

Ref: CB4/BC/1/23

Report of the Bills Committee on Family Procedure Bill

PURPOSE

This paper reports on the deliberations of the Bills Committee on Family Procedure Bill (“the Bills Committee”).

BACKGROUND

2. According to the Administration and the Judiciary Administration,¹ Hong Kong’s family justice system embraces a wide range of subject matters, covering mainly matrimonial and family related matters, with both the High Court and the Family Court (“FC”) (a division of the District Court (“DC”)) handling such cases within their respective jurisdictions. At present, the court-related procedures for these matters are often fragmented and convoluted, dispersed over many pieces of principal legislation, multiple subsidiary legislation, and an array of Practice Directions promulgated by the courts.

3. In the absence of dedicated rules governing family proceedings, it is not uncommon for associated proceedings arising from the same causes to be determined by procedures derived from a mixture of primary and secondary legislation, with parties spending disproportionate time and costs to address procedural issues peripheral to the issue(s) in dispute. The former Chief Justice of the Court of Final Appeal (“CJ”) appointed the Working Party on Family Procedure Rules (“the Working Party”) in March 2012 to examine and make recommendations for changes to the current procedures in the family justice system.²

¹ The information in this and the next section is based on the Legislative Council Brief on Family Procedures Bill (File Ref.: AW-275-020-010-030-003) jointly issued by the Administration and the Judiciary Administration on 1 March 2023, which may be accessed at: https://www.legco.gov.hk/yr2023/english/brief/aw275020010030003_20230301-e.pdf

² The Judiciary Administration’s paper on the Bill for discussion at the meeting of the Panel on Administration of Justice and Legal Services on 2 August 2022 (LC Paper No.

4. In February 2014, the Working Party published an interim report³ (“the Interim Report”) and conducted a public consultation exercise. In April 2014, the Working Party briefed the Panel on Administration of Justice and Legal Services (“the Panel”) on the proposals set out in the Interim Report and received its general support. In May 2015, drawing on comments received from the public consultation exercise, the Working Party published the Final Report on the Review of Family Procedure Rules⁴ (“the Final Report”), making 133 recommendations to improve court procedures for the family justice system. In May 2015, the Panel was updated on the recommendations put forward in the Final Report. The former CJ accepted all the recommendations set out in the Final Report, the major ones of them include:

- (a) adoption of a single unified set of Family Procedure Rules (“FPR”) that comprehensively deals with the processes and procedures for all family and matrimonial matters;
- (b) setting up of a new Family Procedure Rules Committee (“FPRC”) as the single rule-making authority to ensure that the FPR are coherent, cohesive and consistent; and
- (c) setting up of a Family Masters system under which the Registrar and Masters of FC would be empowered to take up certain case management functions of Family Judges (“FJs”) to alleviate their heavy workload.

5. Since the publication of the Final Report, an Implementation Committee chaired by a Judge of the High Court was set up within the Judiciary to oversee the implementation of the recommendations of the Final Report, including any new legislation or amendments to existing legislation required. The Bill was drafted under the auspices of the Implementation Committee.

CB(4)686/2022(01)) which may be accessed at:

<https://www.legco.gov.hk/yr2022/english/panels/ajls/papers/ajls20220802cb4-686-1-e.pdf>

³ The 2014 Interim Report and Consultative Paper on the Review of Family Procedure Rules is available at:

https://www.judiciary.hk/doc/en/other_information/fpr/interim_report_and_consultative_paper.pdf

⁴ The 2015 Final Report on the Review of Family Procedure Rules is available at:

https://www.judiciary.hk/doc/en/other_information/fpr/final_report.pdf

THE FAMILY PROCEDURE BILL

6. Published in the Gazette on 3 March 2023 and introduced into the Legislative Council at its meeting of 15 March 2023, the Bill seeks to introduce a new single piece of primary legislation which provides the legal basis to consolidate the various procedural rules of the family justice system currently scattered over different Ordinances with a view to making the family justice system more efficient, cost-effective and user-friendly. The Bill mainly covers the following proposals:

- (a) Prescribing general principles and common definitions with general applicability in the reformed procedural regime;
- (b) setting out the jurisdiction and powers of FC and High Court in family proceedings;
- (c) providing for the general practice and procedures relating to family proceedings;
- (d) providing for the establishment of FPRC; and
- (e) setting up a new Family Masters system.

7. Subject to the deliberation of FPRC, FPR would be made under the new primary legislation.⁵ It aims to align the procedures for the High Court (“HC”) and FC, remove any inconsistencies as appropriate, and introduce appropriate new procedural arrangements if currently none exist.

