SEMINAR ON FAMILY MEDIATION PRACTICE 2026

COMMON DISPUTES IN CROSS-BORDER MATRIMONIAL / FAMILY PROCEEDINGS IN FAMILY COURT

13 October 2026

DISTRICT JUDGE SIMON K.M. LO

Agenda

Relevant Statutes

Key legislations governing cross-border cases

Why Cross-Border Cases Are Distinctive

Multiple forums, legal systems, assets, and children involved

The Central Legal Map

Three routes: original HK proceedings, Part IIA, Cap. 639

Cap. 639 Regime

Registration, recognition and setting aside application

Part IIA of Cap. 192

Financial relief after foreign / Mainland divorce

Children's Welfare

Custody, relocation and *QMY v GSS* (CFA case)

Hague issues

Abduction & Habitual residence

Summing Up

Ten judicial propositions

Disclaimer

Scope and limitations

Relevant Statutes

Matrimonial Causes Ordinance	**Cap. 179**
Matrimonial Proceedings and Property Ordinance	**Cap. 192, esp. Part IIA, ss. 29AB–29AF**
Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance	**Cap. 639**
Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Rules	**Cap. 639A**
Child Abduction and Custody Ordinance	**Cap. 512**
Guardianship of Minors Ordinance	**Cap. 13**

Useful Judiciary website tailor-made for Family Court: https://www.judiciary.hk/en/courts/fc_index.html

Family Court: Definition & Scope



Definition — §1 of Practice Direction 15.12

"Family Court" means that division of the District Court which is for the time being assigned by the Chief Justice to deal with Matrimonial Proceedings and/or Family Proceedings.

Technical difference of Matrimonial / Family Proceedings See § §2 & 4 of the said Practice Direction.

Cross-Border Scope

- HK–Mainland marriages, divorces, children (legitimate & illegitimate), maintenance & assets
- Recognition and enforcement under Cap. 639
- Financial relief after foreign / Mainland divorce under Part IIA, Cap. 192
- Jurisdiction, forum, child welfare, property distribution & procedural fairness

Key Judicial Role

The court must identify the correct legal route: an original HK claim, a Cap. 639 recognition/enforcement application, a Part IIA financial-relief application, or an application involving the child's welfare, relocation under Cap. 13, or Hague issues.

Why Cross-Border Cases Are Distinctive



One matrimonial / family dispute may involve many legal systems

- Marriage or family life may be centred in Hong Kong, the Mainland, and one or more than one overseas jurisdictions.
- Divorce status may arise from a Mainland judgment or a Mainland Civil Affairs Department divorce certificate.
- Assets may be held through HK/Mainland companies, bank accounts, trusts, real property, nominees or family-controlled entities.
- Children may live, attend school or receive care in a different jurisdiction from the litigation forum.
- The same dispute may generate questions of jurisdiction, recognition, enforcement, duplication, public policy and child welfare.

Key Message

The court should identify whether the application concerns:

1. **Status —** married couple, divorce, nullity, legal separation.
2. **Children —** custody, care and control, access, return/delivery
3. **Maintenance/property —** child/spousal maintenance, lump sum, property transfer or division
4. **Fresh financial relief after foreign (including Mainland) divorce —** Part IIA, Cap. 192

Note:

1. Cap. 639 and Part IIA perform different functions.
2. Do not assume that recognition of a divorce resolves financial relief, or that a recognition/enforcement application is the same as an original ancillary-relief claim.

The Central Legal Map

At least three routes commonly encountered

1 Original HK Divorce

- Dissolution of marriage under Cap. 179 where HK jurisdiction exists, then ancillary relief under Cap. 192, Part II.
- Financial and child orders consequent on HK matrimonial proceedings.

2 Financial Relief After Foreign / Mainland Divorce

Fresh HK financial-relief application under Cap. 192, Part IIA, subject to leave and jurisdiction.

3 Registration Under Cap. 639

Registration / recognition / enforcement of qualifying Mainland matrimonial and family judgments under Cap. 639 and Cap. 639A.



Judicial Caution

A party cannot bypass the statutory conditions of Part IIA by presenting a fresh financial case as a Cap. 639 application; equally, a party seeking recognition of an enforceable Mainland order should not be required to re-litigate the merits as if commencing an original Part IIA claim.

Question:

What is the relevance and significance of the Mainland judgment in an application under Cap 639 & Cap. 192, Part IIA and how does it affect these 2 kinds of applications?

