

**LEGISLATIVE COUNCIL BRIEF**

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

**INTRODUCTION**

A At the meeting of the Executive Council on 15 June 2010, the Council ADVISED and the Chief Executive ORDERED that the Matrimonial Proceedings and Property (Amendment) Bill 2010, at Annex A, should be introduced into the Legislative Council.

**THE PROBLEM**

2. Under the Matrimonial Proceedings and Property Ordinance (Cap. 192) (“the Ordinance”), the court’s powers to make an order for financial provision in favour of a spouse are conditional on the grant of a divorce decree by a Hong Kong court. A party who has obtained a divorce decree in a jurisdiction outside Hong Kong which is recognized in Hong Kong cannot apply for financial relief because the Hong Kong courts can no longer grant any decree absolute. This may cause hardship to a party where no or insufficient financial provisions have been made under the foreign order.

3. The problem has been discussed in *ML v YJ* (HCMC 13/2006, CACV 89/2008). In that case, both the Court of First Instance and the Court of Appeal asked the Administration to consider if legislation similar to Part III of the English Matrimonial and Family Proceedings Act 1984 should be introduced so that the Hong Kong courts could be empowered to deal with ancillary relief matters after giving recognition to an overseas divorce decree.

## **JUSTIFICATIONS**

4. The purpose of the Bill is to empower the High Court and the District Court to order financial relief for a former spouse whose marriage has been dissolved or annulled, or who has been legally separated, in judicial or other proceedings outside Hong Kong.

## **THE BILL**

5. The Bill is modelled on Part III of the English Matrimonial and Family Proceedings Act 1984 and the main provisions of the Bill are set out below.

### New Part IIA

6. Clause 3 adds a new Part IIA (comprising sections 29AA to 29AL) to the Ordinance.

7. The proposed section 29AA contains definitions that are necessary for the interpretation of the new Part.

8. The proposed section 29AB provides that a party may apply for an order of financial relief if the marriage has been dissolved or annulled, or if the parties have been legally separated, by a court outside Hong Kong unless that party has remarried. The proposed section 29AC requires that the leave of the court must be obtained before a party applies for financial relief. Leave will only be granted if the court considers that there is substantial ground for the making of the application.

9. The proposed section 29AD provides that after leave has been granted, the court may make interim orders for financial relief if it appears that the applicant or any child of the family is in immediate need of financial assistance.

10. Under the proposed section 29AE, the jurisdictional basis for the court to consider an application for financial relief is 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, on the date of the application for leave or the date when the foreign divorce, annulment or

legal separation took effect.

11. Before making an order for financial relief, the proposed section 29AF requires the court to consider whether in all the circumstances of the case, having paid particular attention to certain matters referred to in that proposed section, it would be appropriate for a court in Hong Kong to make the order.

12. The court is empowered by the proposed section 29AG to make orders for financial provision and property adjustment after leave to apply has been given and it is satisfied that it is appropriate to make such an order, having regard to the matters set out in the proposed section 29AH.

13. The proposed section 29AI applies certain provisions of the Ordinance to orders made under section 29AD or 29AG as if the orders had been ancillary to divorce, etc. proceedings in Hong Kong.

14. The proposed sections 29AJ and 29AK contain anti-avoidance provisions to deal with dispositions and transactions that are intended to defeat or prevent applications for financial relief or which reduce such a relief, or in any way interfere with the enforcement of orders for relief.

#### Other provisions

15. Clause 4 amends section 32 of the Ordinance to transfer to the Chief Judge the rule-making power of the Chief Justice under that section.

16. Clauses 5 to 16 contain related and consequential amendments. Clause 12 adds new rules to the Matrimonial Causes Rules (Cap. 179 sub. leg. A). The proposed rules 103A to 103E set out the procedure relating to various applications made under the new Part IIA of the Ordinance. Clause 14 prescribes the forms to be used in relation to those applications.

### **LEGISLATIVE TIMETABLE**

17. The legislative timetable will be as follows –

Publication in the Gazette	18 June 2010
First Reading and commencement	30 June 2010

of Second Reading debate

Resumption of Second Reading debate, To be notified  
committee stage and Third Reading

## **IMPLICATIONS OF THE PROPOSAL**

18. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no economic, civil service, productivity, environmental or sustainability implications.

19. It is not possible to estimate the additional workload on the courts as a result of the implementation of the Bill at this stage. Where necessary, the additional resources will be sought through the established resource allocation mechanism.

20. The Bill will not affect the current binding effect of the Ordinance.

## **PUBLIC CONSULTATION**

21. In January 2010, the DoJ consulted the legal professional bodies and relevant policy bureaux on the draft legislative proposals. The Law Society of Hong Kong, the Hong Kong Bar Association, the Hong Kong Family Law Association, the Judiciary and relevant policy bureaux are supportive of the proposal to amend the Ordinance. Responses from the two professional bodies and the Judiciary have been taken into account in the drafting of the Bill where appropriate.

