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

The Government's Response to the follow-up action arising from the meeting on 19 January 2021

The Government sets out its response to the follow-up action arising from the captioned meeting.

(a) The registering court's discretion under Clause 14(1) of the Bill to specify the time limit within which a setting aside application may be made

2. Clause 14(1) of the Bill requires the registering court, when making a registration order for a specified order to be registered, to specify a period within which an application for setting aside the registration may be made. Clause 14 gives the registering court the discretion to fix the period instead of following a fixed period specified in the legislation. Such approach gives the registering court the necessary flexibility to determine the appropriate time period on a case by case basis, having regard to all circumstances of the registration application, including the nature of the specified orders in the relevant Mainland judgment and the whereabouts of the other parties to the relevant Mainland judgment.

3. Such an approach is not unheard of and has been adopted in other Ordinances, whether in the context of enforcement of judgments or otherwise. For example, section 17(1) of the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597) likewise empowers the court to specify a time limit within which a setting aside application may be made. Other examples include rule 5(3) of Order 71, as well as rule 17(3) of Order 115 and rule 7(3) of Order 115A of the Rules of the High Court (Cap. 4A), etc.[1]

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[1] Rule 5(3) of Order 71 of the Rules of the High Court (Cap. 4A) provides that "[e]very [order giving leave to register a judgment under the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319)] shall state the period within which an application may be made to set aside the registration […]".

Rule 17(3) of Order 115 provides that a notice of registration made under the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) shall state, inter alia, the period within which an application may be made to vary or set aside the registration. Rule 7(3) of Order 115A contains similar provision in respect of a notice of registration made under the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525).

4. In our view, such flexibility does not go against the aim of facilitating the recognition and enforcement of the relevant Mainland judgments in a timely manner. Further, our perusal of the published judgments and decisions reveals that, in practice, applications for setting aside under Cap. 597 in those cases have largely been made in around one month's time from the date of service of the relevant notice of registration. We also understand that the current approach under section 17 of Cap. 597 has been largely effective and we are not aware of there being any concern that the court has set an unduly long period for application to set aside a registration. Since an underlying objective of the Civil Justice Reform is that cases should be dealt with as expeditiously as is reasonably practicable, we believe it is unlikely that the registering court would specify an unduly long period for setting aside application to be made. We also believe that the party who wishes to set aside the registration would have an interest to make such application swiftly.

5. In view of the above, we consider that there are merits in giving the court the flexibility to specify an appropriate time limit under Clause 14(1) of the Bill and allowing the court to develop its practice based on actual experience, instead of specifying a fixed period in the legislation.

(b) <u>Adopting "攸關狀況命令", "攸關看顧命令" and "攸關贍養命令" as the Chinese equivalent terms for "status-related order", "care-related order" and "maintenance-related order" respectively</u>

6. For reasons explained in our letter to the Clerk to the Bills Committee dated 17 January 2021 (LC Paper No. CB(4)389/20-21(02)), we consider "攸關狀況命令", "攸關看顧命令" and "攸關贍養命令" to be appropriate Chinese equivalent terms for "status-related order", "care-related order" and "maintenance-related order" respectively. That said, taking into account the views expressed by Members at meetings of the Bills Committee, we are now considering adopting a more commonplace expression and revising the relevant terms to "狀況相關命令", "看顧相關命令" and "贍養相關命令" respectively.

(c) <u>Adopting "了結" as the Chinese equivalent term for "finally disposed of"</u>

7. According to《重編國語辭典修訂本》, "了結" means "完結、解決". The following sentence from chapter 4 of *The Story of the Stone* provides an

example: "老爺何不順水行舟，作個整人情，將此案了結。" where "了結" is used in relation to a court case. In the Chinese text of Clause 20(2) of the Bill, "該申請了結" refers to an application having been dealt with by the court ("finally disposed of").

8. According to the dictionaries, none of "完結", "結束" or "終結" carries the meaning of "解決". Hence, the phrase "該申請完結" , "該申請結束" or "該申請終結" may not be able to fully convey the nuance that the application having been dealt with and resolved by the court.

9. An example in the legislation where "了結" is used in relation to a proceeding or procedure is section 508(3)(a)(ii) of the Companies Ordinance (Cap. 622): "如有人就可予覆核的裁定提出覆核申請，該項裁定在覆核或任何進一步覆核獲了結之時，成為終局裁定".[2]

10. It is worth mentioning that even without the prefix of "最終", "了結" itself carries the meaning of "完結" and reflects the idea of "finally" in the English text.

11. In sum, we consider "了結" an appropriate Chinese equivalent term for "finally disposed of".

Department of Justice
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[2] "a finding subject to review[,] if an application for review has been made, becomes final when the review, or any further review, is disposed of".