

# 立法會 *Legislative Council*

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## **Background brief for the Bills Committee on Matrimonial Proceedings and Property (Amendment) Bill 2010**

### **Purpose**

This paper sets out the background of the Matrimonial Proceedings and Property (Amendment) Bill 2010 and gives a brief account of the discussion of the Panel on Administration of Justice and Legal Services ("the Panel") on the proposed legislation which seeks to enable parties who have obtained a divorce decree in a jurisdiction outside Hong Kong to apply for financial relief to the Hong Kong courts.

### **Background**

#### Existing deficiency in matrimonial legislation

2. Currently, the Hong Kong courts have no power under the existing legislation to hear applications by a former spouse for financial relief after a decree or order in respect of whose marriage has been made in a jurisdiction outside Hong Kong.

3. Under section 25(1)(b) of the Matrimonial Proceedings and Property Ordinance (Cap. 192) ("the Ordinance"), the court's powers to make an order for financial provision or property transfer in favour of a spouse are conditional on the grant of a decree absolute by the Hong Kong court. As a result, parties who have obtained a divorce decree in a jurisdiction outside Hong Kong cannot apply for financial relief to the Hong Kong courts. Parties are barred from making such an application as the Hong Kong courts can no longer grant any decree absolute after the marriage has been dissolved by the court of another jurisdiction and the decree is recognized in Hong Kong. This may cause hardship to parties where no or insufficient financial provisions have been made under the foreign orders, notwithstanding that the parties may have property or assets in Hong Kong.

4. The problems are illustrated in the recent case of *ML v YJ* (HCMC 13/2006, CACV89/2008). In that case, the couple was married in Shenzhen and later moved to Hong Kong. The wife filed a divorce petition in Hong Kong and applied for financial relief in respect of matrimonial properties situated in both Hong Kong and Shenzhen. Before a decree absolute was made by the Hong Kong court, the husband obtained a divorce order from the Shenzhen court. In the judgments, both the Court of First Instance ("CFI") and the Court of Appeal urged the legislature to consider amending the law to confer jurisdiction on the Hong Kong courts in appropriate cases to deal with claims for ancillary relief after giving recognition to an overseas divorce.

## **Discussions of the Panel**

5. At its special meeting held on 22 October 2009, the Panel discussed the Administration's legislative proposal to address the existing deficiency as identified in *ML v YJ*. The Panel was briefed by the Administration on the progress of the Bill at its meeting on 29 March 2010. The Panel also received views from the Hong Kong Bar Association ("Bar Association") and the Law Society of Hong Kong ("Law Society") at the meeting. The Panel was advised that the proposed amendments were broadly similar to Part III of the English Matrimonial and Family Proceedings Act 1984 ("the 1984 Act"). Members of the Panel expressed support for the amendment proposal in principle to plug the loopholes under the existing legislation.

### Jurisdictional requirements

6. The Panel noted the views expressed by the two legal professional bodies on the proposed jurisdictional requirements to be met by a party who wished to apply for an order of financial relief. It was proposed in the draft bill that the Hong Kong courts would have jurisdiction to deal with an application for financial relief if either party to the marriage was habitually resident in Hong Kong, or a permanent resident of Hong Kong. The Law Society pointed out that the Administration had only adopted section 15(1)(a) and (b) of the 1984 Act in its proposed amendments but not section 15(1)(c) which provided that a party might make an application if either or both parties to the marriage had at the date of the application for leave a beneficial interest in possession in a dwelling house situated in England and Wales which was a matrimonial home some time during the marriage. The Law Society considered that a ground similar to section 15(1)(c) should be added to the jurisdictional clause in the bill. The Administration explained that it had not done so having regard to the complexity of the provisions of the 1984 Act relating to former matrimonial home and the factual difficulties that could arise in establishing jurisdiction solely on that ground.

