

立法會
Legislative Council

Ref : CB2/BC/3/09

LC Paper No. CB(2)2221/09-10
(These minutes have been seen
by the Administration)

**Bills Committee on Matrimonial Proceedings
and Property (Amendment) Bill 2010**

**Minutes of the first meeting
held on Monday, 12 July 2010, at 8:30 am
in Conference Room B of the Legislative Council Building**

Members present : Dr Hon Margaret NG (Chairman)
Hon Albert HO Chun-yan
Hon James TO Kun-sun
Hon LAU Kong-wah, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Cyd HO Sau-lan
Hon Paul TSE Wai-chun

Public Officers attending : Department of Justice

Miss Michelle TSANG
Senior Assistant Solicitor General

Mr CHENG Kim-fung
Senior Assistant Law Draftsman

Ms Alice CHOY
Senior Government Counsel

Clerk in attendance : Miss Flora TAI
Chief Council Secretary (2)3

Staff in attendance : Ms Clara TAM
Assistant Legal Adviser 9

Ms Amy YU
Senior Council Secretary (2)3

Action

I. Election of Chairman

Dr Margaret NG was elected Chairman of the Bills Committee.

II. Meeting with the Administration

[LC Paper Nos. CB(2)1615/09-10(01) CB(2)2031/09-10(01) to (02), CB(3)813/09-10, LP 5060/1C and LS82/09-10]

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).

Follow-up actions

Admin

3. The Administration was requested to -

- (a) provide information on the experience of the English courts with reference to relevant case law in dealing with cases where the party applying for an order for financial relief had already obtained financial provision made under a foreign order;
- (b) seek relevant information from the Judiciary, the Legal Aid Department, the two legal professional bodies and relevant community organizations on the estimated caseload arising from the implementation of the proposed legislation;
- (c) provide information on the procedures for transfer of the relevant applications for financial relief from the District Court to the Court of First Instance and vice versa; and
- (d) provide information on factors taken into account by the Hong Kong courts in relevant cases when considering whether the jurisdictional requirement of "substantial connection" was met in divorce proceedings, and examples of such factors.

III. Any other business

4. Members noted that the Administration had consulted the Hong Kong Bar Association, the Law Society of Hong Kong, the Hong Kong Family Law Association and the Judiciary on the draft legislative proposals in January 2010, and their responses had been taken into account in the drafting of the Bill where appropriate. Members agreed that it was not necessary for the Bills Committee to conduct further consultation on the Bill. Members also agreed to hold the next meeting in early September 2010.

(Post-meeting note: With the concurrence of the Chairman, the next meeting of the Bills Committee was scheduled for 10 September 2010 at 2:30 pm.)

Action

5. There being no other business, the meeting ended at 9:57 am.

Council Business Division 2
Legislative Council Secretariat
2 September 2010

**Proceedings of the first meeting of the
Bills Committee on Matrimonial Proceedings
and Property (Amendment) Bill 2010
on Monday, 12 July 2010, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000108 - 000118	Dr Margaret NG Mr James TO Ms Audrey EU Mr LAU Kong-wah	Election of Chairman	
000119 - 000316	Chairman Mr LAU Kong-wah	Opening remarks	
000317 - 002507	Chairman Administration	<p>Briefing by the Administration on Parts 1 and 2 of the Bill.</p> <p>On jurisdictional requirements, the Administration advised that under the proposed section 29AE, the jurisdictional basis for the court to consider an application for financial relief after a foreign divorce was similar to its jurisdiction in divorce proceedings in Hong Kong, namely, either of the parties to the marriage was domiciled or habitually resident in Hong Kong, or had a substantial connection with Hong Kong. The Administration explained the reasons for adopting such an approach as follows -</p> <p>(a) the Administration initially proposed that the court's jurisdiction was to be based on habitual residence or permanent resident status of the parties to the marriage. When the Law Society of Hong Kong ("Law Society") was consulted on the working draft bill, it had suggested that the "matrimonial home" ground in section 15(1)(c) of the English Matrimonial and Family Proceedings Act 1984 ("1984 Act") should be added to the jurisdictional clause to provide an avenue for redress to those people who fell outside the requirements based on habitual residence in Hong Kong or permanent resident status. The Administration had not included such a ground in the working draft bill as it noted that under section 20 of the 1984 Act, the court's power to make an order for financial relief where its jurisdiction depended solely on the existence of a former matrimonial home in England and Wales were more restrictive than when jurisdiction was founded on one of the other two grounds. Factual difficulties and controversies could also arise in establishing jurisdiction solely on that ground;</p> <p>(b) the Hong Kong Bar Association ("Bar Association") and the Judiciary were of the view that the court's</p>	

