

Family Council

Progress of Further Study on the Phenomenon of Divorce in Hong Kong

PURPOSE

This paper updates Members on the latest progress of “Further Study on the Phenomenon of Divorce in Hong Kong” (the Study).

BACKGROUND

2. In view of the developments in several issues concerning matrimonial legislation¹, the Sub-committee on Family Support of the Family Council (the Council) discussed and agreed at its meeting on 15 March 2017 to commission the Study with a view to finding out more about the demographic and socioeconomic landscape of divorce situation in Hong Kong so as to facilitate a holistic review of various divorce related issues, including the systems of collection of maintenance payments and enforcement of maintenance orders. One of the key issues to be examined in this Study is whether a maintenance board with powers and functions should be set up in Hong Kong. The objectives and scope of the Study are at [Annex A](#).

3. On 21 June 2018, the Research Team led by Prof. Paul YIP of The University of Hong Kong was appointed to conduct the Study, which is expected to be completed in 18 months.

¹ The issues include the compatibility issue of the judgment summons proceedings with the rights enshrined in Articles 10 and 11 of the Hong Kong Bill of Rights Ordinance (Cap. 383); the Law Reform Commission’s recommendation on reduction of the minimum age of marriage without parental consent from 21 to 18; the submissions received during the public consultation conducted by the Labour and Welfare Bureau on the draft Children Proceedings (Parental Responsibility) Bill which urged for the setting up of a maintenance board as one of the support measures to facilitate the implementation of the parental responsibility model; and 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 between Hong Kong and Mainland in 2017.

WORKING GROUP

4. A Working Group, chaired by the Chairman of the Council and comprising representatives from the Council, Home Affairs Bureau, Policy Innovation and Co-ordination Office, Department of Justice, Legal Aid Department and Social Welfare Department as members, is formed to oversee the progress of the Study. The membership list and the terms of reference of the Working Group are at **Annex B**.

5. The Working Group meets regularly to review the progress of the Study and has set out a tentative work schedule at **Annex C**. It will consider and provide comments on the various deliverables submitted by the Research Team at different stages. The first and second Working Group meetings were held on 18 September 2018 and 21 January 2019² respectively.

LATEST PROGRESS

6. On 11 February 2019, the Research Team submitted the draft Progress Report. The Council Secretariat passed preliminary comments and observations to the Research Team on 14 February 2019 for reference in refining the draft. The Research Team will brief the Council on the gist of its Progress Report. Below is a snapshot of the progress made by the Research Team –

Questionnaire Survey

7. The Research Team aims to collect data on divorce cases from Non-Governmental Organisations and law firms for reference in its qualitative survey. It targets to collect a total of around 500 cases by two phases through an online questionnaire. So far the first phase of data collection has been completed with 199 cases received. The Research Team will report on the preliminary analysis of the data collected.

Quantitative Survey

8. The Research Team presented its initial analyses on the data collected by the Thematic Household Survey on Enforcement of Maintenance Orders (the Thematic Household Survey) commissioned by Census and Statistics Department from October 2015 to January 2016 at

² The second Working Group meeting was deferred from November 2018 to January 2019 at the request of the Research Team.

the second Working Group Meeting. The Working Group has reminded the Research Team to conduct more in-depth analyses, in particular on the socio-demographic background of respondents by categories of their status of claiming/receiving maintenance as well as cross-referencing with the findings of the questionnaire survey mentioned in paragraph 7 above.

9. The Research Team sent two requests to the Judiciary Administrator in August and November 2018 respectively requesting for access to data on divorce and relevant enforcement proceedings from the Family Court in the past ten years (2008-2018). Following discussion at the second Working Group meeting on 21 January 2019, the Council Chairman wrote to the Judiciary Administrator (JA) on 24 January 2019 appealing to her assistance in provision of court information for the Study. JA replied on 13 February 2019 that the first batch of information was released to the Research Team on the same day and they would endeavor to provide further information available in the Judiciary by phases when ready.

Literature Review

10. According to the work schedule stipulated in the consultancy brief, the Research Team should provide findings of its literature review in the draft Progress Report, which should cover the maintenance boards and maintenance recovery systems in foreign countries; relationships between marriage age and divorce rate, and marriage age and length of marriage; jurisdictions which have adjusted the minimum marriage age without parental consent in the past ten years; as well as the system of divorce, enforcement of maintenance orders and custody orders in the Mainland, etc. The Research Team has yet to report on this front at the second Working Group meeting.

ADVICE SOUGHT

11. Members are invited to note the latest progress of the Study and to provide comments on the Research Team's presentation.

