if any, reached between the parties might complicate the matter. Moreover, the Court has the responsibility to protect the interest of children involved and to balance all relevant factors.

(c) Training for Relevant Parties on the Reformed Procedures

On the suggestion that training should be provided for all relevant parties concerned, we have explained that training sessions have been provided for Family Court Judges. Moreover, the two legal professional bodies have sent

information on the pilot scheme to their fellow members, and arranged briefing sessions and seminars for them.

(d) Dual Functions of the Court

Concerns have been expressed about the dual functions to be performed by the Family Court, i.e. both as an adjudicator and a mediator. We have explained that if settlement cannot be reached under the FDR procedures, the ensuing trial would be presided by another Judge to avoid bias. The Family Court Judges have already been performing informal mediating task under the existing procedures. The pilot scheme would provide a more formal mechanism to facilitate the mediation process.

(e) Legal Cost Involved in FDR Procedures

In response to the suggestion that no legal cost should be required on any party in a settlement under the FDR procedures, we have explained that while the FDR hearings are intended to allow parties to negotiate settlement in good faith, the Court should reserve the right to impose legal cost if a party acted irresponsibly.

(f) Monitoring and Evaluation Mechanism

Views have been expressed that there should be a monitoring and evaluation mechanism for the pilot scheme. As part of its terms of reference, the Steering Committee on the Pilot Scheme would oversee the implementation of the pilot scheme and evaluate its effectiveness. It will make recommendations to the Chief Justice on the way forward towards the end of the pilot scheme.

(g) Promotion of the Family Mediation Service

One suggestion is that parties concerned should use the family mediation service before making applications under the pilot scheme. We have explained the proposed pilot scheme would run independently of the existing Pilot Scheme on Family Mediation. The latter has been launched to promote a more settlement-oriented approach, which allows the separating or divorcing couples to reach mutual agreements for the custody and maintenance of children as well as resolution of financial

matters. The new procedures under the proposed pilot scheme would apply to all litigants who commence proceedings on or after the commencement date, regardless of whether they have attempted mediation.

(h) Duration of the Procedures under the Pilot Scheme

Views have been expressed that the waiting time from one phase to another is too long. We have explained that in the ordinary course of events, the date of the First Appointment will be some 10 to 14 weeks ahead, so as to allow sufficient time for the applicant to serve notice on the respondent and to prepare for the necessary documents before the hearing of the First Appointment. The date for the FDR hearing can only be fixed at the First Appointment, as the time frame required may vary from case to case depending on the number and complexity of outstanding disputes to be resolved between the parties. Moreover, if the Court at the First Appointment exercises its discretion against the holding of a FDR hearing, then Phase Two effectively becomes Phase Three leading directly to trial.

(i) Documentation Required for the Pilot Scheme

In response to the suggestion that the documents required for the pilot scheme could be further simplified, with a view to reducing legal cost, we have explained that the documents required are essential for the Court to consider and give directions at the First Appointment. In particular, the purpose of the statement of costs incurred and to be incurred is to ensure that the parties are kept aware of the costs of their litigation.

### **Specific Comments from the Two Legal Professional Bodies**

6. The Law Society of Hong Kong has indicated that it supports the proposal to introduce the pilot scheme. The Hong Kong Bar Association has not received any adverse comments from its members on the proposal.

## **Way Forward**

7. We will take into account any further views Members may have on the proposed pilot scheme, and proceed to introduce the Matrimonial Causes (Amendment) Rules into the Legislative Council. Subject to approval by the Legislative Council, we aim to bring the pilot scheme into operation in the latter half of this year.

Judiciary Administration  
May 2003