



REVIEW OF FAMILY PROCEDURE RULES 2014

SUBMISSIONS

Background

1. In February 2014, the Chief Justice's Working Party on Family Procedure Rules ("the Working Party") published an Interim Report and Consultative Paper on Review of Family Procedure Rules ("the Consultative Paper"). The Consultative Paper contains 136 proposals on a major reform of the court procedures for Hong Kong's family justice system.
2. The Law Society has reviewed the Consultative Paper and has the following comments. Where necessary and/or relevant, the abbreviations used in the Submission below shall follow those appearing in the Consultative Paper.

Comments on the individual proposals

Proposals	Law Society's Response
<i>Proposal 1</i> Hong Kong's family justice system should adopt a single set of self-contained procedural rules to implement the reforms ("the New Code").	Agree.
<i>Proposal 2</i> A new Family Procedure Rules Committee should be set up by way of primary legislation as the single rule-making authority for making the New	Agree.

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<p>Code and any subsequent amendments. The proposed Rules Committee should model on the powers, composition and approach for the two rules committees established for the High Court and the District Court respectively (namely, the High Court Rules Committee and the District Court Rules Committee) .</p>	
<p><i>Proposal 3</i></p> <p>Where it is necessary to implement any proposed reforms, consequential amendments should be introduced to the relevant principal Ordinances and/or subsidiary legislation.</p>	<p>Agree.</p>
<p><i>Proposal 4</i></p> <p>Subject to the reservation about the use of PDs as discussed herein, the FPR 2010 should be adopted as the broad, basic framework for the New Code.</p>	<p>Agree.</p>
<p><i>Proposal 5</i></p> <p>The general provisions in the New Code should be modelled on the equivalents in the RHC or incorporate the relevant provisions of the RHC, as the case may be, with modifications as appropriate for family and matrimonial matters.</p>	<p>Agree.</p>
<p><i>Proposal 6</i></p> <p>A general fall-back provision on the applicable rules in the RHC should be created to fill any unforeseen procedural gap left in the New Code.</p>	<p>Agree.</p>
<p><i>Proposal 7</i></p> <p>All the provisions in the RHC, as set out above, which are of general applicability, should be adopted into the New Code, with modifications appropriate for family and matrimonial matters.</p>	<p>Agree.</p>

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<p><i>Proposal 8</i></p> <p>The relevant applicable provisions in the FPR 2010 and those necessary PDs should be selected for adoption with necessary modifications as rules in the New Code.</p>	<p>Agree.</p>
<p><i>Proposal 9</i></p> <p>The New Code should apply to all family and matrimonial proceedings as defined, whether they are in the High Court or the Family Court.</p>	<p>Agree.</p>
<p><i>Proposal 10</i></p> <p>The statutory definition of “matrimonial cause” in the MCO should be retained and incorporated into the New Code.</p> <p>It is not necessary to give a definition of “matrimonial proceedings” in the New Code.</p> <p>The term “family proceedings” should be comprehensive and list out all family-related proceedings to which the New Code is to apply, whether such proceedings are in the High Court or in the Family Court.</p>	<p>Agree.</p>
<p><i>Proposal 11</i></p> <p>There should be a clear definition of “court” and of “judge” in the New Code</p>	<p>Agree.</p>
<p><i>Proposal 12</i></p> <p>The powers of judges to perform functions under the New Code should be spelt out.</p>	<p>Agree.</p>
<p><i>Proposal 13</i></p> <p>There should be a definition of “Family Court” in the New Code, setting out its jurisdiction, including the jurisdiction in children matters, and</p>	<p>Agree.</p>

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<p>stating there are no monetary limits in any financial applications to which the New Code is to apply.</p>	
<p><i>Proposal 14</i></p> <p>A list of matters assigned to be dealt with by the Family Court should also be set out in the New Code.</p>	<p>Agree.</p>
<p><i>Proposal 15</i></p> <p>The New Code should set out clearly the matters over which the Court of First Instance of the High Court has exclusive jurisdiction.</p>	<p>Agree.</p>
<p><i>Proposal 16</i></p> <p>The “inherent jurisdiction” of the Court of First Instance of the High Court in children matters should be defined in the New Code, following the FPR 2010, and the provisions in PD 12D therein should be adopted with necessary modifications, in particular the transfer of certain matters to be dealt with by the Family Court.</p>	<ol style="list-style-type: none"> 1. Wardship is a highly specialized children-related matter. It is often sought in cases of emergency, e.g. child abduction. The judge dealing with wardship applications should have not only expert knowledge in Family Law but also a broad experience in wardship matters. 2. It is submitted that it is undesirable to have two judges to deal with matters of the same child – one dealing with wardship and one dealing other child-related matters in the Family Courts. The Law Society suggests the Judiciary to arrange and to

