

立法會
Legislative Council

LC Paper No. CB(4)822/20-21
(These minutes have been seen
by the Administration)

Ref: CB4/BC/1/20

**Bills Committee on Mainland Judgments in Matrimonial and
Family Cases (Reciprocal Recognition and Enforcement) Bill**

**Minutes of the first meeting held on
Monday, 11 January 2021, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Members present : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP (Chairman)
Hon Paul TSE Wai-chun, JP
Hon Alice MAK Mei-kuen, BBS, JP
Hon Elizabeth QUAT, BBS, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon Vincent CHENG Wing-shun, MH, JP

Member absent : Hon Tommy CHEUNG Yu-yan, GBS, JP

**Public Officers
attending** : **Agenda item II**

Department of Justice

Miss S K LEE
Deputy Solicitor General (Policy Affairs)

Miss Deneb CHEUNG
Senior Assistant Solicitor General (China Law)

Miss Selina LAU
Senior Government Counsel

Ms Mary HO
Government Counsel

Miss Celia HO
Government Counsel

Mr Karl SUEN
Government Counsel

Clerk in attendance : Mr Lemuel WOO
Chief Council Secretary (4)6

Staff in attendance : Ms Vanessa CHENG
Assistant Legal Adviser 5

Mr Raymond SZETO
Senior Council Secretary (4)6

Ms Emily LIU
Legislative Assistant (4)6

Action

I. Election of Chairman

Dr Priscilla LEUNG, the member who had the highest precedence among members of the Bills Committee present at the meeting, presided over the election of the Chairman of the Bills Committee.

2. Dr Priscilla LEUNG invited nominations for chairmanship of the Bills Committee. Dr Junius HO nominated Dr Priscilla LEUNG, and the nomination was seconded by Mr Vincent CHENG. Dr Priscilla LEUNG accepted the nomination.

3. As Dr Priscilla LEUNG was nominated for the office, Ms Alice MAK, the member who had the highest precedence among the members not nominated for the office, presided over the election of chairman. There being no other nomination, Ms MAK declared Dr Priscilla LEUNG elected as the Chairman of the Bills Committee. Dr Priscilla LEUNG then took the chair.

4. Members agreed that there was no need to elect a deputy chairman.

II. Meeting with the Administration

[LC Paper No. CB(3)182/20-21, File Ref: L/M(5) to LP CLU 5037/7/3C, LC Paper Nos. LS13/20-21, and CB(4)354/20-21(01) to (03)]

5. The Administration briefed members on the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Bill ("the Bill"). The Bills Committee deliberated (index of proceedings at **Appendix**).

Clause-by-clause examination of the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Bill

6. The Bills Committee commenced clause-by-clause examination of the Bill. The Bills Committee examined up to clause 11 of the Bill before the end of the meeting.

Follow-up actions to be taken by the Administration

Admin 7. The Administration was requested to provide the following information:

- (a) in respect of "攸關狀況命令", "攸關看顧命令" and "攸關贍養命令" being adopted as the Chinese renditions of "status-related order", "care-related order" and "maintenance-related order" respectively in clause 2 of the Bill, other examples in the laws of Hong Kong adopting a similar use of "攸關";
- (b) a detailed explanation of the legislative intent for clause 11(4) of the Bill; whether and in what ways clause 11(4), as drafted, could reflect such legislative intent without any ambiguity and if not, whether amendment should be made thereto; and
- (c) in respect of the grounds for setting aside the registration of a specified order in a Mainland Judgment under clause 16 of the Bill, a list of criteria satisfying the ground specified in clause 16(1)(h), i.e. the recognition of the specified order, or the enforcement of the specified order, is manifestly contrary to the public policy of Hong Kong.

(Post-meeting note: The Administration's response was circulated to members vide LC Paper No. CB(4)389/20-21(02) on 18 January 2021.)

Invitation of views

8. The Chairman suggested and members agreed that a notice be posted on the Legislative Council ("LegCo") website for written submissions on the Bill.

(Post-meeting note: On 12 January 2021, a notice was posted on the LegCo website to invite submissions from members of the public. No written submission was received by the Bills Committee by the submission deadline on 26 January 2021.)

