

**For discussion
on 22 April 2014**

**Legislative Council Panel
on Administration of Justice and Legal Services**

**Review of Family Procedure Rules –
Interim Report and Consultative Paper**

PURPOSE

This paper briefs Members on the key proposals put forward by the Chief Justice's Working Party on Family Procedure Rules ("the Working Party") in its Interim Report and Consultative Paper ("the consultation paper").

BACKGROUND

The Working Party

2. In March 2012, the Chief Justice appointed the Working Party to advise him, among other things, 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. The Working Party consists of Judges as well as representatives from the legal professional bodies and government departments (such as the Department of Justice and the Legal Aid Department).

3. It should be stressed that the Working Party does not examine or propose changes to the substantive law on family and matrimonial matters. These are matters for the Administration.

Family Justice System in Hong Kong

4. Hong Kong's family justice system embraces a wide range of subject matters and proceedings, most of which are under the concurrent jurisdiction of the Family Court and the High Court. Family and matrimonial matters typically and mostly arise from the Matrimonial Causes

Ordinance (Cap. 179) (“MCO”) on dissolution of marriage and from the Matrimonial Proceedings and Property Ordinance (Cap. 192) on matters including custody, care and control of children as well as ancillary and other financial relief in the context of dissolution of marriage¹.

5. Rules of court governing the practice and procedure in family and matrimonial proceedings are contained in different instruments supplemented by an array of Practice Directions. The Matrimonial Causes Rules (Cap. 179A) (“MCR”) is the principal instrument on procedure. The Rules of the High Court (Cap. 4A) (“RHC”) are also applicable generally, even if the matter remains in the Family Court². In certain proceedings where no specific provision on practice and procedure is available, the court has to invoke those in force in England³.

¹ The family and matrimonial jurisdiction also covers subject matters and proceedings arising from the Guardianship of Minors Ordinance (Cap. 13), the Separation and Maintenance Orders Ordinance (Cap. 16), the Legitimacy Ordinance (Cap. 184), the Maintenance Orders (Reciprocal Enforcement) Ordinance (Cap. 188), the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189), the Adoption Ordinance (Cap. 290), the Parent and Child Ordinance (Cap. 429), the Inheritance (Provision for Family and Dependents) Ordinance (Cap. 481), the Child Abduction and Custody Ordinance (Cap. 512), and wardship proceedings.

² Rule 3 of the MCR provides that “Subject to the provisions of these rules and of any enactment, the Rules of the High Court (Cap 4 sub. leg. A) shall apply with the necessary modifications to the commencement of matrimonial proceedings in, and to the practice and procedure in matrimonial proceedings pending in the Court of First Instance or in the District Court.”.

³ Section 10 of the MCO provides that “The jurisdiction vested in the court by this Ordinance shall so far as regards procedure, practice and powers of the court be exercised in the manner provided by this Ordinance; and where no special provision is contained in this Ordinance with reference thereto, any such jurisdiction shall be exercised in accordance with the practice, procedure and powers for the time being in force in the High Court of Justice in England with reference to matrimonial proceedings.”.

THE REVIEW

Perceived Problems

6. The Working Party considers that many of the adversarial excesses of our family justice system continue to haunt hotly contested family and matrimonial cases, principally because the new measures introduced in the Judiciary's Civil Justice Reform ("CJR") in 2009⁴ have not been extended and implemented with full force for family proceedings.

7. Moreover, the court procedures for the family justice system are now rather fragmented with much cross-referencing to the RHC etc. The Working Party considers that this is not conducive to the efficient disposal of family and matrimonial disputes, imposing extra burden on the court and court users as well as adding to the costs of the litigation process.

Key Proposals

8. In February 2014, the Working Party published the consultation paper to seek the views of the relevant stakeholders on its 136 proposals to reform the procedural rules of the family justice system. We sent a copy of the consultation paper to all Members of the Legislative Council on 17 February 2014⁵.

9. One of the key proposals is the adoption of a single unified procedural code ("the New Code"). England, Australia and New Zealand have in their recent reforms adopted a stand-alone unified procedural code that comprehensively deals with the processes and procedures for all family

⁴ The CJR came into force in April 2009. It was introduced to tackle the problems of excessive costs, delay and complexity in our civil justice system, in particular by :

- (a) preserving the best features of the adversarial system but curtailing its excesses by promoting the use of greater case management powers by the court;
- (b) streamlining and improving civil procedures; and
- (c) facilitating early settlement by the parties, eliminating unnecessary applications and, where appropriate, penalising such applications.

⁵ The full consultation paper is also available at :
http://www.judiciary.gov.hk/en/other_info/family_review.htm.

and matrimonial matters. The Working Party suggests adopting England's Family Procedure Rules 2010 ("FPR 2010") as the New Code's broad, basic framework.

10. On the general contents of the New Code, to align the general practice and procedure in both the family and civil jurisdictions in the post-CJR era and reap the benefits of the CJR reforms, the Working Party has suggested modeling the general provisions of the New Code on the equivalents in the RHC with any necessary modifications. It has also proposed to select from the FPR 2010 and those necessary Practice Directions relevant applicable provisions for adoption as rules in the New Code.

11. Detailed proposals for each area in the family justice system, including those for matrimonial, children and financial proceedings respectively, are put forward in the consultation paper. We will give Members a more detailed briefing on these proposals at the meeting on 22 April 2014.

12. To ensure that the rules are coherent, cohesive and consistent, the Working Party has also suggested the setting up of a new Family Procedure Rules Committee as the single rule-making authority for the New Code. The proposed Rules Committee should be modeled on the powers, composition and approach for the two rules committees established for the High Court and the District Court respectively⁶.

13. Similar to the arrangements for the High Court and the District Court, the Working Party considers that the Family Court should have its own Registrar who should be able to assist the Family Judges to handle simple judicial work, such as amendments to the originating process and time extension.

⁶ Details of the High Court Rules Committee and the District Court Rules Committee are set out in section 55 of the High Court Ordinance (Cap 4) and section 17 of the District Court Ordinance (Cap 336).

Benefits

14. The proposals taken together seek to reduce the adversarial excesses in the culture of family litigation by incorporating all the applicable CJR measures with necessary modifications into the procedure rules. The proposals also facilitate a more streamlined procedure and contribute to a common approach across the Family Court and the High court, resulting in a more efficient, effective and user-friendly family justice system. The time and costs needed for family proceedings are likely to be reduced as a result.

CONSULTATION

15. The Working Party is consulting the relevant stakeholders on the proposals. The consultation period runs for four months and will end on 16 June 2014. A briefing session open to relevant stakeholders including the legal profession, welfare agencies, relevant advisory committees and government bureaux/departments was held on 22 March 2014. Further briefing/discussion sessions have been/are being arranged for the legal profession and some relevant advisory committees.

WAY FORWARD

16. After considering the comments received during the consultation, the Working Party will refine its recommendations as appropriate and prepare its Final Report for the Chief Justice's consideration. The proposals, if implemented, will necessitate changes to both the principal and subsidiary legislation. We will consult the Legislative Council on the proposed legislative changes when ready.

17. Members are invited to note the review. Comments on the proposals are also welcomed.

Judiciary Administration
April 2014