**Family Council Secretariat
March 2019**

Further Study on the Phenomenon of Divorce in Hong Kong Objectives and Scope of the Study

Objectives of the Study

The purposes of the Study are –

- (a) to update the demographic and socioeconomic landscape of divorce in Hong Kong including further examining the correlation between marriage age and divorce rate, the divorce rate of cross-boundary marriage and more background information of divorced families, including step and split families arising from divorce and remarriages;
- (b) to review the existing systems of recovery of maintenance payments and enforcement of maintenance orders, and collect maintenance-related statistics and information in Hong Kong; and
- (c) to examine the effectiveness of judgement summons (JS) proceedings in recovering maintenance payments and identify viable improvement measures that are in compliance with Articles 10 and 11 of the Hong Kong Bill of Rights Ordinance (HKBOR).

Scope of the Study

The Research Team is required to perform the following tasks –

- (a) provide an overview of the existing procedures for divorce and applications for issuing and enforcing maintenance order in Hong Kong;
- (b) conduct literature review on –
 - (i) relationships between marriage age and divorce rate as well as marriage age and length of marriage, including but not limited to one Asian jurisdiction and one Commonwealth jurisdiction;

- (ii) jurisdictions which have adjusted the minimum marriage age without parental consent in the past ten years as well as the background and consequences of the change (i.e. from 2006 to 2016);
 - (iii) the system of recovery of maintenance payments and enforcement of maintenance orders in overseas jurisdictions (in particular the latest arrangements in the United Kingdoms, USA, Australia, New Zealand, Canada, Norway, Sweden and Singapore as appropriate), their cost-effectiveness, efficiency and applicability to Hong Kong; and
 - (iv) the system of divorce, enforcement of maintenance orders and custody orders in the Mainland.
- (c) stocktake the number of divorce decrees and maintenance orders issued in Hong Kong¹, collect statistical information about issue of judgment summons and their outcomes in recent three years (i.e. from 2014 to 2016)², and conduct quantitative and qualitative analysis of data with cross reference to the results of the Thematic Household Survey on Enforcement of Maintenance Orders³ commissioned by the Census and Statistics Department on the following –
- (i) number of divorce cases with maintenance orders and/or custody orders issued each year;
 - (ii) number of maintenance orders issued each year, proportion of cases in default of maintenance payments and the amounts involved, relevant demographic information of maintenance

¹ Excluding the maintenance orders issued under the Guardianship of Minors Ordinance.

² The Research Team is required to explore viable means to obtain the required information, including filing of request with the Family Court and utilising publicly available judgement transcripts of the Family Court.

³ The Thematic Household Survey was conducted during October 2015 to January 2016 to collect information relating to the enforcement of maintenance orders amongst Hong Kong residents who had ever divorced or separated. Survey data was collected through face-to-face interviews during household visits based on a structured questionnaire. The survey covered a total of 13 441 households of which 10 057 had been successfully enumerated, constituting an overall response rate of 75%. As the target respondents may not be willing to reveal that they had ever been divorced or separated, the number of persons ever divorced or separated might be subject to under-reporting.

payers and payees (e.g., age, citizenship, employment status, source of income and income level, residential status, etc.), the common reasons for default in maintenance payments, the difficulties faced by maintenance payees of different demographic and social economic background, the phenomenon of nominal maintenance of \$1, and the critical factors that encourage timely and responsible compliance of maintenance orders, including but not limited to the divorced couples' attitude to and agreement on parental responsibility;

- (iii) number of JS each year, the success rate and interests or surcharge imposed, if any, and the proportion of legally-aided cases and Comprehensive Social Security Assistance recipients; and
- (iv) number of other enforcement proceedings such as Charging Order⁴, Garnishee Order⁵, Attachment of Income Order⁶ and Writ of Fieri Facias⁷ each year and the success rate;
- (d) conduct analysis on marriage age and divorce rate as well as marriage age and length of marriage, and divorce rate of cross-boundary marriages⁸ in Hong Kong for the past ten years;
- (e) conduct surveys, consultative interviews and focus group discussions with various stakeholders (e.g. divorced families of different demographic and socio-economic background, divorcees who do not apply for maintenance order or opt for nominal maintenance of \$1, maintenance payers, maintenance payees, youngsters below the age of 21, a variety of family professionals and

⁴ A court order by which the shares or property of an individual or a company of a judgment debtor stands charged with the payment of the amount due under a judgment with interest and costs.

⁵ A court order by which a third party (the garnishee, such as bank) who holds money for a judgment debtor is directed to attach whole or part of the judgment debt to the judgment creditor, and the garnishee is ordered to pay the judgment creditor the amount of any debt due or accruing due to the judgment creditor.

⁶ A court order that requires an income source (e.g. an employer) to deduct maintenance payment from a maintenance payer's income and pay the deductions directly to the maintenance payee.

⁷ A command directing the bailiff to seize in execution such of the judgment debtor's goods, chattels and other property as are authorized to be seized by the law and from these goods to sell so much of the same as may be sufficient to satisfy the judgment debt, the costs of execution and interest until payment.

