

立法會
Legislative Council

LC Paper No. CB(4)975/20-21
(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 second meeting held on
Tuesday, 19 January 2021, at 2:00 pm
in Conference Room 1 of the Legislative Council Complex**

Members present : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP (Chairman)
Hon Tommy CHEUNG Yu-yan, GBS, JP
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

**Public Officers
attending** : **Agenda item I**

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. 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, CB(4)354/20-21(01) to (03) and CB(4)389/20-21(01) to (03)]

Discussion

The Bills Committee deliberated (Index of proceedings at **Appendix**).

Follow-up actions to be taken by the Administration

2. The Administration was requested to provide the following information:

- (a) in respect of clause 14(1) of the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Bill ("the Bill"), the registering court, when making a registration application for a specified order to be registered, would be granted the authority and have discretionary powers to set a period within which an application for setting aside a registration may be made,

whether it is appropriate to specify in the Bill (or in the rules to be made by the Chief Judge under clause 40 of the Bill) a fixed period in relation thereto instead of leaving the discretion to the registering court in setting a time limit, and the pros and cons of specifying such time limit in the Bill or the rules to be made;

- (b) 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 the Bill, a response to the Chairman's view that the phrase "攸關" should be replaced by other renditions, such as "相關" or "關乎", and whether the Administration intends to propose an amendment thereto; and
- (c) in respect of clause 24(2) of the Bill, the rationale of adopting "了結" as the Chinese rendition of "finally disposed of", as well as examples of such use under the existing Hong Kong legislation, and whether the Administration would consider alternative renditions.

II. Any other business

- 3. There being no other business, the meeting ended at 3:57 pm.

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

**Proceedings of the second meeting held on
Tuesday, 19 January 2021, at 2:00 pm
in Conference Room 1 of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)	Action required
Agenda Item I - Meeting with the Administration			
001040- 001252	Chairman	Opening remarks	
001253- 002801	Chairman Assistant Legal Adviser ("ALA") Administration	<p>The Administration's briefing on its response to the issues raised at the meeting on 11 January 2021, as set out in LC Paper No. CB(4)389/20-21(02).</p> <p>Regarding item (a), the Chairman's suggestion that the phrase "攸關" as appeared in the Chinese renditions of "攸關狀況命令", "攸關看顧命令" and "攸關贍養命令" be replaced by phrases such as "相關" or "關乎", which would be more readily understood by the general public. ALA's advice that, based on her own research, "攸關" was used more frequently in Hong Kong legislation as the Chinese rendition for "relevant to" while "相關" or "關乎" was more often used for "related".</p> <p>The Administration's response that it would further consider whether to propose amendments having regard to the views of the Chairman and ALA.</p> <p>Regarding item (b), the Administration's elaboration on the legislative intent of clause 11(4) and response that, in light of the views of the Bills Committee at the last meeting, the Administration was considering possible refinements to clause 11 of the Bill such that the legislative intent could be more clearly expressed.</p> <p>Regarding item (c), the Administration's explanation that whether the ground of "manifestly contrary to the public policy of Hong Kong" could be satisfied would be considered by the court in light of the circumstances of each case and would likely be invoked by the court sparingly. Moreover, the intention was that the registering court was not required to review the whole case afresh.</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
002802-003012	Chairman Administration	<p>Continuation of clause-by-clause examination of the Bill</p> <p>Part 2 Division 2 – Registration Orders and Registration (Cont'd)</p> <p><u>Clauses 12 and 13</u></p> <p>Members raised no question</p>	
003013-003335	Chairman ALA Administration	<p>Part 2 Division 3 – Setting Aside Registration</p> <p><u>Clause 14</u></p> <p>ALA's enquiry on the rationale behind clause 14(1) of the Bill for the registering court to be granted discretionary power to set a period within which an application for setting aside a registration might be made, instead of specifying a fixed period in that regard in the Bill.</p> <p>The Administration's response that reference had been made to the similar arrangement provided in the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597) and that this discretionary power would allow flexibility for the registering court to specify an appropriate period in each registration application having regard to the nature and circumstances of individual applications.</p> <p>The Administration's further elaboration that it was noted in a case in the context of Cap. 597 that the registering court specified a 14-day period.</p>	
003336-004005	Chairman Administration	<p><u>Clause 15</u></p> <p>The Chairman's enquiry on the consequence if no setting aside application was made within the period specified in clause 14 and the Administration's response that, in such a case, the applicant may apply for execution of the registered order upon expiration of such period.</p> <p>The Chairman's further enquiry on the procedure in respect of an application for recognition and enforcement made to the Mainland courts.</p> <p>The Administration's response that such application would be made pursuant to the Arrangement on Reciprocal Recognition and Enforcement of Civil Judgments in Matrimonial and Family Cases by the</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>Courts of the Mainland and of the Hong Kong Special Administrative Region ("the Arrangement") and that, with reference to the current approach of the Mainland courts in respect of application for enforcement of arbitral awards, the Mainland court might hold hearings where both parties could make submissions and raise objections. The Administration's further elaboration that the mechanism to be established in Hong Kong under the Bill would be different as registration applications would be made ex parte.</p>	
004006-005446	Chairman ALA Administration	<p><u>Clause 16</u></p> <p>ALA's enquiry in relation to clause 16(1)(b) regarding the usual modes under Mainland law for summoning the respondents to appear, including where the whereabouts of the respondents were unknown.</p> <p>The Administration's explanation on the usual modes of service under Mainland law for summoning the respondents, including by way of public announcement where the whereabouts of the respondents were unknown.</p> <p>The Chairman's appreciation of clause 16(1)(c) for codifying "the right to be heard" which was derived from the principle of natural justice, and the Administration's response that there was a similar provision in the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region Pursuant to Choice of Court Agreements between Parties Concerned.</p> <p>The Chairman's enquiry on what criteria would satisfy the ground in clause 16(1)(h) and the Administration's recapitulation of its response given in paragraphs 7 and 8 of LC Paper No. CB(4)389/20-21(02).</p> <p>The Administration's further elaboration that references were made to the application of the public policy ground in applications to Hong Kong courts for recognition and/or enforcement of Mainland arbitral awards and overseas divorce.</p>	

