

Further Study on the Phenomenon of Divorce in Hong Kong

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HKJC Centre for Suicide Research and Prevention

The University of Hong Kong

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Abbreviations

| | |
|------------------|--------------------------------------------------------|
| AIO | Attachment of Income Order |
| Cafcass | Children and Family Court Advisory and Support Service |
| CA | Communication Authority |
| cDR | Crude Divorce Rate |
| CDR | Children's Dispute Resolution |
| cDRI | Improved Crude Divorce Rate |
| CICO | Construction Industry Council Ordinance |
| CMAC | Catholic Marriage Advisory Council |
| CMEC | Child Maintenance and Enforcement Commission |
| CMO | Child Maintenance Options |
| CMS | Child Maintenance Service |
| CRA | Credit Reference Agency |
| CR | Compassionate Rehousing |
| CSA | Child Support Agency |
| C&SD | Census and Statistics Department |
| CSSA | Comprehensive Social Security Assistance |
| DV | Domestic Violence |
| DWP | Department for Work and Pension |
| ESDS | Economic and Social Data Service |
| FCPSU | Family and Child Protective Services Unit |
| FCU | Family Counselling Unit |
| FDR | Financial Dispute Resolution |
| FPT Committee | Federal Provincial Territorial Family Law Committee |
| FJC | Family Justice Court |
| FRO | Family Responsibility Office |
| FRU | Family Resource Unit |
| FSR | Report on the Review of Family Services |
| FSU | Family Support Unit |

| | |
|--------|--------------------------------------------------------------------|
| HAD | Home Affairs Department |
| HD | Housing Department |
| HKBOR | Hong Kong Bill of Rights Ordinance, Cap. 383 |
| HKFWS | Hong Kong Family Welfare Society |
| HKIRD | Hong Kong Inland Revenue Department |
| HKMAAL | Hong Kong Mediation Accreditation Association Ltd |
| HKPF | Hong Kong Police Force |
| HKU | The University of Hong Kong |
| ICCMW | Integrated Community Centres on Mental Wellness |
| KPIs | Key performance indicators |
| IDS | Integrated Database System |
| IFSC | Integrative Family Service Centre |
| ImmD | Immigration Department |
| IRU | Information Resource Unit |
| ISP | Interim Support Plan |
| IS | Income Support |
| JS | Judgment Summons |
| KPI | Key Performance Indicator |
| LAD | Legal Aid Department |
| LGBTQ+ | Lesbian, gay, bisexual, transgender, queer and related communities |
| LWB | Labour and Welfare Bureau |
| MAS | Maintenance Assurance Scheme |
| MASPS | Maintenance Assurance Scheme Payment System |
| MB | Maintenance Board |
| MCO | Matrimonial Causes Ordinance, Cap. 179 |
| MCR | Matrimonial Causes Rules, Cap.179A |
| MEPs | Maintenance Enforcement Programs |
| MIP | Mandatory Information Programme |
| MMCs | Maintenance Mediation Chambers |
| MMS | Mediator Mentorship Scheme |
| MPPO | Matrimonial Proceedings and Property Ordinance, Cap. 192 |
| MO | Maintenance Order |

| | |
|---------|--------------------------------------------------------------|
| MPS | Maintenance Pending Suit |
| MRO | Maintenance Record Officer |
| MSC | Maintenance Support Central |
| NGO | Non-Governmental Organisation |
| NLSFT | Non-means-tested Loan Scheme for Full-time Tertiary Students |
| NLSPS | Non-means-tested Loan Scheme for Post-secondary Students |
| NRP(s) | Non-resident Parent(s) |
| NT West | New Territories West |
| NZIR | New Zealand Inland Revenue |
| OFRO | Ontario Family Responsibility Office |
| OMIP | Ontario Mandatory Information Programme |
| OP | Opposite Party |
| PCCC | Parent-Child Contact Centre |
| PDPO | Personal Data Privacy Ordinance, Cap. 486 |
| PFA | Private Family Adjudication |
| PWC | Parent with care |
| PWIF | Protection of Wages on Insolvency Fund |
| RDC | Rules of the District Court, Cap. 336H |
| SCLET | Standing Committee on Legal Education and Training |
| SCSCs | Specialised Co-parenting Support Centres |
| SES | Socioeconomic Status |
| SFO | Student Finance Office |
| SKCSA | Child Support Agency of South Korea |
| SIRs | Social Investigation Reports |
| SWD | Social Welfare Department |
| TAVA | Traffic Accident Victim Assistance |
| THB | Transport and Housing Bureau |
| THS | Thematic Household Survey Report |
| TICF | Travel Industry Compensation Fund |
| UK | United Kingdom |
| UKDS | United Kingdom Data Service |
| US | United States of America |

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Further Study on the Phenomenon of Divorce in Hong Kong

HKJC Centre for Suicide Research and Prevention and
the Department of Social Work and Social Administration

The University of Hong Kong

Executive Summary

A. Background and Objectives

1. Divorce has become an increasingly serious social problem in Hong Kong. It presents complicated challenges to individuals and families, including physical, psychological, familial, and financial stress especially for those who are vulnerable and disadvantaged. An in-depth investigation of the phenomenon of divorce in Hong Kong is therefore of paramount importance to better mitigate these problems arising from divorce. Following the 2014 Study on the Phenomenon of Divorce in Hong Kong by The University of Hong Kong (HKU), the Government, through the Family Council, commissioned the HKU Team in 2018 to conduct a *Further Study on the Phenomenon of Divorce in Hong Kong*. This project's objectives include:
 - a) to update the demographic and socioeconomic landscape of divorce in Hong Kong, including a further examination of: (i) the correlation between the age of marriage and divorce rate; (ii) the divorce rate of cross-boundary marriages; and (iii) the background of divorced families, such as step- and split-families arising from divorce and remarriages;
 - b) to review existing systems that recover maintenance payments and enforce maintenance orders, and collect maintenance-related statistics and information in Hong Kong;
 - c) to examine the effectiveness of Judgment Summons (JS) proceedings in recovering maintenance payments and identify viable improvements to comply with Articles 10 and 11 of the Hong Kong Bill of Rights Ordinance, Cap. 383 (HKBOR).

B. Methodology

2. This *Further Study* adopted a mixed-methods approach, involving both quantitative and qualitative methodologies, to address the three main objectives above. Findings were compiled based on information from a) relevant literature, b) Thematic Household Survey (THS) Report No.61, c) 308 cases submitted online by government departments, social service organizations and legal practitioners, d) 200 divorce cases provided by the Family Court, e) interviews and focus groups with key stakeholders, such as divorced families, legal and social service providers,

and government officials, as well as f) meetings with the Research Team community partners from social service and legal sectors.

C. Key Findings

Phenomenon of Divorce

3. Divorce has become a common phenomenon in Hong Kong. According to the THS Report No. 61, around 6% of all persons aged 16 and over in Hong Kong have been divorced/separated. The number of cases has increased from 2,000 in 1981 to more than 20,000 new cases each year in 2019. Often, couples with lower educational attainment and shorter length of marriage are more likely to separate. Current data suggests that the divorce rate in cross-boundary marriages is not consistently higher than that in local marriages. The Team also found that divorce risk peaks at 2 to 10 years of marriage (Hong Kong), and was highest for those married at young ages (South Korea). The findings also highlighted the various impacts of divorce on families, including physical exhaustion, psychological burden, shifted relationship dynamics, and role changes of family members. Examining the rationales and practices of the minimum marriage age in various jurisdictions, the Team also found no support for lowering or changing the current minimum marriageable age in Hong Kong at 21 and 16, respectively without and with parental consent.

Maintenance Orders

4. Only a minority of divorcees (16.1% of all who have divorced/legally separated) applied for maintenance orders. However, the low rate does not depict the need for maintenance, because there are other factors that could affect the decision-making, for example, legal obstacles, family barriers, administrative bureaucracy and the waiting time of obtaining the maintenance. From our analysis, divorcees who are more likely to apply for maintenance are: a) female, aged between 30-34, not remarried, with lower educational attainment, and of lower income, b) younger age of marriage and age of divorce, and c) have shorter lengths of marriage. Specifically, the most common type of application is periodic maintenance, followed by nominal maintenance. Males and recipients of CSSA (Comprehensive Social Security Assistance) are more likely to apply for nominal maintenance than females and non-CSSA counterparts.

Default of Maintenance

5. Default of maintenance is a relatively common issue in Hong Kong (occurred in 40.5% of maintenance orders that involved periodical or lump sum payments) as it is in many places worldwide. In Hong Kong, it is more likely to occur to a) females, who received secondary school education, retired, working in clerical support and sales, low income, living in subsidized homeownership housing, and CSSA recipients, and b) those with poor spousal relationships.

Findings also illustrated the long-lasting impact of the default of maintenance, including financial and psychological burdens on the payees with dependent children. This can be especially detrimental for spouses from cross-boundary marriages as they often face additional challenges, such as the lack of social support and language barriers.

Enforcement of Maintenance Orders

6. Despite the prevalent problem of defaults on maintenance payments, most of those affected (87.8% of persons who did not receive full maintenance) did not pursue enforcement action against the defaulters. A lack of legal action does not mean maintenance is not needed. Such hesitancy could be attributed to insufficient access to information, perceived ineffectiveness of the system, complicated and lengthy legal procedures, and the stress involved in the process.
7. For those who do pursue enforcement actions, Judgment Summons (JS) is currently the most commonly used procedure. Yet, our findings suggest that JS could be time-consuming, cost inefficient and could negatively affect the mental health of the recipients (including spouse and children). Referencing international practices on maintenance management, the Team explores potential ways to enhance the effectiveness of maintenance recovery procedures in Hong Kong.
 - a. Due to the limited availability of existing data, the current findings do not include the (a) number of divorce cases with maintenance orders and/or custody orders issued each year, (b) the number of maintenance orders issued each year, (c) proportion of cases in default of maintenance payments and the amounts involved, (d) relevant demographic information of maintenance payers, (e) the interests or surcharge imposed in relation to Judgment Summons (f) success rate of Charging Orders, Garnishee Orders, Attachment of Income Orders and Writs of Fieri Facias and (g) analysis on marriage age and divorce rate in Hong Kong for the past ten years which could not provide a comprehensive and thorough analysis on the landscape of divorce and situation of enforcement of maintenance orders in Hong Kong. The above information would only be available if the divorce information can be captured and stored in a systematic and timely manner by a relevant bureau/ department. This *Study* is mainly based on the Thematic Household Survey (THS) Report No.61 of the Census and Statistics Department, 308 cases submitted online by government departments, social service organizations and legal practitioners, 200 divorce cases provided by the Family Court, etc. Therefore, it is important to take these limitations into account and exercise caution when interpreting and generalizing our findings.

Service Provision

8. Stakeholders expressed appreciation towards Hong Kong's existing social services since a range of quality services are provided to divorced populations before and during the marriage, also during and after divorce. The Team also highlighted key qualities that were considered important

for service providers, including well-rounded knowledge, sensitivity to users' needs and feelings, and multidisciplinary collaboration. Areas for development in current services are also identified, with the main goals of increasing divorce-related knowledge and strengthening the effectiveness of current enforcement procedures.

Study of maintenance systems in other jurisdictions

9. In this *Study*, the Team studied the maintenance models of the UK, Canada (Ontario), New Zealand, South Korea, Taiwan and Singapore. Research reveals that all jurisdictions which have adopted models of maintenance boards are Western ones, South Korea is the only Asian place which has adopted a similar system. Meanwhile, most jurisdictions with maintenance assurance schemes have encountered a number of problems, such as a large amount of arrears, long processing time with only a small number of cases handled, management issues, high administrative costs, etc.

D. Recommendations

10. Based on our research findings, the Team made the following recommendations: a) service recommendations to improve existing services, b) legislative recommendations to improve the effectiveness and efficiency of enforcement measures, and c) policy initiatives to help effectively prevent and manage divorce issues in Hong Kong.

Recommendations on Divorce-related Services

11. Multiple preventive and remedial service recommendations that cover pre-marriage to post-divorce periods are proposed. They are developed to further improve existing services and address gaps noted in our findings, aiming to minimize the risks of divorce and stress during the divorce process.

Recommendation 1: To reduce divorce risks, we proposed enhanced promotions to encourage couples and families to utilize family services, including a) pre-marital education programs and counselling services, and b) online and offline family education programs.

Recommendation 2: To promote responsible divorce decisions, we recommend a) strengthening informational support such as legal rights, co-parenting, and local services; and b) better promotion of counselling services for those contemplating divorce.

Recommendation 3: To mitigate the negative impacts of divorce on divorcees and children, we suggest strengthening the following services: a) co-parenting courses in family services, b)

support to children, c) more accessible intermediate housing services for divorced families in need, d) further streamlining administrative processes for Legal Aid.

Recommendation 4: To continue to improve existing service quality, the following areas could be further fine-tuned: a) pre- and in-service training on knowledge and sensitivity for service providers, b) greater cross-professional collaboration and integration to provide specialised case support for divorcees, and c) increasing the staffing of the Family Court to match the growing number of divorce cases.

Recommendations on Maintenance Enforcement Measures

12. To improve compliance with maintenance payments, we propose strengthening the following legal tools to improve enforcement measures.

Recommendation 5: The Judiciary could consider a) better enhancement of judgment summons (JS) and imposing penalties such as pursuing a committal for contempt of court for breach of maintenance order, b) evaluating the use of attachment of income order (AIO) and encouraging to settle maintenance instalment by autopay services, and c) extending the validity of prohibition orders to prevent debtors from leaving Hong Kong.

Recommendation 6: New administrative and policy measures to deter defaults by: a) suspending passport and driving licenses, b) transferring debtor's information to credit reference agencies, c) deducting government benefits and tax refunds, and d) extending payment options, and e) furnishing a banker's guarantee by the debtor. All these measures have been implemented in many societies with economic developments similar to that of Hong Kong (e.g., Canada, South Korea, and the UK).

Recommendation 7: To achieve the proposed recommendations 5 and 6, a) the mechanism for locating debtors should be strengthened, and b) access to case-related information should be further facilitated.

Recommended Policy Initiatives

13. Reviewing the present development in seeking a divorce, the Team identified four areas, including *a) an integrated information support platform, b) effective maintenance systems, c) financial support for divorced families in need, and d) divorce-related data collection and documentation.* We recommend the government consider the following two areas of policy initiatives:

Policy Initiative 1: Establish a Family Responsibility Office (FRO): The establishment of a FRO would enable the Information Resource Unit (IRU), a one-stop resource hub that sets out a

Mandatory Information Programme following all divorce applications, includes an assessment and referral station, and provides capacity building courses to service providers. This would better ensure that divorcees are well informed about their rights and responsibilities, receive the appropriate help needed, and that front-line professionals possess sufficient knowledge to work with divorced families.

Additionally, the Office will facilitate the implementation of the Maintenance Assurance Scheme (MAS). The MAS would collect and distribute maintenance through private payments or MAS payment systems and enforce court orders to recover maintenance. Aside from granting or amending such orders, statutory powers may be conferred on the centre to perform the functions described above without undermining the authority of the courts. The MAS is expected to make the maintenance recovery process more effective and efficient, so as to encourage payers to fulfil their responsibilities and encourage payees to apply for enforcement orders.

The Interim Support Plan (ISP) for maintenance payees facing financial hardships during maintenance enforcement litigation is also part of the proposed MAS. It would provide immediate ex-gratia payments to maintenance payees in need for a limited time. It operates by collecting a levy from marriage registration fees as a contribution to the Plan, disbursing payments to eligible maintenance payees, and having maintenance payers return payments after the end of litigation against the payers to ensure the sustainability of the Plan.

Policy Initiative 2: Set up an Integrated Database System (IDS): The Government can consider identifying a bureau/ department to set up an IDS to systematically collect divorce-related data with the support of the Census and Statistics Department (C&SD) in order to better keep track of the current divorce situation and for future study. Increasing the current level of workforce in respective departments would be required to enhance database management and data collection capabilities. The IDS should be housed in the bureau/ department which looks after and takes charge of the issue of divorce.

E. Concluding Remarks

14. This report seeks to provide a review of divorce-related issues and policy recommendations based on historical data, especially in addressing deficiencies in current systems that collect maintenance payments and enforce maintenance orders. Some existing services need to be realigned and current staffing needs to be redeployed to improve connectedness between existing services and their efficiencies. Every reasonable effort has been made to address research limitations and to synthesise ideas from available local data, other jurisdictions' experiences and relevant literature.
15. We hope in the not too distant future, research on divorce in Hong Kong should be conducted regularly to monitor the latest trends, to identify gaps in existing services, and to better evaluate

the effectiveness of the proposed policies related to maintenance. The government should consider establishing a comprehensive database to collect divorce-related statistics for future policy deliberation as in other jurisdictions. A fuller picture will benefit the family court, families and communities directly, and will ensure worthy spending of needed additional resources. Subsequently, the risk of divorce can be mitigated for the betterment of the community.

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香港離婚狀況進一步研究

香港大學香港賽馬會防止自殺研究中心

及

社會工作及社會行政學系

報告摘要

A. 前言

1. 離婚已成為香港日益嚴重的社會問題，並為個人和家庭，特別對弱勢群體帶來了一系列包括生理、心理、家庭和財務壓力等複雜的問題。深入探討與離婚有關的本地現象因此變得非常重要，亦有助緩和離婚所引致的問題。繼 2014 年「香港離婚狀況研究」之後，政府透過家庭議會於 2018 年委託香港大學的研究團隊對香港離婚狀況進行了進一步研究。研究目的包括：
 - a) 就香港的離婚人口結構和社會經濟狀況提供最新資料，包括進一步剖析 (i) 結婚年齡與離婚率的相互關係；(ii) 跨境婚姻的離婚率；以及 (iii) 提供更多有關離婚家庭(包括再婚和離異家庭)的背景資料；
 - b) 審視現行的追討贍養費制度和執行贍養令制度，並收集香港有關贍養費的統計數字和資料；以及
 - c) 研究有關採取判決傳票法律程序以追討贍養費的成效，並探討一些符合《香港人權法案條例》第十和第十一條規定的可行改善措施。

B. 調查方法

2. 「香港離婚狀況進一步研究」(「離婚研究」)採用混合調查方法，就以上三個研究目的進行了定量和定質研究。研究調查結果是根據下列六種資料分析而成，包括：a) 文獻探討、b) 主題性住戶統計調查第 61 號報告書(「2016 年統計調查」)、c) 308 件由政府部門、社會服務機構和律師事務所透過網上提供的個案、d) 200 件由家事法庭提供的離婚個案、e) 與相關的持份者，如離婚家庭、法律及社會服務提供者和政府官員進行的深度訪談和焦點小組訪談，以及 f) 與研究團隊的社福及法律界伙伴進行的會議。

C. 主要調查結果

現時離婚狀況

- 離婚在社會上愈趨普遍。根據 2016 年統計調查結果顯示，全港約 6% 的 16 歲及以上人士曾經離婚或分居。曾經離婚或分居的人數從 1981 年的 2,000 人增加至 2019 年的 20,000 以上。受教育程度較低和婚姻時間較短的夫婦都比較容易離婚或分開。現時數據顯示，跨境婚姻的離婚率並沒有持續高於本地婚姻的離婚率。研究團隊還發現離婚風險於婚後 2 至 10 年間為最高（香港），而在年輕時結婚也會承受最高的離婚風險（韓國）。研究結果亦指出離婚對家庭的不同影響，包括精疲力盡、心理負擔，以及家庭關係及角色變化。此外，團隊分析了不同地方調整最低結婚年齡的理據後，認為分析結果支持本港維持現時最低結婚年齡，即年滿 21 歲以及已獲取父母或監護人書面同意的 16 歲香港居民便可結婚。

贍養令

- 研究結果顯示只有少數曾經離婚或分開之人士（16.1%）申請贍養令。但是，低贍養令申請數量可能無法如實反映對贍養費的需求，因為還有其他因素，如法律或家庭上的障礙、申請程序和等待發出贍養令的時間，可能會影響離婚人士申請贍養令的意欲。根據我們的分析，a) 女性、30 至 34 歲、沒有再婚、低學歷、低收入的背景、b) 在年輕時結婚和離婚的人士，以及 c) 短婚齡的人士較大機會申請贍養費。具體來說，定期付款是最常用的贍養令種類，其次是象徵式贍養費。男性和領取綜援的贍養費收款人申請象徵式贍養費比女性和非領取綜援人士的比例高。

拖欠贍養費

- 拖欠贍養費的問題，香港與其他地區一樣，都是一個相對普遍的的問題（佔定期付款或整筆付款的贍養令總數的 40.5%）。在本港，被拖欠贍養費的經歷多在 a) 女性、持中學學歷、已退休、從事文書支援或零售工作、居住於資助房屋、領取綜援，以及 b) 與配偶關係惡劣的人士身上發生。調查結果還說明了拖欠贍養費所帶來的長期影響，包括受款人的財務和心理負擔。對於跨境婚姻的離婚配偶而言，這種影響尤其有害，因為除了上述問題之外，他們還需面對額外的挑戰，例如缺乏社會支援，語言障礙等困難。

追收贍養費欠款

6. 儘管拖欠贍養費的問題普遍存在，但大多數（87.8%的受款人沒有得到全額贍養費）都沒有採取執行判令向支付人追討欠款。然而，不採取法律行動並不一定意味著不需要討回贍養費欠款，卻可能因為他們缺乏足夠有關的知識與資訊、認為追討機制無效、或擔心複雜且冗長的法律程序以及過程中所面對巨大壓力。
7. 對於那些透過法律程序追討的人來說，判決傳票是目前最常用的執法程序。可是，研究團隊指判決傳票目前仍可能比較費時、成本效率低，或對贍養費受款人（包括配偶和子女）的心理健康產生負面影響。團隊參考了有關贍養費政策之國際經驗，以探討如何改善本港贍養費政策及有關措施。
 - a) 由於數據有限，研究團隊的數字並未包括 (a) 每年發出涉及贍養費令及/或管養令的離婚個案數字、(b) 每年發出的贍養費令數字、(c) 拖欠贍養費的個案數字及其涉及金額、(d) 與贍養費支付人相關的基本人口資料、(e) 判決傳票中的贍養費欠款附加費或利息、(f) 押記令、第三債務人的命令、扣押入息令和扣押債務人財產令狀的成功率及 (g) 香港過去十年的結婚年齡與離婚率分析等，未能全面及透徹分析香港離婚現象和贍養費令執行的情況。當離婚相關的資料能夠由有關的決策局/部門以有系統和及時的方式儲存，上述資料才能夠被獲得。此研究主要以政府統計處的主題性住戶統計調查第 61 號報告書、308 件由政府部門、社會服務機構和律師事務所透過網上提供的個案及 200 件由家事法庭提供的個案等作為依據。因此，在理解研究結果時，需要參考這些因素帶來的限制。

離婚服務及改善空間

8. 不同的持份者都對本港現有的社會服務評價正面，因為服務涵蓋了整段婚姻經歷（從結婚前到結婚期間，至離婚期間及離婚後），並為服務使用者提供了一系列優質的服務。研究團隊提出一些有關服務機構的關鍵服務質素，包括全面的知識、對服務使用者的需求和感受的敏感度，以及跨部門、跨專業之間的協作。研究團隊亦指出一些現有服務發展之建議，主要包括提升工作者對離婚有關的知識和增強現有法律和行政措施之效能。

其他地方的贍養費制度研究

9. 研究團隊在此報告中研究了英國、加拿大（安大略省）、新西蘭、南韓、台灣及新加坡的贍養費制度。根據研究結果顯示，所有採取贍養費管理局模式的司法管轄區均為西方國家，而南韓是唯一一個亞洲地方有採用類似的制度。與此同時，大部份設有贍養費支

援計劃的地方其計劃仍存有不少問題，例如龐大的贍養費欠款金額、較長的處理時間但處理的個案數字較少、管理問題及高昂的行政開支等。

D. 建議

10. 根據研究結果，研究團隊提出：**a)** 改善現有服務的**服務建議**，**b)** 提高執法措施有效性和效率的**立法建議**，以及 **c)** 長遠有助本港預防及管理離婚問題之**政策建議**。

有關離婚服務之建議

11. 研究團隊提出多項範圍涵蓋婚前及離婚後的預防及補救性建議。以下建議都是為了進一步改善現有服務並應付報告中指出的服務改善空間，以減輕離婚風險及離婚過程中所帶來的壓力：

建議一：為降低離婚風險，我們建議應加強服務宣傳包括：**a)** 婚前教育計劃和諮詢服務，以及 **b)** 網上和實體的家庭教育計劃，以鼓勵伴侶和家庭參與。

建議二：為促進負責任的離婚安排，我們建議有關服務應：**a)** 加強資訊支援，如合法權利、共享親職和有關服務消息，以及 **b)** 向正打算離婚的人士推廣離婚諮詢服務。

建議三：為了盡力減少離婚對個人和子女的負面影響，我們建議應強化以下服務：**a)** 家庭服務中的共享親職課程、**b)** 兒童支援、**c)** 為有需要的離婚家庭提供更方便的過渡性房屋服務，以及 **d)** 進一步簡化法律援助申請的行政程序。

建議四：為了繼續提高現有的服務質素，以下領域可以進一步微調，包括：**a)** 服務提供者的知識和敏感度方面的職前及在職培訓、**b)** 更緊密的跨專業合作及整合，以提供專門的支援，以及 **c)** 調整家事法庭的人手以配合日益增加的離婚案件。

有關法律措施之建議

12. 為提升贍養費支付比率，研究團隊提出下列多項對法律措施的建議，以改善現時執行贍養令措施：

建議五：司法機構可考慮 **a)** 完善判決傳票以及違反贍養令的懲罰如藐視法庭的執行、**b)** 檢討扣押入息令的使用情況，並鼓勵使用自動轉帳來付定期的贍養費，以及 **c)** 延長禁制令的有效時間，以防止債務人離開香港。

建議六：新行政及政策措施以阻止拖欠贍養費，包括：a) 暫停護照和駕駛執照、b) 將債務人的資料傳至給信貸評級機構、c) 扣除政府提供的資助和退稅優惠、d) 擴展贍養費付款方式，以及 e) 債務人提供銀行擔保。以上措施已被不少與香港的經濟發展相若的社會採用（如加拿大、南韓和英國）。

建議七：為實現建議五及建設六，政府應 a) 加強債務人的定位機制，以及 b) 協助公眾就有關資料的獲取。

政策建議

13. 研究團隊在審視本港離婚議題的發展後，找出四個關鍵領域，包括：a) *綜合的信息支援平台*、b) *有效的贍養費系統*、c) *對有需要的離婚家庭提供財務支援*，和 d) *與離婚相關的數據收集及紀錄*。因此，團隊建議政府考慮以下兩項政策建議：

政策建議一．設立家庭責任中心：此中心應設立信息資源組，以一站式資源中心的形式為所有申請離婚人士制訂強制性的資訊計劃，其中包括評估轉介服務，以及為離婚服務提供者提供能力提升課程。這將更好地確保離婚人士充分了解其權利和責任，以及得到專業人員的適切協助，而前線的專業人員亦能增進有關知識來協助離婚家庭。

此外，該中心會協助執行贍養費支援計劃。計劃將會透過私人繳付或計劃增設的繳付系統來收取及發放贍養費，並執行法院命令以收回贍養費。撇除頒布或更改此類命令外，法定權力可以授予該中心以執行上述功能，而不會損害法院的權威。此計劃期望使贍養費追討程序更有效用及效率，以鼓勵支付人履行其責任並促使收款人申請執行令。

針對在贍養費執行訴訟期間贍養費收款人所面臨的財務困難，過渡性津貼基金計劃也是建議的贍養費支援計劃一部分。它將為有需要的贍養費收款人提供即時特惠金。它的運作方式是從婚姻登記費中徵收費用作為計劃資金，向符合資格的贍養費收款人提供款項，並在訴訟結束後向支付人收回款項，以確保該計劃的可持續性。

政策建議二．建立綜合數據庫：政府可考慮物色決策局/部門設立綜合數據庫，在政府統計處的支持下有系統地收集與離婚有關的資料，以便更好地掌握現時的離婚情況及作日後研究。此建議將需要足夠的人力來增強數據庫管理及數據搜集的能力，而綜合數據庫也應設在負責處理離婚問題的決策局/部門中。

E. 結語

14. 此報告希望基於過往的數字去審視離婚相關的議題和政策建議，尤其應對現今系統中有關收取贍養費以及執行贍養令的不足之處。為了改善現存服務之間的緊密性和服務效率，一些現存的服務需要重整，而人員的配備亦需要重新部署。研究團隊已盡力解決研究問題，以可用的本地數據、其他地方的經驗和相關文獻以進行分析。
15. 團隊希望在不久將來，香港能夠就本地的離婚現象進行定期研究，以監測其趨勢變化，找出有關服務的改善空間，以及更好地評估有關執行贍養費的政策建議之效用性。政府應建立一個全面的數據庫收集與離婚有關的統計數據，以備將來政策審議之用。一個更全面的理解使家庭和社區都能直接受惠，並確保所需的額外資源得以善用。希望能藉此減輕離婚帶來的風險，推動社會進步。

二零二二年十一月

Chapter 1:

Background, Objectives, Research Questions and Methodology

A. Background

- 1.1 Amidst the rising number of divorce cases in Hong Kong (from 2,062 in 1981 to 23,255 in 2012), the Family Council (with the Home Affairs Bureau serving as the Secretariat) commissioned The University of Hong Kong (HKU) to conduct A Study on the Phenomenon of Divorce in Hong Kong (hereinafter “the *Study*”) in 2012. With approval and assistance from the Family Court and Her Honour Judge Bebe Chu, the then Principal Judge of the Family Court, the *Study* employed the method of triangulation and interrogated qualitative and quantitative data collected from Family Court case files, interviews, and the Hong Kong population census.
- 1.2 The *Study* summarised the demographic and socioeconomic profiles of divorcees and discovered that those who divorced are often in a worse financial position than the average population. Following this observation, the *Study* recommended that social protection including the Comprehensive Social Security Assistance (CSSA) should be adjusted to cater for the financial and housing needs of divorcees and their children. At the same time, the *Study* observed that the mental health of divorcees and their offspring tend to be negatively affected by divorce actions, and therefore unresolved family issues such as domestic violence (DV) can worsen during the actions. The *Study* therefore suggested interim housing may be offered to families in need to minimise family conflicts. The *Study* also suggested that intangible support is important to divorcees. For instance, childcare services and flexible working hours for single-parent families are essential to help divorcees regain sustainable financial independence, as the divorced parents are tasked to fulfil duties as both caregivers and breadwinners.
- 1.3 In addition to studying the effects of divorce on different affected parties, the *Study* also looked at the means to empower couples so that divorces could be avoided, or the impacts of divorces could be minimised in case a marriage is unrecoverable. For instance, marital counselling, including pre-marital education, is found to be a useful tool to harmonise relationships and to minimise negative impacts on the well-being of children in cases of marital difficulty. Divorce education designed for parents and children can help with reducing stress during the divorce process while also providing emotional support and parenting knowledge.
- 1.4 In terms of procedures in divorce and court proceedings, the *Study* suggested that the existing procedures for applying for divorce should be improved to reduce the stress experienced by divorcees. Additional education and assistance provided to divorcees should cover topics including the divorce process, the legal rights of both parties, and the criteria for custodial arrangements. The *Study* suggested that divorce education could reduce the points of disputes in

court proceedings by empowering involved parties with information and skills. To illustrate the point, the *Study* cited certain overseas examples with mandatory divorce education and discovered that divorce education helps involved parties make informed decisions, thereby lowering the stress experienced by the parties. For example, specific school-based programmes for children of divorced families could be cited from the UK. The *Study* suggested that divorce education could help look after the emotional and practical needs of adults while preserving awareness for the well-being of children.

- 1.5 After the *Study* in 2014, a *Further Study on the Phenomenon of Divorce in Hong Kong* (Hereinafter “The *Further Study*”) was arranged to provide a holistic review of the latest situation of divorce in Hong Kong especially on the proper prevention and management of problems with maintenance payment, and the implications of some new developments in matrimonial legislations. Examples include the compatibility of the JS proceedings with the rights enshrined in the Hong Kong Bill of Rights Ordinance, and the Arrangement on Reciprocal Recognition and Enforcement of Civil Judgments in Matrimonial and Family Cases by Courts of Mainland China and of the Hong Kong Special Administrative Region.

B. Objectives

- 1.6 The objectives of this *Further Study on the Phenomenon of Divorce in Hong Kong*, as listed in the service specification of the consultancy study, include the following:
- a) to update the demographic and socioeconomic landscape of divorce in Hong Kong including further examining i) the correlation between marriage age and divorce rate; ii) the divorce rate of marriage; and iii) background information on divorced families, such as 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 Hong Kong Bill of Rights Ordinance, Cap. 383 (HKBOR).
- 1.7 In order to meet the objectives, the Research Team has compiled a list of research questions to generate the required information for the *Further Study*.

C. Research Questions

Phenomenon of Divorce

- a) Where are the divorcees located in the communities in Hong Kong?
- b) How is the risk of divorce related to the length of marriage?
- c) How is the risk of divorce related to age at marriage? Should Hong Kong lower the minimum marriageable age?
- d) How is the risk of divorce related to whether or not it is a cross-boundary marriage?

Maintenance Orders, Related Factors, and Effectiveness:

- e) What are the relationships between: (i) socioeconomic backgrounds of divorcees and outstanding maintenance; (ii) profiles of dependent children and outstanding maintenance; (iii) legal representation and maintenance recovery?
- f) How effective are Judgment Summons in enforcing maintenance payments? What is the usage of different forms of court orders in enforcing maintenance payments?
- g) What are the main reasons for applying, or not applying, for a maintenance order?
- h) What are the key stakeholders' (e.g., social and legal service providers, and divorcees) experiences of using/providing services in family dissolution? What are the benefits and unmet needs?
- i) How can maintenance-related policies and services help address these needs? What are the benefits, limitations, and suggestions for improvement which aim to address deficiencies in current policies and gaps in services?

D. Methodology

1.8 This *Further Study* used a mixed-methods approach and adopted qualitative and quantitative strategies to collect data from July 2018 to December 2019. Aside from conducting an in-depth literature review and case studies of other jurisdictions, the Team also conducted an issue-focused analysis of the 2016 Thematic Household Survey (THS) Report No. 61 data, analysed 308 online form (e-Form) cases with decree absolute provided by social service organisations and legal practitioners, 200 divorce cases provided by the Family Court, and conducted in-depth interviews with social and legal service providers, and families affected by divorce. Meetings were also held with the Consultancy Team's community partners from the social services and legal sectors and government bureaux and departments to enrich our methodology and the

interpretation and recommendations of the findings. The methodologies adopted in this *Further Study* are explained in further detail below.

Thematic Household Survey (THS) Report No. 61

- 1.9 An in-depth analysis on the enforcement of maintenance orders and the profiles of the respective households was carried out based on a larger governmental dataset (THS Report No. 61). Based on the 2016 census data, a spatial analysis was further conducted to reveal the locations of the divorcees in the communities in Hong Kong. The objective of the THS Report No. 61 was to collect information on the enforcement of maintenance orders among persons who had ever been divorced/separated rather than to estimate the total number of persons who had ever been divorced/separated. As some may not be willing to reveal that they had ever been divorced/separated, the number of persons ever divorced/separated might be subject to under-reporting.
- 1.10 The THS Report No.61 was conducted by the Census and Statistics Department (C&SD) from October 2015 to January 2016, with the purpose of collecting information on a) the use of new media among Hong Kong residents, and b) the enforcement of maintenance orders among Hong Kong residents who had ever been divorced/separated. In this survey, some 10,000 households within a scientifically selected sample of households were successfully enumerated, constituting a response rate of 75%, n = 28,533 (See Appendix C.1). Within each enumerated household, all persons aged 16 and over who have ever been divorced/separated (n = 1,626 excluding foreign domestic helpers) were interviewed using the survey on enforcement of maintenance orders. In that survey, target respondents were asked whether they applied/intended to apply for maintenance orders and if not, the reasons for not doing so, including whether they had a private agreement with their ex-spouse on maintenance. Respondents that successfully obtained maintenance orders were asked whether they received the maintenance in full and if not, whether they pursued legal actions to recover maintenance.

e-Form and Court Cases

- 1.11 To collect more in-depth information on the phenomenon of divorce in Hong Kong, this *Further Study* adopted a purposive selective case-sampling from the secondary data method to collect 500 cases from the case banks of social services organisations and law firms. The case studies were conducted by recruiting government departments, non-governmental organisations (NGOs) and legal practitioners/law firms to submit their cases through an online-form system (e-Form). The e-Form consisted of 197 questions under 6 sections, where get social workers and lawyers to present the array of divorce issues, service needs, and potential solutions through reporting on cases in their case banks (See Appendix D for the complete e-Form questionnaire).

- 1.12 The main eligible cases included those who obtained the decree absolute since 1st January 2000 until the time of data entry for this *Further Study*. To optimise case coverage, the eligible date was originally set at 1st January 2012 but was later revised to 1st January 2000 to increase the number of eligible cases. Illustrative cases which warrant further attention but fall outside the specified time period were studied through special qualitative methods by collecting information from the corresponding case social worker or lawyer. This case study method banked on secondary data which does not involve clients' consent. The Working Group supported the arrangement of the data collection,¹ and ethical approval has been obtained from the Human Research Ethics Committee of HKU.
- 1.13 Our target was to collect 500 cases from the case banks of social service organisations and law firms. However, e-Form cases initially received from law firms are fewer than expected. Some solicitors expressed concerns about legal privilege and privacy issues, despite the study has gained ethical approval from the HKU. Some of them were not comfortable as they were highly conscious about their clients' confidentiality and the lack of their expressed consent for participating in this *Further Study*. Nevertheless, we managed to collect 80 cases from law firms and the Legal Aid Department (LAD). Privacy concerns have been fully addressed and only aggregated figures are presented in the report. Apart from case reports from the e-Form, 200 divorce cases were collected with the assistance of the Family Court to provide information on the issue of maintenance order. The Team managed to reach the target case input from the NGOs and Social Welfare Department (SWD) (228), law firms and the LAD (80) and the Family Court (200), with a total of 508 cases.
- 1.14 Among the 308 e-Form cases collected from the organisations other than the court, they provided information on a) the principal client, ex-spouse, child(ren), and household; b) the marriage, c) divorce proceedings, d) decree absolute and orders granted by the court; e) enforcement of court order and f) specific remarks on the case. Due to the nature of target sampling, the e-Form dataset mostly focused on CSSA users, low-income families, and cross-boundary marriages, and is not representative of all families in Hong Kong.
- 1.15 Among the 200 cases from the Family Court, the first 100 involved court actions relating to maintenance issues, while the other 100 served as a control group without court action. We also recorded the sociodemographic profiles of divorcees and the processes involved in recovering outstanding maintenance were recorded.

¹ A Working Group was formed to oversee the progress of this *Further Study*. The Working Group is chaired by Prof. Daniel SHEK, the ex-Chairman of the Family Council with representatives from the Family Council and relevant government bureaux/departments as members.

Interview Case Studies

- 1.16 Upon identifying different arrangements in divorce across different jurisdictions, the Team set out to communicate with Hong Kong's stakeholders on their understanding of divorce and related issues in their disciplines. The interviewed stakeholders included government officials, social service providers, legal professionals, and divorcees (See Appendix E for the full list of interviewees).
- 1.17 The interviews helped identify the lacunas in Hong Kong's maintenance recovery procedures and have been a key step to achieve the research goals. It also laid the foundation for evaluating the necessity to pursue legislative amendments to the Matrimonial Causes Rules, Cap. 179A; the Matrimonial Cases (fees) Rules, Cap. 179B; Attachment of Income Order rules, Cap.13A; and the Rules of the District Court Cap. 336H to improve efficiency in the enforcement of maintenance orders, and the potential social implications of lowering the minimum marriage age without parental consent in Hong Kong.
- 1.18 10 individual interviews and 9 focus groups involving a total of 37 participants were held. Each interview lasted for around an hour and each focus group lasted for more than one hour. The interviews were arranged based on the schedules of the informants. Interview questions were also provided to the interviewees beforehand. Details can be found in Appendix E. A Family Court judge was also interviewed by the Team. Speaking in his personal capacity, he shared his invaluable insights on the effectiveness of 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 the concern about the data availability for understanding the divorce situation in Hong Kong in the Family Court.

Highlight 1.1: This *Further Study* adopted a mixed-methods approach to study the phenomenon of divorce, and analyses findings from the: a) THS Report No.61 in 2016, b) 308 e-Form cases, c) 200 cases provided by the Family Court, and d) 10 individual interviews and 9 focus groups.

Chapter 2:

Divorce and Maintenance: Literature Review

- 2.1 Maintenance payments upon divorce serve to meet the financial needs and increase the financial security of the divorced spouses and the dependent children in the family. This includes limiting the unfair economic effects of divorce by providing continuous income to a non/lower-wage-earning spouse (alimony), and protecting the children from the economic impact of divorce (child support). In addition, maintenance ascertains the parents' obligations in sharing the responsibility of raising their children, recognises the contributions of the parties, and underlines the principle of fairness in the treatment of the spouses².
- 2.2 In this chapter, we discuss the impact of maintenance on divorcees and children, review the role of maintenance in family dissolution from a systemic theoretical perspective, summarise current models of maintenance overseas, and examine other factors associated with divorce that are of interest to local policymaking, including length of the marriage and minimum marriage age.

A. The Impact of Divorce and Maintenance

The Impact of Maintenance on Divorcees

- 2.3 The divorce-stress-adjustment framework³ considers divorce not as a single *event*, but as a *process*. It begins when couples live together, and ends long after the legal divorce procedures. Individual family members may experience different trajectories of stress and adjustment in this process, and a satisfactory maintenance arrangement plays an important role in helping family members successfully resolve problems during this process.
- 2.4 Maintenance, including child support and alimony, reduces spousal financial stress, particularly for mothers⁴. A study of 18 Organisation for Economic Development Cooperation(OECD) countries from 1978–2008 showed that maintenance was important to reducing single-parent

² Cancian, M., & Meyer, D.R. (1996). Changing policy, changing practice: Mothers' income and child support orders. *Journal of Marriage and the Family*, 58, 618-627.

³ Amato, P. R. (2000). The consequences of divorce for adults and children. *Journal of Marriage and Family*, 62, 1269-1287.

⁴ Amato, P. R. (2000).

poverty^{5,6}. Maintenance (e.g. alimony) bridges the gap between spouses' earning capacities⁷, and protects the divorcee who focused on housework and childcare in a marriage⁸.

- 2.5 Effective maintenance enforcement may also reduce divorcees' psychological stress. Research shows that divorced individuals, both men and women, show more mental health symptoms, physical health problems, and substance-use problems than married individuals^{9,10}. Possible causes include sustained conflicts with the ex-spouse over child support, custody¹¹ and negotiation of parenting with the ex-spouse¹². Divorcees' perceived control of and satisfaction with the divorce settlements (e.g. financial and custody arrangements) are associated with fewer co-parenting conflicts^{13,14,15}. A maintenance system that effectively facilitates these settlements will therefore reduce spousal conflicts and stress.
- 2.6 Additionally, maintenance promotes cooperation between divorcees. The custodial parents (often mothers) usually assume the sole responsibility for the child day-to-day care, which can increase their stress and sense of being overwhelmed, particularly during the first year after divorce¹⁶. Research in the United States suggests that compared with the traditional cost-oriented approach (e.g. child support is only ordered when needed), an income-sharing approach (e.g. the non-resident parents (NRPs) sharing some income with the child) requires NRPs to take more than a residual responsibility for their children¹⁷. With effectively enforced child maintenance, the NRPs may prefer checking the use of their payment and therefore have greater involvement in children's daily life¹⁸.

⁵ Maldonado, L.C., & Nieuwenhuis, R. (2014). Family policies and single parent poverty in 18 OECD countries, 1978-2008. *LIS Working Paper Series, No. 622*. OECD countries in this study consisted of European countries plus the United States and Canada, thus caution should be taken when acquiring this information.

⁶ Skinner, C., Bradshaw, J., & Davidson, J. (2008). *Child support policy: An international perspective* (Chapter 1) (No. 478). LIS Working Paper Series.

⁷ Kindregan, C. (2013). Reforming alimony: Massachusetts reconsiders post-divorce spousal support. *Suffolk University Law Review, 46*(1), 13-44.

⁸ Bredtmann, J., & Vonnahme, C. (2019). Less money after divorce: how the 2008 alimony reform in Germany affected spouses' labor supply, leisure and marital stability. *Review of Economics of the Household, 17*, 1191-1223.

⁹ Hughes, M. H., & Waite, L. J. (2009). Marital biography and health at mid-life. *Journal of Health and Social Behavior, 50*, 344 – 358.

¹⁰ Wood, R. G., Goesling, B., & Avellar, S. (2007). *The effect of marriage on health: A synthesis of recent research evidence*. Washington, DC: U.S. Department of Health and Human Services.

¹¹ Amato, P. R. (2000).

¹² Hughes, M. H., & Waite, L. J. (2009).

¹³ Petren, R., Ferraro, A., Davis, T., & Pasley, K. (2017). Factors linked with co-parenting support and conflict after divorce. *Journal of Divorce & Remarriage, 58*(3), 145-160.

¹⁴ Madden-Derdich, D. A., Leonard, S. A., & Christopher, F. S. (1999). Boundary ambiguity and co-parental conflict after divorce: An empirical test of a family systems model of the divorce process. *Journal of Marriage and the Family, 61*, 588–598.

¹⁵ Bay, R. C., & Braver, S. L. (1990). Perceived control of the divorce settlement process and interparental conflict. *Family Relations, 39*, 382–387.

¹⁶ Madden-Derdich, D. A., Leonard, S. A., & Christopher, F. S. (1999).

¹⁷ Cancian, M., & Meyer, D.R. (1996).

¹⁸ Huang, C., & Han, K. (2012). Child support enforcement in the United States: Has policy made a difference? *Children and Youth Services Review, 34*, 622-627.

The Impact of Maintenance on Children

- 2.7 The negative impact of divorce on children's long-term emotional, behavioural, social, and academic outcomes has been well documented especially for those who are vulnerable and disadvantaged^{19,20}. Maintenance may protect children from these negative impacts in multiple ways.
- 2.8 Financially, children living in single-parent families are much more likely to fall into poverty than those who live in two-parent families²¹, and childhood poverty generates a long-lasting impact on child development. Research has shown a strong negative relationship between household poverty and young children's intellectual and behavioural development, while persistent poverty is particularly harmful to child cognitive development²². For instance, recent local studies found that children from higher-socioeconomic status (SES) families have greater school readiness than children from lower-SES families²³, and the predictive effect of SES on children's academic performance increases as they grow older²⁴. Therefore, maintenance not only protects children from low household income and standard of living due to parental divorce²⁵, but it may also protect the children's long-term development.
- 2.9 Psychologically, an effective maintenance system may reduce children's distress during the divorce process. Research shows that parental conflicts during divorce or separation are related to children's feelings of shame and poor self-esteem, especially when children feel involved or when they think they are the cause of parental conflicts²⁶. Children that experienced parental divorce often encounter subclinical psychological pain, even though they may not present clinical symptoms²⁷. When parents take their case to the court, children usually become the subject of welfare report investigation and may feel pressured to choose one parent over the other. According to a study in the United Kingdom (UK), 52% of boys and 48% of girls presented adjustment problems immediately after the proceedings, while 62% of boys and 32% of girls remained maladjusted one year later²⁸. Effective maintenance settlements may reduce

¹⁹ Amato, P. R. (2010). Research on divorce: Continuing trends and new developments. *Journal of Marriage and Family* 72, 650–666.

²⁰ Wallerstein, J., & Lewis, J. (2004). The unexpected legacy of divorce: Report of a 25-year study. *Psychoanalytic Psychology*, 21(3), 353-370.

²¹ Child Trends Databank. (2019). *Children in poverty*. <https://www.childtrends.org/?indicators=children-in-poverty>

²² Kiernan, K.E, & Mensah, F.K. (2009). Poverty, maternal depression, family status and children's cognitive and behavioural development in early childhood: A longitudinal study. *Journal of Social Policy*, 38, 569-588.

²³ Ip, P., Rao, N., Bacon-Shone, J., Li, S., Ho, F., Chow, C-B., & Jiang, F. (2016). Socioeconomic gradients in school readiness of Chinese preschool children: The mediating role of family processes and kindergarten quality. *Early Childhood Research Quarterly*, 35, 111-123.

²⁴ Ip, P. (2015, March). *Environment, child health & development*. Symposium on Early Childhood Development. <https://www.youtube.com/watch?v=suVrWDSCyEI>

²⁵ Rappaport, S.R. (2013). Deconstructing the impact of divorce on children. *Family Law Quarterly*, 47, 353-377.

²⁶ Barumandzedah, R., Martin-Lebrun, E., Barumandzedah, T., & Poussin, G. (2016). The impact of parental conflict and the mitigating effect of joint custody after divorce or separation. *Journal of Divorce and Remarriage*, 57(3), 212-223.

²⁷ Laumann-Billings, L., & Emery, R. E. (2000). Distress among young adults from divorced families. *Journal of Family Psychology*, 14, 671–687.

²⁸ Bream, V., & Buchanan, A. (2003). Distress among children whose separated or divorced parents cannot agree arrangements for them. *British Journal of Social Work*, 33, 227-238.

parental conflicts and facilitate negotiation, thereby reducing psychological distress for both the parents and the children.

2.10 Emotionally, maintenance and related family services help children adapt to parental divorce quicker by maintaining the parent-child attachment, which is disrupted by the divorce, and fostering consistent parenting. Since child attachment to a parent begins from infancy, young children may experience chronic loss when both parents no longer live together or rarely share time as a family. Conflicts may also preoccupy parents and lower their sensitivity to their children, which can intensify child attachment issues²⁹. In contrast, children are better when the custodial and non-custodial parents can maintain daily childcare routines (e.g. sleep, eat), use similar parenting approaches (e.g. limit setting), and give consistent narratives about the reason for divorce³⁰. Thus, if a maintenance system stipulates consistent childcare responsibilities between both parents, it will foster cooperative parenting and minimise the impact of divorce on parent-child attachment. In addition, programmes that educate parents about the impact of divorce on children and teach them effective parenting approaches will also benefit the adjustment process³¹.

