

**CONSULTATION PAPER ON
THE MAINLAND JUDGMENTS IN MATRIMONIAL AND FAMILY CASES
(RECIPROCAL RECOGNITION AND ENFORCEMENT) BILL AND
THE MAINLAND JUDGMENTS IN MATRIMONIAL AND FAMILY CASES
(RECIPROCAL RECOGNITION AND ENFORCEMENT) RULES**

SUBMISSIONS

Introduction

1. On 8 February 2019, the Department of Justice ("**DOJ**") released a consultation paper on the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Bill ("**draft Bill**") and the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Rules ("**draft Rules**") for public views.
2. We note that:
 - (i) the draft Bill and the draft Rules are prepared for the implementation of 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* signed by the Government of Hong Kong SAR and the Supreme People's Court on 20 June 2017. ("**Arrangement**")
 - (ii) the draft Bill mainly seeks to establish mechanisms in the Hong Kong for:
 - registration of specified orders contained in a Mainland judgment given in a matrimonial or family case;
 - application for recognition in Hong Kong of a Mainland divorce certificate; and
 - certification by a Hong Kong court of a Hong Kong judgment given in a

matrimonial or family case for the purpose of seeking recognition and enforcement of the judgment in the Mainland.

(iii) the draft Rules lay down the practice and procedures relating to the applications made to a Hong Kong court under the Bill, for example, the requirements for affidavit in support of a registration application.

3. We have reviewed the draft Bill and the draft Rules and have the following comments.

Comments

4. We note that Clause 9 of the draft Bill introduces a time limitation for registration of specified orders in Mainland judgment within 2 years. We wish to point out that this time limitation of 2 years has not been mentioned in the Arrangement. The time limitation makes the operation of enforcement of court orders inflexible and unrealistic.

5. There are various legitimate reasons for an order not been able or required to be registered. We can easily identify some common scenarios where the care-related order could be barred from registration¹, as examples:

(i) the non-compliance of the care-related order first occurred while the whereabouts of the child/the defaulting party are unknown; after such non-compliance first occurred more than 2 years, it is discovered that the child/the defaulting party are in HKSAR; the party to the child-care order cannot apply for registration; or

(ii) the non-compliance of the care-related order first occurred in the Mainland and there was subsequent compliance. After 5 years of the non-compliance first occurred, the child moves to Hong Kong and the non-compliance occurred again. The party to the child-care order cannot apply for registration.

¹ The current drafting of Clause 9(1) of the draft Bill is:

"A registration application must not seek to register a care-related order if -

(a) there has been non-compliance with the order; but

(b) the application is made 2 years after the date on which the non-compliance first occurred."

6. We would ask the DOJ to consider the practical problems that the time limitation could bring about and find way to address the problems.
7. Consideration should also be given to whether the Hong Kong court should be given a discretionary power to extend such time limit.
8. We have no comments on the draft Rules.

Implementation

9. We have been engaged with the DOJ on the need to establish a mechanism for reciprocal recognition and enforcement of Judgments on Matrimonial and Related Matters since 2011.
10. We are keen to see that the draft Bill and the draft Rules could be introduced into the Legislative Council as soon as possible.

The Law Society of Hong Kong
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