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		<p>The Chairman's and ALA's enquiry as to whether the Mainland courts would take into account a list of factors when considering the best interests of the minor child in the context of clause 16(2) of the Bill and Article 9(3) of the Arrangement.</p> <p>The Administration's response that, in the context of considering substantive applications in respect of custody or maintenance of a child, the Mainland courts would, generally, take into account the circumstances of the case when considering the best interests of a child in individual cases, as distinguished from applying a pre-established list of factors.</p> <p>The Administration also emphasised that, in the context of considering application for recognition and enforcement of judgments made by the court in another jurisdiction, the objective of the Arrangement was to minimise the need for re-litigation of the same disputes in another jurisdiction, such that the requested court would not conduct substantive review of the dispute as if a substantive application had been made.</p>	
005447-010517	Chairman Administration	<p><u>Clause 17</u></p> <p>The Chairman's enquiry on the scope of interim reliefs that could be imposed by the courts of Hong Kong under clause 17(3).</p> <p>The Administration's explanation that High Court Ordinance (Cap. 4) provides the court the power to grant interim reliefs and illustration by examples including the temporary restraining on dissipation of assets or interim arrangements for the care of a child.</p> <p><u>Clause 18</u></p> <p>The Chairman's enquiry and the Administration's elaboration on how clause 18 would work.</p>	
010518-010759	Chairman Administration	<p>Part 2 Division 4 – Effect etc. of Registration</p> <p><u>Clauses 19 and 20</u></p> <p>Members raised no question.</p>	

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010800-011759	Chairman ALA Administration	<p><u>Clause 21</u></p> <p>Enquiries by the Chairman and ALA on the circumstances under which a registered order would be transferred to the Court of First Instance ("CFI") in accordance with clause 21 of the Bill.</p> <p>The Administration's illustration with the example that while the District Court ("DC") and CFI have similar jurisdiction in cases of domestic violence, CFI can exercise certain powers under the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189) in a case of urgency and the Administration's further response that it might be more appropriate to transfer the order to CFI in cases where complex issues were in dispute or novel points of law were involved.</p> <p>The Chairman's enquiry and the Administration's further clarification that the modes of execution between the DC and the CFI would be more or less the same and the reasons to transfer the order to CFI would normally be due to the complexity of the case or the legal issues involved.</p> <p>The Chairman's enquiry about the need to state clearly the circumstances for the order to be transferred to CFI and the Administration's response that it would be necessary to provide for flexibility in the mechanism.</p> <p>ALA's enquiry on when the respondent would be notified as the application for the order to be transferred to CFI would be made on an ex parte basis.</p> <p>The Administration's response that the procedures for registration of specified orders and application for enforcement would allow the respondent to be notified at appropriate stage and elaboration that the policy intent was to achieve an overall balance such that the entire process of registration and execution of specified orders would not be too complex and cause delay to the whole process.</p>	
011800-012747	Chairman Administration	<p><u>Clause 22</u></p> <p>The Chairman's enquiry about who would actually be nominated by the court, for the purpose of clause 22(4) of the Bill, to execute the instrument for the transfer of property. The Administration's response</p>	

