

Family Council

The Draft Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Bill

PURPOSE

This paper provides background information to facilitate Members' discussion of the presentation to be made by the Department of Justice (DoJ) on the draft Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Bill ("**Bill**").

BACKGROUND

2. DoJ previously briefed Members on a proposed arrangement with the Mainland on reciprocal recognition and enforcement of judgments in matrimonial and family cases on 6 June 2017. Subsequently, 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”¹ ("**Arrangement**") was signed between the Government of the Hong Kong Special Administrative Region ("**Hong Kong**") and the Supreme People's Court ("**SPC**") on 20 June 2017.

3. The Arrangement will come into effect after both Hong Kong and the Mainland have put in place the relevant implementation mechanism in their respective jurisdictions. The Arrangement will apply to judgments made on or after its commencement date. Specifically, the Arrangement will be implemented in the Mainland by way of judicial interpretation and in Hong Kong by way of legislation.

¹ The English translation of the title of the Arrangement is "*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*".

4. The Bill seeks to implement the Arrangement in Hong Kong and provides for the mechanisms in respect of the following:

- (a) the recognition and enforcement in Hong Kong of Mainland judgments given in matrimonial or family cases;
- (b) the recognition in Hong Kong of Mainland divorce certificates; and
- (c) the facilitation of the recognition and enforcement in the Mainland of Hong Kong judgments given in matrimonial or family cases.

5. On 8 February 2019, the Government launched a public consultation to invite views on the draft Bill as well as the draft Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Rules. The consultation period ended on 8 March 2019.

6. Subsequently, the Government received five written submissions from the stakeholders. The Government also met with certain stakeholders to discuss the issues relating to the Bill.

7. The Government consulted the Legislative Council Panel on Administration of Justice and Legal Services (“**AJLS Panel**”) on the key features of the draft legislative proposal for implementing the Arrangement in March 2018 and then on the draft Bill issued for public consultation in February 2019.

8. Members of the AJLS Panel, the Law Society of Hong Kong and the Hong Kong Bar Association indicated in-principle support for the draft Bill.

9. We consider that the Bill will benefit parties to cross-boundary marriages and their children as well as parties with assets in Hong Kong and the Mainland by providing a more expeditious and cost effective way of seeking recognition and enforcement in Hong Kong of Mainland judgments given in matrimonial and family cases, as well as facilitating the application in the Mainland for recognition and enforcement of Hong Kong judgments given in matrimonial and family cases. By reducing the need to litigate matrimonial proceedings on divorce and custody in both Hong Kong and the Mainland, the implementation of the Bill will have a positive impact on mitigating the impact and emotional stress of a divorce on the parties to the marriage and on the children of the family. It will also provide better safeguards to families, in particular those involving cross-boundary marriages and their children

ADVICE SOUGHT

10. Members are invited to note the content of DoJ's presentation and provide views on the Bill.

**Family Council Secretariat
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