

**For discussion
on 29 March 2010**

LegCo Panel on Administration of Justice and Legal Services
Amendments to the
Matrimonial Proceedings and Property Ordinance (Cap. 192)

Purpose

At the meeting of the Panel on Administration of Justice and Legal Service on 22 October 2009, members inquired about the proposed amendments to the Matrimonial Proceedings and Property Ordinance (Cap. 192) (“the Ordinance”). The Secretary for Justice indicated that the Administration would introduce legislative amendments to the Ordinance to enable the Hong Kong courts to deal with ancillary matters after recognition of a decree of divorce granted by a jurisdiction outside Hong Kong.

The Background

2. Under section 25(1)(b) of 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 could not 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. The problems are illustrated in the case of *ML v YJ*¹.

ML v YJ

3. In *ML v YJ*, the couple were married in Shenzhen in 1992 and later moved to Hong Kong. In May 2006, the wife filed a petition for divorce in Hong Kong. The husband separately issued divorce proceedings in Shenzhen in October 2006 claiming for the custody of the children and

¹ *ML v YJ*, (HCMC 13/2006)

division of certain matrimonial assets. In November 2006, the Shenzhen court made an order for divorce as well as for distribution of the properties put forward in those proceedings (including two Hong Kong properties).

4. The husband then attempted to stay the ancillary proceedings in Hong Kong on the ground that since the marriage had been dissolved by the Shenzhen judgment, the Hong Kong court no longer had jurisdiction to grant a decree absolute, but failed at the first instance. The Court of First Instance (“CFI”) held that the PRC divorce should not be recognised under section 61(2)(b) of the Matrimonial Causes Ordinance (Cap. 179) “due to the unconscionable use of the PRC divorce on the part of the husband.”

5. The CFI’s decision was overturned on appeal by a majority ruling on the ground that the discretion to refuse giving recognition to the Shenzhen divorce on public policy ground was wrongly exercised. The Court of Appeal however agreed with the lower court that the law should be changed “to confer jurisdiction on the Hong Kong Court in appropriate cases to deal with ancillary relief after giving recognition to an overseas divorce”.²

6. Noting the court’s comments in *ML v YJ*, the Administration approached the Bar Association and the Law Society to seek their views on the proposal to introduce legislative amendments to the Ordinance along the line of Part III of the Matrimonial and Family Proceeding Act 1984 (the 1984 Act). The two professional bodies responded indicating in-principle support.

Proposed Amendments to Cap. 192

7. After reviewing the case of the *ML and YJ* and Part III of the 1984 Act, the Administration decided to introduce a Bill to amend the Ordinance in the legislative year 2009-2010. The proposed amendments will be broadly similar to Part III of the 1984 Act by providing –

- the requisite requirement that leave from the court must be obtained prior to a party making an application for financial relief under the amended provisions;
- the jurisdictional requirements to be met by a party who wishes to apply for an order of financial relief;

² *ML v YJ*, (CACV 89/2008) per Cheung JA at paragraph 153

- the matters to be considered by the court in deciding if it is appropriate for such an order to be made in Hong Kong;
- the types of order that may be made by the court if an application is granted;
- the inclusion of anti-avoidance provisions with regard to transactions intending to defeat applications for financial relief under the amended provisions.

8. It would be necessary to consider the rules of court that should be amended or introduced in order to facilitate applications for ancillary relief under the amended provisions as well as other consequential amendments that may be required. In the light of the proposed amendments to the Ordinance, new rules will be included in the Matrimonial Causes Rules (Cap. 179 sub. leg. A).

9. In order to ensure that the proposed amendments could properly address the issues identified in *ML v YJ*, the Administration has prepared a working draft of the amendment bill for discussion with the relevant parties including the Judiciary, policy bureaux and legal professional bodies in January 2010. While some have responded indicating support, we are still awaiting comments from others. We will review the working draft bill in the light of the comments received. We propose to introduce the amendment Bill into the Legislative Council in June 2010.

Department of Justice
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