Highlight 2.1: Maintenance support plays a protective role for divorcees and children. It can reduce families' financial, and psychological burdens, and promote parenting responsibilities following divorce.

B. The Role of Maintenance in Family Dissolution: A Systemic View

2.11 The General Systems Theory³² proposes a comprehensive view of human and societal situations in understanding the holistic nature of human functioning. Looking beyond a certain problem (e.g. maintenance payment issues), the systemic view considers the underlying complexities, the interrelationships of related issues, and the interactions between individuals, groups, and communities in maintaining or resolving the problem. Based on this theory, maintenance affects both parents and children as an integral part of a family, and the design and implementation of a maintenance system must consider the following six aspects^{33,34,35,36}.

²⁹ Zeanah, C.H., Berlin, L.J., & Boris, N.W. (2011). Practitioner review: Clinical applications of attachment theory and research for infants and young children. *Journal of Child Psychology and Psychiatry*, 52, 819-833.

³⁰ Zeanah, C.H., Berlin, L.J., & Boris, N. W. (2011).

³¹ Brotherson, S., Rittenbach, C., & White, J. (2012). Impacts of Parents Forever on parental behaviour and adjustment during divorce: a short-term follow-up evaluation study. *Journal of Divorce & Remarriage*, 53, 267-291.

³² Bertalanffy, L. (1968). *General systems theory: Foundation, development, application*. NY: George Braziller.

³³ Bertalanffy, L. (1968).

³⁴ Andreae, D. (2011). General systems theory: Contributions to social work theory and practice. In F.J. Turner (Ed.), *Social work treatment: Interlocking theoretical approaches* (5th ed.). Oxford, UK: Oxford University Press.

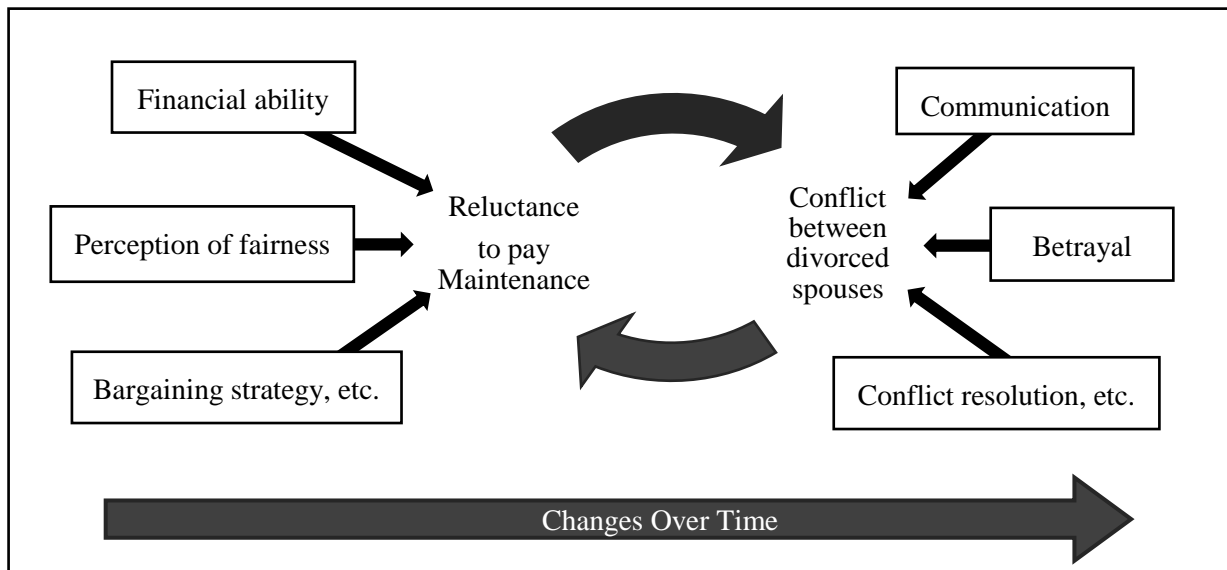
³⁵ Nichols, M. (2016). *Family therapy: Concepts and methods* (11th ed.). Boston, MA: Pearson.

³⁶ Suissa, A.J. (2005). Social practitioners and families: A systemic perspective. *Journal of Family Social Work*, 8, 1-28.

- 2.12 First, the whole is more than the sum of its parts. Just as a machine cannot only be analysed by its individual components, a social support system must be examined in its entirety. Family is more than a collection of people; patterns of relationships, such as communication, roles, power dynamics, and mutual influences all contribute to a family. Therefore, the discussion of maintenance systems goes beyond the payer, the payee, and the order; instead, we must consider the dynamics between the parties, the motivation and emotional undertones of their behaviours, the impact on all family members, and the interaction among these issues. How maintenance disputes are settled (negotiation, mediation, or court judgment) may interact with custody, access, parent-child relationship, and the relationship between ex-spouses.
- 2.13 Just as spinning the wheel of a machine and other parts move in motion, any change in one element triggers changes in a system. In approaching maintenance issues, we need to identify ways to spin the wheel and evaluate the consequences on various parts of the system. Divorce not only influences families' financial status, but it also influences parental health, parenting quality, families' emotional well-being, and child's long-term academic development. Maintenance must therefore include preventive, supportive, and remedial measures to optimise family members' adjustment to the divorce process.
- 2.14 Second, causality between events and behaviours is not linear but circular. In a system, components influence and are influenced by one another through a circular feedback loop. A family member's behaviour cannot be dissociated from other members' behaviours. A problem cannot be only attributed to one single behaviour. Outcomes are often associated with multiple causes interacting with one another with a combined effect.
- 2.15 The willingness or unwillingness to provide maintenance may be associated with the circular sequences of interaction between the divorced parties. For example, conflicts may cause one party of the divorcing couple to be reluctant to provide maintenance, which may generate more conflicts. Maintenance, along with many related factors, may hence be part of the struggle between spouses (Figure 2.1). These circular interactions are also embedded in the ever-changing family system³⁷. Effective maintenance may break the vicious cycle between payment failures and spousal conflicts, fostering healthy family interaction over time.

³⁷ Bronfenbrenner, U. (1994). Ecological models of human development. In *International Encyclopedia of Education* (Vol.3, pp.1643–1647). Oxford: Elsevier. Reprinted in M. Gauvain & M. Cole (Eds.), *Readings on the development of children* (pp.37–43). NY: Freeman.

Figure 2.1 Circular causality in maintenance issues



2.16 Third, the process within the system (the *how*) indicates the way the components operate together and defines family functioning; it is as important as the substance (the *what*). A maintenance system should move beyond whether the payments are successfully recovered, but consider the spousal interaction *processes* when the payees try to recover maintenance. The legal process of divorce and the administrative process of maintenance enforcement also affect family functioning.

2.17 Fourth, within each family, there is an implicit boundary, an imaginary border that defines who is in and out of the system, based on the physical and psychological presence or absence^{38,39}. In divorce, the family boundary is altered because spouses live apart and the marital relationship dissolves. How the NRP defines their place in the family may depend on their relationship with the children and their perceived responsibilities. Although the parent-child biological relationship never dissolves, some NRPs may see their responsibilities diminish as they no longer belong to that household. For instance, research suggests that non-resident fathers' involvement with children is positively related to the institutional clarity of the father's role⁴⁰. Similarly, NRP's perceived absence of custodial role may affect their willingness to provide maintenance. Therefore, parents' perceived responsibility may be a determinant of a successful maintenance system.

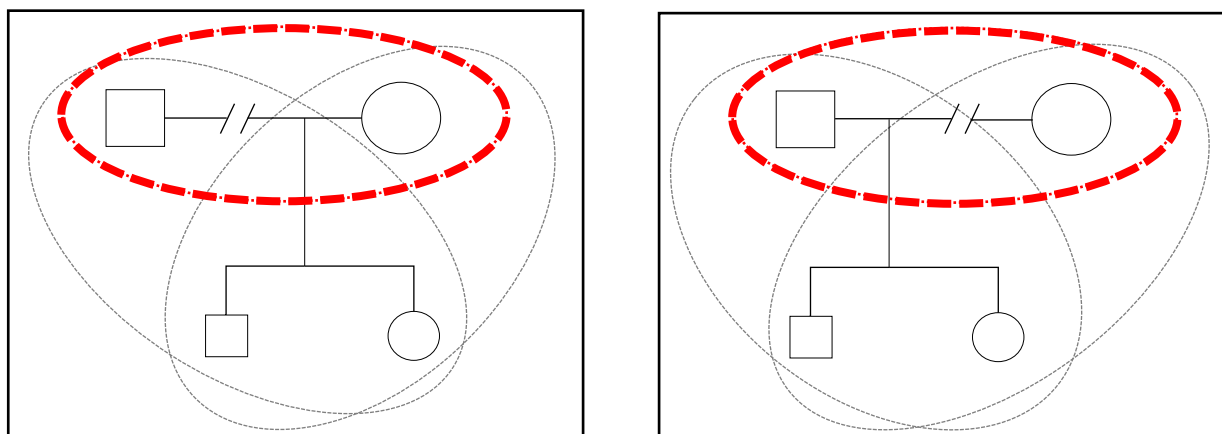
³⁸ Boss, P. (1977). A clarification of the concept of psychological father presence in families experiencing ambiguity of boundary. *Journal of Marriage and the Family*, 39, 141-151.

³⁹ Stewart, S. (2005). Boundary ambiguity in stepfamilies. *Journal of Family Issues*, 26 (7), 1002-1029.

⁴⁰ Leite, R.W. (2002). Aspects of father status and post-divorce father involvement with children. *Journal of Family Issues*, 23(5), 601-623.

2.18 Fifth, the family system is an integrated set of subsystems that carry respective functions. The most significant ones are spouse, parent-child, and sibling subsystems. The subsystems' boundaries and functions change substantially during the divorce. The spousal subsystem is dissolved, changing into a co-parental subsystem in which the divorced spouses continue functioning as parents. Some argue that children in divorced families are actually not single-parented. Instead, they form two separate parent-child subsystems in a "binuclear family"⁴¹ (Figure 2.2). Despite the dissolution of the spousal subsystem, parental responsibilities such as providing care, love, and support continue in the parent-child subsystems. Child maintenance is integral to parental responsibilities. And when settling maintenance payments, the co-parental subsystem must protect children from being tangled in conflicts between parents.

Figure 2.2a (left, mother as the resident parent) and 2.2b (right, father as the resident parent) Binuclear family parent-child subsystems and co-parental subsystem⁴²



2.19 Sixth, families operate within a larger system. While individuals form subsystems that in turn form families, families are also part of such larger systems as social units, groups, communities, and societies (Figure 2.3). To look at wider societal conditions that may improve or worsen the family system, one would need to take a wide range of factors into account, including social networks, resources, legal structures, socio-economic conditions, cultural norms, and policies.

2.20 Family well-being is influenced by the wider social context. A maintenance system requires a joint effort from multiple disciplines, such as social service, legal service, housing, and education, which complement one another and maximise the entire system's functionality. Our 2014 Report also recognised the significant role of social context in influencing family well-being and raised recommendations on strengthening community support for divorced families⁴³. For instance,

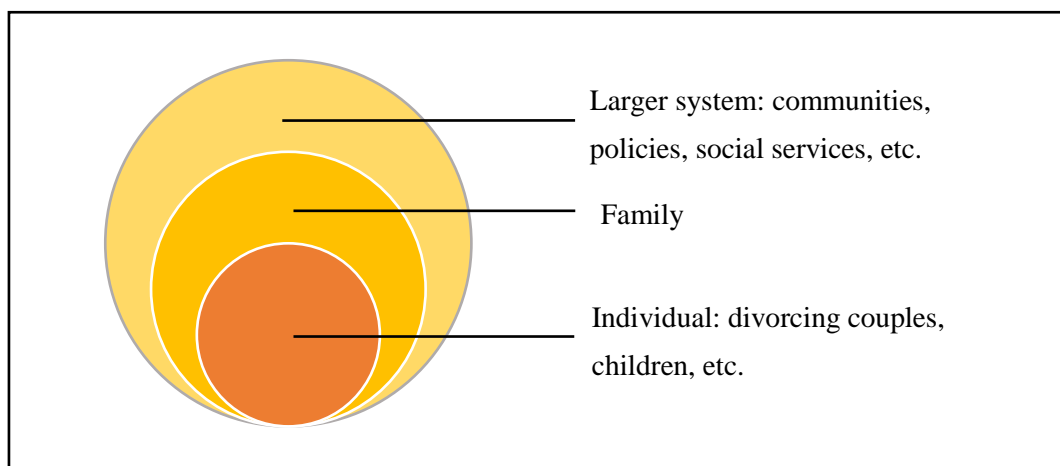
⁴¹ Ahrons, C. R. (1994). *The good divorce: Keeping your family together when your marriage comes apart*. New York, NY: Harper Perennial.

⁴² Ahrons, C. R. (1994)

⁴³ LEGCO. (2014). *A study on the phenomenon of divorce in Hong Kong*. <https://www.legco.gov.hk/yr13-14/english/panels/ws/papers/ws0609cb2-2288-1-e.pdf>

families' financial challenges could be met by housing and social welfare support, namely to increase the CSSA and adjust single-parent allowance to be on par with inflation, and expedite compassionate rehousing or interim housing applications. Afterschool programmes can help alleviate the single-parent burden in childcare; marital counselling and divorce education will mitigate parental conflicts and the impact on children; legal education and assistance on divorce procedures (e.g. application, legal rights of both parties, criteria for custodial arrangements) will reduce families' psychological distress caused by the divorce process itself.

Figure 2.3 Families operate within a larger system



2.21 In summary, based on the systemic theoretical perspective, maintenance means much more than money to a family. Maintenance non-compliance may indicate family system problems beyond the payer's financial ability, such as spouse conflicts and power struggles, parents' diminished sense of family roles and obligations, inadequate social services and resources for the family, and ineffective order enforcement. Maintenance non-compliance causes more than financial difficulties for the payee, it may also affect the parent-child relationship, sense of parental responsibility, spouses' emotional well-being, and childcare quality. An effective maintenance system that ensures full compliance to maintenance orders, in contrast, would relieve family members' distress during the family dissolution process, break unhealthy family relationship dynamics, minimise spousal conflict and its impact on children, and promote better family functioning.

Highlight 2.2: Maintenance non-compliance may indicate problems in the family system that are beyond payers' financial ability, and can create spousal conflicts and cause psychological distress to spouse and children.

C. Approaches of Maintenance Compliance

- 2.22 Three approaches have been identified to ensure compliance with maintenance orders: a) deterrence-based, b) compliance-based, and c) consensus approach⁴⁴.
- 2.23 The *deterrence-based* approach uses legal punishment of offenders, such as the jailing of those who fail to pay maintenance even upon serving of JS or liens on their property. Some overseas studies⁴⁵ suggest that such penal measures manage to deter the non-compliance behaviour of those who have the ability but are unwilling to pay. For low-income parents, however, jailing may only prevent them from fulfilling their responsibility, further lowering their child's financial insecurity, and shifting the burden on taxpayers^{46,47}.
- 2.24 The *compliance-based* approach uses enforcement methods to regulate individuals' compliance behaviour. An example is the Attachment of Income Order (AIO) where the child or spousal maintenance is made before the release of income by the payer's employer. Research has found a positive association of such orders with child support, but not for payers who were self-employed^{48,49,50}.
- 2.25 Lastly, the *consensus* approach assumes that individuals comply with the law not because of fear of punishment, but because they identify with the principles and norms defined by the law. Examples include uniform guidelines to determine child support or public education on proper attitudes towards child support. However, evidence on the effectiveness of this approach has been mixed. Some found that perception of fairness increased maintenance compliance, regardless of whether there was an order to withhold payers' income⁵¹; while others found a minimal change in maintenance compliance after a "fairer" system for child support calculation was introduced⁵².

⁴⁴ Lin, I. (2000). Perceived fairness and compliance with child support obligations. *Journal of Marriage and the Family*, 62, 388-398.

⁴⁵ Sorensen, E., & Halpern, A. (1999, as cited in Lin, 2000). *Single mothers and their child support receipt: How well is child support enforcement doing?* Unpublished manuscript. Washington, DC: Urban Institute.

⁴⁶ Luckey, I. & Potts, L. (2011). Alternative to incarceration for low-income noncustodial parents. *Child and Family Social Work*, 16, 22-32.

⁴⁷ Huang, C., Mincy, R.B., & Garfinkel, I. (2005). Child support obligations and low-income fathers. *Journal of Marriage & Family*, 67, 1212-1225.

⁴⁸ Huang, C., & Han, K. (2012).

⁴⁹ Meyer, D.R., & Bartfeld, J. (1996). Compliance with child support orders in divorce cases. *Journal of Marriage and the Family*, 58, 201-212.

⁵⁰ Sorensen, E.J., & Hill, A. (2004). Single mothers and their child support receipt: How well is child support enforcement doing? *Journal of Human Resources*, 39(1), 135-154.

⁵¹ Lin, I. (2000).

⁵² Smyth, B.M., Vnuk, M., Rodgers, B., & Son, V. (2014). Can child support compliance be improved by the introduction of a 'fairer' child support formula and more rigorous enforcement? The recent Australian experience. *Journal of Family Studies*, 20(3), 204-220.

2.26 Hong Kong adopted a mixture of all three approaches. For instance, the AIO uses a compliance approach to regulate maintenance; NRPs may make maintenance payments based on consensus, while deterrence measures may be used when JS is served for those who have not fulfilled maintenance responsibilities.

Highlight 2.3: Hong Kong adopts a mixture of the deterrence-based, compliance-based, and consensus approach in maintenance compliance.

D. Three Models of Maintenance System

2.27 Maintenance enforcement agencies serve various functions worldwide. Some of these are dedicated to collect payments, while others are part of tax administrations. In jurisdictions with fixed penalties for failure to pay spousal or child support on time, dedicated public agencies can take various actions to recover outstanding maintenance payments without going to courts, such as freezing injunctions, seizing property, and suspending work licenses. In jurisdictions without such enforcement agencies (e.g. Hong Kong, Singapore, and Australia), legal actions through court hearings are needed to recover outstanding maintenance.

2.28 The roles of law courts in granting maintenance also vary across jurisdictions. For instance, courts in Hong Kong, the UK, and the US (taking State of California as an example) play major roles regarding alimony grants, whereas the Canadian courts only act as a last resort while negotiations and mediation are encouraged. In Norway and Sweden, courts play minimal roles in deciding spousal and child support as these decisions are mutually made by divorcees or by other public agencies (e.g., the Family Welfare Centre in Norway and Social Insurance Agency in Sweden).

2.29 Appendix F delineates legal divorce procedures, spousal and child maintenance eligibility, and maintenance enforcement approaches across eight jurisdictions. Overall, these jurisdictions can be divided into three maintenance models: a) the nominal model (e.g. Norway, Sweden); b) the obligatory model (Singapore); and c) the transitional support model (e.g. Australia, Canada, New Zealand, Taiwan, South Korea, the US, the UK). We provide an overview of these models and then examine the current maintenance systems in Hong Kong and mainland China.

The Nominal Model

2.30 In the nominal model (e.g. Norway and Sweden), all citizens are entitled to universal welfare provisions, and applications for additional maintenance payments are rare. For instance, the Norwegian Labour and Welfare Administration provides financial assistance to Norwegian citizens through specific assessments of individuals' needs for assistance. This temporary income aims to help people become financially independent as soon as possible. Single parents in Norway receive additional child benefits, including paying reduced rates for kindergarten and

after-school programmes; low-income single parents may have lower tax rates and obtain cash support for up to three years if they raise a child without a partner⁵³.

2.31 Similarly, the Swedish welfare model embodies the ideology that everyone has the right to healthcare, family services, pensions, and other social benefits regardless of income. Social assistance can also be obtained from the Swedish social welfare committee⁵⁴. Child and family welfare provisions include childcare fees, free education, free healthcare, and dental care for children and young adults below 20 years of age; additionally, a series of free services are provided: child health check-ups, counselling for parents, student health services, parental cooperation talks in case of divorce or separation, and child and adolescent psychiatric services.

The Obligatory Model

2.32 In the obligatory model (Singapore), maintenance payments are considered an obligation of a former spouse, and maintenance may be lifelong⁵⁵. The government plays a strong role in reinforcing maintenance payments.

The Transitional Support Model

2.33 In the transitional support model (e.g. UK, Canada, US, Australia, and New Zealand), maintenance aims to financially support dependent ex-spouses to cover their expenses during their transitional periods, although the duration of these periods may vary. For instance, maintenance will last until the payee party can become self-sufficient in the US (California); short-term maintenance that ranges from two to five years is provided in the UK; if both parties can sustain themselves financially, judges would usually only discharge family assets accumulated during the marriage and would not order maintenance payment.

2.34 As Hong Kong adopts a *productivist* welfare regime that features modest welfare provision and limited welfare universalism^{56,57}, the maintenance system in Hong Kong likely will follow the transitional support model. Similar to the UK and the US, the role of maintenance support (i.e. Family Court) in Hong Kong may include: a) supporting the spouse and children during challenging transitional periods, and b) enforcing maintenance payments, which include more punitive measures for outstanding payments.

⁵³ See: <https://www.nav.no/no/person>

⁵⁴ Commission on European Family Law. (n.d.). *Sweden: Children and Parents Code, Chapter 6 and Chapter 21*. <https://ceflonline.net/wp-content/uploads/Sweden-Parental-Responsibilities-Legislation.pdf>

⁵⁵ Singapore Statutes Online. (2009). *Women's charter*. <https://sso.agc.gov.sg/Act/WC1961>

⁵⁶ Holliday, I. (2000). Productivist welfare capitalism: social policy in East Asia, *Political Studies*, 48, 706-723.

⁵⁷ Hudson, J., Kuhner, S., & Yang, N. (2014). Productive welfare, the East Asian "model" and beyond: Placing welfare types in Greater China into context. *Social Policy & Society*, 13(2), 301-315.

E. Divorce and Maintenance Procedures in Hong Kong and mainland China

Hong Kong

Source of law

2.35 The relevant laws are identified in the Matrimonial Causes Ordinance (MCO)⁵⁸; Matrimonial Causes Rules⁵⁹; Matrimonial Proceedings and Property Ordinance (MPPO)⁶⁰; Guardianship of Minors Ordinance⁶¹; Attachment of Income Order Rules⁶²; Separation and Maintenance Orders Ordinance⁶³; Marriage Reform Ordinance⁶⁴; Parent and Child Ordinance⁶⁵, Marriage Ordinance⁶⁶; and Married Persons Status Ordinance⁶⁷.

Procedures for divorce and making maintenance arrangements

2.36 According to s.3 of MCO, parties may apply for divorce in the forms of joint application or matrimonial cause if:

- a) Either of the parties to the marriage was domiciled in Hong Kong at the date of the petition or application;
- b) Either of the parties to the marriage was habitually resident in Hong Kong through the period of 3 years immediately preceding the date of the petition or application; or
- c) Either of the parties to the marriage had a substantial connection with Hong Kong at the date of the petition or application.

2.37 Apart from the divorce itself, families with children should deal with custody, care and control of the children and access arrangements for the NRP in the proceedings. The Judiciary has issued a Practice Direction 15.13⁶⁸ Children's Dispute Resolution effective from 3 October 2013. The aim is to encourage amicable discussion to quickly obtain a lasting agreement concerning the children.

2.38 Regardless of the forms of application, parties are free to reach agreements on financial issues, e.g. ancillary relief including monthly maintenance at any time of the lawsuit and turn it into a

⁵⁸ Cap. 179

⁵⁹ Cap.179A

⁶⁰ Cap. 192

⁶¹ Cap. 13

⁶² Cap.13A

⁶³ Cap. 16

⁶⁴ Cap. 178

⁶⁵ Cap. 429

⁶⁶ Cap. 181

⁶⁷ Cap. 182

⁶⁸ For further information, please view: <https://legalref.judiciary.hk/lrs/common/pd/pdcontent.jsp?pdn=PD15.13.htm&lang=EN>

consent order. If no agreements are reached, it will then be dealt by the Court. Given that divorce proceedings are required to be commenced in the District Court under s2A of the MPPO, financial issues for divorcing families will be handled by the Family Court, which, according to Practice Direction 15.12, is the division of the District Court assigned by the Chief Justice to deal with matrimonial proceedings and/or family proceedings. If complex issues arise, proceedings will be transferred to the High Court, including all applications for ancillary relief.

- 2.39 An alternative dispute resolution procedure, namely Family Mediation, was first introduced under a three-year pilot scheme, between 2 May 2000 and 1 August 2003⁶⁹. The Judiciary further set up the Financial Dispute Resolution (FDR) Pilot Scheme for the reform of ancillary relief procedures in matrimonial proceedings⁷⁰, effective from 29 December 2003. Given the positive feedback, the pilot scheme was extended and the Judiciary refined the practice direction in 2007 and 2012. The FDR procedure was applicable to all ancillary relief applications, with the exception of claims for nominal maintenance or where the parties reached a settlement on ancillary relief from 2003 up to now. The Chief Justice's Working Party on Review of Family Procedure Rules has recommended in its Final Report that the FDR procedure and Practice Direction 15.11 be incorporated into the court procedural code for all family and matrimonial proceedings.
- 2.40 At the Family Court, applications for ancillary relief include applications for Maintenance Pending Suit (MPS) or Interim Maintenance, monthly maintenance (maintenance upon settlement or issuance of decree absolute) for involved parties and/or for their dependent children, a lump sum payment (either by instalments or one-off payment) or transfer of property order or sale of property order for involved parties.
- 2.41 If there is a claim for ancillary relief, the Family Court will fix a first appointment hearing for the parties at the filing of the divorce petition or the notice in Form A triggered the FDR proceedings. The case will be heard by the same FDR Judge and may be adjourned for several First Appointment being call-over hearings. Each could last around 15 minutes or up to half a day including waiting time, within 4 months from the filing of the Divorce Petition. The first appointment can be adjourned more than once, extending the whole FDR proceeding to 6 months from the First Appointment. In some cases, it could be adjourned up to around two years from the filing of the Divorce Petition⁷¹.
- 2.42 Both parties are required to file and exchange their financial statements in designated forms with supporting documents before the first appointment. The Court may issue an application for MPS

⁶⁹ For further information, please view: <https://legalref.judiciary.hk/lrs/common/pd/pdcontent.jsp?pdn=PD15.10.htm&lang=EN>

⁷⁰ For further information, please view: <https://legalref.judiciary.hk/lrs/common/pd/pdcontent.jsp?pdn=PD15.11.htm&lang=EN>

⁷¹ The timeframe was not transparent in the past until the change of the Practice Directions released in August 2020. In order to help the readers to have an idea on the possible timeframe of the procedure, HKU Study Team set out the "estimated timeframe" based on the experience and observation of legal practitioners.

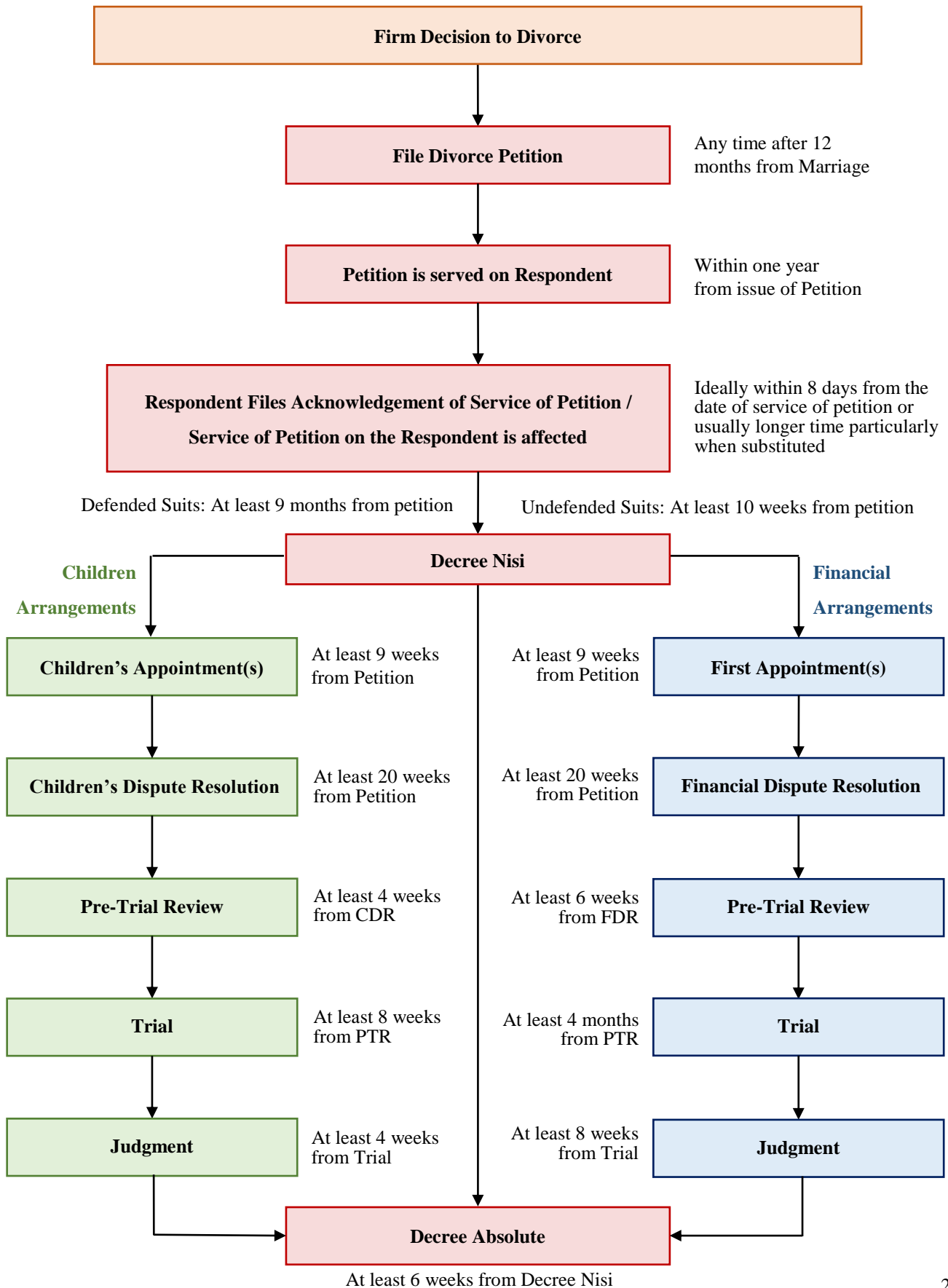
or injunction application etc. The Court will not issue interlocutory applications which should be initiated by the parties themselves. The FDR hearing will take place after the filing of all necessary documents and resolution on preliminary issues or interim applications mentioned above, on a date fixed at the last adjourned First Appointment. If no settlement is reached at the end of the FDR hearing, which will usually be heard within one day or up to several days either consecutively or as a part-heard arrangement, the FDR Judge will transfer the proceedings to the Listing Judge (Principal Judge of Family Court) for pre-trial review in around two months. The Listing Judge will consider the case and the court's diary before further transferring the proceedings to a Trial Judge, who cannot be the same FDR judge. The parties have to update their Form E and filing of affirmations and expert reports if necessary before the Trial Judge can set down the case and fix the trial date, which can be at least six months afterwards.

2.43 After the trial, the Court will give its judgment for the ancillary relief (and adjust the amount of MPS if necessary). Once the decree nisi has been granted and custody and maintenance arrangements for the children have been finalised, the parties can apply for the issuance of the decree absolute.

2.44 Figure 2.4 summarises the general divorce procedures in Hong Kong, including child and financial disputes (see Appendix G for further details). With no adjournments, the Court proceedings are expected to last for a minimum of four months and could be longer for cases involving children and financial arrangements.⁷² It should be noted that the times required for each step as described in the figure might not represent all applicable scenarios.

⁷² See footnote 71.

Figure 2.4 Summary of the estimated fastest timeframe for general divorce procedures in Hong Kong based on the legal team's experiences



2.45 To provide a further option for families to settle their financial dispute instead of having the FDR or a trial, there was a 3+3 years Pilot Scheme on Private Adjudication of Financial Disputes in Matrimonial and Family Proceedings introduced since 19 January 2015, pursuant to the Practice Direction Specialist List (PDSL) 9⁷³, as a new mode of alternative dispute resolution in matrimonial and family proceedings. The first private adjudication took place in May 2020 with a decision delivered by the adjudicator in July 2020 and endorsed by the Family Court⁷⁴. The Pilot Scheme is further extended for three years from 19 January 2021 to 18 January 2024. Upon conclusion of the extended period, the Judiciary will further review its effectiveness.

Criteria/factors in determining spousal maintenance/division of family assets

2.46 According to s7(1) of the MPPO, the following factors will be taken into account by the Court in deciding what orders to make for financial provisions for a party to the marriage:

- a) Income, earning capacity, property, and other financial resources of the parties to the marriage;
- b) Financial needs, obligations, and responsibilities of the parties to the marriage;
- c) Standard of living enjoyed by the family before the breakdown of the marriage;
- d) Age of each party to the marriage and the duration of the marriage;
- e) Any physical or mental disability of the parties;
- f) The contributions made by each of the parties to the welfare of the family; and
- g) The value of a benefit (e.g. a pension) which by reason of the dissolution of the marriage a party will lose the chance of acquiring.

2.47 According to the guidelines provided by the Court of Final Appeal in *LKW v DD* case [*FACV 16/2008*], the Court should bear in mind four principles and five practical steps in exercising its discretion under s7 of the MPPO. The four principles are:

- a) The objective of fairness;
- b) Rejection of discrimination;
- c) The yardstick of equal division; and
- d) Rejection of minute retrospective investigations.

⁷³ For further information, see:

<https://www.hkarbsoc.org.hk/en/PilotSchemeonPrivateAdjudicationOfFinancialDisputesinMatrimonialandFamilyProceeding.htm>

⁷⁴ For further information, see: <https://legalref.judiciary.hk/lrs/common/pd/pdcontent.jsp?pdn=PDSL9.htm&lang=EN>

2.48 The s.7 exercise involves the following five practical steps:

- a) Identify assets;
- b) Assess parties' financial needs;
- c) Decide to apply the sharing principle if there are surplus assets after the parties' needs have been catered for;
- d) Consider whether there are good reasons for departing from equal division; and
- e) Decide the outcome taking into account the overall impact of all relevant factors.

2.49 Under the latest trend, if the family has sufficient assets, the parties tend to opt for a "clean break" such as a lump sum, Transfer of Property Order etc., rather than a continuous obligation due to potential enforcement difficulties. However, the receiving party may have to accept either monthly maintenance or partial monthly payment and partial lump sum, if the available assets are not sufficient or ready for division. In any event, the monthly maintenance obligation will cease upon the death of either party or when the receiving party is re-married.

Assessing the amount of maintenance

2.50 There is no single formula for assessing spousal or child maintenance. The Court will make the decision based on principles and steps laid down in *LKW v DD*, s.7 of MPPO and the circumstances of each case, thus not necessarily splitting the amount of maintenance in half for all cases. It is generally accepted that being a homemaker is equally valuable as being the breadwinner. Both non-financial contributions (e.g. caring for the family, building a home, supporting the breadwinner's career) and financial contributions will be considered.

Criteria of determining child maintenance

2.51 Financial provisions for a child will generally begin at any time upon the consent of both parties or after appropriate maintenance order has been made, and will cease when the child reaches 18 or completion of full-time education, whichever is the later. As set out in s7(2) of the MPPO, the following factors will be considered in determining the amount of child maintenance:

- a) Financial needs of the child;
- b) Income, earning capacity, property, and other financial resources of the child;
- c) Physical or mental disability of the child;
- d) Standard of living enjoyed by the family before the breakdown of the marriage; and
- e) The manner in which the child was being brought up, and how the parents expect him/her to be educated.

2.52 Even if no maintenance order has been made at the divorce proceedings, the child has the statutory right to apply for such maintenance order at any time provided that he/she reasonably believes or provides evidence to prove that the paying parent has the means to pay.

Factors affecting enforcement of maintenance orders

2.53 There are a number of factors affecting the enforcement of maintenance orders in Hong Kong, including but not limited to the following:

- a) Whether the judgment debtors can be located in Hong Kong or elsewhere in the world;
- b) Whether the judgment debtors have any means to satisfy the maintenance orders or is there any need to apply for a variation of the current maintenance order before proceeding to the enforcement action;
- c) Whether the judgment debtors have any attachable income;
- d) Whether the judgment debtors have any landed property;
- e) Whether the judgment debtors have any bank account;
- f) Whether the judgment debtors have any other valuable personal assets;
- g) Whether the maintenance payers need to frequently travel out of Hong Kong; and
- h) Factors under the judge's consideration/discretion

Measures for enforcing maintenance payment for spouse and child

2.54 Upon application for recovery of outstanding maintenance payment by the judgment creditor⁷⁵, the Court has the power to enforce a judgment or order made in matrimonial proceedings by way of Attachment of an Income Order made against the payer's employer, Garnishee Order against the payer's bank account, Charging Order on landed property, Writ of *Fieri Facias* on the payer's property, Prohibition Order to restrict the freedom of movement of the payer for a certain period of time, Judgment Summons and Committal for Contempt of Court. According to s12(1) of the MPPO, a person shall not be entitled to enforce through the Court the payment of any arrears due under an order without leave of the Court if those arrears have become due more than 12 months before proceedings to enforce the payment to them had begun.

2.55 If the judgment debtor⁷⁶ was ordered by the Court to pay maintenance to the spouse and/or child and refuses to pay, the following measures can be taken depending on the applicable conditions:

- a) **Attachment of Income Order (AIO):** This can be made when the payer has without reasonable excuse failed to make any payment that he/she is required to make by the

⁷⁵ *Judgment creditor* means a person entitled to enforce an order

⁷⁶ *Judgment debtor* means a person liable under an order

maintenance order; when there are reasonable grounds to believe that the payer will not make full or punctual payment in compliance with the maintenance order; or if the payer and designated judgment creditor agree to the making of the order. This is useful when the judgment debtor has fixed employment with sufficient income to cover the maintenance amount in Hong Kong and employer information is known to the judgment creditor.

- b) **Prohibition Order:** This can be made by the judgment creditor to prevent the judgment debtor from leaving Hong Kong pending recovery of the debt. It is a very effective method if the debtor travels frequently as it is likely to cause the debtor considerable inconvenience. However, the order is only effective for 3 months and has to be renewed by another court order upon expiry. There is no use if the debtor stays in Hong Kong throughout that period.
- c) **Writ of *Fieri Facias*:** This is a writ requiring the bailiff of the Court to seize goods, chattels, and other property of the judgment debtor. No writ of *fieri facias* or warrant of execution shall be issued to enforce payment of any sum due under an order for ancillary relief when an application for a variation order is pending. This is useful when property under the judgment debtor's name is available in Hong Kong and of good value, and the location of the property is known to the judgment creditor.
- d) **Charging Order:** This can be imposed on any property of the judgment debtor as specified in the order for securing the payment of any money due or becoming due under a judgment or order. It is not a direct method of enforcing a judgment debt but has the effect of converting the judgment creditor into a secured creditor. This is useful when landed property under the judgment debtor's name is available in Hong Kong and the full address is known to the judgment creditor.
- e) **Garnishee Order:** This is used when the obligation of a third party within the jurisdiction to pay money to the judgment debtor is transformed into an obligation to pay money directly to the judgment creditor. The judgment debt must be a sum of money amounting in value to at least HK\$1,000. This is useful when a deposit is available in that bank account and the bank account information is known to the payee.
- f) **Judgment Summons (JS):** This should be regarded as the last alternative among all recovery actions because it usually pairs up with an application for Committal proceedings. This requires the judgment debtor to appear in Court and be examined on oath as to why he/she has not paid the spousal/children maintenance as ordered. The summons shall be served on the judgment debtor personally not fewer than 10 clear days before the hearing. This is useful only when personal service of the JS is possible; there may be a delay in the recovery proceedings if the judgment debtor alleged that there was a significant change of circumstances that an application for variation of maintenance downwards should be heard before the JS.

g) **Committal for Contempt of Court:** Two categories of judgment or order may be enforced by committal, namely, those which direct the judgment debtor to do an act within a specified time, or those which command the debtor to abstain from doing an act. The *Hadkinson* order, also known as “unless order”, bars the party in breach from making any further submissions in the proceedings until the undertaking has been complied with. The procedure for committal for contempt is applicable when the examination stage of JS has been completed and the judgment creditor proceeds to the second stage of JS i.e. committal summons, and there is sufficient evidence to show that the judgment debtor has means to pay but avoids the obligation, which is of a higher standard of proof than the ordinary civil standard of the balance of probabilities. However, it needs further application, personal service of the summons, and hearing for the committal proceedings which further delay the process and incur legal costs. Sometimes, the judgment debtor may avoid service after the completion of the examination stage which made the whole effort in vain. Even if the Judgment debtor was finally put in jail, the family would still not get any financial benefit out of this recovery action. Therefore, such an application should be considered as the last resort when other methods of enforcement have been exhausted and proved ineffective, also considering the Court may be reluctant to restrict a person’s liberty. It has rarely been used before the issue of the New Practice Direction on JS on 18.11.2019 (PDSL 10.2) but it is reported there had been a couple of judgments after July 2019⁷⁷.

Mainland China

Divorce system

2.56 Since 2007, China has witnessed a surge in the number of divorce applications. The number of divorces doubled from 2007 to 2019 increasing from 2.1 million to 4.7 million and falling to 4.3 million in 2020⁷⁸. Although the number of divorce cases decreased in 2020, caution should be taken because divorce-related services may have been affected during the COVID outbreak since late 2019. The driving forces include population mobility, evolving views on freedom of marriage, the financial incentive for house purchasing for a single person, and simplified divorce procedures. The Crude Divorce Rate (cDR) reached 3.02‰ in 2016, increased to 3.36‰ in 2019 and fell to 3.09‰ in 2020⁷⁹. While the cDR is equally high in certain jurisdictions (e.g. 3.2‰ in the US), China’s divorce rate is significantly higher than that of Asian countries and jurisdictions

⁷⁷ The four published cases can be viewed here:

1. [葉及陳 FCMC 9346/2016 \[2019\] HKFC 159](#)
2. [李及張 FCMC 4305/2013 \[2019\] HKFC 297](#)
3. [容及鄭 FCMC 1165/2018 \[2020\] HKFC 54](#)
4. [BT v CBY CACV 439/2019\[2020\] HKCA 426](#)

⁷⁸ 中国统计出版社. (2021). 中国统计年鉴—2021. <https://finance.qq.com/cross/20180326/HP2z24P2.html>

⁷⁹ 中国统计出版社. (2021).

on average (1.2‰ in 2016)^{80,81}. The cDR can be misleading as it ignores the change in the marital distribution in the population⁸².

- 2.57 The number of marriages between Hong Kong and mainland residents also increased in recent years. From 2001 to 2015, these marriages registered in Hong Kong increased by 8.3% annually⁸³. From 2010 to 2014, 20-30% of all the divorced cases involved mainland residents^{84,85}. During the same period, cross-boundary marriages contributed to 30-40% of total marriages registered in Hong Kong.
- 2.58 According to the mainland's legal system, a divorce can be obtained through the Civil Affairs (民政局) if both parties agree with the terms of the divorce. For contested divorces or if issues arise in the divorce process, the couple has to file a petition in court. This system has been established for decades. For a long time in China, it was difficult to obtain a divorce. Judges assumed that the responsibility of rectifying the "mistakes" committed by estranged husbands and wives laid on the parties themselves⁸⁶. Such a legal arrangement became central to a series of unprecedented public debates in China that culminated in the 2001 amendment to the Marriage Law⁸⁷. The previous law was criticised for too much state paternalism and too little individual choice⁸⁸. Liberals argued that divorce could be desirable in some situations, freeing unhappy partners from unfortunate unions and sparing their children the prospect of growing up in acrimonious households^{89,90,91}.
- 2.59 The standards on whether to grant a divorce at the courts have been loosened over the last three decades. The increasing divorce caseloads led the Supreme People's Court to reform the mode and working mechanism of trials in family matters through a pilot programme in the Basic-level

⁸⁰ OECD. (2018). *Marriage and divorce rates*. http://www.oecd.org/els/family/SF_3_1_Marriage_and_divorce_rates.pdf

⁸¹ United Nations Department of Economics and Social Affairs. (2018). *2017 Demographic Yearbook*. <https://unstats.un.org/unsd/demographic-social/products/dyb/dybssets/2017.pdf>

⁸² Chen, M., & Yip, P. S. (2018). Decomposing the crude divorce rate in five countries and jurisdictions: Singapore, Taiwan, South Korea, the UK, and Australia. *Asian Population Studies*, 14(2), 137-152. <https://doi.org/10.1080/17441730.2018.1452380>

⁸³ Economic Daily. (2016). 「婚·離」原來不易 中港互認有法依. <http://www.bauhinia.org/index.php/zh-HK/analyses/476>

⁸⁴ Economic Daily. (2016).

⁸⁵ HKSAR Department of Justice. (2016 June). Consultation Paper: Proposed arrangement with the mainland on reciprocal recognition and enforcement of judgments on matrimonial and related matters. https://www.doj.gov.hk/chi/public/pdf/2016/consultation_pd2.pdf

⁸⁶ Huang, P. C. C. (2010). *Chinese civil justice, past and present*. New York: Rowman & Littlefield

⁸⁷ Li, Y., & Ma, Y. (Eds.) *The debate on revising the Marriage Law* [婚姻法修改論爭]. Beijing: Guangming Daily Press.

⁸⁸ Alford, W., & Shen, Y. (2003). Have you eaten? Have you divorced? Marriage, divorce and the assessment of freedom in China. In W. Kirby (ed.), *Ideas of freedom in the Chinese world*. Stanford: Stanford Univ. Press.

⁸⁹ Li, Y. (1998). Be vigilant against regression in the revision of the Marriage Law [修改《婚姻法》時要警惕倒退], *Collection of Women's Studies* [婦女研究論叢], 7(2), 4-5 & 23.

⁹⁰ Pan, S. (1999). Five doubts on revising the Family Law [對修改婚姻法的五個疑問] in Y. Li, & Y. Ma, (Eds.), *The debate on revising the Marriage Law* [婚姻法修改論爭]. Beijing: Guangming Daily Press. 103-105.

⁹¹ Xu, A. (1999). A pitfall for Marriage Law revision: Constraining divorce [婚姻法修改的誤區—限制離婚] in Y. Li, & Y. Ma (Eds.), *The debate on revising the Marriage Law* [婚姻法修改論爭]. Beijing: Guangming Daily Press. 182-192.

People's Courts and Intermediate People's Courts⁹². Most judges have formal legal training and experience in handling family issues, especially divorce matters. The Chinese judiciary has always incorporated in-trial mediation into court hearings in order to assist the parties to arrive at a compromise. Family divisions or judges are responsible for handling cases related to child custody, child support, adoption, parent-child relationships, inheritance disputes, cohabitation disputes etc. Now the courts basically allow no-fault divorce, a dissolution of a marriage in which the showing of wrongdoing by either party is not required.

Enforcement of maintenance order

- 2.60 In addressing divorce and maintenance-related issues, the mainland court follows a pragmatic approach, balancing the interests of the litigation participants and the need of the judges to resolve the cases without lingering effects⁹³.
- 2.61 Following this ideology, the mainland court adopts the principle of *no complaint, no trial* in maintenance cases (不告不理). Namely, the court only intervenes when the spouse initiates legal proceedings. This principle reduces court caseloads; more importantly, with a focus on fostering *forgiveness* and *reconciliation* rather than punishment and retaliation, it helps with restoring relationships among family members⁹⁴. For divorce cases, the courts usually divide the couple's assets, including the property, at the moment of delivering the divorce judgment. The market price can be obtained by either the appraisal agency or, in most situations, the bidding between the couple.
- 2.62 The principle governing the determination of custody, similar to most jurisdictions, is the best interests of children. The best interests of a child are considered based on various factors, such as parental income, parent-child relationship, child's preference, and whether there is domestic violence (DV)⁹⁵. Considering the children's need, custody of young children (age 2 or below) are usually granted to mothers⁹⁶. In reality, however, the patriarchal culture remains influential and judges may be influenced by such culture. As a result, along with a recent increase in the number of two-child families, when two siblings are used to each other's company, the judge may rule each for one parent, and more often than not, boy for the father⁹⁷.
- 2.63 The amount of child support is usually discussed between the two parties, and the court acts as a mediator to help the two parties arrive at a compromised amount. According to the Chinese

⁹² Supreme People's Court. (2016). *Notice of the Supreme People's Court on implementing a pilot programme in certain courts to reform the mode and working mechanism of trials in family matters [Effective]*.

<http://en.pkulaw.cn/display.aspx?cgid=284111&lib=law>

⁹³ Ng, K., & He, X. (2013). Pragmatic Discourse and Gender Inequality in China. *Law & Society Review*, 47(2), 279-310.

⁹⁴ 章瑛.(2015).懲罰之外: 恢復性司法理念在婚姻家庭犯罪中的適用. *社會科學研究*, 37(5), 104-108.

⁹⁵ 法制日報.(2019).撫養權究竟該歸誰多方因素參考衡量. http://www.xinhuanet.com/legal/2019-06/16/c_1124628744.htm

⁹⁶ 中國法院報.(2016).離婚案件聚焦: 二孩誰來撫養? Reprinted in *鄉村科技*, 2017, 8(7), 7.

⁹⁷ He, X. (2020 forthcoming). *Divorce in China*, NYU Press; Ethan Michelson, Decoupling, Cambridge University Press.

law, the amount for child support should be 20–30% of the payer’s monthly income, and should not be over 30% of the monthly income. Considering the modest cost of living in many mainland regions, the amount of child support is often modest; and upon agreement between the divorced couple⁹⁸, the support is rarely not paid.

