

立法會
Legislative Council

Ref : CB2/BC/3/09

LC Paper No. CB(2)431/10-11
(These minutes have been seen
by the Administration)

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

**Minutes of the third meeting
held on Tuesday, 5 October 2010, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Members present : Dr Hon Margaret NG (Chairman)
Hon James TO Kun-sun
Hon LAU Kong-wah, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Paul TSE Wai-chun

Members absent : Hon Albert HO Chun-yan
Hon Cyd HO Sau-lan

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. Meeting with the Administration

[LC Paper Nos. CB(3)813/09-10, CB(2)2031/09-10(01), CB(2)2228/09-10(02), CB(2)2237/09-10(01) and CB(2)2317/09-10(01)]

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

Follow-up actions

- Admin 2. The Administration was requested to -
- (a) reconsider the appropriateness of the use of "substantial ground" in the proposed section 29AC(2) in the light of the interpretation made by the United Kingdom Supreme Court on the threshold required for grant of leave in *Agbaje v Agbaje* [2009];
 - (b) provide information, with examples, on the use of the term "substantial ground", as well as its Chinese rendition, in other Hong Kong legislation;
 - (c) provide information, with examples, on the use of the term "substantial connection", as well as its Chinese rendition, in other Hong Kong legislation;
 - (d) clarify (i) whether the Hong Kong courts had the power to deal with applications for financial relief made by or on behalf of a child of the family after a foreign divorce; (ii) what would be the effect if references to section 5 of the Matrimonial Proceedings and Property Ordinance (Cap. 192) ("MPPO") were deleted from the proposed sections 29AG(1) and (2); and (iii) impact of the Bill on applications for financial relief made by or on behalf of a child of the family after a foreign divorce; and
 - (e) provide a response to the query raised by the legal adviser to the Bills Committee on the policy consideration behind the exclusion of a periodical payment order under section 4(1)(a) or 5(2)(a) of MPPO from the proposed section 29AG(2).

Action

II. Any other business

Date of next meeting

3. Members agreed that the next meeting be held on 8 November 2010 at 2:30 pm.
4. There being no other business, the meeting ended at 5:52 pm.

Council Business Division 2
Legislative Council Secretariat
30 November 2010

**Proceedings of the third meeting of the
Bills Committee on Matrimonial Proceedings
and Property (Amendment) Bill 2010
on Tuesday, 5 October 2010, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000002 - 000636	Chairman Administration	Briefing by the Administration on the rationale behind the relevant provisions of the Matrimonial and Family Proceedings Act 1984 ("1984 Act") on which the proposed sections 29AB(2) and (3) of the Matrimonial Proceedings and Property Ordinance (Cap. 192) ("MPPO") were based, i.e. a remarriage, including one which was by law void or voidable, would operate as a bar to an application for financial relief [paragraphs 2 to 11 of LC Paper No. CB(2)2317/09-10(01)].	
000637 - 002002	Mr James TO Chairman Administration ALA9	<p>Mr James TO considered it unjustifiable that a remarriage that was by law void or voidable would operate as a bar to an application for financial relief, particularly in respect of a void remarriage.</p> <p>The Chairman advised that the English law on judicial separation and alimony had its origins in ecclesiastical law. Under the English ecclesiastical law, a husband had the obligation to support his separated wife. However, a wife having left her husband and lived with another man could not claim alimony, as her conduct had signified the termination of her husband's obligation to support her. Once terminated, the husband's obligation could not be revived, whatever the outcome of the wife's relationship with another man. This historical background explained why remarriage, even one which was by law null and void, would operate as a bar to an application for financial relief.</p> <p>In response to the Chairman's enquiry on the Administration's views, from the policy perspective, on the restriction in the proposed section 29AB(3) relating to a remarriage which was by law void or voidable, the Administration advised that it did not propose to change the existing provision having regard to the following -</p> <p>(a) restriction similar to the one provided in section 29AB(3) existed under MPPO and applied to applications for ancillary relief after a marriage had been dissolved in Hong Kong;</p>	

