

## LEGISLATIVE COUNCIL BRIEF

### Matrimonial Causes Ordinance (Chapter 179)

#### MATRIMONIAL CAUSES (AMENDMENT) RULES 2003

#### INTRODUCTION

Annex A

On 4 September 2003, the Chief Justice made the Matrimonial Causes (Amendment) Rules 2003 (“the Amendment Rules”) at **Annex A** under section 54 of the Matrimonial Causes Ordinance (Cap. 179) for the implementation of the pilot scheme for the reform of ancillary relief<sup>Note</sup> procedures in matrimonial proceedings.

#### JUSTIFICATIONS

##### *Existing Ancillary Relief Procedures*

2. The existing ancillary relief procedures in matrimonial proceedings in Hong Kong have been in operation since 1972. The ancillary relief proceedings commence when one party gives to the other a formal notice of intention to seek money or property orders from the court. If a petitioner seeks ancillary relief, the notice will invariably be contained in the body of the Divorce Petition. If a respondent seeks ancillary relief, the notice will be contained in the respondent’s Answer to the Petition.

3. A respondent receiving a Notice of Application for Ancillary Relief is obliged to file an Affidavit of Means giving full particulars of property and income within 14 days. The petitioner should then reply to the Affidavit of Means within 14 days.

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<sup>Note</sup> The term “ancillary relief” is defined in rule 2 of the Matrimonial Causes Rules, Chapter 179 and means-

- |  |   |
|--|---|
| (a) an avoidance of disposition order,     | (f) a settlement of property order,     |
| (b) a lump sum order,                      | (g) a transfer of property order,       |
| (c) an order for maintenance pending suit, | (h) a variation of settlement order, or |
| (d) a periodical payments order,           | (i) a variation order.                  |
| (e) a secured periodical payments order,   |   |

4. The petitioner or respondent may each raise a financial Questionnaire for further discovery on the other's Affidavit of Means. In addition, the parties may file further Affidavits commenting on the matters raised in the other's Affidavit.

5. The discovery of documents taking the form of Questionnaires, further Affidavits of Means and Replies thereto is usually a lengthy and sometimes complex process. Discovery can be extensive, often exceeding the realistic requirements of the case.

6. Directions are often given at the divorce hearing which, in the majority of cases, occurs before the discovery of documents. The court will order discovery of documents within a certain time. The court may also fix a date for the hearing for ancillary relief. At the hearing, the court will investigate the allegations made in support of, and in answer to, the application and may order the attendance of any person for the purpose of being examined or cross-examined. The court may also order the discovery and production of any document or require further Affidavits. In a simple case, the judge may deliver judgment at the end of the hearing. In a complex case, the judge will reserve judgment for delivery on another day.

***Problems with the existing ancillary relief procedures***

7. It is observed that the existing ancillary relief procedures allow too much leeway for litigants, who are frequently under great emotional stress occasioned by the breakdown of their marriage, to turn ancillary relief proceedings into a battlefield for the exhaustion of their marital antagonisms. The antagonistic approach adopted by the parties very often prolongs the emotional trauma of divorce resulting in the dissipation of family assets in costs. The current ancillary relief procedures are generally considered -

- (a) too adversarial in nature;
- (b) not in any way designed to promote a culture of settlement;
- (c) too susceptible to obstructionist tactics, especially oppressive discovery proceedings;
- (d) too expensive; and
- (e) too complex in nature.

8. In particular, the current procedures do not make provision for a mandatory directions hearing. Delays in bringing ancillary relief proceedings to conclusion often mean that in the interim period the financial circumstances

of the parties change. This requires the parties to file further Affidavits of Means to bring matters up to date.

9. Furthermore, the matter of settlement is left entirely to the discretion of the parties and their legal advisors. Settlements reached “at the door of the court” on the morning of the ancillary relief hearing or during the course of the hearing itself are common. By then, all too often the legal costs incurred by the parties frustrate any substantive benefit, which the parties receive from an otherwise equitable distribution of the matrimonial assets.