8. In making the family justice system more accessible, fair and efficient, the future Family Procedure Ordinance (“FPO”) and the related FPR (when they are enacted) would unify and streamline practices and processes for proceedings on family and matrimonial matters. In this regard, it is necessary to consequentially amend or repeal certain provisions in existing legislation to ensure compatibility and consistency, as well as to remove any overlap with FPO and FPR as appropriate. The five parts of the Bill are summarized below:

- (a) Part 1 - Preliminary (Clauses 1 to 5);
- (b) Part 2 - Jurisdiction and powers of the courts in family proceedings (Clauses 6 to 15);

⁵ The Family Procedure Rules would be supplemented by a comprehensive set of Practice Directions to provide detailed procedural guidance for reference by court users.

- (c) Part 3 - Practice and procedure (Clauses 16 to 23);
- (d) Part 4 – Family Procedure Rules Committee (Clauses 24 to 26); and
- (e) Part 5 –Miscellaneous Provisions (Clauses 27 and 28).

9. The clauses relating to establishing and empowering FPRC to make rules, setting up the Family Masters system, as well as those on preliminary matters and definitions of terms would come into effect upon passage of FPO. For the remaining clauses (including the clause that introduces the consequential amendments to other family-related legislation), they would commence together with FPR at a later stage.

THE BILLS COMMITTEE

10. At the House Committee meeting on 17 March 2023, Members agreed to form a bills committee to scrutinize the Bill. The membership list of the Bills Committee is in **Appendix 1**. The Bills Committee has held four meetings with the Administration and the Judiciary Administration, including one meeting to receive views from deputations. The Bills Committee has also received a total of six written submissions from members of the public (including deputations attending the meeting). A list of organizations which have appeared before the Bills Committee and/or given views to the Bills Committee is in **Appendix 2**.

DELIBERATIONS OF THE BILLS COMMITTEE

Policy objectives

11. Members support consolidating the various procedural rules of the family justice system scattered over different Ordinances, hoping that the currently complicated court-related procedures for family and matrimonial matters could be simplified and streamlined. They enquire whether it would reduce the amount of time and costs spent on legal proceedings. There is also an enquiry about whether the Bill would bring improvements to prevailing family policy issues such as difficulties encountered by maintenance payees in collecting maintenance payments and enforcing maintenance orders.

12. In response, the Judiciary Administration (“Jud Adm”) recapitulates the objective of the Bill, i.e. to introduce a new single piece of primary legislation which provides the legal basis to consolidate the various procedural rules of the

family justice system currently scattered over different Ordinances. Subject to the deliberation of FPRC to be established after the enactment of FPO, FPR would be made as subsidiary legislation including about 60 parts covering different aspects for the conduct of family proceedings, such as commencement of proceedings; procedures of applications, payments, etc. to minimize the need for users to check and cross-reference other pieces of legislation. Special efforts would be made to streamline their content and use plain language as far as practicable.

13. Jud Adm has also advised that as the primary objective of the Bill is to introduce procedural reforms for the family justice system as recommended in the Final Report, there is no intention to introduce changes to substantive policies or legislation, which should be separately dealt with by the Administration. The consolidation of various procedural rules governing family proceedings would make such rules more accessible to court users and facilitate a more efficient and cost effective system in terms of procedural certainty. As a result, the disproportionate time and costs spent on procedural issues which are peripheral to the main issues will be reduced.

Part 1 of the Bill – Preliminary (clauses 1 - 5)

14. Members and deputations have expressed concerns about the current inconsistencies in the terms and languages used across the various family procedural rules provided in different Ordinances. In response, Jud Adm has explained that it is one of the objectives of the Bill to prescribe general principles and common definitions with general applicability in the reformed regime for ease of reference by court users.

15. To illustrate, Jud Adm has pointed out that in clause 3 of the Bill, the term “family proceeding” is proposed to be given a comprehensive and detailed definition to include matrimonial causes and other relevant proceedings under existing Ordinances to which FPR would apply. In response to an enquiry about the proposed definition of “child” in the Bill, Jud Adm has confirmed that different definitions provided in different ordinances would be unified to mean a person under 18 years of age. Furthermore, a proceeding started under an Ordinance specified in clause 3(2) would be defined as “family proceeding” and to be dealt with under the FPO after it has come into full operation. Also, under clause 4 of the Bill, the meaning of “financial order” will cover the various types and forms of financial relief available under different legislation.

Part 2 of the Bill – Jurisdiction and Powers of Courts in Family Proceedings (clauses 6 - 15)

Exclusive jurisdiction of the Court of First Instance and the Family Court

16. Noting that clause 6 of the Bill has set out matters which are proposed to be within the Court of First Instance (“CFI”)’s exclusive jurisdiction, there is an enquiry as to whether the matters set out in Clause 6(1)(a) to (f) follows the existing position or whether anything new has been added to the original matters within CFI’s exclusive jurisdiction. In response, Jud Adm confirmed that nothing new has been added.