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		<p>(b) the legal profession had not raised the need for amending the provision; and</p> <p>(c) the Administration was not aware of any cases in Hong Kong where a party had been barred from applying for financial relief due to a remarriage which was by law void or voidable.</p> <p>Mr James TO's reiteration of his view on the absurdity of including a void marriage in the restriction. While he did not intend to move amendments to the proposed section 29AB(3), he considered that the Administration should review and propose changes to the relevant provisions of MPPO relating to a void or voidable marriage acting as a bar to applications for financial relief after the enactment of the Bill.</p> <p>In response to Mr James TO's concern, the legal adviser informed members that sections 4, 5 and 6 of MPPO empowered the court to make financial provisions for a party to a marriage which had been declared null.</p>	
002003 - 002615	Administration	Briefing by the Administration on the meaning of "substantial ground" required for granting leave under the proposed section 29AC(2) [paragraphs 12 to 21 of LC Paper No. CB(2)2317/09-10(01)].	
002616 - 002807	Chairman Administration	<p>In response to the Chairman, the Administration confirmed that the United Kingdom ("UK") Supreme Court's interpretation of the "substantial ground" threshold in <i>Agbaje v Agbaje</i> [2009], as set out in paragraph 19 of the Administration's paper, accorded with the policy intent of the Administration.</p> <p>The Chairman requested the Administration to reconsider the appropriateness of the use of "substantial ground" in the proposed section 29AC(2) in the light of the interpretation made by the UK Supreme Court on the threshold required for grant of leave in <i>Agbaje v Agbaje</i> [2009].</p>	Admin (para 2 of minutes)
002808 - 003345	Ms Audrey EU Chairman Administration	<p>Ms Audrey EU reiterated her concern that the threshold for granting leave under the proposed section 29AC(2) was higher than that for the granting of the substantive application under the proposed section 29AF.</p> <p>To facilitate members' consideration of the appropriateness of the use of "substantial ground" and its Chinese rendition "充分理由", the Administration was requested to provide information, with examples, on the</p>	Admin (para 2 of minutes)

Time Marker	Speaker(s)	Subject(s)	Action required
		use of the term "substantial ground", as well as its Chinese rendition, in other Hong Kong legislation.	
003346 - 003558	Chairman Administration	Briefing by the Administration on its response to members' concern as to whether the expression "make any payment or transfer of any property" in the proposed section 29AC(3) was adequate to cover any order of financial provision made by the court [paragraphs 22 to 28 of LC Paper No. CB(2)2317/09-10(01)].	
003559 - 004146	Chairman Administration	Briefing by the Administration on legislation in other jurisdictions concerning financial relief to parties of a foreign divorce [paragraphs 29 to 38 of LC Paper No. CB(2)2317/09-10(01)].	
004147 - 005211	Chairman Administration Mr Paul TSE Ms Audrey EU	<p><u>Clause-by-clause examination of the Bill</u></p> <p><u>Proposed section 29AE - Jurisdiction of court</u></p> <p>In response to Mr Paul TSE, the Administration advised that the Chinese rendition of "密切聯繫" for "substantial connection" was the same as that used in section 3 of the Matrimonial Causes Ordinance (Cap.179) ("MCO") relating to the court's jurisdiction in divorce proceedings in Hong Kong. Ms Audrey EU agreed that the drafting of section 29AE should be consistent with that of section 3 of MCO.</p> <p>The Administration was requested to provide information, with examples, on the use of the term "substantial connection", as well as its Chinese rendition, in other Hong Kong legislation.</p>	Admin (para 2 of minutes)
005212 - 005641	Chairman Administration Ms Audrey EU	<u>Proposed section 29AF - Duty of court to consider whether Hong Kong is an appropriate venue for application</u>	
005642 - 005800	Mr Paul TSE Chairman	Mr Paul TSE suggested replacing the word "substantial" with "solid" in the proposed section 29AC(2).	
005801 - 010006	Ms Audrey EU Administration Chairman	In response to Ms Audrey EU, the Administration confirmed that the proposed section 29AF(2) was materially the same as section 16 of the 1984 Act.	
010007 - 010253	Chairman Administration	<p><u>Proposed section 29AG - Orders for financial provision and property adjustment</u></p> <p>In respect of the proposed section 29AG(2), the Administration advised that:</p>	