22. The Legislative Council's Panel on Administration of Justice and Legal Services has been briefed on the progress of the Bill at its meeting on 29 March 2010. Members of the Panel expressed support for the proposal to amend the Ordinance.

## **PUBLICITY**

23. A press release is to be issued on 17 June 2010. A spokesman will be available to answer enquiries.

## **ENQUIRY**

24. Any enquiry on this brief can be addressed to Miss Michelle Tsang, Senior Assistant Solicitor General, Legal Policy Division, Department of Justice, at Tel. No. 2867 4771.

Department of Justice  
17 June 2010

#355049v2

**MATRIMONIAL PROCEEDINGS AND PROPERTY  
(AMENDMENT) BILL 2010**

**CONTENTS**

Clause Page

**PART 1**

**PRELIMINARY**

- |    |              |   |
|----|--------------|---|
| 1. | Short title  | 1 |
| 2. | Commencement | 1 |

**PART 2**

**AMENDMENTS TO MATRIMONIAL PROCEEDINGS AND  
PROPERTY ORDINANCE**

- |    |                |  |
|----|----------------|--|
| 3. | Part IIA added |  |
|----|----------------|--|

**PART IIA**

**FINANCIAL RELIEF IN HONG KONG AFTER  
DIVORCE, ETC. OUTSIDE HONG KONG**

- |       |   |   |
|-------|---|---|
| 29AA. | Interpretation of Part IIA  | 2 |
| 29AB. | Applications for financial relief after divorce, etc.<br>outside Hong Kong          | 2 |
| 29AC. | Leave of court required for applications for financial<br>relief                    | 3 |
| 29AD. | Interim orders for maintenance  | 3 |
| 29AE. | Jurisdiction of court   | 4 |
| 29AF. | Duty of court to consider whether Hong Kong is<br>appropriate venue for application | 5 |
| 29AG. | Orders for financial provision and property adjustment                              | 6 |

29AH.	Matters to which court is to have regard in exercising its powers under section 29AG	7
29AI.	Application of certain provisions of Part II to orders made under sections 29AD and 29AG	8
29AJ.	Avoidance of transactions intended to defeat applications for financial relief under section 29AD or 29AG	8
29AK.	Prevention of transactions intended to defeat prospective applications for financial relief	10
29AL.	Power to grant injunctions not affected	12
4.	Rules of court	12

### PART 3

#### RELATED AND CONSEQUENTIAL AMENDMENTS

##### **Division 1 – Rules of the High Court**

5.	Application	13
----	-------------	----

##### **Division 2 – Matrimonial Causes Ordinance**

6.	References to “country” substituted by “place”	13
7.	Grounds for recognition	13
8.	Non-recognition of divorce by third country no bar to remarriage	13
9.	Interpretation and transitional provisions	14

##### **Division 3 – Matrimonial Causes Rules**

10.	Interpretation	14
11.	Evidence of marriage outside Hong Kong	14
12.	Rules 103A to 103E added	
103A.	Application for leave under section 29AC of Matrimonial Proceedings and Property Ordinance	14
103B.	Application for order for financial relief under section 29AB of Matrimonial Proceedings and Property Ordinance	15

	103C.	Application for interim order for maintenance or avoidance of transaction order under section 29AD or 29AJ of Matrimonial Proceedings and Property Ordinance	16
	103D.	Application for order under section 29AK of Matrimonial Proceedings and Property Ordinance	18
	103E.	Transfer of application made under rule 103A, 103B, 103C or 103D	19
13.		Service out of Hong Kong	19
14.		Forms	19

**Division 4 – Inheritance (Provision for Family and Dependants) Ordinance**

15.		Interpretation	26
16.		Section 17A added	
	17A.	Restriction imposed in proceedings under Matrimonial Proceedings and Property Ordinance on application under this Ordinance	26



## A BILL

To

Amend the Matrimonial Proceedings and Property Ordinance to empower the High Court and the District Court to order financial relief for a former spouse whose marriage has been dissolved or annulled, or who has been legally separated, by means of judicial or other proceedings in a place outside Hong Kong; and to make related and consequential amendments.

Enacted by the Legislative Council.

### PART 1

#### PRELIMINARY

**1. Short title**

This Ordinance may be cited as the Matrimonial Proceedings and Property (Amendment) Ordinance 2010.

**2. Commencement**

This Ordinance comes into operation on a day to be appointed by the Secretary for Justice by notice published in the Gazette.

### PART 2

#### AMENDMENTS TO MATRIMONIAL PROCEEDINGS AND PROPERTY ORDINANCE

**3. Part IIA added**

The Matrimonial Proceedings and Property Ordinance (Cap. 192) is amended by adding –

## “PART IIA

### FINANCIAL RELIEF IN HONG KONG AFTER DIVORCE, ETC. OUTSIDE HONG KONG

#### **29AA. Interpretation of Part IIA**

In this Part –

“competent authority outside Hong Kong” (境外主管當局) means any court or public body outside Hong Kong;

“disposition” (財產處置) does not include any provision contained in a will or codicil but, with that exception, includes any conveyance, assurance or gift of property of any description, whether made by an instrument or otherwise;

“order for financial relief” (經濟濟助命令), except in section 29AJ, means an order that the court may make under section 29AG.