17. Members note that while CFI has exclusive jurisdiction over certain family proceedings, according to clause 7(2) of the Bill, FC may also have jurisdiction over a family proceeding that falls within CFI’s exclusive jurisdiction if the proceeding (or application) is transferred by CFI to FC. In response to members’ enquiry about the types of cases which would be transferred, Jud Adm has advised that for cases transferred from CFI to FC, it is generally those cases where CFI has already dealt with the more complex and complicated issues or FC is considered more appropriate for dealing with the cases.

Jurisdictional limits of the Family Court

18. Some members have expressed concern about clause 7(3) of the Bill, which seeks to provide that FC has jurisdiction over a family proceeding even if the amount claimed in the proceeding is more than the limit of DC’s jurisdiction under the District Court Ordinance (Cap. 336). They are worried that such proceedings would impose extra burden on FC’s caseload which is already very heavy. It is suggested that family proceedings involving financial disputes over \$3 million should be handled by CFI.

19. In response, Jud Adm has explained that as CFI is also facing heavy caseload, it would be more cost-effective for all family proceedings including proceedings on financial orders (regardless of the amounts) to generally commence at FC. In response to an enquiry on whether CFI could transfer any family proceeding to FC regardless of the financial amount involved, Jud Adm has advised that CFI might transfer any family proceeding to FC in whole or in part, including those involving less complicated financial disputes or children disputes which have been resolved with mutual agreement. It is believed that by transferring the cases to FC, the time spent and costs borne by parties could be reduced.

Service of notices of proceedings

20. In relation to the proposed court's power to make a declaration of beneficial ownership in favour of or against third party, there is a concern that the service of notice of the proceeding to the third party under clause 11(2) of the Bill is sometimes impractical. Jud Adm advised that if the common mode of service (e.g. by post) is not practicable, FJs may consider alternative methods such as by publishing a notice in the newspaper.

Finality of orders on family proceedings

21. Some members have enquired about the purpose of clause 12 of the Bill, which states that “unless otherwise provided by an enactment, an order of the court in a family proceeding is final and conclusive between the parties”. In response, Jud Adm has advised that clause 12 of the Bill seeks to provide for the finality and conclusiveness between the parties of orders made by FC on family proceedings, which are usually a requisite for recognition and enforcement of a court order in other jurisdictions, including the Mainland courts.

22. Jud Adm has also mentioned clause 20(2) of the Bill which provides that “no appeal lies to the Court of Appeal from an order absolute for the dissolution or nullity of marriage where a party who, having had time and opportunity to appeal from the decree nisi on which the order was founded, has not appealed from that decree.” to illustrate that the Court of Appeal's appellate jurisdiction covers orders on family proceedings made by FC and is not in conflict with clause 12 of the Bill.

23. In response to an enquiry as to how the Bill would facilitate the enforcement of FC's orders concerning cross-border marriages in the Mainland, Jud Adm referred members to the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (Cap. 639) which came into operation on 15 February 2022, to implement 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》⁶ and, in particular, Part 4 of Cap. 639 has provided for the recognition and enforcement in Mainland of Hong Kong judgments given in matrimonial or family cases.

⁶ English translation of the title: 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.

Part 3 of the Bill – Practice and Procedure (clauses 16 - 23)

24. In response to an enquiry on what constitutes the exceptional circumstances in clause 16(c) under which a family proceeding may not start in FC, Jud Adm has advised that it is not referring to any specific circumstance but the clause is reserved for unforeseen circumstances which necessitate the family proceeding to be heard in CFI.

25. Some members have enquired about the reasons why an application in relation to an order or direction referred to in the legislation set out in clause 17 of the Bill must be made to the court that made the order or direction. In response, Jud Adm has explained that if an application is made to amend or repeal an order made by the court, it would be more reasonable and convenient for the family proceeding to be heard in the court which made the order whether the court is CFI or FC. In response to a further enquiry, Jud Adm has advised that this clause would generally apply to orders made before enactment of the FPO as well.

26. Members welcome the proposed setting up of a new Family Masters system under which the Registrar and Masters of FC would be empowered to take up certain case management functions of FJs who could then be relieved to focus their efforts on handling the more complicated cases. However, as clause 20(3) of the Bill seeks to provide that “an appeal lies as of right to FJ in chambers from an order of a Master in family proceedings”, there is an enquiry as to whether, in case an appeal is made against a Master’s order to the FJ who has given directions to the Master concerned, the FJ might appear to be in a position of conflict.

27. In response, Jud Adm has advised that the distribution of functions among FJs, Registrar and Masters would be decided by FPRC and elaborated clearly in FPR. The case applications and matters that can be handled by Masters under FJs’ directions set out in a draft Practice Direction have been circulated to the Hong Kong Bar Association (“HKBA”) and The Law Society of Hong Kong (“the Law Society”) for their views. Jud Adm is of the view that, as the Registrar and Masters would work on the functions assigned to them independently after the directions are given to them, it is not expected that FJs’ function to hear appeal against Masters’ order would conflict with FJs’ function of giving directions to Masters.