### ***Working Group to Consider Reform of the Ancillary Relief Procedures***

10. In November 1999, the Chief Justice appointed a Working Group under the chairmanship of the Hon Mr Justice Hartmann to consider the reform of the ancillary relief procedures (“Working Group”) with a view to making them quicker, cheaper, less adversarial and more conducive to a culture of settlement. The terms of reference of the Working Group were to consider whether there should be a reform of existing ancillary relief procedures and, if so -

- (a) to recommend a new procedural framework for the resolution of ancillary relief disputes and, where custody (and access) disputes are integral to a resolution of such disputes, their incorporation into that new procedural framework; and
- (b) if thought appropriate, to recommend a pilot scheme to test the effectiveness of any new procedural framework.

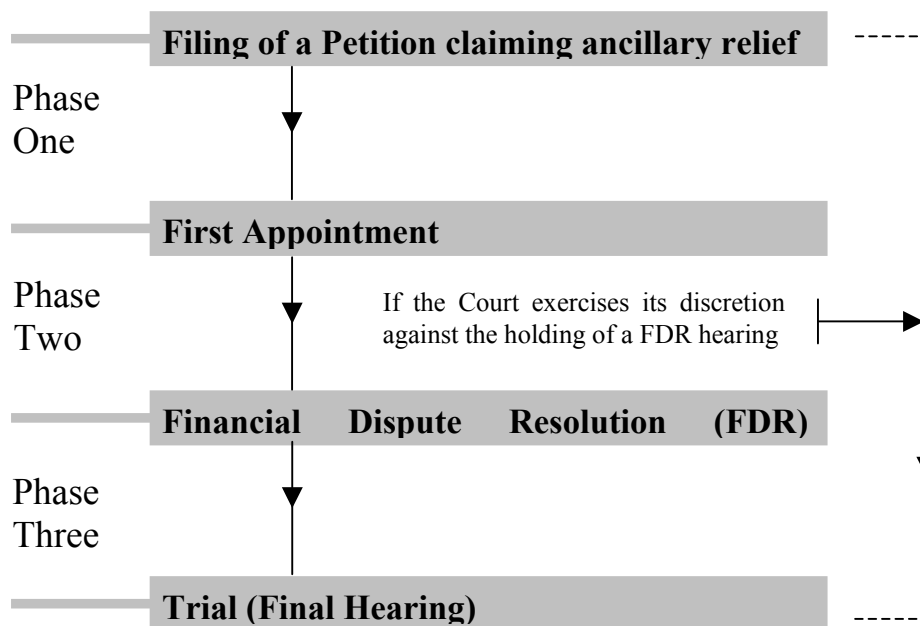
### **Annex B**

11. The membership of the Working Group is at **Annex B**. The Working Group noted that in recent years, a number of common law jurisdictions, including Australia, New Zealand, England and Wales have conducted reforms to ancillary relief proceedings with encouraging results. Having studied the overseas experience and the local situation, the Working Group recommended that a set of reformed ancillary relief procedures should be introduced into Hong Kong, and that their effectiveness should be tested by a two-year pilot scheme. The Chief Justice has approved the Working Group’s recommendation.

### ***Reformed Ancillary Relief Procedures***

12. Broadly speaking, the reformed ancillary relief procedures to be tested under the pilot scheme are divided into three phases, each phase

concluding with a “milestone” court hearing, as illustrated in the flowchart below -



### Phase One

13. This phase commences with the filing of a Petition, Joint Application or Answer in which a claim for ancillary relief, other than only nominal maintenance, is contained and concludes with the holding of the **First Appointment**.

14. The date of the First Appointment will in the ordinary course of events be some 10 to 14 weeks ahead. A later date within such time frame may be given, if, for example, difficulties are anticipated in serving process on the other party. Once a date for the hearing of the First Appointment is given, a timetable is thereby created. Such timetable cannot be altered without the leave of the court.

15. At least 28 days before the date of the First Appointment, the parties must each file with the court and simultaneously exchange their respective **Financial Statements**. A failure to file the Statement on due date may be penalized in costs. Where one party only is in the position to file and exchange the Financial Statement, that party shall be at liberty to file the Statement in a sealed envelope so that it cannot be read by the defaulting party until that party has filed his/her Statement and is in the position to exchange his/her Statement.

16. After the exchange of the Financial Statements, and at least 14 days before the hearing of the First Appointment, the parties are required to file a bundle of documents including a concise statement of the issues between the

parties; a brief chronology relevant to the matters in issue; a questionnaire (if necessary); and a **statement of costs** incurred and to be incurred by the conclusion of the First Appointment.