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	<p>designate a Judge in the Court of First Instance to be the Wardship Judge to handle the wardship matters as well as other issues relating to the child. Therefore, CDR should be expanded to the Court of First Instance.</p> <p>3. The suggested continuation of transfer of proceedings between High Court and the Family Court could cause confusion to the court users; it could also be costly and time-consuming on the part of the Judiciary and also the parties involved.</p> <p>See also the Response to Proposal 19 below.</p>
<p><i>Proposal 17</i></p> <p>Provisions expressly setting out the underlying objectives of the family justice system, similar to those in Order 1A of the RHC, should be adopted in the New Code.</p>	<p>Agree.</p>
<p><i>Proposal 18</i></p> <p>The New Code should require the court to have regard to welfare issues when applying the underlying objectives for family procedure.</p>	<p>Agree.</p>
<p><i>Proposal 19</i></p> <p>The New Code should have provisions setting out the court's case management powers similar to those under Order 1B of the RHC.</p>	<p>Agree.</p>

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<p><i>Proposal 20</i></p> <p>Express provisions modelled on Part 3 of the FPR 2010 should be adopted into the New Code with necessary modifications to enhance the court's powers in dealing with alternative dispute resolution.</p>	<p>Agree, but suggests that the ADR should not be restricted to mediation and should include other dispute resolution manner, e.g. collaborative practice.</p> <p>See also the Response to Proposal 74 below.</p>
<p><i>Proposal 21</i></p> <p>Considerations should be given to see if the mediation procedure as now stipulated in PD 15.10 needs any further enhancement and if so, how.</p>	<p>Agree. This should include other forms of ADR.</p>
<p><i>Proposal 22</i></p> <p>Readers are asked to express their views on if [sic] a pre-action protocol for mediation for family and matrimonial disputes is suitable in local circumstances.</p>	<p>It is not necessary to have a mandatory <i>pre-action</i> protocol on mediation in family matters, but the Law Society supports the suggestion to have a protocol to run <i>in parallel</i> to the matrimonial proceedings. This proposed parallel protocol should ease off concerns on front loading of costs and apparently delaying the parties' access to the courts, by reasons of the mandatory engagement in the pre-action protocol.</p> <p>This parallel protocol should not be compulsory.</p>
<p><i>Proposal 23</i></p> <p>The New Code should set out clearly the relevant</p>	<p>Agree.</p>

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court(s) for commencing the matrimonial causes and each type of the family proceedings.	
<p><i>Proposal 24</i></p> <p>The New Code should provide that matrimonial causes and family proceedings should generally begin in the Family Court unless the High Court has exclusive jurisdiction or in exceptional circumstances; and the New Code should further expressly spell out the exceptional circumstances where proceedings may begin in the High Court.</p>	Agree.
<p><i>Proposal 25</i></p> <p>The New Code should adopt a simple, focused and efficient practice and procedure for the transfer and/or retransfer of all types of transferable proceedings between the Family Court and the High Court (with empowering provisions added to the individual primary legislation if required), to be modelled on the relevant provisions in the FPR 2010 and augmented by PDs modelled on the 2008 Order and the 2008 Direction, with modifications to suit local circumstances.</p>	Agree.
<p><i>Proposal 26</i></p> <p>Originating application should be adopted as the unified mode of originating process for matrimonial causes and all family proceedings, accompanied by different statutory forms created specifically for the proceedings concerned.</p>	Agree.
<p><i>Proposal 27</i></p> <p>In the originating application, the nomenclature for the parties should be unified so that the applicant should be called "Applicant" and the respondent "Respondent", save for joint</p>	Agree.

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<p>application for divorce where the parties should be called "1st Applicant" and "2nd Applicant".</p>	
<p>Proposal 28</p> <p>Generally, the present mode of service and acknowledgement of service in the MCR should be retained but refined and put in one place in the New Code.</p>	<p>Agree, and see Response to proposal 29 below.</p>
<p>Proposal 29</p> <p>Readers are invited to express their views on whether the provision for service in matrimonial causes by ordinary post should be replaced by registered post for the alignment of the MCR, the RHC and the RDC, and to do away with the need for a deemed service order in cases where a signed acknowledgment of service by the respondent has not been returned to the Registry.</p>	<ol style="list-style-type: none"> 1. Agreed that the service by ordinary post should be replaced by service by registered post, but 2. deemed service is still required, where the circumstances warrant e.g. a signed acknowledgement is not returned.
<p>Proposal 30</p> <p>Views are invited on whether in the New Code, documents other than the originating process and judgment summons should, as a matter of principle, be permitted to be served by fax or other electronic communication in line with the FPR 2010.</p>	<p>Agree.</p>
<p>Proposal 31</p> <p>The provision in Rule 109(1) of the MCR on service outside the jurisdiction without leave should be retained in the New Code. Order 11 of the RHC should also be incorporated into the New Code for the manner of service of documents outside the jurisdiction.</p>	<p>Agree.</p>

