



**SEMINAR ON FAMILY MEDIATION 2022 :
RECENT DEVELOPMENTS IN THE
FAMILY COURT**

3 May 2022

**HIS HONOUR JUDGE C K CHAN,
PRINCIPAL FAMILY COURT JUDGE**

Topics for discussion

1. PDSL 10.4: Guidance Note on Case Management and Time tabling in Children and Ancillary Relief Proceedings
2. Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance, Cap. 639
3. Mediator-assisted CDR/FDR
4. Some Advice to Mediators
5. Q & A

Practice Direction – SL10.4

Guidance Note on Case Management and Time Tabling in Children and Ancillary Relief Proceedings

- Commencement Date: 1 September 2021
- Applicability: (1) All new First/Children Appointments
(FA/CA)
(2) Could apply to existing cases by consent
- Purpose: Better case management and address issue of delay
- Supplement PD 15.11 and PD 15.13

Guidance Note on Case Management and Time Tabling in Children and Ancillary Relief Proceedings

3 main areas of reform:

- (1) Re-distribution of work between Case Management Judges (CMJ) and Allocated Judges (AJ)
- (2) Modification of existing docket system
- (3) Set target time tables for conclusion of cases

Re-distribution of Cases

Division of work between CMJ and AJ

CMJ: working in the capacity of a case management Master

- Paving the way for a Master system under the Family Justice Reform (FJR)
- Update on FJR: New Family Procedure Bill likely to be introduced in 2022/2023
- New Family Procedure Rules to follow in 2023/24

Re-distribution of Cases

- CMJ Duties: To deal with all new FA/CA until they are ready to be sent to AJ for Case Management Hearing (CMH) at which Time Tables (TT) will be set.

Actual Operation of CMJ

- A notional return date for FA/CA before CMJ after the filing of the application for AR (usually contained in petition or Form A)
- Under PD15.11: that notional return date will be 10-14 weeks after filing
- Under PD15.11 (para.2), there are filing requirements, most importantly, Form E (28 days before FA) and FA Bundle (14 days before FA)

Actual Operation of CMJ

- 12 days before FA/CA: cases will be sent to CMJ for vetting
- 10 days before FA/CA: directions to be given by CMJ on paper
- 6 days before FA/CA: written directions to be sent out
- 3 days before FA/CA: parties would have received court directions

Actual Operation of CMJ

- Tight time schedule, especially when intervening holidays
- Compliance with time limits set out in PD is important
- If case is not ready, the CMJ will adjourn the FA/CA for compliance

Actual Operation of CMJ

- Prior to the adjourned hearing, if case is still not ready, the CMJ may adjourn the FA/CA for further compliance or hold an oral hearing (especially when the parties are LIPs)
- In default of compliance (especially by the Respondent), the CMJ may adjourn the case to AJ for CMH, during which a trial may be fixed
- In order to ensure compliance, CMJ may make unless orders

Actual Operation of CMJ

Purpose of unless orders: to avoid stalemate

Examples of unless orders:

- Main suit to be dismissed if Petitioner fails to proceed
- A party may not file further documents (i.e. no further evidence to be allowed from that party)
- A party's ancillary relief claim to be dismissed if claim not pursued diligently

Actual Operation of CMJ

- If the case is ready, CMJ will adjourn for a CMH before the AJ
- At the same time, CMJ may also give further case management directions, for example:
 - answering of questionnaires
 - filing of further evidence, including expert evidence

Case Management Hearing (CMH)

- To be heard by Allocated Judge (AJ)
- To initiate target time tabling procedure if satisfied case is ready
- Case being ready means:
 - A decree nisi (DN) has been granted or soon to be granted
 - Necessary documents have been filed, including Form J, Form E, other supporting evidence or affidavits

Case Management Hearing (CMH)

At CMH, appraisal by AJ on the complexity of the case

Proceedings to be divided into 3 categories:

- (1) Short cases (estimated time for trial: ≤ 2 days)
- (2) Medium cases (estimated time for trial: ≤ 4 days)
- (3) Long cases (estimated time for trial: ≥ 5 days)

