

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

**The Government's Response to the follow-up actions arising from  
the meeting on 26 February 2021**

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

**(a) Background and rationale for requiring registration applications in relation to care-related orders and maintenance-related orders<sup>1</sup> to be made within a two-year time limit and relevant Mainland legal provisions**

2. Article 1(1) of the Arrangement<sup>2</sup> provides that the Arrangement applies to cases where a party applies to a court of Hong Kong for the recognition and enforcement of a **legally effective judgment** made by a people's court of the Mainland in a civil matrimonial and family case. Under clause 7(1)(b) of the Bill, it is one of the requirements for making a registration application that the Mainland Judgment must be **effective in the Mainland**, whereas clause 5(1)(a) of the Bill provides that a Mainland Judgment is effective if, inter alia, it is **enforceable in the Mainland**.

3. According to Article 239 of the *Civil Procedure Law of the People's Republic of China* (《中華人民共和國民事訴訟法》), the time limit for submission of an application for execution shall be **two years**. The provisions of that Article are set out in Part (I) of the **Annex**. The two-year time limit is crucial in determining if a Mainland Judgment is enforceable in the Mainland under clause 5(1)(a) of the Bill. Hence, a two-year time limit is stated in clause 8 of the Bill.

<sup>1</sup> We propose to amend the Chinese renditions adopted in the Bill in respect of the defined terms "care-related order" and "maintenance-related order", by replacing "攸關看顧命令" and "攸關贍養命令" with "看顧相關命令" and "贍養相關命令" respectively. For details, please refer to our letter to the Clerk to the Bills Committee dated 19 February 2021 (LC Paper No. CB(4)546/20-21(01)).

<sup>2</sup> i.e. The arrangement titled 《關於內地與香港特別行政區法院相互認可和執行婚姻家庭民事案件判決的安排》 signed between the Government and the Supreme People's Court on 20 June 2017. The English translation of the title of the Arrangement is "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".

(b) **Background and rationale for the proposed amendments in replacing references to “child” and “子女” with “person” and “[的]人” and relevant Mainland legal provisions**

4. For background and rationale for the proposed amendments in replacing references to “child” and “子女” with “person” and “[的]人” respectively, please refer to paragraphs 6 to 9 of the Explanations (“**Explanations**”) enclosed at Annex B to our letter to the Clerk to the Bills Committee dated 19 February 2021 (LC Paper No. CB(4)546/20-21(01)). The relevant provision in the Arrangement is Article 3(1)(1). Relevant provisions under Mainland law are set out in Part (II) of **Annex**.

(c) **Member’s suggestion for the scope of “child” and “子女” to be defined in clause 2 of the Bill and assessment of potential impacts on other provisions in the Bill and other relevant legislation in Hong Kong**

5. When formulating the proposed amendments in this regard, we have considered the feasibility of inserting an interpretative provision in clause 2 of the Bill. However, we consider it appropriate to make amendments to each of the individual provisions replacing the terms “child” and “子女” for a number of reasons which we set out below.

6. First, for valid reasons, the replacing of the terms “child” and “子女” does not apply uniformly to the whole Bill. As mentioned in paragraph 9 of the Explanations, the references to “子女” in Schedule 1 to the Chinese text of the Bill were retained as such terms has been reproduced from Article 3(1)(1)(7) and 12 of the Arrangement.

7. Second, inserting an interpretative provision of “child” and “子女” in clause 2 of the Bill is not preferred from a drafting point of view as each of the terms “person” and “[的]人” is not an ordinary meaning of “child” and “子女” respectively; defining a term in a way that is at odds with its commonly accepted or dictionary meaning is to be avoided.<sup>3</sup>

---

<sup>3</sup> See paragraph 5.2.19 of “Drafting Legislation in Hong Kong: A Guide to Styles & Practices” published by the Law Drafting Division of the Department of Justice, which provides as follows,  
“Do not define a term in a way that is totally at odds with its commonly accepted or dictionary meaning.”