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<p><i>Proposal 32</i></p> <p>The New Code should follow the FPR 2010 by expressly providing that all documents in matrimonial causes and family proceedings may be served outside the jurisdiction without leave.</p>	<p>Agree.</p>
<p><i>Proposal 33</i></p> <p>For any interlocutory application in extant proceedings for matrimonial causes and family proceedings, such an application should be made by summons.</p>	<p>Agree.</p>
<p><i>Proposal 34</i></p> <p>It is not necessary to make separate provisions in the procedures governing matrimonial causes for matters that are of general application, which will be covered by the relevant provisions in the New Code.</p>	<p>Agree.</p>
<p><i>Proposal 35</i></p> <p>The New Code should not include any specific provision to enable the parties to a marriage to seek the court's opinion on an agreement or proposed arrangements before or after the presentation of a petition, except in the context of a FDR or CDR hearing.</p>	<p>Agree.</p>
<p><i>Proposal 36</i></p> <p>The application and scope of PD 15.3 should be reviewed and, if it is to be retained, incorporated into the New Code.</p>	<p>The Law Society considered that PD15.3¹ should not be retained.</p>

¹ This relates to the requirement for a legally represented applicant to file a statement certifying whether the legal representative has discussed the possibility of reconciliation.

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<p><i>Proposal 37</i></p> <p>The New Code should discourage the naming of co-respondents similar to that of PD 7A in the FPR 2010.</p>	<p>Agree.</p>
<p><i>Proposal 38</i></p> <p>The New Code should follow the FPR 2010 so that what hitherto has been regarded as a special procedure becomes the norm to which the rules primarily apply and defended cases are treated as the exception. The current special procedure should also be extended to nullity proceedings.</p>	<p>Agree.</p>
<p><i>Proposal 39</i></p> <p>The New Code should include those procedural matters which are currently set out in PD 15.4, including the Registrar's directions for trial in the Special Procedure List, attendance of the parties, pronouncement of the decree in open court and subsequent procedures.</p>	<p>Agree.</p>
<p><i>Proposal 40</i></p> <p>Similar to Rule 7.26 of the FPR 2010, the New Code should provide for medical examination in proceedings for nullity, which places the onus of determining whether medical examiners should be appointed on the court, without the need to make any application. The court must only appoint examiners where it is necessary for the proper disposal of the case. Provisions similar to PD 7B should also be supplemented.</p>	<p>Agree.</p>
<p><i>Proposal 41</i></p> <p>The provisions of the New Code relating to rescission should be grouped together and parties seeking rescission of all matrimonial decrees</p>	<p>Agree.</p>

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<p>should do so by application made in accordance with a common procedure.</p>	
<p><i>Proposal 42</i></p> <p>The New Code should include provisions similar to Rules 7.32 and 7.33 of the FPR 2010 on making a decree absolute save that the application must be made to a judge including a district judge.</p>	<p>Agree.</p>
<p><i>Proposal 43</i></p> <p>The New Code should include provisions to record the precise time when the decree nisi is made absolute.</p>	<p>Agree.</p>
<p><i>Proposal 44</i></p> <p>Considerations should be given to see (a) if and how the structure of the procedural rules of matrimonial causes in the New Code should be modelled on Part 7 of the FPR 2010; and (b) if and how the relevant provisions in Part 7 of the FPR 2010 should best be adopted with necessary modifications.</p>	<p>Agree.</p>
<p><i>Proposal 45</i></p> <p>The New Code should have provisions to provide for the practice and procedure for an application for a financial order that is made in matrimonial causes and family proceedings.</p>	<p>Agree.</p>
<p><i>Proposal 46</i></p> <p>The New Code should clearly state that it does apply to financial applications made under the MPSO whether or not such applications are made within extant matrimonial proceedings or family proceedings.</p>	<p>Agree.</p>

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<p><i>Proposal 47</i></p> <p>The New Code should define “financial order” to cover all categories of financial order for which application may be made in matrimonial causes and all family proceedings to which the New Code is to apply, whether in the High Court or the Family Court, together with definitions for related terminologies.</p>	<p>Agree.</p>
<p><i>Proposal 48</i></p> <p>The New Code should adopt a similar general approach as that in the FPR 2010 for the procedures for applications for a financial order and follow as far as possible the procedural steps with all necessary modifications to suit local circumstances.</p>	<p>Agree.</p>
<p><i>Proposal 49</i></p> <p>The New Code should clearly state the court in which the application should be commenced; and should provide for the practice and procedure to apply for transfer and re-transfer.</p>	<p>Agree, without prejudice to the Response to Proposal 16 above.</p>
<p><i>Proposal 50</i></p> <p>The New Code should provide that where there are family proceedings extant between the parties, a financial order should be applied for within the extant family proceedings; if there are no extant family proceedings, a financial order (if available) should in general be commenced by way of separate family proceedings.</p>	<p>Agree.</p>
<p><i>Proposal 51</i></p> <p>The New Code should provide for standardized originating applications, summonses, forms and affidavits, together with the evidence that is to be</p>	<p>Agree.</p>