17. The First Appointment will be presided over by a judge who will “manage” the case. Issues will be defined and a broad range of directions will be given by the judge at the First Appointment to ensure that the matter proceeds to resolution economically and with a minimum of delay.

18. Matters of custody are often integral to ancillary relief proceedings. At the First Appointment, the judge will have discretion to seek a way to best manage the collateral custody proceedings, perhaps by directing that custody issues be resolved first in a separate hearing, and the ancillary relief hearings will be consequent upon that resolution.

19. If the court at the First Appointment exercises its discretion against the holding of a Financial Dispute Resolution (“FDR”) hearing, then it will proceed directly to trial.

### Phase Two

20. This phase proceeds from the First Appointment and concludes with the **FDR hearing**, which will take place after the filing of all necessary documents on a date fixed at the First Appointment. All correspondence between the parties aimed at settlement will be considered at the FDR hearing, which is presided over by the judge who has been given management of the case. The purpose is to explore possible grounds for settlement. All settlement proposals that the parties have made to each other, together with any fresh proposal, will be tabled at the hearing to enable the parties to seek common ground for settlement. The judge, where appropriate, will attempt to facilitate settlement.

21. At the FDR hearing, the judge sits essentially in the role of a “facilitator”, assisting the parties to try to reach a settlement. The parties are obliged to provide a **statement of costs** they have incurred to date. If a settlement is not obtained at the FDR hearing, the matter will be set down for trial before another judge.

### Phase Three

22. This phase proceeds from the conclusion of the FDR hearing, if that has not been fully successful, and concludes with the **trial**.

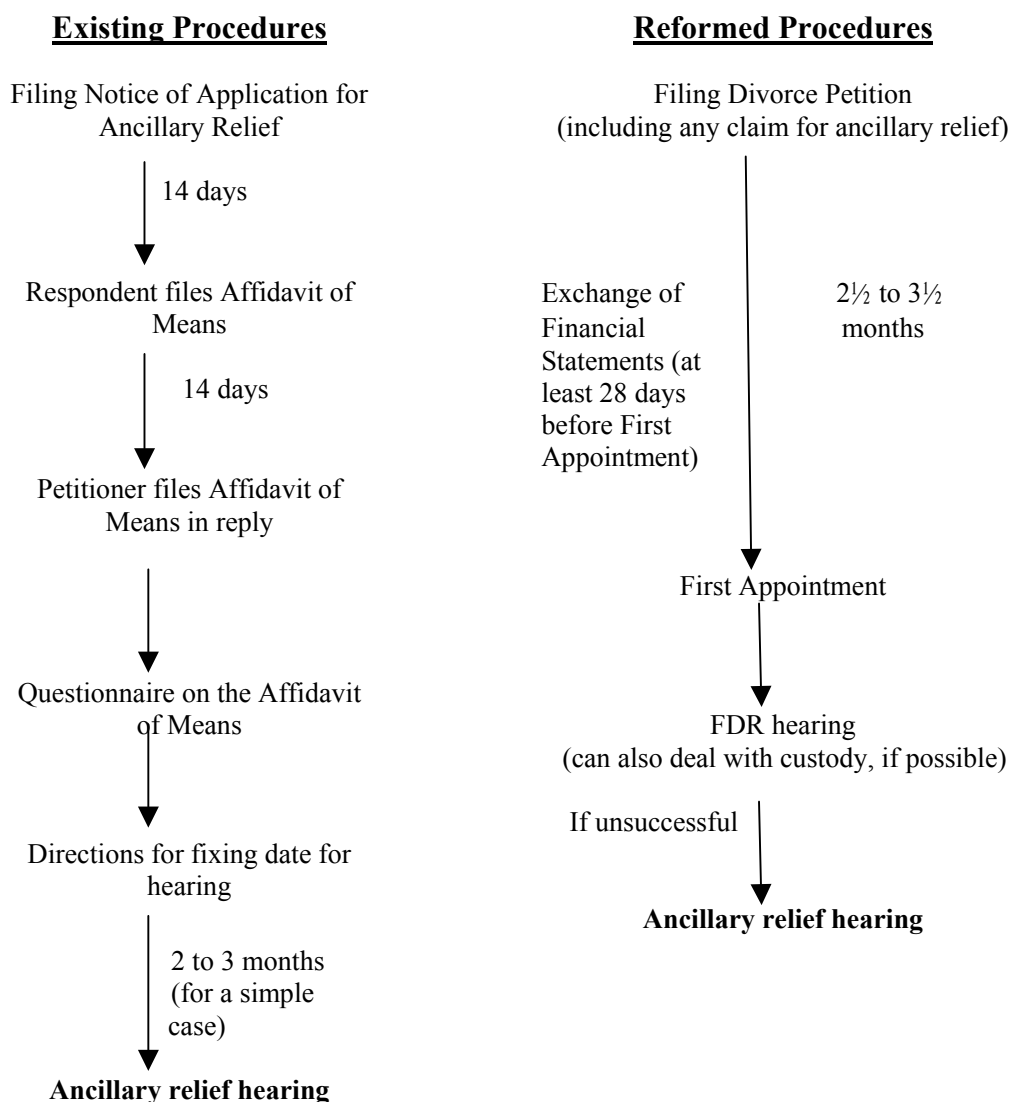
23. At least 21 days before the trial, the applicant must file and serve an open proposal and the respondent must, within seven days of receipt of that open proposal, file his or her open proposal.

