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By Fax (2543 9197)

17 January 2021

Mr Lemuel WOO
Clerk to Bills Committee
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Mr Woo,

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

The Government's response to issues raised by the Bills Committee at the meeting on 11 January 2021

At the meeting of the Bills Committee held on 11 January 2021, the Government was requested to provide a written response on certain issues. We set out below the Government's response.

Item (a): Chinese renditions of certain defined terms in Clause 2 of the Bill (namely, "status-related order" ("攸關狀況命令"), "care-related order" ("攸關看顧命令") and "maintenance-related order" ("攸關贍養命令"))

2. According to 《重編國語辭典修訂本》, "攸關" means "相關連", for example, "婚姻攸關一生的幸福, 務必審慎處理, 切莫意氣用事。".
3. "攸關" is not uncommonly used in our legislation as a Chinese equivalent term for "relevant" or "relate" (including any grammatical

variation of those English terms). Some examples are:

- (a) Rule 11(3)(b)(ii) of Order 71A of the Rules of the High Court (Cap. 4A) which provides that “為施行第(2)款而指明的誓章須.....盡宣誓人所知或所信述明任何攸關該申請的其他資料” (“An affidavit specified for the purposes of paragraph (2) shall...state to the best of the information or belief of the deponent any other information *relevant to* the application”) (emphasis added); and
- (b) Section 3(6)(b)(ii) of Schedule 9 to the Competition Ordinance (Cap. 619) which provides that “如該訴訟關乎違反攸關該條例第 7K、7L 或 7N 條的牌照條件、決定或指示” (“If the action relates to a breach of a licence condition, determination or direction *relating to* section 7K, 7L or 7N of that Ordinance”) (emphasis added).

4. We have considered the alternative of adopting “與狀況[有關/相關]的命令”, “與看顧[有關/相關]的命令” and “與贍養[有關/相關]的命令” as the Chinese renditions for the terms “status-related order”, “care-related order” and “maintenance-related order” respectively. Since the use of shorter defined terms in the Bill would enhance readability, these are not preferred options.

Item (b): Legislative intent of Clause 11(4) of the Bill

5. Pursuant to Clause 8(3) of the Bill, a party to a maintenance-related order which provides for periodic payment or periodic performance of acts (“**periodic order**”) may only apply to the court for registration of such order if there has been a default in a periodic payment or the periodic performance of an act. However, due to the nature of periodic orders, there is a possibility that those payments or acts which will become due on or after the date of the registration application may also subsequently be in default. The legislative intent of Clause 11(4) of the Bill is to allow the registration of periodic orders to cover not only those payments or acts which have become overdue before the date of the registration application, but also periodic obligations to pay or perform an act which becomes due on or after the application date. This means that upon further default of a periodic

obligation to pay or perform an act under the periodic order in future, the judgment creditor does not need to apply to the court for registration of the periodic order again but may directly proceed to make an application to the court for execution of such order.

6. In light of the views expressed by the Bills Committee in the drafting of the provision, we are considering possible refinements to Clause 11 of the Bill such that the legislative intent can be more clearly expressed.

Item (c): Grounds for setting aside the registration under Clause 16 of the Bill

7. Please see paragraphs 22 to 28 of our reply dated 8 January 2021 to the Assistant Legal Adviser. Whether the recognition and enforcement of a specified order would be “manifestly contrary to the public policy of Hong Kong” is necessarily a fact-sensitive issue to be considered in light of the circumstances of each case. While the Court of Final Appeal has said that “there is no limit to the combination of circumstances which fall to be considered” under the public policy ground, the discretion is to be exercised “sparingly”. Hong Kong case law has consistently held that the concept of “public policy” of Hong Kong refers to the “**fundamental conceptions of morality and justice**” of Hong Kong. The “public policy” ground is invoked where there is something that amount to “**substantial injustice**” which is “**so shocking to the court’s conscience as to render enforcement repugnant**”.

8. We take this opportunity to recap that the Bill seeks to implement the *Arrangement on Reciprocal Recognition and Enforcement of Civil Judgments in Matrimonial and Family Cases by the Courts of the Mainland and of the Hong Kong Special Administrative Region* which provides a bilateral mechanism for the reciprocal recognition and enforcement of judgments in matrimonial and family cases between Hong Kong and the Mainland. The objective of the Arrangement is to minimise the need for re-litigation of the same disputes in another jurisdiction, thereby saving time and cost as well as reducing emotional stress of the parties. It follows that the requested court is not expected to conduct a substantive review into the merits of the case when considering applications for recognition and enforcement. In respect of an application made to the Hong Kong court, registration would be set

aside only where any of the grounds specified in Clause 16 of the Bill has been satisfied.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Deneb CHEUNG', with a long, sweeping flourish extending upwards and to the right.

(Deneb CHEUNG)

Senior Assistant Solicitor General (China Law)