8. We have taken into account the use of the terms “child” and “子女” and similar terms in existing legislations in the matrimonial and family context and note that there is currently no universally adopted definition for “child”. For instance, in the Guardianship of Minors Ordinance (Cap. 13), the term “minor” (“未成人”) is used to denote “child”. Hence, it follows that the use of the neutral term “person” (“[的]人”) can connote a broader interpretation and can better align with different scenarios and positions under existing legislations in the matrimonial and family context.

9. Our proposed amendment of the term would not have implications for other relevant legislation in Hong Kong as the amendments are mainly in Schedule 2 to the Bill which relates to specified orders in Mainland Judgments. There is no other legislation in Hong Kong which deals with these specified orders in Mainland Judgments. As regards the amendment to item 12 of Schedule 3 to the Bill, the amendment accurately reflects that in an order in relation to custody in respect of a ward of court, the ward is a person under 18 years old and the applicant does not have to be the parent of such person. Therefore, we believe our proposed amendments would not have read-across implications to existing legislations in Hong Kong.

(d) **Time limits on the making of application for the setting aside of a registration and a recognition order respectively**

10. Similar to clause 14(1) of the Bill, clause 31(1) also provides the necessary flexibility for the District Court to exercise its discretion in fixing the period within which an application for setting aside a recognition order may be made on a case by case basis having regard to the circumstances of each case, instead of stipulating a fixed period in the legislation. We consider the reasons mentioned in our response to follow-up actions arising from the meeting on 19 January 2021 (LC Paper No. CB(4)443/20-21(02)) to be likewise applicable to both clauses 14(1) and 31(1), namely, that such an approach has been adopted in other Ordinances and has been largely effective as applied in the existing mechanisms for recognition and enforcement.

(e) **Relevant Mainland legal provisions in respect of the validity of Mainland divorce certificates and Mainland Judgments containing status-related orders**<sup>4</sup>

11. According to Article 1080 of the *Civil Code of the People's Republic of China* (“**PRC Civil Code**”), a marriage shall be dissolved once the divorce registration has been completed, or the divorce judgment or conciliatory statement<sup>5</sup> takes effect. Under Article 1076 of the PRC Civil Code, where parties to a marriage agree to divorce, they may sign a written divorce agreement and apply to the marriage registration authority in the Mainland for divorce registration. The marriage registration authority shall register the divorce and issue a Mainland divorce certificate pursuant to the requirements under Article 1078 of the PRC Civil Code. The District Court may order the Mainland divorce certificate be recognized under clause 30 of the Bill.

12. Where only a party to the marriage wishes to divorce, that party shall file proceedings with a relevant people's court in the Mainland pursuant to Article 1079 of the PRC Civil Code. If an order granting a divorce is obtained from the Mainland court (i.e. item 1 of Part 2 of Schedule 2 to the Bill), a registration application can be made under clause 7 of the Bill. A registered status-related order is recognized as valid in Hong Kong under clause 24 of the Bill. The relevant provisions under Mainland law are set out in Part (III) of the **Annex**.

(f) **Clause 11**

13. The proposed revised clause 11(3)(a) clearly provides that the court may order that the periodic maintenance-related order is also to be registered in relation to a payment or an act that is required by the periodic maintenance-related order to be made or performed by a date that falls **on or after the application date**, hence the registration will naturally cover those payments or acts which fall due **on or after the date of registration**. The proposed revised clause 11(3)(b) only seeks to further qualify such payments or acts to those that have not been made or performed **as at the time when the court exercises the power to make the order under clause 10(1)**. For example, if, on the date of registration when the court is to make an order under clause 10(1) to register the periodic

---

<sup>4</sup> We propose to amend the Chinese rendition adopted in the Bill in respect of the defined term “status-related order”, by replacing “攸關狀況命令” with “狀況相關命令”. See footnote 1.

<sup>5</sup> In clause 2 of the Bill, “Mainland Judgment” is defined to include a conciliatory statement given by a court in the Mainland.

maintenance-related order, the judgment debtor has already made an advance payment in respect of a part of an instalment that will become due on a date in the future, such advance payment will not fall within the proposed revised clause 11(3)(b) and hence the registration order will not cover that payment which has been made.

14. It should be noted that pursuant to clause 16(1)(a) and 18(3) of the Bill, it is a ground for setting aside the registration of a specified order if the order was registered in respect of the whole sum or act despite the fact that part of the payment had been made, or part of the act had been performed. Therefore, the proposed revised clause 11(3)(b) is crucial and necessary.