- 2.64 According to the Chinese Marriage Law, parents have the responsibility to pay for child support after their divorce. Some divorced litigants may later request the court to alter the child support amount due to changed economic situations, but the child or the other parent may apply for enforcement from the court if a parent refuses to pay. Article 19 of the Provisions of the Supreme People’s Court on Several Issues Concerning the Judicial Enforcement of People’s Courts (最高人民法院關於人民法院執行工作若干問題的規定) states that enforcement of valid legal documents of the civil suit, including those containing decisions of paying alimony or support, may be transferred to criminal proceedings with legal force by the enforcement agency for enforcement. Enforcement methods include property seizure, charging order, imprisonment, AIO, and freezing injunction.
- 2.65 Courts in mainland China often work with other institutions during the judicial and enforcement process. In the mainland, according to the Article 221 of the Civil Procedural Law, courts are authorised to check the bank accounts of debtors when they do not fulfil the stipulated obligation. Banks must cooperate with courts that are also authorised to freeze and transfer assets equivalent to the limit of the debt. To do so, the prosecutor needs to provide the court with the debtor’s bank account and other relevant information, then the court will send a written judgment to the bank.
- 2.66 According to Article 222 of the Civil Procedural Law, similar to the garnishee order of Hong Kong, the court can also freeze and withdraw debt from the debtor’s income. Yet, it shall leave enough living expenses to debtors. If debtors still refuse to fulfil their obligations, the court can have the frozen assets auctioned at designated auction agencies. The procedures of the auction agencies are as follows: a) evaluate the value of the assets; b) make a compulsory auction decision; c) identify and commission auction agencies; d) announcement and display of target; e) determine the auction reserve price; f) hold an auction; and g) validate auction results and deliver auction objects to buyers.
- 2.67 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 was signed between the Hong Kong Government and the Supreme People’s Court on 20th June 2017, and the bill has now been read and came into effect in 2022. Before the implementation of the arrangement, the civil judgments on matrimonial and family cases were not mutually recognised between Hong Kong and mainland courts. To realise any property right, one had to initiate a parallel or separate lawsuit. Once a decision was made by a

⁹⁸ Ng, K., & He, X. (2014). Internal contradictions in China’s judicial mediation. *Law & Social Inquiry*, 39, 282-312.

court in the mainland, it would be enforced by the courts, usually when there was enforceable property in the mainland. Courts in Shenzhen, which received many of these cases, have adopted an approach that was convenient to the litigants. For example, they often admitted the decisions of Hong Kong courts as facts, and they have often directly delivered summons and subpoenas.

Comparisons between Hong Kong and mainland China

Differences in legal systems of divorce

- 2.68 In Hong Kong, parties can only apply for divorce in court. Parties may make a joint application or file a petition for divorce. Regardless of the forms of application, parties are free to reach agreements on financial issues, including in relation to ancillary relief or arrangements for the children. In order to promote the best interest of the children under legal provision (*Section 3 (1)(a)(i)(B) of Guardianship of Minor Ordinance, Cap 13*), Hong Kong courts will call for social investigation reports (SIRs) or other reports prepared by the social work officers of the SWD in relation to custody, care and control, and access of children. The Court may also call for other reports, such as clinical psychologist reports from clinical psychologists of the SWD or social welfare reports by other professionals for children residing outside Hong Kong whenever appropriate. Consideration will be given to the recommendations stated in these reports. Expert reports prepared by private mental health practitioners may be produced, subject to approval from the court.
- 2.69 In Mainland China, parties may apply for divorce in offices where the place of one of the parties' households (户口, "hukou") administer under the Ministry of Civil Affairs (民政部) if it is uncontested, or otherwise in court. Most divorce petitions in court will be rejected for the first time but will be allowed on repeated petitions. Mainland courts often work with other institutions. For example, the Mainland courts work with community residential committees to gather information about families in divorce.

Differences in the enforcement of maintenance orders and custody orders

- 2.70 The powers of the Hong Kong courts have been stated in the laws of Hong Kong and the relevant ordinance aforementioned. Furthermore, after a maintenance order is issued by the court, the payee has to exercise the court's ruling on his/her own, i.e. there is no monitoring or collection system for maintenance. If payers refuse to pay maintenance, payees may apply for enforcement orders from the Court, including AIO, charging order, garnishee order, writ of *fieri facias*, prohibition order and JS. After the order is made, the payee has to serve the order, e.g. AIO, by

personal service or by registered post. The Bailiff Section of the Judiciary could take the appropriate steps upon request to execute enforcement orders, such as the writ of *feri facias*⁹⁹.

2.71 The enforcement agency or bureau is an integral part of the courts. Enforcement affairs are all handled under the court's division in mainland China. They are authorised to take the measures listed. Indeed, when a party has the capacity to comply with the judgments but refuses to do so, it can be charged criminally under the amended Criminal Law, and it can deduct the amount from the payroll or freeze and auction the relevant assets (Art. 48 of the Marriage Law of the PRC). Furthermore, the mainland courts adopt the principle of “no complaint, no trial” (不告不理) and often work with other institutions to enforce maintenance orders. For example, mainland courts work with banks to freeze parties' assets and enforce child's maintenance, and with auction agencies to handle real property assets. If judgment debtors refuse to pay children's maintenance, judgment creditors may apply for enforcement orders from the court and enforce the order as appropriate. Enforcement methods include property seizure, charging order, imprisonment, attachment of income, and freezing injunction.

Reciprocal Arrangement between Hong Kong and the mainland

2.72 The Team studied the Arrangement signed in 2017. It will come into effect after Hong Kong and the mainland have implemented it by way of legislation and judicial interpretation respectively. The Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (Cap. 639) comes into operation on 15 February 2022. It implements 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.”

2.73 The Government has consulted the LegCo Panel on Administration of Justice and Legal Services (AJLS) in 2018. In a meeting¹⁰⁰ on 26 March 2018, Mr Jeremy Chan representing the Bar Association and Mr Dennis Ho representing the Law Society both said that the Government has set out the majority of views of the two legal professional bodies, and generally supports the Arrangement. However, the legislator at the time, Dr Fernando Cheung expressed concerns about children's interests affected by the different considerations of Hong Kong and mainland courts due to cultural and social differences, such as the tendency to grant custody of girls to mothers and that of boys to fathers, leading to separation of siblings.

2.74 The Government has then produced the proposed mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Bill (“Bill”) and the mainland

⁹⁹ The Judiciary. (2021). *Bailiff Section*. https://www.judiciary.hk/en/court_services_facilities/bailiff.html

¹⁰⁰ Legislative Council. (2018). *Minutes of meeting held on Monday, 26 February 2018, at 4:30 pm in Conference Room 2 of the Legislative Council Complex (CB(4)1599/17-18)*. Panel on Administration of Justice and Legal Services. <https://www.legco.gov.hk/yr17-18/english/panels/ajls/minutes/ajls20180226.pdf>

Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Rules (“Rules”). The Government launched a public consultation to seek views on the draft of the Bill and the Rules from 8th February 2019 to 8th March 2019. The Government consulted the AJLS on the key features of the draft legislative proposal for implementing the Arrangement in March 2018 and then on the draft bill and rules issued for public consultation on February 2019. Members of the AJLS Panel indicated support in principle and urged the Bill to be introduced at LegCo as soon as possible. A Family Court Judge shared his view in our interview, that despite the busy schedule for reading in the Legislative Council, the Bill was well-prepared and in full progress.

- 2.75 The Bill provides a mechanism for the registration of specified orders based on effective mainland judgment in a matrimonial or family case. There are three categories of specified orders, namely care-related orders, status-related orders and maintenance-related orders (see Schedule 2 of the Bill).
- 2.76 In summary, if a party presents to the District Court a mainland judgment on matrimonial or family cases that is effective in the mainland on or after the commencement of the Bill (Clause 8), the District Court may order for that specified order to be registered (Clause 11). For this purpose, a mainland judgment is presumed, until the contrary is proved, to be effective in the mainland if a certificate certifying those matters is issued by the original mainland court. Further restrictions on the registration application concerning the three categories of specified orders are set out in Clause 9. The party can also apply to set aside the registration of a specified order as stipulated in Clause 16 to 17 of the Bill.
- 2.77 Registration enables a registered care-related order and maintenance-related order to be enforced in Hong Kong as if it was an order made by the registering court (Clause 20). As for a status-related order, it will be recognised as valid in Hong Kong (Clause 21). Enforcement of a registered order can only be pursued after the expiry of the period for setting aside the registration (Clause 22). Where a registration application is made in relation to any specified order, and proceedings are pending before a court in Hong Kong (adjudicating court) in relation to a cause of action same as that of the mainland judgment, the adjudicating court must order that further proceedings in front be stayed (Clause 27). The party to the mainland judgment must not bring the same cause of action in the Hong Kong court (Clause 28).
- 2.78 The Bill therefore establishes a mechanism to recognise specified mainland judgments in the Hong Kong court. The enforcement measures are those used in Hong Kong. Thus, there should not be legal requirements encumbering the Arrangement to be enforced in Hong Kong.

Enforcement of mainland maintenance orders in Hong Kong

- 2.79 Hong Kong has reciprocal enforcement of foreign financial orders under the Maintenance Orders (Reciprocal Enforcement) Ordinance, Cap. 188 to facilitate maintenance recovery by or from

people in Hong Kong or by other people in reciprocating countries and jurisdictions. The reciprocating jurisdictions for maintenance orders generally are the UK, Bermuda, the Province of Manitoba, the Province of Saskatchewan, the Province of Ontario, and Isle of Man. There are also other reciprocating countries and jurisdictions for maintenance orders other than affiliation orders, i.e. orders finding or declaring a person to be the father of a child, or whether or not it also provides maintenance of the child.

2.80 According to the Provisions of the Supreme People's Court on Several Issues Concerning the Judicial Enforcement of People's Courts, as long as the legal document for alimony or child support is valid, the case can be transferred by the tribunal of the enforcement agency for enforcement. This means that the Court can use its powers to start the enforcement procedure. This practice is different from that in Hong Kong, as the concerned party will have to submit affidavits and apply for JS in order to start the maintenance recovery process, in which the other party may often seek different methods to avoid paying support. Under the current judicial system, the Hong Kong court, unlike the mainland court, cannot transfer civil cases directly to criminal proceedings. Therefore, under existing legal systems in the mainland and Hong Kong, the differences in court procedures may pose difficulties in enforcing maintenance and child support orders from the mainland in Hong Kong.

F. Other Marital Factors Associated with Divorce

Spouse Background

2.81 With an increasing number of cross-border marriages in Hong Kong, the risk of divorce of spouses from different backgrounds warrants further investigation. For instance, couples with different sociocultural backgrounds may have higher risks of divorce. A longitudinal survey in Germany found that marriages between native individuals and immigrants had a significantly higher risk of divorce than their counterparts (native–native marriages, and immigrant–immigrant marriages). A possible reason is that cultural dissimilarity in language, religion, and values between the partners may lead to misunderstandings and daily-life communication problems. In addition, marrying outside the ethnic or cultural group means crossing a social boundary in society; consequently, the couple may feel neglected by significant others in their communities, which could become a source of conflict¹⁰¹. The geographic locations of the couple are also relevant. A study found that compared with close-proximity relationships, people in long-distance relationships reported higher relationship quality and commitment at the initial stage; however, the relationship gradually deteriorated afterwards¹⁰². Another study involving

¹⁰¹ Milewski, N., & Kulu, H. (2014). Mixed marriages in Germany: A high risk of divorce for immigrant-native couples. *European Journal of Population*, 30(1), 89-113.

¹⁰² Kelmer, G., Rhoades, G., Stanley, S., & Markman, H. (2013). Relationship quality, commitment, and stability in long-distance relationships. *Family Process*, 52(2), 257-270.

27 countries across the globe found that having a secure attachment style and engaging in self-disclosure enhanced the quality of long-distance relationships by facilitating trust, certainty and relational satisfaction, which may affect the overall success of the said relationships¹⁰³.

Length of Marriage

2.82 Some studies have identified a rising-falling pattern of divorce risk along with the duration of the marriage, but this pattern varies across sociocultural contexts. A Finnish study suggested that married couples experience the highest marital satisfaction during the initial stage of marriage; the risk of divorce then begins to increase, reaching its peak at the 5th year of marriage and declining gradually afterwards¹⁰⁴. A US study also found that half of the marriages that ended up in divorce had lasted for less than seven years¹⁰⁵. This pattern of divorce in Western marriages, however, is quite different from the Singaporean median length of marriages of 13 years¹⁰⁶. *Interpersonal* factors (e.g., approaches to problem-solving, decision-making and role division) and *intrapersonal* factors (e.g., commitment, loyalty, personality characteristics, and capability to trust) both contribute to the length of the marriage¹⁰⁷.

Age at Marriage

2.83 Additionally, marital stability and satisfaction are non-linearly related to age at marriage. Although there is no clear-cut ideal age for marriage, one study in the US showed that those who married at a younger age had higher risks of instability later in their marriage, and were more likely to report decreased marital satisfaction as opposed to those who married at an older age¹⁰⁸. Another US study found that people married between the ages of 22–25 had the highest marital quality, while people married at an older age had higher rates of marital survival, as those with later first marriages were less likely to resort to divorce¹⁰⁹. Internationally, the average age of first marriage is increasing despite a decline in child marriages (marriage before age 18)- which are most prevalent in South Asia and Sub-Saharan Africa¹¹⁰, and are often driven by poverty and detrimental to girls' health (e.g., heightened risk of infant/maternal mortality)¹¹¹. On the other

¹⁰³ Hammonds, J. R., Ribarsky, E., & Soares, G. (2020). Attached and Apart: Attachment Styles and Self-Disclosure in Long-Distance Romantic Relationships. *Journal of Relationships Research, 11*.

¹⁰⁴ Kulu, H. (2014). Marriage duration and divorce: the seven-year itch or a lifelong itch? *Demography, 51*, 881-893.

¹⁰⁵ Clarke, S. C. (1995). Advance report of final divorce statistics, 1989 and 1990. *Monthly Vital Statistics Report, 43* (Suppl. 9), 1.

¹⁰⁶ Subordinate Courts of Singapore. (2003). Divorcing couples: A profile analysis. *Subordinate Courts Research Bulletin, 31*, 12.

¹⁰⁷ Karimi, R., Bakhtiyari, M., & Masjedi Arani, A. (2019). Protective factors of marital stability in long-term marriage globally: A systematic review. *Epidemiology and Health, 41*, E2019023.

¹⁰⁸ Bartle-Haring, S., Shannon, S., Holowacz, E., Patton, R., & Lotspeich-Younkin, F. (2018). Is there the “sweet spot” for age at marriage and positive marital outcomes? *Journal of Family Issues, 39*(4), 1085-1107.

¹⁰⁹ Glenn, N., Uecker, J., & Love, R. (2010). Later first marriage and marital success. *Social Science Research, 39*, 787-800.

¹¹⁰ UNICEF. (2018). *Child marriage: Latest trends and future prospects*. <https://data.unicef.org/resources/child-marriage-latest-trends-and-future-prospects/>

¹¹¹ Nour, N. (2006). Health consequences of child marriage in Africa. *Emerging Infectious Disease, 12*, 1644-1649.

hand, people in more developed economies are delaying marriage, which may be attributed to higher education levels among females, gender equality, and economic modernisation¹¹².

Highlight 2.4: Other factors associated with divorce include but are not limited to spousal backgrounds (couples with different sociocultural backgrounds, long-distant relationships), the length of marriage, and the age of marriage. As these factors may vary across sociocultural contexts, patterns of duration of marriage also warrant exploration in the local context.

¹¹² Saardchom, N., & Lemaire, J. (2005). Causes of increasing ages at marriage: An international regression study. *Marriage & Family Review*, 37, 73-97.

Chapter 3:

Updated Phenomenon of Divorce in Hong Kong

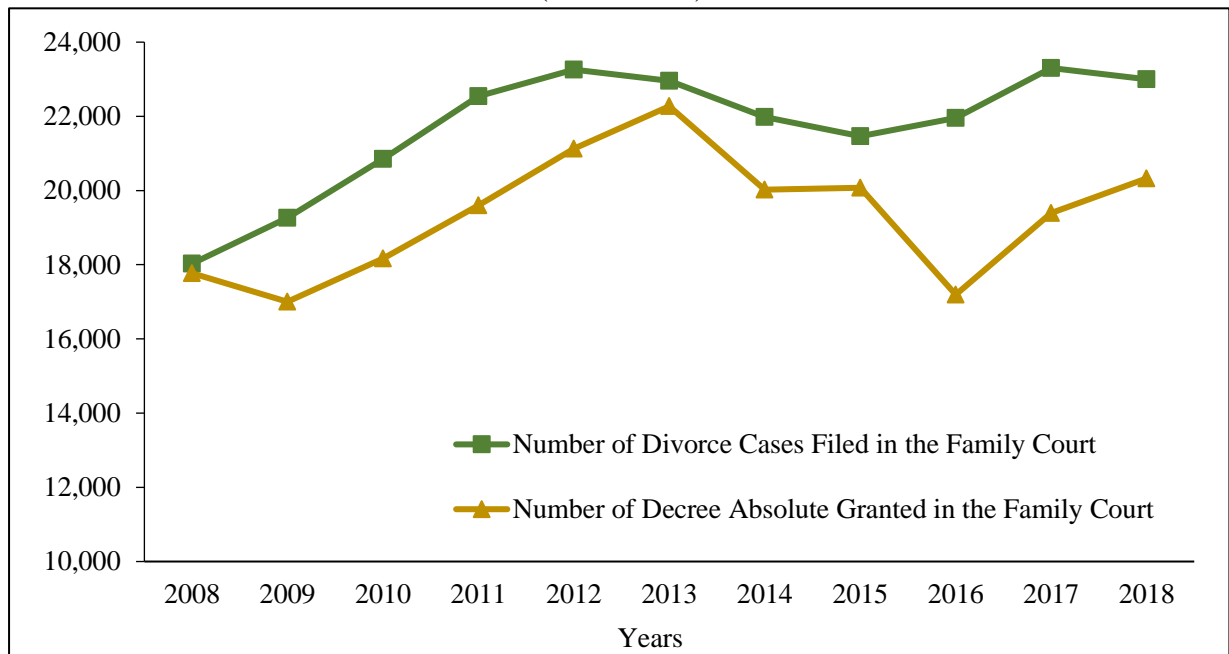
- 3.1 Two cases have stood out in our study that highlighted the importance of the proper handling of maintenance.
- 3.2 **Case 1.** *Prior to the divorce, a non-Chinese Asian mother of two daughters was a homemaker in a middle-class household in a popular private housing estate. After her ex-husband tried to strangle her for three times, the violent nature of their marriage propelled her to file for a divorce. The ex-husband received a maintenance order to pay HK\$12,000 each month. Yet as a senior staff in a tutorial centre, he claimed to have no money and failed to pay regularly and in full amount. Consequently, the unstable financial condition of the mother and the children caused them to apply for CSSA and move to public housing. Although the CSSA Scheme provides a safety net for those who cannot support themselves financially to meet their basic needs, limited social and financial support has caused the mother to experience high stress. Her daughters also reported feeling unsafe, emotionally unstable, and stigmatised at school.*
- 3.3 **Case 2.** *The divorced couple were both new arrivals. After their son was born, their relationship worsened and the mother discovered that her husband had three children with some other women. The husband's uncooperativeness caused family mediation to be unhelpful, and the subsequent divorce process stretched on for five years. Despite the Court's order of a maintenance fee of around HK\$2,000, this ex-husband, who came from a wealthy background, transferred all assets to his relatives prior to the divorce and refused to pay by declaring bankruptcy. Unable to enforce maintenance, the mother now relies on CSSA to care for her son with autism spectrum disorder and speech delay. She thinks the negative experience of the family breakdown and her limited resources have affected the boy's progress.*
- 3.4 The two mothers and their children's experiences reflect how outstanding maintenance is not merely a financial issue, but also grieves divorcees' quality of life. Payers who may well be financially capable could still evade paying maintenance by exploiting gaps in the existing system. Additionally, divorcees often require support beyond financial security, such as social and child care support, in particular culturally sensitive services or professional care for children with special needs. Divorced families that rely on financial assistance and social services also come from various socio-economic backgrounds, highlighting the need to understand the phenomenon of divorce among the entire population.
- 3.5 This Chapter presents the Research Team's observation on the latest phenomenon of divorce in Hong Kong, covering the scope of the problem, key factors associated with divorce, its severity, and the profiling of divorced persons. It should be noted that the statistics used for the findings

came from multiple sources and fell within the range of 1990 to 2018, and therefore only explain the trends within the studied period.

A. Scale of the Problem

3.6 Divorce is common in Hong Kong as in many high-income western societies and Asian jurisdictions¹¹³. Based on the THS Report No. 61¹¹⁴, it was estimated that 362,200 persons aged 16 and over have been divorced/separated at the time of enumeration, which is equivalent to 6.0% of all persons aged 16 and over in Hong Kong. With the rise of divorce shown in Figure 3.1, it is important to have readily available resources and services to protect this growing population group from the adverse impacts of divorce (see Appendix H.1 – I.2). Table 3.1 also shows the number of legal-aided divorce cases each year.

Figure 3.1 Number of divorce cases filed and decree absolute granted in the Family Court (2008 -2018)



¹¹³ Chen, M., & Yip, P. S. (2018). Decomposing the crude divorce rate in five countries: Singapore, Taiwan, South Korea, the UK, and Australia. *Asian population studies*, 14(2), 137-152.

¹¹⁴ Census and Statistics Department, Social Surveys Section (1). (2016). *Thematic Household Survey Report No.61*. Retrieved from <https://www.statistics.gov.hk/pub/B11302612016XXXXB0100.pdf>

Table 3.1 Number of legal-aided divorce cases (2009-2018)

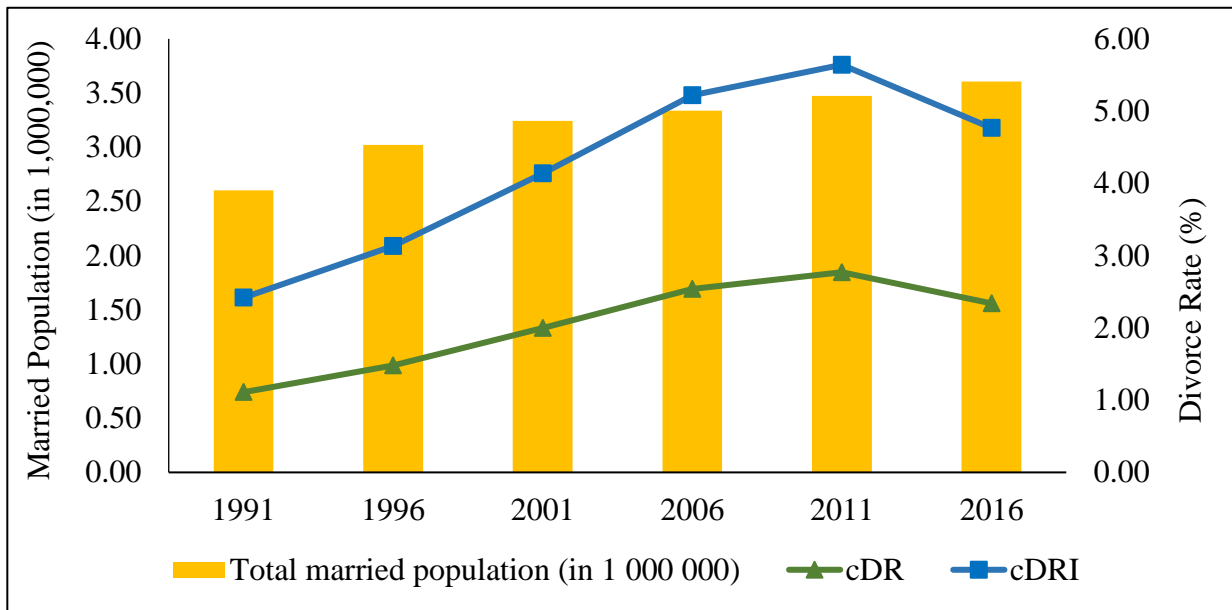
| | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 |
|---------------------------------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|
| Legal Aid Applications | 9,171 | 8,366 | 7,856 | 7,749 | 7,353 | 7,152 | 6,564 | 6,592 | 6,557 | 6,138 |
| (% of divorce filed) | (47.6%) | (40.1%) | (34.8%) | (33.3%) | (32.0%) | (32.5%) | (30.6%) | (30.0%) | (28.1%) | (26.7%) |
| Legal aid Certificates Granted | 5,213 | 4,580 | 4,137 | 4,046 | 3,775 | 3,457 | 2,969 | 3,100 | 2,816 | 2,635 |
| (% of divorce granted) | (30.7%) | (25.2%) | (21.1%) | (19.2%) | (17.0%) | (17.3%) | (14.8%) | (18.0%) | (14.5%) | (13.0%) |

3.7 Furthermore, the Team compared the cDR and Improved Crude Divorce Rate (cDRI) from 1991 to 2016 in the following figure (See Table J.1 in Appendix I.1)¹¹⁵. The cDR refers to ‘the number of divorce decrees granted in a calendar year per 1000 mid-year population of that year’, and is often used to provide an estimate of the divorce situation. However, the cDR does not consider the population that is not eligible to undergo divorce, such as persons below 16 years. Instead of dividing the number of divorce decrees granted by the population, it is more appropriate to divide it by the number of married persons aged 15 and over (excluding foreign domestic helpers), composing the cDRI¹¹⁶.

¹¹⁵ Census and Statistics Department, Demographic Statistics Section. (2018). *Marriage and Divorce Trends in Hong Kong, 1991 to 2016*. Retrieved from <https://www.statistics.gov.hk/pub/B71801FB2018XXXXB0100.pdf>

¹¹⁶ Chen, M., & Yip, P. S. (2018). Decomposing the crude divorce rate in five countries and jurisdictions: Singapore, Taiwan, South Korea, the UK, and Australia. *Asian Population Studies*, 14(2), 137-152. <https://doi.org/10.1080/17441730.2018.1452380>

Figure 3.2 cDR vs cDRI by year (1991-2016)



3.8 As seen in Figure 3.2, the cDRI returns a higher divorce rate, because the married population will always be less than the total population. In terms of the percentage change, both methods captured similar trends in general. The cDRI showed an increasing trend from 1991 to 2011, with a decreasing rate of percentage change in divorce rate from 2011 to 2016. The decreased divorce rate could be due to the relatively low percentage increase in the married population (+3.83%) and a large decrease in divorce decrees granted (-12.25%). Further details can be viewed in Table I.2 in Appendix I.1.

Highlight 3.1: Divorce is not an uncommon experience and does not just impact any particular group. However, it debunks the myths that 2 in 5 marriages result in divorce, based on comparisons between the annual number of marriage registrations and number of divorces as divorce and marriages correspond to two different population, married and unmarried population, respectively.

B. Factors Associated with Divorce

Educational Attainment

3.9 The sociodemographic background of divorced persons was asked in the THS Report No.61 survey, including age, gender, current marital status, educational level, occupation, economic activity status, personal and household income and type of housing. There was a significant difference in the socioeconomic background across groups, with the divorced/separated group generally having a lower educational level compared to the never divorced/separated group (see Appendix C.2).

Highlight 3.2: Divorce risk is positively associated with lower educational attainment.

Length of Marriage

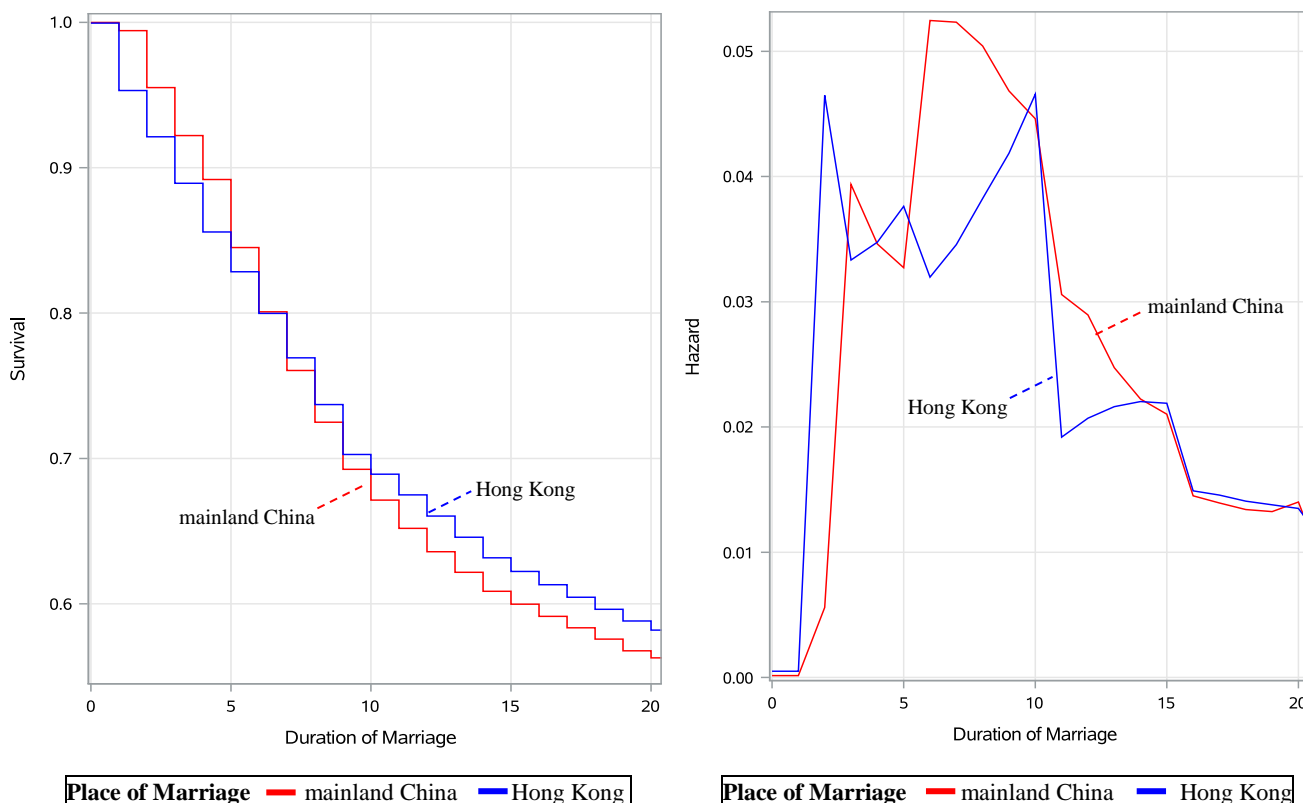
- 3.10 Although various studies identified a rising-falling pattern of divorce risk along with the duration of the marriage, it was uncertain whether this trend will be replicated in the local context (see para. 2.82). The Team therefore collected data on the number of divorces after a specific number of years for marriages that registered in Hong Kong, and compared it to marriages that registered in mainland China, regardless of the nationality of the married people. The data was grouped according to the duration of the marriage, and the groups were then split into individual years for further analysis.
- 3.11 To count the number of registered marriages in Hong Kong across the place of marriage, we used data from the C&SD¹¹⁷. Based on the available data, we computed the survival probabilities for each marriage duration. To deduct the number of deaths during the marriage from our calculation, we collected the death data for married people at different ages. Since these data did not contain the duration of marriage at the time of death, we assumed the age of 30¹¹⁸ as the beginning of the marriage for any deceased person because 30 is the median age of marriage.
- 3.12 Furthermore, with no available data regarding the place of marriage for a deceased person, we assigned 75 and 25 percent of the number of deaths to the group for which the place of marriage is Hong Kong and the group for which the place of marriage is mainland China, respectively¹¹⁹. The detailed calculation of the survival rate and hazard rate of marriages in Hong Kong and mainland China is presented in Appendix I.2.

¹¹⁷ Census and Statistics Department, Demographic Statistics Section. (2018). *Marriage and Divorce Trends in Hong Kong, 1991 to 2016*. Retrieved from <https://www.statistics.gov.hk/pub/B71801FB2018XXXXB0100.pdf>

¹¹⁸ Our analysis is very robust to the selection of this assumed age.

¹¹⁹ The 75 and 25 percent cut-off is based on the number of registered marriages in each place.

Figure 3.3a (left) and 3.3b (right) Survival rate of marriages (left) and hazard rate (right) of divorces among marriages in Hong Kong and mainland China



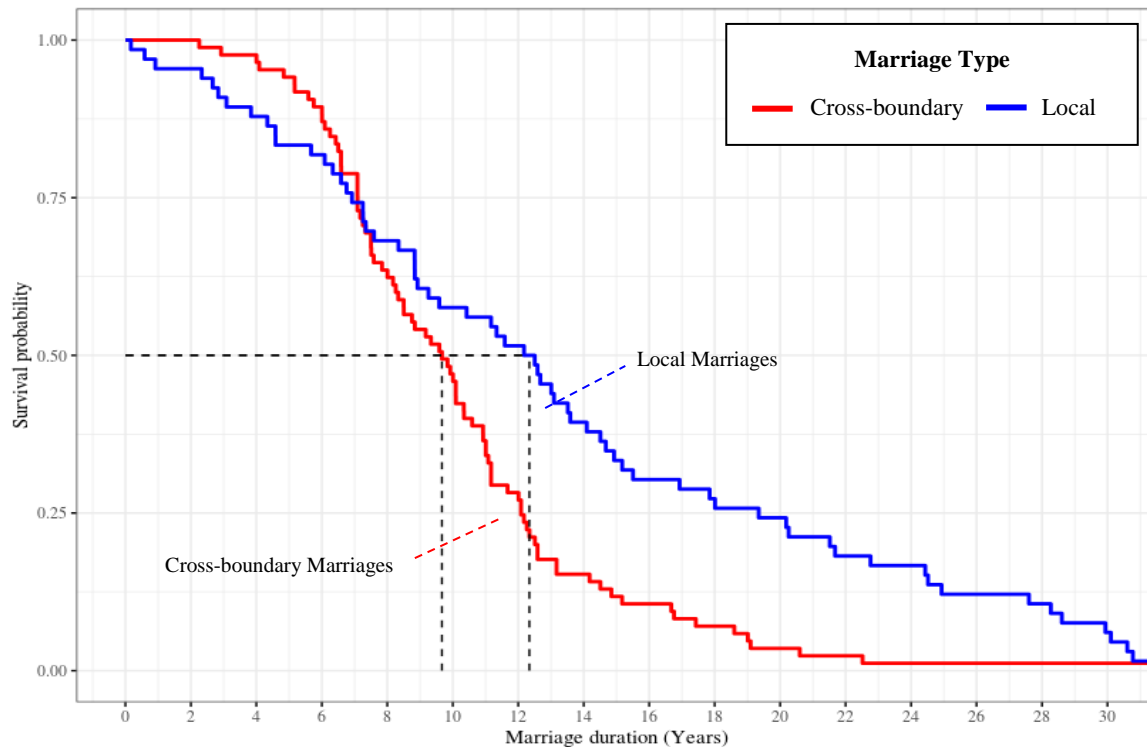
3.13 Figure 3.3a and 3.3b show the survival rate of marriages and the hazard rate of divorces among marriages registered in Hong Kong and mainland China. These figures can be used to compare the duration of marriage for the people whose marriage happened in Hong Kong with the people whose marriage happened in mainland China. In Hong Kong, the hazard rate of divorce was the highest in year 2, followed by a slight decrease before the hazard rate climbs up in year 7. After the hazard rate peaks in year 10, the rate immediately drops and continues to fall over time. Compared to Hong Kong, the hazard rate in mainland China is also high in years 2-3. It is then followed by a slight decrease before the hazard rate peaks in years 6-7, at a rate higher than the peaking points in Hong Kong. After the peak, the hazard rate gradually fell. The explanation for these observations in Hong Kong and mainland China requires further study. For instance, whether the 7-year peak in hazard rate in Hong Kong and mainland China can be explained by the “七年之癢” idea requires future studies and data to confirm this phenomenon.

Highlight 3.3: Risk for divorce is significantly associated with the duration of marriage in both Hong Kong and mainland China. Risk for divorce peaks during the second to tenth years of marriage.

Spouse Background

- 3.14 Since 1997, over one million mainland residents settled in Hong Kong as a result of the one-way permit scheme; the influx of mainland residents into Hong Kong contributed to 80% of the population growth in the past decade (2008-2018). This explains the local (Hong Kong brides and bridegrooms) and cross-boundary marriages (either Hong Kong bridegrooms and mainland brides or Hong Kong brides and mainland bridegrooms) ratio reaching 1:0.8. Since then, it has been claimed that cross-boundary marriages have higher divorce risks than local marriages, as their marriages may experience greater challenges from cultural and language differences.
- 3.15 To test the validity of such claims, the Team compared the marriage length and divorce risk between local and cross-boundary marriages, using data from the 308 e-Form cases. As seen in Figure 3.4, local marriages had a lower survival probability than cross-boundary marriages before year 7. However, once it reached year 7, there was an interaction point between the survival curve of cross-boundary and local marriages where the trend reverses, with cross-boundary marriages having a slightly higher risk of divorce than local marriages. Figure 3.4 also shows that years 6-7 marks the deterioration point for cross-boundary marriages, wherein survival probability in the marriages dropped rapidly.
- 3.16 Given that there are currently no official statistics on the exact number of marriages and divorce decrees granted among cross-boundary and local cases each year, it should be noted that the analysis was completed using 308 e-Form cases that all resulted in divorce. The Team could only calculate the conditional probability of risk of divorce amongst the local and cross-boundary marriages that resulted in divorce, and does not include calculations for the marriages that never resulted in divorce. This indicates the need to improve data collection for future studies to better clarify the relationship between marriage duration and divorce risk between local and cross-boundary marriages. Nonetheless, our findings reflect the enigmatic nature of this relationship, and debunk claims that cross-boundary marriages have a higher divorce risk than local marriages across all marriage durations.

Figure 3.4 Relationship between marriage length and survival probability of marriage in local and cross-boundary marriages in e-Form data



Highlight 3.4: Cross-boundary marriages do not have a consistently higher divorce risk than local marriages. The crossover between the local and cross-boundary at the seventh year is an interesting and important observation.

Age of Marriage

3.17 Age of marriage is also a factor associated with divorce risk. As relevant data is unavailable in Hong Kong, we explored the relationship between marriage age and divorce risk in South Korea. The Team was only able to conduct analysis on one Asian jurisdiction, as not enough statistical information can be gathered to conduct analysis on another Commonwealth jurisdiction.

3.18 Here, we computed the probability of marriage survival for different age-groups and sexes, based on more comprehensive and managed divorce data that contain information for all marriages and divorces in South Korea during 1990-2017 for people aged 15-65 years old¹²⁰. Details on the computed marriage survival probability data are in Appendix I.3. Findings are presented below:

¹²⁰ Males over 18 and females over 16 years old may marry with their parents' or guardians' consent. Otherwise South Korea's age of consent to marriage is 20.

Figure 3.5a Survival probability of marriage for husbands in South Korea

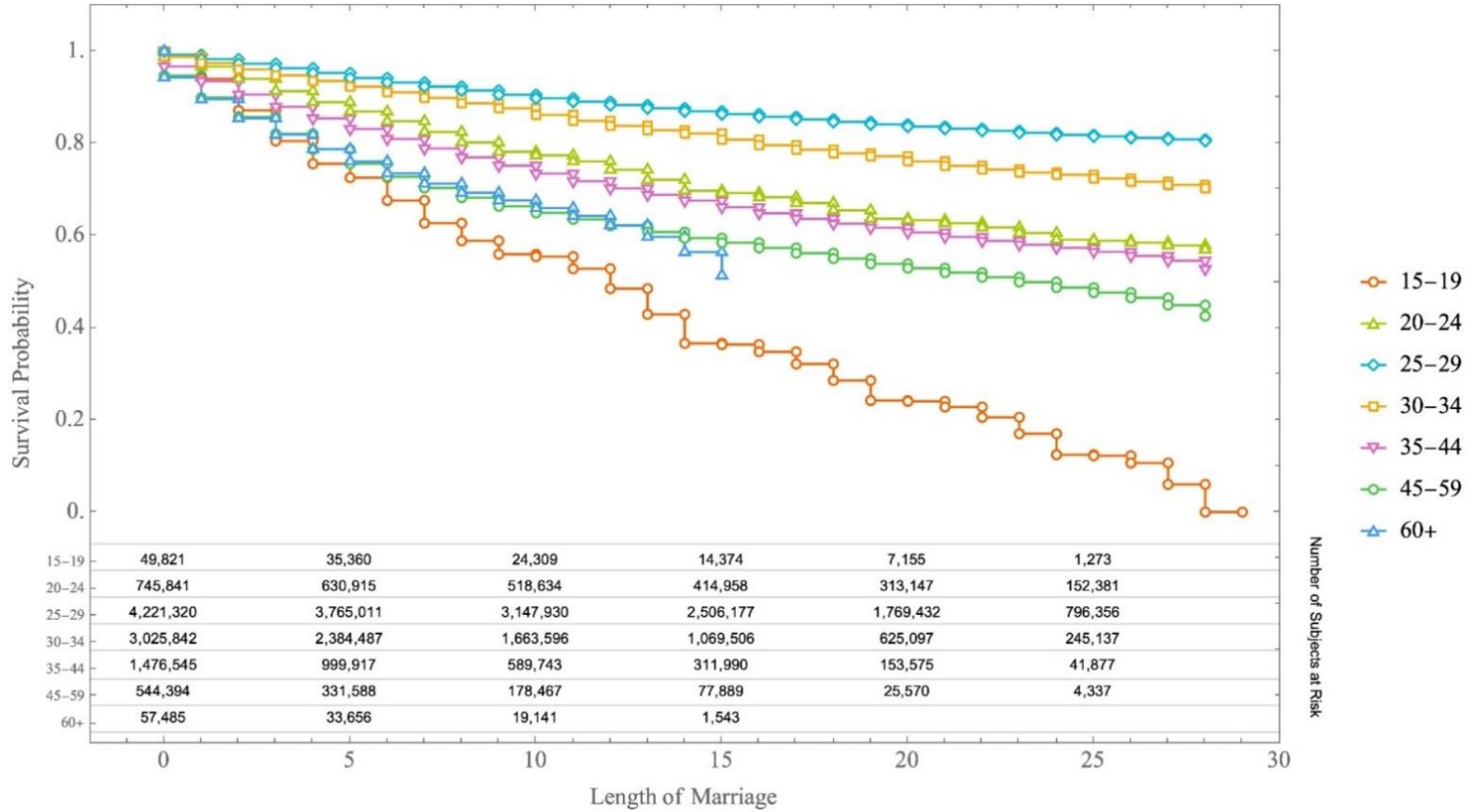


Figure 3.5b Survival probability of marriage for wives in South Korea

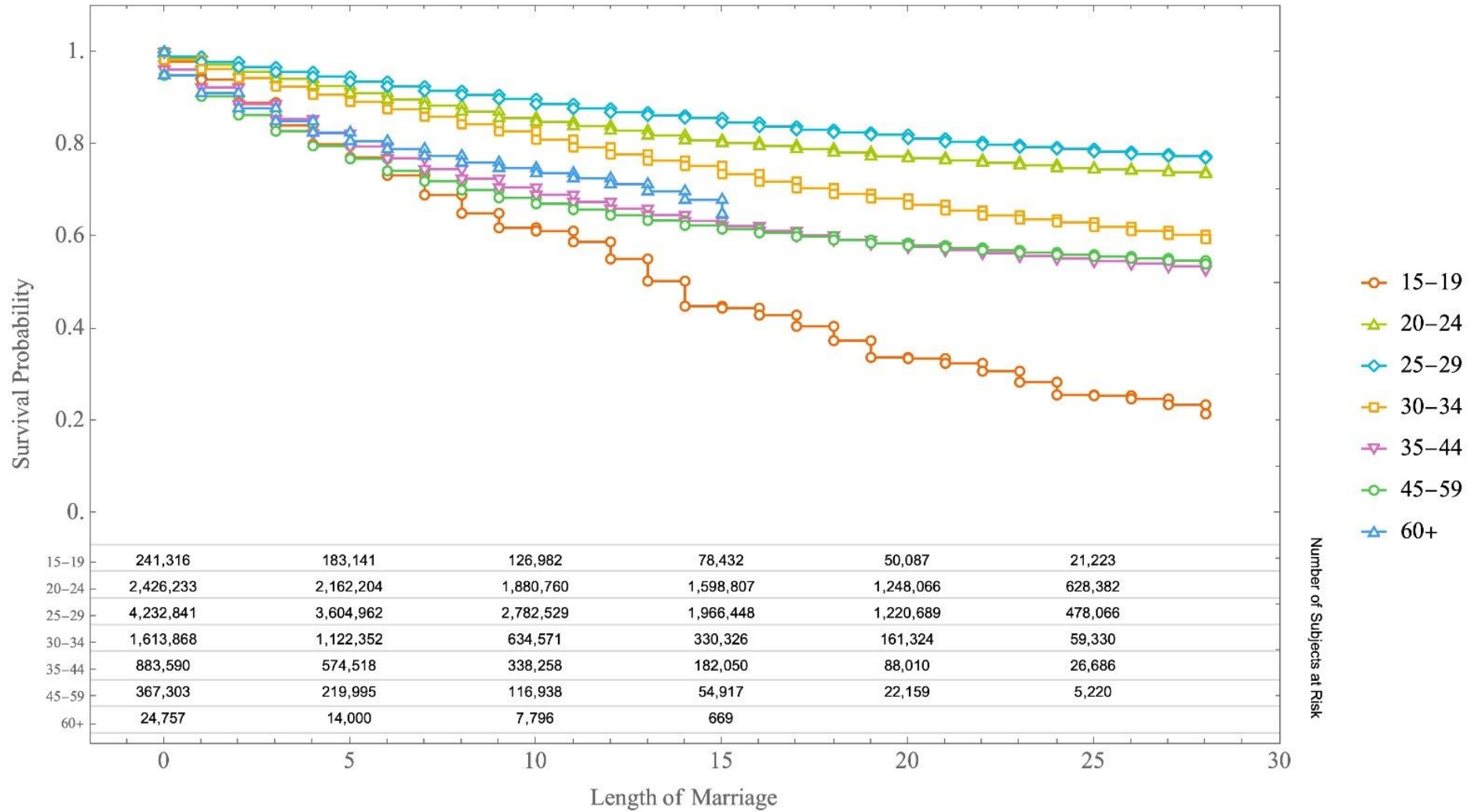
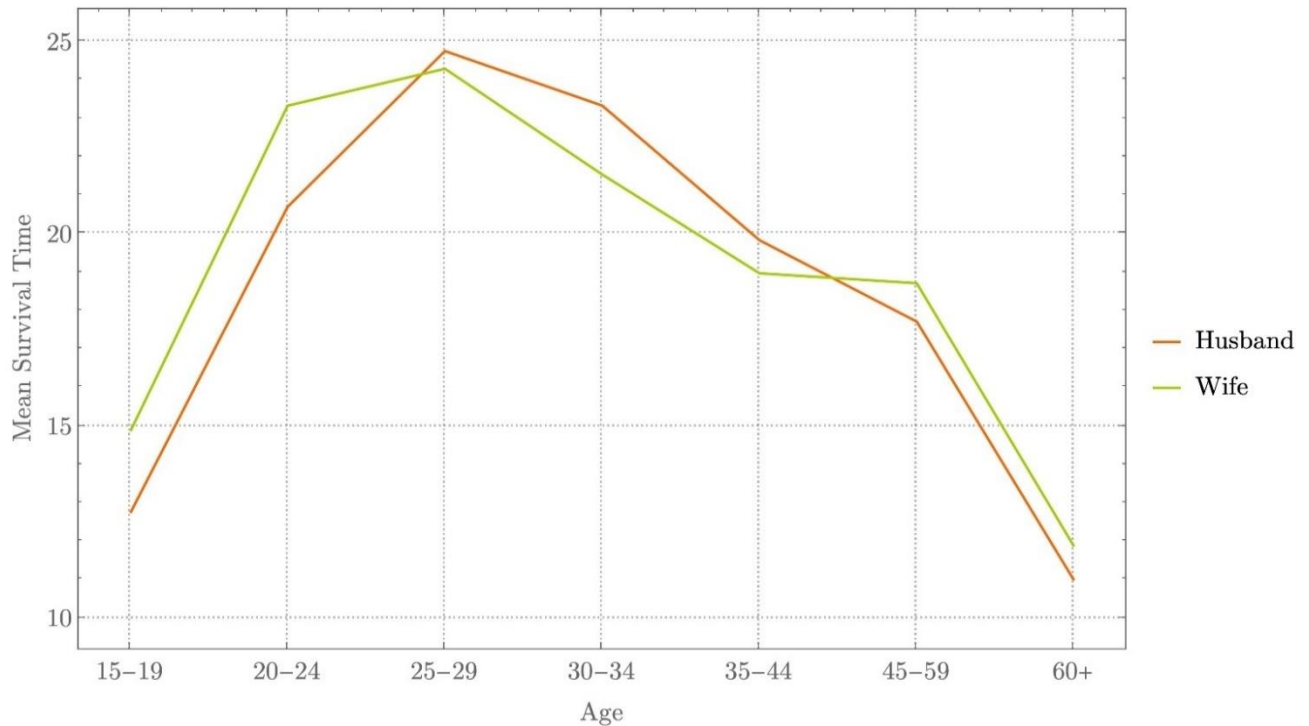


Figure 3.6 Mean survival time of marriage for husbands and wives in different age groups in South Korea



Note: Since data are not available for duration of more than 28 years, the means are underestimated.

3.19 The Team calculated the risk of divorce for males and females across different ages, with consideration for the probability of death during marriages. According to the Cox proportional hazards model for data, the risk of divorce decreased over time after fixing the level of age and sex. As shown in Figures 3.5a and 3.5b, the marriage survival probability was the highest in 25-34 marriage age group for males, and 20-29 marriage age group for females. 25-29 years old was the marriage age group with the highest marriage survival probability for both genders. Figure 3.8 also indicates that the mean survival time for this age group is the highest, reaching ~24.5 years for both genders.