#### **29AB. Applications for financial relief after divorce, etc. outside Hong Kong**

(1) If –

(a) a marriage has been dissolved or annulled, or the parties to a marriage have been legally separated, by means of judicial or other proceedings in a place outside Hong Kong; and

(b) the divorce, annulment or legal separation is recognized as valid by the law of Hong Kong,

either of the parties to the marriage may apply to the court in accordance with rules of court for an order for financial relief.

(2) If after a marriage has been dissolved or annulled in a place outside Hong Kong, one of the parties to the marriage remarries, that party is not entitled to make an application in relation to that marriage.

(3) The reference in subsection (2) to remarriage includes a marriage that is by law void or voidable.

**29AC. Leave of court required for applications for financial relief**

(1) No application for an order for financial relief may be made unless the leave of the court has been obtained in accordance with rules of court.

(2) The court must not grant leave unless it considers that there is substantial ground for the making of an application for an order for financial relief.

(3) The court may grant leave under this section despite the fact that an order has been made by a competent authority outside Hong Kong requiring the other party to the marriage to make any payment or transfer any property to, or for the benefit of, the applicant or a child of the family.

(4) Leave under this section may be granted subject to any conditions the court thinks fit.

**29AD. Interim orders for maintenance**

(1) If leave is granted under section 29AC for the making of an application for an order for financial relief and it appears to the court that the applicant or any child of the family is in immediate need of financial assistance, the court may make an order requiring the other party to the marriage to make to the applicant or the child any periodical payments the court thinks reasonable.

(2) The periodical payments may be for a term that the court thinks reasonable, but the term must not begin earlier than the date of the grant of leave and must end on the date of the determination of the application for an order for financial relief.

(3) An order under this section may be made subject to any conditions the court thinks fit.

**29AE. Jurisdiction of court**

The court has jurisdiction to entertain an application for an order for financial relief if any of the following jurisdictional requirements is satisfied –

- (a) either of the parties to the marriage was domiciled in Hong Kong –
  - (i) on the date of the application for leave under section 29AC; or
  - (ii) on the date on which the divorce, annulment or legal separation obtained in the place outside Hong Kong took effect in that place;
- (b) either of the parties to the marriage was habitually resident in Hong Kong –
  - (i) throughout the period of 3 years immediately before the date of the application for leave under section 29AC; or
  - (ii) throughout the period of 3 years immediately before the date on which the divorce, annulment or legal separation obtained in the place outside Hong Kong took effect in that place; or
- (c) either of the parties to the marriage had a substantial connection with Hong Kong –
  - (i) on the date of the application for leave under section 29AC; or

- (ii) on the date on which the divorce, annulment or legal separation obtained in the place outside Hong Kong took effect in that place.

**29AF. Duty of court to consider whether Hong Kong is appropriate venue for application**

(1) Before making an order for financial relief, the court must consider whether in all the circumstances of the case it would be appropriate for the order to be made by a court in Hong Kong, and if the court is not satisfied that it would be appropriate, the court must dismiss the application.

(2) The court must in particular have regard to the following matters –

- (a) the connection that the parties to the marriage have with Hong Kong;
- (b) the connection that those parties have with the place where the marriage was dissolved or annulled or where they were legally separated;
- (c) the connection that those parties have with any other place outside Hong Kong;
- (d) any financial benefit that the applicant or a child of the family has received, or is likely to receive, in consequence of the divorce, annulment or legal separation, by virtue of any agreement or the operation of the law of a place outside Hong Kong;
- (e) if an order has been made by a competent authority outside Hong Kong requiring the other party to the marriage to make any payment or

transfer any property to, or for the benefit of, the applicant or a child of the family –

- (i) the financial relief given by the order; and
  - (ii) the extent to which the order has been complied with or is likely to be complied with;
- (f) any right that the applicant has, or has had, to apply for financial relief from the other party to the marriage under the law of any place outside Hong Kong and, if the applicant has not exercised that right, the reason for that;
- (g) the availability of any property in Hong Kong in respect of which an order for financial relief in favour of the applicant may be made;
- (h) the extent to which any order for financial relief is likely to be enforceable;
- (i) the length of time that has elapsed since the date of the divorce, annulment or legal separation.

**29AG. Orders for financial provision and property adjustment**

(1) On an application by a party to a marriage for an order for financial relief, the court may make any one or more of the orders that it could make under section 4, 5 or 6 if a decree of divorce, a decree of nullity of marriage or a decree of judicial separation in respect of the marriage had been granted in Hong Kong.

(2) If under subsection (1) the court makes an order mentioned in section 4(1)(b) or (c), 5(2)(b) or (c) or 6, then, on making that order or at any time after the making of that order, the court may make an order mentioned in section 6A(1).