The HK–Mainland Arrangement & Cap. 639



The Statutory Reciprocal-Recognition Regime

- **20 June 2017** — Arrangement on Reciprocal Recognition and Enforcement of Civil Judgments in Matrimonial and Family Cases signed by *the Supreme People's Court* and *the HKSAR Government*.
- **Cap. 639** — Implemented in Hong Kong by the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance.
- **15 Feb 2022** — Cap. 639 came into operation.

Cap. 639 creates an HK Route for:

1. Registration of specified orders in effective Mainland matrimonial/family judgments.
2. Recognition of valid Mainland divorce certificates.
3. Issue of certified copies and certificates for qualifying HK judgments to facilitate Mainland recognition/enforcement.

Note:

1. The statutory structure reflects a policy of reciprocal effectiveness while retaining procedural safeguards. The court's task is primarily statutory: eligibility, proof, registration, service, set-aside application and enforcement consequences.
2. Cap. 639 is not a general *appeal* from Mainland judgments but is a specialised recognition and enforcement mechanism.

Cap. 639: What Can Be Registered & Recognised?

Three Categories of Specified Mainland Orders

Status-Related Orders

Divorce, nullity, legal separation

Care-Related Orders

Child custody, care and control, access, guardianship arrangements, return or delivery of a child.

Maintenance-Related Orders

Child / spousal maintenance, property division between spouses and other qualifying financial orders.

Separate Category: Mainland Divorce Certificates

- Addressed by the specific recognition mechanism in Part 3 of Cap. 639.
- Not treated in precisely the same way as a court judgment.
- The Family Court may recognise it if satisfied that it is valid in the Mainland, subject to the statutory process and any set-aside challenge.

Question:

When party may use loose language such as "enforcing a Mainland divorce", the court should ask: is it a court judgment with specified orders, a Civil Affairs Department divorce certificate, or a request for fresh / additional financial relief in HK?

Cap. 639: Application & Procedural Route

Registration of a Mainland Judgment

1. Confirm that the Mainland judgment was given on or after 15 February 2022 and is effective in the Mainland.
2. Apply to the District Court (Family Court) for a registration order subject to statutory transfer provisions.
3. Support the application with an affidavit and prescribed evidence, including the sealed judgment and Mainland-court certificate where required.
4. Serve notice of registration on the other party.
5. Permit any application to set aside registration within the period stipulated by the court/notice.
6. Once final, a registered status-related order is recognised as valid in HK; a registered care-related or maintenance-related order may be enforced in HK.
7. Care-related and maintenance-related registration applications generally carry a two-year time limit, subject to the statutory framework and any applicable extension/discretion.

Question:
The court should ensure it has the correct certified or sealed documents and evidence of effectiveness in the Mainland, and should examine the effective date of the relevant Mainland order and the precise relief sought, rather than rely merely on copies from lawyers, or descriptions in pleadings. In what circumstances, is a PRC lawyer's opinion needed?

Part 3 of Cap. 639: Mainland Divorce Certificates

Statutory Route

- Apply to the District Court (Family Court).
- File affidavit evidence and a notarised copy of the certificate as required.
- The court considers whether the certificate is valid in the Mainland.
- Notice of the recognition order must be served on the other party.
- Recognition takes effect after the set-aside period expires or any set-aside challenge is finally determined.

Likely Contested Issues

- Authenticity and validity of the certificate.
- Fraud or alleged sham registration.
- Proper notice and procedural fairness.
- Consequences for an earlier / later HK divorce petition / parallel proceedings in Mainland or for a Part IIA application.

Note:
A valid Mainland divorce certificate issued only on or after ***15 February 2022*** may be recognised through this Part 3 mechanism.

Division 3 of Cap. 639: Setting Aside & Safeguards

Registration is not automatic immunity from challenge

Typical Grounds for Setting Aside

- The judgment was not effective in the Mainland.
- A statutory precondition to registration was not satisfied.
- The respondent was not summoned in accordance with Mainland law.
- The order is affected by fraud or other statutory defect.
- The case engages the statutory exceptions, including public-policy and child-welfare protections.

Judicial Focus

- Was the respondent afforded a genuine opportunity to participate?
- Is the particular order within the statutory class?
- Is the relief sought enforcement, recognition, or impermissible merits re-litigation?
- Where children are concerned, have welfare and the statutory safeguards been given proper weight?

The court should distinguish a true procedural or statutory defect from a dissatisfied party's attempt to reopen the substantive merits of a Mainland determination.

Question:
Is there any risk of double recovery across HK and the Mainland? This question is especially important for maintenance/property relief. Reciprocal enforcement is designed to make a qualifying order effective, not to allow the judgment creditor to recover more than the order permits.