7. The Panel also noted the Bar Association's view that the court's jurisdiction to entertain applications for financial relief after a foreign divorce should be analogous to the court's jurisdiction in divorce proceedings in Hong Kong under section 3 of the Matrimonial Causes Ordinance (Cap. 179) ("MCO"), which provided that the court should have jurisdiction in divorce proceedings if either of the parties to the marriage was domiciled in Hong Kong, was habitually resident in Hong Kong throughout the period of three years immediately preceding the date of the petition or application, or had a substantial connection in Hong Kong. Members may wish to note that under the proposed section 29AE of the Bill, the jurisdictional basis for the court to consider an application for financial relief is similar to that of divorce proceedings under section 3 of MCO.

### Commencement of relevant proceedings

8. On the issue raised by the Bar Association as to whether an application for ancillary relief under the amended provisions should be made to the Family Court

which was within the jurisdiction of the District Court, or CFI which had jurisdiction over wardship proceedings and Hague Convention proceedings, the Panel was advised of the Judiciary's view that an application under the amended provisions might be commenced in the Family Court and the Family Court Judge should have discretion to transfer the relevant applications to the High Court. The Administration also advised the Panel that rules of court would be included in the Bill so that in appropriate cases, an application might be transferred to CFI as if in other ancillary relief proceedings under the Ordinance.

#### Scope of the legislative proposal

9. On the scope of the legislative proposals, the Administration advised the Panel that the Bill dealt only with matters concerning matrimonial property and not custody, as the latter involved complex issues and more time was needed to study the matter. The Panel also noted that the Administration was proposing to have discussion with the Mainland authorities on broad issues relating to matrimonial proceedings and recognition of orders made in those proceedings. Hon Audrey EU expressed the view that the Administration should consider extending the applicability of the proposed legislation retroactively to cover on-going cases.

10. At the request of the Panel, the Administration has provided a supplementary information paper to the Panel in May 2010 on details on the proposed amendments, the relevant provisions of the 1984 Act (and how far they had been incorporated into the proposed amendments), views received from its consultation and the Administration's response thereto (LC Paper No. CB(2)1615/09-10(01)). Members may wish to refer to the paper for more details on the proposed amendments.

#### **Relevant papers**

11. A list of the relevant papers which are available on the Legislative Council website (<http://www.legco.gov.hk>) is in **Appendix**.

## Matrimonial Proceedings and Property (Amendment) Bill 2010

## Relevant documents

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper</u>
Panel on Administration of Justice and Legal Services	22 October 2009	Minutes of meeting [LC Paper No. CB(2)506/09-10] <a href="http://www.legco.gov.hk/yr09-10/english/panels/ajls/minutes/aj20091022.pdf">http://www.legco.gov.hk/yr09-10/english/panels/ajls/minutes/aj20091022.pdf</a>
	29 March 2010	Administration's paper on "Amendments to the Matrimonial Proceedings and Property Ordinance (Cap. 192)" [LC Paper No. CB(2)1148/09-10(03)] <a href="http://www.legco.gov.hk/yr09-10/english/panels/ajls/papers/aj0329cb2-1148-3-e.pdf">http://www.legco.gov.hk/yr09-10/english/panels/ajls/papers/aj0329cb2-1148-3-e.pdf</a>  Submission from the Law Society of Hong Kong [LC Paper No. CB(2)1156/09-10(09)] <a href="http://www.legco.gov.hk/yr09-10/chinese/panels/ajls/papers/aj0329cb2-1156-9-ec.pdf">http://www.legco.gov.hk/yr09-10/chinese/panels/ajls/papers/aj0329cb2-1156-9-ec.pdf</a>  Minutes of meeting [LC Paper No. CB(2)1581/09-10] <a href="http://www.legco.gov.hk/yr09-10/english/panels/ajls/minutes/aj20100329.pdf">http://www.legco.gov.hk/yr09-10/english/panels/ajls/minutes/aj20100329.pdf</a>  <u>Follow-up paper</u> Administration's supplementary information paper on details of the proposed amendments to the Matrimonial Proceedings and Property Ordinance (Cap. 192) [LC Paper No. CB(2)1615/09-10(01)] <a href="http://www.legco.gov.hk/yr09-10/english/panels/ajls/papers/aj0329cb2-1615-1-e.pdf">http://www.legco.gov.hk/yr09-10/english/panels/ajls/papers/aj0329cb2-1615-1-e.pdf</a>