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<p>provided for each type or form of financial order sought. The originating applications, summonses or forms should require that the orders applied for be stated with particularity unless the applicant provides reasonable grounds for being unable to do so. Particulars of orders applied for, including any changes thereto, ought to be stated by way of amendment as soon as practicable. Where an application is made before filing Form E, there should be written evidence in support explaining why the order is necessary and giving up-to-date information about the applicant's financial circumstances.</p>	
<p><i>Proposal 52</i></p> <p>The New Code should clearly state the default mode of hearing is in Chambers (not open to the public).</p>	<p>Agree.</p> <p>See also Response to Proposal 120 below.</p>
<p><i>Proposal 53</i></p> <p>The New Code should provide for service upon third-parties where a variation of settlement order has been applied for.</p>	<p>Agree.</p>
<p><i>Proposal 54</i></p> <p>The New Code should provide for service upon alleged recipients where an avoidance of disposition order has been applied for.</p>	<p>Agree.</p>
<p><i>Proposal 55</i></p> <p>The New Code should provide for service upon the registered owner and mortgagee where an application for financial order includes an application relating to landed property, or where a notice of ancillary relief has been lodged with the Land Registry for registration against landed</p>	<p>Agree.</p>

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property.	
<p>Proposal 56</p> <p>The New Code should set out the duties of the parties and those of their legal advisors to constantly monitor the progress of matrimonial proceedings and family proceedings. In particular, a party should be under a duty to forthwith notify the other parties and the court as soon as that party becomes aware of other proceedings that arise from, may affect or are connected with the matrimonial proceedings and family proceedings.</p>	<p>The Law Society takes notes of the case of <i>TL v ML</i> [2006] 1 FLR 1263 and supports proposals 56 to 59 as a revamp.</p>
<p>Proposal 57</p> <p>The New Code should expressly provide that as far as possible separate civil proceedings should be avoided.</p>	<p>See Response to Proposal 56.</p>
<p>Proposal 58</p> <p>The New Code should provide that in the event any party becomes aware of any issue or dispute arising involving third-parties, including where ownership or beneficial ownership of properties and assets is disputed or where legal rights and entitlements are disputed, the party should as soon as practicable make an application for appropriate directions to be given.</p> <p>The New Code should provide that third-parties are permitted to make an application for appropriate directions and for the determination of disputed issues.</p>	<p>See Response to Proposal 56.</p>
<p>Proposal 59</p> <p>The New Code should provide for the general directions that the court may consider giving – including for the joinder of third-parties, the</p>	<p>See Response to Proposal 56.</p>

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<p>pleading of issues by way of points of claim and points of defence, the filing of separate witness statements, the hearing of the disputed issues separately by way of preliminary issue, the stay of other extant proceedings pending the relevant matrimonial proceedings or family proceedings, and other directions as the court may consider appropriate in the circumstances.</p>	
<p>Proposal 60</p> <p>The rules in the RHC in relation to joinder of third-parties should be included in the New Code. Jurisdiction as to making an application for declaration of beneficial ownership against a third-party should also be provided for.</p>	<p>Agree.</p>
<p>Proposal 61</p> <p>The New Code should largely adopt and incorporate the FDR procedure and PD 15.11.</p> <p>Abandonment of the former practice of 'affidavit of means' should be clarified and reference to the same deleted from the rules and PDs.</p>	<p>Agree.</p>
<p>Proposal 62</p> <p>The New Code should provide that the FDR procedure and PD 15.11 shall also apply to applications for a variation order under section 11 of the MPPO.</p>	<p>Agree.</p>
<p>Proposal 63</p> <p>The New Code should incorporate provisions catering for the situation where parties have been unavoidably prevented from including documents with the Form E, for the provision of documents at the earliest opportunity together with a written explanation for the failure to do so earlier.</p>	<p>It is not uncommon for the parties to the proceedings to have failed to disclose documents as specified in Form E. The Law Society supports the incorporation of Rule 9.14(3) of</p>

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	the FPR 2010 into the New Code and shall await any suggestion by the Rules Committee, if any, on the format to be adopted for the production of the documents.
<p><i>Proposal 64</i></p> <p>The New Code should provide for and deal with costs estimates in a comprehensive and consolidated manner, incorporating paragraph 10 of PD 15.11, PD 15.9, paragraphs 26 and 27 of PD 15.12 and Rule 9.27 of the FPR 2010.</p> <p>Costs estimates should be prepared and provided prior to the substantive hearings (in particular the FDR hearing and the financial order hearing) and should also be provided together with open proposals.</p>	Agree.
<p><i>Proposal 65</i></p> <p>The New Code should specifically stipulate that Order 22 of the RHC shall not apply in family proceedings.</p>	Agree and welcome the suggestion that the Calderbank offers continue to apply in lieu of Order 22 provisions and sanctions.
<p><i>Proposal 66</i></p> <p>Where proceedings have been transferred to the High Court, the New Code should provide for the possible partial re-transfer from the High Court to the Family Court for the conduct of the FDR hearing, either upon application or of the court's own motion.</p>	Agree, and is without prejudice to the Response to Proposal 16 above.
<p><i>Proposal 67</i></p> <p>The New Code should have a new Part to provide</p>	Agree.