Part IIA of Cap. 192

Financial Relief After Foreign / Mainland Divorce



Permits

HK financial relief after marriage dissolved outside HK including Mainland

Prevents

Serious financial injustice where the foreign / Mainland process does not adequately address the parties' financial circumstances or the HK connection

Not Designed

To create a routine second financial hearing after every foreign / Mainland divorce

Part IIA: Statutory Structure

Stage	Core Issue
Section 29AB	Is the applicant within the class entitled to apply after a foreign Mainland divorce, annulment or legal separation?
Section 29AC	Should the court grant leave? Is there substantial ground for the application?
Section 29AE	Does the court have Part IIA jurisdiction?
Section 29AF	Is HK an appropriate venue, and what relief—if any—should be ordered?

Part IIA is modelled substantially on ***Part III of the UK Matrimonial and Family Proceedings Act 1984***, but its application is rooted in the wording and jurisprudence of the Hong Kong statute.
A party may enforce a Mainland maintenance order under Cap. 639 but still seek leave for financial relief under Part IIA, subject to the statutory requirements and the court's assessment.



Part IIA Jurisdiction: Section 29AE

Three Alternative Jurisdictional Gateways
Under section 29AE, the court has jurisdiction only if, at the relevant date, either party to the marriage:

1. Domiciled in Hong Kong
2. Habitually resident in HK throughout the three years immediately preceding the foreign divorce or leave application
3. Substantial connection with Hong Kong

Judicial Consequences

- These are threshold requirements, not merely discretionary factors.
- A financial claim cannot proceed under Part IIA if no statutory jurisdictional gateway is established.

Key Authorities

PFX v XKJ [2026] 1 HKLRD 599
JQ v CLH [2022] 2 HKLRD 632 (CA)
ZJW v SY [2017] HKFLR 612 (CA)
ZC v CN [2014] 5 HKLRD 43 (CA)

“Substantial Connection”: A Judicial Fact Matrix

The inquiry is intensely factual

Physical presence

Frequency, duration and purpose of stays in HK

Family life

Where did spouses actually live?
How about their close relatives, eg parents?

Children

School, medical care and daily routines

Employment / business

Genuinely conducted in HK, and to what extent?

Property / assets

Real HK asset base, rent or own — central or peripheral?

Financial footprint

Bank accounts, credit facilities, tax, companies, investments

Social integration

Community, memberships, immigration status, social ties

Temporal quality

Current or historical / opportunistic or merely anticipated?

“Substantial connection” should not be reduced to a single asset, citizenship, a past residence, or a proposed future move. The authorities require evaluation of the true and current connection.

Part IIA Leave: Section 29AC

The leave stage is a filter

Under section 29AC, on an *ex parte* basis, the applicant must first obtain leave.
The court must not grant leave unless it considers that there is substantial ground for the application.

The Court Shall Examine:

- Whether a section 29AE jurisdictional basis is realistically established.
- Whether the applicant is delay in applying for leave.
- The nature and adequacy of financial provision, if any, in the foreign/Mainland proceedings.
- The connection of the parties and assets to Hong Kong.
- Whether the applicant is seeking a legitimate remedy for financial injustice or a tactical re-litigation.
- The practical enforceability of any future HK order.
- The risks of inconsistent orders and double recovery.

Leave application is not a mini-trial of every section 29AF factor, but neither is it formalistic. It protects the court and parties from unmeritorious or opportunistic post-divorce litigation.

Part IIA Merits: Section 29AF

Is Hong Kong the appropriate venue for financial relief?

- The connection with any other country.
- Financial benefit already received, or likely to be received, from the foreign/Mainland proceedings.
- Financial benefit available from a foreign/Mainland settlement agreement or foreign/Mainland law.
- The availability and enforceability of relief in Hong Kong.
- The parties' resources, needs, obligations, contributions, standard of living, age and duration of marriage.
- The welfare of any children of the family.

Judicial Distinction

s. 29AE

Does HK have jurisdiction?

s. 29AC

Is there substantial ground for the claim?

s. 29AF

Is HK an appropriate venue and the court is required to consider all circumstances to determine what order is just?

Children’s Welfare in Cross-Border Cases



The children’s welfare is the court’s paramount consideration.

Children do not become secondary to jurisdictional disputes.

In a Cap. 639 case, the statutory safeguards must also be applied with close attention to the welfare consequences of recognition or enforcement.

