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Panel on Administration of Justice and Legal Services

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 27 June 2016**

**Reciprocal recognition and enforcement of judgments on matrimonial and
related matters with the Mainland**

Purpose

This paper provides a brief account of the past discussions of the Panel on Administration of Justice and Legal Services ("the Panel") on the reciprocal recognition and enforcement of judgments on matrimonial and related matters with the Mainland.

Background

2. In recent years, a significant number of the marriages registered in Hong Kong may be characterized as "cross-boundary marriages" between Mainland and Hong Kong residents. In the light of this, the Administration has studied the possibility of establishing a mechanism for reciprocal recognition and enforcement of matrimonial judgments between the Mainland and Hong Kong so as to provide better legal protection and certainty to parties to such a marriage should it break down.

Existing legal framework for recognition and enforcement of civil judgments in the Mainland and Hong Kong

3. In July 2006, Hong Kong and the Mainland reached an agreement on reciprocal recognition and enforcement of civil judgments. The Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the HKSAR Pursuant

to Choice of Court Agreements between Parties Concerned (《關於內地與香港特別行政區法院相互認可和執行當事人協議管轄的民商事案件判決的安排》) ("REJ Arrangement") sets out the framework under which judgments of one jurisdiction could be enforced in the other upon meeting certain requirements. The REJ Arrangement has been implemented since 1 August 2008, however it only covers judgments that require payment of money in business-to-business contracts and family matters are excluded.

4. Under the existing legal framework of Hong Kong:

- (a) Mainland divorce orders may be recognized under the Matrimonial Causes Ordinance (Chapter 179) subject to certain specified grounds on which recognition may be refused, including that the other party has received no notice of the proceedings or has no opportunity to take part in the proceedings (section 61 of Cap. 179).
- (b) the Maintenance Orders (Reciprocal Enforcement) Ordinance (Chapter 188) does not apply to maintenance orders made by the Mainland courts as the People's Republic of China is not one of the "reciprocating countries" designated under the Ordinance.
- (c) the Hague Convention on the Civil Aspects for International Child Abduction, which is incorporated into Hong Kong law through the enactment of the Child Abduction and Custody Ordinance (Chapter 512), is not applicable to the parental child abduction cases involving the Mainland as the Convention does not apply to the Mainland.

5. The Administration advised that the current Mainland law does not expressly provide for the recognition on the Mainland of a divorce, maintenance or custody order granted by the Hong Kong courts, or for its enforcement on the Mainland.

Lack of a mechanism for reciprocal recognition and enforcement of matrimonial judgments

6. The absence of a mechanism for reciprocal recognition and enforcement of matrimonial judgments between the Mainland and Hong Kong may cause difficulties to parties of cross-boundary marriages, for example, in obtaining recognition of divorce decrees and enforcing orders for maintenance and orders for child custody and access in both places. The Administration also noted the complexities as well as the risk of conflicting judgments arising from parallel divorce proceedings in both the Mainland and Hong Kong.

7. Without an arrangement with the Mainland on reciprocal recognition and enforcement of matrimonial judgments, parties to cross-boundary marriages who seek to enforce matrimonial judgments obtained in the courts of one place would have no speedy redress when the ex-spouse moved out of jurisdiction and failed to comply with a court order on maintenance. The party seeking to enforce the court order may have to re-litigate the matter in the courts of the Mainland. The need to re-litigate would entail longer and complex legal procedures and higher legal costs which may cause hardship to some families with immediate needs.

8. The current lack of a mechanism for reciprocal enforcement of court orders on child custody and access in the Mainland and Hong Kong is also a problem. There is not much that a party to a cross-boundary marriage could do if his/her rights in custody and/or access have been violated by the other party's actions, for example, removing the child out of his habitual place of residence without the consent of the former spouse.

Proposed arrangement with the Mainland on reciprocal recognition and enforcement of matrimonial judgments

9. Having taken into account of the significant number of cross-boundary marriages in Hong Kong and the difficulties that may be caused by the lack of a mechanism for reciprocal recognition and enforcement of matrimonial judgments in the Mainland and Hong Kong, and having consulted the relevant parties, the Administration considers it appropriate to initiate discussion with the Mainland side on the need to enter into an arrangement on co-operation in matrimonial matters.

10. Given the differences between the legal systems of the Mainland and Hong Kong, a number of issues that would need to be discussed with the Mainland side are set out as follows:

- (a) the scope of the proposed arrangement, in particular, whether divorces obtained through registration with the relevant administrative authority in the Mainland according to the Mainland law and non-money orders, including orders on child custody and access could be covered;
- (b) the issue of parallel proceedings in both places; and
- (c) the provision of adequate safeguard measures in the proposed mechanism.

11. The Mainland side also recognized the need to further examine the matter with a view to entering into formal discussions on the proposed arrangement. To facilitate further discussions, the Administration has exchanged background information with the Mainland side on matrimonial proceedings and enforcement of matrimonial orders in the respective jurisdictions so as to enhance each side's understanding on the other's legal regime governing matrimonial disputes and identify the technical issues concerning reciprocal recognition and enforcement.

12. The Administration concluded that it would continue to discuss with the Mainland side and consult the legal professional bodies as well as other stakeholders at a suitable stage on matters regarding the proposed arrangement.

Past discussions

13. At the meeting of the Panel held on 23 May 2011, members were briefed by the Administration on its initial discussion with the Mainland authorities on the need to establish a mechanism for reciprocal recognition and enforcement of matrimonial judgments between the Mainland and Hong Kong in view of the significant number of cross-boundary marriages. Major views expressed by members, the Hong Kong Bar Association ("the Bar Association") and the Law Society of Hong Kong ("the Law Society") are summarized in the ensuing paragraphs.

14. Both the Bar Association and the Law Society welcomed the Administration's discussion with the Mainland in respect of the reciprocal recognition and enforcement of matrimonial judgments between the Mainland and Hong Kong. The Bar Association said that it would be pleased to provide any assistance in future consultations.

15. Members in general agreed on the need to enter into an arrangement on co-operation in matrimonial matters. They considered that the Administration should expedite its discussion with the Mainland authorities with a view to reaching agreements and principles on matters of urgency, such as the issues relating to parental child abduction and custody of children across the borders, having regard to the practice in the international context.

16. The Administration advised that given the differences between the legal systems of the Mainland and Hong Kong, those issues that were easier to be handled, such as the reciprocal recognition of divorce decrees and the enforcement of maintenance orders, would first be discussed with the Mainland. The Administration had already initiated preliminary discussion with the

Mainland authorities and hoped that some concrete consensus could be reached later.

17. A member suggested that apart from the two legal professional bodies, the Administration should also consult the Immigration Department and the Hong Kong Family Law Association on the proposed arrangement with the Mainland on reciprocal recognition and enforcement of matrimonial judgments.

Latest position

18. The Administration will brief and update the Panel on the prospect of entering into an arrangement with the Mainland on reciprocal recognition and enforcement of judgments on matrimonial and related matters at its meeting scheduled for 27 June 2016.

Relevant papers

19. A list of relevant papers is in the **Appendix**.

Council Business Division 4
Legislative Council Secretariat
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Appendix

Reciprocal recognition and enforcement of judgments on matrimonial and related matters with the Mainland

List of relevant papers

Date	Meeting	Paper
23 May 2011	Panel on Administration of Justice and Legal Services	Administration's paper on "Information on Reciprocal Recognition / Enforcement of Matrimonial Judgments with the Mainland" LC Paper No. CB(2)1781/10-11(04) Minutes of meeting LC Paper No. CB(2)1747/11-12

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