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<p>for the practice and procedure for proceedings brought under the I(PFD)O, which should also be included within the meaning of "Family Proceedings".</p> <p>This should include provisions providing for the practice and procedure relating to commencement of proceedings in the Family Court, the filing of evidence and documents in support, and other procedural matters, including interlocutory applications, transfer and re-transfer.</p>	
<p><i>Proposal 68</i></p> <p>The New Code should stipulate the parties to be named in the originating application, including the personal representatives, executors (if any), all beneficiaries (whether testate, intestate or upon partial intestacy) and other persons affected by the application.</p>	<p>Agree.</p>
<p><i>Proposal 69</i></p> <p>Where there is an application for an order to be made under section 11 of the I(PFD)O, the joint tenant should be joined as a party.</p>	<p>Agree.</p>
<p><i>Proposal 70</i></p> <p>The New Code should provide that where an application is made after the 6-month period stipulated by section 6 of the I(PFD)O, the originating application shall include an application for leave to bring such late application, to be supported by affidavit setting out the grounds and evidence justifying the same.</p>	<p>Agree.</p>
<p><i>Proposal 71</i></p> <p>The New Code should provide that applications for interim relief should be made in the originating</p>	<p>Agree.</p>

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<p>application wherever appropriate or thereafter by way of summons.</p> <p>The New Code should provide that in general interlocutory applications should be made by way of summons.</p>	
<p>Proposal 72</p> <p>The New Code should provide for the practice and procedure relating to applications under section 8 of the I(PFD)O for variation, discharge, suspension or revival and section 9 of the I(PFD)O for variation.</p>	<p>Agree.</p>
<p>Proposal 73</p> <p>The New Code should provide that applications under section 12 or 13 of the I(PFD)O should be made in the originating application wherever appropriate or thereafter by way of summons.</p> <p>Where there is an application for an order to be made under section 12 or 13 of the I(PFD)O, the alleged “donee” should be joined as a party.</p>	<p>Agree.</p>
<p>Proposal 74</p> <p>The New Code should make provisions for directions to be given for mediation or for the FDR procedure to be made applicable to proceedings under the I(PFD)O.</p>	<p>The Law Society suggests that other forms of ADR should be available to the parties, and therefore the New Code should make provisions for directions to be given for mediation or similar alternative dispute resolution or for the FDR procedure to be made applicable to proceedings under the I(PFD)O. In this regard, the phrase “<i>or similar alternative dispute resolution</i>” should be</p>

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	added after " <i>mediation</i> " in this proposal.
<p><i>Proposal 75</i></p> <p>The New Code should provide rules for Part V of the I(PFD)O and sections 11(6) and 16 of the MPPO in the same Part as the I(PFD)O.</p>	Agree.
<p><i>Proposal 76</i></p> <p>The New Code should include, in the same Part as the I(PFD)O, rules which apply to all proceedings by which a person applies for provision from a deceased's estate, both under the I(PFD)O and the MPPO.</p>	Agree.
<p><i>Proposal 77</i></p> <p>The New Code should, so far as circumstances permit, include uniform procedures which cover all miscellaneous family proceedings which would assist all persons involved in the conduct of such proceedings in their timely, just and cost-effective disposal.</p>	Agree.
<p><i>Proposal 78</i></p> <p>The procedures for miscellaneous applications not falling into any of the categories in paragraph 277.1 should be grouped together in the New Code and a uniform format similar to that in Part 8 of the FPR 2010 should be adopted.</p>	Agree.
<p><i>Proposal 79</i></p> <p>The New Code should provide for procedures for applications for declarations as to marital status, parentage, legitimacy or legitimation and adoptions effected overseas.</p>	Agree.

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<p><i>Proposal 80</i></p> <p>Rules applicable to the DCRVO should be included in a separate part of the New Code.</p>	<p>Agree.</p>
<p><i>Proposal 81</i></p> <p>Rules should be made in the New Code to provide for applications for non-cohabitation under the SMOO to be made to the Family Court in accordance with the proposed uniform procedures.</p>	<p>Agree.</p>
<p><i>Proposal 82</i></p> <p>The New Code should include rules for applications under section 18A of the MO to the Family Court.</p>	<p>Agree.</p>
<p><i>Proposal 83</i></p> <p>The new rules on children proceedings should cover all the extant proceedings relating to children arising from the applications brought under sections 10, 11 and 12 of the GMO; section 19 of the MPPO; section 48 of the MCO; sections 6, 12 and 13 of the PCO; section 5(1)(b) of the SMOO; applications under the inherent jurisdiction of the High Court, including wardship proceedings under Order 90 of the RHC; the Hague Convention under the CACO and Order 121 of the RHC; and adoption proceedings under the AO.</p>	<p>Agree.</p>
<p><i>Proposal 84</i></p> <p>Parts 12 and 14 of the FPR 2010 should be adopted as the broad framework for the new procedural rules on children proceedings in the New Code.</p>	<p>Agree.</p>