III. Any other business

9. There being no other business, the meeting ended at 6:29 pm.

Council Business Division 4
Legislative Council Secretariat
16 April 2021

Bills Committee on Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Bill

**Proceedings of the first meeting held on
Monday, 11 January 2021, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)	Action required
Agenda Item I - Election of Chairman			
000554-000753	Dr Priscilla LEUNG Dr Junius HO Mr Vincent CHENG Ms Alice MAK	Election of Chairman	
Agenda Item II - Meeting with the Administration			
000754-002643	Chairman Administration	Briefing by the Administration on the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Bill ("the Bill")	
002644-003147	Chairman Ms Alice MAK Administration	Ms MAK's enquiry and the Administration's explanation on how the Bill could facilitate enforcement in the Mainland of maintenance-related orders obtained in Hong Kong. Ms MAK's enquiry and the Administration's response on whether the Bill would cover orders in relation to custody of a child.	
003148-003508	Chairman Ms Elizabeth QUAT Administration	Ms QUAT's expression of support for the Bill. Ms QUAT's concerns about the lack of a designated enforcement agency to oversee enforcement of maintenance claims and enquiry about the measures available in Hong Kong to enforce maintenance-related orders and doubt about whether such orders in Mainland Judgments could be effectively enforced in Hong Kong even with the Bill passed. The Administration's response that enforcement measures that are available to maintenance orders made by Hong Kong courts are generally available for enforcement of Mainland specified orders which have been recognized in Hong Kong.	

Time Marker	Speaker(s)	Subject(s)	Action required
003509-004220	Chairman Dr Junius HO Administration	<p>Dr HO's enquiry on the nature of judicial proceedings in Hong Kong for the registration of specified orders in Mainland Judgments and the Administration's response that it would be determined by the Judiciary but was believed to likely be similar to the procedures for registration under the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597) and for arbitral awards.</p> <p>Dr HO's enquiry and the Administration's response on the potential compatibility issues in light of differences in the legal provisions between the Mainland and Hong Kong, with the enforceability of pre-nuptial agreements in Hong Kong quoted as a case in point.</p> <p>The Administration's response that while pre-nuptial agreements would be recognized in the Mainland courts, the Hong Kong courts would not categorically refute such agreements unless they were manifestly contrary to the public policy of Hong Kong.</p> <p>The Administration's further explanation that the purpose of the registration mechanism under the Bill was to enable Mainland Judgments to be recognized and enforced in Hong Kong through a simple registration procedure with a view to minimising re-litigation and that recognition would unlikely be refused merely due to differences in the legal provisions between the two jurisdictions, unless one of the grounds for setting aside the registration order is met, such as being manifestly contrary to the public policy of Hong Kong (clause 16 (1)(h) of the Bill), which had a very high threshold.</p> <p>The Chairman's and Dr HO's request for supplementary information to be provided by the Administration as listed out in paragraph 7(c) of the minutes.</p>	Administration
004221-005350	Chairman Administration	<p>The Chairman's expression of support for the Bill and her comments on the importance of providing a simple procedure between the Mainland and Hong Kong for the reciprocal recognition and enforcement of judgments in matrimonial and family matters, which could help avoid the re-litigation of disputes in such matters in the courts of the two jurisdictions.</p> <p>The Administration's response that the registration procedure had been designed to provide a simple mechanism for the recognition and enforcement of Mainland Judgments in matrimonial and family</p>	

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		<p>matters, which was similar to existing recognition and enforcement mechanisms, and it was the intention that the need for re-litigation could be avoided.</p> <p>The Chairman's concerns about some practical problems in relation to the enforcement of specified orders after passage of the Bill, in particular those relating to the custody in relation to a child in cross-boundary marriage, which would need to be addressed and might involve interdepartmental collaboration in Hong Kong.</p> <p>The Administration's response that any practical issues which might arise in the course of enforcement and might need appropriate supporting measures from relevant bureaux/departments could be further considered in the light of actual implementation of the Bill.</p> <p>The Chairman's comment that when handling enforcement issues relating to matrimonial and family matters involving cross-boundary marriage, especially when care of minors was involved, more discretionary powers should be given to the relevant authorities as such cross-boundary cases were often complex.</p>	
005351-005530	Chairman	The Chairman's advice on receiving written submissions from members of the public on the Bill	
005531-005717	Chairman Administration	<p>Commencement of clause-by-clause examination of the Bill</p> <p>Part 1: Preliminary</p> <p><u>Clause 1</u></p> <p>Members raised no question.</p>	
005718-010446	Chairman Administration	<p><u>Clause 2</u></p> <p>The Administration's confirmation of the Chairman's observation that under the definition of "Mainland Judgment" referenced in the Bill, judgments given by a court in a place outside the Mainland which were recognized in the Mainland under the law of the Mainland would be excluded.</p> <p>The Chairman's enquiry and the Administration's explanation on the choice of "攸關" as the Chinese</p>	Administration