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		<p>jurisdiction to deal with applications for financial relief should be the same as that for divorce proceedings in Hong Kong;</p> <p>(c) after taking into account all the views received, the Administration decided to adopt the approach suggested by the Bar Association and the Judiciary. The Administration considered it appropriate for the court's jurisdiction to deal with ancillary relief matters after a foreign divorce to be the same as that for divorce proceedings in Hong Kong. The Administration also noted that the courts tended to adopt a liberal approach in considering what constituted a "substantial connection with Hong Kong". As the "substantial connection" test had been adopted, the Administration considered that it would not be necessary to include the "matrimonial home" test. The Administration further advised that the Law Society had been informed of this approach and had raised no objection to the proposal.</p>	
002508 - 002756	Chairman Ms Audrey EU Administration	<p>Ms Audrey EU declared that she was the counsel to the applicant in <i>ML v YJ</i> when the case was heard by the Court of First Instance ("CFI").</p> <p>Ms EU enquired about the applicability of the proposed legislation to on-going judicial proceedings (including cases on appeal).</p> <p>The Administration advised that there were no provisions on transitional arrangements in the Bill. After the bill was enacted, the court would be empowered to deal with an application for an order for financial relief after a foreign divorce provided that the parties could satisfy the jurisdictional requirements set out in the proposed section 29AE.</p>	
002757 - 003357	Ms Miriam LAU Administration Chairman	<p>Ms Miriam LAU enquired whether a party who had obtained financial relief made under a foreign order after an overseas divorce could apply for financial relief to the Hong Kong courts under the new Part IIA. Her remark that fairness issue might arise if that party was given another opportunity to seek additional financial relief.</p> <p>The Administration replied in the affirmative, pointing out that -</p> <p>(a) the financial relief granted by a foreign order, if any, was one of the matters set out in the proposed section 29AF which the court should have regard to before making an order for financial relief;</p> <p>(b) there have been cases in the United Kingdom ("UK") where a party who had obtained insufficient financial provisions under a foreign order applied to the courts in UK for financial relief; and</p>	

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		<p>(c) any order for financial relief made by the Hong Kong courts would not amount to a variation of the foreign order.</p> <p>The Administration was requested to provide information on the experience of the English courts in dealing with such applications with reference to relevant case law.</p> <p>Ms LAU further enquired the reasons why it was provided under the proposed section 29AB(3) that a remarriage that was by law void or voidable would operate as a bar to an application for financial relief under the new Part IIA, given that financial relief might not be available under such remarriage.</p> <p>The Administration responded that -</p> <p>(a) after a marriage had been dissolved in Hong Kong, a party who had remarried was equally prevented to make an application for ancillary relief; and</p> <p>(b) section 29AB(3) was modeled on section 12(3) of the 1984 Act.</p>	<p>Admin (para 3 of minutes)</p>
003358 - 003550	Mr Albert HO Chairman Administration	<p>Mr Albert HO declared that his law firm was handling on behalf of the applicant in <i>ML v YJ</i> her application for appeal to the Court of Final Appeal.</p> <p>Mr HO's enquiry about the applicability of the proposed legislation to on-going judicial proceedings.</p>	
003551 - 004530	Mr Albert HO Chairman Administration	<p>Mr Albert HO enquired whether the Administration had made any assessment on the impact of the legislative proposals in terms of the number of applications to be made under the proposed Part IIA should the Bill be enacted.</p> <p>The Administration responded that -</p> <p>(a) it did not have the relevant data for making such an assessment;</p> <p>(b) when the Hong Kong Family Law Association was consulted on the draft legislative proposals, it had cautioned that the proposed amendments might result in a significant number of applications being made to the Hong Kong courts, particularly from litigants from the Mainland.</p> <p>The Administration was requested to seek relevant information from the Judiciary, the Legal Aid Department, the two legal professional bodies and relevant community organizations on the estimated caseload arising from the implementation of the proposed legislation.</p> <p>Mr Albert HO enquired whether conflict could arise</p>	<p>Admin (para 3 of minutes)</p>