**29AH. Matters to which court is to have regard in exercising its powers under section 29AG**

(1) In deciding whether to exercise its powers under section 29AG and, if so, in what manner, the court must make its decision in accordance with this section.

(2) As regards the exercise of those powers in relation to a party to the marriage, the court must have regard to the conduct of the parties and all the circumstances of the case including the matters mentioned in section 7(1)(a), (b), (c), (d), (e), (f) and (g).

(3) As regards the exercise of those powers in relation to a child of the family, the court must –

(a) have regard to all the circumstances of the case including the matters mentioned in section 7(2)(a), (b), (c), (d) and (e); and

(b) if it decides to exercise those powers, exercise them in the manner specified in section 7(2).

(4) As regards the exercise of those powers against a party to the marriage in favour of a child of the family who is not the child of that party, the court must have regard to all the circumstances of the case including the matters mentioned in section 7(3)(a), (b) and (c).

(5) If an order has been made by a competent authority outside Hong Kong for the making of payments or the transfer of property by a party to the marriage, the court in considering in accordance with this section the financial resources of the other party to the marriage or a child of the family must have regard to the extent to which that order has been complied with or is likely to be complied with.

**29AI. Application of certain provisions of Part II to orders made under sections 29AD and 29AG**

The following provisions of Part II apply in relation to an order made under section 29AD or 29AG as they apply in relation to a like order under those provisions –

- (a) section 4(2);
- (b) section 5(3) and (4);
- (c) section 6A(2), (3), (4), (5) and (6);
- (d) section 9(1), (2) and (3);
- (e) section 10;
- (f) section 11, except subsections (2)(d) and (4);
- (g) section 12;
- (h) section 13;
- (i) section 23;
- (j) section 24;
- (k) section 26(a);
- (l) section 27;
- (m) section 28;
- (n) section 28AA;
- (o) section 28AB.

**29AJ. Avoidance of transactions intended to defeat applications for financial relief under section 29AD or 29AG**

(1) If leave is granted under section 29AC for the making by a party to a marriage of an application for an order for financial relief under section 29AG, the court may, on an application by that party, make an order mentioned in subsection (2) or (3).

(2) If the court is satisfied that the other party to the marriage is, with the intention of defeating the claim for financial relief, about to make any disposition or to transfer out of the jurisdiction or otherwise deal



with any property, the court may make any order it thinks fit for restraining the other party from so doing or otherwise for protecting the claim.

(3) If the court is satisfied that the other party to the marriage has, with the intention of defeating the claim for financial relief, made a disposition to which this subsection applies, and that if the disposition were set aside, financial relief or different financial relief would be granted to the applicant, the court may make an order setting aside the disposition.

(4) If an order for financial relief under section 29AD or 29AG has been made by the court at the instance of a party to a marriage, then, on an application by that party, the court may, if it is satisfied that the other party to the marriage has, with the intention of defeating the claim for financial relief, made a disposition to which this subsection applies, make an order setting aside the disposition.

(5) Subsections (3) and (4) apply respectively to a disposition made by the other party to the marriage (whether before or after the commencement of the application), not being 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.

(6) If the court makes an order under subsection (3) or (4) setting aside a disposition, it may give any consequential directions it thinks fit for giving effect to the order; including directions requiring the making of any payment or the disposal of any property.

(7) Subsection (8) applies if an application is made under subsection (1) or (4), with respect to a disposition that took place less than 3 years before the date of the application or with respect to a disposition or other dealing with property that is about to take place.

(8) If the court is satisfied –

- (a) in a case falling within subsection (2), that the disposition or other dealing would (apart from this section) have the consequence of defeating the applicant's claim for financial relief; or
- (b) in a case falling within subsection (3) or (4), that the disposition has had the consequence of defeating the applicant's claim for financial relief,

it is to be presumed, unless the contrary is shown, that the person who disposed of or is about to dispose of or deal with the property did so or, as the case may be, is about to do so, with the intention of defeating the applicant's claim for financial relief.

(9) In this section, any reference to defeating a claim by a party to a marriage for financial relief is a reference to –

- (a) preventing financial relief from being granted or reducing the amount of relief that might be granted; or
- (b) frustrating or impeding the enforcement of any order that might be or has been made under section 29AD or 29AG.

**29AK. Prevention of transactions intended to defeat prospective applications for financial relief**

(1) The court may make an order under subsection (2) if, on an application by a party to a marriage for the order, it appears to the court –

- (a) that the marriage has been dissolved or annulled, or that the parties to the marriage have been legally separated, by means of judicial or other proceedings in a place outside Hong Kong;

- (b) that the divorce, annulment or legal separation is recognized as valid by the law of Hong Kong;
- (c) that the applicant intends to apply for leave to make an application for an order for financial relief as soon as he or she has been habitually resident in Hong Kong throughout a period of 3 years immediately before the date of the application; and
- (d) that the other party to the marriage is, with the intention of defeating the claim for financial relief, about to make any disposition or to transfer out of the jurisdiction or otherwise deal with any property.