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<p><i>Proposal 85</i></p> <p>The New Code should contain a unified term for the procedures concerning children irrespective of how they are described under different Ordinances, subject to any contrary definition in any principal Ordinance.</p>	<p>Agree.</p>
<p><i>Proposal 86</i></p> <p>Rules 9(3) and 15B of the MCR should be incorporated into the New Code and should cover all children under the age of 18 years.</p>	<p>Agree.</p>
<p><i>Proposal 87</i></p> <p>Subject to Proposals 88 to 89 below, Rules 92 to 96 of the MCR, with all necessary modifications, should be incorporated into the New Code.</p>	<p>Agree.</p>
<p><i>Proposal 88</i></p> <p>Rule 92(5) and (6) of the MCR should not be incorporated into the New Code.</p>	<p>Agree.</p>
<p><i>Proposal 89</i></p> <p>It should be expressly stated in the New Code that when the court directs that a report be filed by the Director of Social Welfare, it may also order that a clinical psychologist's report or an international social welfare report be provided.</p>	<p>Under section 3(1) of GMO, the court shall have regard to the best interest of the minor as first and paramount consideration and in having such regard the Court shall give due consideration to any material information including any relevant reports. As such, the Law Society suggests that the court may also order that other professional expert reports, such as reports of Official Solicitors,</p>

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	GAO Reports and educationist assessment reports, wherever necessary, be provided.
<p><i>Proposal 90</i></p> <p>PD15.13 with all future amendments arising from the review and Rule 25.4(2)-(4) of the FPR 2010 with all necessary modifications should be incorporated into the New Code. Readers are also invited to express their views with respect to whether or not the CDR procedure should be extended to the High Court.</p>	Without prejudice to the Response to Proposal 16, the Law Society supports the proposal that CDR procedure should be extended to High Court.
<p><i>Proposal 91</i></p> <p>The provisions in Order 90 of the RHC, Order 90 of the RDC and Rule 69 of the MCR, which are relevant to guardianship proceedings, should be incorporated into the New Code.</p>	Agree.
<p><i>Proposal 92</i></p> <p>Order 121 of the RHC should be incorporated into the New Code.</p>	Agree.
<p><i>Proposal 93</i></p> <p>Rule 124 of the MCR should be incorporated into the New Code.</p>	Agree.
<p><i>Proposal 94</i></p> <p>Provisions should be made in the New Code to cater for the practice and procedure to be applied in applications under the PCO, including applications under sections 6 and 12, and for the transfer of applications to the High Court pursuant to section 16. Considerations should also be given as to the manner of giving effect to directions under section 13 such as by the making of rules or</p>	Agree.

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by means of PDs or guidance notes if necessary.	
<p><i>Proposal 95</i></p> <p>The AR and the CAR should be incorporated into the New Code.</p>	Agree.
<p><i>Proposal 96</i></p> <p>There should be rules in the New Code for all the applications referred to in the AO.</p>	Agree.
<p><i>Proposal 97</i></p> <p>In the New Code, the practice for service outside jurisdiction for adoption cases should be aligned with that for other family and matrimonial cases.</p>	Agree.
<p><i>Proposal 98</i></p> <p>Considerations should be given to see if the provisions in the Guidance on Separate Representation for Children in Matrimonial and Family Proceedings should be incorporated into the New Code.</p>	Agree.
<p><i>Proposal 99</i></p> <p>For other various miscellaneous applications relating to children in our existing Ordinances of which no rules exist, the relevant provisions in the FPR 2010, if applicable, should be adopted in the New Code with necessary modifications.</p>	Agree.
<p><i>Proposal 100</i></p> <p>Sections 17(1)(a) and 29AJ of the MPPO and Order 29 of the RHC/RDC should be combined and incorporated into the New Code with all necessary modifications.</p>	Agree.

Proposals	Law Society's Response
<p><i>Proposal 101</i></p> <p>The current Rule 37 of the MCR and Order 23 of the RHC/RDC should be incorporated into the New Code with all necessary modifications.</p>	<p>Bearing in mind the unique nature of matrimonial litigation which involves the sharing of family assets, in principle, the Law Society has no objection to the incorporation of provisions on security for costs into the New Code, but cautions that any such applications for security for costs should be allowed only in rare and exceptional circumstances, because</p> <ol style="list-style-type: none"> 1. views and comments in matrimonial matters should not be shut out on strength of finance of a party; 2. meritorious claims for, e.g., financial relief should not be stifled merely because that party who makes the claim could not put up the sufficient security; and 3. any security so ordered is to be paid out of the family assets.
<p><i>Proposal 102</i></p> <p>The New Code should include procedural rules relating to evidence in matrimonial causes and family proceedings similar to those contained in Parts 22 to 24 of the FPR 2010. Similar PDs, like those contained in PDs 22A and 24A which supplement the FPR 2010, should also be issued to provide guidance on the practice of such</p>	<p>Agree.</p>