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		<ul style="list-style-type: none"> - section 4(1)(b) referred to an order for secured periodical payments to a party of the marriage; - section 4(1)(c) referred to an order for payment of a lump sum to a party to the marriage; - section 5(2)(b) referred to an order for secured periodical payments to or for the benefit of a child of the family; - section 5(2)(c) referred to an order for payment of a lump sum to or for the benefit of a child of the family; - section 6 related to orders for transfer and settlement of property; and - section 6A(1) referred to orders for sale of property. 	
010254 - 010939	Ms Audrey EU Chairman Administration	<p>Noting that under the existing MPPO, the Hong Kong courts were not empowered to deal with applications for financial relief made by a former spouse after a foreign divorce, Ms Audrey EU sought clarification as to whether the Hong Kong courts had the power to deal with applications for financial relief made by or on behalf of a child of the family after a foreign divorce. If there was no such restriction at present, Ms EU was concerned about the impact of the inclusion of references to section 5 of MPPO (relating to financial provision for child of the family) in the proposed sections 29AG (1) and (2) on applications for financial relief made by or on behalf of a child.</p> <p>The Administration agreed to provide a written response to Ms EU's queries. The Chairman requested the Administration to also address the following in its response -</p> <ul style="list-style-type: none"> (a) what would be the effect if references to section 5 were deleted from the proposed sections 29AG(1) and (2); and (b) impact of the Bill on applications for financial relief made by or on behalf of a child of the family after a foreign divorce. 	Admin (para 2 of minutes)

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010940 - 011224	Chairman ALA9 Administration	<p>The legal adviser pointed out that as it was specified in the proposed section 29AG(2) that the court might make an order for sale of property under section 6A(1) of MPPO after the making of an order under section 4(1)(b) or (c), 5(2)(b) or (c) or 6 of MPPO, the effect would be that the court could not make an order for sale of property upon or after the making of an order for periodical payments under section 4(1)(a) or 5(2)(a). Such restriction was not found under section 6A(1) of MPPO in respect of applications for financial provisions after a divorce in Hong Kong. She had written to the Administration [LC Paper No. CB(2)2228/09-10(02)] to seek clarification on the policy consideration behind such restriction.</p> <p>The Administration responded that -</p> <p>(a) the proposed section 29AG(2) was similar to section 17(2) of the 1984 Act; and</p> <p>(b) the Administration was reviewing and considering proposing amendments to the proposed section, and would revert to members on its consideration.</p>	Admin (para 2 of minutes)
011225 - 011543	Chairman Administration	<u>Proposed section 29AH – Matters to which court is to have regard in exercising its powers under section 29AG</u>	
011544 - 011757	Chairman Administration Ms Miriam LAU	<u>Proposed section 29AI - Application of certain provisions of Part II to orders made under sections 29AD and 29AG</u>	
011758 - 011935	Chairman Administration	<p><u>Proposed section 29AJ – Avoidance of transactions intended to defeat applications for financial relief under section 29AD or 29AG</u></p> <p><u>Proposed section 29AK - Prevention of transactions intended to defeat prospective applications for financial relief</u></p> <p>The Administration advised that the proposed sections 29AJ and 29AK contained anti-avoidance provisions, which were modeled upon relevant provisions of the 1984 Act, to deal with depositions and transactions that were intended to defeat or prevent applications for financial relief or reduce such a relief, or in any way interfere with the enforcement of orders for relief.</p>	
011936 - 011958	Chairman Administration	<u>Proposed section 29AL - Power to grant injunctions not affected</u>	

Time Marker	Speaker(s)	Subject(s)	Action required
011959 - 012028	Chairman Administration	<u>Clause 4 - Rules of court</u>	
012029 - 012218	Chairman Administration	Date of next meeting	

Council Business Division 2
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30 November 2010