(2) The court may make any order it thinks fit for restraining the other party to the marriage from making any disposition or transferring out of the jurisdiction or otherwise dealing with any property.

(3) If an application is made under subsection (1) with respect to a disposition or other dealing with property that is about to take place and the court is satisfied that the disposition or other dealing would (apart from this section) have the consequence of defeating the applicant's claim for financial relief, it is to be presumed, unless the contrary is shown, that the person who is about to dispose of or deal with the property is about to do so, with the intention of defeating the applicant's claim for financial relief.

(4) In this section, any reference to defeating a claim by a party to a marriage for financial relief is a reference to –

- (a) preventing financial relief from being granted or reducing the amount of relief that might be granted; or

- (b) frustrating or impeding the enforcement of any order that might be made under section 29AG.

**29AL. Power to grant injunctions not affected**

Sections 29AJ and 29AK do not affect any power of the High Court to grant an interlocutory injunction under section 21L(1) or 21M(1) of the High Court Ordinance (Cap. 4).”.

**4. Rules of court**

- (1) Section 32 is amended by renumbering it as section 32(1).
- (2) Section 32(1) is amended by repealing “Chief Justice” and substituting “Chief Judge”.
- (3) Section 32 is amended by adding –
  - “(2) Without limiting subsection (1), the Chief Judge may make rules of court –
    - (a) as to all matters of procedure under this Ordinance;
    - (b) prescribing the forms to be used under this Ordinance;
    - (c) with regard to any matter as to which rules may be made under this Ordinance; and
    - (d) providing for the enforcement in the High Court of orders made under this Ordinance in the District Court.”.

## PART 3

### RELATED AND CONSEQUENTIAL AMENDMENTS

#### **Division 1 – Rules of the High Court**

##### **5. Application**

Order 1, rule 2(2) of the Rules of the High Court (Cap. 4 sub. leg. A) is amended, in item 6 of the Table, by adding “; Matrimonial Proceedings and Property Ordinance (Cap. 192), section 32” after “sections 10 and 54”.

#### **Division 2 – Matrimonial Causes Ordinance**

##### **6. References to “country” substituted by “place”**

The following provisions of the Matrimonial Causes Ordinance (Cap. 179) are amended by repealing “country” wherever it appears and substituting “place” –

- (a) section 20A(1);
- (b) section 55(2);
- (c) section 56(1) and (2);
- (d) section 57(2);
- (e) section 58(2);
- (f) section 59;
- (g) section 60.

##### **7. Grounds for recognition**

Section 56(3) is repealed.

##### **8. Non-recognition of divorce by third country no bar to remarriage**

The heading of section 60 is amended by repealing “country” and substituting “place”.

## **9. Interpretation and transitional provisions**

Section 62(1) is amended by repealing “country” (國家)” and substituting “place” (地方)”.

### **Division 3 – Matrimonial Causes Rules**

## **10. Interpretation**

Rule 2(2) of the Matrimonial Causes Rules (Cap. 179 sub. leg. A) is amended, in the definition of “matrimonial proceedings”, by adding “or section 32 of the Matrimonial Proceedings and Property Ordinance (Cap. 192)” after “Ordinance”.

## **11. Evidence of marriage outside Hong Kong**

Rule 40(1) is amended by repealing “country” wherever it appears and substituting “place”.

## **12. Rules 103A to 103E added**

The following are added immediately after rule 103 –

### **“103A. Application for leave under section 29AC of Matrimonial Proceedings and Property Ordinance**

(1) An application for leave to apply for an order for financial relief under section 29AC of the Matrimonial Proceedings and Property Ordinance (Cap. 192) must be –

(a) made ex parte by originating summons in Form 27; and

(b) supported by an affidavit by the applicant stating the facts relied on in support of the application with particular reference to the matters set out in section 29AF of that Ordinance.

(2) The affidavit in support must give particulars of the judicial or other proceedings by means of which the marriage to which the

application relates was dissolved or annulled, or by means of which the parties to the marriage were legally separated, and must state, so far as is known to the applicant –

- (a) the names of the parties to the marriage and the date and place of the marriage;
- (b) the occupation and residence of each of the parties to the marriage;
- (c) whether there are any living children of the family and, if so, the number of the children and each child's full names (including surname) and date of birth or, if it be the case, that he or she is over 18;
- (d) whether either party to the marriage has remarried;
- (e) the full particulars of each party's property and income; and
- (f) the grounds on which it is alleged that the court has jurisdiction to entertain an application for an order for financial relief under section 29AB of the Matrimonial Proceedings and Property Ordinance (Cap. 192).

(3) The registrar must fix a date, time and place for the hearing of the application by a judge in chambers and give notice of the hearing to the applicant.

