

For discussion
on 27 November 2006

LegCo Panel on Administration of Justice and Legal Services

Information Paper on Domicile Bill 2007

Introduction

In April 2005, the Law Reform Commission published a report entitled “Rules for Determining Domicile”. A copy of that report was sent to all members of the Legislative Council.

2. The Department of Justice has assumed policy responsibility for implementing the report.

Background and argument

General background

3. The report notes that domicile is a complex and confusing area of the common law and recommends the introduction of several legislative amendments to simplify the ascertainment of a person’s domicile.

4. The Commission considers that, for practical purposes, the recommendations would not change the domicile of many people, with the exception that a married woman’s domicile would no longer depend on that of her husband.

5. The report also recommends a major change in the domicile of children so that this will no longer be tied to the parents’ domicile. The existing rules are essentially based on Victorian ideas of the father as the head of the family, and the proposed changes would more closely reflect modern realities.

6. There is also a recommendation that the concept of domicile of origin be abolished to make the domiciliary rules more in tune with modern conditions. In an age of greatly increased mobility, there is less justification for a special bias in favour of a person's first domicile.

Outline of proposed amendments

7. The structure and contents of the Bill will follow the recommendations made by the Law Reform Commission. It is not expected that major changes will be made as a result of consultation.

8. There will be a section providing clear general rules for the determination of domicile, which state that –

- Every individual has a domicile.
- No individual has, at the same time and for the same purpose, more than one domicile.
- Where the domicile of an individual is in issue before any court in Hong Kong, the issue shall be determined in accordance with the laws of Hong Kong.

9. The general section is followed by sections which set out detailed rules for determining domicile under the following headings –

Domicile of children

Domicile of adults

Acquiring domicile in Hong Kong

Acquiring domicile in another country or territory

Domicile of adults under disability

Continuity of domicile

Domicile in country comprising two or more territories

Standard of proof

Domicile before commencement date

Domicile after commencement date

Public consultation and policy support

10. The Administration circulated a consultation paper and draft bill in April 2006. The comments received have been supportive although some responses have yet to be received.

Legal Policy Division
Department of Justice
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