

立法會
Legislative Council

LC Paper No. LS13/20-21

**Paper for the House Committee Meeting
on 4 December 2020**

**Legal Service Division Report on
Mainland Judgments in Matrimonial and Family Cases
(Reciprocal Recognition and Enforcement) Bill**

I. SUMMARY

- 1. The Bill**

The Bill seeks to give effect to 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 made between the Supreme People's Court of the People's Republic of China and the Government of the Hong Kong Special Administrative Region on 20 June 2017 ("Arrangement"); and to provide for related matters.
- 2. Public Consultation**

The Government conducted a public consultation on the draft Bill in February 2019. Majority of responses received are supportive of the Bill. The Law Society of Hong Kong and the Hong Kong Bar Association are in principle supportive of the Bill.
- 3. Consultation with LegCo Panel**

The Panel on Administration of Justice and Legal Services ("AJLS Panel") was briefed on the draft Bill on 26 March 2018 and 25 February 2019. While supporting the draft Bill in general, members raised questions and views on the details of implementing the Arrangement through the Bill.
- 4. Conclusion**

The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. In light of the views expressed by members of the AJLS Panel concerning the implementation of the Arrangement, Members may wish to form a Bills Committee to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 2 December 2020. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: L/M(5) to LP CLU 5037/7/3C) issued by the Department of Justice on 25 November 2020 for further details.

Object of the Bill

2. The Bill seeks to provide for the recognition and enforcement in Hong Kong of judgments in matrimonial and family cases given in the Mainland, for facilitating the recognition and enforcement in the Mainland of such judgments given in Hong Kong, and for the recognition of Mainland divorce certificates, so as to give effect to 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 ("HKSAR") made between the Supreme People's Court of the People's Republic of China ("SPC") and the Government of the HKSAR ("Arrangement"); and to provide for related matters.

Background

3. At present, Mainland judgments on matrimonial and family matters are generally not recognized and enforceable in Hong Kong.¹ Neither does Mainland law expressly provide for the recognition and enforcement of Hong Kong judgments in matrimonial and family matters in the Mainland. According to paragraphs 3 and 5 of the LegCo Brief, in view of the large number of cross-boundary marriages and related matrimonial and family matters, the Government of the HKSAR and SPC signed the Arrangement on 20 June 2017 to provide better safeguards to the rights of the parties to the cross-boundary marriages and reducing the need for re-litigation of the same disputes. In the judgment of *Lai (黎) v Ling (凌)* [2017] 5 HKLRD 629 dealing with a cross-boundary marriage, the Court of Appeal also urged for the early implementation of the Arrangement through the legislative scheme.² The Bill

¹ The few exceptions include divorces and legal separations which have been obtained by means of judicial or other proceedings in any place outside Hong Kong and are effective under the law of that place (Part IX of the Matrimonial Causes Ordinance (Cap. 179)); and overseas adoptions where a person has been adopted in any place outside Hong Kong and the adoption is legally valid according to the law of that place (section 17 of the Adoption Ordinance (Cap. 290)).

² The Court of Appeal stated that "... absent formal arrangement [viz. the Arrangement] of this nature, there can be a lack of effective judicial redress for problems arising from the breakdown of such marriages. In the interest of society, we would urge that the preparation and enactment of the legislative scheme be proceeded with diligently and expeditiously." (paragraph 91 of the judgment delivered in November 2017).

seeks to implement the Arrangement in Hong Kong. In the Mainland, it will be implemented by way of interpretation to be promulgated by SPC.

Provisions of the Bill

4. The Bill contains five parts and four schedules. The major provisions of the Bill are summarized in the ensuing paragraphs.

Recognition and enforcement of Mainland judgments in Hong Kong

Registration of specified orders

5. Part 2 of the Bill (clauses 7 to 13) seeks to provide for the registration of specified orders in a Mainland (i.e. the part of China other than Hong Kong, Macao and Taiwan) judgment given in a matrimonial or family case as set out in Schedule 1 to the Bill.³ The specified orders are set out in Schedule 2 to the Bill and are categorized into three types i.e. (a) care-related orders such as orders relating to custody or guardianship of a child; (b) status-related orders such as orders granting divorce or annulment of a marriage; and (c) maintenance-related orders such as orders relating to the maintenance of a child, spousal maintenance and division of property between parties to a marriage.

6. Under the Bill, the District Court or the Court of First Instance⁴ ("CFI") may on a registration application made by a party to a Mainland judgment, order a specified order to be registered if it is satisfied that the Mainland judgment is given in a matrimonial or family case on or after the commencement of the enacted Ordinance and is effective in the Mainland. A Mainland judgment would be presumed, until the contrary is proved, to be given in a matrimonial or family case and effective in the Mainland if a certificate certifying those matters is issued by the original Mainland court (clause 10(2)). For registration applications in relation to care-related and maintenance-related orders (requiring payment of a sum of money or performance of an act), the Bill proposes that such applications should be made within two years after non-compliance with the orders or after the date on which the judgments become effective, as the case may be (clause 8). A party to the Mainland Judgment may apply to set aside the registration of a specified order within the specified time limit on certain grounds including: where the respondent to the Mainland judgment was not summoned to appear according

³ Matrimonial or family cases, in relation to a Mainland judgment, include disputes over division of property during the subsistence of the marriage; divorce; property after divorce; invalidity or annulment of a marriage; matrimonial property agreement; custody, right of access, guardianship or maintenance of a child; confirmation of parentage etc. (see Schedule 1 to the Bill).