Part 4 of the Bill – Family Procedure Rules Committee (clauses 24 - 26)

Composition of the Family Procedure Rules Committee

28. Some members hold the view that, whilst stakeholders from sectors other than the legal profession have been consulted on the Bill, it is important for FPRC to have input from the social welfare sector at an early stage in preparing FPR rather than to consult them after the FPR has been drafted. In this connection, it is suggested that stakeholders from the social welfare sector be represented in FPRC so that the views and opinions of the social welfare sector may be made available for consideration.

29. In response, Jud Adm has advised that FPRC's function is to make FPR for family proceedings and this would require extensive legal knowledge. Furthermore, the proposed FPRC's powers and approach are modelled on those for the High Court Rules Committee ("HCRC") and the District Court Rules Committee ("DCRC"). As such, the proposed FPRC's composition is similar to those of HCRC and DCRC, i.e. to consist of judges and judicial officers and representatives from the two legal professional bodies as well as the Department of Justice.

30. Jud Adm mentioned that it has taken on board the views expressed by members of the Panel on Administration of Justice and Legal Services at its meeting on 2 August 2022 and increased the number of representatives to be nominated by HKBA and the Law Society from one to two for both bodies so that there may be a broader representation with different expertise and experience, such as on mediation matters which form an increasingly important part of the modern day family justice system. Some members have suggested that, even though representatives from social welfare sector may not be appointed to FPRC, considerations may be given to set up sub-committees or working groups on specific issues for various sectors to express views relating to relevant FPR.

Time schedule for the establishment of FPRC

31. Some members have expressed concerns that, FPR to be made by FPRC may be similar to the procedure rules applicable to HC and DC which are voluminous, and it would take a very long time to complete. In response, Jud Adm has advised that as FPR is meant to consolidate the various procedural rules scattered in different Ordinances instead of making new procedural rules from scratch, it should not take unduly long time to complete. However, as extensive public consultation on the draft FPR would be required, subject to the extent of

the views received, it is the Judiciary's target to substantively complete the FPR within one or two years' time after the establishment of FPRC.

32. There is also a concern whether the introduction of any new family-related policies and legislation by the relevant policy bureau, in the short term, would be hindered by the fact that FPR are to roll out in the future. In reply, Jud Adm has advised that the reform to the family justice system would only call for procedural changes but not changes to any substantive policies. It is for the relevant policy bureaux to consider whether changes to substantive policies or new policies on family matters should be introduced at any time. However, if there are policy changes or new policies which entail new or amendments to certain family procedural rules the amendments to FPR or new FPR might be made by FPRC as appropriate.

Criminal liability on non-compliance with FPR relating to specified Ordinance

33. The Legal adviser to the Bills Committee ("LA") has noted that, under clause 26(1)(q) of the Bill, FPR may be made to provide that contravention of any provision of FPR that related to a number of Ordinances ("specified Ordinance") would be an offence. Whilst the maximum penalty under existing legislation on contravention of rules that relate to the specified Ordinance is fine at level 2 and imprisonment for 1 month, it is lower than the proposed maximum penalty under clause 26(2) of the Bill (i.e. fine at level 2 and imprisonment for 2 years). The Administration is requested to explain on the rationale for the proposed increase in the level of maximum penalty (in terms of length of imprisonment).

34. In its reply to LA, Jud Adm has advised that the scope of the current legislative exercise is limited to changes to court procedures only and does not involve any policy change. It is not its intent to adjust the level of maximum penalty (including level of fine and length of imprisonment) for contravening procedural rules relating to family proceedings. Amendment to clause 26(2) of the Bill has been proposed by Jud Adm to rectify this error by restating the penalty level (in terms of length of imprisonment) in line with that currently prescribed in the specified Ordinances. Members have raised no objections to the proposed amendment.

Part 5 of the Bill – Miscellaneous Provisions (clauses 27 - 28)

35. Members note that as the Bill and the related FPR (when they are enacted) would consolidate, unify and streamline practices and processes for proceedings on family and matrimonial matters currently covered by a host of

Ordinances and/or subsidiary legislation, it is necessary to consequentially amend or repeal certain provisions in existing legislation to ensure compatibility and consistency, as well as to remove any overlap with the Bill and FPR as appropriate, as set out in clause 28 and the Schedule to the Bill (“the Schedule”).

Schedule to the Bill

36. Members note that many proposed consequential amendments in the Schedule are for the harmonization of certain defined terms. Besides the use of unified definitions of terms, simplified and self-explanatory terminology are adopted so that their meaning can be self-evident in the relevant context. They have raised no particular concerns about these proposed amendments. As for other proposed consequential and related amendments which include the consolidation of rule-making powers, introduction of unified court procedures, discontinuation of certain court procedures, implementation of the Family Masters system and adaptation of colonial terms, members’ views and concerns are summarized in the ensuing paragraphs.