Proposals	Law Society's Response
procedural rules.	
<p><i>Proposal 103</i></p> <p>The New Code should follow the model in the FPR 2010 to provide for a self-contained set of procedural rules relating to discovery, inspection and interrogatories for defended matrimonial causes, financial order proceedings and children proceedings.</p>	Agree.
<p><i>Proposal 104</i></p> <p>There should be a provision in the New Code to empower the court, in all matrimonial causes and family proceedings, to carry out investigations and to make orders for the discovery of documents against parties involved in the proceedings and other third-parties.</p>	Agree; the Law Society notes that currently a party could request production of documents of a third / non-party by way of <i>subpoena duces tecum</i> . The new provisions should adopt and incorporate the relevant practice and rules.
<p><i>Proposal 105</i></p> <p>The New Code should include procedural rules relating to expert evidence in family and matrimonial proceedings similar to those contained in Part 25 of the FPR 2010. Similar PDs, like those contained in PDs 25A-25F which supplement the FPR 2010, should also be issued to provide guidance on the practice of such procedural rules.</p>	Agree. It serves a good guidance to experts.
<p><i>Proposal 106</i></p> <p>Order 33, rule 6 of the RHC/RDC, should be incorporated into the New Code with necessary modifications.</p>	Agree.

Proposals	Law Society's Response
<p><i>Proposal 107</i></p> <p>Provisions on Statements of Truth in Order 41A of the RHC/RDC should be incorporated into the New Code with all necessary modifications.</p>	<p>Agree.</p>
<p><i>Proposal 108</i></p> <p>Order 35 of the RHC/RDC, relevant provisions in Chapter 3 of Part 7 and Part 27 of the FPR 2010 and the existing MCR should, with necessary modifications, be incorporated into one single set of rules in the New Code to govern the setting down and conduct of a trial in matrimonial causes and family proceedings.</p>	<p>Agree.</p>
<p><i>Proposal 109</i></p> <p>A single set of rules should be drafted to cater for appeals in matrimonial causes and family proceedings from both the Court of First Instance and the District Court, by incorporating the present provisions in the MCR, the RHC and the RDC.</p>	<p>Agree.</p>
<p><i>Proposal 110</i></p> <p>In the event that Proposals 127 to 130 in this report are to be adopted, the Working Party proposes that further consideration needs to be given to the new rules governing the future appeals from the Registrar/Masters to the judge or to the Court of Appeal.</p>	<p>Agree.</p>
<p><i>Proposal 111</i></p> <p>Express rules should be provided in the New Code for the application for setting aside the decrees, judgments or orders obtained by irregular service to be dealt with by the court granting such decrees, judgments or orders.</p>	<p>Agree.</p>

Proposals	Law Society's Response
<p><i>Proposal 112</i></p> <p>Orders 62 and 62A of the RHC/RDC should be incorporated into the New Code with necessary modifications.</p>	<p>Agree.</p>
<p><i>Proposal 113</i></p> <p>Considerations should be given to whether any amendments to the existing provisions on judgment summons are required in light of Articles 10 and 11 of the Hong Kong Bill of Rights.</p>	<p>Agree.</p>
<p><i>Proposal 114</i></p> <p>The New Code should provide that the relevant AIOR provisions are to apply to maintenance pending suit for spouses.</p>	<p>Agree.</p>
<p><i>Proposal 115</i></p> <p>It is proposed that our New Code should include the enforcement provisions in the MCR and the AIOR and all the relevant provisions in Orders 44A to 52 of the RHC, with necessary modifications. Any future amendments to the RHC/RDC will not automatically apply to the New Code.</p>	<p>Agree.</p>
<p><i>Proposal 116</i></p> <p>It is proposed that Rule 33.3(2) of the FPR 2010 be adopted into the New Code.</p>	<p>Agree.</p>
<p><i>Proposal 117</i></p> <p>Provisions similar to the English Practice Direction 33A (Enforcement of Undertakings) should be adopted with necessary modifications in order to provide a solid legislative underpinning</p>	<p>Agree.</p>

Proposals	Law Society's Response
<p>for the enforcement of the undertaking and to ensure that the person giving the undertaking is fully aware of the undertaking being given and the serious consequences that it entails if in breach.</p>	
<p><i>Proposal 118</i></p> <p>Subject to Proposal 117 being accepted, the New Code should provide the express legislative underpinning for the enforcement of undertakings whilst the form of the penal notice and statement to be signed by the person giving the undertaking are to be dealt with by way of a PD.</p>	<p>Agree.</p>
<p><i>Proposal 119</i></p> <p>The present provisions in the MO(RE)R should be incorporated into the New Code.</p>	<p>Agree.</p>
<p><i>Proposal 120</i></p> <p>The New Code should expressly provide that subject to any enactment or any rules in the New Code, all proceedings to which the New Code applies, where they are pending in the first instance courts, should be held in private to the exclusion of the public, but the court retains the discretion to order the hearing to be open to the public if it is of the view that none of the reasons in the BOR Article 10 is satisfied in the circumstances of the case concerned.</p>	<p>Agree.</p>
<p><i>Proposal 121</i></p> <p>The New Code should have a new PD to include the extant practice of the Family Court for publishing judgments and the internal instruction of the Chief Justice for anonymising judgments before release for publication.</p>	<p>Agree.</p>