**103B. Application for order for financial relief under section 29AB of Matrimonial Proceedings and Property Ordinance**

(1) An application for an order for financial relief under section 29AB of the Matrimonial Proceedings and Property Ordinance (Cap. 192) must be made by originating summons in Form 28. At the

same time, the applicant must, unless the registrar otherwise directs, file in the registry an affidavit in support of the summons giving full particulars of his or her property and income.

(2) The applicant must serve a sealed copy of the originating summons on the respondent, together with –

(a) a copy of the affidavit in support, if one has been filed in the registry; and

(b) a notice of proceedings and acknowledgment of service in Form 29.

(3) For the purposes of an application made under this rule, rule 15 applies in relation to the acknowledgment of service as if the references in paragraph (1) of rule 15 to Form 4 and in paragraph (2) of rule 15 to 8 days were, respectively, references to Form 29 and 31 days.

(4) Rules 72, 77(6) and 81 apply, with the necessary modifications, to an application made under this rule as they apply to an application for ancillary relief made by notice in Form 8 or 8B.

(5) The court may order the attendance of any person for the purpose of being examined or cross-examined and the discovery and production of any document.

(6) If the respondent intends to contest the application, the respondent must –

(a) within 28 days after the time limited for giving notice of intention to defend, file an affidavit in answer to the application setting out the grounds on which he or she relies; and

(b) serve a copy on the applicant.

(7) The application must be determined by a judge.

**103C. Application for interim order for maintenance or avoidance of transaction order under section 29AD**



**or 29AJ of Matrimonial Proceedings  
and Property Ordinance**

(1) An application for an interim order for maintenance under section 29AD of the Matrimonial Proceedings and Property Ordinance (Cap. 192) or for an order under section 29AJ of that Ordinance must be made, unless the court otherwise directs, in the originating summons under rule 103B.

(2) An application for an order under section 29AJ of the Matrimonial Proceedings and Property Ordinance (Cap. 192) must be supported by an affidavit, which may be the affidavit filed under rule 103B, stating the facts relied on.

(3) If the respondent intends to contest the application, the respondent must –

- (a) within 28 days after the time limited for giving notice of intention to defend, file an affidavit in answer to the application setting out the grounds on which he or she relies; and
- (b) serve a copy on the applicant.

(4) In respect of an application for an order under section 29AJ of the Matrimonial Proceedings and Property Ordinance (Cap. 192), the court may give any direction or make any appointment that it is empowered to give or make by rule 103B(4), and rule 74 applies, with the necessary modifications, to an application for such an order as it applies to an avoidance of disposition order.

(5) An application for an order under section 29AJ of the Matrimonial Proceedings and Property Ordinance (Cap. 192) must be determined by a judge.

**103D. Application for order under section 29AK of Matrimonial Proceedings and Property Ordinance**

(1) An application for an order preventing a transaction under section 29AK of the Matrimonial Proceedings and Property Ordinance (Cap. 192) must be –

- (a) made by originating summons in Form 30; and
- (b) supported by an affidavit by the applicant stating the facts relied on in support of the application.

(2) The applicant must serve a sealed copy of the originating summons on the respondent, together with –

- (a) a copy of the affidavit in support, if one has been filed in the registry; and
- (b) a notice of proceedings and acknowledgment of service in Form 29.

(3) For the purposes of an application made under this rule, rule 15 applies in relation to the acknowledgment of service as if the references in paragraph (1) of rule 15 to Form 4 and in paragraph (2) of rule 15 to 8 days were, respectively, references to Form 29 and 31 days.

(4) If the respondent intends to contest the application, the respondent must –

- (a) within 28 days after the time limited for giving notice of intention to defend, file an affidavit in answer to the application setting out the grounds on which he or she relies; and
- (b) serve a copy on the applicant.

(5) The application must be determined by a judge.

(6) Rule 81 applies, with the necessary modifications, to the application as if it were an application for ancillary relief.

**103E. Transfer of application made under rule 103A, 103B, 103C or 103D**

Rule 80 applies, with the necessary modifications, to an application made under rule 103A, 103B, 103C or 103D as it applies to an application for ancillary relief made by notice in Form 8 or 8B.”.

**13. Service out of Hong Kong**

Rule 109(3) is amended by repealing “country” wherever it appears and substituting “place”.

**14. Forms**

The Appendix is amended by adding –

*Ex parte Originating Summons for an Application under  
Section 29AC of the Matrimonial Proceedings  
and Property Ordinance*

IN THE DISTRICT COURT OF HONG KONG

Case No.

In the Matter of an Application  
by under section 29AC of the Matrimonial  
Proceedings and Property Ordinance (Cap. 192).

Let all parties concerned attend before the Court on day,  
the day of 20 ,  
at o'clock, on the hearing of an application by  
that leave be granted to to make an application for  
an order for financial relief under section 29AG of the Matrimonial Proceedings and  
Property Ordinance (Cap. 192).

Dated this day of  
20 .

This summons was taken out  
by [the solicitor for] the above-named  
applicant whose address is .