⁴ A registration application made by a party to a Mainland judgment to the District Court may be transferred to CFI if the District Court considers that the application can be more conveniently dealt with by CFI (see clause 9).

to the law of the Mainland; the judgment was obtained by fraud; a court in Hong Kong has given a judgment on the same cause of action between the same parties.

Effect of registration

7. Under Part 2 of the Bill, the effect of registration is that a registered care-related order or a maintenance-related order may be enforced in Hong Kong as if it were originally made by a registering court and it were made on the day of registration of the order. A registered status-related order would be recognized as valid in Hong Kong after the application period for setting aside the registration has expired, or after the setting aside application has been finally disposed of.

Restriction on Hong Kong court proceedings

8. Part 2 of the Bill also proposes to restrict Hong Kong court proceedings⁵ for the same cause of action between the same parties in the Mainland judgment by providing for proceedings pending before a Hong Kong court to be stayed, and by restricting the commencement of proceedings in a court in Hong Kong, pending the final disposal of a registration application or an application to set aside the registration.

Recognition of Mainland divorce certificates in Hong Kong

9. Part 3 of the Bill seeks to provide for recognition of Mainland divorce certificates in Hong Kong. It is proposed that on an application by a party to a divorce specified in a Mainland certificate issued on or after the commencement of the enacted Ordinance, the District Court may order that the certificate be recognized if it is satisfied that the certificate is valid in the Mainland (i.e. the certificate is notarized in accordance with the law of the Mainland). The recognition order may be set aside on the grounds that the certificate was obtained by fraud, the certificate is invalid or the recognition is manifestly contrary to the public policy of Hong Kong.

Certification of Hong Kong judgments for purposes of recognition and enforcement in the Mainland

10. Part 4 of the Bill proposes that a party to a Hong Kong judgment given in a matrimonial or family case (i.e. which includes an order specified in Schedule 3 to the Bill such as maintenance order, order for transfer or sale of property, custody order etc. granted or made by a court in Hong Kong) that is given on or after the commencement date of the enacted Ordinance and effective

⁵ The restriction would not apply to proceedings under Part IIA of the Matrimonial Proceedings and Property Ordinance (Cap. 192) i.e. proceedings in relation to the financial relief for a former spouse whose marriage has been dissolved or annulled, or who has been legally separated by means of judicial or other proceedings in a place outside Hong Kong (see clauses 26(1)(c) and 27(2)).

in Hong Kong may apply to the relevant court for a certified copy of the Hong Kong judgment with a certificate certifying that the relevant Hong Kong judgment is given in a matrimonial or family case and is effective in Hong Kong.

Miscellaneous matters

11. Part 5 of the Bill seeks to provide for related matters including the power of the Chief Judge ("CJ") to make rules for the carrying into effect of the enacted Ordinance; the power of the Secretary for Justice ("SJ") to amend the Schedules to the Bill. Schedule 4 to the Bill also proposes to make certain consequential amendments to the Matrimonial Causes Ordinance (Cap. 179) so that the provisions relating to the recognition of overseas divorces would not apply to divorces in the Mainland upon the commencement of the enacted Ordinance. The rules to be made by CJ and amendments made by SJ would be subsidiary legislation subject to the negative vetting procedure of LegCo.

Commencement

12. The Bill, if passed, would come into operation on a day to be appointed by SJ by notice published in the Gazette.

Public Consultation

13. According to paragraphs 23 to 25 of the LegCo Brief, the Administration conducted a public consultation on the draft Bill and the draft Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) ("draft Rules") in February 2019. The majority of responses received by the Government are supportive of the Bill and the draft Rules. While the Law Society of Hong Kong and the Hong Kong Bar Association are in principle supportive of the Bill, they have raised various comments and suggestions on it. The Administration has since continued to engage with family law practitioners and has taken on board their major comments on the Bill. The Government also consulted the Family Council on the legislative proposals and members raised no objection.

Consultation with LegCo Panel

14. As advised by the Clerk to the Panel on Administration of Justice and Legal Services ("AJLS Panel"), the AJLS Panel was briefed on the key features of the Bill at its meeting on 26 March 2018. On 25 February 2019, the AJLS Panel was briefed on the draft of the Bill issued for public consultation in February 2019. While supporting the draft Bill in general, members urged the Administration to consider the views received and refine the draft Bill. Some members raised

questions and views on the details of implementing the Arrangement through the Bill including the provision of a clear definition of effective judgment in the Mainland in the Bill and granting discretionary power to the court to extend the two-year time limit for which the registration application for a care-related order should be made.

Conclusion

15. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. In light of the views expressed by members of the AJLS Panel on the implementation of the Arrangement, Members may wish to form a Bills Committee to study the Bill in detail.

Prepared by

CHENG Kiu-fung, Vanessa
Assistant Legal Adviser
Legislative Council Secretariat
3 December 2020