

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

**1. Background**

1.1 In the light of the increase of divorce cases (from 2 062 in 1981 to 23 255 in 2012) and their profound impact on children and families, the Family Council (with the Home Affairs Bureau serving as the Secretariat) commissioned the University of Hong Kong to conduct “A Study on the Phenomenon of Divorce in Hong Kong” in May 2012. Since the conclusion of the above-mentioned Study in February 2014, there have been new developments in several issues concerning matrimonial legislation that call for a holistic review of the latest situation of divorce in Hong Kong which include –

- (a) the compatibility issue of the judgment summons (“JS”) proceedings with the rights enshrined in Articles 10 and 11 of the Hong Kong Bill of Rights Ordinance (Cap. 383) (“HKBOR”);
- (b) the deliberation on reduction of the minimum age of marriage without parental consent from 21 to 18 years, as recommended in the Report on “Child Custody and Access” by the Law Reform Commission in 2005 as well as the concern of the United Nations Committee on the Elimination of Discrimination against Women that the minimum marriage age in Hong Kong at 16 is in violation of international norms;
- (c) submissions received during the public consultation conducted by the Labour and Welfare Bureau from 25 November 2015 to 25 March 2016 on the draft Children Proceedings (Parental Responsibility) Bill which, among other things, urged for improvement to the mechanism on maintenance payments including the setting up of a maintenance board as one of the support measures to facilitate the implementation of the parental responsibility model; and
- (d) 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 and related matters signed between Hong Kong and the Mainland on 20 June 2017.

1.2 The above-mentioned issues are intricately related. Before the proposal of reduction of the minimum age of marriage without parental consent is pursued, we need to examine its possible consequences in various aspects including whether it would give rise to a higher rate of divorce and if yes, the need to strengthen preparation of marriage for young people and the support service for divorcees. One of the support measures is perhaps to improve the JS proceedings for better enforcement of maintenance payments which would ultimately facilitate the implementation of parental responsibility in child custody. However, the

improvement measures need to be carefully worked out with due regard to the need to comply with Articles 10 and 11 of the HKBOR, and caution against any unintended consequences caused by the differences between the legal systems of Hong Kong and the Mainland, given the prevailing number of Hong Kong-Mainland marriages.

## **2. Objectives of the Further Study on the Phenomenon of Divorce in Hong Kong**

2.1 The Family Council plans to commission a research organisation to undertake the Further Study on the Phenomenon of Divorce in Hong Kong with the following objectives –

- (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 JS proceedings in recovering maintenance payments and identify viable improvement measures that are in compliance with Articles 10 and 11 of the HKBOR.

## **3. Scope of the Study**

3.1 The research organisation 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 Kong, collect statistical information about issue of judgment summons and their outcomes in recent three years (i.e. from 2014 to 2016), and conduct quantitative and qualitative analysis of data with cross reference to the results of the Thematic Household Survey on Enforcement of Maintenance Orders 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 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 Order, Garnishee Order Attachment of Income Order and Writ of Fieri Facias 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 marriages 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 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 tasks 3.1(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 orders should continue to be pursued.

**Home Affairs Bureau**  
**The Government of the Hong Kong Special Administrative Region**  
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