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>between an order for financial relief made by the Hong Kong court and that by the foreign court.</p> <p>The Administration responded that -</p> <ul style="list-style-type: none"> (a) it did not envisage that any such conflict would arise; (b) in cases where an order for financial relief had been made by a foreign court, Hong Kong courts could supplement, but not vary, the order made by the foreign court if it considered appropriate for such an order to be made; and (c) whether an order for financial relief made by a foreign court was enforceable in Hong Kong depended on whether there were arrangements for reciprocal enforcement of judgments between Hong Kong and the jurisdiction concerned. 	
004531 - 005444	Mr Paul TSE Chairman Administration	In response to Mr Paul TSE, the Administration clarified that the "matrimonial home" ground was only one of the three jurisdictional grounds under section 15(1) of the 1984 Act.	
005445 - 005836	Mr Paul TSE Administration Chairman	<p>Mr Paul TSE enquired the reasons why the Administration had not adopted the Bar Association's proposal of allowing appropriate cases to be commenced in CFI.</p> <p>The Administration responded that -</p> <ul style="list-style-type: none"> (a) the proposal in the Bill for the commencement of the relevant proceedings in the Family Court was in line with the existing arrangement for ancillary relief proceedings after a marriage was dissolved in Hong Kong; (b) the Judiciary was of the view that an application under the amended provisions should commence in the Family Court and the Family Court Judge should have the discretion to transfer the relevant applications to CFI; and (c) the proposed rule 103E of the Matrimonial Causes Rules provided that in appropriate cases, an application might be transferred to CFI as in the case of other ancillary relief proceedings under the Matrimonial Proceedings and Property Ordinance (Cap. 192). <p>The Chairman opined that one of the benefits of commencing the relevant proceedings in the District Court was that the proceedings would be less costly and complicated.</p> <p>The Administration was requested to provide information on the procedures for transfer of the relevant applications</p>	<p>Admin (para 3 of</p>

Time Marker	Speaker(s)	Subject(s)	Action required
		from the District Court to CFI and vice versa.	minutes)
005837 - 010816	Ms Cyd HO Administration Chairman	<p>Ms Cyd HO expressed concern that the implementation of the Bill would bring about a significant increase in the workload on the courts, and agreed on the need for the Administration to make an assessment in this regard.</p> <p>The Chairman enquired whether the proposed jurisdictional requirement of having a substantial connection with Hong Kong would be met in cases where both parties to a marriage were non-Hong Kong residents living on the Mainland whose children were born and studying in Hong Kong.</p> <p>The Administration responded that according to the relevant case law in Hong Kong concerning divorce proceedings, the court would take into account all the circumstances of each case in considering whether a “substantial connection” existed.</p> <p>The Administration agreed to provide information on factors taken into account by the Hong Kong courts in relevant cases when considering whether the jurisdictional requirement of "substantial connection" was met in divorce proceedings, and examples of such factors.</p> <p>Noting that the Home Affairs Bureau was working on legislative amendments to facilitate maintenance payees' collection of maintenance payments (such as empowering the court to make an order prohibiting a maintenance payer from leaving Hong Kong), Ms Cyd HO enquired whether the relevant law concerning enforcement of maintenance orders would apply equally to the orders for financial relief granted by the court under the proposed legislation.</p> <p>The Administration responded that an order for financial relief made under the proposed legislation would be enforceable in the same way as other orders for financial relief made under the Matrimonial Proceedings and Property Ordinance.</p>	Admin (para 3 of minutes)
010817 - 011210	Mr Paul TSE Administration Chairman	<p>Mr Paul TSE shared the view of the Hong Kong Family Law Association that there was likely to be a significant number of applications to the Hong Kong courts from litigants from the Mainland seeking additional financial provision after an order for financial relief had already been given by the Mainland court.</p> <p>The Administration reiterated that the proposed section 29AF required the court to consider all relevant circumstances of the case, including any financial relief given under a foreign order and the extent to which the order had been complied with, before making an order for financial relief.</p> <p>The Chairman pointed out that the proposed legislation was</p>	

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		aimed at alleviating the hardship suffered by parties where no or insufficient financial provisions had been made by a foreign court.	
011211 - 011335	Chairman Administration	In response to the Chairman, the Administration advised that it intended to bring the Amendment Ordinance (if enacted) into operation as soon as possible and envisaged that it could commence within one month after its enactment.	
011336 - 011909	Chairman Administration	Briefing by the Administration on Part 3 of the Bill.	
011910 - 012058	Chairman	The Chairman concluded that members were in general supportive of the policy aspects of the major areas of the Bill including the jurisdictional requirements and relevant procedural arrangements.	
012059 - 012816	Chairman Administration Ms Cyd HO Mr Paul TSE	Date of next meeting	

Council Business Division 2
Legislative Council Secretariat
2 September 2010