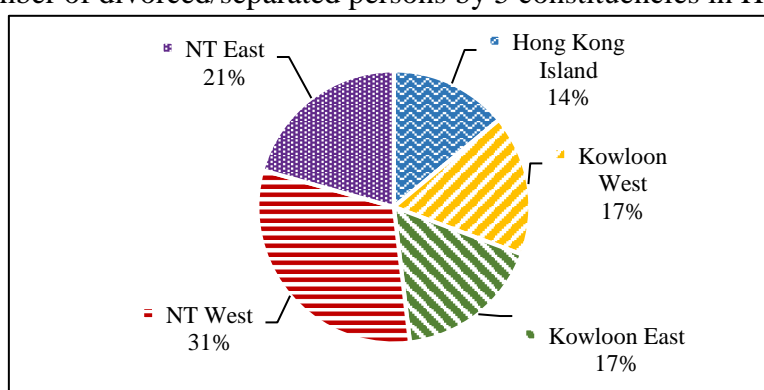
3.20 Figures 3.5a and 3.5b also show that the 15-19 marriage age group had the lowest marriage survival probability for both genders, with the survival probability in this marriage age group lower for males than females. Specifically, approximately 97% and 91% of the marriages failed to survive the past 25 years for males and females respectively. Whereas, for those married at the age of 25-29, only 20% of those marriages failed for both males and females. Figure 3.6 also shows that the mean survival time for this age group was also lower for males (~12.5 years) than females (~15 years).

Highlight 3.5: In South Korea, the divorce risk was highest for those married at young (15-19) ages for both males and females. The survival rate of marriage was the highest for those married between 25-29 for both males and females, about 80% after 25 years of marriage.

C. Spatial Analysis of Divorce in Hong Kong

- 3.21 Using Geographic Information System techniques, the Team identified divorce hotspots in the five constituencies (Figure 3.7) and the 18 districts (Figure 3.8 & 3.9) of Hong Kong.
- 3.22 In Figure 3.7, findings show that New Territories West (NT West) constituency had the highest number of divorced persons. It constituted 31% of the total divorced/separated persons in Hong Kong, with Yuen Long (32,300), Kwai Tsing (26,800) and Tuen Mun (26,600) among the top five districts with the highest number of divorced persons. Nevertheless, Kwun Tong district had the highest number of divorced persons amongst all (37,900). On the other hand, Hong Kong Island had the lowest number of divorced persons, which only constitutes 14% of the total number of divorced persons in Hong Kong. Central & Western, Wan Chai and Southern districts are three of the four districts with the lowest number of divorced persons.
- 3.23 Interestingly, the Team observed from Figure 3.8 that the top five districts with the highest number of divorcees are New Towns, areas that developed rapidly during the 1970s and 80s¹²¹. This observation aligned with the issues associated with New Towns, previously mentioned in the 2005 Tin Shui Wai report¹²². In the report, the panel suggested that changes in housing policy in the 1990s led to the imbalanced distribution of public and private housing across Tin Shui Wai (North) and Tin Shui Wai (South), such that the highly congested public housing estates in Tin Shui Wai (North) lacked provision of public facilities, social services and business opportunities. The Yuen Long was also the third district with the highest number of CSSA recipients, new arrivals, child abuse cases, unemployed persons, etc. Previous findings therefore suggested that there are core issues in New Towns that could have contributed to higher numbers of divorces in such districts.

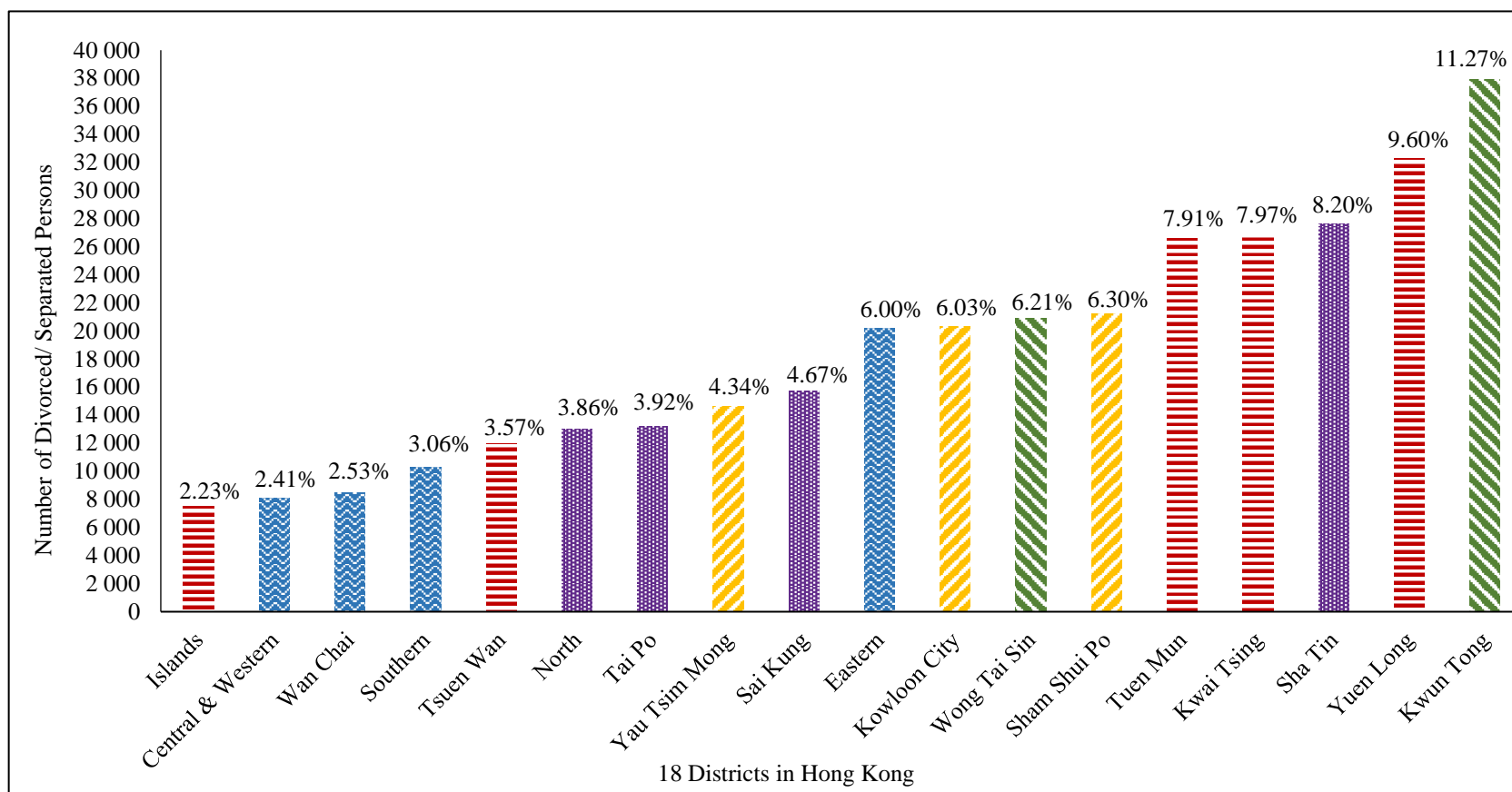
Figure 3.7 Number of divorced/separated persons by 5 constituencies in Hong Kong (2018)



¹²¹ The percentages may not add up to 100% due to rounding.

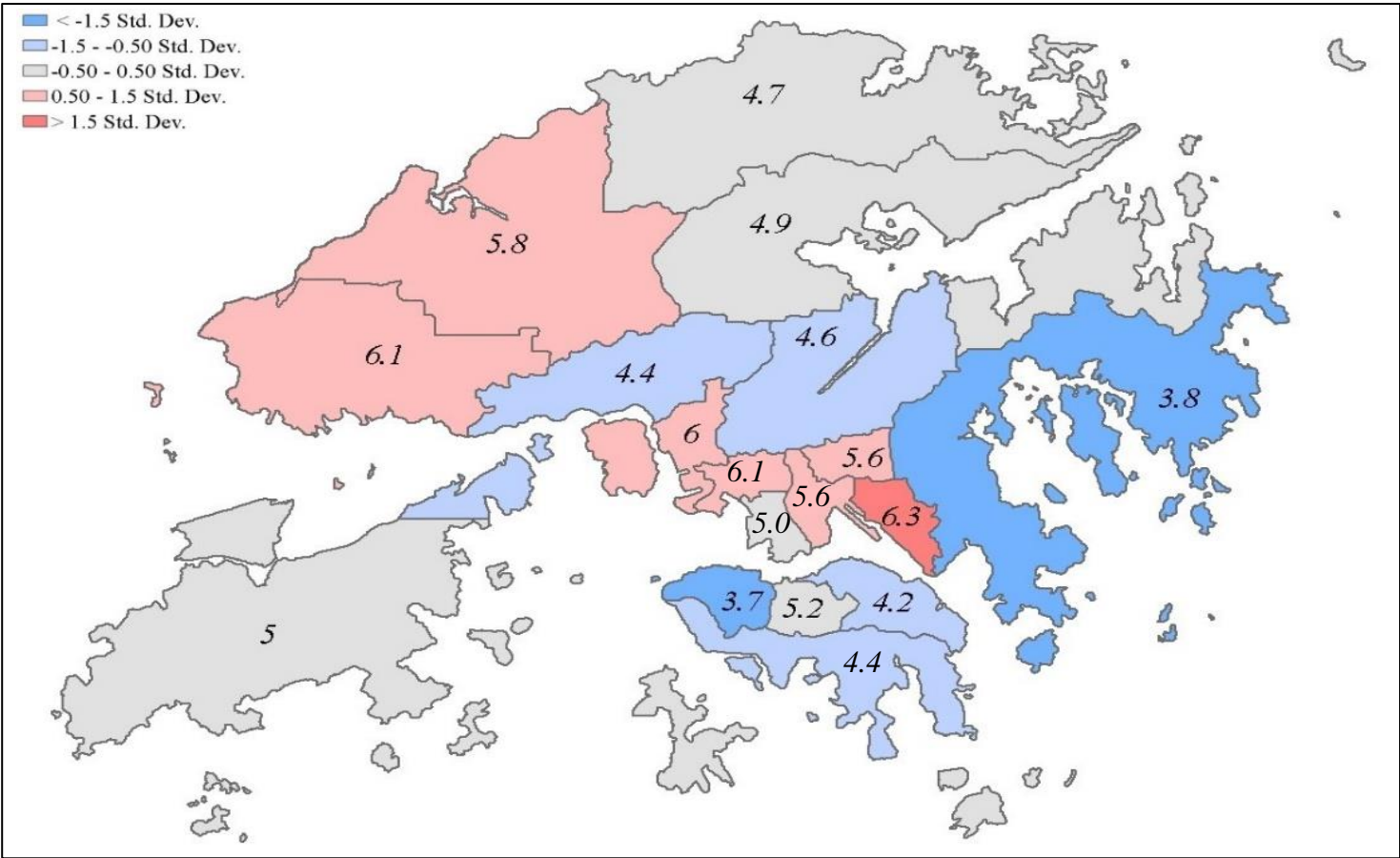
¹²² Social Welfare Department. (2005). *Report of Review Panel on Family Services in Tin Shui Wai*. Retrieved from: <https://www.legco.gov.hk/yr04-05/english/panels/ws/papers/ws1122cb2-262-1e.pdf>

Figure 3.8 Number of divorced/separated persons by the 18 districts in Hong Kong (2018)¹²³



¹²³ Census and Statistics Department. (2019). *Population and Household Statistics Analysed by District Council District*. Retrieved from: https://www.censtatd.gov.hk/en/data/stat_report/product/B1130301/att/B11303012018AN18B0100.pdf

Figure 3.9 Spatial hotspots of divorced/separated persons in percentage based on 18 districts in Hong Kong (2018)¹²⁴



Highlight 3.6: Most Divorce Hotspots are in the New Towns in Hong Kong.

¹²⁴ Census and Statistics Department, Household Statistics Analysis Section. (2018). *Population and Household Statistics Analysed by District Council District*. Retrieved from: <https://www.statistics.gov.hk/pub/B11303012018AN18B0100.pdf>

D. Impact of Divorce

3.24 Divorce has a substantial impact on all involved parties, including the divorcees and the children. Therefore, the Team identified common themes that each party faces in order to better understand how these issues may mutually influence and exacerbate the impact of divorce.

Impact on Divorcees

3.25 All parties from the case reports demonstrated the adverse impact of deteriorated marital relationships on divorcees. Such impact takes the forms of threatened psychological well-being, and problems in adapting to role changes in families.

3.26 A common theme was the psychological burden divorcees experience following marital breakdowns. Case reports from interviewees frequently illustrate the emotional distress experienced, with commonly reported emotions including helplessness, anger, fear, and guilt that may manifest into more destructive behaviours, including suicidal thoughts in extreme cases. These emotions often co-exist. In one case, a female client from the Single Parents Association reported being overwhelmed with helplessness following divorce. Despite being aware that her emotions and behaviours affected her interaction with her children, the emotions were beyond her control, exacerbating her guilt and helplessness. A clinical psychologist interviewed pointed out that in extreme cases, certain parents can be blinded by marital frustrations and accuse partners of sexual abuse even when evidence does not clearly reflect the allegation. While these case reports reflect the emotional burden and coping difficulties divorcees face, not many seek professional help. As shown in e-Form cases, in 20% of the DV cases with psychological abuse, only 12.6% of that 20%'s DV victims sought help from mental health professionals. Handling the stress alone can exacerbate their psychological burden, which in turn will also impact the parent-child relationship and the children's well-being. This will be discussed further later in the section.

3.27 Another common theme was the struggle associated with role changes in families following divorce, an issue particularly relevant to parents that are suddenly required to manage the dual roles as the primary caregiver and financial supporter of the family. On the one hand, divorcees not qualified for CSSA or that do not want to receive CSSA may experience guilt or confusion, as going to work and finding others to take care of their children means sacrificing time spent as a family. On the other hand, our interviewees indicate that divorcees often resort to CSSA due to financial hardship, as homemakers who have been economically inactive for years may encounter greater barriers returning to the workforce following divorce. Moreover, parenting can be challenging for single parents. In one case from an NGO social worker, the male client had difficulties teaching his son when he was young, and found it hard to manage his violent behaviour. This is common, as service providers reported that many parents experience guilt and self-blame for how divorce impacted their children, and many single parents wanted to send their

children to boarding schools due to parenting difficulties. These case reports revealed the potential challenges parents may face when taking up new or additional roles, greatly impacting the parent-child relationship and children's development.

- 3.28 While divorce can have a negative impact on divorcees, some were able to overcome the challenges, and with support, adjust well and even find opportunities for growth. This was evidenced in a case report, where the divorcee gained insights from attending single-parent programmes that advocated “strengthen[ing] ourselves, help ourselves, help others (自強自助再助人)”. Through the programmes, she was able to move forward, gain new perspectives, and even volunteered as a peer supporter to share her story with others with similar experiences.

Impact on Children

- 3.29 As aforementioned, a family is composed of multiple subsystems – parent-parent, parent-children. Once the parent-parent relationship dissolves, changes in the subsystem dynamics will inevitably affect parent-child relationships. It is critical to consider the interaction between subsystems, and their mutual influence on each other after divorce. Such impacts include disrupted relationships, shifted relationship dynamics, and threatened child well-being.
- 3.30 A common theme identified was disrupted parent-child relationships following divorce. This could be a result of several interacting factors: disrupted attachment; parents being occupied with emotional, social and financial adjustments; the child being caught in parental conflicts, and the child's difficulties in making sense of complex family situations. In one case, a clinical psychologist we interviewed arranged a letter-writing activity to enable the son to articulate his thoughts and emotions to his dad. The 12-year-old son wrote: “Please come home. I would like you to think about it: what did we ever do to make you want to leave the family? We were happy but how come you destroyed the family?”. The series of questioning indicated the child's grief, confusion and conflicted emotions regarding the divorce, a common reaction reported by children with divorced parents. Children may also be triangulated in the parental relationship, as demonstrated in another case from the same clinical psychologist. In that case, the daughter was reported to be emotionally attached to the father and excited to receive his photos, but was hesitant to meet him. This could be due to the mother's hatred for the father, and her refusal to let her meet him even three years after divorce. The parental alienation behaviours trapped the daughter in the parental conflict, and possibly fostered such ambivalent attitude towards her father. In high marital conflict cases (e.g. DV), children also often experience self-hatred and anger towards perpetrators, highly impacting the quality of parent-child relationships.
- 3.31 Divorce is also accompanied by shifted relationship dynamics between divorcees and children. Role changes are illustrated in case reports, reflecting the commonality of the children having to replace the father or mother's role in the family. However, young minors may not be mature enough to make decisions for themselves or their family, making this a particularly stressful role

for children. The shift in relationship dynamics following divorce is particularly salient in the context of stepfamilies. This was illustrated in one case by the clinical psychologist, wherein the 9-year-old boy struggled between his biological parents and stepmother. Not only did the father intend to get full control of the son and prevent him from communicating with his biological mother, the stepmother also constantly wanted to replace the biological mother, and restricted their time spent together. Although the son was well-behaved and took care of his stepbrother, it was reported that he seemed more relaxed around his biological mother. According to the same clinical psychologist, children trapped in the power struggles between biological parents and step-parents often have to adjust their behaviours against their natural feelings, thus exacerbating their distress, and preventing them from expressing their emotions.

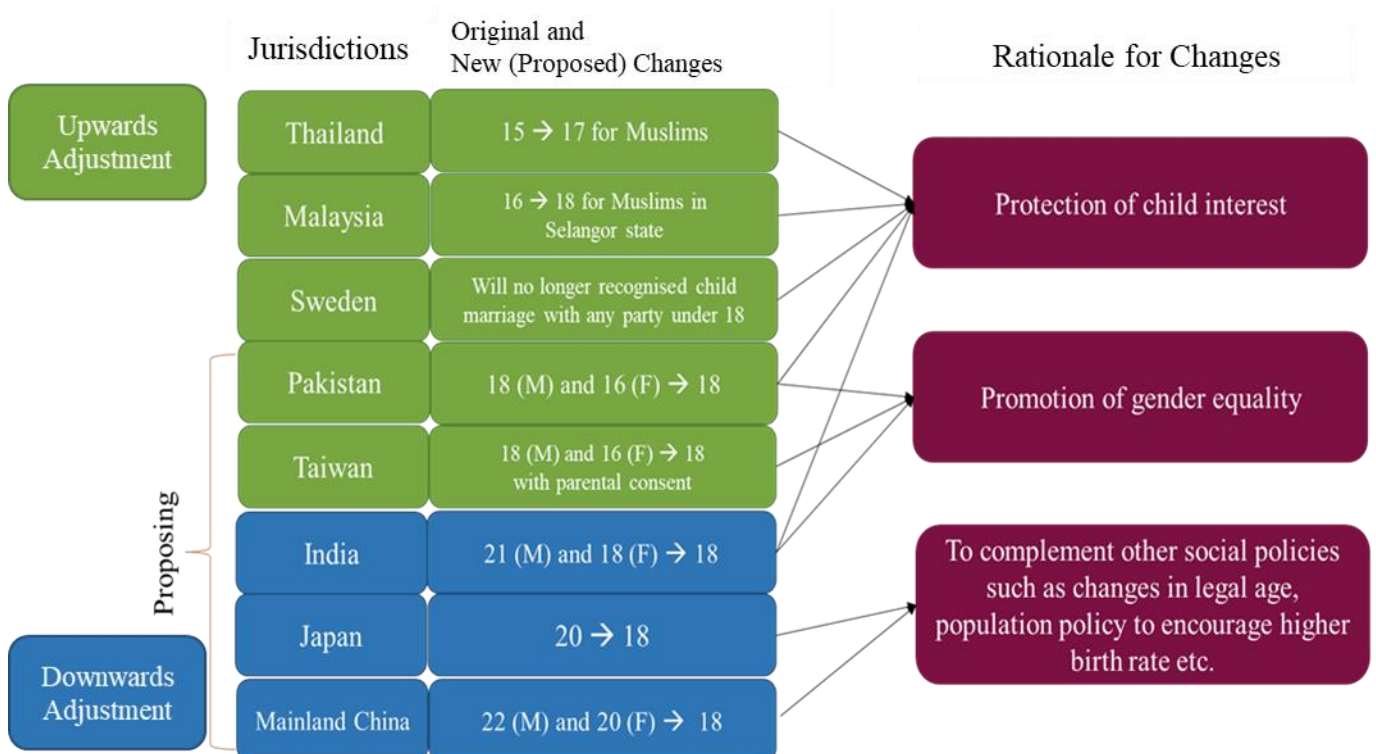
3.32 Another common theme identified is compromised psychological well-being in children, with child anxiety, intimacy issues and attention problems commonly observed. The impact was often more severe (e.g. self-harm) in high marital conflict cases, as children may generate self-hatred in reaction to what they see. This was illustrated in a case from an NGO social worker, where the mother was uninvolved with the family, and the father had an affair with the mother's friend. The child was reported to have sworn a lot and demonstrated self-harm behaviours. She once drew a gravestone with her name and said that her "parents would suffer less, and they may probably come to see me if I die". This reflects the need for love and care from parents, and the impact of unresolved emotions and thoughts about divorce on children. Emotional issues often come from parents not knowing how to explain the situation to their children who then have to interpret complex situations themselves. In another case reported by the NGO social worker, the son displayed anger management issues, and sexually harassed other classmates as a result of witnessing his father engaging in sexual activity after the mother left. He also exhibited social difficulties and struggled academically. Although these cases are rare and extreme, it suggests that complications from divorce can significantly impact children's well-being and development.

Highlight 3.7: Divorce has adverse impacts on a) divorcees, including compromised psychological well-being and role changes in families; and b) children, including disrupted relationships, shifted relationship dynamics, and compromised psychological well-being.

E. Minimum Marriageable Age

3.33 To enable further discussion on whether Hong Kong should adjust its minimum marriageable age, the philosophies and rationales embraced by other jurisdictions in adjusting their minimum marriageable age were reviewed. The main supporting arguments for adjusting the minimum marriageable age are: a) to protect children from exploitation; b) for social reasons, such as the encouragement of birth; and c) to eliminate gender inequality regarding marriage age. The following figure summarises the changes / proposed changes, and the rationale of changes to minimum marriageable age in a range of studied jurisdictions.

Figure 3.10 Summarised figure of the adjusted or proposed adjustments to minimum marriageable age without parental consent in other jurisdictions



Reason One: Protection of Child Interest

3.34 In many jurisdictions, media coverage of child brides and human trafficking raised awareness of the abuse of child marriages and led to movements to increase the minimum marriageable age in those societies. The rationale behind increasing the minimum marriageable age across jurisdictions is to protect child interest while providing a stringent procedure for anyone under the age of 18 to marry with parental consent and approval by state agencies.

Malaysia: Increased the minimum marriageable age for non-Muslims

- 3.35 Following the Ministry of Women, Family and Community Development's criticism of a 44-year-old divorced man married a 15-year-old girl out of mutual love, there were discussions of increasing Malaysia's minimum marriageable age to protect children's rights, and tackling the use of marriage to get out of poverty.
- 3.36 In 2018, the Malaysian national government proposed adjustments to the minimum marriageable age from 16 to 18 for non-Muslims, but would only issue guidelines to customary heads to warn them of the risks of underage marriage regarding customary marriages¹²⁵. In the same year, the Selangor Sultan, or the head of state in Selangor, raised the minimum marriageable age without parental consent from 16 to 18 for Muslims in the Selangor State. While couples with any party below the age of 18 can still marry with parental consent, the ultimate ratification of the marriage depends on approval by state agencies that follow stringent procedures. For instance, Judges in Sharia courts are allowed to make personal judgments on approving or denying underaged marriages prior to the reform. After the reforms, applicants are required to provide affidavits to prove their mental and physical capabilities before they are allowed to get married, in addition to further requests for personal information from witnesses to validate the affidavits.

Thailand: Increased the minimum marriageable age in Islamic marriage

- 3.37 Thailand raised its minimum marriageable age without parental consent from 15 to 17 for Muslims in 2018 amidst uproar on the marriage between a 41-year-old Muslim man and an 11-year-old Thai girl. The rationale is to protect children's rights and to combat the phenomenon of child brides. While either of the couples aged under 17 can still get married with parental consent, the ultimate ratification of the marriage depends on approval by state agencies. However, Muslims in Southern Thailand are exempt from Thai law and follow the Sharia law code, which stipulates the minimum marriageable age without parental consent to be 20.

Sweden: Forbidden Forced Marriages and Child Marriages

- 3.38 Since 1969, all parties in Sweden under the age of 18 could not get married without permission from the county administrative board. In 2004, there was a special marriage exemption that permitted parties under the age of 18 to get married. In 2014, a new legislation stipulated that there would be no exceptions to the minimum marriageable age, and a further legislation stipulated that marriages involving anyone under the age of 18 would not be recognised, regardless of the location of marriage registration in 2019. The rationale is to protect the rights

¹²⁵ "DPM: We'll raise minimum marriage age to 18." *The Star Online*. <https://www.thestar.com.my/news/nation/2018/09/22/dpm-well-raise-minimum-marriage-age-to-18/>

of children, guard them against forced marriages, and take a step towards abolishing child marriages in Sweden.

Reason Two: Alignment with other Social Policies

3.39 National policy changes as a result of social factors, such as populational and cultural changes. For instance, changes in the age of majority can lead to changes in the minimum marriageable age, in order to complement new changes. Adjusting the minimum marriageable age can also encourage couples to form families earlier or later in favour of population policies.

Japan: Proposed to standardise the minimum marriageable age to 18 by 2022

3.40 In Japan, the minimum marriageable age without parental consent is 20 for all, while the minimum marriageable age with parental consent is 18 and 16 for males and females respectively. In efforts to unify the age of adulthood from 20 to 18 in Japan, it has been argued that the minimum marriageable age should also be adjusted to 18¹²⁶. Furthermore, the Japanese government also proposed to standardise the minimum marriageable age of 18 for both genders to promote gender equality.

Mainland China: Proposed to change minimum marriageable age due to population trends

3.41 In 1950, matrimonial laws stipulated that all males and females were fit to marry at 20 and 18 respectively. In 1980, law amendments increased the minimum marriageable age by two years for all parties in order to control population growth. People were even entitled to an additional 30 days of paid marriage leave if they married older at 25 for males and 23 for females. In 2017, the National People's Congress delegate Huang Xihua raised concerns to lower the current legal minimum marriageable age of 22 for males and 20 for females to 18 for both males and females¹²⁷. The rationale is to complement the "three-child policy", in order to improve fertility rates in certain provinces in China due to declining population trends in China. Afterwards, the Civil Code of the People's Republic of China was passed by the 13th National People's Congress on 28 May 2020, and took effect on 1 January 2021. Article 1047 states that "To enter into a marriage, a man shall reach the age of twenty-two, and a woman shall reach the age of twenty¹²⁸." Therefore, it can be seen that the marriage age is intertwined with population policies in China.

¹²⁶ Human Rights Watch. "Japan Moves to End Child Marriage: Bill Would Make 18 Minimum Marriage Age for Women and Men." <https://www.hrw.org/news/2018/03/21/japan-moves-end-child-marriage>.

¹²⁷ 中國網 (2017)。〈提降婚齡人大代表:非鼓勵早戀 保障年輕人權利〉。取自 http://www.china.com.cn/lianghui/news/2017-03/04/content_40406275.htm

¹²⁸ 中國政府網 (2020)。〈中華人民共和國民法典〉。取自 http://www.gov.cn/xinwen/2020-06/01/content_5516649.htm

Reason Three: Promotion of Gender Equality

3.42 Gender inequality is another main reason jurisdiction adjust their minimum marriageable age, as discrepancies in the minimum marriageable age across genders often generate criticism such as depriving gender parity in education and limiting opportunities in the labour market. Promoting gender equality is also one of the 17 Sustainable Development Goals of the United Nations¹²⁹.

Taiwan: Proposed to change the minimum marriageable age with parental consent

3.43 In Taiwan, the minimum marriageable age is 20 for all without parental consent, while the minimum marriageable age with parental consent is 18 and 16 for males and females respectively. In 2016, the Ministry of Justice proposed to increase the minimum marriageable age with parental consent to 18 for both gender but it has not been approved yet. Meanwhile, newly promulgated laws specified that the minimum marriageable age is 18 in same-sex marriages, but only people above 20 can marry without parental consent.

Diverse Reasons

3.44 India and Pakistan proposed to adjust minimum marriageable ages to protect child interests and promote gender equality. In the global effort to end child marriage, a revision of the civil code is essential to raise awareness of human rights and offer legal protection to citizens.

India

3.45 In India, the nominal minimum marriageable age is 21 for males and 18 for females. However, marriages with any party under the nominal marriageable age are still viewed as valid but are voidable. The law panel of India argued that existing arrangements reinforce traditional stereotypes, and indicate gender inequality. Moreover, child marriage is rampant in India due to diverse traditions and religions. To tackle these issues, the proposed changes in law aim to nullify the validity of all marriages involving parties under 18, regardless of gender and religion.

Pakistan

3.46 In Pakistan, males and females are allowed to marry at 18 and 16 respectively. However, judges often disregard the existing law and apply the Sharia law code, which allows the marriage of people who have reached puberty. In 2018, the Human Rights Minister submitted a bill to the Senate to set the minimum marriageable age at 18, as existing laws imply gender discrimination and are too loose in handling child marriages.

¹²⁹ United Nations. (2016). *The Sustainable Development Goals Report 2016*; United Nations: New York, NY, USA.

Implications for Hong Kong

- 3.47 In Hong Kong, the minimum marriageable age is 21 without parental consent, and 16 with parental consent. Hong Kong does not have the necessary conditions to lower the minimum marriageable age without parental consent to 18. Firstly, the current arrangement already preserves the right to free marriage. It also aligns with the rationale and requirements set by the Office of the UN High Commissioner for Human Rights, which prioritises the protection of children's rights, that states that the minimum marriageable age should be 18 years for both genders, and at least 16 with parental consent¹³⁰. Therefore, lowering the marriageable age from 21 to 18 in Hong Kong will not further ensure better protection of children, but would risk a higher divorce rate, as young age is positively associated with a high divorce rate.
- 3.48 Secondly, despite the current discrepancy between the adulthood age and the minimum marriageable age, there is no need to align the two ages. According to the C&SD, only 86 males (0.1%) and 309 females (0.4%) married for the first time before 19 in 2018¹³¹, reflecting the lack of practice and demand in the population to lower minimum marriageable ages in Hong Kong. Moreover, adjustments require considering the necessity in terms of practical needs, cost of law amendments, international values, and regulations governing applications that involve parental consent. The low marriage rate for people below 19 suggests that lowering the marriageable age to 18 is not a priority and will have a very limited societal impact.
- 3.49 Thirdly, Hong Kong is a city that encourages gender equality and provides accessible education opportunities. Many of the youth are still receiving education at the age of 18, and do not bear the social cultural pressure to give birth at such ages. Moreover, given the high cost of living and housing and problems with youth upward mobility in Hong Kong, lowering the marriageable age would have minimal/no impact on encouraging fertility, and might even increase divorce risk in young couples.

Highlight 3.8: Hong Kong does not have any sufficient ground to lower its minimum marriageable age, as the change a) would not intensify the protection of children's rights, b) would not increase fertility, and c) may increase divorce risk in young couples.

¹³⁰ United Nations General Assembly. <https://undocs.org/en/A/HRC/31/37>.

¹³¹ Census and Statistics Department, Social Statistics Branch. (2019). *Women and Men in Hong Kong - Key Statistics (2019 Edition)*. Retrieved from: <https://www.statistics.gov.hk/pub/B11303032019AN19B0100.pdf>

Chapter 4:

Maintenance Orders

4.1 This Chapter presents the Research Team's observations on maintenance-related statistics, which covers the scope of the reasons for applying for maintenance, and the public's perception of the effectiveness of maintenance orders.

A. Application for Maintenance Orders

4.2 From the THS Report No. 61, out of the 362,200 ever divorced or separated persons from October 2015 to January 2016, the majority (83.1%, N = 301,100) neither applied nor intended to apply for a maintenance order from the Court. Only 16.1% (N = 58,300) had applied and 0.8% (N=2,800) intended to apply for a maintenance order. Within the low number of maintenance applications, the success rate for obtaining maintenance orders was high (86.6%) (See Appendix C.3).

Highlight 4.1: Only a minority of the divorced population (16.1%) apply for maintenance orders.

B. Factors Associated with Obtaining Maintenance Orders

Sociodemographic Background

4.3 According to the THS Report No. 61, those who were female, un-remarried, less educated, home makers, service workers, of lower income, CSSA recipients, and living in public housing were more likely to apply for maintenance orders. The background of respondents by their maintenance application status is presented in Appendix C.4.

Age-Related Information of Divorcees

4.4 Using 200 cases provided by the Family Court in which the Decree Absolute of each case was granted from 2013 to 2018, the Team found that age at marriage had a significant bearing on maintenance lawsuits. The average age at marriage for males and females getting maintenance orders is 31.2 and 26.5 respectively, while the average age at marriage for males and females not getting maintenance orders is 33.8 and 29.6 respectively. That suggests that divorcees married at younger ages are more likely to be involved in maintenance lawsuits.

4.5 Age at divorce also had significant effects on maintenance lawsuits. The average age of males and females obtaining maintenance orders is 41.2 and 36.1 respectively, whereas the average age of males and females not obtaining maintenance orders is 46.6 and 42.4 respectively. Results suggest that younger age at divorce increases the tendency to obtain maintenance orders.

4.6 Yet, no significant relationship was found in divorcees' age differences and maintenance orders.

Length of Marriage

4.7 Analysing the court cases, the Team also found the length of marriage to have a significant effect on the likelihood of obtaining maintenance. The mean length of the marriage is shorter for divorcees with maintenance orders (9.4 years) than divorcees without maintenance orders (12.5 years). Results suggest that divorcees with shorter marriage lengths are more likely to obtain maintenance orders.

Highlight 4.2: Applying for maintenance is statistically significantly associated with younger age at marriage and divorce, and shorter length of marriage.

C. Decisions Made Following Divorce

4.8 The qualitative data in e-Form data showed that some divorcees do not make legal decisions that are most beneficial to the children or themselves following divorce owing to the conflicts and power struggles between the spouses. For example, some divorcees reported to have applied for maintenance simply to retaliate and make life difficult for their ex-spouses, to fight over custody and create difficulties in maintenance settlement. They do not consider mediation, and are unwilling to compromise. As shown in an NGO case, the interviewed social worker described a case which involved severe spousal conflict. The mother was unwilling to give up her son's custody, but was also unwilling to take care of him. Such a decision greatly compromised the child's welfare, as seen in her child's poor physical development (e.g. seriously bad teeth), self-care problems, and low self-esteem. Despite these, the aunt and father could not help without custody. These examples highlight how spousal conflicts may hinder spouses' ability to make responsible decisions on the important arrangements following divorce.

4.9 Furthermore, instead of turning to mediation, some spouses fight with each other in and outside courts at the expense of the children's welfare. In one case referred by a lawyer, the wife refused to negotiate on maintenance to delay the ex-husband's remarriage. This demonstrates how unresolved emotions in divorce prevented maintenance settlement. This is supported by that only approximately 5% of the cases from the e-Form data went through mediation to settle custody and maintenance issues. Data from the Family Mediation Coordinator's Office (FMCO)¹³², an agency established under the Judiciary to provide mediation service referral and relevant information, also showed that not many cases have been referred to mediators through their

¹³² The Mediation Information Office (MIO) and the Family Mediation Co-ordinator's Office (FMCO) has been merged to become the Integrated Mediation Office (IMO) starting from May 2018.
(<https://www.info.gov.hk/gia/general/201804/30/P2018043000226.htm?fontSize=1>)

office (see Table 4.1), although the effort has been made by family judges to refer the divorcing couples to the FMCO as it is located in the Family Court building¹³³. Therefore, it warranted a caution when interpreting the number of cases as the numbers do not reflect all mediation settled by private lawyers.

4.10 Battles in courts can generate substantial psychological and financial burdens on divorcees, together with lengthy court procedures, a sizable sum of money for maintenance has gone to legal costs. This was evident in a high-conflict case, where the client refused to let her ex-spouse see the children, and spent an excessive time contesting every single issue during the divorce suit. Although they eventually settled with a lump sum maintenance of over HK\$500,000, the frequent proceedings incurred a substantial cost to both parties. These cases may provide insight into how spousal conflicts and power struggles may impact decisions on post-divorce arrangements.

Table 4.1 Number of family mediation cases referred to mediators through Family Mediation Coordinator’s Office (2008-2018)

| | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 |
|--------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
| Number of cases | 92 | 138 | 259 | 177 | 234 | 235 | 230 | 235 | 237 | 231 | 212 |
| (% of divorce decrees granted) | (0.5%) | (0.8%) | (1.4%) | (0.9%) | (1.1%) | (1.1%) | (1.1%) | (1.2%) | (1.4%) | (1.2%) | (1.0%) |

Highlight 4.3: Spousal conflicts can affect the decisions made following divorce. Examples include their decisions on financial/childcare arrangements, and decisions to turn to family mediation.

D. Reasons for Not Applying for Maintenance Orders

4.11 Amongst the 301 100 persons (83.1% of all divorced persons) that neither applied nor intended to apply for a maintenance order in the THS Report No. 61, 21.3% (N = 64,300) reported to have a private agreement with their ex-spouses, 4,600 reported that the ex-spouse would take the initiative to provide maintenance, and 59,700 reported to have made other arrangements. The other 78.7% (N = 236,900) had no maintenance agreement with their ex-spouses. The common reasons for not applying for maintenance orders were “no such need” (55.9%), followed by “mutual agreement to not provide each other maintenance” (16.2%), “considered that men should not receive maintenance” (11.7%). Other reasons were “ex-spouse unable to pay maintenance”, “considered that the ex-spouse would not pay maintenance”, “unable to contact

¹³³ The Chinese University of Hong Kong. (2017). A Study on family mediation services in Hong Kong. https://www.familycouncil.gov.hk/en/files/research/family_mediation_services_in_hong_kong.pdf

the ex-spouse”, with over 15% being CSSA recipients (See Appendix C.5). For those who cited the reason “had better financial condition than ex-spouse”, more than 98% were non-CSSA recipients. The Team also identified divorcees’ common reasons for not applying for maintenance in the e-Form cases (See Appendix J.1). The top reasons were “feeling no such need” (12 cases), “receiver applied/would apply for CSSA” (10 cases), and “ex-spouse unable to pay maintenance” (10 cases). Only three cases stated reasons to be “mutual agreement to not provide each other maintenance”.

- 4.12 Although 55.9% of the respondents felt “no such need” to apply for maintenance orders in the THS Report No. 61, 44.1% cited other reasons/factors that impacted their decisions. While multiple reasons were given, the findings suggested that there are often other factors that influence the decision not to apply for maintenance orders, and it does not always mean that divorcees lack this financial need. This aligns with “applied for CSSA” being one of the top reasons for not applying for maintenance in the e-Form, further indicating that some ex-spouses without maintenance orders needed financial support following divorce, but choose to or intend to apply for CSSA instead of maintenance orders (10 cases). Such decisions, as suggested above, could be impacted by factors such as gender-related stigma and a lack of faith in spouses’ willingness to pay maintenance. This reflects the public perception of the maintenance orders, and the possible increase in maintenance applications if divorcees are well informed regarding the current maintenance enforcement procedures and the possible positive effects of pursuing maintenance.

Highlight 4.4: Not applying for maintenance does not always mean not needing financial assistance. It can be related to gender-related stigma, low financial ability of the ex-spouses, and the lack of faith in ex-spouses’ willingness to pay maintenance.

E. Common Forms of Maintenance Payments

- 4.13 According to the THS Report No. 61, 55,100 ever separated / divorced persons received maintenance, with 50,500 obtaining maintenance orders and 4,600 persons with private agreements. Amongst the 55,100 persons, the majority (N = 34,300) had their maintenance settled either by periodic payments (N = 31,300, 56.8%) or lump sum payments (N = 3,000, 5.4%). The remaining 20,800 (37.7%) settled by nominal maintenance of HK\$1.00 or were waiting for the Court’s ruling.
- 4.14 Responses in the e-Form indicated that 188 (61%) principal clients had applied for maintenance orders among multiple possible options. 125 of the principal clients who applied for maintenance orders obtained monthly maintenance, with 60 obtaining child maintenance, 15 obtaining spousal maintenance, and 50 obtaining both orders. Nominal maintenance of HK\$1.00 is not a rare arrangement, with slightly over one-third, or 68 obtaining nominal maintenance. 59 waived

or did not receive maintenance, and 54 obtained other maintenance orders (e.g. lump sum, shared sale proceeds of the properties, and transfer of property order); this is less common than monthly or nominal maintenance orders. See Appendix J.2 for the detailed table.

- 4.15 Both the THS Report No. 61 and the e-Form cases indicated that divorced persons often settle their maintenance through periodic payments. Interestingly, nominal maintenance was also a common form of maintenance payment following periodic payments.

Highlight 4.5: Periodic maintenance order and nominal maintenance order are commonly applied. 37.7% of the applicants obtained the HK\$1.00 nominal maintenance order or waited for court ruling.

F. Factors Associated with Nominal Maintenance Applications

- 4.16 The Team explored the factors associated with nominal maintenance applications in the THS Report No. 61. Regression models showed that those who were male, living in private housing, aged 50 and over, less educated, retired and CSSA recipients were more likely to apply for nominal maintenance of HK\$1.00 (See Appendix C.6). In the e-Form cases, findings reveal the top reasons for choosing nominal maintenance to be “received/receiving/would apply CSSA” (60.3%), followed by “no such need” (16.2%) and “mutual agreement to not provide each other maintenance” (13.2%) (See Appendix J.3). With nominal maintenance, the divorcees’ rights to apply for maintenance in the future could be preserved if necessary.
- 4.17 The THS Report No. 61 and the e-Form findings suggested that those who apply for nominal maintenance are more likely to apply for CSSA, further indicating the need for financial support for those who obtain nominal maintenance orders. However, the aforementioned factors, such as gender-related stigma and a lack of trust in ex-spouses may discourage divorced persons’ decision to receive maintenance from ex-spouses and instead apply for nominal maintenance and/or CSSA. The current maintenance system still has room for improvement to increase the awareness of the use of maintenance orders, and thus may increase maintenance applications. It may also lower the number of nominal maintenance and CSSA applications to ensure maintenance payers fulfil their responsibilities, and preserve the public resources for those genuinely in need of financial support.

4.18 It is also important to note that while the number of males who applied for maintenance orders is low, males are significantly more likely to apply for nominal maintenance than their female counterparts (See Appendix C.6). This could be explained by the stigma related to males requiring maintenance, as supported by 11.7% of non-applicants in the THS Report No. 61 cited that “men should not receive maintenance”.

Highlight 4.6: A higher proportion of males and CSSA recipients apply for the HK\$1.00 nominal maintenance, which might be due to gender-related perceptions and perceptions of the unwillingness of ex-spouses to pay maintenance. These perceptions may not reflect the genuine need for maintenance and the capability of ex-spouses. Therefore, those divorcees in financial need would tend to apply for CSSA as the "only way" out of the financial hardship.

Chapter 5:

Default of Maintenance

5.1 This Chapter presents the Research Team's findings and observations on the default of maintenance issues in Hong Kong. It covers the scale of the problem, contributing factors, and its impact.

A. Size of the Problem

5.2 After the courts grant an order of maintenance, divorcees might face difficulties in executing the order as maintenance is *not* paid accordingly. According to the THS Report No. 61, amongst the 34,300 persons who would have received periodic or lump sum payments, 40.5% (N = 13,900) did not receive the full amount. Furthermore, from the e-Form analysis, we observed that maintenance delivery/financial problems were reported as the key issues in 38.0% (N = 117) of the sample. Other key issues include communication conflicts and DV, composing 26.0 % (N = 80) and 24.3% (N = 75) of the sample respectively (See Appendix J.4). Such findings reflect the commonality and severity of maintenance issues, highlighting the potential impact on families.

Highlight 5.1: Default of maintenance is not uncommon. Around 40% of maintenance payees did not receive their payment in full.

B. Factors Leading to Default of Maintenance

5.3 As mentioned in Chapter 2, maintenance issues may go beyond the problem of money. Maintenance non-compliance may point to other and/or wider problems, such as spousal relationships, diminished parental responsibilities, and ineffective enforcement. Here, we used the THS Report No. 61, e-Form, court cases, and interview reports to identify the possible factors that contribute to maintenance default. Amongst the 188 principal clients with maintenance orders of the e-Form, we identified 69 (36.7%) cases with difficulties in collecting maintenance in full (Diff), and 119 (63.3%) cases without difficulties (NoDiff) in collecting maintenance in full.

Sociodemographic Background of Divorcees

5.4 In the THS Report No. 61, those who were least likely to receive maintenance payments in full were female, attained secondary-school education, retired, clerical support workers / service and sales workers, low income, lived in subsidised home ownership housing, and CSSA recipients. (See Appendix C.6).

Relationships between Divorcees

5.5 Poor relationships between divorced parties often contribute to the reluctance to provide maintenance payments. In an NGO case, the wife defied her husband's objection, filed a divorce after realising he had children with another woman. Despite the ex-husband owning lots of land and property in Mainland China, he refused to provide maintenance, and her father-in-law also refused to help. This reluctance reflected possible grudges and resentment against his ex-spouse's divorce petition, even though he was financially capable of paying maintenance to his ex-wife. Mistrust in spousal relationships can also contribute to the reluctance to pay. During interviews, three male payers revealed the suspicion that their ex-spouses planned the divorce to seize half their personal assets, and acted as the weaker party to gain sympathy. These cases provide insight into how the negative perceptions towards the ex-spouses shape the willingness of paying maintenance, and the complexity of the relationship between divorcees. Furthermore, e-Form cases show that NoDiff cases were more likely to settle divorce by agreement (69.75%) than Diff cases (53.62%), and more likely to co-habit after decree absolute (14.29%), as opposed to Diff cases (1.45%). These findings highlight how spousal attitudes and relationships contribute to maintenance issues.

Cross-boundary Marriages between Hong Kong and Mainland China

5.6 Background of divorcees (e.g. local, cross-boundary marriages) can often impact spousal relationships, and may contribute to payers' reluctance to provide maintenance payments. For instance, it has been suggested that cross-boundary marriages may harbour different needs and problems like cultural differences with their counterparts from local marriages^{134,135}, which may worsen relationships and increase reluctance to provide maintenance. Contrary to expectations, the e-Form suggests that cross-boundary marriages are not more likely to encounter maintenance issues, and there is no significant difference in the amount of outstanding maintenance compared to local marriages. Despite this, the Team observed from the case reports that spouses from cross-boundary marriages encounter greater impact from maintenance difficulties, which will be further elaborated on below.

Highlight 5.2: Sociodemographic backgrounds and poor spousal relationships are possible contributing factors to the default of maintenance.

¹³⁴ Ho Sik Ying, P. (2012). Hong Kong men's stories of intra-national cross border romances. *Asia Pacific Journal of Social Work and Development*, 22(3), 176-186.

¹³⁵ Ho, K. M., Wong, Y. C., & Chan, C. L. (2003). Cultural divergence in cross-border marriage in Hong Kong: A call for culturally sensitive approach in social work practice. *Asia Pacific Journal of Social Work and Development*, 13(1), 42-58.

C. Other Issues related to Maintenance

- 5.7 Apart from difficulties in receiving maintenance, some divorcees used maintenance or children's welfare as a tool to achieve other motives. For example, maintenance can be used to alienate ex-spouses and create or exacerbate spousal conflicts. This was illustrated in one NGO case where the father and grandmother treated the biological mother with hostility. The children were said to be influenced by the father and the grandmother, who supported them financially and took care of them respectively, and they eventually refused access from the mother. Such parental alienation usually stems from parents' anger towards one another and can hugely compromise children's welfare. In another NGO case, it was reported that the payee did not allow the child to contact the father until he provided maintenance. While outstanding maintenance has an adverse impact on payees, it is important that measures taken to recover maintenance do not compromise the child's welfare and development.
- 5.8 Another maintenance issue concerns how the public perceives maintenance, as it was alluded by some payers that maintenance can replace love and concern from families. In one of the reported cases from the e-Form data, the payer paid maintenance regularly without visiting the child regularly. Another payer misinterpreted the definition of "full-time education" in the maintenance order and refused to pay even if the child was studying for their first university degree. Therefore, instead of focusing solely on regular maintenance, it is also important to promote parental responsibility to educate parents to express appropriate care and concern towards their children.
- 5.9 Maintenance could be settled in exchange for other rights or benefits when the ex-spouses agreed. NGOs and lawyers reported some cases of paying for child expenses or not fighting for custody in return for not seeking maintenance. The ex-wife continued to do household chores for her ex-husband in exchange for monthly maintenance from him, according to another case reported by NGO. While ex-spouses are encouraged to make mutual agreements on post-divorce arrangements, it is important to ensure that these "agreements" are not based on threats or coercions.

Highlight 5.3: Other factors influencing maintenance compliance may include using maintenance to a) achieve other motives (e.g. to alienate ex-spouses), b) replace parental obligations, and c) exchange for rights/benefits.

D. Impact of Maintenance Difficulties

- 5.10 The interview and e-Form cases illustrated various maintenance difficulties which divorcees encounter, including refusal to pay, delayed/irregular payment, and inability to pay due to unemployment or illness. Based on findings from focus group interviews, it has been reported that some took advantage of gaps in the legal system to avoid paying maintenance, including incomplete disclosure of income and assets, the inadequate record of salary for freelance jobs, redistributing assets, and declaring bankruptcy, etc. Such strategies reflect the intention to manipulate the Judge's ruling on the amount of maintenance due. Quoting a male client interviewed, "acting like a scoundrel is the only way men can win the case", showing how some deliberately abuse the current legal system. Legal experts in the interviews shared that payers who have financial capability would sometimes rather pay the legal fee to apply for variation, instead of complying with maintenance orders. In cases with high marital conflicts, perpetrators may also use manipulation and threats to prevent victims from recovering maintenance, even when payers are violating legal orders. This was illustrated in a DV case interviewed, where the husband, knowing the mother was struggling with school fees, threatened not to pay for the daughters' school fees unless the daughters stayed with him every other week. This reflects how the current system is prone to abuse by DV perpetrators compromising the welfare of the affected parties.
- 5.11 Despite default of maintenance having become a common issue in Hong Kong and as in many high-income western societies, service providers that support the affected divorcees reported that payees do not often resort to enforcement procedures once issues arise, so maintenance difficulties often persist. Problems could arise as early as during maintenance pending suit/interim maintenance, and as late as monthly maintenance after the decree absolute was issued. In the e-Form cases with interim maintenance never/partially paid, 100% and 78.58% of the spousal and child maintenance had been outstanding for at least 6 months, respectively. The main reason stated was payers' refusal to pay for no reason (87.5% and 90.0% of the outstanding spousal and child maintenance in e-Form cases, respectively), rather than the inability to provide maintenance. Amongst the cases in e-Form with reported outstanding maintenance since decree absolute, 82.61% and 67.39% of the spousal and child maintenance had been outstanding for at least 6 months, respectively. The outstanding duration for cases with maintenance non-compliance ranged from 3 to 72 months, with the mean and median being 17.53 and 12 months respectively. Maintenance difficulties can therefore occur for months, posing a long-lasting impact on families.
- 5.12 Failure to receive maintenance can place an immense financial burden on payees. This is shown to have impacted spouses' financial stability, especially for those who hold custody but lack the working qualifications to sustain a living in Hong Kong. For instance, two NGO social workers reported that divorcees being both the breadwinner and caregiver often have to take overnight

shifts or work multiple part-time jobs (e.g. working at convenient shops, massage parlours, etc.), and are forced to leave their children at home without guardianship. These single parents risk offending the law (section 27 of Offences against the Person Ordinance) and suffered from substantial stress, while compromising the quality of childcare. Children's physical and psychological well-being can thus be hindered by maintenance difficulties.