24. At the commencement of the trial, each party must submit a **final statement of costs**, such costs being estimated to the end of the trial.

25. The trial will proceed in the usual manner before a judge other than the one who presided at the FDR hearing. As the issues will have been defined at the First Appointment and pleadings kept within realistic limits, trials are expected to be shorter.

### ***Main Features and Aims of the Pilot Scheme***

26. A comparison of the existing ancillary procedures and the reformed procedures under the pilot scheme is illustrated below -



27. The main features of the pilot scheme are highlighted below -
- (a) Substitution of Affidavits of Means with a disclosure of financial information in a standardized form (the “Financial Statement”). All parties must file a Financial Statement notwithstanding the level of their affluence;
  - (b) Mandatory attendance of the parties at the First Appointment and the FDR hearing; and
  - (c) A requirement for the parties or their legal representatives to submit at each hearing a statement of costs incurred by them to date. The purpose of this is to ensure that both the parties and the court are, at each milestone event, kept aware of the costs incurred to date and thereby their impact on the family assets.
28. With the above main features, the pilot scheme aims to –
- (a) identify the issues which are important to the parties and to encourage them to reach settlement on those issues;
  - (b) reduce unnecessary costs, delay and personal distress for the parties;
  - (c) ensure that the parties are made aware at every stage of the proceedings of the costs incurred to date and, where appropriate, the costs that may be incurred if the matter is to proceed; and
  - (d) curb exhaustive and unnecessary disclosure of financial information, especially copious discovery (and copying) of documents so that the parties and the court can, at a reduced cost, focus on the matters of material relevance.

### ***Implementation of the Pilot Scheme***

29. The pilot scheme concerns primarily matters of procedure at the Family Court. Its implementation will be governed by a Practice Direction to be issued by the Chief Justice. However, the effective working of the pilot scheme demands that certain existing Matrimonial Causes Rules (Cap. 179 sub. leg.) have to be set aside. Reference has been made to the experience of the English

pilot scheme, which had first been introduced in the belief that a Practice Direction was sufficient. However, fairly early in the history of the English pilot scheme, there was a challenge as to the lawfulness of the scheme based on the Practice Direction alone. Consequently, rapid amendments to the Rules were made through the Lord Chancellor's Department for the implementation of the English pilot scheme. Having regard to the experience of the English pilot scheme and the legal position in Hong Kong, the Judiciary is of the view that amendments to the existing Matrimonial Causes Rules are necessary to put certain existing Rules to one side for the implementation of the pilot scheme.

## **THE AMENDMENT RULES**

30. The Amendment Rules at **Annex A** amend the Matrimonial Causes Rules (Cap. 179 sub. leg.) to –

- (a) disapply certain provisions under the principal Rules in respect of –
  - (i) an application by the respondent to a petition for divorce for the Family Court to consider his financial position after the divorce; and

- (ii) an application for ancillary relief

where the petition for divorce or joint application is presented to the Family Court on or after the commencement of the Amendment Rules; and

- (b) prescribe new forms to be used in the proceedings of those applications.

## **LEGISLATIVE TIMETABLE**

31. The Amendment Rules will be gazetted on 3 October 2003 and tabled at the Legislative Council on 8 October 2003 for negative vetting. Subject to the Legislative Council's approval of the Rules by negative vetting, the Judiciary aims to bring the Amendment Rules into operation by the end of 2003. The commencement date of the Amendment Rules will be appointed by the Chief Justice by notice published in the Gazette.