*Originating Summons for an Application under Section 29AB  
of the Matrimonial Proceedings and Property Ordinance*

IN THE DISTRICT COURT OF HONG KONG

Case No.

In the Matter of an Application  
by under section 29AB of the Matrimonial  
Proceedings and Property Ordinance (Cap. 192).

Between Applicant  
and Respondent

Let of  
attend before the Court on day, the day  
of 20, at o'clock, on the  
hearing of an application by for the following  
relief, namely –

Dated this day of  
20 .

This summons was taken out by [the  
solicitor for] the above-named applicant whose address is

*Notice of Proceedings and Acknowledgment of Service*

IN THE DISTRICT COURT OF HONG KONG

Case No.

Between  
and

Applicant  
Respondent

Read carefully this Notice of Proceedings before answering the questions that follow.

NOTICE OF PROCEEDINGS

<sup>(1)</sup> Or as the  
case may be.

TAKE NOTICE THAT an application [for financial relief] [to prevent a transaction]<sup>(1)</sup> has been presented to this Court. A sealed copy of it and a copy of the applicant's affidavit in support are delivered with this notice.

1. You must complete and detach the acknowledgment of service and send it so as to reach the Court within 31 days after you receive this notice, inclusive of the day of receipt. Delay in returning the form may add to the costs.
2. If you wish to dispute the claim made by the applicant you must file in the Court an affidavit in answer within 28 days after the time allowed for sending the acknowledgment of service.
3. If you intend to instruct a lawyer to act for you, you should at once

give the lawyer all the documents that have been served on you, so that the lawyer may send the acknowledgment to the Court on your behalf. If you do not intend to instruct a lawyer, you should nevertheless give an address for service in the acknowledgment so that any documents affecting your interests that are sent to you will in fact reach you. This should be your place of residence or, if you do not reside in Hong Kong, the address of a place in Hong Kong to which documents may be sent to you. Change of address should be notified to the Court.

ACKNOWLEDGMENT OF SERVICE

IN THE DISTRICT COURT OF HONG KONG

Case No.

Between  
and

Applicant  
Respondent

1. Have you received an originating summons and a copy of the supporting affidavit in respect of the proceedings mentioned above?
2. On what date and at what address did you receive them?  
Date  
Address
3. Are you the person named as the respondent in the originating summons?
4. Do you intend to defend the case?  
If your answer to this question is yes you must follow the instructions in paragraph 2 of the Notice of Proceedings.
5. Even if you do not intend to defend the case do you object to paying the costs of the proceedings, if so on what grounds?

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

Signed

Respondent

I am [We are] acting for the Respondent in this matter

Signed

Address for service of  
documents

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



FORM 30

[Rule 103D(1)]

*Originating Summons for an Application under  
Section 29AK of the Matrimonial Proceedings  
and Property Ordinance*

IN THE DISTRICT COURT OF HONG KONG

Case No.

In the Matter of an Application  
by under section 29AK of the Matrimonial  
Proceedings and Property Ordinance (Cap. 192).

Between Applicant  
and Respondent

Let of  
attend before the Court on day, the day  
of 20, at o'clock, on the  
hearing of an application by for an order  
restraining from making any disposition or  
transferring out of the jurisdiction or otherwise dealing with any property with intent to  
defeat a claim for financial relief by the applicant under section 29AG of the

Matrimonial Proceedings and Property Ordinance (Cap. 192).

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

This summons was taken out by  
[the solicitor for] the above-named applicant whose address is

.”.

#### **Division 4 – Inheritance (Provision for Family and Dependants) Ordinance**

##### **15. Interpretation**

Section 2(1) of the Inheritance (Provision for Family and Dependants) Ordinance (Cap. 481) is amended, in the definition of “former wife” or “former husband”, in paragraph (b), by repealing “country or territory” and substituting “place”.

##### **16. Section 17A added**

The following is added –

##### **“17A. Restriction imposed in proceedings under Matrimonial Proceedings and Property Ordinance on application under this Ordinance**

(1) On making an order under section 29AG of the Matrimonial Proceedings and Property Ordinance (Cap. 192), the court, if it considers it just to do so, may, on the application of either party to the marriage, order that the other party to the marriage is not on the death of the applicant entitled to apply for an order under section 4.

(2) If an order under subsection (1) has been made with respect to a party to a marriage that has been dissolved or annulled, then, on the death of the other party to that marriage, the court must not entertain an application under section 4 made by the first-mentioned party.

(3) If an order under subsection (1) has been made with respect to a party to a marriage the parties to which have been legally separated, then, if the other party to the marriage dies while the legal separation is in force, the court must not entertain an application under section 4 made by the first-mentioned party.”.

## **Explanatory Memorandum**

The principal purpose of this Bill is to amend the Matrimonial Proceedings and Property Ordinance (Cap. 192) (“the MPPO”) to empower the High Court and the District Court to order financial relief for a former spouse whose marriage has been dissolved or annulled, or who has been legally separated, in judicial or other proceedings outside Hong Kong, as they are able to do in proceedings for divorce, annulment or judicial separation in Hong Kong.