5.13 It is therefore difficult for payees facing financial hardships to maintain their basic living during outstanding periods. According to the e-Forms cases, 38.1% maintained their basic living through CSSA, and 34.9% through salary and savings. CSSA is often regarded as the more secure option than recovering maintenance, as it is a stable source of income accompanied by better services, welfare, and higher probabilities of getting public housing. In some cases, it is stated that CSSA can only compensate for the missing maintenance after the client has applied for legal aid to enforce maintenance. Not only do financial difficulties create financial and psychological distress for families, as some social workers raised, resorting to CSSA can also discourage self-sufficiency, fuel shame, discrimination and low self-esteem, and lead to inter-generational CSSA recipients. Over-reliance on CSSA can increase the burden on taxpayers, who should not take up the burden of payers evading their responsibility.

Highlight 5.4: Maintenance difficulties is a persistent problem that affects payees' financial stability and ability to maintain basic living, causing long-lasting impacts on families.

Cross-Boundary Marriages

5.14 Findings also showed that spouses from cross-boundary marriages are susceptible to the detrimental impacts of maintenance issues, as they often face other additional problems. For instance:

- Divorcees who have gained Hong Kong residency and resided in Hong Kong for less than one year are not entitled to receive CSSA¹³⁶. Outstanding maintenance can therefore greatly threaten their financial stability. Moreover, new arrivals holding a two-way permit to take care of their children cannot be employed, even if they want to seek part-time jobs.
- Some new arrivals with relatively low education and low skills have difficulties adapting to life in Hong Kong. Without maintenance, it will be challenging for spouses from cross-boundary marriages to successfully adapt and support themselves in Hong Kong amidst divorce.

¹³⁶ In exceptional circumstances, CSSA may be granted at the discretion of the Director of Social Welfare to those who do not satisfy the residence requirement.

- In another case, an ex-spouse has been awarded the matrimonial property purchased under Tenants Purchase Scheme (TPS) instead of a lump sum or maintenance after trial. However, the ownership of the property could not be transferred to the ex-spouse, because the owner has never added the name of the new arrival as family member after the issuance of the one-way permit. This created a deadlock as the court has no power to order the owner to add the name of the ex-spouse while the Director of Housing could not assist the ex-spouse as the owner refused to take any action and continued to live inside the property. Also, new arrivals who come to live in Hong Kong often forgo their social support network in mainland China, making it difficult for them to return to their family for help when needed.

Highlight 5.5: Spouses from cross-boundary marriages are especially vulnerable to the impacts of maintenance non-compliance due to factors such as the lack of social support networks, etc.

Chapter 6:

Enforcement of Maintenance Orders

6.1 This Chapter presents the Research Team’s observations on the enforcement of maintenance orders in Hong Kong. This includes an examination of divorcees’ challenges in enforcing maintenance orders and current enforcement procedures, a discussion of the importance of reciprocal arrangements for spouses from cross-boundary marriages, and a comparative review of the maintenance policies across other jurisdictions.

A. Proportion that Took Legal Action to Recover Maintenance

6.2 Compared to the 13,900 persons (40.5% of them who received the payment either by instalment or in a lump sum) in the THS Report No. 61 who did not receive maintenance in full, only a small proportion (12.2% of persons who did not receive in full) took legal actions to recover outstanding maintenance (See Appendix C.7). The large number of people that chose not to recover maintenance warrants our attention, as it may suggest, inter alia, how those affected perceive enforcement orders and the need to understand current procedures.

6.3 An analysis of the findings also indicates that CSSA recipients were more likely to take legal action than non-CSSA recipients (See Appendix C.8), which might be due to CSSA’s treatment of maintenance payments. Unless with acceptable reason, the applicant/recipient, as the maintenance payee, should seek assistance to enforce the maintenance order under maintenance default. If an applicant/recipient has approached direct either the Family Court to apply for maintenance enforcement or LAD to apply for legal aid to recover the arrear of maintenance, the SWD will cease to deduct the maintenance payments from his/her CSSA entitlements upon receiving the document proof regarding the enforcement application¹³⁷. This is further supported in Table 6.1, wherein over 50% of the payees who applied for JS in the LAD from 2016 to 2018 were also CSSA recipients.

Table 6.1 Percentage of judgment creditors who were CSSA recipients out of overall JS applications on maintenance handled by LAD (2016-2018)

| | 2016 | 2017 | 2018 |
|--------------------------------------------------------------------------------------------------------|-------------|-------------|-------------|
| Percentage of judgment creditors who were CSSA recipients of all JS applications on maintenance | 58% | 53% | 59% |

¹³⁷ Social Welfare Department. (2021). A guide to Comprehensive Social Security Assistance (Internet version). [https://www.swd.gov.hk/storage/asset/section/250/en/CSSAG022021\(Eng\).pdf](https://www.swd.gov.hk/storage/asset/section/250/en/CSSAG022021(Eng).pdf)

Highlight 6.1: According to statistics of the THS Report No. 61, most divorcees whose maintenance orders are not fulfilled (87.8% of persons who did not receive full maintenance) do not take legal actions.

Reasons for Not Taking Legal Action

- 6.4 Several possible reasons are identified to account for why only a minority took enforcement action, namely the access to information, low-perceived effectiveness, complicated legal procedures, and the stress involved.
- 6.5 Firstly, access to information about the rights of individuals and how to enforce orders can encourage affected persons to take enforcement action. Indeed, the majority of the divorced population (84.5%, N=306,200) surveyed in the THS Report No. 61 were not aware of the official promotional materials about enforcement orders. Current promotional materials exist in the forms of: a) TV announcements/voice recordings by the Government, b) printed publications (e.g., leaflet/booklet, CD-ROMs etc.), c) information about “Surcharge on Arrears of Maintenance” and d) other promotional activities organised by NGOs. Amongst those who were aware of enforcement orders, they learned such information via one channel (6.0%; N=21,900), two channels (4.3%; N=15,700), three channels (1.5%; N=5,400) and four channels (3.6%; N=13,000) respectively. The Team identified that females and older persons were less likely to be aware of enforcement orders compared with males and younger adults, and were less likely to be aware of enforcement orders via channels a), b), and c). This could be a possible barrier for spouses from cross-boundary marriages, as the interviewed service providers reported that ex-spouses can often take advantage of their mainland counterparts’ lack of legal knowledge in Hong Kong to manipulate them to sign unfavourable maintenance agreements, causing them to give up on maintenance recovery.
- 6.6 Secondly, the following three factors can together contribute to payees’ reluctance to pursue legal actions: perceived difficulties, lengthy legal proceedings (lasted from one to 48 months, with a median of 15 months in the e-Form data), and psychological distress. One major factor is the perceived difficulties in executing enforcement orders. When asked about their main reasons for not pursuing enforcement actions in the THS Report No. 61, 27.2% of payees answered that they believed “ex-spouse would not pay maintenance” and 18.7% said that they were “unable to contact ex-spouses”. This could be attributed to difficulties that occur as early as during the interim maintenance period, as some payees may lack faith that enforcement orders entail payers’ compliance. This may explain why 29.4% of the payees in the e-Form group did not enforce the outstanding maintenance since the interim maintenance period.

- 6.7 Personal perceptions of complicated, lengthy court procedures, and small chances of success in recovering the outstanding maintenance may also explain the small proportion of payees that chose to enforce maintenance. 22.5% of the payees in the THS Report No. 61 cited complicated and lengthy legal procedures as their reason for not pursuing legal actions. They may be influenced by their experience in earlier court proceedings. In one lawyer's case, the client withdrew from enforcing maintenance despite facing financial hardships, after it took her two years to enforce maintenance orders for her children. However, it should be noted that the time taken by the court to handle one particular case might not fully represent the general situation relating to the operation of the Family Court.
- 6.8 Furthermore, the psychological distress incurred from these proceedings may further deter people from taking enforcement actions. This is supported by the e-Form data, where payees reported physical/mental stress and being busy with caregiving as the reasons for not pursuing legal action. As evident from the interview reports, the distress involved can be especially intense in high-conflict cases. In one case reported by an NGO social worker, the payee received death threats to pressure them to stop recovering maintenance. In another NGO case, a payer repeatedly applied to the Court to change the custody order and the payee allegedly dared not to take action. Our findings indicate that decisions to not pursue legal actions do not necessarily stem from payees' lack of need for financial support.

Highlight 6.2: Not needing financial support may not be the sole reason for deciding to not take enforcement actions. This decision can also be due to perceived difficulties in executing enforcement orders by insufficient informational support, perceived difficulties in executing enforcement orders, and psychological distress from complicated legal proceedings.

B. Commonly Used Enforcement Measures

- 6.9 Granting final orders on financial matters may not spell the end of the lawsuit between parties because issues may still arise during the process of enforcement. If either of the parties refuses or fails to honour the court orders to make maintenance payment, the other party may enforce the maintenance payment through one or a combination of the following ways: garnishee order; charging order; AIO; warrant of execution; writ of *feri facias*; prohibition order; JS and Committal. An analysis of the available data shows that there was a low usage of enforcement actions other than JS.

Findings from e-forms & court cases

- 6.10 e-Forms and court cases showed that JS is the most frequent enforcement action taken by the judgment creditors, whilst other types of enforcement actions are less common. In the e-Forms, 29 cases used JS, while AIO, charging order, garnishee order were used in one case respectively,

and none of them used warrant of execution/writ of *feri facias*. In the 100 out of 200 cases collected from the Family Court that did end up in court, all but one (99) used JS, and AIO and prohibition order were used in 1 and 11 case(s) respectively.

6.11 Among the e-Forms cases, the most common reason for launching a JS application is that “it is the only available alternative” (13 of the cases), followed by “payer with stable employer” (5 cases) and “ex-spouse’s means are unknown” (5 cases).

Findings from court cases

6.12 Data provided by the Judiciary showed that between 2008 and 2018, JS is the most common enforcement action (Table 6.2) compared to AIO (Table 6.3). In Table 6.2, the number of JS hearings stays at around 700-900 each year over the past 7 years. There is no information on the number of proceedings for the other enforcement orders.

Table 6.2 Number of JS hearings listed in the Family Court (2008-2018)

| | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 |
|------------------------------|------|------|------|------|------|------|------|------|------|------|------|
| Number of JS hearings | 943 | 1165 | 909 | 836 | 847 | 898 | 832 | 797 | 844 | 839 | 783 |

6.13 On the other hand, the number of applications for AIO from 2008 to 2018 has decreased, as seen in Table 6.3. The research team is not able to identify the reason(s) for the decline of the AIO application as it can involve many factors, for example, the turnover of jobs is pretty frequent or there are more self-employed people involved in divorce, it is difficult to ask the Court gives the AIO directly.

Table 6.3 Number of AIO applications filed and AIO made in the Family Court (2008-2018)

| | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 |
|-----------------------------------|------|------|------|------|------|------|------|------|------|------|------|
| Number of AIO applications | 39 | 25 | 52 | 28 | 24 | 17 | 24 | 11 | 12 | 14 | 9 |

6.14 One point to note is that the number of JS hearings is not equal to the number of cases with arrears of maintenance because one single judgment creditor may apply for multiple JS over the same maintenance order, and the JS will be adjourned to a later date if, for example, there is an application and hearing for variation of maintenance. The number of JS applications is significantly greater than that of AIOs (Mann-Whitney-Wilcoxon Test p-value = 0.00004).

Findings from Legal Aid Department (LAD)

6.15 According to the data provided by the LAD, enforcement actions such as garnishee orders, charging orders, and writ of *feri facias* are also rarely adopted (Table 6.4) when compared to JS (Table 6.5). Although these numbers do not reflect the number of applications and proceedings in private practice, the contrast between JS and other enforcement orders warrants our attention.

Table 6.4 Number of applications for Garnishee Order, Charging Order, and Writ of *Fieri Facias* in the Family Court in LAD data (2016-2018)

| | 2016 | 2017 | 2018 |
|-----------------------------------------------|------|------|------|
| Number of Garnishee Order applications | 0 | 4 | 8 |
| Number of Charging Order applications | 0 | 8 | 6 |
| Number of Writ of <i>Fieri Facias</i> | N/A | N/A | N/A |

Table 6.5 Number of JS proceedings issued in the Family Court in LAD data (2011-2018)

| | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 |
|----------------------------------------|------|------|------|------|------|------|------|------|
| Number of JS Proceedings Issued | 146 | 153 | 150 | 116 | 75 | 126 | 99 | 95 |

6.16 One observation made by the interviewee from the Judiciary was that there has been no increase in initial applications for JS proceedings after the judgment of *YBL v LWC* was handed down and the new PDSL10.2 adopted in February 2019. Yet, it is worth noting that the number of JS proceedings that completed committal proceedings increased, i.e., courts have held the judgment debtor for contempt of court in breaching maintenance order following PDSL 10.2.

Highlight 6.3: Judgment Summons is the most commonly used enforcement procedure, but it often subjects to adjournment of hearing and delay the enforcement.

C. New Practice Directions on Judgment Summons

6.17 The Court of Final Appeal has in the case of *YBL v LWC*, *CACV 244/2015[2017] 1 HKLRD 823* recognised that the previous JS procedure under rule 87 of MCR was incompatible with Articles 10 & 11 of the Hong Kong Bill of Rights¹³⁸.

¹³⁸ *YBL v LWC [2017]*, *CACV 244/2015*

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=107460&QS=%2B&TP=JU

Table 6.6 Incompatibility of the JS procedure with Articles 10 & 11 of the HKBOR

| | In breach of | Existing issue | How to avoid the issue |
|----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| a | Article 11(1): presumption of innocence | r.87(5)(c) and Form 23 of MCR requiring the Judgment debtor to show cause on why he should not be committed to prison for the contempt. This reverses the “Burden of Proof” on the Plaintiff/Claimant to demonstrate that a claim is valid. | The payee should prove that the payer has the ability to pay but fails to do so. |
| b | Article 11(2)(a): right to be informed of the nature and cause of the charge against him | Insufficient information in the JS in Form 23. | The factual basis for both non-compliance and the alleged means to pay on the part of the judgment debtor should be set out. |
| c | Article 11(2)(a) and (b): right to be informed and right to have adequate time and facilities for the preparation of the defence | After the oral examination, the Court orders Committal at the same hearing. | Separate into 2 processes: Examination process and Committal process. |
| d | Article 11(2)(d): the right to be present and to be informed of the right to legal representation Article 10: equality before courts and right to a fair and public hearing | r.87(5)(c) automatic Committal if a judgment debtor has failed to appear at the court hearing despite being ordered to attend. | If the Court was satisfied that the judgment debtor had failed to attend the hearing without good cause, it can be concluded that he had waived his right to be present at trial. The Court may proceed to hear the judgment creditor’s evidence and determine whether a case for committal was established beyond a reasonable doubt. If so, an order for committal could be made in the judgment debtor’s absence. |

| | In breach of | Existing issue | How to avoid the issue |
|----------|-----------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|
| e | Article 11(2)(g): right of non-compellability and the right against self-incrimination | <p>After giving evidence, the Court orders the Committal at the same hearing.</p> <p>As for the right of non-compellability, the Court of Appeal held that compelled answers can be directly used in the examination process under committal proceedings. The same satisfied the proportionality test and did not undermine the judgment debtor's right to a fair trial – paras 91-95.</p> <p>As for the right against self-incrimination, the Court of Appeal held that a judgment debtor could not avoid questions about his/her means in the examination process by relying on the right against self-incrimination. The scheme of the relevant rules and their stated purpose necessarily and impliedly outweighed the judgment debtor's risk of committal caused by self-incrimination.</p> | Separate the JS proceeding into 2 processes: The examination process and the Committal process. |

- 6.18 The Judiciary subsequently set out remedial interpretations of JS procedure to segregate the examination process from the committal application. Accordingly, the Judiciary has issued a new PDSL10.2 to provide new guidance on JS procedure, effective from 11 February 2019.
- 6.19 The new JS procedure has two separate parts: examination summons and committal summons. The examination summons requires the judgment debtor to appear in court and be examined on oath over a) whether any and, if so, what debts are owing to the judgment creditor; and b) whether the judgment debtor has any and, if so, what other property or means of satisfying the order. After the conclusion of the examination summons, the judgment creditor may, if deemed appropriate, apply for leave to issue a committal summons and if leave is granted, issue an *inter parte* committal summons. In determining a committal summon, the court may, at its discretion, make an order for committal against the judgment debtor if it is satisfied that the judgment debtor:
- a) has or has had since the date of the order the means to pay the sum in respect of which he has made default; and
 - b) has refused or neglected, or refuses or neglects, to pay the sum.
- 6.20 After the implementation of the latest practice direction SL 10.2, four published cases of committal proceedings were observed within 12 months¹³⁹. Furthermore, because the new practice direction required an examination proceeding before the committal proceedings, the enforcement procedure is prolonged and costs increased. For example, in the first reported case 葉及陳 *handed down* on 3rd July 2019, the maintenance order was made as early as on 27th February 2018. Although the reason causing the postponement was not known, the leave for application for an order of committal was only given on 20th December 2018 and the judgment on committal proceedings was given on 3rd July 2019.
- 6.21 In the second reported case of 李及張 published on 20th November 2019, the judgment debtor failed to pay maintenance in full commencing from March 2016, and the family had to suffer for three years. It was unclear from the judgment whether the family could eventually recover the outstanding amount in full or not. Since the originating summons for an application for an order of committal needs to be personally served to the judgment debtors, serving has become difficult and causes further delay in the proceedings.

¹³⁹ The four published cases can be viewed here:

1. 葉及陳 *FCCM 9346/2016 [2019] HKFC 159*
2. 李及張 *FCCM 4305/2013 [2019] HKFC 297*
3. 容及鄭 *FCCM 1165/2018 [2020] HKFC 54*
4. *BT v CBY CACV 439/2019[2020] HKCA 426*

- 6.22 In the third reported case *容及鄭* published on 16th January 2020, the applicant requested the respondent to attend the hearing but was in vain. Although the court ultimately granted leave to dispense with the personal service of the court order, the matter was further delayed for almost 24 months. Although this was not a JS application, the respondent had evaded his financial obligation to provide proper documents even before the court could make a proper maintenance order, as stated in the judgment “16. 在發出離婚呈請書後，答辯人將他的銀行戶口內的資產轉移總數超過 1,000,000 元。答辯人亦多次向呈請人表示，他不會出席法庭的聆訊，呈請人委託律師在法庭申訴是沒有用處的，他情願坐監，也不會向呈請人支付一分一毫。” It illustrates the court’s willingness to exercise committal proceedings in response to respondents who remain absent from court hearings.
- 6.23 In the fourth reported case *BT v CBY*¹⁴⁰, published on 8th June 2020, the Court of Appeal explained the application of the law of committal proceedings on judgment summons, how and what amount of evidence would be considered sufficient to commit the judgment debtor after the *YBL* case. The judgment debtor in question has failed to pay maintenance under the original order since August 2011. The applicant applied by way of three JS for an order to commit the judgment debtor for contempt of court, but the judgment debtor once again fails to pay the over HK\$24,170,000 of judgment debts plus interest and surcharge, and the sum of HK\$300,000 per month following another court order in 2015. Upon hearing the mitigation of the judgment debtor, the Court of Appeal ordered the judgment debtor to be committed to prison for a term of three months for his failure to comply with the order to pay the judgment debt plus interest and surcharge. This sent a clear message on the possible consequence of JS, which may increase JS deterrent effect against maintenance non-compliance. However, the procedure for triggering a suspended committal order is still not clear and not every judgment creditor can afford the expensive and lengthy litigation.
- 6.24 The two separate applications of examination and committal could cause confusion for judgment creditors. In the examination proceedings, the judgment debtors will be orally examined on debts owed, if any, and what property or means of compiling the order now being enforced. There is nothing to prove at this stage, the judgment debtors will simply be asked about the questions, so reference to burden and standard of proof does not apply. In committal proceedings, the judgment creditors have to prove beyond a reasonable doubt in order to commit the judgment debtors. Furthermore, in the past, the judgment debtor had to fill in Form 23 explaining why maintenance could not be provided to the judgment creditor. Currently, this Form 23 is no longer in use so as to satisfy the HKBOR, since committal proceedings are regarded as quasi-criminal proceedings with the liberty of the judgment debtor at stake. The burden of proof is therefore on the judgment creditor, making it more difficult to recover maintenance from their point of view.

¹⁴⁰ CACV 439/2019[2020] HKCA 426

6.25 In conclusion, JS should always be the last resort, because it is a draconian measure and has a committal element. Furthermore, although the New PDSL10.2 for JS has been issued to make the JS procedure compatible with HKBOR, it is worth considering an in-depth review and reform of the existing law on the financial arrangement and especially for improving the current situation, given the law has not seen major revision for almost 50 years.

Highlight 6.4: New PDSL10.2 for Judgment Summons addresses Articles 10 & 11 of the Hong Kong Bill of Rights Ordinance, Cap. 383.

D. Effectiveness of Current Enforcement Procedures

6.26 In this section, we will discuss the effectiveness of the current enforcement procedures of ancillary relief orders via analysis of the data collected for the Study and interviews with the Judiciary and legal practitioners. However, this is limited by the difficulty of collecting data from the legal professions. There is currently no database or statistics in relation to the enforcement procedure of ancillary relief orders in the Judiciary, LAD, legal practitioners/law firms and NGOs. Thus, the only data available in the Study are the empirical 500 cases collected for this study, data provided by the Judiciary and LAD and interviews conducted.

6.27 Despite limitations in data availability, the analysis of data is consistent with the observations and views of the Judiciary and legal practitioners. The effectiveness of the current enforcement procedures of ancillary relief orders will be discussed based on both data and interviews with the Judiciary, LAD and legal practitioners.

Judgment Summons (JS)

6.28 This section will focus on the effectiveness of the JS procedure. Due to the limitations of the available dataset, the “effectiveness” of the JS procedure was defined based on the available information from each data source.

Findings from e-forms

6.29 e-Forms showed that in the 29 cases in which JS application is involved, 55.2% of the judgment creditors were successful in recovering some or all of the outstanding payments.

Findings from court cases

6.30 It is difficult to estimate the success rate of JS because the court case data has not indicated the outcome of enforcement orders. The court case data only includes the affidavits, applications for variation of maintenance, JS, court hearing notes, and court orders. For instance, even if the court issues an order regarding the settlement of outstanding maintenance, there is no way to track

whether or not the payer ends up paying the outstanding amount. Furthermore, if the judgment debtor still fails to pay maintenance, and the receiving party gives up pursuing the issue in Court, there is no way to find out the case outcome based on the case file.

- 6.31 While there are exceptions where the court case data mentioned the outcome of JS, these situations are rare. For instance, the receiving party may apply for JS to recover outstanding maintenance from the paying party. If the paying party settles the payment before the date of the JS, the judgment creditor may inform the Court about the settlement and request for withdrawal of the JS. Typically, letters written by the receiving party to the Family Court before the JS is the only way to find out whether the maintenance has successfully been recovered, or if the receiving party has given up on recovering maintenance. Hence, the Judiciary can try to collect more statistical information from the cases in order to learn about the effectiveness of the JS, and to develop improvement measures or policy suggestions.
- 6.32 Therefore, the Team was only able to investigate the effectiveness of JS based on whether JS facilitated the process of recovering maintenance. This includes any mutual agreements made, penalty issued to the payer with outstanding payment, and any other flexible arrangement between both parties.
- 6.33 The Team observed that issuing a JS helped settle 84 out of 100 court cases with court action and outstanding maintenance before the hearing. Details of the judgment order vary in each case. Out of the 84 cases, 20 of them reached mutual agreements, 23 made maintenance payment arrangements plus interests or penalty and fees, and 77 made other arrangements (multiple options were possible). Among the 12 cases with either party being CSSA recipients, 10 (83.3%) had their issue resolved. Among the 36 cases with either party being legal aid users, 34 (94.4%) had their issue resolved with the court action taken; 19 (82.6%) of the 23 cases with maintenance payment arrangement plus interests or penalty and fees also involved legal aid users. This shows that legal aid does facilitate the legal process.

Findings from LAD

- 6.34 The Family Court has no data on the proportion of JS applications handled by Legal Aid Counsels (lawyers employed in the LAD), lawyers in private practice or acting in person on an annual basis. There is no data on the outcome of the actual amount and when judgment creditors receive the outstanding amount after the orders. Furthermore, the LAD does not hold data on the time spent by the professional staff to handle each case and other administrative supporting costs to effectively evaluate the efficacy of JS. The Team relied on statistics from the LAD to analyse the effectiveness of JS. Therefore, existing data does not cover the costs incurred in each court hearing including costs for the judge, law clerks, staff at the Registry for filing and record inputting, IT staff for audio-recording during the hearings, and security guards at the Court.

6.35 Although the numbers only reflected all JS cases handled by the Legal Aid Counsels excluding private lawyers, there are still significant and representative because the Government absorbed the legal costs incurred by Legal Aid Counsels, law clerks and necessary administrative staff to handle each case. It would be relatively expensive and time-consuming for those middle-class families to recover the outstanding amount through legal proceedings. One must take note that the LAD did not keep the data on whether the judgment creditor ended up recovering the arrears of maintenance, and that the data available only showed the number of the judgment creditors who are “successful” in the JS proceedings as defined below. The cases considered “effective” should fulfil three criteria: a) if the whole amount claimed has been paid in full or an undertaking to pay by instalments has been signed by the opposite party (OP) after a JS was issued; b) a settlement order was obtained with OPs undertaking to pay the whole amount in full or by instalments; or c) a Committal Order/suspended Committal Order/ Warrant of Arrest was obtained against OP. According to Table 6.6, the success rate was generally around 60-70%.

Table 6.7 Number of JS proceedings issued and its outcomes listed in the Family Court in LAD data (2011-2018)

| | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 |
|----------------------------------------|--------------|-------------|-------------|-------------|------------|-------------|--------------|-------------|
| Number of JS proceedings issued | 146 | 153 | 150 | 116 | 75 | 126 | 99 | 95 |
| Number of cases closed | 134 | 126 | 121 | 84 | 17 | 116 | 161 | 141 |
| Number of successful cases (%) | 103 (77%) | 92 (73%) | 83 (69%) | 62 (74%) | 8 (47%) | 82 (71%) | 104 (65%) | 89 (63%) |

Note: cases may not be closed in the same year as the JS proceedings were issued.

Interviews with Judiciary and Legal Practitioners

6.36 Interviewees from the Family Court and the legal profession shared similar views that the enforcement of maintenance orders stands out as an issue in Hong Kong. The interviewees further noted that it is difficult to recover maintenance via JS:

- a) The Family Judge commented that after the judgment of *YBL v LWC* was handed down and the new PDSL10.2 was issued, it is more difficult to recover maintenance *via* the JS procedure. Beforehand, the judgment debtor has to fill in a Form 23 to explain why he could not pay the maintenance. However, after the judgment and the new practice direction, a quasi-criminal proceeding is used *e.g.* the burden is not on the judgment debtor to explain why the judgment debtor could not pay the maintenance but the burden is shifted to the judgment creditor. It should be noted that the views of the Family Judge interviewed were given in her personal capacity and the views do not represent the Judiciary’s position on any matter.

b) From interviews with barristers, they expressed that the JS procedure is not effective in handling monetary disputes because even if the judgment creditor successfully commits the judgment debtor, the judgment creditor may not be able to recover any outstanding maintenance if the judgment debtor refuses to pay after the JS proceedings.

6.37 The Family Judge further remarked that although many judicial resources are now used to enforce maintenance orders, on many occasions, it is difficult to obtain positive outcomes. Furthermore, solicitors interviewed also pointed to the delays in enforcement proceedings. However, the issue of delay is complicated because the judgment debtor may apply for a variation of the maintenance order, which will be heard before enforcement proceedings can proceed. Besides, it was stated that the serving of JS contributed to the delay in legal processes. Since it is required to be served in person to the judgment debtor, the effort and time required to serve JS contribute a major portion of the delay. The resultant delays to the enforcement procedure and may even cause creditors to give up pursuing enforcement orders.

Other Enforcement Procedures

6.38 In light of the low usage of enforcement actions other than JS, it is hard to provide any useful or meaningful analysis of other actions. None of the available datasets provided information on the success rates of these enforcement procedures either. However, the interviewees from the Judiciary and from barristers provided some insight into the effectiveness of these orders.

Interviews with a Family Judge and some Legal Practitioners

6.39 Interviewees from the Family Court and barristers noted other enforcement actions are difficult to apply, because not all enforcement actions are available to the judgment creditor. Only if payees meet the conditions below, they can satisfy the legal merit to apply for these orders. The orders generally require substantial proof of information, which may be challenging for certain payees to fulfil:

- a) **Garnishee order** depends on whether the judgment debtor has assets in bank accounts in Hong Kong or a third party owes debts to the judgment debtor and whether the judgment creditor has knowledge of such bank accounts or debts;
- b) **Charging order** depends on whether the judgment debtor has landed properties in Hong Kong and whether the judgment creditor has knowledge of them;
- c) **Warrant of Execution** and **Writ of *Fieri Facias*** depend on whether the judgment debtor has valuable goods or assets in Hong Kong and the judgment creditor has knowledge of such valuable goods or assets; whilst

- d) **AIO** depends on whether the judgment debtor has a steady job in Hong Kong which is not paid by cash and the judgment creditor runs a risk of the judgment debtor resigning from the said job; whilst
- e) **Prohibition orders, arrest warrants and committal orders** restrict human rights, thus the court needs strong evidence to support issuing such orders. For example, the court often requires the statement of travel records of the judgment debtors as supporting documents for the application of prohibition orders, but it is often impossible for the judgment creditor to obtain such documents without the consent of the judgment debtor or with the help from the Legal Aid Department, which utilises internal government channels to request travel records of the judgment debtor from the Immigration Department (ImmD). Prohibition Order has no use when the judgment debtor does not often leave Hong Kong.

6.40 Generally, JS applications are considered the last resort for payees who fail to meet the above requirements. Our findings suggest that payees generally do not fit the requirements for other orders. However, the interviewees expressed that enforcement actions such as garnishee order, charging order and prohibition order are more effective than JS, especially for middle- and high-income families who could locate and recover funds for family use. Yet, the burden of proof rests on the plaintiff throughout the trial. It may be challenging for the plaintiff to gather sufficient evidence to satisfy the Court.

Highlight 6.5: Judgment Summons has more than 60% success rate in LAD data. For the remaining unresolved cases, existing gaps include the judgment debtor still refuses to pay after JS even the judgment creditor that commits judgment debtor, and applications for variation orders delays enforcement proceedings. The process could be lengthy and time consuming for all parties involved.

E. Other Jurisdictions Maintenance Models

- 6.41 The Team conducted an extensive review of international practices on divorce and maintenance management. The review included six jurisdictions from Western and Asian contexts, namely the UK, Canada, New Zealand, Singapore, Taiwan, and South Korea. Maintenance systems can be found in Western jurisdiction studies since the 1990s, whereas there is only Asian jurisdiction that has recently adopted a maintenance assurance system, i.e. South Korea.
- 6.42 Based on the Consultancy Brief, the list of other jurisdictions to be explored includes the UK, the USA, Australia, New Zealand, Canada, Norway, Sweden and Singapore. The team has covered all of the above jurisdictions in the preliminary study reflected by the interim report¹⁴¹ (Section 2.5) and progress report¹⁴² (Section 2.5). It was noted by the research team that the list is skewed towards western, educated, industrialized, rich, and developed countries. Based on major social and legal incompatibilities, the team has excluded the USA, Norway and Sweden from the final analysis. Australia was also excluded because of its similarity to New Zealand and the UK, both of which have been extensively covered in the report. Subsequently, the team has gone extra miles to include two more Asian jurisdictions of appropriate cultural heritage with similar levels of economic development, namely South Korea and Taiwan. A brief, individual discussion on each of the added or excluded jurisdictions is provided below.
- 6.43 **The USA.** The system in the state of California has been briefly reviewed in the progress report. Including California, 8 states in the USA are community property states, which means properties and incomes are regarded as jointly owned by the couple, during a divorce the community property will be divided 50-50. Exceptions and definitions of community property differ among states. Spousal maintenance (alimony) is granted case by case for a transitional period of up to a few years, while child support is a parental obligation and is assessed by a standardized mechanism.
- 6.44 **Sweden and Norway.** Both are Scandinavian countries that maintain higher tax rate and welfare policies. Sweden has a maintenance enforcement agency while Norway does not. In both jurisdictions, spousal support is unpopular due to a culture of gender equality. As the states cover most of the child expenses with supplementary welfare policies, reviewing their child support policy does not provide much insight into Hong Kong's situation.
- 6.45 **Australia.** Child maintenance enforcement is managed by Services Australia, a government agency that delivers government payments and services, including raising kids, living arrangements, ageing, work, education, Health and disability. It is similar to the UK that

¹⁴¹ The HKU Team. (2019). Further Study on the Phenomenon of Divorce in Hong Kong Revised Interim Report. Oct 2019.

¹⁴² The HKU Team. (2019). Further Study on the Phenomenon of Divorce in Hong Kong Progress Report. Jul 2019.

enforcement is carried out by a separate government agency; while the comprehensiveness of the agency's scope of service is similar to New Zealand's Inland Revenue.

- 6.46 The six selected other jurisdictions were examined to better understand how their current systems were formulated and maintained. They were also compared to Hong Kong's system in several aspects: legal norms regarding maintenance, societal values, welfare policy, penalties for non-payment of maintenance, culture, and common characteristics of single-parent families. Although maintenance models cannot be directly replicated, the government may refer to factors contributing to the development of the respective models.
- 6.47 **Legal norms regarding maintenance.** The UK and New Zealand share a common policy ancestry, where child support fees are calculated through formulas. NRPs in the UK pay a certain portion of their income on maintenance that increases with each increasing child they are responsible for, with each child accounting for an equal amount. On the other hand, Hong Kong's court determines the amount of payment towards the maintenance of the child on a case-by-case basis by assessing various aspects, including the child's financial needs, the family's previous standard of living, and parental expectations of the child's education. The qualifying criteria for child maintenance also differ by jurisdiction with eligible children in Singapore defined as under 21 as opposed to under 18 in Hong Kong.
- 6.48 **Societal values.** The alignment between societal values and current child maintenance policies is an indicator of maintenance system effectiveness. The UK's British Social Attitudes Survey reflects a number of discrepancies between public opinion and policy. There is a general consensus that parents with care who suffers from low income should be granted higher amounts of maintenance. Yet, the UK policies do not take parents with care's income level into account. However, western society family values adopted in jurisdictions such as the UK may not apply in Taiwan, South Korea and Hong Kong, for Asian societies tend to emphasise the hierarchical structure and social roles of different family members. Even if people from different countries and jurisdictions hold similar values, they may also instantiate their beliefs through different behaviours¹⁴³.
- 6.49 **Welfare model.** Depending on which welfare system the jurisdictions adopt- residual, solidarity, or institutional, the degree of priority given to people varies. Hong Kong and Singapore's welfare systems target people facing severe hardship and disadvantages, whereas jurisdictions under the solidarity welfare system provide welfare depending on people's circumstances and those under the institutional welfare system grants welfare to everyone. The expansion of social welfare systems in Taiwan and South Korea can be attributed to democratisation acting as the push factor

¹⁴³ Hanel, P. H., Maio, G. R., Soares, A. K., Vione, K. C., de Holanda Coelho, G. L., Gouveia, V. V., ... & Manstead, A. S. (2018). Cross-cultural differences and similarities in human value instantiation. *Frontiers in psychology, 9*, 849.

facing pressure from middle- and lower-class voters to close the wealth gap. The focus of Singapore and Hong Kong was different, as both cities work on the economy, and social welfare may depend more on individual resources and family support¹⁴⁴.

6.50 Penalties for non-payment of maintenance. Whether NRP will make timely payments may depend on the consequences should they fail to do so. Canada enforces strict penalties for non-payment, including the garnishment of wages and federal payments and even the suspension of a driver's license and/or the revocation of a passport. In Hong Kong, restriction of a person's liberty remains the last resort, so prohibition orders banning departures from Hong Kong are rarely enforced¹⁴⁵. If the NRP relocates overseas, guaranteeing payment becomes challenging with only 15 reciprocating countries allowing the child maintenance order to be enforced.

6.51 Culture. Despite Asian communities tend to view divorce more of a taboo than the West, women in Hong Kong, Taiwan and South Korea have been increasingly independent economically and have gradually led to more women filing for divorce. While the culture is leaning towards gender equality, divorcees continue to face gender-specific challenges. Across jurisdictions, households with single-mothers outnumber those with single-fathers, as children tend to stay with their mothers after a divorce. In addition to gender-specific challenges, South Korean and Taiwanese single-mothers also suffer from economic stress as most are poorer than single-father families, while single-fathers experience high emotional stress. Working single-mothers in Hong Kong face similar challenges with a median monthly income of \$12,000, lower than single-fathers and all working males and females¹⁴⁶. Though both single mothers and fathers can file for maintenance fees, in practice, Hong Kong's single-fathers still face difficulties in obtaining maintenance to receive financial support from their ex-wives.

6.52 Common characteristics of single-parent families. Age and education level are the relevant parameters comparing single-parent families across jurisdictions. The majority of these families in Hong Kong fall within the range of 30 to 49, and are less educated than two-parent families, and live with their child only. Contrary to common beliefs, single-mothers in the UK and Hong Kong are equally or even more likely to work than women without children. This suggests that single-parent families may be more prone to financial difficulties and those in employment may encounter difficulties in balancing work and caring for their children.

¹⁴⁴ Chen, M.F.(2012) Welfare state restructuring: Construction and reform of long-term care insurance in Germany and policy implications for Taiwan. *NTU Social Work Review*, 25, 157-2007

¹⁴⁵ Family CLIC. (2018). *VI. Financial Matters*. Family CLIC website. <https://familyclic.hk/en/topics/Matrimonial-matters/Divorce/Financial-matters/>.

¹⁴⁶ Census and Statistics Department. (2018, February 9). "2016 Population By-census Thematic Report: Single Parents" published. <https://www.info.gov.hk/gia/general/201802/09/P2018020900380.htm>.

Western Maintenance Policy Analysis

6.53 Using the social policy analysis framework suggested by Fung (1997), the following sections from 6.50 to 6.96 mainly investigate the development of maintenance systems of the United Kingdom, New Zealand, and Ontario, Canada¹⁴⁷. This framework includes issue identification, policy goals, service provision structures and design, finance, and performance evaluations. Factors that bolster or hinder the effectiveness of these maintenance systems are also examined. It is noteworthy that maintenance systems in the aforementioned western jurisdictions provide services for child maintenance to parents who have registered their agreements in the formal system rather than those with private agreements or cases opted out from the system. Therefore, the characteristics of service users in those systems cannot accurately reflect the general situation of the said jurisdictions. Also, spousal maintenance is not an entitlement and can be agreed upon between spouses or ordered by the court if financial proceedings are based on need. The agencies responsible for the maintenance systems of respective jurisdictions will be discussed. These agencies do not provide services for spousal maintenance bar Ontario (Canada). Therefore, maintenance in this section refers to child support which is money paid by an NRP to a resident parent to support children post-separation.

UK: Child Maintenance Service

6.54 Child Maintenance Service (CMS) is an agency established in 2013 in the UK under the Department for Work and Pension (DWP) to reform the national child maintenance system. The CMS assesses maintenance amounts, collects and transfers payments and takes action if payments are not made. The main focus of this reform is to encourage separated parents to make private arrangements for child maintenance (i.e. Family-based Arrangements, FBAs) whenever possible. Parents may apply to this statutory service should private arrangements be not possible.

Development of CMS

6.55 The predecessor of CMS is the Child Support Agency (CSA, 1993-2012) and the Child Maintenance and Enforcement Commission (CMEC, 2008-2011) from 1993 to 2012. Prior to the CSA, child support had been a matter of family law and hence fell under the jurisdiction of the courts. Child support was regarded as a private matter and state intervention was limited¹⁴⁸. However, lone parenthood accounted for one of the fastest-growing areas of public expenditure in the 1980s. In 1989, 70% of single parents received Income Support (IS), and its cost rose from £1.3 billion in 1981-1982 to £4.3 billion in 1990-1991. Amongst the single parents with IS, only

¹⁴⁷ Fung, K. (1997). Social policy analysis. In Kam, P., Woo, M., Fung, K. & Leung, C. (Ed.), *Skills in Community Work* (pp. 35-53). Hong Kong: The Chinese University Press.

¹⁴⁸ Skinner, C. (2012). *Child maintenance in the United Kingdom*. *European Journal of Social Security*, 14(4), 231-251. <https://doi.org/10.1177/138826271201400402>

22% were receiving maintenance. Furthermore, only 30% of single parents managed maintenance through the government program ‘liable relatives’, and the amount of maintenance was also typically low, at around £18 per week for a single child¹⁴⁹.

6.56 The *1990 White Paper, Children Come First*, a government report with information and proposals on child support, suggested the establishment of CSA with a formula-based system for the assessment of child maintenance. A standardised formula of child maintenance would be used for assessment, plus the function of collection and enforcement of child support was served through a bureaucratic branch of the Department for Social Security¹⁵⁰. In 1991, the UK government introduced the *Child Support Act* to enforce the requirement that all liable parents need to pay for child support, and the Child Support Agency was formed in 1993 to implement provisions of the Act.

Ontario (Canada): Family Responsibility Office

6.57 In Canada, there are government bodies in different provinces or territories authorised by legislation to implement the Maintenance Enforcement Programs (MEPs) that help divorcees collect, distribute and enforce court-ordered child or spousal support payments¹⁵¹. Federal and local government agencies and MEPs do not have the power to change a support order or agreement. Parents can either decide their child support arrangements or ask the judge to decide according to child support guidelines. If one parent wants to change the order, the parent either applies a variation of maintenance through the court or applies for recalculation services through the Government-Based Family Justice Services in the province or territory without going to court. In the following section, the Team examined the Family Responsibility Office (OFRO) in Ontario, Canada.

Development of OFRO

6.58 During the mid-to-late 1980s, no government organisation or department was responsible for the collection and distribution of spousal support or child support. If a payer did not pay, it was up to the recipient to recover payments in court. In 1983, the Federal-Provincial-Territorial Family Law Committee recommended that the provinces and territories establish MEPs to facilitate the effectiveness of maintenance policy¹⁵².

¹⁴⁹ Nutt, T. (2006). *The Child Support Agency and the Old Poor Law*. History & Policy. <https://www.historyandpolicy.org/policy-papers/papers/the-child-support-agency-and-the-old-poor-law>

¹⁵⁰ Roll, J. (1994). *Child Support (Research Paper 94/20)*. House of Commons Library.

¹⁵¹ Department of Justice. (2019). *Resolve enforcement issues*. <https://justice.gc.ca/eng/fl-df/enforce-execution/sol.html>

¹⁵² Child Support Team of the Provincial/Territorial Implementation and Project Development Unit. (2000). *Child support implementation and enforcement projects funded from 1997 to 1999*. Department of Justice. <https://www.justice.gc.ca/eng/rp-pr/fl-lf/child-enfant/sum-som/p1.html>

6.59 OFRO is therefore established and mandated through the Family Responsibility and Support Arrears Enforcement Act, 1996 which gives OFRO the authority to enforce support orders, support deduction orders, and domestic contracts filed in the court. This Act replaces the Family Support Plan Act 1990 in May 1997 and expands the enforcement powers as well as changes in the management model of child support services¹⁵³.

New Zealand: Child Support

6.60 Child support in New Zealand is regulated under the *Child Support Act 1991* and is managed by the Inland Revenue (NZIR). Child support is paid by NRPs who are also not the principal provider of ongoing daily childcare. The amount of child support depends on the parents' income, as well as the time the child spends living with each parent¹⁵⁴.

Development of Child Support

6.61 Before 1992, New Zealand had a dual approach in dealing with family maintenance. The former Department of Social Welfare provided the Liable Contribution Scheme for single parents with a payment called domestic purposes benefit. Those who do not receive social benefits could apply for maintenance orders and maintenance agreements administered through courts under the *Family Proceedings Act 1980*¹⁵⁵. The Liable Contribution Scheme introduced in 1981 was designed for children of custodians on the social benefit to recover money from non-custodial parents. Despite such agreements, many parents escaped responsibilities and failed to provide maintenance.

6.62 The dual approach, originally intended to ensure non-custodial parents to pay maintenance, failed due to a high number of inconsistent payments and uncollectible arrears. Specifically, parents who could not agree on child support financial arrangements were required to take action through the family court, and this was often a lengthy and expensive process. Hence, the government merged the dual approach into a single, unified child support scheme open to both beneficiaries and non-beneficiaries. In 1989, the government appointed the Working Group to establish principles and objectives for a new child support scheme and put forward the reform. The Child Support Bill was introduced and became law in December 1991.

Policy goals

6.63 **Common goals.** The common goals enshrined in the three models are three folded: firstly, they affirm and protect the interests of children and spouses through strict maintenance enforcement.

¹⁵³ Harnick, C. (1996). *Bill 82, Family responsibility and support arrears enforcement act, 1996*. Legislative Assembly of Ontario. <https://www.ola.org/en/legislative-business/bills/parliament-36/session-1/bill-82>

¹⁵⁴ Parliamentary Counsel Office. (2017). *Child support act 1991 no 142 (as at 31 August 2017)*. New Zealand Legislation.

¹⁵⁵ Dunne, P. (2010). *Supporting children: A Government discussion document on updating the child support scheme*. Policy Advice Division of Inland Revenue.

Secondly, they aim to collect support and assist recipients by being ‘go-between’ between payer and payee. Thirdly, they aim to increase payers’ moral and parental responsibility by ensuring that payees and their children receive maintenance on time through effective track and enforcement.

6.64 **Special goals.** New Zealand includes the alleviation of child poverty as one of its policy goals. The UK and New Zealand not only strive to reach the above common goals, but they also seek to reduce public expenditure on social security for single-parent families. Moreover, they took over part of the court’s duty to deliver maintenance assessments and determine parents’ obligations. Whereas in Ontario’s courts, judges decide how much is to be paid regarding the Federal Child Support Tables. Apart from that, the UK and New Zealand’s institutions also have different goals: the British government would like to increase the number of single parents in employment, while the NZIR is keen to break the cycle of inter-generational poverty amongst single-parent families, as well as to recognise general equality by taking paternal care and maternal employment into account¹⁵⁶.

6.65 With a very different focus to its earlier scheme (CSA, CMEC), the CMS recognises the autonomy of parents to arrange an amicable, private child maintenance arrangement as CSA did not meet the needs of many parents who preferred private settlements rather than through statutory agreement. The design for encouraging parents to collaborate in child maintenance arrangements is one of the CMS’s policies goals.

Issue identifications

6.66 **Similarities.** The three models above address the prevailing trend of outstanding maintenance while the number of divorces increased in the three places during the 1980s^{157,158,159}. The increase in single-parent families also drove up the demand for public resources for social security, especially for child support. However, there was a limited public intervention for maintenance. Therefore, these jurisdictions introduced agencies or policies to provide maintenance services for divorcees.

¹⁵⁶ Skinner, C., & Hakovirta, M. (2020). Separated Families and Child Support Policies in Times of Social Change: A Comparative Analysis. In *The Palgrave Handbook of Family Policy* (pp. 267-301). Palgrave Macmillan, Cham.

¹⁵⁷ Office for National Statistics. (2019). *Divorces in England and Wales*.

<https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/divorce/bulletins/divorcesinenglandandwales/2018>

¹⁵⁸ Statistics Canada. (2012, March 28). *Data table for chart 1: Number of marriages and divorces, Canada, 1926 to 2008*. Juristat.

<https://www150.statcan.gc.ca/n1/pub/85-002-x/2012001/article/11634/c-g/desc/desc01-eng.htm>

¹⁵⁹ Stats NZ. (2019). *Marriages, civil unions, and divorces: Year ended December 2018*. <https://www.stats.govt.nz/information-releases/marriages-civil-unions-and-divorces-year-ended-december-2018>

6.67 **Differences.** The three jurisdictions face problems specific to them. For the UK and New Zealand, they failed to recover the expense of social support for single-parent families from the non-custodial parents. The vicious cycle of maintenance non-compliance exacerbated the burden on government budgets, and therefore the governments wanted to break this cycle. For Ontario, the Canadian federal government wanted to solve the problem of lower compliance from payers who have arrangements under a court order.

Service provision structure

6.68 Child maintenance regimes denote the decision-making systems of child maintenance, and there is diversity in the administrative structures and procedures in place in different jurisdictions. All agencies in this study are established in a centralised structure for their service provision, although inter-governmental collaboration is not uncommon. Skinner et al. (2007) identified three clusters: “court”, “agency”, and “hybrid”, which are critical in understanding policy differences as the regime impacts how to assess child maintenance obligations, mediate collections as well as involved when the non-compliance happens¹⁶⁰. Only Ontario uses “court” in which the court decides or ratifies child maintenance obligations, but the OFRO provides collection, case management and enforcement services. Otherwise, CMS and NZIR are the agencies for all formal assessment, collection, and transference of child maintenance, but courts have a marginal role in determining formal child maintenance.