⁸ Cross-boundary marriages mean Hong Kong-Mainland marriages.

practitioners including social workers, counsellors, family law practitioners, Judges of Family Courts and relevant government bureaux/departments) where appropriate, so as to provide a more detailed analysis of the information gathered from (b) to (d) above; and

- (f) assess, on the basis of the empirical information collected –
- (i) the implications of lowering the marriage age without parental consent and the factors as well as support measures to be considered;
 - (ii) the effectiveness of the existing system of recovery of maintenance payments and enforcement of maintenance orders;
 - (iii) the considerations and implications of amending the existing provisions on JS in light of Articles 10 and 11 of the HKBOR, and the need for further support measures to the judgment creditors if the legal regime for JS is to be revised; and
 - (iv) whether the proposed legislative amendments to the Matrimonial Causes Rules (Cap. 179A), the Matrimonial Causes (Fees) Rules (Cap. 179B) and the Rules of the District Court (Cap. 336H) which seek to improve the serving of JS to enhance enforcement of maintenance orders⁹ should continue to be pursued.

⁹ The proposed legislative amendments aimed to relax the requirement for JS to be personally served on the judgment debtor; empower the court to make an order of arrest for judgment debtor pending examination, an order prohibiting him/her leaving Hong Kong, and an order that he/she be imprisoned until the resumption of an adjourned JS hearing to ensure the appearance of the judgment debtor at the resumption of examination; and clarify that the court, on hearing of a JS, may order a payment of maintenance arrears accruing due after the application for the issue of the JS up to the date of the order of commitment.

**Working Group on
Further Study on the Phenomenon of Divorce in Hong Kong**

Terms of Reference

- (a) To ensure the Further Study on the Phenomenon of Divorce in Hong Kong (the Study) is conducted in accordance with the study aims and in compliance with the consultancy agreement;
- (b) To monitor the progress of the Study and to advise on issues relating to the Study to facilitate its smooth progress and completion; and
- (c) To report the progress and matters arising from the Study to the Family Council and advise the Family Council on the acceptance of deliverables of the Study (i.e. draft inception report, draft progress report, draft interim report and draft final report) at different stages.

**Working Group on
Further Study on the Phenomenon of Divorce in Hong Kong**

Membership

Chairman

Prof. Daniel SHEK, Chairman of Family Council

Regular Members

Family Council

Mrs Patricia CHU, Convenor, Sub-committee on Family Support

Ms Amarantha YIP, Member

Home Affairs Bureau

Mr Patrick LI, Deputy Secretary for Home Affairs (1)

Ms Carmen KONG, Principal Assistant Secretary (Civic Affairs) 2

Policy Innovation and Co-ordination Office

Mr Bassanio SO, Assistant Head (3)

Department of Justice

Mr Winson KOO, Assistant Law Officer (Civil Law)(Advisory)

Legal Aid Department

Miss Doreen CHAN, Assistant Principal Legal Aid Counsel / Civil Litigation 2 (atg.)

Social Welfare Department

Ms PANG Kit-ling, Assistant Director (Family and Child Welfare)

Ad-hoc Members

Family Council

Mrs Cecilia WONG, Member

Prof. Alvin LEUNG, Member

Mr Clement WOO, Member

Secretary

Chief Executive Officer (Family Council), Home Affairs Bureau

**Working Group on
Further Study on the Phenomenon of Divorce in Hong Kong**

Tentative Work Schedule

Time	Action
21 Jun 2018	<ul style="list-style-type: none">• Commissioning of the study
19 July 2018	<ul style="list-style-type: none">• Submission of draft Inception Report by the appointed Consulting Team
Early Sep 2018	<ul style="list-style-type: none">• Setting up of Working Group
18 Sep 2018	<ul style="list-style-type: none">• 1st meeting of Working Group to examine the draft Inception Report submitted by the Consulting Team
Mid-Nov 2018	<ul style="list-style-type: none">• Consulting Team to present progress of its quantitative and qualitative surveys at the 2nd meeting of Working Group
20 Jan 2019	<ul style="list-style-type: none">• Consulting Team to submit draft chapter on literature review and report on progress of study
Feb 2019	<ul style="list-style-type: none">• 3rd meeting of Working Group to discuss the draft chapter on literature review and progress of study
May 2019	<ul style="list-style-type: none">• Consulting Team to present its preliminary findings of quantitative and qualitative analyses at 4th meeting of Working Group
20 Jun 2019	<ul style="list-style-type: none">• Consulting Team to submit draft Interim Report
Aug 2019	<ul style="list-style-type: none">• Consulting Team to present its preliminary recommendations and framework of executive summary at the 5th meeting of Working Group

Time	Action
Sep 2019	<ul style="list-style-type: none"> • Consulting Team to present its preliminary recommendations and framework of executive summary to the Family Council
Nov 2019	<ul style="list-style-type: none"> • Consulting Team to present first draft Final Report at the 6th meeting of Working Group • Consulting Team to submit first draft Final Report
Dec 2019	<ul style="list-style-type: none"> • Circulation of the first draft Final Report to concerned B/Ds for comments
Jan 2020	<ul style="list-style-type: none"> • Consulting Team to submit Final Report