Part 2 of the Schedule – Amendments to Evidence Ordinance (Cap. 8)

37. In relation to section 7 of the Schedule, members note that the term “matrimonial proceedings” in section 63(1), (2)(b) and (3) of the Evidence Ordinance (Cap. 8) is proposed to be replaced by “matrimonial cause”. As clause 3(1)(b) of the Bill seeks to provide that a family proceeding is a matrimonial cause, there is an enquiry on why the term “matrimonial proceedings” in Cap. 8 is not replaced by “family proceeding”.

38. In response, Jud Adm has explained that “matrimonial proceedings” in Cap. 8 specifically means “proceedings of divorce, nullity of marriage, judicial separation, presumption of death and dissolution of marriage.” It is more appropriate to substitute “matrimonial proceedings” with “matrimonial cause” in the context of Cap.8.

Part 7 of the Schedule - Amendments to Matrimonial Causes Ordinance (Cap. 179) and its Subsidiary Legislation

39. In relation to section 48 of the Schedule, members note that sections 14(1) and 14(2) of the Matrimonial Causes Ordinance (Cap. 179) are proposed to be repealed and substituted by a new section 14(1). In the original section 14(1), where in a petition for divorce one party to the marriage alleges that the other has committed adultery, the party making the allegation shall make the person alleged to have committed adultery with the other party to the marriage a party to the

proceedings unless excused by the court on special grounds from doing so. On the contrary, section 14(1) (as amended by clause 48(2)) seems to discourage the practice of making the third person (in relation to the alleged adultery) as a third party to the proceedings.

40. Some members are of the view that the proposed changes are substantive rather than consequential changes and enquire about the reasons. Jud Adm has replied that under the reformed family procedural regime set up pursuant to recommendations of the Working Party put forward in the Final Report, certain court practices would be discontinued to reduce adversarial excesses. For example, naming of co-respondents where adultery or improper association is alleged would be discouraged to reduce hostility among the parties in family proceedings, certain less desirable use of terms in existing legislation would be replaced by more neutral terms, such as replacing “third party committing adultery with a party to marriage” by “party to the proceedings”, etc. The amendments to sections 14(1) and 14(2) of Cap. 179 are to reflect the Final Report’s recommendations.

41. In relation to section 49(8) of the Schedule, there is an enquiry about the reasons for the proposed replacement of “3 months” in section 15(5) of Cap. 179 by “6 weeks”. In reply, Jud Adm has explained that according to the Matrimonial Causes (Decree Absolute) General Order (Cap. 179C) enacted on 3 July 1973, in relation to any decree nisi granted after the coming into operation of Cap. 179C the period of 3 months specified in section 15(5) of Cap. 179 shall be reduced to 6 weeks and accordingly the decree shall not be made absolute until the expiration of 6 weeks from its grant unless the Court in any particular case fixes a shorter period. Therefore, the amendment is to ensure consistency with the existing law. In response to the Chairman’s enquiry, Jud Adm has confirmed that section 17(2)(a) of Cap. 179 has also been amended along the same line.

Part 8 of the Schedule – Amendments to Marriage Ordinance (Cap. 181)

42. In relation to section 82(3) of the Schedule, in response to the question about why section 18A(2) of the Marriage Ordinance (Cap.181) is proposed to be repealed, Jud Adm has advised that the existing powers of DC in making rules for family proceedings would be consolidated to FPRC for making FPR. In this connection, the existing section 18A(2) would need to be repealed. Jud Adm has added that similar amendments would be made to various other Ordinances in order to consolidate the rule-making powers to FPRC.

Part 9 of the Schedule – Amendments to Married Persons Status Ordinance (Cap. 182)

43. In relation to section 84(2) of the Schedule, members note that “summons or otherwise in a summary way” in section 6(1) of the Married Persons Status Ordinance (Cap. 182) is proposed to be repealed and substituted by “an originating application” and there is an enquiry about the reasons for this change. In reply, Jud Adm has advised that this is also for the consolidation of the rule-making powers to FPRC who would make the relevant FPR to regulate the matter.

Part 11 of the Schedule – Amendments to Maintenance Orders (Reciprocal Enforcement) Ordinance (Cap. 188) and its Subsidiary Legislation

44. In relation to Section 90(4) of the Schedule, there is an enquiry as to why only the word “District” is proposed to be changed to “Family” in the English version of section 9(3)(b) of the Maintenance Orders (Reciprocal Enforcement) Ordinance (Cap. 188) whilst the whole section of its Chinese text needs to be replaced. The Administration has explained that this is owing to the difference in English and Chinese drafting and the need to make the latter more fluent in style.

