

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

**CONTENTS**

Section Page

**PART 1**

**PRELIMINARY**

- |    |                    |      |
|----|--------------------|------|
| 1. | Short title .....  | A959 |
| 2. | Commencement ..... | A959 |

**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 .....  | A961 |
| 29AB. | Applications for financial relief after divorce, etc.<br>outside Hong Kong .....              | A961 |
| 29AC. | Leave of court required for applications for financial<br>relief .....                        | A963 |
| 29AD. | Interim orders for maintenance .....  | A963 |
| 29AE. | Jurisdiction of court .....   | A963 |
| 29AF. | Duty of court to consider whether Hong Kong is<br>appropriate venue for application .....     | A965 |
| 29AG. | Orders for financial provision and property<br>adjustment .....                               | A967 |
| 29AH. | Matters to which court is to have regard in exercising<br>its powers under section 29AG ..... | A967 |

Section	Page
29AI. Application of certain provisions of Part II to orders made under sections 29AD and 29AG .....	A969
29AJ. Avoidance of transactions intended to defeat applications for financial relief under section 29AD or 29AG .....	A971
29AK. Prevention of transactions intended to defeat prospective applications for financial relief .....	A973
29AL. Power to grant injunctions not affected .....	A975
4. Rules of court .....	A975

### PART 3

#### RELATED AND CONSEQUENTIAL AMENDMENTS

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

5. Application .....	A977
----------------------	------

##### **Division 2—Matrimonial Causes Ordinance**

6. References to “country” substituted by “place” .....	A977
7. Grounds for recognition .....	A977
8. Non-recognition of divorce by third country no bar to remarriage .....	A977
9. Interpretation and transitional provisions .....	A979

##### **Division 3—Matrimonial Causes Rules**

10. Interpretation .....	A979
11. Evidence of marriage outside Hong Kong .....	A979
12. Rules 103A to 103E added	
103A. Application for leave under section 29AC of Matrimonial Proceedings and Property Ordinance .....	A979
103B. Application for order for financial relief under section 29AB of Matrimonial Proceedings and Property Ordinance .....	A981

Section	Page
103C. Application for interim order for maintenance or avoidance of transaction order under section 29AD or 29AJ of Matrimonial Proceedings and Property Ordinance .....	A983
103D. Application for order under section 29AK of Matrimonial Proceedings and Property Ordinance	A985
103E. Transfer of application made under rule 103A, 103B, 103C or 103D .....	A985
13. Service out of Hong Kong .....	A985
14. Forms .....	A987
<b>Division 4—Inheritance (Provision for Family and Dependants) Ordinance</b>	
15. Interpretation .....	A995
16. Section 17A added	
17A. Restriction imposed in proceedings under Matrimonial Proceedings and Property Ordinance on application under this Ordinance .....	A995

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

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ORDINANCE NO. 20 OF 2010

L.S.

Henry TANG  
Acting Chief Executive  
23 December 2010

An Ordinance 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.

**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, 5 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—

“FORM 27

[Rule 103A(1)]

*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 \_\_\_\_\_  
\_\_\_\_\_.

FORM 28

[Rule 103B(1)]

*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 .

FORM 29

[Rules 103B(2) &  
103D(2)]

*Notice of Proceedings and Acknowledgment of Service*

IN THE DISTRICT COURT OF HONG KONG

Case No.

Between Applicant  
and 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

Applicant

and

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?



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.”.