6.69 Concerns about costs resulting from the increase in lone-parent families drove the British and New Zealand governments to find alternatives for cost recovery by policy transfer to develop indigenous programmes, policies and institutions¹⁶¹. British policymakers explicitly turned the US’s policy, Wisconsin’s Child Support Assurance System (CSAS), into the UK’s CSA to reduce single-parent dependence on welfare benefits. New Zealand legislators were also inspired by the Australian model¹⁶² to devise the child maintenance regime.

Service designs and conditions of access to the service

6.70 Service designs shape the degree of complication of the administrative process and conditions of access to the service. All agencies provide in-kind services to beneficiaries to meet those policy goals: determination and revision of child support obligations, making payments, and enforcement for cases of non-compliance.

6.71 International convention laid the consensus of moral and legal expectations for separated parents, emphasising parental financial responsibility to children, but also for states to ensure they

¹⁶⁰ Skinner, C., Bradshaw, J., & Davidson, J. (2008)..

¹⁶¹ Dolowitz, D. P. (2001). The British Child Support Agency: Did American Origins Bring Failure? *Environment and Planning C: Government and Policy*, 19(3), 373–389. <https://doi.org/10.1068/c11c>

¹⁶² Atkin, W. R. (1994). Child Support in New Zealand Runs into Strife. *Hous. L. Rev.*, 31, 631.

continue to fulfil their parental responsibilities. Article 27(4) of the United Nations Convention on the Rights of the Child (UNCRC) stipulates that the State Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for that child. OFRO also extends its service to spousal maintenance, given that payers often pay both child and spousal support at the same time yet maintenance entitlements of minor children will get a higher priority¹⁶³. For example, in cases where the payer's financial resources are insufficient to pay both child and spousal support at the same time, they are required to fulfil child support first.

- 6.72 Parents in the UK and New Zealand could make a “Family-Based Agreement” and “Private Agreement” respectively for child support if both parents agree. They could make private agreements on the amount and frequency of child support payments. Organising payments and resolving issues stay between themselves. The agreement does not necessarily need to be filed to the court or other authority, unless, the parents in New Zealand, who wish to register the agreement with the NZIR named “Voluntary Agreement”. In Ontario, when a person is ordered by courts or registers the domestic contracts to pay child or spousal support payments, the support order is automatically filed with the OFRO for free unless parties mutually withdraw from the Office and arrange the payment themselves.
- 6.73 There are two mechanisms for the formal determination of child maintenance obligations. In New Zealand and the UK, agencies decide and revise child support obligations. Parents in the UK must first contact Child Maintenance Options (CMO) before going to the CMS, and a mandatory conversation provides an opportunity for parents to discuss the different types of maintenance arrangements available. Another mechanism is determining child maintenance obligations through the Courts, which is the only way to obtain a formal assessment for child support in Canada. Even though the court has discretionary practices on child support, judges use formulae and guidelines in their determinations. If the child receiving carer in New Zealand receives a sole parent rate of benefit or Unsupported Child's Benefit, it must apply for formula assessment through NZIR. Part of the recovered maintenance will be given to the NZIR to cover the cost of sole parent benefit or unsupported child's benefit paid to the receiving carer.
- 6.74 There are two channels – private transfers and mediate transfers - to make payments from payers to payees through the agencies' administration. For example, CMS users could opt for "Direct Pay" as a private transfer, where the CMS calculates the amount of maintenance to be paid, and parents then arrange the payment between themselves. For mediate transfers, users must make payments through the OFRO either by support deduction notice for employed payers or pre-

¹⁶³ <https://www.justice.gc.ca/eng/fl-df/fact3-fiches3.html>

authorized support payments, bank transferal or cheque/money order. Otherwise, OFRO will charge an extra administrative fee every time for record adjustment.

6.75 Another example of mediate transfers is CMS “Collect and Pay” which mediates collection and forwarding service where the CMS collects and manages the payment between the parents. If the paying parent refuses to respond to the agency, has missed previous payments (and there is evidence of this), and/or agrees to use Collect and Pay, i.e. a paying parent’s behaviour is used to determine whether they are likely or unlikely to pay, the collection charge will then apply to both paying and receiving parents. Either parent can choose Direct Pay unless there is evidence that the payer is unlikely to pay. However, liable parents in New Zealand using “voluntary agreement” and “formula assessment” must use NZIR to settle payments if they earn salary and wages.

6.76 If non-compliance is detected or prompted by the payee, agencies would contact the payer for maintenance recovery. All studied agencies attach the payer's earnings as the routine recovery measure when the payer has employment income. If the non-payment situation persists, the agencies will take further actions to recover the arrear. Agencies have powers held and actions possible to deal with non-compliance, and some practices may be intrusive, e.g., seizing and selling assets, suspending driving licenses (except NZIR), imprisonment, etc. Comparisons among the western maintenance policies as outlined in Appendix F.

Finance (individual costs, government expenditure)

6.77 Costs of maintenance include costs to agencies, costs to individuals, costs to courts and any help available with those costs. Court costs were particularly salient for the non-agency jurisdictions and where parents chose to use the courts rather than the agency. Generally, governments funded schemes (e.g. Legal Aid) mitigate these costs on a means-tested basis. Yet, there is not much available data on the costs, especially the charge-out rate of lawyers varies by lawyer and location. A study in 2007 estimated the administrative cost per unit transferred in New Zealand and the UK was 21% and 68% respectively. OFRO spent an administrative cost of £93-96 per case¹⁶⁴.

Table 6.8 Cost to individual among western maintenance policies

| | United Kingdom | Ontario (Canada) | New Zealand |
|-----------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|
| Cost to individuals when using an agency’s mediate | Paying parents who use Collect & Pay service must pay a collection fee each time we collect payment from them. Receiving parents who use Collect & Pay are also charged | No direct cost to either liable parents or receiving carers unless reopening a closed case or record adjustment. | No direct cost to either liable parents or receiving carers. |

¹⁶⁴ Skinner, C., Bradshaw, J., & Davidson, J. (2008).

| | | | |
|------------------------|---------------------------------------------|--|--|
| payment service | a fee each time we pass payment on to them. | | |
|------------------------|---------------------------------------------|--|--|

6.78 In 2015/16 the admin cost of CMS was £114Mil, on the other hand, £8.5Mil was collected from service charges. Based on past report data, 473,100 children were covered by CMS in 2015/16; therefore, the cost per child per year in 2015/16 was £223. Based on the UK CMS's most recent report, during the quarter ending December 2021¹⁶⁵, 803,000 children are covered by the CMS, of which 282,300 are on Collect and Pay and 510,100 are on Direct Pay. During this period, 158,400 Paying Parents due to pay via the Collect & Pay service:

- 51,300 (32%) paid no maintenance
- 107,100 (68%) paid some maintenance, of which:
 - 36,500 (23%) paid up to 90% of the maintenance due for the quarter
 - 70,600 (45%) paid over 90% of the maintenance due for the quarter
- £782.3 mil (92.8%) out of £842.7 mil due maintenance was paid in 2021

6.79 Only 51,300 (6.38%) out of the total 803,000 covered children were not able to receive any maintenance. The system is able to ensure the maintenance of more than 93% of covered children, of which ~89% received 100% of their due maintenance. Under a means-tested social security safety net, the cost of ~£223 per child is able to bring about relief to the public social security system, safeguard children's rights and welfare. If seen as a social investment, the invested administration cost brings about 5-10 times the value. Assurance of maintenance will alleviate single-parent poverty and therefore prevent social, economic and governance problems arising from poverty.

6.80 The way in which the government uses money collected from payers may impact the net gain of payees and the policy goal of child poverty reduction. The UK and Ontario share the principle of treating child maintenance as a complement to social benefit, i.e., after child maintenance payments are approved, this always increases the total income of beneficiaries as it adds to existing social benefits received. On the contrary, the state mostly retains child support in New Zealand to offset the cost of social benefits, and such support is not given if the recipients receive social benefits. A study reveals that, assuming full compliance with maintenance payment, child

¹⁶⁵ Department for Work & Pensions. (2022). Child Maintenance Service statistics: data to December 2021 (experimental). March 2022. Retrieved on 26 May 2022, from: <https://www.gov.uk/government/statistics/child-maintenance-service-statistics-data-to-december-2021-experimental/child-maintenance-service-statistics-data-to-december-2021-experimental>

support has no additional poverty reduction effects for low-income families in New Zealand but has full poverty reduction effects in the UK.

The impact of fees and charges imposed by the CMS

- 6.81 The UK government recognised that continued cooperation and communication between parents contribute better co-parenting and positive outcomes for child development. To reinforce parental responsibility, the government realised the importance of providing ways for those who are able and prefer to set up their own family-based arrangements. Thus, the CMS imposed application fees and ongoing collection fees to encourage parents to collaborate and use Family-based Arrangement (FBA), where parties can agree on a private child maintenance arrangement by themselves without turning to the CMS.
- 6.82 Suppose the CMO does not indicate a great need to use CMS services. In that case, the application fee provides an “extra nudge” as a reflection point for involved parties to consider the different maintenance options available to them rather than assuming that their only recourse is to the CMS. The application fee is £20, which 72% of surveyed parents in the 2017 report found very or relatively easy to afford. Some parents, particularly those with low income, could see the application fee as challenging to afford, but there was no evidence that this prevented them from making the application.
- 6.83 Unlike the application fee, there are no exemptions from the collection charge for Collect and Pay to provide an ongoing incentive for both parents to move their case into the Direct Pay arrangement. This measure is one factor that encourages parents to collaborate, as the study found that it partly influenced 47% of the surveyed payees to not use the collection service. Still, other factors such as the relationship with payers affected payees’ decisions. Interestingly, when the payment is on time, one-third of payees used Direct Pay to avoid paying charges, but only 10% of them did not switch to Collect and Pay because of charges when the Direct Pay payment did not work. It is also expected that ongoing charges strongly influenced payers’ decision to use Direct Pay, which means the collection fee could motivate the payers to work with payees to settle child maintenance.
- 6.84 There were some unintended consequences noted in this charging policy. For those who choose Direct Pay, the burden of ensuring the payment lies with the payee. Some parents adhere to an ineffective Direct Pay arrangement rather than moving to Collect and Pay, so CMS could not follow up with the arrear effectively. This is because the CMS does not track payments on the Direct Pay system. Yet, it is still unclear whether the ongoing collection fees contribute to this behaviour. If this is the case, this measure does not align with the aim to improve child maintenance compliance set by the CMS. The CMS may introduce monitoring of Direct Pay compliance by quarterly follow-up calls or messages and enhance the clarity of the thresholds

for enforcement to increase awareness and usage of the Collect and Pay function. In addition, collection fees were insufficient to deter parents from not paying in full and on time.

6.85 Concerns from DV victims who are very unlikely to pay privately may consider the charges as a “double penalty” for payees. For some parents who have difficulties contacting their ex-spouses due to the DV experience, the CMS can help them get money from the payers. The ongoing charges are inevitable, though a victim of domestic violence or abuse is exempt from the Child Maintenance Service application fee. The CMS advises that victims using the Direct Pay service may arrange child maintenance without the other parent knowing their new identity or bank account details, such as through using pre-payment master cards and non-geographic bank accounts. Given the safeguards built into the system, such as the CMS who acts as an intermediary body that facilitates the exchange of bank details, victims can set up an arrangement without contacting the other parents. If the collecting fees are exempted from the DV victims, it may remove the incentive that encourages payees to arrange payment with the supports mentioned above provided by the CMS.

Evaluation

Performance

6.86 In terms of caseload, the CMS processed the highest number of cases. At the end of March 2019, CMS was managing arrangements for 689,100 children¹⁶⁶. This may be due to the UK’s large population size and amount of divorce cases as compared with Ontario and New Zealand, even though the number of divorce cases has been decreasing in all three jurisdictions.

6.87 NZIR and CMS recorded an increase in the compliance rate. According to the NZIR’s 2017-18 Annual Report, it collected NZ\$473 million from more than 164,000 parents who pay child support, and child support debt decreased by 17% from the year 2016-17. The number of child support clients in arrears also decreased by 7.5% and the percentage of on-time payments was about 70%, showing a steady increase since 2014 (66.2%)¹⁶⁷. In the quarter ending in March 2019, 67% of parents using the Collect and Pay service in CMS paid maintenance, up from 60% in 2018. £238.3 million worth of child maintenance was due to be paid, marking an 18% increase from the same period in 2018¹⁶⁸.

¹⁶⁶ Department for Work and Pensions. (2019). *Child Maintenance Service Statistics: Data for August 2013 to March 2019*. 1.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/811638/child-maintenance-service-statistics-aug-2013-mar-2019.pdf

¹⁶⁷ Inland Revenue. (2018). *Annual Report 2018*. <https://www.classic.ird.govt.nz/resources/0/7/0774560a-7b44-4c03-8a76-cebe59f042c3/annual-report-2018.pdf>

¹⁶⁸ Department for Work and Pensions, 3 & 7.

- 6.88 The OFRO had collected about CAD\$650 million in support payments and receiving approximately CAD\$13 for every CAD\$1 invested in the year 2018-19¹⁶⁹. Although the compliance rate data is unavailable, the amount of support collected indicates a relatively high compliance rate of parents paying part of or the full amount of maintenance on time.
- 6.89 Ontario and the UK provide equal treatment for similar cases, as cases with similar circumstances usually receive relatively unified treatment in obligation determination. This seems to be related to their use of child maintenance formulae and guidelines, compared to using the latest tax return by NZIR though this may be more responsive to individual circumstances. Using a formula to calculate child maintenance by CMS may also increase calculation transparency (not equal to the transparency of case management). Meanwhile, apart from the formula, judges could take different factors into consideration while determining child obligations through courts in Ontario to make payees feel that the amount of maintenance is adequate.
- 6.90 NZIR facilitates prompt and possibly more accurate assessments based on parents' latest circumstances. A study in 2007 reveals that 75% of the assessments were made within two weeks and 95% within six weeks from application. Almost all assessments were correct when made based on the information received, which provides a fairly quick determination of obligations once the assessment has begun¹⁷⁰.
- 6.91 In terms of administrative effectiveness and efficiency, NZIR performed better than OFRO and CSA in the 2000s. Even though the estimated total (direct and indirect) cost of child support activities in 2018-19 was \$86.8 million that representing about 18% of the total maintenance payments collected in the year, the system is very streamlined because many decisions are taken automatically. Hence, NZIR could do an assessment promptly if changes in circumstances are detected, and the proportion of assessments collected is high by international standards, indicating efficiency in operation.
- 6.92 The 2007 Report also found that OFRO and CSA did not work effectively and efficiently since many payments were in arrears and seemed to not improve over time. CSA was struggling to manage its caseload due to a series of interrelated problems and poor case management, such as poor execution of enforcement procedures (will be further discussed below). Enforcement has been identified as a key issue to restore faith in the system to ensure effective compliance should there be a breakdown in arrangements. However, payers are reluctant to pay and even recovery strategies for non-payment have not been that successful.
- 6.93 To improve the child support system, the UK government established the CMEC, a statutory non-departmental public body, to take on the work of the CSA. Several amendments to the Child Maintenance and Other Payments Act 200 allowed more flexibility for parents to make family-

¹⁶⁹ Treasury Board Secretariat. (2019). *Public accounts of Ontario: Annual report and consolidated financial statements 2018–2019*.

¹⁷⁰ Skinner, C., Bradshaw, J., & Davidson, J. (2008).

based arrangements with the support of a new CMO to provide information and support to help parents reach a decision. The Act introduced new enforcement powers to endorse the CMEC to restrict the passport or driving licence of irresponsible payers without involving the courts. These efforts echoed recommendations made in the 2006 Henshaw report^{171,172}.

- 6.94 Efforts made by CMEC improved the performance of the child maintenance system of the UK. Compared to CSA's performance in 2007, there was more than a 20% increase in children beneficiaries in 2010. The compliance rate surged to reach nearly 80%, compared with 66% three years ago. Although several enforcement powers in the 2008 Act were infrequently used, these powers act as deterrents as these are considered severe consequences, but still remain proportionate to the amount owed and the amount of resources used. CMEC would use enforcement measures like curfew and imprisonment in very few cases¹⁷³.
- 6.95 Useful measures such as deduction orders from bank accounts are helpful if the agency can access a database that holds updated data, illustrating that comprehensive support to enforcement powers could be pivotal in making inroads towards a more effective and efficient maintenance service. ¹⁷⁴As long as the enforcement is proportionately commenced with sufficient information, enforcement could become one key element for the maintenance system and could be an integral part of poverty alleviation and maintaining child rights.

Limitations

- 6.96 **Ambiguity in the use of enforcement measures.** Maintenance payees may rely on agencies to enforce payments. However, agencies were sometimes hesitant to use their authority for enforcement. The Work and Pensions Committee reveals that CMS did not set clear criteria, time or value thresholds for enforcement measures. The enforcement mechanism might not be triggered immediately after the first missed payment, so payers could still get away without contributing to their children's well-being. The agencies did not clearly state which cases they

¹⁷¹ Henshaw report; i.e. a system that allows parents to make their arrangements; removing compulsion for parents on benefits to use the CSA and for those who do; disregarding child maintenance from benefits calculations; and a new organisation to administer child maintenance, that delivers information and support have stricter enforcement measures and is given the power to charge for its services
¹⁷²Two Hundred. (n.d.). Child maintenance explained. Retrieved from https://www.birkettlong.co.uk/site/library/privateclient/child_maintenance_explained.html

¹⁷³ House of Commons. (2007). Child Maintenance and Other Payments Bill. Retrieved from <https://publications.parliament.uk/pa/cm200607/cmpublic/cmpbchildmain.htm>

¹⁷⁴ The Work and Pensions Committee. (2011). *The Government's proposed child maintenance reforms: Fifth Report of Session 2010-12* (volume II). Retrieved from The Stationery Office Limited website: <https://publications.parliament.uk/pa/cm201012/cmselect/cmworpen/1047/1047ii.pdf>

intended to take up. Such ambiguity suggests failures in dealing with underpayments, which undermines trust in the systems¹⁷⁵.

- 6.97 Many stakeholders said that agencies needed to use their powers more frequently. Conversely, some payers believed that enforcement actions should be used sparingly, otherwise, it may push them into a desperate situation that may make the arrear more unbearable. For example, a commercial driver in Ontario lost his job and thus the arrear accumulated. The OFRO suspended his license so that he could not earn money to recover the arrear. He attempted to reinstate the license by a Member of the Provincial Parliament and the Ombudsman on his behalf, but it failed and he became despondent. Eventually, he committed suicide in 2010¹⁷⁶. This tragedy demonstrated the importance to justify what enforcement action(s) need to be made for each case, and documentation is needed to specify enforcement steps to avoid taking overly aggressive or even unreasonable actions.
- 6.98 According to the Ontario Ombudsman's Report of 2019-20, it seems unabated a decade later that the OFRO received 832 complaints. Although related complaints only consisted of 3.15% of the total received cases, the complaints made it one of the top five offices that received the most complaints. The main types of complaints about the OFRO include disagreements on interpretations of court orders as well as enforcement of support arrangements and inter-jurisdictional orders. Complaint cases also reflected miscommunication between government offices and between OFRO and the paying and receiving parties. Many new complaints were due to OFRO's cancellation of dedicated caseworkers just before the time of the report, resulting in 45 minutes or more of hold time over the phone for service users. Analysis of case summaries presented in the ombudsman's report reflects that complaints were due to case monitoring performance, resulting in failure to reflect the most recent changes in court rulings and updating information submitted by service users. In most cases, however, mistakes were rectified within the same day. The take-home messages are as follows: a) active case monitoring is important; and b) an effective appeal mechanism and complaint channel can rectify performance issues of the OFRO. The ombudsman's report did not present any systematic issues. The OFRO's enforcement – from support payers who feel that enforcements were too harsh or wrong, and from support recipients who feel that enforcements were inadequate, as there were cases in which users were experiencing financial hardship but failed to receive support payments despite the establishment of the OFRO.
- 6.99 Complaints over OFRO's enforcement performance did not hinder its overall effectiveness helps in enforcing payment. OFRO handles uncooperative individuals effectively, for instance, there

¹⁷⁵ House of Commons Work and Pensions Committee. (2017). (rep.). Child Maintenance Service Fourteenth Report of Session 2016–17. House of Commons. Retrieved from https://www.familylaw.co.uk/docs/pdf-files/Work_and_Pensions_Committee_Child_Maintenance_Service_inquiry.pdf

¹⁷⁶ Alexander, R. (2020, September 30). *Wife Plans to Sue Ontario Family Responsibility Office for Husband's Suicide*. FamilyLLB. <https://familyllb.com/2011/05/01/wife-plans-to-sue-ontario-family-responsibility-office-for-husbands-suicide/>.

was a paying parent who claimed to be in poverty and played games with his support obligations, owing CAD\$200,000 in arrears. Final measures of incarcerating that parent forced him to produce the required amount of CAD\$50,000 within a day in order to be released. OFRO not only prioritises the effectiveness of enforcing payments but also works towards executing enforcement actions that give paying parents sufficient notice and choice. Should the OFRO suspend one's driver's license, the First Notice of Driver's Licence Suspension is sent to paying parents 30 days before the suspension. Paying parents are also given the choice to respond in three ways, including a) immediately paying; b) work on a payment agreement; and c) asking the court for a refraining order¹⁷⁷.

6.100 Inadequacies in management. Recorded in the 2010 Audit Report, the ineffectiveness of the OFRO was the result of poor administration and case management. There was a lack of oversight at the managerial level in assessing the quality and effort of enforcement staff in collecting outstanding amounts, and without assigning staff to proactively oversee each case, different front-line workers proceeded to work on the same case over time. These shortcomings hindered its effectiveness in recovering payment, led to long waiting times, and made it difficult for parties to contact enforcement staff. In response to these issues, the OFRO implemented key performance indicators (KPIs) to evaluate overall programme performance¹⁷⁸.

6.101 Gaps in the safety net. The CMS may charge users to encourage separated parents to come up with voluntary agreements when possible and, when such agreements cannot be made, provide a safety net. The CMS charges both the payer and the payee in case registration and enforcement except for domestic abuse survivors and applicants under 19, which may help maintain its sustainability. The "user-pay" principle also encourages users to adopt private payments to lower the CMS's workload of payment transactions. CMS, for instance, offers a "Direct Pay" option to attract users to arrange transactions among themselves and contact CMS for enforcement if payments are overdue. Otherwise, CMS charges an extra 20% from the amount paid by the payer and 4% from the payment by the payee in the "Collect and Pay" service charge¹⁷⁹.

6.102 It is noteworthy that charges may increase receiving parents' concerns about receiving a reduced amount of maintenance. While amicable separations are typically self-managed, those struggling to access support for children would likely turn to the state for help. However, some parents may not be able to afford the application, service fee and enforcement fee. These fees discourage parents in the most vulnerable groups to give up on pursuing maintenance. The Work and

¹⁷⁷ Steps to Justice. (2020, September 2). *Avoid a default hearing or driver's licence suspension*. Steps to Justice. Retrieved December 29, 2021, from <https://stepstojustice.ca/steps/family-law/avoid-default-hearing-or-driver%E2%80%99s-licence-suspension/>

¹⁷⁸ Canadian Children's Rights Council. (2010). (rep.). *Family Responsibility Office Ontario Auditor General Report 2010*. Retrieved from: https://canadiancrc.com/Family_Responsibility_Office_Ontario_child_support/Family_Responsibility_Office_Ontario-Auditor_General_Annual_Report_2010-303en10.aspx

¹⁷⁹ Child Maintenance Service. (2019). *About the Child Maintenance Service: A guide for paying parents and receiving parents*. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800650/about-the-child-maintenance-service.pdf

Pensions Committee found it “difficult to justify charging an upfront CMS application fee to Parents with Care to transition legacy cases with a prolonged history of non-payment, especially as such cases appear to be a low priority for enforcement. These parents and their children, have been failed by their ex-partners and the system”, and “Charges for using Collect and Pay are discouraging some parents who require the service”. This report concludes with, “It is far from evident that the charges and criteria used for determining whether Collect and Pay can be used are acting in the best interests of children”¹⁸⁰. Yet, it is still unclear whether collection fees influence some parents to stay in an ineffective Direct Pay arrangement rather than moving to Collect and Pay, as stated in another report¹⁸¹.

6.103 **Agency’s use of authority is prone to challenge.** A New Zealand Ombudsman report in 2004 reviewed the NZIR’s policy and procedures on balancing the rights of paying parents and custodial parents based on a complaint case. The Ombudsman challenged NZIR’s decision to allow a paying parent to repay a sum of outstanding maintenance by instalment without scrutinizing the paying parent’s financial condition. The NZIR has agreed to the NZ Ombudsman’s suggestion to review their policy so that custodial parents’ rights to receive support in the timeliest manner becomes the agency’s priority¹⁸². In another case, a mother applied to NZIR for a higher amount of child support to take care of her disabled child. NZIR rejected her plea and was criticised because the child support officer did not challenge or scrutinise the paying father’s defence of being financially incapable. The incident exposes the lack of transparency and exposes staff may overlook liable parents’ lack of full disclosure and evidence of their financial situations. Even after the *Child Support Amendment Act 2013* was introduced, the policy still favours the paying parents. It still caused fewer liabilities to be attached to paying parents. The policy still biased towards the paying parents after the policy amendment. It is noted that when the enforcement agency is given the power to accept appeals and adjust payment amounts, the decision-making process can be prone to criticism.

Factors facilitating the effectiveness of maintenance policies

6.104 High policy legitimacy:

- a) **Good stakeholder engagement.** Inter-disciplinary engagement is inevitable for these overseas models, because maintenance usually involves different departments. New Zealand’s working group for maintenance model development involves the Ministry of

¹⁸⁰ Same as 155.

¹⁸¹ Secretary of State for Work and Pensions. (2017). Child Maintenance Reforms: 30 Month Review of charging (Cm9481). Department for Work and Pensions. From https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/635556/child-maintenance-reforms-30-month-review-of-charging-web-version.pdf

¹⁸² Ombudsman Anand Satyanand. (2004). Inland Revenue’s policy and procedures deficient in case of child support repayments. *Case number: A10328*. Retrieved 16 May 2022 from: <https://www.ombudsman.parliament.nz/resources/inland-revenues-policy-and-procedures-deficient-case-child-support-repayments>

Justice, Inland Revenue, Department of Social Welfare, the Treasury and even the Ministry of Maori Affairs. Even though maintenance policy is usually formulated with a top-down approach, it was crucial for stakeholders to be invited during the policymaking process and evaluation. For instance, the OFRO often meets members from professional organisations such as the Family Law Association and the Ontario section of the Canadian Bar Association. That is to ensure policies received enough support inside and outside the government, concerns are recognised and policy's legitimacy can be established; and

- b) **Statutory power.** All three jurisdictions grant statutory power to maintenance agencies through legislation, allowing authorities to use more coercive and varied measures if maintenance is not paid. OFRO is a good example to illustrate the importance of multiple enforcement, with an “enforcement tree” providing a series of enforcement steps that gradually progress from lenient to more deterrent measures¹⁸³. The power of assessing users' economic and social status is even granted to CMS and NZIR for deciding whom to pay for child support. Legitimising statutory power raises the feasibility of maintenance management through state intervention.

6.105 Systematic policy development:

- a) **Clear objectives.** Objectives of the policy are seen as the guiding principles in developing policy, and allow the public to understand the function of the organisation and the expected outcome. All three models have developed precise objectives that define the boundaries of policy for tackling specific problems, refine policy delivery and change the administrative model in child maintenance payment.
- b) **Evidence-based.** Evidence gathered from research helps policy formulation to achieve good policy objectives. Before OFRO was launched, the Federal-Provincial-Territorial Family Law Committee (FPT Committee) studied how to address widespread dissatisfaction with child support assessment in 1990¹⁸⁴. On behalf of the FPT Committee, the Canadian Department of Justice conducted a four-year research programme to gather sufficient evidence to support the validity of the assessment formula. The Federal Government also studied the Commonwealth and United States' child support policies, and it set unified objectives in MEPs across provinces and territories in Canada¹⁸⁵;

¹⁸³ McCarter, J. (2010). *2010 Annual Report of the Office of the Auditor General of Ontario*. Office of the Auditor General of Ontario.

https://www.auditor.on.ca/en/content/annualreports/arreports/en10/2010ar_en.pdf

¹⁸⁴ Department of Justice. (2015). *Children come first: A Report to Parliament reviewing the provisions and operation of the Federal Child Support Guidelines - Volume 2*. <https://www.justice.gc.ca/eng/rp-pr/fl-lf/child-enfant/rp/v2/toc-tdm.html>

¹⁸⁵ Department of Justice. (2002). *Expedited child support: An Overview of the Commonwealth countries' and United States' procedures for establishing and modifying child support*. <https://www.justice.gc.ca/eng/rp-pr/fl-lf/child-enfant/ecs-tapae/p1c.html>

- c) **Timely enforcement.** The effectiveness of enforcement measures depends on their timely intervention. NZIR provides timely assistance when the users are first assessed and follows up with a reminder text message for their first instalment. If a parent falls into debt, early intervention is prioritised through timely contact with the parent in the first few days after payment was overdue. This helps ensure that the maintenance is paid regularly and prevents the accumulation of debt; and
- d) **Available supporting services.** CMO is a British information and support service to identify needs and makes follow-up telephone calls to separating or separated parents. It aims to help users to make an informed choice about child maintenance. Apart from CMO, Children and Family Court Advisory and Support Service (Cafcass) supports families and children, and represents children in Family Court cases in England, ensuring that children’s voices are heard in family court settings and that decisions are made based on their best interests¹⁸⁶. The Family Court Advisors in Cafcass are involved in three areas: divorce and separation, when there are disagreements on the children’s arrangements; care proceedings, when social services have concerns about the children’s safety and welfare; and adoption. Supporting services help smoothen the maintenance and related arrangements.

6.106 Quality policy management:

- a) **Active collaboration.** Intra- and inter-departmental or even cross-border collaboration is crucial for effective services. Since the maintenance agency needs to administer maintenance with legal actions, court clerks who specialised in alimony cases have been placed in the OFRO to facilitate the exchange of documents between courts and the Office. Courts have real-time access to OFRO’s database to check current financial information to expedite court decision-making on maintenance arrears¹⁸⁷. Furthermore, NZIR often works with the court and other government departments for enforcement. It may check with the New Zealand Customs Service to access real-time border information and apply to the Family Court for a warrant to arrest debtors about to leave the country. Reciprocal arrangement with Australia, facilitates timely payments even though payers may be living in different countries or jurisdictions¹⁸⁸.

Highlight 6.6: Factors facilitating the effectiveness of maintenance policies are: a) policy legitimacy - good stakeholder engagement, statutory power; b) policy development – clear objectives, evidence-based, timely enforcement, available supporting services; c) policy management – “user-pay” policy and active collaboration.

¹⁸⁶ Cafcass. (2017). *About Cafcass*. Cafcass - Children and Family Court Advisory and Support Service. <https://www.cafcass.gov.uk/about-cafcass/>

¹⁸⁷ McCarter, J. (2012). *2012 Annual Report of the Office of the Auditor General of Ontario*. Office of the Auditor General of Ontario. https://www.auditor.on.ca/en/content/annualreports/arreports/en12/2012ar_en.pdf

¹⁸⁸ Inland Revenue, 54.

Factors hindering the effectiveness of maintenance policies

6.107 The maladministration of CSA provides good insights into why maintenance policies fail. The Team identified multiple factors that contributed to CSA's failure; it aims to raise awareness and avoid the same mistake when developing maintenance policy.

6.108 Low policy legitimacy:

- a) **Poor public confidence.** The establishment of a maintenance agency stirred much controversy in the UK. Even though the public has expressed doubts, the government failed to address those concerns and did not allow thorough discussion before its implementation¹⁸⁹. For instance, despite critics argue the child support scheme focus on the recovery of money for the Treasury instead of the welfare of children, the government did not address such concerns. The UK government also overlooked the social security offices' experience in collecting payments and information from the poor. Although there was good stakeholder engagement shown within the government, the failure to address concerns dented the public's expectations for the policy; and
- b) **Compulsory use of service.** When CSA started to operate, maintenance was still perceived as a private matter for the UK public, hence CSA was seen as intervening into family affairs¹⁹⁰. Some may feel uncomfortable or dissatisfied with the compulsory CSA requirement, because some parents are already compliant with the maintenance arrangement independently. Consequently, the maintenance agency should allow people in non-high-conflict cases to opt-out. Users can resort to enforcement action when the payment is overdue.

6.109 Weak policy implementation:

- a) **Poor enforcement.** Enforcement powers were not put to full use in recovering maintenance debt, reducing the effectiveness of CSA. CSA spent £12 million a year on unpaid debts in 2005, however, only £8 million was recovered from paying parents¹⁹¹. Passive procedures led to a delay in processing maintenance assessments. No adequate information to payees on the progress of their cases also contributed to parents' frustration throughout the process.

6.110 Poor policy management

- a) **Unrealistic target setting.** Ministers and core policymakers of the UK Government developed service targets and KPIs, which were not controlled of the CSA's managers to avoid bias. However, those targets and KPIs were unrealistically high and rigid without

¹⁸⁹ NACSA. (n.d.). *History of the CSA*. <https://www.nacsa.co.uk/history-of-the-csa>

¹⁹⁰ Skinner, 234.

¹⁹¹ BBC. (2006). *The troubled history of the CSA*. https://news.bbc.co.uk/2/hi/uk_news/politics/4020399.stm

considering the operation and parents' liability¹⁹². Those targets may have been set only to appease the public expectation of the policy, nevertheless, it runs against the original intention of the evaluation and frustrated both CSA's staff and the public;

- b) **Poor capacity of staff.** CSA staff lacked experience with child maintenance issues, and even the head of the CSA had no experience working in public service¹⁹³. The CSA was also unable to cover its operational cost of £200 million by 2005. Such poor self-sufficiency failed the goal of curbing the growth of public expenditure on single parents. Its inconsistent enforcement caused complaints and damaged the creditability of the agency. For instance, some payers who missed payments received no sanction at all, while some were imprisoned for debt. The unfair treatment hampered faith in CSA as the bureaucratic arm of child support policy¹⁹⁴;
- c) **Poor staff morale.** According to the April 2005 government report, staff morale in CSA was very low reportedly, with the "vast majority" of administrative staff depressed and wanting to leave. Staff illness in CSA was reportedly the highest amongst the Department of Work and Pensions. Most CSA staff were "overwhelmingly negative" about the new computer system and dissatisfied with the level of training received¹⁹⁵. Some staff even avoided talking with their clients over the phone, showing that they were reluctant to work with users proactively. This has since affected the user experience and effectiveness of CSA; and
- d) **Insufficient IT support.** Despite a massive £456 million investment in new IT systems in the 2000s, the CSA was plagued by computer problems. It used a huge amount of money for constructing the IT system, but only half of the single parents received maintenance. A backlog of over 30,000 cases developed each month since then, in addition to an estimated 170,000 pending cases at the same time. Although a simpler calculation system for new cases was introduced in 2003, it did not apply to older cases because of the incompatibility of the two computer systems. It further limited the effectiveness of the IT system and increased the staff's workload, and affected the timeliness of the process of enforcement.

Highlight 6.7: Factors hindering the effectiveness of maintenance policies are: a) policy legitimacy – poor public confidence, compulsory use of service; b) policy implementation – poor enforcement; c) policy management – unrealistic target setting, poor capability of staff, poor staff morale and insufficient IT support.

¹⁹² Harlow, C. (1999) 'Accountancy, New Public management and the Problems of the Child Support Agency,' *Journal of Law and Society* Vol. 26 (2) pp. 150-74.

¹⁹³ Bates, G., Hutchinson, D., Robertson, T., Wadsworth, A., & Watson, R. (2002). *Identifying the cause of the Child Support Agency's problems*. Child Support Analysis. https://www.childsupportanalysis.co.uk/guest_contributions/newcastle_paper/history.htm

¹⁹⁴ Dugan, E. (2011). *More fathers jailed over child support*. The Independent. <https://www.independent.co.uk/news/uk/crime/more-fathers-jailed-over-child-support-2265787.html>

¹⁹⁵ BBC.

Asian Maintenance Systems

6.111 “*The East Asian Experience is distinctive, differing decisively from the Euro-American models current in social policy discourse*”¹⁹⁶. Apart from the experiences from Western jurisdictions, studying the maintenance policies of the Four Asian Tigers (as known as the Four Asian Dragons or Four Little Dragons), namely Korea, Taiwan, Singapore and Hong Kong can provide good insights. During the early 1960s to 1990s, they underwent rapid industrialisation and maintained exceptionally high growth rates of gross domestic product among the Asian regions. While each had unique features in industrialisation, investment, quality education, and neoliberal policies such as low tax rates and minimal welfare states, these features were all building blocks that contributed to their economic booms.

6.112 As the territories of the four tigers in Asia are relatively small and densely populated, their economic take-offs possess many common characteristics, such as full participation in the international division of labour and exercising export-oriented economies. However, their economic development models are far from the same. Also, though Confucianism forms the basis for many cultural roots, its influence varies among these four modern societies, which remains strong in Korea.

6.113 Asian culture has traditionally relegated the issue of child support primarily to families and has not considered child support a matter of public policy. There has been neither a universal allowance for children nor a guaranteed child support system among the Four Asian Tigers. Also, raising children is traditionally perceived more as an investment, i.e., raising a child informally constitutes an agreement that the child will eventually support the parents. Although this perception has declined in recent decades, it implies that non-custodial parents tend to feel that they do not have to support their children if they do not live with them. Hence, most Asian jurisdictions do not have an explicit child support policy. Whether the topic of “should non-custodial parents support their children?” is a matter of government intervention or still remains a topic of debate.

6.114 Since the last decade, South Korea has begun to institutionalize child support policy via a set of legal changes to echo a shift in social value from male supremacy towards equal parental obligation and increased concern over child welfare, while the rest (Hong Kong, Taiwan, Singapore) continue using the court system as the primary child support regime. Due to the unique political and social conditions in each place, there is no surprise that their social developments are distinct from one another. Hong Kong, Taiwan, South Korea and Singapore

¹⁹⁶ Kwon, Huck-ji. (1998). Democracy and the politics of social welfare: A Comparative analysis of welfare systems in East Asia. In Roger Goodman, Gordan White and Huck-ju Kwon (eds). *The East Asian Welfare Model: Welfare Orientalism and the State*. London: Routledge, 27-24.

all share traditional Chinese cultural lineage, and show a progressive tendency towards child welfare and gender equality. Although they each have their own social developmental trajectories and unique legal and political systems, examining the development of their divorce and maintenance policies can be good reference for Hong Kong's situation. Taiwan, South Korea and Singapore's different models can be seen as possible solutions to the same problem or at different time points in a common progressive spectrum. In the following sections, the models from the Four Asian Tigers will be looked at separately, reflecting their unique experience in relation to Hong Kong's development.

South Korea

Issue identification

6.115 In the 2000s, the increase in single-mother households and their persistent economic vulnerability drew public attention towards South Korea's child support policy. Until 1990, the father gained custody of the child by legal default if divorcing couples did not reach a custody agreement. As a result, many custodial mothers gave up on obtaining child support in exchange for custody from the fathers, so single-mother households were more likely to live in poverty.

6.116 Public opinion seems to agree that non-custodial parents have a moral responsibility to take financial responsibility, or at least partial financial responsibility, for their children¹⁹⁷. Therefore, the child support reform in 2007 enacted the first law that explicitly made noncustodial parents liable for child support and dictated that divorce agreements should include child obligation settlement¹⁹⁸. This amendment attempted to create momentum in Korea's shift from a largely informal, discretionary mode to a court-based scheme in the child support system.

6.117 After the reform made it relatively easier to establish child support agreements, the ability to pursue child support began to matter less. Kim and Chung (2020) found no consistent evidence that the policy reform increased child support receipts among divorced single mothers, although there was a transient increase in the receipt rate among mothers who divorced after the reform. There is evidence that even after the reform, many couples agreed that no child support is needed, i.e., zero-amount of child support¹⁹⁹.

6.118 This was due to some custodial mothers who only wanted to end the divorce process, and believed that fathers would not pay even if there were agreements²⁰⁰. Many custodial parents did not have faith in the child support system and believed that noncustodial parents would be unable

¹⁹⁷ Kang, Y., Ko, K., Ganong, L., & Chapman, A. (2020). Perceived norms of child support payments: a comparative study of South Korea and the United States. *Journal of Family Studies*, 1-17.

¹⁹⁸ Civil Law Revision #8720; implemented in June 2008.

¹⁹⁹ Kim, Y., & Chung, Y. (2020). Child support receipt among divorced mothers in Korea: Changes after the 2007 policy reform. *Children and Youth Services Review*, 119, 105446.

²⁰⁰ Son, S. (2014). Korean Divorced Mothers' Experiences with Child Support from Noncustodial Fathers. *International Journal of Human Ecology*, 15(1), 38-50.

or unwilling to pay the enforceable child support orders. Also, much of the burden of finding the addresses and jobs of noncustodial fathers for enforcement fell on custodial parents. This burden was substantial for unwed mothers, who may have less access to information on the fathers' location and employment than divorced mothers, and there was no explicit consideration or extra help for unwed mothers. Some custodial parents thought it would be demeaning if they asked for child support from ex-spouses, albeit many custodial parents are poor. This reveals that the social norm of parental responsibility has yet to be upheld in society.

6.119 A study conducted by the Government of South Korea and commissioned by the Ministry of Gender Equality and Family in 2012 showed that 83% of 470,000 single-parent households in South Korea never received any child support from their non-custodial counterparts (obligors). Only 4.6% of payees (obligees) resorted to enforcement litigations, and approximately two-thirds of them were unable to recover the payment despite the granted court orders. Therefore, the development of explicit child support policies to enforce non-custodial parents' obligations to provide financial support for their children has been the government's response to mitigate the issue of limited public resources available for vulnerable, single-parent families.

Policy goals

6.120 In March 2015, the Child Support Agency (SKCSA) was established in South Korea as a public agency. It was given limited enforcement authority under the supervision of a government department without local branches. As South Korea's child support orders and subsequent enforcement actions are only determined in court, the primary role of the SKCSA is to represent custodial parents in court proceedings for child-support or custody-related disputes.

6.121 The goal of founding the SKCSA is to create a safe, nurturing environment for minors by increasing the compliance rate for child support and securing the expenses necessary for protecting and rearing minors under Article 4 of the *Civil Act*. To monitor child support claims and support for the enforcement, the SKCSA was founded under the Korean Institute for Healthy Family incorporated with the *Framework Act on Healthy Families* (Act No. 14059, Article 31), with the following principles:

- a) The State and local governments shall take necessary measures so as to ensure the substantiality of divorce conciliation such as the rendering, before a divorce, of advisory opinions to a couple intending to obtain the divorce;
- b) The State and local governments shall render services as necessary to the couple determining to divorce to assist the family in various matters including the bringing-up of children, the disposition of property, emotions, etc.; and

- c) The State and local governments shall strengthen the effectiveness of the payment of expenses for bringing-up children with respect to a divorced and expand the scope of the application of such payment.

6.122 SKCSA initially consisted of 57 officers, including 20 lawyers for legal support²⁰¹. A Deliberative Committee on Payment of Child Support was set up alongside the SKCSA, as prescribed by the Minister of Gender Equality and Family, to deliberate on and determine the areas of improvement for the systems such as sanctions against defaulters, guidelines on child support and cooperation with the relevant departments and public institutions.

Service design and conditions of access to the service

6.123 SKCSA services help payees to receive child support payments from the payers upon their request, or through compulsory payment orders after default cases are reported. The latter involves taking legal actions concerning child support payments, collecting credits, arranging sanctioning measures, etc., between the two parties. To receive the above services, parents can receive integrated support by submitting a one-time application at the Agency.

6.124 Following the *Act on Enforcing and Supporting Child Support Payment* (Article 7), the SKCSA performs the following functions:

- a) Consultation regarding child support of non-custodial parents and custodial parents;
- b) Legal support for claims for child support and enforcing the payment of child support;
- c) Emergency assistance for temporary child support;
- d) Support for the collection of claims for child support finally determined by agreement or court judgment, and transfer of child support to custodial parents;
- e) Sanctions against defaulters of the payments of child support;
- f) Research on systems for enforcing the effectiveness of the payment of child support and other related matters;
- g) Education and publicity regarding the payments of child support;
- h) Other affairs necessary for enforcing obligations for the payment of child support.
- i) In addition, SKCSA also operates under the prescription of the Presidential Decree.

6.125 The Agency provides a proactive consultation service as the first step to reach a mutual agreement in resolving child support. In case of disagreement, SKCSA takes legal actions to

²⁰¹ 권혜진.(2015). 한부모가정 양육비 확보 돕는 양육비이행관리원 출범. Retrieved from: <https://www.yna.co.kr/view/AKR20150323153600005>

enforce the unpaid support by assisting in debt collection and forcing the recovery of claims if necessary. If a child is at risk or at potential risk due to default of child support, SKCSA will temporarily provide emergency aid for child care. Even after legal proceedings where non-custodial parents pledge to perform their duties, SKCSA constantly monitors child support payments until the child becomes an adult. In the meantime, the Agency also provides services to support non-custodial parents in maintaining a close and healthy relationship with their children.

Target Users

6.126 SKCSA does not only serve the parents regardless of marital status but also the grandparents and other guardians, whose children are under 19. It may extend to cover adolescents under 22 if they are attending school, returning to school after military service, or serving military service. Furthermore, a means test was created to screen eligible custodial parents with an income level not higher than 125% of the standard median income of the country (however, support is also available for Single Parent Family Subsidy/National Basic Living Security recipients)²⁰².

Evaluation

6.127 In the following five years after the establishment of SKCSA, 146,000 online and offline counselling sessions were provided, and 20,000 applications were received for child support implementation services. Applicants were predominantly comprised of divorced single parents (94.4%) and the average age of the children of applicants was 12 years old²⁰³. The SKCSA also provided support for negotiations between non-custodial parents and their minors to enhance the parent-child relationship and compliance with child support. Although the total number of negotiations is still relatively low, it jumped by 1.36 times in yearly growth.

6.128 From 2015 to 2019, the number of child support cases managed by the SKCSA increased fourfold from 514 in 2015 to 1,993 in 2019, recording a rapid average annual growth of 147%. The amount of child support collected increased from KRW\$2.5 billion in 2015 to KRW\$26.2 billion in 2019 with an average annual growth of 204%, of which the cumulative amount has already reached KRW\$66.6 billion. A total of KRW\$670 million were used as emergency assistance funds to provide temporary child support for 660 minors from families who failed to receive child support²⁰⁴. The agency had to convince many non-custodial parents that they have the responsibility to provide support for their children to the best of their abilities.

²⁰² 양육비이행관리원.(n.d.) 양육비 이행확보 지원신청. Retrieved from:

https://www.childsupport.or.kr/lay1/program/S1T23C24/part/part_01_01.do

²⁰³ 여성가족부.(2020) 대한민국 정책브리핑지난 5년간 양육비 이행건수 4 배, 이행금액 10 배 늘어. Retrieved from:

https://www.korea.kr/news/pressReleaseView.do?newsId=156381480&call_from=naver_news

²⁰⁴ 여성가족부.(2020).

6.129 Payers' willingness and payees' ability to pursue child support are crucial factors for high compliance with child support obligations. If payers are capable and perceive that the needs and amount of child support are legit, they tend to comply with the child support obligation. Besides, if payees have high education level and no physical constraints, it enhances their ability to pursue child support. However, noncustodial fathers with higher education pay less for child support. A possible explanation may be that highly educated men are more likely to remarry, reducing child support payments. Also, highly educated fathers may have more power and knowledge of the system, resulting in better abilities to evade support payments²⁰⁵.

6.130 Korean fathers' willingness to pay child support is more dependent upon their perceived relationship with the custodial mother, which tends to weaken over time after the marriage/relationship has ended, and the age of the youngest child is assumed to measure this passage of time to some degree. Also, the earnings of payees are negatively associated with the child support receipt, as having low incomes may indicate that their children have higher economic needs, thus motivating payers to pay support. More children also reflect the needs of the family and motivate payers to pay child support. Living with an adult relative may affect the payers' perception of children's needs and may discourage them from paying child support²⁰⁶.

6.131 Despite the number of cases and amount of child support collected having increased yearly, the cumulative fulfilment rate remained comparatively low. Only 35.6% of the enforced cases managed to have payers pay for child support after the intervention of the SKCSA in 2019, but it was still increasing year by year from 21.2% in 2015²⁰⁷. The low rate may be due to inadequate punishment towards irresponsible payers as only fines and potential imprisonment were available at the time. These measures were ineffective as payers often provided incorrect information such as fake addresses to the Agency.

6.132 The 2018 Single-parent Family Survey (the 2018 Survey) reported that 78.8% of the payees had not received child support, but most of them were unwilling to turn to child support. Despite the SKCSA offering support for payment collection, payees still had the impression that it was difficult to receive child support. In addition, the rate of receiving government support increased from 30.4% in 2012 to 46.0% in 2018²⁰⁸. The welfare system of South Korea provides security support to single-parent families or unprivileged groups, in particular, the National Basic Living

²⁰⁵ Chung, Y., & Kim, Y. (2019). How cultural and policy contexts interact with child support policy: A case study of child support receipt in Korea and the United States. *Children and Youth Services Review*, 96, 237-249.

²⁰⁶ Chung, Y., & Kim, Y. (2019).

²⁰⁷ 여성가족부.(2020).

²⁰⁸ 여성가족부.(2019). 2018 년 한부모가족 실태조사 결과 발표. Retrieved from:

<https://www.korea.kr/news/pressReleaseView.do?newsId=156326179>

Security System was reformed and the education benefits program was expanded. These factors might make payees less reliant on the SKCSA to handle child support matters.