45. In relation to section 90(2) of the Schedule, some members have enquired about why it is proposed to make mandatory that, under section 9(2) of Cap. 188, notice of the change of the person’s address must be made within 14 days of the change. There is also a question on why the level of fine for the relevant offence is proposed to be adjusted from level 1 to level 2. In response, Jud Adm has explained that the changes are to align with similar provisions in other Ordinances regarding the notice period on change of a person’s address and penalty for non-compliance with such requirement.

Part 12 of the Schedule – Amendments to Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189) and its Subsidiary Legislation

46. In relation to section 102 of the Schedule, there is an enquiry about the reasons behind repealing section 4 of the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189). In reply, Jud Adm has explained that as clauses 6 to 7 of the Bill have already sought to provide for matters within CFI’s exclusive jurisdiction and FC’s jurisdiction respectively, and clause 8 of the Bill has sought to provide for the transfer of proceedings between CFI and FC, section 4 of Cap. 189 would overlap with those clauses and hence needed to be repealed.

Consequential amendments for the consolidation of rule-making powers

47. Noting that quite a number of proposed consequential or related amendments in the Schedule are for the consolidation of the rule-making powers to FPRC and new rules to be replaced by FPR, e.g. the proposed repealing of section 18A(2) of Cap. 181, some members have expressed worries about the impact of such amendments on users of the family justice system.

48. In reply, Jud Adm has advised that, according to clause 1(2) of the Bill, a number of existing subsidiary legislation (which are family-related procedural rules) proposed to be repealed under clause 28 of the Bill would not come into operation until the day to be appointed by CJ by notice published in the Gazette. As most clauses that seek to introduce the consequential amendments to family-related legislation would only commence operation at a later stage, relevant provisions proposed to be repealed by the Bill would remain in force until a future day to be appointed by CJ.

49. Notwithstanding this, some members are concerned that, during the interim period before all clauses of the Bill come into full operation, members of the public may be confused about the applicability of existing procedural rules and subsidiary legislation to be amended or repealed by way of consequential amendments. Jud Adm is urged to step up publicity with respect to legislation that would remain in force before the consequential amendments take effect, in particular to legal practitioners.

Part 13 of the Schedule – Amendments to Matrimonial Proceedings and Property Ordinance (Cap. 192)

50. In response to an enquiry as to why section 28AA(9) of Cap. 192 is proposed to be repealed by section 121 of the Schedule, Jud Adm has explained that this section is about the appeal mechanism for a judgment debtor who is aggrieved by a requirement under section 28AA(8). To avoid overlapping with the jurisdictions of clauses 19 and 20 of the Bill which respectively seek to deal with appeals from CFI and FC, 28AA(9) of Cap. 192 needed to be repealed.

51. In relation to section 122 of the Schedule, members note that section 28AB(9) of Cap. 192 is proposed to be amended to include the condition “and the court is satisfied that the summons, affidavit and notice of the adjourned hearing have been duly served on the judgment debtor”. In reply to members’ enquiry, Jud Adm has advised that it is to ensure that judgment debtor is fully aware of the adjourned hearing. However, as both members and deputations have mentioned about the difficulty in the service of documents which often cause disputes among

divorcees, Jud Adm is asked to simplify the requirements for effecting service of documents.

52. Jud Adm advised that in the event that an acknowledgement of service is impractical, e.g. parties intentionally hiding or changing address, FJ may allow the service of documents by substituted means, e.g. servicing to another address or by electronic means. Parties may also consider using bailiff services or even publishing a notice in the newspaper. Jud Adm would step up promotion about bailiff services to divorcees in family proceedings.

Part 16 of the Schedule – Amendments to Parent and Child Ordinance (Cap. 429)

53. Amendments to section 149 and addition of section 150A of the Schedule are proposed by Jud Adm to replace Chinese text of the colonial terms used before the handover of Hong Kong in 1997, i.e. “地方法院的司法常務官” by “區域法院司法常務官” in sections 6(4) and 12(9) of the Parent and Child Ordinance (Cap. 429), and introduce corresponding amendments in the English text to ensure consistency. Members have raised no objections to the proposed amendments.

Part 17 of the Schedule – Amendments to Inheritance (Provision for Family and Dependants) Ordinance (Cap. 481)

54. In relation to section 154(1) of the Schedule, some members have enquired about the rationale for amending paragraph (b) of the definition of “child” under section 2(1) of the Inheritance (Provision for Family and Dependants) Ordinance (Cap. 481), the original intent of the definition and whether it has been preserved in the English and Chinese texts of paragraph (b) of the definition of “child” as amended by section 154(1) of the Schedule. Jud Adm is requested to provide the authoritative sources including statute law, case law, legal references (e.g. Westlaw), etc. which provided the authority from which the wording of paragraph (b) of the definition of “child” (as amended by section 154(1) of the Schedule) could be derived.