Common Cross-Border Children Disputes



- Custody, care and control, access and contact under Cap 13.
- Removal from HK to the Mainland or overseas for short-term purposes (e.g. travel, study).
- Permanent relocation.
- Enforcement of Mainland care-related orders under Cap. 639.
- Conflicting orders or parallel proceedings in different forum.
- Habitual residence, wrongful removal and retention under Cap. 512.
- Protective measures, education, medical needs and the child's views.

Key Authorities

- QMY v GSS (2017) 20 HKCFAR 303
- PD v KWW [2010] 4 HKLRD 191 (CA)
- SMM v TWM [2010] 4 HKLRD 37 (CA)
- BA v BL [2019] 4 HKLRD 23 (CA)
- ZJ v XWN [2018] 3 HKLRD 644 (CA)

*In the child's permanent relocation application, the court will usually require the applicant to give undertaking to apply for a **Mirror Order** in the country where the child relocates.*

QMY v GSS (2017) 20 HKCFAR 303

Children Outside HK: Why the Case Matters

- The CFA considered jurisdiction under Cap. 13 in respect of a child who was neither ordinarily resident nor present in Hong Kong.
- The CFA held that the HK court has jurisdiction to entertain the application for maintenance of an illegitimate child.
- Once jurisdiction exists, the court does not possess an unfettered discretion to decline it; the issue of declining jurisdiction is governed by *forum non conveniens* principles.
- The child's best interests remain central within the relevant substantive analysis.

Cross-Border Application

1. Whether there is statutory jurisdiction for child's custody, care and control, access or guardianship under Cap. 13, see CYMY v YKKE [2025] HKFC 97;
2. Whether another forum is clearly more appropriate (ie *forum non conveniens*); and
3. What outcome best promotes the child's welfare?

Permanent Relocation: A Structured Welfare Inquiry

Relocation is not a parental entitlement

Typical issues:

- What is the child's view?
- Is the proposal genuinely motivated, realistic and adequately planned?
- What are the educational, medical, caregiving and housing arrangements?
- What is the impact on the child's relationship with the left-behind parent?
- Can contact be maintained in a meaningful and affordable manner?
- What are the travel, immigration, school-calendar and enforcement implications?
- How should the court evaluate alleged advantages in the proposed location?
- What arrangements protect against unilateral retention or non-compliance?

The inquiry remains child-centred and fact-sensitive. Social Investigation Report & International Social Investigation Report are always important

Hague Convention & Habitual Residence Disputes

International child-abduction issues under Cap. 512 remain distinct from Cap. 639
Jurisdiction: *Court of First Instance* only but not Family Court

Common Issues

- Was the removal or retention wrongful?
- What was the child's habitual residence immediately before the alleged wrongful removal or retention?
- Did the applicant have rights of custody and exercise them?
- Is a Convention defence made out?
- Has the child become settled or objected in a legally relevant way?
- Are there grave-risk or protective-measure issues?

Authorities

- LCYP v JEK [2015] 4 HKLRD 798 (CA)
- M v E (Hague Convention; Rights of Custody) [2015] HKFLR 337 (CA)
- BMC v BGC formerly known as WCY [2020] HKCA 317
- CD v HX [2025] HKCA 762

The Mainland is not a Hague Convention contracting jurisdiction for the purpose of the Convention's operation in the same way as contracting states. However, Cap. 639 enforcement may be an alternative.

Key Judicial Propositions

Summing up (1–5)

1. Classify the legal route first. Cap. 639, Part IIA and Cap. 512 are not interchangeable.
2. Cap. 639 is a statutory recognition/enforcement regime. It applies to qualifying judgments and certificates within its temporal and substantive scope.
3. The Family Court is the usual HK forum for Cap. 639 applications.
4. Status, care and maintenance-related orders must be distinguished.
5. Recognition of a PRC divorce does not itself determine ancillary financial claims.

Key Judicial Propositions

Summing up (6–10)

6 Part IIA requires leave and a jurisdictional gateway. The applicant must show domicile, qualifying habitual residence, or substantial connection.

7 “Substantial connection” is a holistic factual inquiry. It is not established merely by a minor asset, a historical link or a future plan.

8 Prior Mainland financial provision matters. It may affect leave, appropriateness, the quantum of relief and the risk of double recovery.

9 Children require a separate welfare-centred analysis. Jurisdiction, forum, enforcement and relocation must be approached through the applicable statutory framework.

10 Enforceability matters. A technically correct Mainland order may be enforceable in HK but may also be an empty judgment due to inadequate assets of the other party here.

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