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>rendition of "related" in "care-related orders", "status-related orders" and "maintenance-related orders".</p> <p>The Chairman's request for the Administration to provide supplementary information as listed out in paragraph 7(a) of the minutes.</p>	
010447-011200	Chairman Assistant Legal Adviser ("ALA") Administration	<p><u>Clause 3</u></p> <p>The Administration's confirmation of the Chairman's observation that the Bill did not cover recognition of Mainland adoption orders, which was covered by the Adoption Ordinance (Cap. 290).</p> <p>ALA's enquiry on the reference to the term "child" in Schedules 1 and 2 to the Bill, and the Administration's explanation that the term included an illegitimate child, a step-child and an adopted child and, as regards orders in relation to maintenance and custody of a child, persons over 18 years old who could not live independently were also included.</p> <p>The Chairman's and ALA's enquiry on the coverage of the order for the protection of a person from violence in a domestic relationship made by the Mainland courts and the Administration's explanation that, under Mainland law, while co-habitants were not considered as family members, they would be covered by such order as far as domestic violence was concerned.</p>	
011201-011951	Chairman Administration	<p><u>Clause 4</u></p> <p>Members raised no question.</p> <p><u>Clause 5</u></p> <p>The Administration's explanation on what constituted an effective Mainland Judgment in the Bill, and clarification on the distinctions between the trial supervision procedure and appeal procedures in civil cases under Mainland law.</p> <p>The Chairman's expression of support for including a judgment given according to the trial supervision procedure of the Mainland as an effective Mainland Judgment in the Bill.</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>The Chairman's comments that the Mainland courts practised the two-trial system with the judgment given at second instance being the final judgment, and that the trial supervision procedure would rarely be invoked, hence, should not be considered an essential procedural step.</p> <p><u>Clause 6</u></p> <p>Members raised no question.</p>	
011952-012554	Chairman Administration	<p>Part 2: Registration in Hong Kong of Mainland Judgments Given in Matrimonial or Family Cases</p> <p><u>Clause 7</u></p> <p>The Chairman's enquiry and the Administration's response that the choice of "指明命令" as the Chinese rendition of "specified order" was consistent with existing practice.</p>	
012555-013808	Chairman ALA Administration	<p><u>Clause 8</u></p> <p>The Chairman's query and the Administration's explanation that reference had been made to existing legislation when providing discretion to the District Court to give permission for registration application to be made in relation to maintenance-related orders and care-related orders after the expiry of a 2-year period after the date of non-compliance with the order or after the date on which the Mainland Judgment had become effective (as the case may be).</p> <p>Enquiries by the Chairman and ALA and the Administration's response on the special circumstances which the District Court might consider for giving permission to allow registration application to be made after the expiry of the 2-year period.</p>	
013809-014025	Chairman Administration	<p><u>Clause 9</u></p> <p>Members raised no question.</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
014026-014457	Chairman ALA Administration	<p><u>Clause 10</u></p> <p>Enquiries by the Chairman and ALA on whether the application for trial supervision procedure might affect the presumption of a Mainland Judgment being effective pursuant to clause 10(2).</p> <p>The Administration's explanation that the presumption in clause 10(2) would not be rebutted solely upon an application being made in the trial supervision procedure as such an application would be subject to review if retrial would be warranted and that, if retrial was ordered, while a Mainland Judgment might be suspended, suspension would not be mandatory in certain judgments on matrimonial and family matters such as claims for maintenance.</p>	
014458-015950	Chairman Mr Paul TSE ALA Administration	<p><u>Clause 11</u></p> <p>Enquiries by the Chairman, Mr TSE and ALA on the legislative intent for clause 11(4) and whether the clause, as drafted, could reflect such legislative intent.</p> <p>The Administration's clarification that the intention was for the registration of maintenance-related orders to cover not only periodic payments or periodic performances of act which had become due and were in default before the application date, but also on and after that date, so there would be no need for a judgment creditor to make fresh registration applications in relation to such maintenance-related orders upon subsequent defaults and would only need to apply for the execution of the relevant maintenance-related orders which had already been registered.</p> <p>The Administration's further clarification that clause 11(4) was to be read in conjunction with clause 8(3), which set out the prerequisite that a registration application could be made in relation to a maintenance-related order requiring a payment or an act to be made or performed periodically only if there had been default by a due date before the application date.</p> <p>Mr TSE's enquiry and the Administration's clarification on the need to break down clause 11(4)(a) into sub-paragraphs (i) and (ii).</p>	Administration

Time Marker	Speaker(s)	Subject(s)	Action required
		The Chairman's request for the Administration to provide supplementary information as listed out in paragraph 7(b) of the minutes.	
Agenda Item III - Any other business			
015951-020142	Chairman	Date of the next meeting Invitation of public views Closing remarks	

Council Business Division 4
Legislative Council Secretariat
16 April 2021