55. In its reply to the Bills Committee [[LC Paper No. CB\(4\)500/2023\(03\)](#)], Jud Adm has advised that amendment to the definition of “child” in Cap. 481 is proposed to update the phrase “*a child en ventre sa mère at the death of the deceased*” with “*a child who was in the womb of his or her mother at the death of the deceased and born posthumously*” to set out the relevant legal concept (i.e. the requisite condition that the child is subsequently born alive) as provided for in the original legislation in clear and easy to understand wording for the benefit of court users. In sum, the definition of “child” with the updated phrase retains the original intent in the repealed Deceased’s Family Maintenance Ordinance (Cap. 129), which was subsequently replaced by Cap. 481, to include a child who

is *en ventre sa mère* at the time of their parent's death to be granted the right to apply for reasonable financial provision from the estate of the deceased. In conveying the legal concept of "*en ventre sa mère*" in a more comprehensible and accurate format, the updated phrase follows the extensive pool of case law and relevant reference materials such as the Annotated Ordinances of Hong Kong and preserves its original intended meaning.

56. There is also an enquiry on whether a child who is in the womb of his or her mother at her death but is given birth through cesarean delivery falls into the definition of "born posthumously" set out in paragraph (b) of the definition of "child" as amended by section 154(1) of the Schedule.

57. In Jud Adm's reply to the Bills Committee mentioned above, Jud Adm has advised that, the relevant legal concept of "*en ventre sa mère*" refers to a child who was in the womb of his or her mother at the death of the deceased and born posthumously. The legal concept applies to enable a posthumous child (i.e. a child conceived before the death of the deceased and survived after the death of the deceased) to apply for financial provisions under Cap. 481 without any requirements as to the specific procedures by which the child was delivered.

Related policy issues

Use of technology in courts

58. Jud Adm is urged to accelerate its efforts to promote the use of technology, such as chatbot utilizing artificial intelligence technology to answer court users' questions about issues relating to family and matrimonial proceedings. It is also suggested that Jud Adm should employ big data analytics to collate, examine and analyze the data from FC to discover the trends and patterns of family proceedings to facilitate classification and categorization of family proceedings for better use of resources.

59. Jud Adm has advised that the Judiciary has been active in promoting the use of information technology at various courts, e.g. remote hearings and electronic filing. As large-scale data collation and analytics would require much public resources, Jud Adm would only consider collating and conducting business analytics which are relevant and important to court operation and resource planning. On the other hand, as the computer system of FC would need to be refined because of the FPR, Jud Adm would take the opportunities to see if more key relevant information could be captured.

Public consultation on the Bill and Family Procedure Rules

60. There is a view that family justice system is not just about procedural rules but touches upon social issues of wide public concerns such as divorces, children's welfare, difficulties in collecting maintenance payments, etc. Some members have enquired whether Jud Adm has consulted stakeholders other than the legal professionals who are concerned about these issues, such as non-government organizations ("NGOs") in the social welfare sector, family mediators, users of the family justice system, etc.

61. In response, Jud Adm has advised that during its public consultation on the draft Bill, it has consulted NGOs in the social welfare sector, e.g. Hong Kong Committee on Children's Rights and The Hong Kong Family Law Association, etc. As most of the opinions collected are related to specific family policies, e.g. child custody and maintenance payments, they have been referred to the relevant policy bureaux to follow up. When FPR are made by FPRC, public consultation on the draft FPR would be done as early as possible. Furthermore, the Family Proceedings Court Users' Committee, whose membership included representatives from the Social Welfare Department and Legal Aid Department, has been relaying stakeholders' views on the operation of FC to the Judiciary for consideration.

62. There is a question whether it would really help FC users just by simplifying the court-related procedures since FPR would be difficult to understand for the general public, especially for the unrepresented litigants. There is a suggestion that helpdesk services similar to those provided in the Small Claims Tribunal ("SCT"), which are much welcomed by SCT users, should be provided to FC users.

63. In reply, Jud Adm has advised that it would be providing administrative support for the establishment and work of FPRC and promotion of the FPR, especially to the unrepresented litigants. Among other things, it would explore setting up helpdesk services in FC to introduce the new FPR by making reference to the setup of such services in SCT. Jud Adm assured members that it would promote understanding of the overall procedures among the legal industry and the public once the FPR was passed.

Mediation services

64. Noting that the Judiciary has been promoting the use of mediation as an alternative dispute resolution on family matters for more than 10 years, there is an enquiry about public's acceptance of mediation services in family and matrimonial disputes. Jud Adm has replied that the Working Party on Mediation

in the Judiciary has been facilitating and advocating the use of mediation at all levels of courts in civil disputes. However, as mediation is not necessarily suitable for all cases, it is for parties to adopt on a voluntary basis and the Integrated Mediation Office (“IMO”) under the Judiciary would assist parties to understand the nature of mediation and how it may help the litigants resolve their disputes. IMO has been answering enquiries and providing information on court-related mediation on all types of civil cases, including proceedings on matrimonial and family matters.

