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立法會CB(4)607/13-14(01)號文件

# **Review of Family Procedure Rules**

## **家事訴訟程序規則檢討**

**Legislative Council Panel on  
Administration of Justice and Legal Services**  
**立法會司法及法律事務委員會**

**22.4.2014**

# Purpose

## 目的

- Brief Members on key proposals (some 130) arising from the review of family procedure rules

向議員簡介家事訴訟程序規則檢討的主要建議(共有約130項建議)

- Comments from Members are welcomed

歡迎議員提出意見

# Presentation Outline

## 簡報大綱

1. Working Party

工作小組

2. Background

背景

3. Proposals

建議

4. Way Forward

下一步

**Working Party**

工作小組

# Working Party on Family Procedure Rules

## 家事訴訟程序規則工作小組

- Appointed by the Chief Justice in March 2012  
於 2012年3月獲終審法院首席法官委任
- Chaired by Mr Justice Jeremy Poon, Judge of the Court of First Instance of the High Court  
由高等法院原訟庭法官潘兆初擔任主席

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# Working Party on Family Procedure Rules (cont'd)

## 家事訴訟程序規則工作小組(續)

- Members 成員:
  - Judges of the High Court and Family Court  
高等法院及家事法庭的法官
  - Representatives from Bar Association, Law Society, Family Law Association, Department of Justice and Legal Aid Department  
大律師公會、律師會、家庭法律協會、律政司及法律援助署的代表

# Terms of Reference

## 職責範圍

- To advise the Chief Justice on the desirability, impact and practicalities of formulating a single set of procedural rules for the family jurisdiction applicable both to the Family Court and the High Court

就家事司法管轄權制定單一套對家事法庭和高等法院均適用的程序規則之可取性、影響及可行性，向終審法院首席法官提供意見

**Background**

背景



# Family Justice System

## 家事司法制度

- Family and Matrimonial Matters include:  
家事和婚姻訴訟事宜包括:
  - (a) Matrimonial issues  
婚姻事宜
  - (b) Financial issues  
財務事宜
  - (c) Children proceedings  
子女的事宜
  - (d) Others  
其他

# Need for Review

## 檢討的需要

- Perceived Problems 問題：
  - (a) Adversarial excesses  
過度抗衡的態度
  - (b) Fragmented and labyrinthine court procedures  
零散分割和錯綜複雜的法庭程序

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## Perceived Problems (cont'd)

### 問題(續)

- (c) Most family proceedings have no dedicated rules of their own

大部分家事法律程序並無專為它們而設的規則規管

- (d) Much cross-referencing to the rules of the High Court or the District Court, and in some cases, the practice in England

需經常參照高等法院或區域法院的規則，甚至在某些情況下英國的做法

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## Perceived Problems (cont'd)

### 問題(續)

- (e) Different rule-making authorities for different Ordinances

不同條例下獲授權訂立規則的機關／人員有所不同

# International Experience

## 國際經驗

- England, Australia and New Zealand  
英國、澳洲及新西蘭
- A Unified Procedural Code for family /  
matrimonial proceedings  
一套統一的家事／婚姻法律程序的法規

# Benefits

## 效益

- (a) Shift in litigation culture towards a more conciliatory approach  
提倡傾向和解的訴訟文化
- (b) Self-contained Procedural Code  
獨立完備的程序法規
- (c) More efficient, effective and user-friendly system  
更高效率、更具效益和更方便易用的程序

**Key Proposals**

**主要建議**

# General Approach

## 整體處理方式

- **Broad, Basic Framework** : modeling on England's Family Procedure Rules ("FPR") 2010

概括和基本的框架：以英國的《2010年家事訴訟程序規則》為藍本



# General Approach (cont'd)

## 整體處理方式(續)

### General Contents 內容:

#### (a) To model on HK's Rules of the High Court

以香港的《高等法院規則》為藍本

- to align the general practice and procedures in family and civil jurisdictions in post-Civil Justice Reform era

使在民事司法制度改革後，家事司法管轄範圍內和民事司法管轄範圍內的一般常規及程序協調一致

#### (b) To select appropriate provisions from England's Family Procedure Rules 2010

選取英國《2010年家事訴訟程序規則》當中適用的條文

# Procedures only

## 只限於程序

- Refinement of Court Procedures only  
只改良法庭程序
- No change to substantive law  
不改變實體法律

# Key Proposals for Consultation

## 主要建議

- A unified procedural code (“New Code”) applicable to:
  - 一套統一程序法規( “新法規” )，適用於：
    - the High Court and the Family Court  
高等法院和家事法庭
    - all matrimonial and family proceedings  
所有婚姻和家事法律程序