## **APPLICATION OF THE PILOT SCHEME**

32. Upon the commencement of the Amendment Rules, the pilot scheme will apply to all cases involving claims for ancillary relief, except for those in which nominal maintenance only is claimed. When the resolution of a custody dispute is integral to the resolution of an ancillary relief dispute, that custody dispute will also fall under the pilot scheme. All claims for ancillary relief contained in Petitions or Joint Applications, which are filed on or after the commencement date of the Amendment Rules, are subject to the pilot scheme. Claims contained in Petitions or Joint Applications filed prior to the commencement date of the Amendment Rules will not be subject to the pilot scheme unless the parties agree and the court so orders. If so, and depending on the stage of that prior litigation, it may be necessary to seek directions from the court.

## **PUBLIC CONSULTATION**

33. The Legislative Council Panel on Administration of Justice and Legal Services was consulted on the pilot scheme in January 2003. The majority of the Panel members supported the aims of the pilot scheme. In May 2003, the Panel agreed that the policy aspects of the proposal had been considered, and that the Judiciary could proceed to introduce the relevant rules into the Legislative Council.

34. The Women's Commission, prominent local women's groups and services agencies have been consulted on the pilot scheme. The feedback has generally been positive. In particular, the reformed procedures, which aim to improve efficiency and reduce the adversarial nature of the existing ancillary relief proceedings, are welcomed. 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.

## **PUBLICITY**

35. A press conference will be held and a press release will be issued near the commencement of the pilot scheme. A spokesman of the Judiciary will be available to answer enquiries. Information pamphlets on the pilot scheme will be made available at the Family Court and all relevant levels of court, relevant Government departments, the legal professional bodies, and relevant non-government organizations.

**ENQUIRY**

36. Any enquiry on this brief can be addressed to Miss Vega Wong, Assistant Judiciary Administrator (Development), at 2825 4244.

Judiciary Administration  
September 2003

**MATRIMONIAL CAUSES (AMENDMENT) RULES 2003**

(Made under section 54 of the Matrimonial Causes Ordinance (Cap. 179))

**1. Commencement**

These Rules shall come into operation on a day to be appointed by the Chief Justice by notice published in the Gazette.

**2. Rule added**

The Matrimonial Causes Rules (Cap. 179 sub. leg. A) is amended by adding immediately after rule 84 -

**"84A. Applications under rule 56B and applications for ancillary relief where petitions for divorce or joint applications are presented on or after commencement of Matrimonial Causes (Amendment) Rules 2003**

(1) Rule 56B(2) and (3) shall not apply to an application by the respondent to a petition for divorce for the court to consider his financial position after the divorce, where the petition is presented to the court on or after the commencement of the Matrimonial Causes (Amendment) Rules 2003 (L.N. of 2003).

(2) Subject to paragraph (4), rules 70, 71, 73, 74, 76 and 77(1), (3), (4) and (7) shall not apply to an application for ancillary relief made in relation to a petition for divorce or joint application, where the petition for divorce or joint application is presented to the court on or after the

commencement of the Matrimonial Causes (Amendment) Rules 2003  
(L.N. of 2003).

(3) Insofar as -

(a) rule 56B(1) applies to an application referred to in paragraph (1), any reference to Form 8A in that rule shall be construed as a reference to Form 26;

(b) rule 56B(5) applies to an application referred to in paragraph (1), any reference to rule 77(3), (4), (5), (6) and (7) in that rule shall be construed as a reference to rule 77(5) and (6);  
and

(c) rule 68, 68A or 69 applies to an application for ancillary relief referred to in paragraph (2), subject to paragraph (4), any reference to Form 8 or 8B in that rule shall be construed as a reference to Form 25.

(4) Paragraphs (2) and (3)(c) shall not apply where -

(a) the application for ancillary relief concerned only relates to an order for periodical nominal payment in the sum of \$1 per annum;

(b) the application is made for a variation order; or

(c) the parties to the application for ancillary relief concerned have reached agreement on terms of the proposed order."