65. Jud Adm has advised that there are also some NGOs providing mediation services for those who had financial difficulties. In view of the increasing demand for mediation in family proceedings and the benefits that mediation brought to all concerned, Jud Adm is examining whether some limited financial assistance could be provided to needy parties undergoing mediation for selected FC cases. The Jud Adm has also been expanding the pilot mediation schemes for family and matrimonial proceedings as appropriate.

Maintenance payments

66. Members and deputations have called for the establishment of a publicly funded maintenance board to assist those maintenance payees having difficulties in collecting the maintenance payments, especially those in the low-income group, such as through paying maintenance payments to them in advance using public funding and empowering it to collect the payments from the payers on behalf of the payees.

67. Jud Adm has explained that FPB and FPR seek to give effect to procedural reforms for the family justice system. There is no intention to introduce any changes to the substantive law or policy relating to family and matrimonial matters. The Administration has also advised that the Government had been adopting various measures for enhancing the system of effective enforcement of maintenance orders and collection of maintenance payments, including imposing surcharge on defaulting maintenance payers and stepping up publicity and public education etc. Regarding the suggestion of setting up a publicly funded maintenance board, experience in other jurisdictions indicated that there are other problems, such as long processing time with only few cases handled and high administrative costs, etc. The Administration is also aware of the controversies involved, including concerns on the rights of individuals and privacy if certain restrictions are imposed on defaulting maintenance payers. The Administration will continue to keep the system of collection of maintenance payments and enforcement of maintenance orders under review.

Proposed amendments to the Bill

68. The Administration will propose amendments to clause 26(2) of the Bill and section 149 of the Schedule to the Bill, as well as the addition of section 150A to that Schedule, the details of which are set out in paragraphs 34 and 53 above. Members of the Bills Committee have noted the draft amendments is in **Appendix 3** and have not raised any queries on the proposed amendments. The Bills Committee will not propose any amendments to the Bill.

Resumption of Second Reading debate on the Bill

69. The Bills Committee has completed scrutiny of the Bill and raised no objection to the resumption of the Second Reading debate on the Bill at the Council meeting on 21 June 2023.

Consultation with the House Committee

70. The Bills Committee reported its deliberation to the House Committee on 9 June 2023.

Council Business Division 4
Legislative Council Secretariat
16 June 2023

Bills Committee on Family Procedure Bill

Membership list

Chairman	Hon Holden CHOW Ho-ding
Members	Hon Tommy CHEUNG Yu-yan, GBM, GBS, JP Hon Elizabeth QUAT, BBS, JP Hon YUNG Hoi-yan, JP Hon Doreen KONG Yuk-foon Dr Hon TIK Chi-yuen, SBS, JP Hon LAM San-keung, JP Hon TANG Fei, MH (Total : 8 members)
Clerk	Mr Lemuel WOO
Legal Adviser	Mr Mark LAM

Bills Committee on Family Procedure Bill

**List of deputations which have attended meetings of the Bills Committee
and/or submitted views to the Bills Committee**

1. Ms YEN Kwun-wing Cynthia
2. Mr Ian CHU
3. Ms Rowena NG
Development Officer, Hong Kong Federation of Women's Centres
4. Miss CHAN Hiu-ying
Member of Divorce Support Advocacy Group,
Hong Kong Federation of Women's Centres
5. Mr LIU Shan
6. Ms HO Man-yee Esther
7. Mr Jim HOE
Project Manager (Family and Community Service)
The Hong Kong Council of Social Service
8. Ms Winnie CHOW
Member of the Family Law Committee
The Law Society of Hong Kong
9. Ms Lisa WONG
Member of the Family Law Committee
The Law Society of Hong Kong
10. Ms Kally LAM
Assistant Director, Practitioners Affairs
The Law Society of Hong Kong
11. Mr Martin WONG
Hong Kong Bar Association
12. Mr Robin EGERTON
Hong Kong Bar Association
13. A member from the general public

Appendix 3

Family Procedure Bill

Committee Stage

Amendments to be moved by the Chief Secretary for Administration

<u>Clause</u>	<u>Amendment Proposed</u>
26	In the proposed section 26(2), by deleting “2 years” and substituting “one month”.
Schedule, section 149	By renumbering the section as section 149(2).
Schedule, section 149	By adding— “(1) Section 6(4)— Repeal “court shall” Substitute “High Court or the Registrar of the District Court must”.’.”.
Schedule	By adding— “150A. Section 12 amended (parental orders in favour of gamete donors) Section 12(9)— Repeal “court shall” Substitute “High Court or the Registrar of the District Court must”.’.”.