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## Key Proposals (cont'd)

### 主要建議 (續)

- To reap the benefits of Civil Justice Reform, case management powers and alternative dispute resolution etc. similar to general civil proceedings

為獲益於民事司法制度改革，與一般民事法律程序相若的案件管理權力及另類排解程序等

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## Key Proposals (cont'd)

### 主要建議 (續)

- Registrar/Masters to assist in simple judicial work  
司法常務官／聆案官協助處理簡單的司法工作
- New single rule-making authority e.g. Rules Committee  
新設訂立規則的單一權力機關，例如：規則委員會

**More Detailed Proposals**

**更詳細的建議**

# More Detailed Proposals

## 更詳細的建議

- (a) General issues  
一般事宜
- (b) Matrimonial issues  
婚姻事宜
- (c) Financial issues  
財務事宜
- (d) Children issues  
子女事宜

# More Detailed Proposals

## 更詳細的建議

**(a) General issues**

一般事宜

(b) Matrimonial issues

婚姻事宜

(c) Financial issues

財務事宜

(d) Children issues

子女事宜



# General Issues

## 一般事宜

- To set out the jurisdictions of the Family Court and High Court

列明家事法庭和高等法院的司法管轄權

– children and monetary jurisdiction of the Family Court

家事法庭對於金錢及子女的司法管轄權

– High Court's exclusive jurisdiction and inherent jurisdiction in children matters

高等法院的專屬司法管轄權和在子女事宜的固有司法管轄權

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# General Issues (cont'd)

## 一般事宜(續)

- Adoption of Civil Justice Reform objectives and with regard to “welfare issues”

採用民事司法制度改革的目標，顧及與當事人「福祉」有關的議題

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# General Issues (cont'd)

## 一般事宜(續)

- Alternative Dispute Resolution:

另類排解程序:

- to enhance court's powers in promoting alternative dispute resolution

加強法庭處理另類排解程序的權力

- enhancement to family mediation procedures needed?

家事調解程序是否需作進一步改善?

- Pre-action protocol?

訟前守則?

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# General Issues (cont'd)

## 一般事宜(續)

- Commencement and transfer of proceedings:

展開及移交法律程序:

- proceedings should generally begin in the Family Court  
一般而言法律程序應在家事法庭展開
- simple, focused and efficient practice and procedure for transfer and/or retransfer

簡單、集中和有效率的常規及程序，處理家事法庭和高等法院之間的法律程序移交及/或再移交

- unified mode of originating process and new statutory forms

劃一的原訴法律程序文件模式及新的法定表格 /...

# General Issues (cont'd)

## 一般事宜(續)

- Aligned/updated terminologies, e.g.  
統一／現代化術語，例如
    - to unify nomenclature for parties in originating applications: “Applicant” and “Respondent”  
劃一原訴申請書中雙方的稱呼：「申請人」及「答辯人」
    - “ancillary relief” to be replaced by “financial order”  
「經濟命令」取代「附屬濟助」
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# General Issues (cont'd)

## 一般事宜(續)

- A single, self-contained set of rules on enforcement  
單一套獨立完備的強制執行規則
- Rules applicable to the Domestic and Cohabitation Relationships Violence Ordinance to be incorporated without changes  
適用於《家庭及同居關係暴力條例》的規則維持不變，納入新法規

# More Detailed Proposals

## 更詳細的建議

(a) General issues

一般事宜

**(b) Matrimonial issues**

婚姻事宜

(c) Financial issues

財務事宜

(d) Children issues

子女事宜

# Matrimonial Issues

## 婚姻事宜

- Essential features in the Matrimonial Causes Rules to be retained and incorporated

《婚姻訴訟規則》基本條文應該保留和收納在新法規內

- “Special procedure” for undefended case to become norm

無抗辯訴訟的“特別程序”變為標準程序

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# Matrimonial Issues (cont'd)

## 婚姻事宜 (續)

- To clarify and consolidate procedure for applications of:

訂明及統一以下的申請程序:

- rescission of matrimonial decree

撤銷婚姻判令

- making a decree absolute

將判令轉為絕對判令

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# Matrimonial Issues (cont'd)

## 婚姻事宜 (續)

- Requirement for attempt at reconciliation for both legally represented and unrepresented parties?  
關於嘗試和解的規定，應否應用於有律師代表以及無律師代表的訴訟各方?
- The court to determine whether medical examiners should be appointed in nullity proceedings, without the need for application  
在婚姻無效的法律程序中，由法庭決定應否委派醫療檢驗人員，無須作出申請

# More Detailed Proposals

## 更詳細的建議

- (a) General issues  
一般事宜
- (b) Matrimonial issues  
婚姻事宜
- (c) Financial issues**  
財務事宜
- (d) Children issues  
子女事宜