- 6.133 Although consistent evidence about the effect of the SKCSA has yet to be found, it does not mean that the policy was proven ineffective or not worth implementing. Instead, it is suggested that child support receipt has increased continuously over time²⁰⁹.
- 6.134 The SKCSA plays a critical role in assisting vulnerable groups, particularly poor single-parents, non-local single-parents who lack social support, and caregivers of the children who are unable to contact biological parents for collecting child support. Before the child support reform in South Korea, the pursuit of child support depended on custodial parents' ability to navigate the legal system, i.e. cognitive ability and physical constraints, which would matter more for receiving child support when the system is less formalized. The higher the opportunity costs (e.g., the financial cost for disputes, effort, time, stress, etc.) of pursuing child support, the less likely a custodial parent will receive child support.
- 6.135 According to the 2018 Survey, many parents in need faced low income and long working hours and single-parents might have to sacrifice their time for children care and go to work, which jeopardises the welfare of the children. Custodial parents with limited ability to navigate the legal system, especially those who encountered higher opportunity costs when pursuing child support, had significantly greater difficulty in seeking child support than their counterparts. If the compliance rate increases with assistance from SKCSA, it may hopefully alleviate the financial burden of custodial parents.
- 6.136 In the 2018 Survey, 44.9% of surveyed single parents were aware of the SKCSA, which increased significantly compared to 28.0% when it was launched in March 2015. "So many mothers have come to us saying that they decided to talk to us as a last resort. Many of them told us that they seriously thought of giving up their lives before finding out about us. Child support is every child's right, not a parent's or anyone else's to sign away or waive," said Lee Seon-hee (이선희), the former director of the SKCSA, who stressed the importance of enforcing the child support policy for the single-parent families in South Korea²¹⁰. She also expressed that it was critical to take care of the children in time, otherwise, they would be forced into a difficult position which hinders their development and eventually that could cost the nation and the society more in the future. Setting up the Agency provided an opportunity to raise awareness of acting in the child's best interest.
- 6.137 Parties' sensitivity to the rights and obligations of child-rearing has also increased, which further shows that active states' intervention is necessary. Almost one-third of respondents who believed

²⁰⁹ Kim, Y., & Chung, Y. (2020).

²¹⁰ 이다영.(2016). South Koreans still struggle with idea of child support. Retrieved from: <http://www.koreaherald.com/view.php?ud=20160320000367>

that “strengthening punishment for child support non-compliance is needed” has increased compared to the same survey conducted in 2015. Nearly half of the respondents supported “expanding emergency support” to ensure child support is provided, which was the most expected improvement of the child support system in South Korea.

6.138 Improving child support enforcement would help the effectiveness of the policy reform. Recent policy efforts in South Korea focused on introducing punitive measures, e.g., suspending driver’s licenses or passports. Though these punitive measures aim to make payers comply with support agreements, as suggested by prior studies, they could be counterproductive for recovering child support arrears if the payer finds the measure unfair. It may also create conflict in their relationships with custodial mothers, as some low-income fathers prefer paying informal support over formal support.

6.139 On the other hand, a preventive, simplified and automated child support system that reduces payer’s discretion and conflicts could favour child support compliance. It is suggested that South Korea could implement a nationwide automatic wage withholding system to ease the burden of custodial parents who have difficulties in obtaining income and employment information from noncustodial parents, as well as helping them retrieve administrative records of other governmental departments, which can be complicated, costly and time-consuming²¹¹. This may strengthen the social norm of supporting their children as the parental financial responsibility.

Taiwan

6.140 In Taiwan, the divorce rate has been on the rise since the mid-1970s under rapid economic development and modernisation, suggesting a switch in family attitudes and higher marriage instability. According to the data from the Department of Household Registration of the Ministry of the Interior, the divorce rate in 2019 was 2.31, which was slightly lower than that of Hong Kong. Regarding financial arrangements, the divorcee may request spousal support in terms of compensation (only on the condition that the innocent party suffered from the damage by the fault-based grounds, *Civil Code* Article 1056) and alimony (for the ex-spouse to reduce difficulties in livelihood, *Civil Code* Article 1057). For child maintenance, according to the *Civil Code*, parents have the duties to maintain their minors (Article 1084), and such obligation shall not be affected by the annulment of the marriage or the divorce (Article 1116-2).

The phenomena of stem family support to the single-parent families in Taiwan

6.141 In 2018, the Ministry of the Interior registered a total of 68,619 dependents for the “Registration of exercising responsibility of the rights and obligations for minor children,” of which the majority (85.2%) was due to parental divorce. The survey results in 2017 also showed that there

²¹¹ Kim, Y., & Chung, Y. (2020).

were 85,911 single-parent households, representing 10.04% of the total national households. In other words, more than 1 in 10 families were single-parent families in Taiwan²¹².

6.142 The family structure has shifted from the traditional stem and extended family to the nuclear family. The absence of a spouse in the family which includes dependent children under 18, regardless of reason, is conventionally referred to as a single-parent family with a nuclear family structure. If a single parent and his or her young children live with other relatives, this structure will be regarded as a stem family. Stem and extended family structures are different from the nuclear structure since other family members are more likely to be able to provide material and emotional assistance. This shift has made the family more vulnerable than before.

6.143 The number of single-parent families increased from 141,000 in 1990 to 234,000 in 2007; however, it started to decline in 2010 and dropped to 136,000 in 2018, the lowest since 1990. On the other hand, single-parents in stem families rose from 34,000 in 1990 to 68,000 in 2018²¹³. This implies that an increasing number of single-parents moved back to their families of origin and they may receive more assistance from their parents, particularly during the last decade. However, the decline in the total number of single-parent families may also be due to the decrease in fertility rates over the recent decade.

6.144 The poverty trend of single-parents in stem families also fluctuated. Nonetheless, the poverty rate of single-parents in stem families remained consistently lower than that of single-parent families. The expansion of childcare lowers the poverty rate for single-parents in stem families. Compared to conventional single-parent families, single-parents in stem families generally enjoy better economic conditions and seem to be better at providing shelter, economic assistance, and child care for adult children.

Enforcement of maintenance order

6.145 Even though support from the stem family is gradually considered one of the channels to maintain the family's standard of living following divorce, some divorcees may still rely on financial support from their ex-spouses. If both parties can handle matters rationally and peacefully, it would be better than going through court. Therefore, the *Family Law* stipulates that in principle, all family matters should go through mediation first. Even after entering litigation or non-litigation proceedings, the judge can also transfer the case to mediation if necessary.

6.146 Regarding arrangements and enforcements in matrimonial cases, the District Courts and the Juvenile and Family Court of Judicial Yuan has the legal authority of adjudication. There is no intermediary body for maintenance in Taiwan, and also no available data about related

²¹² 黃天如.(2019). 離異、死亡、認領非婚生子女...台灣年逾 5 萬對夫妻「拆夥」年增近 7 萬單親兒少. Retrieved from: <https://www.storm.mg/article/1550442?mode=whole>

²¹³ Hsueh, C. T., Cai, L., & Keng, C. (2020). *Single-parent families in Taiwan*. Institute for Family Studies. <https://ifstudies.org/blog/single-parent-families-in-taiwan->

compliance rates. Hence, to understand the enforcement mechanism, the following paragraphs introduce the enforcement measures.

- 6.147 **Writ of Execution.** When the creditor of the compensation, alimony or child maintenance obtains the writ of execution, in addition to the request for enforcement, he or she may also request the court to investigate the status of the performance of obligations and urge the debtor to perform the obligation (Articles 187 and 188 of the *Family Act*; Articles 163 to 166 of the *Trial Rules for Family Matters*).
- 6.148 **The Urge for and Investigation on Performance.** Unlike other enforcement in financial disputes, creditors and debtors often have emotional entanglements during enforcement litigation. Therefore, before the enforcement, investigating the status of the performance of obligations (調查義務之履行狀況) has been introduced in the Family Act. The creditor could request or initiate by the court, investigate the performance of the debtor's obligations and advise the debtor to perform all or part of the debt spontaneously after the establishment of the writ of execution (Article 187 of the *Family Act*).
- 6.149 Concerning practical needs, the court may entrust other courts, agencies, institutions, organizations, or other appropriate personnel, such as agencies in the county or city governments if the debtor residing outside the court's jurisdiction, to jointly assist in the process of investigation (Article 188 of the *Family Act*). Relevant agencies, medical institutions, non-governmental organizations, psychologists, social workers, school teachers, or even debtors' trusted relatives and friends may also be invited for evaluating, advising, communicating, and calming the emotions of the involved parties.
- 6.150 As for performance measurements, under Article 166 of the *Trial Rules for Family Matters* (家事事件審理細則), they include:
- a) Assessment of the possibility of the debtor's performance, when it will be performed automatically, the creditor's opinion, the wishes of the minor, psychological, emotional state or learning and living conditions and other necessary matters, etc., in order to formulate appropriate counter-measures;
 - b) Evaluate the possibility of the meeting between the creditor and the debtor and facilitate the meeting. However, in cases of domestic violence, the provisions of Article 47 of the Domestic Violence Prevention Act shall be used;
 - c) Carry out parental education or parent-child relationship counselling;
 - d) When minor children are unwilling, provide appropriate counselling, evaluate and facilitate a meeting with the parents;

- e) Inform other related parties about their interests and ask them to assist in urging the debtor to perform;
- f) Assist the creditor or debtor in drawing up a safe execution plan or short-term trial plan;
- g) Advise the debtor to propose a method of performance for the payment of all or expired money or other substitutes; and
- h) Take other appropriate measures, etc.

6.151 The investigation emphasises the negotiation between the maintenance creditor and debtor to resolve the arrear issue. Also, to achieve the ultimate goal of protecting the child's best interest in child maintenance enforcement, Taiwan promotes parental responsibility through parenting education and counselling to facilitate compliance, instead of presenting child maintenance as purely a financial issue.

6.152 Special Provisions on the Compulsory Enforcement of Adjudications in Family Matters.

According to Articles 189 to 193 of the *Family Act*, it is possible to petition the court for compulsory enforcement in a ruling ordering the debtor, per a writ of execution, to make timely payments according to the schedule. The attachment could be made to deduct the salary of the debtor to recover the arrear. The court may also order the debtor to pay the mandatory fund to the creditor if such payments are not performed on time.

6.153 The Compulsory Enforcement Act serves as a basis for enforcement. Applicants can apply for compulsory enforcement on the basis of a maintenance order or private divorce agreements (with or without mediation). If the paying parent's asset or income source is known, such information is to be supplied by the applicant to the court. If it is not known, the applicant can apply for an investigation of the debtor's assets. The compulsory enforcement is to be applied to courts in municipalities where the assets are located. If the assets or their location are unknown, the enforcement should be applied at courts in the municipal of debtors' residences. Successful enforcement does not require the presence of the debtor in court. The debtor can apply for objection for adjustment to his financial circumstances and needs. In a 2019 amendment, the compulsory enforcement was capped at one-third of the debtor's monthly income and the remaining portion should be at least 1.2 times the municipalities' minimum living expense (Articles 115 & 122 of the Compulsory Enforcement Act). The Compulsory Enforcement Act applies to a wide range of financial obligations or debts, it is not specific to maintenance recovery. The act covers properties, assets, savings and income etc. Thus, in Taiwan, financial obligations have priority over privacy concerns.

6.154 The execution fee for the enforcement of the maintenance order may be temporarily exempted until it is deducted from the proceeds of the enforcement. Also, in cases where the debtor bears

the obligation to pay for living expenses of the household, maintenance or alimony, if one payment or instalment is overdue, the remaining payments or instalments that are not yet due may nonetheless be enforceable upon petition.

6.155 It is important to ensure financial support for the children's upbringing, therefore, maintenance claims for the minor child could be compulsorily retrieved from the debtor's social welfare allowance, social relief fund or subsidies. Moreover, it is necessary to safeguard the quality of the parent-child relationship during the maintenance enforcement process. If enforcement measures are rashly adopted, they may cause sharp confrontations between the parties, and may also indirectly cause adverse effects on minor children. Therefore, enforcement should not be too strict to avoid building hostility.

One-stop legal aid service on diverse family matters services

6.156 Court family matters service centres are set up by the municipality, county or city governments in all district courts and Kaohsiung Juvenile and Family Court²¹⁴. These centres provide one-stop services ranging from accompanying parents to attend court sessions and giving basic legal advice, to providing parental education, psychological support and counselling services. These centres actively connect to relevant administrative and social resources of local governments and the Ministry of the Interior's National Immigration Agency to set up service stations for local communities such as social work, household administration, employment, new resident, legal assistance, indigenous inhabitants etc. to provide diverse and integrated services for parties involved.

6.157 In addition to serving different parties and minor children, the family service centres also provide services to the general public. Users can come in person, or ask for advice through letters or the phone. These Municipal Family Matters Service Centres in Court are responsible for the provision of welfare and legal support for all family matters. These service centres in court only provide various services in relation to court and legal matters. City-wide family service is a different service in Taiwan. In Taipei city, for instance, there are 12 Women and Family Service Centres operated or commissioned to NGOs by the government, and they provide services similar to those of IFSCs in Hong Kong. The Municipal Family Matters Service Centres in Court are therefore a supplementary service to bridge gaps between the judiciary and administrative powers.

Singapore

6.158 Both Singapore and Hong Kong are jurisdictions with links to the English legal system. Similarly, Singapore strives to maintain a fine balance between retaining the common-law

²¹⁴ Taiwan Kaohsiung Juvenile and Family Court. (2021). *Family matters service center*. Retrieved from: <https://ksy.judicial.gov.tw/en/cp-5712-221238-a4180-352.html>

system and creating an autochthonous legal system that fits its unique circumstances, which serves as a useful reference for Hong Kong.

6.159 Singaporean family law emphasises spousal and child maintenance during both marriage and divorce. Generally, maintenance ensures a reasonable standard of living that the family is used to, by monthly or lump sum payment depending on the court's discretion. The enforcement measures following a failure to pay maintenance are stringent to protect the welfare and interest of the children and ex-spouse. Matters regarding divorce and separation, such as access and control of children and maintenance, are legislated in the *Women's Charter* since 1961. Amendments to the Charter were passed in 2011 and 2016 that introduced provisions to address divorce and strengthened the enforcement of maintenance orders. In addition, the amendment allows men to seek maintenance only if they are incapacitated and therefore unable to support themselves due to illness or disability.

Characteristics of maintenance enforcement in Singapore

6.160 **Multiple measures for streamlining the enforcement application process.** Singapore offers options to file applications for fresh maintenance and enforcement of an existing maintenance order. The applicant may apply by visiting either the Registry in the Family Justice Court (FJC) or authorised agencies, such as Maintenance Support Central (MSC) and HELP Family Service Centre. To streamline the process, online submission of the application draft and documents by the Family Integrated Application Management System (iFAMS) is encouraged. Digitalising the applications helps organise all relevant data pertaining to the application. In addition, the hotline support team is available to answer all related enquiries, and they also accept enquiries through email.

6.161 Besides, the Court's Process Server will serve the summons on the Respondent (maintenance payer, the defaulter) who is residing in Singapore in accordance with the requirements of the law by automation. This will notify the Respondent of the application and the first mention date. i.e. the date the Respondent is required to appear at the FJC.

6.162 Under the court's mandate, Singapore's enforcement procedure follows a clear path. Upon the first mention, the Complainant (maintenance payee) reads out to the Respondent regarding the arrear of maintenance in Family Court No.1. If the Respondent consents to the application and the court are satisfied, a consent order with instruction of enforcement (if any) can be recorded. Otherwise, the Court may direct both parties to attend a mediation session carried out by the court-appointed mediator in the Maintenance Mediation Chambers (MMCs), preferably held on the same day. If a resolution is reached and satisfies both sides, the parties will be directed to the court for a consent order.

6.163 This mechanism assures that the hearing would be considered as the last resort if mediation fails. Once the judge in Family Court No.1 is satisfied that the parties are ready for the hearing with their witnesses' statements and documents, a hearing date will be fixed, which usually takes place four weeks after the last date of mention. Online hearing is available while the privacy of the persons is guaranteed. The court will then decide and conclude the matter of the application²¹⁵.

6.164 **Court-directed mediation on enforcement.** Requiring mandatory mediation rather than optional proceeding highlights the evolving concept of access to justice in Singapore. In terms of cost-effectiveness, mediation would ease the economic burden of parties and foster a healthier and more efficient civil justice system to settle disputes. It could also avoid case backlog building up in FJC which minimises the use of public resources.

6.165 Institutionalising mediation inside the court system also indicates that the court recognises the need to support voluntary settlement, rather than adversarial justice in related financial dispute resolutions. Since mediation gives a greater party autonomy to reach a consensual settlement, which could factor in other non-legal elements, mediation often better caters to parties' needs than litigation, the latter which entails a win-lose situation²¹⁶. The mutual agreement could facilitate the defaulter to better comply with the enforcement because the settlement was consensual, which includes his/her own consideration.

6.166 Notably, Asian culture has played a prominent role in the overall development of mediation in Singapore. As Asian cultures stress the importance of preserving harmonious relationships even in the middle of conflicts, mediation reshaped the concept of justice in the cultural context by reintroducing the traditional conciliatory approach. Unlike Western mediation practices that emphasise self-determination, the primacy of social hierarchy in Singapore may also shift the expectation from the facilitative mediation model to the evaluative practices of the mediator – to lead and guide the parties, express opinions, and give input to the case. Such cultural assumption alludes mediators to be authoritative and to take leadership of the process to fulfil parties' expectations²¹⁷.

6.167 **Official support for the Complainant's burden of proof.** Currently, the burden of proof to show the default of maintenance lies on the complainant in common law jurisdictions. The affected person has to deal with the tedious process of gathering evidence, which may be frustrating for the Complainants. In light of this, the Maintenance Record Officer (MRO) pilot project was initiated in 2007 to assist the court in the fact-finding process by obtaining

²¹⁵ Family Justice Courts. (2021). *Maintenance*. Retrieve from: <https://www.familyjusticecourts.gov.sg/what-we-do/family-courts/maintenance>

²¹⁶ Quek Anderson, Dorcas. (2020). The evolving concept of access to justice in Singapore's mediation movement. *International Journal of Law in Context*, 16(2), 128-145.

²¹⁷ *Ibid.*

information on parties' financial circumstances and identifying recalcitrant defaulters even if they can afford it²¹⁸.

6.168 Under the FJC Practice Directions Section 25A, the Court may appoint a MRO pursuant to 114B of Family Justice Rules 2014 at any stage during those proceedings. Once the MRO is appointed, the officer performs the following tasks: a) interview the parties involved; b) obtain documents and information on the financial positions of a party or any third party with consent; c) obtain information on any maintenance that has not been paid and the reason (if any) why the maintenance was not paid, and d) compile and review the documents and information, and prepare a written report for the court. After hearing the opinion in MRO's report, the Court may decide whether the defaulter can pay the full amount or any part of that amount given the financial circumstances of each party and the amount of the maintenance arrear.

6.169 In addition, instead of waiting for the affected person to file multiple enforcement applications, the MRO can be involved once the first application is filed if the officer finds the payer refused to pay deliberately. To be more effective, Tan Chuan-Jin, the former Minister for Social and Family Development, stressed that applicants and their children have to be identified to render the necessary assistance as soon as possible²¹⁹. Furthermore, the Ministry and the FJC are looking to include the MRO as a part of the compulsory process, instead of only in situations with both parties consent or parties' voluntary provision of relevant information.

Comparison with maintenance enforcement measures of Hong Kong

6.170 **Similarities.** Enforcement orders can be made by the court both in Hong Kong and Singapore. Commonly, the court will decide what the arrears are in use as of the date of the order and also whether the arrears should be paid in a single payment or monthly instalment using particular payment methods. The common measures are garnishee order, writ of *fiери facias* (writ of seizure and sale in Singapore), charging order and attachment of income order (attachment of earning order in Singapore). Judgment summons (summon in Singapore) is used to set the date for parties to present and be heard by a Judge, where the judge then examines whether the defaulter's (payer's) failure to comply with the maintenance order is of reasonable cause or not. The Court may order the enforceable amount of outstanding maintenance after the hearing.

6.171 **Differences.** Singapore does not impose any prohibition order to restrict the defaulter's right to leave or return to the country, but such an order is possible in Hong Kong. Nevertheless, there

²¹⁸ Tang, Sue-ann. (2017). *More help for people in getting their monthly maintenance from ex-spouses*. Retrieved from: <https://www.straitstimes.com/singapore/courts-crime/more-help-for-people-in-getting-their-monthly-maintenance-from-ex-spouses>

²¹⁹ Ministry of Social and Family Development. (2016). *Opening Speech By Mr Tan Chuan-Jin, Minister For Social And Family Development, At The Second Reading Of The Women's Charter (Amendment) Bill 2016*. Retrieved from: <https://www.msf.gov.sg/media-room/Pages/Opening-Speech-by-Mr-Tan-Chuan-Jin%2C-Minister-for-Social-and-Family-Development%2C-At-The-Second-Reading-of-The-Women%27s-Charte.aspx>

are three enforcement measures of Singapore introduced in 2016 that are not available in Hong Kong, including

- a) Order to set up a banker's guarantee: the defaulter has to set aside a sum of money to be kept in a bank, as a security against future maintenance defaults;
- b) Community service order: perform unpaid community work for a period of up to 40 hours;
- c) Order to list the maintenance arrear history in a defaulter's credit report: to lodge a report to a designated credit bureau regarding the unpaid arrears stated on the order of the court, which can be accessed by banks and financial institutions.

6.172 Singapore is more stringent to impose sanctions like fines and direct imprisonment for up to one month for each month's unpaid allowance. Comparatively, Hong Kong could send the defaulter to jail only if the Judge orders the committal for contempt of court after the committal stage of JS proceedings.

Performance

6.173 After new enforcement measures were introduced in 2016, enforcement applications dropped 11% the same year, down from 2,979 applications filed in 2010. The number of enforcement applications continued to decline by 4.5% on average annually from 2016 to 2019²²⁰. This may be due to the deterrence effect of the new enforcement measurement and mediation to secure voluntary settlements. Still, over 2,000 enforcement applications were filed in a year, revealing that not receiving maintenance fees was still a major problem for some divorced families. Despite the summon by automation service being adopted to facilitate the service process, the summons fails to serve some defaulters since some may deliberately hide. Therefore, lawyers have urged authorities to verify and examine the authenticity of the defaulter's address to facilitate the service of summons.

Policy alternatives and their applicability to Hong Kong

6.174 As observed, the default of maintenance is not only a local but a global challenge. Reviewing various experiences from Western and Asian jurisdictions, we are able to identify a common shift of social value on issues related to divorce and maintenance enforcement. Various jurisdictions have started to respond to the shift from male supremacy towards gender equality and to safeguard the welfare of children at different times and using different approaches. While Western jurisdictions recognized these issues in the 1990s, Asian jurisdictions started to do so in the 2000s and 2010s. Based on their different social, legal and historical backgrounds, they have

²²⁰ Family Justice Courts. (2021). *Statistics*. Retrieved from: <https://www.familyjusticecourts.gov.sg/who-we-are/statistics>

made various attempts to address the issue of providing support for children after divorce. In this sense, each jurisdiction that has been reviewed can be seen as being at different points on the same path of progression. Starting from different points in time, their experiences provide a valuable reference for Hong Kong's first steps in enforcing parents' financial obligations to their children. We shall review a few important policy considerations as well as their relevant merits and pitfalls observed in other jurisdictions aforementioned before discussing whether any policy alternatives (i.e., using Inland Revenue or a statutory maintenance board as an intermediary agency) for maintenance support are applicable in Hong Kong. The following discussion would be considered in the Report's recommendations. (See Chapter 8)

Policy making considerations

6.175 **Social value behind policies.** Taiwan has a complimentary family support service. These family support services originate from their value that family matters should be treated with care and support because these matters often involve the protection and safeguarding of vulnerable groups. As such Taiwan has set up government legal support services on family matters in court in addition to general women and family service centres in society in order to protect women, children and the vulnerable's welfare. In the last two decades, South Korea has recognized the problems of male domination in divorce and maintenance policy; they opted for a change towards gender equality and child welfare. Following the paths of the UK, New Zealand and Ontario, South Korea has set up its Child Support Agency to help promote and enforce maintenance payment to receiving care. Across western and Asian jurisdictions, it is noted that there is common regard for welfare for women, children and vulnerable groups.

6.176 **Means tests and public financial support** have been widely adopted. Ontario, the UK, NZIR and South Korea consider child support as important welfare to protect vulnerable groups in society. While Ontario and the UK do not count maintenance as income in social security means tests, South Korea provides up to 12 months of means-tested emergency support for custodial parents who are unable to receive maintenance. The paid emergency support is indemnifiable to the obligator (paying parent). New Zealand has means-tested financial support for single parents and unsupported children in addition to an array of means-tested and non-means-tested support for families. The NZIR recovers maintenance payments from paying parents and takes a percentage of it to support the means-tested single parent's financial assistance. It is worth noting that most countries adopt emergency support for divorcing caring parents or single-parent families in addition to social security available to all citizens. Some countries recover the paid support from maintenance payers to increase the viability of the support programmes.

6.177 **Operation models** of maintenance recovery programmes have a wide variety across the jurisdictions observed. UK has transited from public service (CSA) towards business modeled CMS in an attempt to reduce government expenditure and public reliance. Ontario's FRO, New Zealand's Inland Revenue and South Korea's CSA provide their service as public services.

Taiwan and Singapore despite having no specific agency responsible for maintenance recovery and enforcement, encourage the use of mediation and private agreements to reduce the workload of the courts. Depending on the jurisdiction's commitment to vulnerable populations and government ideology, those favouring a small government and low public spending prefer to reinforce or even mandate private settlement. Taking reference from the experiences of the UK's old CSA and Ontario's FRO, which both suffered from high caseloads and long processing times for new and ongoing cases, policies that encourage mediation and private settlement can be of some help. Those with a higher (or earlier) commitment to the rights of the vulnerable have employed stand-alone agencies to operate maintenance recovery programmes. These programmes require an effective case management system and government administration spending.

6.178 Locus of Judgment. UK's CMS and NZIR have taken over the power to calculate maintenance amounts, while NZIR also has the authority to process adjustments to maintenance amounts in consideration of changing circumstances of paying and custodial parents. Ontario, Singapore and Taiwan have retained these powers in their judiciary systems. The locus of power to make such judgments will affect fairness and efficiency. Judgments made in courts will have a higher level of fairness. As matters are overseen by judges, the involved parties will also have sufficient time and opportunity to support their claims. But these advantages are at the expense of efficiency. On the other hand, when these powers are administered by agencies, there is a need to establish fair mechanisms and criteria to ensure uniform and efficient enforcement.

6.179 Information management. Many jurisdictions' models rely upon the smooth passage of information between the judiciary and government administration. For example, Ontario and the UK spent great efforts in the early 2000s in developing information systems. They were only successful in a second attempt. An effective information management system can prevent the execution of outdated court orders, issues that were found by the Ontario Ombudsman. In the early 2000s, this might have been confined by technological limitations. Presently, both the NZIR and Singapore use a one-stop online system for applicants to file their applications, update and monitor their progress. As stated in previous sections, the OFRO received high call volumes. Even though the agency was answering 2000 calls a day, there were still 80% unanswered calls. The information systems observed from NZIR and Singapore are vast improvements over Ontario's phone-call-only approach. Another issue observed from the UK's experience in making a transition from the old CSA to the current CMS also provides insight into the importance of the transfer of case information. During the transition, no information transfer was made between the old CSA to the new CMS besides the names and contacts of service users (including payers and recipients). Instead, cases in CSA were closed with a 6-9 months notification period, while new cases are opened in phase by the CMS. During this process, all previous case records, including payment records, default records, defaulted payment recovery progress, etc., were lost. The new CMS were to start everything from scratch. In some reported

sample cases, months of progress in locating missing maintenance payers were completely forgone. Subsequently, the UK's CMS has accumulated a large number of arrears, many simply due to delayed recovery and the inability to identify habitual defaulters. If a complete and clear record is kept, the agencies would be able to identify irrecoverable arrears, such that they can be followed up with appropriate methods. This issue is worth referencing for inter-departmental cooperation in the case of Hong Kong.

6.180 Case management approach. Among jurisdictions that have operated according to an agency model, they have enacted different case management approaches. The OFRO has used a reactive case follow-up approach to passively receive service users calls and applications. The OFRO's approach accumulated criticism from Ombudsman and audit reports as described previously. The OFRO also received criticism for long case processing time, busy hotline and low response rate. They were suggested to switch to a proactive case management approach with a designated case worker for each case to ensure accountability. An improvement in management oversight was also mentioned. The UK's CMS and South Korea's CSA have used an active case management approach. Due to the late start and low societal expectations of maintenance enforcement, South Korea's CSA has a relatively low caseload. UK's CMS has witnessed an increase in success rate in recovering outstanding maintenance. The UK's effort to encourage private settlement (Direct Pay) has indirectly contributed to the improved performance by reducing the overall caseload. In New Zealand, maintenance enforcement as well as overall family benefits are embedded into the tax system as tax credits. The overall housing of the programmes in NZ's Inland Revenue allows for case management to be done on a one-stop online system. Although effective, this is highly specific to the conditions allowed by New Zealand's tax and welfare systems.

Facilitating factors for the policy alternatives of Hong Kong

6.181 Since Hong Kong faces similar issues in other jurisdictions, some common facilitating factors are observed for localising policy alternatives in Hong Kong. Previous studies also summarised that maintenance compliance is positively associated with payers' willingness to provide support, including the ability to provide support, perceived children's needs, and received fairness of the obligation and enforcement measure. Payees' ability to pursue maintenance orders and enforcement is also vital to enforce payers' obligations. Therefore, the following factors should be considered when forming a policy for maintenance support, i.e., to increase payers' willingness to pay and payees' willingness to pursue maintenance.

6.182 Court's authority should be protected. We could see that the Western maintenance models in our studies rely on setting up agencies with high authority to administer and enforce maintenance. For example, if maintenance/support is not paid, CMS, NZIR and OFRO will take action on behalf of the payee and some used measures without getting to court. Agencies in New Zealand and the UK could even determine child support obligations in divorce proceedings. However,

barristers interviewed advised against transforming the maintenance system into an administrative one, as this compromises fairness, which is the crux of Hong Kong's legal system. This exact issue has been observed in UK's CMS and especially NZIR. When the agency is responsible for making maintenance judgments and managing applications for adjustment of maintenance levels, it is difficult to ensure that every applicant gets treated with the same standard. Also, procedures and guidelines have to balance rights between the paying parent and the custodial parent. It is learnt from the New Zealand experience that when exercising these powers, custodial parents' right to receive timely support should remain the top priority. Therefore, the suggested policy alternatives should focus on balancing efficiency and fairness in judgment.

6.183 Assistance to establish proof. To apply for an enforcement order in Hong Kong, the burden of proof is on the plaintiff/claimant under the fundamental principle of presumption of innocence. However, the findings above showed the low usage of enforcement actions other than JS, which may be due to difficulties in producing evidence persuasive enough to establish the factual proof to meet the legal hurdle. Therefore, without any compromise to the principle of presumption of innocence but removing unwanted obstacles to the table, a similar approach to Singapore's MRO project and the legal support by SKCSA may help the payee lower the opportunity costs and increase the ability to pursue maintenance payment.

6.184 Concern about the timeliness of enforcement. Western agencies also value efficiency to ensure timely payment, though achieving an efficient support system is challenging. They aim to execute enforcement immediately to avoid the accumulation of arrears in the first place and reduce the payer's discretion and possible conflicts. A preventative, simplified and automated payment system similar to NZIR's approach would be helpful to streamline the payment. Indeed, the OFRO's experience demonstrated that it would have performed better if sufficient staff, appropriate administration, and an effective IT system were available. Hence, these factors shall not be neglected if the Government considers forming policies to facilitate, monitor and enforce maintenance.

6.185 Utilise mediation. To avoid further hostility between parties that could prolong non-payment, mediation should be rigorously promoted at the outset of any disputes related to maintenance. Court-mandated mediation has already been incorporated into the enforcement procedure in Singapore and Taiwan. Singapore mandates mediation before court proceedings, while in Taiwan mediation results (i.e. private agreements) can be used to replace court judgments. The court will accept applicants who are not successful in arriving at agreements through mediation. In Taiwan, the administration power is responsible for the registration of divorce. Mediators adopted a "party-centred" approach to focus on parties' needs, rights, and interests and facilitate directions to help parties recognise their needs and circumstances and thus agree with their optimal resolution. The influence of Asian culture on preserving harmony and relationship may favour

the application of mediation in Hong Kong, which may obtain the realistic outcome of balancing parties' concerns. Furthermore, mandating mediation before making court applications will reduce the burden of courts by solving a proportion of disputes. Even when mediation fails, the process can still provide a certain foundation for the court's judgment. The downside of such a policy is that applicants need to obtain funding for mediation. The availability and readiness of mediators are also a concern.

6.186 **Finance and cost-effectiveness.** A policy for maintenance compliance would need a considerable amount of funding to fulfil its role. In the OFRO example, overhead and other administrative expenditures rose from CAD\$28.3 million in the 2002-03 fiscal year to about CAD\$44 million in 2009-10, with around two-thirds of the budget being spent on salaries and benefits. As such, effective information and case management systems are crucial to maximise the impact of each dollar spent. SKCSA has also provided a great deal of emergency support for children, and the agency has a right to indemnify the cost from defaulted paying parents. It is reasonable to establish a channel to regain public funding from the payers to recover the cost. Across various jurisdictions, administration cost and public expenditure amount have been noted as an issue. Yet a reasonable policymaker will understand the non-making of a much-needed policy entails more cost, to both the administration as well as society as a whole. After all, single-parent families in need who are unable to receive maintenance from ex-spouses will resort to the CSSA and other government assistance programmes. When vulnerable groups are left alone with dire needs, addressing social problems will translate into government expenditure through increased demands for social services. Hence, the Government may consider possible measures such as the user-pay principle and advanced IT systems to maintain the balance between financial concerns and the social impact of policies.

Applicability of utilising HKIRD as the intermediary body

6.187 Western agencies also tend to directly deduct payers' income to ensure that payments are made. However, it is impractical in Hong Kong due to legal and administrative restrictions. No one can deduct income for maintenance directly unless the court issues an AIO. One may argue that the Hong Kong Inland Revenue Department (HKIRD) could learn from NZIR to be the intermediary to collect and distribute the maintenance, which NZIR can directly tax and collect child support from income. However, direct deduction from salary to collect tax is not allowed in Hong Kong as tax payment is usually transacted through bank-in or online payment. This could be one of the limitations for HKIRD to become a maintenance intermediary body unless the law is amended for enforcement purposes. In addition, this may seem out of HKIRD's service nature to offer services such as legal support and mediation to settle maintenance payments. The government should deploy an extra workforce if HKIRD extends its service to maintenance compliances.

6.188 Still, New Zealand's experience suggests HKIRD's potential to become the maintenance administrator. Authorities may work alongside HKIRD to better access data on payers' income. HKIRD has extensive experience in data collection, with well-established channels to obtain information from taxpayers. For instance, eTax is an official online system for individuals to get a wide range of personalised online services such as filing tax returns and payments. With tax returns filed annually, HKIRD maintains an updated database of personal information, such as a residential address, marital status, income, employer's information, property, etc. Collaboration may help the Court readily access information from the HKIRD database, locate payers, and/or understand their latest financial status.

Applicability of using the current statutory board structure

6.189 The setting up of a Maintenance Board (MB) as a policy alternative has been under discussion since the late 1990s amongst NGOs serving divorced couples, in Legislative Council, professional associations and other NGOs. Multiple stakeholders in the community have suggested setting up an MB for various functions, including the collection, disbursement and enforcement of maintenance. It shows that stakeholders across the sector have anticipated the Government to establish relevant intermediary agencies to assist those in need of better maintenance arrangements.

6.190 The proposed MB emphasises the importance of statutory power to seize maintenance defaulters' income and/or assets, as it is an essential factor for effective maintenance management. In the past, the Government has established various boards, some given statutory power for executive and administrative functions while others perform advisory roles. Their areas covered are wide-ranging. For instance, the Hospital Authority and Communication Authority (CA) manage public hospital services and regulate broadcasting and telecommunications industries respectively, and are accountable to the Government. These statutory bodies possess directive power, and inter-bureau collaboration is not common in daily operations.

6.191 In addition, the interviewed judge from the Judiciary did not have any particular views on whether an MB should be set up. He commented that conflicts in recovering maintenance may be reduced if an MB is set up. The solicitors interviewed shared that enforcement of maintenance orders could be more effective if MB has delegated power. The barristers interviewed opined that setting up an MB may assist in the enforcement of a maintenance order; but they also raised concerns regarding the conspiracy of the payer and payee to abuse the MB and the setup cost involved.

6.192 The proposed MB however is different from statutory bodies since it is designed to work with different bureaux, e.g., the Judiciary, Transport and Housing Bureau (THB), and HKIRD, to address the need and alleviate hardships faced by divorcees. The abovementioned statutory bodies seldom collaborate across the bureau to execute policies, and thus there is a missing

example to understand whether a statutory board structure works for MB. The board structure may not be the most applicable way to host the said functions, as maintenance support goes beyond the legal process.

6.193 Maintenance policies need to consider the divorcees' psychological needs and make appropriate referrals; hence, the board structure may not be suitable for intense interdepartmental collaboration. Instead, the Government may consider offering conditional help to people, ranging from collection and distribution to mediation and facilitating the enforcement process. Such conditions may include mediation attempts, grounds of abuse, a record of maintenance default, caring receivers' need to apply for CSSA (or other government-paid financial support with mean test) etc. Also, the implementation of service charges as an incentive for private/mediation settlement may offer a possible solution to Hong Kong. Only parties involved in enforcement proceedings are eligible to use services provided by the dedicated scheme or programme. Those in private agreements will need to initiate a legal proceeding or have a legal proceeding initiated on their behalf when the default of maintenance occurs. As a result, the scope will be limited to a manageable size rather than a universal policy for every maintenance payer and payee.

F. Impacts of the Reciprocal Arrangement

6.194 Enforcing the maintenance order on mainland properties granted by Hong Kong court in mainland China remains an issue. As mentioned in Chapter 2, the Bill which allows reciprocal enforcement of judgments in both Hong Kong and mainland China (the Arrangement) will greatly impact divorce proceedings, especially on ancillary relief orders. The barristers interviewed also opined that this arrangement is important and beneficial to Hong Kong litigants in enforcing judgments handed down by Hong Kong courts in the mainland. For instance, if an order was made in mainland China and the property involved is in Hong Kong, the order will be enforced under Hong Kong law. This enables more effective enforcement of maintenance-related orders in cross-boundary marriages, as debtors will no longer be able to avoid maintenance by living in mainland China.

6.195 The Team wished to provide more insight into the Arrangement's impact on cross-border cases from the e-Form cases. However, as most divorcees reside and apply for divorce in Hong Kong, the need for the Arrangement was not apparent in most of the cross-boundary cases. The Team identified a few issues specifically related to cross-boundary cases despite the limitations. Firstly, the Arrangement could prevent transferring assets to Mainland China or vice versa to avoid enforcement, and allow more authentic financial statements in maintenance cases. For instance, a mainland wife filed for divorce in Hong Kong and sought a large sum of alimony without declaring her ownership of property in the mainland. After the ex-husband discovered, she backed down and accepted a lesser sum from him because she was afraid the judge might decide even a lesser sum of alimony. The Arrangement may indirectly get parties to give full and frank disclosure of their assets located in the mainland during the ancillary relief trial in HK court and

vice versa. Hence, it may help Hong Kong and mainland courts consider one's capital and asset in both jurisdictions when giving judgments on matrimonial cases.

6.196 Secondly, the Arrangement may better facilitate the execution of maintenance orders on the mainland. In one lawyer's case, the ex-wife settled in Hong Kong via the one-way permit, while the husband moved to the mainland with his girlfriend and daughter, but working in Hong Kong. Arrest warrants issued could not be served on him, as he could not be located. The Arrangement can prevent this issue by facilitating the progress of locating payers in mainland China. It is noted that there may be other situations that call for the need for cross-border jurisdiction. For example, some cases do not involve cross-boundary marriages, but instead, spouses have moved to the mainland to work or live. Such relocations are becoming increasingly common. The Arrangement may benefit many more cases involving cross-boundary marriages in the years to come.

6.197 However, the Arrangement might have impact on the divorce rate in Hong Kong. Divorce in mainland China is relatively easy, quick and simple, because of the divorce by consensus and the no-fault rule on divorce for contested cases. After the Arrangement is implemented, it is estimated that some couples in cross-boundary marriages will choose to divorce in mainland China instead of Hong Kong and elect to enforce maintenance orders in Hong Kong. Thus, the divorce rate in Hong Kong may slightly decline. However, the impact depends on the percentage of cross-boundary marriages in Hong Kong and where the parties now live.

Highlight 6.8: Reciprocal Arrangement is important and mutually beneficial, especially in dealing with the increasing number of cross-boundary marriages in the Hong Kong population.

Chapter 7:

Services and Gaps

7.1 This Chapter presents the Research Team's observations on services related to marriage and divorce in Hong Kong. It will evaluate services provided before and during the marriage, before and during divorce, and after divorce, as well as the gaps. The importance of ensuring adequate specialized services will also be discussed.

A. Pre-Marriage Services

Pre-Marital Education and Counselling

7.2 Pre-marital education and counselling services help the couple to set realistic expectations about marriage, equip them with the skills to handle future challenges and conflicts, and reduce the chances of couples committing to marriages they may later regret. This could prepare couples for marriage and parenthood and reduce the risk of divorce. Service providers have emphasised the importance of such services. They raised special concern for young couples, because many may not be mature enough to bear the responsibilities in marriage. They often encounter significant problems with child care, and serious cases risked ending up in divorce. Other vulnerable groups identified include couples in cross-boundary marriages with significant cultural differences and remarried couples who need to prepare for the complex dynamics of stepfamilies.

7.3 Apart from the adoption of successful overseas pre-marital education and counselling programmes translated into Chinese, there are also locally-developed and religion-based programmes in Hong Kong. However, current pre-marital services are not widely used. The service-seeking behaviour could be due to various factors. Firstly, the couple may perceive they have little need for such services. Secondly, there might be the stigma associated with pre-marital services, some thinking that only those in problematic relationships require these services. Thirdly, some might lack knowledge about pre-marital services. Finally, there could be concerns about fees charged for private pre-marital support that further discourage couples to seek such services.

Highlight 7.1: Pre-marital education and counselling services could be further promoted and better targeted to reduce the risk of divorce especially for marriages at a young age.

B. Peri-Marriage Services

Marital Support and Family Enhancement

7.4 Marriage and family life can entail challenges. Marital support and family enhancement services can strengthen the marital relationship and familial bonds, and avoid toxic issues in marriage such as DV and extramarital affairs, encourage continued nurturance of marriage, hence reducing the likelihood of divorce.

Integrated Family Services Centre (IFSC)

7.5 IFSCs are the key family psychosocial support platforms in Hong Kong. The service model started since the turn of the century, and nearly 70 IFSCs are operated by the SWD and NGOs. IFSCs consist of three components, namely the Family Resource Unit (FRU), Family Support Unit (FSU), and Family Counselling Unit (FCU). Guided by four principles: accessibility, early identification, integration and partnership, they provide a range of services to strengthen families and address their multifarious needs. They include housing/financial assistance, individual/group counselling, referrals, and parenting programmes.

7.6 Specifically, the IFSCs provide preventive and remedial services to support and enhance marriages and families. Firstly, IFSCs developed preventive programmes in the form of outreach activities and community-based programmes (e.g. setting up information counters in different communities) to identify populations at risk, refer them to appropriate services, and encourage unmotivated vulnerable families to seek professional support. Secondly, IFSCs also developed programmes specific to marital support and family enhancement, including marriage enrichment groups, training for families with children addicted to drugs or the internet, and groups to improve social functioning and family relationships. Such services help strengthen family relationships and foster individual and family resilience.

7.7 Yet, it was noted that early identification programmes might be restricted by management offices in private tenement buildings, and are labour-intensive. These could increase the burden on social workers who already carry heavy caseloads. Furthermore, according to some front-line workers, recruitment is sometimes difficult and participants of different programmes may also come from the same pool of users.

Highlight 7.2: Marital support and family enhancement services during marriage via IFSC can help maintain marital relationships and mitigate the risk of divorce. However, the current workload in IFSCs, especially on complicated marital issues, might be overburdensome to the system.

C. Pre- and Peri-Divorce Services

Information Support

7.8 Married persons contemplating divorce need information on divorce procedures, legal rights and responsibilities, as well as ways to settle practical issues such as custody arrangement and division of assets. Divorcees from cross-boundary marriages with limited knowledge of local resources and their legal rights are especially susceptible to manipulation by ex-spouses.

Official Promotional Materials

7.9 As mentioned in Chapter 6, 84.5% of the divorced population in the THS Report No. 61, especially females and older populations, were not aware of the official promotional materials on enforcement orders published by the Government or NGOs. This showed further room for improvement for the Government on the accessibility and promotion of divorce.

Integrated Family Services Centre (IFSC)

7.10 The FRUs in IFSCs provide resources and a wide range of educational, developmental, and preventive services. While information leaflets on various community resources and enquiry services are available for drop-in service users, FRUs also conduct outreach to the community, such as visiting housing estates and hosting road shows.

7.11 Given the complicated nature of divorce issues and the impact of divorce on individuals and families, all persons contemplating divorce should be able to obtain accurate information on divorce so they can make an informed decision, prepare for adjustment, work to minimise the adverse impact of divorce, and if children are involved, recognise their parental responsibility upon divorce. Since FRUs already need to cater for a wide range of community needs, it is unrealistic for them to include reaching out to all who are contemplating or applying for divorce as part of their services. Also, even when target service users approach the centre, frontline FRU workers may not be best equipped with the knowledge and skills to provide specific information on divorce or recognise any hidden concerns and needs for further service. The majority of frontline social workers whom we interviewed hence expressed the need to set up a one-stop specialised unit to serve the specific needs of the divorcing population. (A precedent of such kind would be the Ping Wo Fund which offers preventive and remedial measures to address gambling-related issues.)

Divorce Decision Counselling Services

7.12 The FCU in IFSCs and a few NGOs (e.g., Catholic Marriage Advisory Council (CMAC)) provide divorce decision counselling to those contemplating divorce. In these NGOs, the services are offered by social workers with specialised training on divorce. However, colleagues who have

been providing the services reported IFSC's existing workload as overwhelming. Many staff are drained by work and more support is required to maintain service quality. As decisions to divorce are never easy, these services offered by social workers with specialised training can prevent couples from divorcing on impulse. In cases where divorce is inevitable, couples will be less consumed by regret, guilt or shame, since they have carefully considered before the divorce. Follow-up counselling can be offered to those who decide to explore other options than divorce, and to clients that need advice on ways to break the news to children, as supported by findings from the e-Form cases.

7.13 However, aside from the free IFSC services, the majority of specialised services from NGOs and the private market charge fees and not many people are aware of them. Furthermore, those most in need of these services are likely to be less aware of their needs or service availability, and they may be more impulsive and determined to divorce without fully considering other possible alternatives.

Family Mediation Services and Private Financial Adjudication

7.14 Some lawsuits on divorce could be lengthy. Therefore, the Court has the power to make MPS or interim maintenance orders for the parties and/or children to cater for their financial needs before any final orders on financial matters. However, parties are encouraged and free to reach any settlement on custody, visitation, and financial matters at any time before or during the proceedings. The three years pilot scheme on family mediation was first launched by the Judiciary in 2000. Upon the success of this pilot scheme, the Judiciary has issued Practice Direction 15.11 on mandatory FDR procedure to facilitate and encourage settlements on financial matters.

7.15 Family mediation services assist divorcing couples to handle disputes and reach mutual agreements in an amicable, confidential and speedy way, thereby minimising the negative impact of divorce on children and facilitating co-parenting relationships following divorce. The Judiciary has been promoting family mediation for the Family Court for many years. Judges of the Family Court have been encouraging or directing parties of suitable divorce cases to consider attempting family mediation. The Integrated Mediation Office was established in 2018 close to the Family Court so that parties are provided with the relevant information on mediation and referral service to external family mediators. The Integrated Mediation Office of the Judiciary is planning to launch a pilot scheme called "Family Court-annexed Mediation Scheme" in which suitable cases would be referred to have mediation service before Duty Mediator on the day of the parties' attendance in court. Family mediation is also promoted by the Judiciary through various publicity means including videos, a dedicated mediation webpage, booklets and other relevant publicity materials.

7.16 Currently, the Hong Kong Mediation Accreditation Association Ltd (HKMAAL) maintains a list of accredited family mediators, while some NGOs provide referrals of family mediators and/or

mediation services to the public. There are around 283 accredited family mediators registered under HKMAAL in Hong Kong, mainly with degrees or post-graduate qualifications in legal or mental health subjects with at least three years of relevant working experience, completed proper family mediation training, and participated in two live family mediation under the supervision by approved supervisors. Most family mediators serve on a part-time and fee-charging basis, while a few agencies with mediation services employ a sliding scale according to the parties' income.

7.17 In January 2015, the Judiciary issued another PDSL9 to introduce a new Pilot Scheme on Private Adjudication of Financial Disputes in Matrimonial and Family Proceedings (Private Family Adjudication, PFA) as a new mode of alternative dispute resolution in Matrimonial and Family Proceedings²²¹. Under PFA, parties may appoint a trained and certified adjudicator instead of going through the lengthy litigation process in court to decide their ancillary relief and maintenance claim. The decision will be delivered to the Court for final settlement. A new family mediation scheme called the Pilot Scheme on Mediator-assisted Financial Dispute Resolution has been tried out since 2019 with a success rate at around 88% by mid-June 2022.

7.18 Chapter 5 highlighted that spousal conflicts and power struggles can negatively impact the decision made following divorce. However, findings show that some divorcees took custody and maintenance as a win-or-lose matter, and fight at lengths instead of turning to family mediation. Family mediation services do not seem to be a common option to settle maintenance and custody amongst high-conflict divorcees. This tells the need to further promote family mediation services and education on parental responsibility.

Suspected Domestic Violence Cases Handling

Hong Kong Police Force (HKPF)

7.19 The HKPF is an equally important professional service provider. While the SWD and NGOs mainly cater for families in need of information, material and/or psychosocial support during a divorce, the HKPF works with families with DV risks or histories. Investigation units on duty will handle the DV cases, and for the sake of consistency, the same team will follow the same case for two years. According to their response to Legislative Council's Finance Committee, more than 60% of domestic conflict reports were referred to SWD in 2008. On average, representatives from the HKPF and SWD meet once every three months to discuss case progress.