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		<p>that, based on case law, the Registrar of CFI could be so nominated in the case of CFI.</p> <p><u>Clause 23</u></p> <p>The Chairman's enquiry for adopting "attachment" as the English rendition of "扣押" in clause 23(1) of the Bill, and the Administration's response that it was adopted with reference to the Attachment of Income Order Rules (Cap. 13A).</p> <p><u>Clause 24</u></p> <p>The Chairman's enquiry and the Administration's explanation and illustration with an example in Hong Kong's legislation on adopting "了結" as the Chinese rendition of "finally disposed of" in clause 24(2) of the Bill.</p> <p>The Chairman's request for alternative Chinese renditions for "finally disposed of" to be provided by the Administration.</p>	
012748-014634	Chairman ALA Administration	<p><u>Clause 25</u></p> <p>The Chairman's enquiry on the purpose and effect of clause 25 of the Bill.</p> <p>The Administration's explanation that while the Bill would establish a procedural mechanism for specified orders in Mainland judgments given in a matrimonial or family case to be recognized and enforced in Hong Kong, the Bill did not contain any provision as to whether findings of matters of law or fact decided in such Mainland judgments shall be recognized and further explanation that clause 25 would preserve the common law position on which basis the Hong Kong courts could continue to consider whether such findings of law or facts in the Mainland judgments might be recognized as conclusive in Hong Kong.</p> <p>The Chairman's enquiry on whether the findings of law or facts decided in a Mainland judgment, though not binding on the Hong Kong courts, would be considered persuasive by the Hong Kong courts. The Administration's responses that the Bill would not preclude the court from recognizing the findings of law or fact in the Mainland judgments by applying the applicable common law principles in this regard and that a similar approach was adopted in Cap. 597.</p>	

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		<p>ALA's enquiries on the extent to which clause 25 of the Bill might affect whether any finding of matter of law or fact decided in a Mainland judgment in matrimonial or family proceedings as well as other proceedings might be recognized by the Hong Kong courts as conclusive under the common law and the Administration's response that the Bill did not preclude whether the findings in other proceedings might be recognized as conclusive under the common law principles.</p>	
014635-015812	Chairman Administration	<p>Part 2 Division 5 – Restriction on Hong Kong Court Proceedings</p> <p><u>Clause 26</u></p> <p>The Chairman's enquiry on the procedure and the Administration's response that registration applications would be made on an ex parte basis by a party to a Mainland judgment and that, where the Hong Kong court ordered the specified orders in the judgment to be registered, the other party to the Mainland judgment could apply for setting aside pursuant to clause 16 of the Bill, otherwise the applicant could proceed to apply for execution after the expiry of the time limit for the other party to apply for setting aside.</p> <p>The Chairman and ALA's enquiry on whether the rules of procedural fairness could be complied with as the other party to the Mainland judgment might not be given an opportunity to be heard before the adjudicating court made an order to stay the pending Hong Kong proceedings under clause 26(3).</p> <p>The Administration's response that there would likely be a hearing before the adjudicating court made the order to stay so that the other party to the Mainland judgment might raise objections on the basis that the requirements for the pending proceedings to be stayed under clause 26 were not satisfied for reasons such as the pending proceedings and the Mainland judgment were not in respect of the same cause of action, the pending proceedings were made under Part IIA of Matrimonial Proceeding and Property Ordinance (Cap. 192), etc.</p>	

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		<p>The Administration's further explanation that the intention of the requirement under clause 26 for proceedings to be stayed was for such stay to be temporary in nature so as to allow an opportunity for the registration applications to be decided and to avoid parallel proceedings in Hong Kong and Mainland.</p> <p>The Administration's explanation in response to the Chairman's enquiry that Part IIA of Cap. 192 provided for an existing mechanism by which parties to a marriage which had been dissolved, annulled or legally separated outside Hong Kong and recognized as valid in Hong Kong could apply to the Hong Kong courts for orders for financial relief.</p>	
015813-020024	Chairman Administration	<p>Closing remarks</p> <p>Summary on follow-up actions to be taken by the Administration as listed out in paragraph 2 of the minutes.</p>	Administration
Agenda Item II - Any other business			
020025-020112	The Chairman	Date of the next meeting	