# Financial Issues

## 財務事宜

- A compendious code for financial applications in all family proceedings in the Family Court and High Court  
一套簡明扼要的法規，適用於所有在高等法院及家事法庭的家事法律程序中提出的經濟命令申請
- To standardize originating applications, summonses, forms and affidavits  
劃一規定每一種類的經濟命令申請所使用的原訴申請書、傳票、表格及誓章，

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# Financial Issues (cont'd)

## 財務事宜(續)

- Present default mode of hearing in chambers (not open to public) to continue

維持目前內庭聆訊（不對外公開）為設定的方式

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# Financial Issues (cont'd)

## 財務事宜(續)

- Financial Dispute Resolution (FDR) 解決財務糾紛：
  - rules being made in a separate legislative exercise  
正另進行立法工作，制訂有關規則
  - to replace former complicated and technical practice (e.g. standardized forms vs. affidavits)  
取代之前複雜和技術性的做法(例如以劃一表格取代誓章)
  - due to differences from general civil proceedings, sanctioned offers not to apply  
因為與一般民事法律程序有別，附帶條款和解提議不適用於家事法律程序

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# Financial Issues (cont'd)

## 財務事宜(續)

- New part for proceedings under Inheritance (Provision for Family and Dependants) Ordinance  
就根據《財產繼承（供養遺屬及受養人）條例》  
提起的法律程序，在新法規下設立新部
  - persons affected (e.g. beneficiaries of the estate, joint tenant of property) to be named and served  
訂明受影響人士(例如遺產受益人、財產的聯權共有人)  
的姓名須予列出，並獲送達相關文件
  - directions to be given for mediation or for the Financial Dispute Resolution procedure  
就調解事宜或解決財務糾紛程序作出指示

# More Detailed Proposals

## 更詳細的建議

(a) General issues

一般事宜

(b) Matrimonial issues

婚姻事宜

(c) Financial issues

財務事宜

**(d) Children issues**

子女事宜



# Children Issues

## 子女事宜

- Unified procedural rules for all extant children proceedings under various Ordinances  
一套劃一的程序規則，涵蓋所有目前根據不同法例進行的關於子女的法律程序
- A general single unified term for “child”, subject to any contrary definition in existing Ordinances  
除非現時主體條例載有相反定義，在新法規以單一劃一的字眼表示「子女」／「兒童」  
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# Children Issues (cont'd)

## 子女事宜(續)

- To incorporate the procedure under the existing Child Dispute Resolution (now a pilot scheme)

納入排解子女糾紛的程序(現為試驗計劃)

- to extend to the High Court?

擴展至高等法院?

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# Children Issues (cont'd)

## 子女事宜(續)

- Existing procedures under Matrimonial Causes Rules on custody, care and supervision, removal and related matters to be generally incorporated

納入大部份《婚姻訴訟規則》下關於子女的管養、照顧及監管的程序，及將子女帶離香港和相關事宜的程序

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# Children Issues (cont'd)

## 子女事宜(續)

- To make new provisions for practice and procedure for applications related to parentage, etc. under the Parent and Child Ordinance

訂定新的常規及程序條文，處理根據《父母與子女條例》提出的申請，如父母身份等

- Directions for scientific tests (DNA tests) to be stipulated by rules, PDs, or guidance notes?

就使用科學測試(DNA測試)指令的執行方式，應以訂立規則，或者制定實務指示或指引註釋處理？

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# Children Issues (cont'd)

## 子女事宜(續)

- To incorporate Judiciary's existing "Guidance on Separate Representation for Children in Matrimonial and Family Proceedings" in the New Code?

將目前司法機構《關於婚姻和家事法律程序中子女／兒童的獨立法律代表的指引》納入新法規？

**Way Forward**

下一步

# Consultation

## 諮詢

- Consultation Period from 17 February to 16 June  
諮詢期由2月17日至6月16日
- Consultees : LegCo, legal profession, relevant committees, welfare sector and other stakeholders  
諮詢對象：立法會、法律專業人士、相關委員會、福利界及其他持份者

# Legislative Amendments

## 法例修訂

- Amendments to principal and subsidiary legislations needed

須修訂主體及附屬法例



# Next Steps(tentative)

## 未來工作(暫定)

- Preparation of Final Report      Q3 2014 to about Q1 2015  
擬備最後報告書                    2014年第3季至大約2015年  
第1季
- Preparation of legislative                    starting from about Q2, 2015  
amendments                                      約由2015年第2季開始  
擬備法例修訂

**Views are Welcomed**

**歡迎提供意見**