### Part 1 – Preliminary

2. Clause 1 provides for the short title of the Bill (when enacted).
3. Clause 2 empowers the Secretary for Justice to appoint a day for the Bill (when enacted) to come into operation.

### Part 2 – Amendments to Matrimonial Proceedings and Property Ordinance

4. Clause 3 adds a new Part IIA (comprising sections 29AA to 29AL) to the MPPO.
5. The new section 29AA contains 3 definitions that are necessary for the interpretation of the new Part.
6. The new section 29AB provides for applications to be made to the court for an order for financial relief if a marriage has been dissolved or annulled, or the parties to a marriage have been legally separated, by means of judicial or other proceedings in a place outside Hong Kong. The new section 29AC requires a person to obtain the leave of the court before applying for financial relief.

7. The new section 29AD enables the court to make an interim order if leave to make an application for financial relief is given, and the applicant or a child of the family is in immediate need of financial assistance.

8. The new section 29AE sets out the jurisdictional requirements that must be satisfied before the court may consider an application for financial relief.

9. The new section 29AF requires the court, before making an order for financial relief, to consider whether in all the circumstances of the case it would be appropriate for a court in Hong Kong to make the order. If the court is not so satisfied, it must dismiss the application. The new section also sets out the matters to which the court must pay particular attention for this purpose.

10. The new section 29AG enables the court to make orders for financial provision and property adjustment after leave to apply has been given under the new section 29AC and it is satisfied that it is appropriate for such an order to be made by a court in Hong Kong.

11. The new section 29AH sets out guidelines for the court in the exercise of its power under the new section 29AG to make orders for financial provision and property adjustment.

12. The new section 29AI applies certain provisions of Part II of the MPPO to orders made under the new section 29AD or 29AG so that similar consequences apply as if the orders had been ancillary to divorce, etc. proceedings in Hong Kong.

13. The new sections 29AJ and 29AK contain anti-avoidance provisions to counter dealings which are intended to prevent applications for financial relief or which reduce such a relief, or which in any way interfere with the enforcement of orders for relief. The new section 29AJ applies if leave to apply has been given under the new section 29AC. The new section 29AK

applies if the applicant is not yet able to satisfy any of the jurisdictional criteria for obtaining leave to apply for an order for financial relief.

14. The new section 29AL preserves the power of the High Court to grant interlocutory injunctions under section 21L(1) or 21M(1) of the High Court Ordinance (Cap. 4).

15. Clause 4 amends section 32 of the MPPO to transfer to the Chief Judge the rule-making power of the Chief Justice under that section, and to give more powers to the Chief Judge to make rules of court.

### Part 3 – Related and Consequential Amendments

16. Clause 5 amends Order 1, rule 2(2) of the Rules of the High Court (Cap. 4 sub. leg. A) so that those Rules do not apply to matrimonial proceedings that may be made under section 32 of the MPPO except to the extent that those Rules are applied by any other rules made in relation to those proceedings. Under rule 3 of the Matrimonial Causes Rules (Cap. 179 sub. leg. A) as amended by clause 10, the Rules of the High Court (Cap. 4 sub. leg. A) apply to the practice and procedure in relation to those proceedings.

17. Clauses 6, 8 and 9 amend certain sections of the Matrimonial Causes Ordinance (Cap. 179) to replace the references to “country” with “place” so that those sections apply to divorces or legal separations obtained in any place outside Hong Kong. Clause 7 repeals section 56(3) of that Ordinance because the references to “country” have been replaced with “place” in section 56(1) and (2) of that Ordinance.

18. Clause 10 extends the definition of “matrimonial proceedings” in rule 2(2) of the Matrimonial Causes Rules (Cap. 179 sub. leg. A) so that references to

matrimonial proceedings in the Rules include also proceedings with respect to which rules may be made under section 32 of the MPPO.

19. Clauses 11 and 13 replace the references to “country” in rules 40(1) and 109(3) of the Matrimonial Causes Rules (Cap. 179 sub. leg. A) with “place”.

20. Clause 12 adds 5 new rules to the Matrimonial Causes Rules (Cap. 179 sub. leg. A). The new rules set out the procedure relating to various applications made under the new Part IIA of the MPPO. Clause 14 prescribes the forms to be used in relation to those applications.

21. Clause 15 extends the definition of “former wife” or “former husband” in section 2(1) of the Inheritance (Provision for Family and Dependants) Ordinance (Cap. 481) to include a marriage dissolved or annulled in any place outside Hong Kong.

22. Clause 16 adds a new section to the Inheritance (Provision for Family and Dependants) Ordinance (Cap. 481). The section provides that the court may, on making an order under section 29AG of the MPPO, order that a party to the marriage be barred, on the death of the other party, from making an application for financial provision from the deceased’s estate.