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<p><i>Proposal 122</i></p> <p>The New Code should incorporate the provisions of Order 63, rule 4 of the RHC, Rule 121(2) of the MCR and Rule 21 of the AR, but should expressly provide for prohibition against public search and inspection of all documents filed in the Court Registry in children proceedings, other than a decree or order made in open court, without leave of the court.</p>	<p>Agree.</p>
<p><i>Proposal 123</i></p> <p>The New Code should incorporate the provisions in Rules 6 and 14A of the AR pertaining to anonymisation in adoption proceedings, and should include provisions for anonymisation in children proceedings to preserve confidentiality as from the filing of the originating process.</p>	<p>Agree.</p>
<p><i>Proposal 124</i></p> <p>In the New Code, all the relevant provisions relating to hearing and reporting of proceedings, access to court documents, anonymisation of parties and judgments and orders should be put together in a new Part, to be augmented by PDs if necessary.</p>	<p>Agree.</p>
<p><i>Proposal 125</i></p> <p>Readers are invited to express their views on whether or not an address within the jurisdiction should be given in the Notice of Intention to Act in Person. Subject to the foregoing, it is proposed to incorporate the existing Order 67 of the RHC/RDC into the New Code.</p>	<p>Agree.</p>
<p><i>Proposal 126</i></p> <p>It is proposed to have one set of codes for both the</p>	

Proposals	Law Society's Response
<p>matrimonial and family proceedings for rules governing representation of parties under disabilities in the New Code, incorporating the extant provisions in Rules 105 to 107 of the MCR and Order 80 of the RHC with duplicated provisions removed.</p>	<p>Agree.</p>
<p><i>Proposal 127</i></p> <p>In the New Code, “Registrar” should be defined as the Registrar of the District Court if the case is pending in the Family Court, and the Registrar of the High Court if the case is pending in the High Court.</p>	<p>Agree.</p>
<p><i>Proposal 128</i></p> <p>The scope of the duties of the Registrar, other than those extant matters, should be expanded to cover simple applications such as amendments to the originating process, time extension and approval of consent summonses on procedural matters.</p>	<p>Agree.</p>
<p><i>Proposal 129</i></p> <p>The New Code should provide that the Registrar may under the general or special directions of a judge hear and determine any application or matter which under the principal Ordinances and provisions in the New Code may be heard and determined in Chambers; and that any matter or application before the Registrar may at any time be adjourned by him to be heard before a judge. A PD should be introduced to list out all the matters and applications that the Registrar may hear and determine.</p>	<p>Agree.</p>
<p><i>Proposal 130</i></p> <p>All the jurisdiction, powers and duties conferred</p>	<p>Agree.</p>

Proposals	Law Society's Response
on the Registrar in the New Code may be exercised and performed by a Master.	
<p><i>Proposal 131</i></p> <p>As a matter of principle, the provisions in the New Code should be simple and simply expressed, and where appropriate, the language used may be modernized. Further consideration should be given as to how to pursue this objective as far as practicable, bearing in mind the various concerns.</p>	Agree.
<p><i>Proposal 132</i></p> <p>An assessment on the organizational and manpower implications of the proposals on the Judiciary should be carried out.</p>	Agree.
<p><i>Proposal 133</i></p> <p>In taking forward the proposals, the Judiciary should consider undertaking a further study on the scope of IT system changes required and the approach to be adopted in the context of Phase II of the Judiciary-wide Information Technology Strategy Plan for better synergy and cost-effectiveness etc.</p>	Agree.
<p><i>Proposal 134</i></p> <p>Suitable training on the New Code should be provided to judges and judicial officers dealing with family cases, the support court staff and the legal professionals.</p>	Agree.
<p><i>Proposal 135</i></p> <p>The Judiciary should consider producing suitable publications and materials to assist the litigants in person in navigating through the process.</p>	Agree.

Proposals	Law Society's Response
<p><i>Proposal 136</i></p> <p>Considerations should be given by the Judiciary for producing general publicity materials to enable the interested bodies and members of the public to have a good general understanding of the New Code.</p>	<p>Agree.</p>

Conclusion

3. In conclusion, the Law Society acknowledges those problems identified in the Consultative Paper and appreciates a comprehensive review of the Family Procedure Rules. The introduction of a set of stand-alone unified procedural code that could address these problems is welcomed. The Law Society considers and concurs that the UK Family Procedure Rules 2010 could be adopted as the broad and basic framework for the New Code. In the course of formulating New Code, the Law Society shall invite the attention of the Judiciary to the comments set out in the above, and also to the continual experience the UK has been having since the implementation of their family code.
4. The Law Society also agrees in principle to introduce consequential amendments to the relevant principal Ordinances and/or subsidiary legislation to improve those procedures, and also to the setting up of a new Family Procedure Rules Committee, as proposed.
5. The Law Society suggests that careful planning and time-tabling are important in this review and revamp exercise, because the legislative process for the introduction of the new code and also the amendments to the relevant statutory instruments necessarily are lengthy processes.

The Law Society of Hong Kong

10 June 2014

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