Cases involving both children and AR proceedings

Target time tables for completion: (details at Paragraphs 17- 18 of PDSL 10.4):

- (1) Short cases: within 23 months from CMH
- (2) Medium cases: within 27 months of CMH
- (3) Long cases: within 32 months of CMH

	Short Cases	Medium Cases	Long Cases
0-6 months	CDR	CDR	CDR
6-9	Trial on children dispute (not more than 2 days)	Trial on children dispute (not more than 4 days)	Trial on children dispute (5 days or more)
9-13	PTR on AR	PTR on AR	PTR on AR
13-16	FDR (by another Judge)	FD (by another Judge)	FD (by another Judge)
16-19	Trial on Preliminary Issues/AR (not more than 2 days)	2 nd PTR	2 nd PTR
19-23	Trial on AR (in case of a separate Preliminary Issues trial) (not more than 2 days)	Trial on Preliminary Issues/AR (not more than 4 days)	3 rd PTR
23-27	---	Trial on AR (in case of a separate Preliminary Issues trial) (not more than 4 days)	Trial on Preliminary Issues/AR (5 days or more)
27-32	---	---	Trial on AR (in case of a separate Preliminary Issues trial) (5 days or more)

Cases involving AR proceedings only

Target time tables for completion: (details at Paragraphs 19-20 of PDSL 10.4):

- (1) Short cases: within 13 months from CMH
- (2) Medium cases: within 17 months of CMH
- (3) Long cases: within 22 months of CMH

	Short Cases	Medium Cases	Long Cases
0-6 months	FDR (by another Judge)	FDR (by another Judge)	FDR (by another Judge)
6-9	Trial on Preliminary Issues/ AR (not more than 2 days)	PTR	PTR
9-13	Trial on AR (in case of a separate Preliminary Issues trial) (not more than 2 days)	Trial on Preliminary Issues/ AR (not more than 4 days)	2 nd PTR
13-17	---	Trial on AR (in case of a separate Preliminary Issues trial) (not more than 4 days)	Trial on Preliminary Issues/ AR (5 days or more)
17-22	---	---	Trial on AR (in case of a separate Preliminary Issues trial) (5 days or more)

Cases involving an agreement

- Parties are encouraged to attend mediation/other dispute resolution schemes and reach agreement **prior** to the issue of proceedings
- If agreement reached before issue of proceedings or CMH, a copy should be filed together with the petition/other originating process or as soon as practicable

Target Completion for Cases with agreement

For matrimonial proceedings:

- 3 months for an order in the approved terms from Registrar entering the cause in the Special Procedure List
- another 3 months for DN to be made absolute if no outstanding requisitions from the Registry on the main suit

Target Completion for Cases with agreement

For other proceedings:

- 1 month from the agreed terms being approved by the CMJ or AJ

Special features of Time Tabling Scheme

- At CMH, trial dates will be fixed by AJ, and before that date, each case will have hearing at a roughly 3-6 months interval for CDR/FDR/PTR, which are milestone dates
- CMH/PTR: 30-60 minutes hearing
- CDR/FDR: half or whole day hearing

Special features of Time Tabling Scheme

- FDR will be transferred to and heard by another Judge (FDR Judge)
- If FDR fails, the trial will be heard by the AJ
- Strict and robust case management to ensure compliance
- Interlocutory applications will be dealt with by either CMJ or AJ, and would be way of paper disposal as far as practicable

Third Parties Claiming Interests in Matrimonial Properties

- Third parties are very often close family members or related companies
- No reason why FDR could not involve third parties
- If FDR fails, third party claims could still be heard together with AR claims before AJ
- Only if that is impracticable, AJ may direct the third party claim to be heard as preliminary issue before the AR trial

**Mainland Judgments in
Matrimonial and Family Cases
(Reciprocal Recognition and Enforcement) Ordinance,
Cap. 639
香港法例第639章《內地婚姻家庭案件判決（相互承認
及強制執行）條例》**

Historical Background:

- Before Cap.639, matrimonial and family Judgements and Orders were generally not recognized or enforceable between the Mainland and Hong Kong
- Pressing needs for bilateral recognition and enforcement in view of the large number of cross-border marriages and related matters

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- On 20/6/2017:

HKSAR Government and the Supreme People's Court signed 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”

(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)

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Implementation:

- In Mainland: by way of judicial interpretation
(司法解釋) by the SPC
- In Hong Kong: by local legislation

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- 13/5/2021: Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance, Cap. 639 (“the Ordinance”)
- 23/8/2021: Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Rules, Cap. 639A (“the Rules”)

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- 15/2/2022: Commencement date of both the Ordinance and the Rules
- 1/3/2022: PDSL10.5: Guidance Note on Reciprocal Recognition and Enforcement of Mainland Judgments in Matrimonial and Family Cases (“the Guidance Note”)

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• 3 kinds of application under the Ordinance:

(1) Registration Order (登記令)

(2) Recognition Order (承認令)

(3) Certified Copy of Hong Kong Judgment (香港判決經核證文本)
and Certificate for Hong Kong Judgment (香港判決證明書)

Registration Order (登記令)

Important sections:

- Section 7: A party to Mainland Judgment may apply to the District Court for registration of a **Specified Order** (指明命令)

District Court means: Family Court
(PDSL 10.5: para. 4)

Specified Order (指明命令)

- Care-related Order (看顧相關命令):
Custody, Guardianship, Protection from Domestic Violence
- Status-related Order (狀況相關命令):
Divorce, Nullity, Parentage
- Maintenance-related Order (贍養相關命令):
Maintenance, Property

Setting Aside Registration (將登記作廢)

- S. 14 of the Ordinance: Upon registration, must specify the period within which an application for setting aside may be made
- S. 16(1)(a) – (i): 9 grounds for setting aside registration

Setting Aside Registration (將登記作廢)

- S.19: Effect of registration of care-related or maintenance-related orders:
 - (a) as if made by the registering court
 - (b) as if made on the day of registration
- S.20: Enforcement only after expiry of setting aside period
- S.24: Effect of registration of status-related orders:
 - Recognized only after expiry of setting aside period

Recognition Order (承認令)

- Recognition of Mainland Divorce Certificate
(承認內地離婚證)
- Requirements similar to application for Registration Order, but more simplified
- S.31: Recognition Order must specify the period within which an application for setting aside may be made
- S.33: Grounds on which Recognition Orders may be set aside

Facilitation Of Recognition and Enforcement in Mainland of Hong Kong Judgments given in Matrimonial or Family Cases (利便在內地承認和強制執行香港婚姻或家庭案件判決)

- S.38: Application for certified copy of Hong Kong Judgments
(申請香港判決經核證文本)
- S.39: Issue of certificate for Hong Kong Judgments
(發出香港判決證明書)

Mediator-assisted CDR/FDR (MCDR/MFDR)

- *LLC v LMWA & Anor* [2019] HKCA 347: per Lam Acting CJHC (as Lam PJ then was)
- In appropriate cases, more effective if CDR/FDR can be held with assistance of a mediator
- Judge could give useful views and steer from a legal point of view
- Mediator could work more on the emotions and iron out the details with the parties

Mediator-assisted CDR/FDR (MCDR/MFDR)

- Synergy between Judge and Mediator
- Effective prior communication between Judge and Mediator
- Issue of confidentiality: prior consent from parties
- Judge to be appraised of the main issues driving the parties apart

Mediator-assisted CDR/FDR (MCDR/MFDR)

Latest statistics on MCDR/MFDR :

- 15 cases fixed or gone through MCDR/MFDR
- 10 full agreement
- 1 partial agreement
- 1 no agreement
- 3 ongoing
- successful rate: $11/12 = 92\%$

Some Advice to Mediators

- Pre-ambule re co-parenting
- Removal (temporary/permanent) out of jurisdiction
- Full and frank disclosure of assets
- Orders vs Undertakings?
- Broad agreement vs detailed terms?
- Overseas properties (esp. Mainland properties)
- Agreement subject to Court's approval

Q & A

Thank You