**3. Forms**

The Appendix is amended -

- (a) in Form 8, by repealing "[Rule 68(2)(a) and (3)]" and substituting "[Rules 68(2)(a) & (3) & 84A(3)(c)]";
- (b) in Form 8A, by repealing "[Rule 56B]" and substituting "[Rules 56B & 84A(3)(a)]";
- (c) in Form 8B, by repealing "[Rules 68A(1), 70, 73, 74 & 77]" and substituting "[Rules 68A(1), 70, 73, 74, 77 & 84A(3)(c)]";
- (d) by adding -

"FORM 25

[Rule 84A(3)(c)]

*Notice of Application for Ancillary Relief*

In the District Court / High Court*	
<b>Case No.</b> Always quote this	

Between	Petitioner / 1 <sup>st</sup> Applicant*  Solicitor's ref.	And	Respondent / 2 <sup>nd</sup> Applicant*  Solicitor's ref.
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TAKE NOTICE that -

The Petitioner / 1<sup>st</sup> Applicant / Respondent / 2<sup>nd</sup> Applicant\* intends  
[to apply to the Court for]

[to proceed with the application in the [petition][answer] [application] for -]

- (a) an order for maintenance pending suit;
- (b) a periodical payments order;
- (c) a secured periodical payments order;
- (d) a lump sum order;


- (e) a settlement of property order;
- (f) a transfer of property order;
- (g) a variation of settlement order;
- (h) an avoidance of disposition order


and on behalf of the children of the family for -

- (a) an order for maintenance pending suit;
- (b) a periodical payments order;
- (c) a secured periodical payments order;
- (d) a lump sum order;
- (e) a settlement of property order;
- (f) a transfer of property order;
- (g) a variation of settlement order;
- (h) an avoidance of disposition order


\* delete if not applicable.

Signed:

Date:

[Solicitor for the] [Petitioner / 1<sup>st</sup> Applicant] [Respondent / 2<sup>nd</sup> Applicant]

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*Address all communications to the Chief Judicial Clerk or if the matter is in the High Court, the Clerk of Court and quote the case number. If you do not quote this number, your correspondence may be returned.*

Chief Judicial Clerk  
Family Court Registry  
Wanchai Law Courts

OR

If the matter is in the High Court  
The Clerk of Court  
High Court of Hong Kong

FORM 26

[Rule 84A(3)(a)]

*Notice of Application under Rule 56B*

In the District Court / High Court*	
<b>Case No.</b> Always quote this	

Between

Petitioner
Solicitor's ref.

And

Respondent
Solicitor's ref.

TAKE NOTICE that -

The Respondent intends to apply to the court under section 17A of the Matrimonial Causes Ordinance (Cap. 179) for the court to consider the financial position of the respondent after the divorce.

\* The application will be heard on a date to be fixed.

\* A first appointment date has been fixed by the court on the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_ at \_\_\_\_\_ o'clock.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_ .

\* delete if not applicable.

Signed:

Date:

[Solicitor for the] Respondent

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*Address all communications to the Chief Judicial Clerk or if the matter is in the High Court, the Clerk of Court and quote the case number. If you do not quote this number, your correspondence may be returned.*

Chief Judicial Clerk  
Family Court Registry  
Wanchai Law Courts

OR

If the matter is in the High Court  
The Clerk of Court  
High Court of Hong Kong".

Chief Justice

4th September 2003

**Explanatory Note**

These Rules amend the Matrimonial Causes Rules (Cap. 179 sub. leg.

A) ("the principal Rules") to -

(a) disapply certain provisions under the principal Rules in respect of an application -

(i) by the respondent to a petition for divorce for the District Court ("the court") to consider his financial position after the divorce, where the petition is presented to the court on or after the commencement of the Rules; and

(ii) for ancillary relief, where the petition for divorce or joint application is presented to the court on or after the commencement of the Rules; and

(b) prescribe new forms to be used in the proceedings of those applications.



**Membership of the Working Group to Consider the  
Reform of the Ancillary Relief Procedures**

**Chairman**

The Hon Mr Justice Hartmann      Judge of the Court of First Instance,  
High Court

**Members**

H H Judge Carlson                      Judge of the District Court

H H Judge Chan                         Judge of the District Court

The late Ms Pam Baker                Hong Kong Family Law Association

Ms Corinne Remedios                 Hong Kong Bar Association

Miss Anita Yip                         Hong Kong Bar Association

Ms Bebe Chu                             The Law Society of Hong Kong

Mr Robin Egerton                        The Law Society of Hong Kong

Representative from the Legal Aid Department

Representatives from the Judiciary Administration