



立法會  
LEGISLATIVE COUNCIL

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**URGENT BY FAX**

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2 September 2010

Legal Policy Division, Legal Policy (General) Section  
China Law  
(Attention: Miss Michelle TSANG, Sr Asst Solicitor Gen)  
Department of Justice  
1st floor, High Block  
Queensway Government Offices  
66 Queensway  
Hong Kong

Dear Miss TSANG,

**Matrimonial Proceedings and Property (Amendment) Bill 2010**

I am scrutinizing the Bill and would be grateful for your response to the following matters -

Section 29AB

New section 29AB(3) provides that "[t]he reference in subsection (2) to remarriage includes a marriage that is by law void or voidable". It is noted that a similar provision has already been provided in section 2(2) of the Matrimonial Proceedings and Property Ordinance (Cap. 192) (the Ordinance). Please clarify the need for restating the provision in new section 29AB(3).

As regards the Chinese text of new section 29AB(2), would it be more appropriate to place the supposition "如" before "婚姻任何一方再婚" rather than "一段婚姻在香港以外地方遭解除或廢止之後"?

Section 29AG

New section 29AG(1) empowers the Court upon an application for financial relief to make any order(s) it could make under sections 4, 5 or 6 of the Ordinance if a decree of divorce etc. had been granted in Hong Kong. New section 29AG(2) further provides that the Court may make an order for sale of property under 6A(1) upon or after the making of an order under section 4(1)(b) or (c), 5(2)(b) or (c) or 6 of the Ordinance.

Under the existing section 6A(1) of the Ordinance, the Court may make a further order for the sale of property upon or after making of an order under section 4, 5 or 6. New section 29AI sets out the provisions of Part II of the Ordinance which apply to an order made under section 29AG. It is noted that section 6A(1) is not amongst the specified provisions. It would appear that that section 6A(1) is not applicable to an order under new section 29AG except as provided in section 29AG(2). If so, the Court may not make an order for sale of the property upon or after the making of an order for periodical payments under section 4(1)(a) or 5(2)(a). Please clarify whether this is the intended effect and the policy concerned.

#### Section 29AJ

In subsection (5), the words "並非" in the Chinese text "而該項財產處置並非為有值代價(不包括婚姻)而向某人作出，且在該項財產處置作出時，該人對於該項財產處置是本於真誠行事，且不知道該另一方意圖打擊申請人要求經濟濟助的申索" appear to only qualify the first condition as to valuable consideration, but not the latter two conditions. Thus, the Chinese text may not be able to reflect the meaning of the English text which purports to exclude "a disposition made for valuable consideration (other than marriage) to a person who, at the time of the disposition, acted in relation to it in good faith and without notice of any intention on the part of the other party to defeat the applicant's claim for financial relief".

#### Section 29AK

In view of the comments made on the Chinese text of new section 29AB(2) above, please consider whether the supposition "如" in the Chinese text of section 29AK(1) "如法庭應婚姻的一方提出的要求作出第(2)款下的命令的申請而覺得有下列情況，法庭可作出該命令" may be so placed as to more clearly relate to the phrase it qualifies.

I shall be most grateful if you could let me have your response in both Chinese and English at your earliest convenience to enable Members of the Bills Committee to consider the matters before its second meeting which is to be held on 10 September 2010.

Yours sincerely,



(Clara TAM)

Assistant Legal Adviser

cc. DoJ (Attn.: Mr CHENG Kim-fung, Sr Asst Law Draftsman (By Fax: 2845 2215) & Mr CHONG Ka-ning, Alan, Sr Govt Counsel (By Fax: 2869 1302))

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