

**For discussion  
on 23 May 2011**

**LegCo Panel on Administration of Justice and Legal Services**

**Information on Reciprocal Recognition / Enforcement of  
Matrimonial Judgments with the Mainland**

**Background**

In recent years, a significant number of the marriages registered in Hong Kong may be characterised as “cross-boundary marriages” between Mainland and Hong Kong residents. In 2009, 32% of the total marriages registered in Hong Kong involve one party from the Mainland and in 2008, such marriages account for 35%.

2. According to the information provided by the Judiciary, between 2006 and June 2009, about one third of the matrimonial proceedings handled by the Hong Kong court involve Mainland parties.

3. In view of the significant number of cross-boundary marriages, the Administration is studying 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**

4. 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》) sets out the framework under which judgments of one jurisdiction could be enforced in the other upon meeting certain requirements.

5. The *REJ Arrangement* has been implemented since 1 August 2008 following the enactment of the *Mainland Judgments (Reciprocal Enforcement) Ordinance* (Cap. 597) in Hong Kong and the promulgation of a set of judicial interpretation in the Mainland by the Supreme People's Court. However, the *REJ Arrangement* only covers judgments that require payment of money in business-to-business contracts and family matters are excluded.

6. Under the existing legal framework of Hong Kong:

- (a) Mainland divorce orders may be recognised 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 mechanism under the *Maintenance Orders (Reciprocal Enforcement) Ordinance* (Chapter 188) provides for the recovery of maintenance by and recovery from persons in Hong Kong and also recovery by and from other persons in designated reciprocating countries. The *Ordinance* does not apply to maintenance orders made by the Mainland courts as the PRC is not one of the “reciprocating countries” designated under the *Ordinance*.
- (c) The civil procedures facilitating the prompt return to the country of his residence of a child who has been wrongfully removed to or retrained in another Contracting State under the *Hague Convention on the Civil Aspects for International Child Abduction* and implemented in Hong Kong by virtue of the *Child Abduction and Custody Ordinance* (Chapter 512) are not applicable to the parental child abduction cases involving the Mainland. The *Convention* does not apply to the Mainland.

7. On the question of the recognition in the Mainland of divorce orders granted by the Hong Kong court, as the Administration understands it, the current Mainland law does not expressly provide for the same. Neither does the Mainland law specifically provide for the enforcement in the Mainland of maintenance and custody orders obtained in Hong Kong.

**Lack of a Mechanism for Reciprocal Recognition and Enforcement of Matrimonial Judgments**

8. 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.

9. The recent case of *ML v YJ* (FACV 20/2009) has demonstrated the possible problems involved. The following is a summary of the case: -

- (a) Parties to the marriage were engaged in parallel divorce proceedings respectively in Shenzhen and Hong Kong. The wife petitioned for divorce in Hong Kong and interim orders were granted by the Hong Kong court.
- (b) Before a decree nisi of divorce was granted by the Hong Kong court, the husband issued separate proceedings in Shenzhen and the Intermediate People's Court of Shenzhen granted an order for divorce dissolving the marriage. The Shenzhen court also distributed the properties put forward by the parties in the Shenzhen proceedings and granted custody of the two children to the wife.
- (c) The husband then took out a summons in Hong Kong relying on the Shenzhen divorce judgment and applied for a permanent stay of and/or striking out the ancillary relief proceedings instituted by the wife in Hong Kong.

- (d) The Court of Appeal, by a majority, held that the proceedings for ancillary relief instituted by the wife in Hong Kong be permanently stayed and the Shenzhen divorce judgment should be recognised under the MCO.
- (e) The wife appealed to the Court of Final Appeal which, by a majority, upheld the CA's decision to recognise the Shenzhen judgment and dismissed the wife's appeal.

10. The *ML v YJ* case illustrates the complexities arising from parallel divorce proceedings in both the Mainland and Hong Kong and indeed the risk of conflicting judgments.

11. 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.

12. 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**

13. 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.

14. It is considered that the proposed arrangement would help to provide an easier and more cost effective way of seeking recognition and enforcement in the Mainland and Hong Kong of matrimonial judgments and hence avoiding protracted litigation and offering better legal protection to families of cross-boundary marriages.

15. Given the differences between the legal systems of the Mainland and Hong Kong, the Administration notes that a number of issues would need to be discussed with the Mainland side, including:

- (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.

16. In discussing with the Mainland side, the Administration would draw on the experience from the conclusion of the *REJ Arrangement* and would make reference, where appropriate, to the existing legal mechanism in Hong Kong for the recognition of foreign divorce decrees and the enforcement of foreign maintenance orders, the relevant practice of the Mainland as well as the practice in the regional and international context.

17. The subject matter was therefore raised with the Mainland side which also recognised 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 with a view to enhancing each side's understanding of the other's legal regime governing matrimonial disputes and identifying the technical issues concerning reciprocal recognition and enforcement.

### **Conclusion**

18. The Administration would continue to discuss with the Mainland side on the relevant issues concerning an arrangement for reciprocal recognition and enforcement of matrimonial judgments. We would consult the legal professional bodies and other stakeholders at a suitable stage on matters regarding the proposed arrangement such as the scope of the arrangement and other relevant issues.

### **Response of the Labour and Welfare Bureau to Members' concerns**

19. Separately, according to the letter of 20 April 2011 from the Clerk to Panel, Members have expressed concerns about the issues relating to parental child abduction and custody of children across the borders arising from the increasing number of Mainland - Hong Kong marriages, and the Administration is requested to address these issues during the discussion of this agenda item. In the light of the Panel's request, we have approached the relevant policy bureau, viz. the Labour and Welfare Bureau, and its response is set out at the **Annex**.

Department of Justice  
May 2011

**Follow-up of the Report on International  
Parental Child Abduction (the Report) published by  
the Law Reform Commission of Hong Kong (LRC)**

International/cross-boundary parental child abduction occurs when a child is taken out of Hong Kong by his/her own parent(s) without the consent or lawful authority of the person or institution that has the right to care for him. In 2002, LRC published the Report which advocated law reforms to tackle more effectively the problem of international parental child abduction. The Report noted Hong Kong's positive performance under the Hague Convention in ensuring speedy return of children abducted into Hong Kong and made six recommendations to further enhance the protection for children against abduction.

2. The Labour and Welfare Bureau (LWB) completed the examination of the Report and issued the Administration's public response to the Chairman of LRC in October 2009. In gist, the Administration accepts all six recommendations of the Report, either in full or in a modified form. Our proposed legislative amendments include, among other things –

- (a) enacting legislation to restrict the removal of a child from Hong Kong without the consent of the parent who has custody, or control of the child's residence, or with whom the child has regular contact;
- (b) empowering the court to order the disclosure of the whereabouts or location of the child and the recovery of the child; and
- (c) empowering the Immigration Department and the Police to hold a child where (i) there is a stop order issued by the court prohibiting the child in question from leaving Hong Kong; or (ii) where an application for stop order has been made to the court and the application is pending, etc..

We believe that the proposed legislative amendments can help more effectively address the issues of international and cross-boundary parental child abduction and custody of children.

3. The Legislative Council Panel on Welfare Services (LegCo WS Panel) was briefed on the Administration's position on the Report and our proposed follow-up action at its meeting held on 8 February 2010. With the Panel's support, LWB is now working on the legislative proposals in consultation with relevant bureaux and departments and aims to introduce a bill into the Legislative Council in the 2011-12 legislative session. We will consult the LegCo WS Panel on the legislative proposals in due course.

**Labour and Welfare Bureau**  
**May 2011**