**Department of Justice**  
**4 March 2021**

#529042 v3B

**Extract of relevant Mainland legal provisions**

The Mainland legal provisions cited in this paper are for reference only. The courtesy English translation of the Mainland legal provisions as set out in this paper is prepared by the Department of Justice and is for reference only.

**Part (I): Relevant provisions in respect of the two-year time limit within which applications for execution must be made to the people’s courts in the Mainland**

2. Article 239 of the *Civil Procedure Law of the People’s Republic of China* (《中華人民共和國民事訴訟法》) provides that,

“The time limit in respect of an application for execution shall be two years. The suspension or discontinuance of the time limit in respect of an application for execution shall be governed by the provisions of law in respect of the suspension or discontinuance of the limitation period.

The time limit prescribed in the preceding paragraph shall be calculated from the last day of the period specified in a legal document for performance of obligations. If a legal document specifies performance of obligations in stages, the time limit shall be calculated from the last day of the period specified for each stage of performance. If no period of performance is specified in a legal document, the time limit shall be calculated from the date when the legal document becomes effective.”

**Part (II): Relevant provisions which cover a person other than the son or daughter of a party to a dispute**

3. Article 27(2) of the *Civil Code of the People’s Republic of China* (《中華人民共和國民法典》) (“**PRC Civil Code**”) provides that,

“If the parents of a minor are dead or lack the capability to be his guardian, any of the following persons who has the capability to be a guardian shall act as his guardian in the following sequence:

- (1) paternal or maternal grandparent;

- (2) elder brother or sister; or
  - (3) any other individual or organisation that is willing to act as guardian, provided that approval has been obtained from the residents committees, villagers committees or civil affairs department in the place of residence of the minor.”
4. Article 32 of the PRC Civil Code provides that,

“In the absence of any person who is eligible to act as guardian in accordance with the law, the relevant civil affairs department shall act as guardian, or the residents committee or villagers committee in the place of residence of the minor that possesses the qualifications to perform the responsibilities of a guardian may act as guardian.”
5. Article 1074(1) of the PRC Civil Code provides that,

“Paternal and maternal grandparents who have the capability shall bear responsibilities of custody over their paternal and maternal grandchildren who are minors and whose parents are dead or unable to do so.”
6. Article 1107 of the PRC Civil Code provides that,

“Relatives or friends of biological parents may bear responsibilities of custody over orphans or children whose biological parents are unable to do so. [...]”

**Part (III): Relevant provisions in respect of the validity of Mainland divorce certificate and Mainland Judgments granting a divorce**

7. Article 1076 of the PRC Civil Code provides that,

“In the case where the husband and the wife voluntarily divorce, they shall sign a written divorce agreement and apply in-person to the relevant marriage registration authority for divorce registration.

The divorce agreement shall state both parties’ intention to voluntarily divorce and their consensuses reached through consultations on matters such as the custody of their children, the handling of their properties and liabilities, etc.”
8. Article 1077 of the PRC Civil Code provides that,

“Either party who is unwilling to divorce may withdraw the application

for divorce registration from the marriage registration authority within 30 days after its receipt of the application.

The parties shall apply in-person to the marriage registration authority for the issuance of a divorce certificate within 30 days after the expiration of the time limit prescribed in the preceding paragraph; failing such application, the parties shall be deemed to have withdrawn their application for divorce registration.”

9. Article 1078 of the PRC Civil Code provides that,

“Where a marriage registration authority ascertains upon investigation that the parties voluntarily divorce and have reached consensus through consultations on matters such as the custody of their children, the handling of their properties and liabilities, etc., the marriage registration authority shall register the divorce and issue a divorce certificate.”

10. Article 1079(1) of the PRC Civil Code provides that,

“If the husband or the wife requests to divorce, a relevant organisation may carry out mediation or the party may directly file divorce proceedings with a people’s court.”

11. Article 1080 of the PRC Civil Code provides that,

“The marriage relationship shall be terminated once the divorce registration has been completed, or the judgement or conciliatory statement on divorce has become effective.”

**Department of Justice**

**4 March 2021**