7.20 Following the 2004 review recommendations arising from the Tin Shui Wai family tragedy, police officers have enhanced training in handling DV cases. With the use of the DV booklet (Pol. 1130), police officers can conduct risk assessments and better understand the background information of

²²¹ The Pilot Scheme on Private Adjudication of Financial Disputes in Matrimonial and Family Proceedings was under review and would be extended for another 3 years to 2024.

cases. Given the increasing number of ethnic minorities, the updated DV booklet comes in multiple languages, while additional resources for LGBTQ+ couples and mediation centres are included.

7.21 Service providers and users interviewed in this study responded that the police's approach to a case varied with the officer-in-charge's own interpretation of its internal guideline. Some officers were said to have handled cases with empathy and care, while others were less sensitive in handling vulnerable cases. Furthermore, while the standardised form with essential information is used for social services referral, there might be time gaps in faxing the data to SWD, resulting in some undue delays. Although e-referral of cases to SWD has been in effect since July 2020, they are only limited to DV and child abuse cases and not for other family crises such as elderly abuse. Closer communication with relevant government departments would be helpful.

Highlight 7.3: Sufficient information support, divorce decision counselling, and mediation services before and during divorce can help spouses to make well-informed decisions.

D. Post-Divorce Services

7.22 Divorcees often experience losses (e.g., financial stability, time spent with children, self-esteem, etc.) and challenges (e.g., new living environments, changing roles, social stigmatisation, etc.) from divorce. Such experiences can lower divorced parents' competence and hinder their children's adjustment. The literature review and in-depth interviews also indicated that these experiences can manifest in different areas, ranging from housing, financial, legal, family to psychosocial needs. Post-divorce services, therefore, aim to minimise the knock-on effect divorce has on families, facilitate their adjustments and protect their well-being. In this section, the Team covers and evaluates main post-divorce services.

Psychosocial Support and Family Support Services

Integrated Family Services Centres (IFSCs)

7.23 The FSUs and FCUs in IFSCs and NGOs can assist divorced persons to manage their emotions, cope with changes in roles and relationship dynamics, attend to the well-being of the children, and live a positive new life. Examples of specific support programmes include single-parent groups, parenting skills training, and stress management training. IFSCs also offer counselling services for clients with mental health needs and where appropriate make referrals to Integrated Community Centres on Mental Wellness (ICCMW). Special attention should be given to male

divorcees that are less likely to seek help, divorcees from cross-boundary marriages that are more susceptible to manipulation by ex-spouses and stigmatisation from families.

7.24 Despite the availability of such services, clients seldom reach out for counselling voluntarily. Service providers may also lose sight of psychological needs when focusing on their tangible needs. Furthermore, service users heavily rely on the professional input of social workers to manage complicated family divorce cases, and some may even impose unrealistic expectations on them. Interviewees who provided front-line services had told that this may cause work fatigue among social workers as they might experience adverse effects on their physical and mental health, such as high levels of stress, work fatigue, and depression (See Appendix E). Therefore, supporting IFSC workers through strategies like closer supervision and continuous professional training to the frontline staff may be useful.

Family and Child Protection Services Unit (FCPSU)

7.25 The FCPSUs are specialised units of the SWD that handle high-conflict cases with DV, child abuse, and child custody disputes. In collaboration with each other, IFSC refers severe cases to FCPSU and FCPSU refers more stabilised cases to IFSC. Since 2019, five Specialised Co-Parenting Support Centres (SCSCs) were launched which provide special spaces for playrooms and age, gender-sensitive facilities, ensuring enough room for effective parent-child meetings. While FCPSU offices and other appropriate venues are still being used for supervised access, existing FCPSU premises have limited space and capacity to provide sufficient age and gender-sensitive facilities for different types of families, for example, those with older children. The limited space also poses privacy and safety issues in the often emotionally-laden parent-child meetings.

7.26 FCPSU social workers, like those at IFSCs, would need enhanced support to prevent frustration and burnout caused by the handling of high-conflict cases, albeit sufficient professional supervision has been given. The establishment of a specialised unit to handle issues related to divorce can help mitigate the existing pressure of the IFSC and FCPSU. With the proposed specialised unit handling matters on divorce and maintenance orders, it is likely that a more favourable outcome can be achieved in the divorce process.

Specialised Co-parenting Support Centres (SCSCs)

7.27 In 2016, the SWD launched a two-year pilot project to set up a Parent-Child Contact Centre (PCCC) and commissioned the Hong Kong Family Welfare Society (HKFWS) to launch the service. The success of the PCCC led the Government to appoint NGOs to establish new SCSCs in five clusters (Hong Kong Island, Kowloon East, Kowloon West, New Territories East, New Territories West) in 2019. By September 2019, guidelines on the division of labour and means of collaboration between SCSCs, FCPSU, and IFSCs were published.

7.28 SCSCs provide child-focused co-parenting support services to separated or divorcing parents experiencing difficulties and conflicts. With the emphasis on cooperative co-parenting and child-focused intervention, they aim to a) help parents overcome obstacles and carry out child-focused parental responsibilities effectively; b) help children of divorced families cope with stress and adjust to family changes; c) provide contact opportunities and smoothen contact arrangements to allow safe, conflict-free contact between children and NRPs; and d) promote the concept of parental responsibility through public education. Suitably, age-sensitive physical spaces for parent-child contact are also provided.

7.29 The current provision of space and facilities in the newly launched SCSCs seems to be a good start. Centres with professional expertise can continue to better cater to the high number of individuals with co-parenting difficulties to fulfil their specific needs.

Specialised Services for Divorced Families

7.30 Apart from SCSCs, there are NGOs that offer specialised services to separated/divorced families. Services for divorcees include educational workshops and programmes to support their adjustment to divorce and coping with difficulties, and facilitate co-parenting between divorced parents. Child services focus on their needs, helping them to express their feelings and empowering them to sail through family dissolutions through play therapy and counselling groups. This is especially important, as service providers highlighted that children are often caught between parents in conflicts, while their voices are seldom heard and their needs are seldom addressed.

7.31 The provision of specialised services to high-conflict couples can meet their specific needs, such as cases where the divorcees have tied access to maintenance arrangements, or argued frequently on applications for child maintenance, causing or intensifying their children's emotional or behavioural problems. The divorcees may not be aware of the accumulated negative effect of their acts and attitudes on the children. Counselling using appropriate evidence-based approaches such as Family Biofeedback Assessment for high-conflict families may raise their awareness of how high parental conflict impacts their children, help them manage conflict, avoid compromising children's well-being, and help them develop healthy mindsets.

Children Day Care Services

7.32 Children's daycare services lend a helping hand to parents with difficulties in taking care of children. The need is especially dire for single parents who are financial supporters as well as the primary caregiver. These services are mostly operated by NGOs, subsidised by the SWD. Child care centres provide daycare to children from 0 to under 3; Occasional child care services provide child care services for caregivers with emergent commitments; and extended hours services are for employed caregivers with long working hours. Some NGOs also run mutual help child care

centres and centre-based/home-based child-care services under the Neighbourhood Support Child Care Project. Such services alleviate divorcees' burden and ensure that children are raised in a healthy and safe environment.

7.33 Some single parents might find it challenging to balance their child care and bread-winning roles, both of which are important for healthy child development and the family's well-being. Day child care services allow parents to better manage their dual role flexibly without compromising parental care to children. However, there has been an overwhelming demand for government subsidised child care services that supply could hardly match²²².

Housing Support Services

Housing Department (HD)

7.34 The HD offers public rental housing (PRH) under compassionate rehousing (CR) and interim housing for the needy. CR provides special housing assistance to families with housing problems due to social or medical grounds. Applications for CR have to be assessed by professional social workers and recommended by SWD. All applications have to pass the comprehensive means test and no domestic property test. Eligible persons living with children can be offered conditional tenancy before the completion of divorce proceedings. The conditional status can change if decree absolute is granted with custody.

7.35 Interim Housing is a temporary housing assistance to individuals who are rendered homeless due to government enforcement actions, emergencies, natural disasters or to divorcees who are required to leave the PRH flats upon divorce. Divorced persons who are single and not granted custody can be offered interim housing if they satisfy the comprehensive means test and no domestic property test while applying for public rental housing. In the past years, applicants on average waited for around nine months to be granted interim housing, and another few years for public housing. The increasingly long queues for public housing will mean a slower turnover rate for interim housing.

7.36 The HD and SWD have been actively collaborating through regular platforms at both district and central levels to enhance communication and discuss operational matters. While the HD reserved 2000 housing units for CR in 2018-19 and there was no record of turning down any SWD referrals, only 873 housing units were allocated to CR applications. The Labour and Welfare Bureau (LWB) observed that referrals are declining, because other housing assistance programmes under the Community Care Fund and Light Home have alleviated some housing issues of those in need.

²²² Yip, Chan, Law and Team. (2018). *Consultancy study on the long-term development of child care services*. Hong Kong: The University of Hong Kong. Retrieved from: [https://www.swd.gov.hk/storage/asset/section/219/Final_Report_\(eng\).pdf](https://www.swd.gov.hk/storage/asset/section/219/Final_Report_(eng).pdf)

The continued cooperation between the HD and SWD can help provide the required housing assistance to divorced families.

7.37 Nonetheless, current housing resources are not sufficient to satisfy the need in Hong Kong and the average waiting time for PRH flats has been lengthening in recent years. Different measures such as biennial inspection and well-off tenant policies have been adopted to strengthen tenancy control and to ensure the proper utilisation of public housing resources. Yet, it is challenging to identify and evict tenants who do not meet the housing criteria from the flats. Furthermore, there are cases in which the ex-spouse obtained the transfer of property order from the courts instead of receiving a lump sum payment. Yet, the order is not enforceable due to current restrictions which require the proposed assignee to be an authorized occupant of the property.

Financial Support Services

Comprehensive Social Security Assistance (CSSA)

7.38 CSSA is often viewed as the last safety net for divorced persons who fail to obtain sufficient maintenance or give up recovering maintenance. Our e-Form data shows that 60.3% of those who requested nominal maintenance also applied for CSSA. As indicated in the interviews with clients, some social workers also recommend divorcees apply for CSSA instead of maintenance, as CSSA is often a more stable and reliable income source than maintenance. The amount of CSSA is determined by the resources (including maintenance payments) and needs of an individual applicant or the applicant's family. According to current practice, the SWD ceases to deduct maintenance payments from the CSSA entitlements upon confirming that the applicant has applied or agreed with SWD to refer his/her case to the LAD to seek assistance to apply for the enforcement of maintenance orders. A streamlined referral mechanism has been set up between the SWD and LAD for the application of enforcement of maintenance orders, and SWD has recently stepped up publicity work to promote the above measure.

7.39 In 2020, the poverty rate of single-parent households (13.2%) is much higher than that of the population average (7.9%). [According to the 2016 THS Report, only 41.7% of CSSA recipients received maintenance in full, whereas 58.5% of their counterparts received in full. It might imply that payers may take advantage of the CSSA as they might think that the CSSA is capable of supporting payees' living. Therefore, even though CSSA offers support to maintenance payees, the government can try to send a clear message to the public that maintenance payers cannot take advantage of social welfare like CSSA support to evade the responsibilities of paying on time. Holistic support to CSSA recipients is also required to prepare them to return to the labour market and facilitate the family's journey towards self-sufficiency in the long run.

Legal Support Services

Hong Kong Family Court

7.40 Only the Family Court has the legal authority to handle cases with a default of maintenance and issue enforcement orders. Yet, service providers, clients, and legal professionals interviewed unanimously agreed that the current enforcement measures are not able to effectively mandate debtors to provide maintenance, and b) the complicated, lengthy court procedures discourage clients from pursuing legal actions to protect their rights.

7.41 Besides, the barristers and solicitors interviewed both raised concerns about the underrepresentation of children in court. Solicitors commented that children's voices are rarely heard in disputes concerning themselves, although the judicial interview with children is available when the children request and the judge considers it necessary. Rather, the children's views are mostly expressed through SIRs. Barristers interviewed further raised that there are barriers for children to access legal advice since they are unable to afford the legal cost of consultancy fees for the children's lawyer. With the establishment of SCSCs in the past few years, the proposed Children Proceedings (Parental Responsibility) Bill should be re-lodged at the Legislative Council for discussion at the soonest to reassure the children's rights over custody and access, which also accommodates their age and level of understanding of the issues involved.

Legal Aid Department (LAD)

7.42 The LAD provides legal aid to eligible clients who passed both means and merits tests that require legal assistance during the divorce process and relevant applications. The mechanism is established to ensure public funds are spent appropriately whilst taking care of the interests of applicants and their children. When legal action to recover monthly maintenance is made through the LAD, based on the Director of Legal Aid's first charge, the original monthly maintenance for children and maintenance a spouse can receive is limited to HK\$4,800 until the deductible is paid. Since 25 June 2020, the waiver of the first charge has been raised to HK\$9,100 per month and there is no first charge on the child's monthly maintenance. The Director of Legal Aid has the power to waive the first charge in case of hardship. All lump sum payments are subject to Legal Aid's first charge regardless of the amount.

7.43 The application process may be challenging for some payees. When someone applied for legal aid, a written list of documents needed will be provided to the applicant for easy reference. Depending on individual cases, the handling professional officer may request further information to fulfil what is required under the Legal Aid Ordinance (Cap. 91) and relevant guidelines. The applicant might still find it hard to gather the required documents because they often rely on themselves to collect those required documents. Divorcees may also experience stress over having to prove the payers' uncooperative attitude and uncertainties in serving documents. However, it

should be noted that the opinions of our interviewees do not represent all. Other ordinary applicants may find these procedures not too difficult for them.

7.44 Furthermore, the social workers interviewed asserted that there was incongruence between the provision of legal aid services and expectations from some legal aid users. While cases are assigned and expected to be handled by experienced lawyers, some cases may be transferred to junior assistants with less experience. A lawyer interviewee revealed that some private practitioners perceived that the statutory remuneration from the LAD to be not as appealing as that from the private market, and non-essential work has to be well justified to be reimbursed. It is worth noting that the lawyer interviewee was referring to the fixed costs. Fixed costs apply to simple divorce proceedings. For complicated cases, Assigned Solicitors (AS) can proceed to taxation. The fixed costs for matrimonial cases are being reviewed in consultation with the Law Society. Thus, there is no strong indication that legal practitioners are discouraged to take up contesting case from us.

Free Legal Advice Scheme

7.45 Apart from the free legal consultation provided by volunteer lawyers at the Law Society of Hong Kong, the Free Legal Advice scheme in HKU offers similar pro bono legal seminars and legal consultation to NGO service users at IFSCs, including the HKFWS, CMAC, Caritas, Tung Wah Groups and Hong Kong Federation of Women's Centre. There is also a Free Legal Advice Scheme under the Duty Lawyer Service, which provides legal advice on matrimonial issues at the District Office or at the District Councillor's Offices in the evenings. It provides free, preliminary legal advice to address the public's concerns by informing them of their rights, legal obligations, and possible resolutions, with each session lasting for approximately 15 to 30 minutes. As it is simply a one-off legal advice session, volunteer lawyers do not follow up on the cases or provide in-depth analysis and solutions about the cases. Nevertheless, it does raise the divorcees' awareness of their legal rights and available solutions and can especially benefit ethnic minorities or new arrivals with little legal knowledge of divorce. It is therefore suggested that promotions can be stepped up to reach divorcees through mediums such as electronic media, TV commercials, printed publications, and other promotional activities coordinated by NGOs.

7.46 However, further promotion of the free legal advice service to the public is required, especially for new arrivals and ethnic minorities, as these populations are often unaware of their rights.

Highlight 7.4: Effective and connected services of psychosocial support, family support, housing support, financial support, and legal support services for divorcees can mitigate their stress and reduce potential crises (e.g., domestic violence, homicide and suicide).

E. Provision of Quality Services

7.47 For better or worse, the quality of service provided can influence the emotional impact of divorce on affected persons and families; and even dictates their access to appropriate services. Through reviewing interviews with the informants, the Team identified the important qualities of service providers as reported.

Capacity Building

7.48 Well-rounded interdisciplinary knowledge is considered a critical quality as professional service providers, because divorce can often be complicated and involve the needs of the affected families. For instance, social workers acquire related legal knowledge, understand divorcees' situations and needs, and serve with empathy. Hospital staff equipped with DV knowledge are more alert to spousal injuries. Teachers and school administrative staff who understand the emotional and behavioural impact of divorce on children cater to students' needs better; which could promote early intervention. This is evident in one interview that a school allowed an ex-spouse subject to injunction order to pick up the child from school. This could have been prevented if the school staff were aware of different court orders. Well-rounded knowledge of divorce can raise service providers' sensitivity to the needs of divorced families. It also increases efficiency in case management and allows more effective collaboration across disciplines.

Sensitivity to Clients' Needs and Feelings

7.49 Being sensitive to clients' needs and feelings is considered a critical quality of service providers, otherwise, clients may feel their needs being invalidated, belittled or declined. Firstly, personal judgments may interfere with understanding the clients' needs and feelings. Some divorced men felt taken less seriously than their female counterparts. A male divorcee told in an interview that a female lawyer and a social worker made him feel humiliated and disrespected as they told him his wife was justified to get half of his assets as she gave birth to a son. These experiences that undermine male clients' esteem can discourage them from seeking further help. In other cases, divorcees and social workers reported that while police officers' handling has improved with the issuing of the DV booklet, some still held biases/beliefs/stereotypes/assumptions that women were to blame for DV, or spouses from cross-boundary marriages are somehow part of bogus marriages just to receive identity cards while investigation showed insufficient evidence for DV. The examples reflect how personal judgments can hinder understanding of clients' needs and prevent individuals to seek help in the future.

7.50 Interviewees also advised against imposing ideas on clients. For instance, some police officers reportedly told wives not to sue their husbands who abused them. They were asked, "do you really want to break your family? Do you want to see your husband go to jail?" In more extreme cases, some even pressurised victims to withdraw their cases. While some might purport to act as a

mediator with good intentions to discourage extreme measures within families, it could be dangerous for DV victims to return to abusive households. In another case, a social worker was reported to have misunderstood the client's need for applying for special procedures in public housing and suspected that she attempted to deceive public housing. She hence overlooked the client's medical needs from living in poor environments when discussing with the medical social worker, hence delaying the application process. Furthermore, when the social worker communicated with other colleagues in English, the client felt angry, ignored, and upset afterwards. It is therefore important that service providers are able to empathise with clients, understand their needs, and avoid personal judgment when conducting professional investigations and interventions.

Multidisciplinary and Interdepartmental Collaboration

- 7.51 Multidisciplinary collaboration between the service providers – lawyers, social workers, clinical psychologists, teachers, doctors, police etc. – is critical in ensuring families move past divorce and the subsequent adjustments smoothly. The Hong Kong Collaborative Practice Group is an example of how multidisciplinary collaboration can facilitate service provision. It is formed by over 30 private practising legal and mental health professionals including counsels, solicitors, counsellors, financial advisors and others who are also members of the Hong Kong Family Law Association and are trained in collaborative practice. It promotes alternative dispute resolution targeting family's expatriates as well as middle- to high-income divorcing families in Hong Kong, aiming to help them reach a fair and confident settlement agreement while minimising costs, delays and stress at the court proceedings.
- 7.52 Multidisciplinary collaboration could be further improved, with the consideration of striking the right balance between protecting the privacy and personal safety. However, the examination of several good practice models suggests that personal safety is always the priority of many jurisdictions which are role models in privacy concerns and practice. Information collected at the time of this study indicates that police officers that take up DV cases do not have any prior knowledge about the cases, for example, whether the case is already followed by the SWD or NGO case workers. The SWD and NGOs also do not share information on the internal databases on DV, so clients need to repeatedly answer the same questions. Not only can this pose extra stress and frustration to clients, but it also delays the handling and duplicates of resources. Children would also feel overwhelmed by constantly having to see different professionals, and repeat their stories and feelings. For instance, a child client we interviewed had been sent to see social workers, clinical psychologists, and therapists for support that she felt she did not need, and she preferred to be left alone.
- 7.53 Gaps in multidisciplinary collaboration or smooth handover can also create confusion for divorced persons. Some service providers noted that the SWD sometimes suggests their clients apply for

nominal maintenance and CSSA while the LAD lawyers suggest they request maintenance from ex-spouses instead, leaving a confused and already stressed client pondering on his/her “best” options. Different professionals can be open and respectful in sharing their views with each other. The clients can be given more time to understand the considerations of professionals so they would not feel pressured to decide.

Chapter 8:

Achievements, Limitations, Conclusions and Recommendations for this *Further Study*

8.1 Marriage life can be a journey with ups and downs. Information, guidance and support are needed at different stages, even more so if the couple chooses to part ways. The four sections in this chapter encapsulate the review of the status quo, our recommendations, and what more is to be done for the way forward. It first summarises the achievements and limitations of the study. After contextualising the quantitative and qualitative data collected with an extensive literature review, it then outlines the immediate recommendations to improve existing preventive, supportive and remedial services for families. The important law change will be raised in the hope of making divorce and the compliance of maintenance orders more efficient. Finally, the chapter ends with two long-term initiatives that warrant serious consideration, including the Family Responsibility Office (FRO) and the Integrated Database System (IDS).

A. Achievements and Limitations

8.2 The *Further Study* adopted a mixed-methods approach involving quantitative and qualitative strategies at different stages to investigate the phenomenon of divorce in Hong Kong. This methodology allowed us to explore the phenomenon with depth and breadth, identify the pressing issues, and propose feasible recommendations.

8.3 However, several limitations should be addressed. Firstly, Hong Kong needs a policy-driven mindset in front-line data collection. While an elaborate research methodology has been used in this study, some basic data of core issues do not exist, or may not have been collected systematically by government departments, or could not be meaningfully compared due to compartmentalisation. The Judiciary only captures the data relevant for Family Court Judge to deal with divorce, with most only available in printed form instead of a digital database. This is a stark contrast to other jurisdictions (e.g., Australia, South Korea, and the UK) that collect and make available detailed information, such as the age of marriage, length of the marriage, and occupations, for policy formulation and research purposes.

8.4 Important statistics are also not able to be captured in an ad hoc study, for instance, the number of divorce cases with maintenance orders and custody orders issued each year, the proportion of CSSA recipients in divorce cases, the number of cases in default of maintenance and the total amount involved (including those for cross-boundary marriages), the number of JS made each year, and JS outcomes. It is difficult for the Government to gain a full picture of the divorce situation in Hong Kong and it hinders the formulation of effective policies to deal with the challenge. Either the government should follow through the policy to open up government data for free public use

as outlined in the 2017 Policy Address, or systematic data collection has to be carried out at and by relevant government offices.

8.5 Secondly, the case data collected in the present study is centred on the underprivileged. Data provided by the LAD and the majority of e-Forms cases predominantly concern low-income families instead of middle- to high-income families. This may be due to more e-Forms received by NGOs but less received by law firms, the latter of which was concerned about legal privilege and privacy. Most middle- to high-income families may prefer to settle their disputes through mediation or negotiation by lawyers and their struggles cannot be fully reflected. The results highlight the need of those who are truly in need.

8.6 To address the limitations discussed, Hong Kong should consider a review and reform of the family justice system. The current laws on the child custody arrangement and financial support were developed over 40 years ago, and they need to be updated to stay effective, accessible, and cater for the ever-changing community needs. The Children Proceedings (Parental Responsibility) Bill proposed in 2015 addressed issues related to childcare arrangement orders, but ancillary relief should be the next target in the future. Bearing in mind a thorough reform may take decades, the following sections will discuss the service, legal and policy recommendations to facilitate divorce proceedings and maintenance-related issues.

B. Service Recommendations

8.7 In response to the service gaps identified in Chapter 7, the Team proposes the following recommendations for service improvement, which aims to reduce divorce risks, promote responsible divorce decisions, minimise the negative impacts of divorce, and further enhance the quality of service provision especially in maintenance. These suggestions should ultimately pave the path to establish the required policy initiatives.

Reduce Divorce Risks

Promote Pre-Marital Education and Counselling

8.8 Pre-marital education and counselling services may be strengthened to better prepare couples for marital challenges and build realistic expectations, especially for young and cross-boundary couples. Authorities should also step up pre-(re)marital education for remarrying couples to help them avoid repeating the patterns that led to the end of their previous marriage(s). These services should be widely delivered at affordable charges, preferably by NGOs, such as the IFSCs, Family Life Education Units, etc. They should also be promoted as normal means in ordinary society.

8.9 Programmes can be developed in secondary/tertiary schools to educate students about safe sex and healthy interpersonal relationships. It can reduce the stigma surrounding seeking advice on relationships, and may also prevent unintended pregnancies and other sexually transmitted diseases.

Promote Family Education and Enhancement

8.10 Marital support and family enhancement services should be strengthened to build family resilience and facilitate better communication. Education programmes on marriage enrichment and family planning should be further promoted. Other than conventional group work practice and workshops, information on accessing family resources should be widely disseminated via diverse mediums, such as short clips, movies, and social media. Community-based outreach programmes can also identify individuals and families at risk, such as those with low educational attainment, as identified from the THS Report No. 61 in 2016.

Recommendation 1: To reduce divorce risks, family services should promote: a) pre-marital education programmes and counselling services, and b) family education programmes online and offline, for all couples and families.

Promote Responsible Divorce Decision

Strengthen Informational Support

8.11 Public education resources need to be improved and more widely disseminated so that anyone contemplating divorce can be well informed of the divorce procedures (e.g. enforcement orders), legal responsibilities and rights, as well as relevant social resources. More attention should be given to divorcees of cross-boundary marriages with limited know-how. A consultancy team can be commissioned to develop a holistic curriculum with quality information. Means of dissemination should be user-friendly and go beyond traditional approaches, including the use of social media and guided viewings in established social services (e.g. IFSC, SCSCs, maternity and child health centres, parent resource centres in rehabilitation services, out-patient clinics, hospital patient resource centres, visitor waiting rooms of correctional services institutions). Useful information about existing social resources, such as legal aid, can be attached to the divorce application forms to raise awareness. Volunteers, ambassadors and advocates can also be trained to facilitate public education and strengthen mutual support.

Promote Divorce Decision Counselling Services

8.12 Divorce decision counselling services should be strengthened so that couples contemplating divorce can decide with fewer chances of regret. To expand services, more service providers should be equipped with specialised training on divorce.

Recommendation 2: To promote responsible divorce decisions, family services should: a) strengthen informational support on topics including but not limited to legal rights, co-parenting, and local supporting services; and b) promote divorce decision counselling services, for those contemplating divorce.

Mitigating the Negative Impacts of Divorce

Strengthen Parenting Courses

8.13 Parenting courses for single parents in existing services (e.g., IFSC, SCSCs, Single Parents Association) should be strengthened to support those facing difficulties (e.g. communicating with child), and promote parental responsibility and co-parenting. As single fathers tend to lack societal support, parenting courses should be gender and culturally-sensitive. They can also be extended to grandparents who often play significant roles in families. Educational materials such as promotional leaflets, booklets, short video clips and advertisements can be widely circulated in service centres, district offices, housing estates, or via social media.

Enhance Support to Children

8.14 Children, who are directly affected by divorce, often have limited say in the process and their voices are seldom heard. Services for them should be scaled up to help them better adapt and overcome unresolved emotions. Firstly, facilities should cater to children of different age groups as their needs differ according to age. For instance, while toys are useful for young children, teenage users of SCSC services will most likely prefer electronic games or board games.

8.15 Secondly, information for children on the Family Council website²²³ could be enriched, and the Commission on Children²²⁴ should also include comprehensive information on its website to familiarise children with knowledge and resources related to children welfare. Hong Kong can also adopt certain features from Cafcass to better protect the rights of children (see para. 6.76).

²²³ *Happy Family Info Hub*. <https://www.familycouncil.gov.hk/en/main/>

²²⁴ *Commission on Children*. <https://www.coc.gov.hk/tc/index.html>

8.16 Thirdly, child day care services should be more accessible and affordable, especially in the case of working single parents. The Government may consider increasing funding to more district-based subsidised child care centres and monitoring the quality of Neighbourhood Support Child Care Project and Mutual Help Child Care Centres²²⁵.

8.17 Fourthly, schools should provide better support to children from divorced families, and be more attentive/sensitive to their adjustments, emotions, and needs in school settings.

Simplify and Streamline Administrative Processes

8.18 As noted in 7.42, some divorcees perceive that the divorce experience, involving various application procedures and administrative processes such as legal aid, were lengthy and stressful (See Appendix G). The LAD, as a party to provide assistance to divorcees, can explore alternative administrative procedures to streamline legal aid application processes. Based on the data collected by social workers and lawyers, it is recommended that the LAD streamline procedures either for legal aid applications, or they can provide referral to relevant services (i.e. IFSC or SCSC) to ease the already intense stress they face from the divorce process. To better match appropriate mediators to take up family cases, the LAD can consider establishing a special list of lawyers who have received training in the family context with sufficient knowledge in handling contesting cases to match with potentially high-conflict families or complex cases. Applicants can be given clear guidelines of procedures and when possible, waiting time should be reduced. A telephone hotline or a booth in the Legal Aid Office can assist divorcees in filing their applications.

Recommendation 3: To mitigate the negative impacts of divorce on divorcees and children: a) family services should strengthen co-parenting courses, b) supporting services should be more dedicated to create a child-friendly environment for children, c) intermediate housing services should be more accessible for divorced families in need and/or at risk of domestic violence, d) administrative processes for Legal Aid applications should be streamlined.

Improve Service Quality

Enhance Training for Service Providers

8.19 Other service providers indirectly working on divorce cases should also be more sensitive to the needs of divorcees and their children, and render support to them. There is also a clear need to enhance training for service providers and create pathways for specialisation (certification of

²²⁵ Yip, Chan, Law and Team (2018). *Consultancy study on the long-term development of child care services*. Hong Kong: The University of Hong Kong. Retrieved from: [https://www.swd.gov.hk/storage/asset/section/219/Final_Report_\(eng\).pdf](https://www.swd.gov.hk/storage/asset/section/219/Final_Report_(eng).pdf)

specialists and supervision of such specialists) to ensure timely and appropriate services for divorced families. Moreover, in light of the growing number of ethnic minorities and cross-boundary/cross-ethnic marriages in Hong Kong, it is critical for service providers to reduce stigma and encourage help-seeking by being sensitive to divorced families' gender, age, and culture.

- 8.20 **Educational Institutions.** Additional training for teachers and administrative staff may enable them to become more sensitive towards the emotional and behavioural impacts of divorce on children. Social workers serving all school levels can be equipped with basic legal knowledge as part of their continuous training to encourage early identification and intervention, as well as to protect the safety and well-being of children.
- 8.21 **HKPF.** Training for police officers needs to be strengthened to raise their sensitivity in handling DV and victim cases, especially among new recruits and front-line officers working at the report room of each police station. Other measures include clearer guidelines to assess clients' eligibility for shelter service and constant revision of the protocol for handling DV. The data input forms of the new e-referral system should be further streamlined (combine DV and elderly abuse cases) to ensure more comprehensive information is recorded.
- 8.22 **Hospitals and primary health care providers.** Training to identify DV victims can be provided to healthcare professionals, in particular to primary health care providers as well as front-line workers in the A&E, paediatrics and psychiatric departments. This will enable the collection of evidence for the early identification and protection of abuse victims.
- 8.23 **Housing Department.** The Housing Department staff and social workers need to closely collaborate and familiarise themselves with policies and assessment criteria in order to identify eligible persons for conditional tenancy or to refer highly suspicious cases in crisis to social workers. Living under one roof following divorce is highly undesirable and could be dangerous. The HA should revisit its policies and regulations to see if facilitation could be provided to the divorcees in obtaining housing assistance.
- 8.24 **NGOs.** Training and in-service training on divorce-related knowledge should be required for social workers in social work training institutes. Social workers should furnish the basic legal knowledge on divorce matters, and be empathetic towards the situation and needs of families. They are also recommended to study dynamics in remarried families so as to not treat stepfamilies like first married families. More experienced social workers can be designated to manage divorce cases. Adequate emotional support should be provided to social workers, who are constantly working under highly stressful environments and more susceptible to burnout and depression.
- 8.25 **Matrimonial Lawyers.** Training on divorce and communication with vulnerable parties and children should be provided to solicitors and legal executives. They should be equipped with

basic knowledge of the functions of other collaborative professionals and refer those in need to relevant professionals for follow-up.

- 8.26 **Family Court.** Despite the surge in divorce cases over the last two decades, the workforce of Family Court Judges remains limited, with 12 judges at present, including 1 Principal Family Court Judge, 7 District Judges and 4 Deputy District Judges. In Singapore, the number of judges is 44, four times higher than that of Hong Kong. Although the number of judges is planned to increase from 12 to 18 by 2026, this may not be enough to meet current demands. Increasing the current number should be a continuous priority to prevent delays in handling divorce cases. Yet, it is understood that currently there are challenges in doing so, such as limited family court facilities to accommodate the increased number of judges. In light of this, there will be more facilities for the Family Court at the Revenue Tower in the coming two years or so, as well as when the Family Court is moved to the new District Court Building by 2027.
- 8.27 In spite of the aforementioned situations, it should be recognised that the establishment of full-time Family Court judges has increased by 60% following the creation of three additional posts in 2020 to cope with the increasing caseload and heavy workload of the Family Court. The Judiciary has been conducting open recruitment exercises from time to time with a view to filling judicial vacancies at different levels of courts; and pending the substantive filling of judicial vacancies through open recruitment, the Judiciary has been engaging temporary judicial resources as far as practicable to help maintain the level of judicial manpower required, thereby assisting to maintain court waiting times at reasonable levels and reduce the court waiting times in some cases.
- 8.28 Furthermore, supposedly there are more full-time and part-time legal professionals, judges, and court staff involved in the family justice system. In that case, establishing flexible court times might be worth considering to improve accessibility to the justice system. Yet, this should be planned carefully to contemplate concerns about the long working hours of some legal professionals who may compromise their work-life balance, and challenge the capacity to accommodate childcare responsibilities for those with young children²²⁶.

Strengthen Cross-Professional Collaboration and Integration

- 8.29 Multidisciplinary collaboration among service providers in the community should be encouraged. This is especially important as the ecology of social services has been constantly changing with the rise of new problems and the development of new services such as SCSCs in the recent decade. While a referral system among social services is in place, it is recommended to review and revise

²²⁶ IFF Research and Frontier Economics. (2021). *Flexible Operating Hours Pilots: Evaluation findings*. HM Courts & Tribunals Service. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005224/Annex_A_-_FOH_Evaluation_Main_Report.pdf

the comprehensive assessment forms in use to reflect the needs of specific population groups. For example, adding a sub-category of the needs and services for divorced families in the FRU assessment forms can allow their needs to be identified accurately for timely intervention and referrals. Meanwhile, although the SWD has streamlined referrals of single parents receiving CSSA to LAD for recovering maintenance, some service providers and service users interviewed have still reported delays in payment. It is recommended that the mechanism be reviewed and further streamlined to ensure that payers fulfil their obligations, and reduce the burden on public resources. Setting up a special unit is highly desirable to provide comprehensive information and referrals regarding divorce-related services.

8.30 Currently, each case is assigned a key person-in-charge (case manager) who, with the service users' consent, liaises with other professionals for a smooth transfer of information and coordination across service providers. Interviews of young service users, however, found that they were sometimes overwhelmed to meet different professionals whose roles they found overlapping. It is recommended that the case manager coordinates with various service providers according to personalised assessments of each service user's needs, so as to prevent repetitive assessment. Also, services should be gender, language, and culturally sensitive to cater for the needs of males, ethnic minorities or new arrivals.

Recommendation 4: The quality of services can be improved through strengthening: a) pre- and in-service training on knowledge and sensitivity for service providers, and b) cross-professional collaboration and integration to provide specialised case support for divorcees.

C. Legislative Recommendations

8.31 Hong Kong has ratified the United Nations Convention on the Rights of the Child (UNCRC) since 1994. Article 27(4) laid a moral and legal expectation for separated parents to ensure they cannot repudiate their financial responsibility to their children, and for the government to ensure they continue to fulfil their parental obligations. In light of the frequent maintenance non-compliance highlighted in Chapter 5, it is recommended that Hong Kong should enhance existing legal and administrative measures and also develop new measures. When non-compliance persists, the range of enforcement actions allows payees to mitigate possible implications for their well-being. In the long run, the Team hopes that improvements can direct the path towards setting up needed policy initiatives like the Maintenance Assurance Scheme (MAS) elaborated below.

Improve Existing Legislative Measures

a) *Enhance the enforcement of Judgment Summons (JS)*

- 8.32 Firstly, policymakers and lawmakers can explore possibilities to improve methods of serving JS. Currently, the procedural requirement of issuing JS has been strictly laid down under Rule 87 of Matrimonial Causes Rules, Cap. 179A. Further, under Order 90A of the Rules of the District Court, Cap. 336H (RDC), JS must be served personally on the judgment debtor to attend the court for examination. This requirement ensures debtors are well informed about the penal consequences of JS (e.g. a committal order). However, our study found it was difficult for judgment creditors in serving JS documents on debtors personally. Qualitative interviews with legal practitioners revealed that the limitations created by the JS serving process have resulted in delays and even judgment creditors' giving up on the application process. As seen in other common law jurisdictions that are members of the Hague convention, for example, Canada, alternative serving methods have been employed in cases that serving in person is unsuccessful. These methods include passing a true copy of the summon to an adult person in the vicinity of the judgment debtor's usual place of residence/business; publishing the summon in the press, etc. However, based on other jurisdictions experiences, the alternative serving methods are to be used only when serving in person or all other means of serving have failed. Furthermore, alternative serving methods are prone to legal challenges. More data need to be made available to illustrate the effort and time required for successful in person serving of judgment summons.
- 8.33 Subject to amendments of their data collection policy, the court may order payees to locate payers with assistance from relevant government departments, such as the Housing Department, to check the available official records. A previous case²²⁷ suggested that this would be feasible. The wife filed a summons seeking a court order directed to the Director of Housing for the address of her ex-husband to recover maintenance arrears. The Family Court held that when a person is in breach of a Court order and another who is entitled to the benefit of that order wishes to enforce the order, then by virtue of s58(2) of the Personal Data (Privacy) Ordinance, Cap. 486 (PDPO), a data user is exempt from Data Protection Principles (DPP) 3 because contempt of court is seriously improper conduct and their personal information may be supplied.
- 8.34 However, this case will not be applicable to several departments such as the IRD in view of provisions in s4 and s81 of the Inland Revenue Ordinance, Cap. 112, nor will this apply to the ImmD as personal particulars furnished to a registration officer cannot be disclosed under s11 of the Registration of Persons Ordinance, Cap. 177. Police duties as set out in s10 of the Police Force Ordinance, Cap. 232 do not include assisting maintenance payees to locate maintenance

²²⁷ *M v M*, FCMC 1425 of 1998

payers. Lawmakers may consider amending the aforementioned ordinances to facilitate locating the judgment debtor as it has been done in other jurisdictions through executing statutory power.

- 8.35 Reference can be made to Order 10, Rule 1²²⁸ of the RDC under which a writ for service on a defendant at his/her last known address could be sent by registered mail or insertion through a letterbox. It may be possible to allow leaving the summons with an adult member of the Respondent's household or affixing the summons on the front door of the Respondent's place of residence upon the court's permission. In addition, the court may consider using technology (email, messaging platforms via WhatsApp, WeChat, etc.) as a supplement to notify debtors about the JS in addition to receiving the document in person. Related ordinances should be reviewed together with new administrative measures.
- 8.36 Secondly, in the latest PDSL10.2, the JS procedure has been split into two separate sections: examination summons and committal summons. Relevant authorities can promote and educate the public on the possible consequences of breaching maintenance orders, such as possible contempt of court. This would increase the deterrent effect of JS, thereby increasing the rate of maintenance compliance and recovery.
- 8.37 Thirdly, the court may prioritise hearings for the summons of variation of maintenance, as debtors may request for variation of maintenance upon receipt of the JS, further delaying the JS proceedings for at least nine months.

b) *Encourage the use of Attachment of Income Orders (AIO) or autopay payment*

- 8.38 The court may consider a more extensive use of AIO or schedule autopay as the payment method by the issuance of the maintenance order. Currently, the law provides that the court may issue an AIO under the following conditions: a) joint application made by the maintenance payer and designated payee; b) by the maintenance payer; by maintenance payee and d) by the court at its own discretion. AIO could be issued as early as in the same hearing where the related maintenance order was made, i.e. by the court at its own discretion. Although it is ineffective against debtors who are self-employed or with unstable jobs, AIOs are effective for those with “attachable income”, such as civil servants, employees of large organisations or those with a long employment history with the same employer. Payees should also be informed about information about AIO so that they can apply for AIO when the maintenance order is granted, or when taking enforcement action. Further, it is suggested that the court could order payers to set up autopay to avoid late payment and minimise the risk of having maintenance arrears.
- 8.39 Some payers may be concerned about the privacy side if AIOs are more proactively used. Payers may not want employers to learn about their maintenance order. Employers also need to make

²²⁸ General provisions of the service of originating process

additional accounting arrangements for the payer. However, OFRO's experience demonstrates the balance between privacy and enforcement. In Ontario, it is illegal to punish or dismiss employees for paying support or breaching the confidentiality of the support deduction notice. The Judiciary should therefore consider reviewing the condition of issuing AIO and normalising its usage by informing parties during court proceedings and enhancing the publicity of the said ordinance. If parties are informed of the AIO's possible effects, this may encourage payers to make timely payments to avoid his/her income from being attached as the AIO will notify their employers, i.e. payers will comply with maintenance orders. The Government should also assist employers in following the AIO guidelines and emphasise the importance of confidentiality and protection of payers' rights in AIOs. The collection of maintenance fees through AIO can be reinforced without compromising issues of privacy as many western jurisdictions (e.g. Canada, the UK, etc.) that are very sensitive to privacy issues are still able to do so.

8.40 In addition, if the proposed Children Proceedings (Parental Responsibility) Bill is re-lodged and read at the Legislative Council, the subdivision of Attachment Order in Division Two could provide further support for AIO usage²²⁹. This Bill may strengthen the use of AIO, which section 23(1) of the Crown Proceedings Ordinance (Cap. 300) and section 66 of the Employment Ordinance (Cap. 57) do not preclude the court from making an attachment order in respect of such wages or salary. Though it is a draft bill, this illustrates that the AIO can be strengthened through legislative amendment, which in turn increases the popularity of the AIO.

c) *Prohibit the judgment debtor from leaving Hong Kong*

8.41 The Team agrees with the 2000 HAB report that suggests extending the validity of the prohibition order to strengthen its enforcement power. This highly impacts cross-boundary and relocation cases, where payers move to mainland China once and for all, or they still work in Hong Kong but reside in the mainland. Such relocations are becoming increasingly common, making it difficult to locate defaulters of maintenance. Prohibition orders can prevent payers from moving out of Hong Kong to evade maintenance obligations and appearance in court hearings. They typically last for up to 3 months. Extending the validity of prohibition orders may force payers to pay to discharge the order, as this directly impacts their living. The order should also prohibit payers from entering Hong Kong unless he/she agrees to appear in court for examination upon return. It can deter payers who had left Hong Kong before the order came into effect but who still need to travel to and from Hong Kong from evading court hearings.

8.42 The application of Prohibition Orders requires payees to have knowledge of payer's details (e.g. passport, travel document numbers) and the payer's travel plan or pattern before application. The period of validity set out in section 52E of District Court Ordinance, Cap. 336 applies to all

²²⁹ Proposed Legislation: Children Proceedings (Parental Responsibility) Bill.
[https://www.lwb.gov.hk/en/parentalresponsibility_consult/doc/Draft_Bill_\(Eng\).pdf](https://www.lwb.gov.hk/en/parentalresponsibility_consult/doc/Draft_Bill_(Eng).pdf)

injunctions issued for the recovery of judgment debts in civil claims. Amendments will therefore have widespread impacts. If the current validity period of three months is insufficient to achieve its purpose, an objective benchmark must be established to decide how long the validity period should be modified. The Team suggests further studies on this matter.

Recommendation 5: The government can improve existing legislative measures to prevent the default of maintenance, through a) enhancing the enforcement of JS by promoting possible consequences such as Committal for Contempt of Court for breaches of the maintenance order, b) encouraging the use of AIO and payment by autopay, c) extending the validity of Prohibition Orders to prevent debtors from leaving Hong Kong.

Develop New Legislative Measures

a) *Suspend passport and driving licenses*

8.43 The Team recommends that lawmakers can consider suspending debtors' passports or driver's licenses as a new enforcement measure. This measure is often adopted by overseas jurisdictions until debtors pay all outstanding maintenance or make payment plans to pay arrears. In Ontario, OFRO issues the first notice to payers about the risk of their driver's license being suspended if they refuse to pay or make the payment plan within the 30-day period. Debtors' driver's licenses can be reinstated after they pay or enter payment plans with the OFRO.

8.44 It is noted that it may be too demanding to suspend driving licenses until the payers pay all arrears owed, especially for professional drivers. Since the suspension will significantly lower the payer's income and may constrict their ability to recover the maintenance, the court may consider such suspension to be valid until the payer shows up for hearing. This measure could be seen as a possible consequence if the payer does not appear in court hearings after JS is served.

8.45 To achieve that, the Government should review and amend relevant ordinances and regulations. This also requires efficient logistics and communication between the court and other government departments. Once the court orders the suspension, notices should be directly sent to relevant departments for immediate action. An updated communication system should be established for any new practice. After the debtor appears in court for examination, the suspension may be rescinded.

b) *Transfer judgment debtor's information to credit reference agencies*

8.46 Information about litigants of maintenance arrears can be passed to a credit reference agency (CRA) for records. This could directly impact the credit score of debtors sued to repay maintenance, especially those who plan to apply for loans, mortgages, or credit cards. Other than

the limited effect for those in poverty, this measure has a deterrent effect on payers with financial capability but refusing to pay.

8.47 Under the Code of Practice on Consumer Credit Data issued by the Privacy Commissioner for Personal Data, CRA can only collect “public record and related data”, e.g., data in official records that are publicly available relating to any action for the recovery of a debt or judgments for monies owed entered against the individual and any declaration or discharge of bankruptcy. Since information on the maintenance arrear litigation is not “publicly available information in official records”, it would violate the code if such information is collected by the CRAs.

8.48 The Team suggests amending the data collection policy or re-defining “public record and related data” so the CRAs can collect relevant data. The best way to avoid being reported to the CRA is to pay maintenance on time. Otherwise, when the payee takes enforcement action and the payer does not attend the Court for examination, the record of such litigation will be reported to the CRAs.

c) *Deduct government benefits and tax refunds*

8.49 The court could ask relevant government department(s) to withhold the total sum of outstanding maintenance from benefits (e.g. extra allowance, cash pay-out) and tax refunds from the Government, pending further order from the court until JS ends. This is applicable in Hong Kong, as in the recent five years, the Government has adopted tax reduction and waived/refunded government fees and charges. The Government also provides extra allowance to eligible persons or cash hand-outs to Hong Kong permanent residents aged 18 or above.

8.50 Given that all annual budgetary proposals must be examined and approved by the Legislative Council before implementation, the Government can table this suggestion whenever the tax refund applies to the following fiscal year. However, this may create additional costs and workload for the government departments to process the deduction. It will also be ineffective if the payer is not a taxpayer or is not eligible to receive those benefits under the policy.

d) *Extend payment options*

8.51 The court may consider extending payment options, for instance, to add “payment to a service provider” as an option in maintenance orders. In Singapore, maintenance can be directly paid to service providers such as child care centres. This can incentivise maintenance compliance, as payers know where the money is placed. NRPs may experience greater parental responsibilities and involvement in children’s lives. Such measures may also reduce direct engagement and potential conflicts over direct transactions between divorcees.

8.52 There are examples where the government sets up dedicated schemes or policy tools targeted at specific groups of citizens and for achieving specific policy aims. For example, the Electronic

Tax Reserve Certificate Scheme (儲稅券) is a “Save for Tax” scheme open to all taxpayers to assist them to establish funds for tax payment, while Silver bond (銀色債券) is a governmental retail bond issued under the Government Bond Programme which can only be purchased by Hong Kong ID card holders aged 60 or above. Similarly, the government may consider establishing a dedicated scheme for divorcees and their children. Under the current system, the partners could agree to purchase education funds for their children. However, they may not trust each other and may not have sufficient basic funds for the product in the private market. The proposed fund for divorcees can give parties another option to place money out of their available assets. Those with flexible incomes or self-employed payers could secure the children’s future maintenance or avoid the AIO. The pool of funds might be used to support the operation of the Maintenance Assurance Scheme, which will be covered below.

8.53 The proposed new fund can also specifically target divorced parents for paying full or part of the maintenance. The Government will be the administrator that assists maintenance payers in building up funds for maintenance. The payee may collect the money through procedures similar to the refund of the TRC. The government could also consider launching investment products with a tenor of three to five years for divorced parents to make good financial plans for their children’s future. The interest-generating feature of TRC and investment products may also be considered an incentive for parents to provide steady and effective financial support for their children.

e) *Furnish a banker’s guarantee*

8.54 With reference to Singapore’s practice, a new order known as the banker’s guarantee is recommended. The idea is that the payer is required to keep a sum of money in the bank as depository guarantee. The payee, as the beneficiary of the guarantee, would receive the payment if there is a subsequent default. The amount and validity of the banker’s guarantee will be decided on the court’s discrete prescription. Even if the defaulter has paid the outstanding arrears, he or she may still be ordered to provide a banker’s guarantee. The payer may make a variation of the validity and amount of this suggested order in light of changes in circumstances.

8.55 “Guarantee for maintenance” is a foreign concept in Hong Kong. It is an uncommon practice that requires the defaulted payer to maintain a lump sum in the bank as a security deposit. A banker’s guarantee helps the payer assure payees that the payment for maintenance is guaranteed not just by the payer, but also by a trusted bank that helps facilitate transactions between the two parties. The recommendation may pave way for preventive measures to protect payees from the impact of maintenance arrears. This may be especially applicable amongst middle- and high-income

families in which the payer has sufficient assets but has multiple histories of maintenance non-payment.

Recommendation 6: The Judiciary and the Government may develop new measures to prevent the default of maintenance, through a) suspending passport or driving license, b) transferring debtor’s information to credit reference agencies, c) deducting government benefits and tax refunds, d) extending payment options, and e) furnishing a banker’s guarantee.

Factors that facilitate the implementation of the above suggestions

a) Strengthen the mechanism for locating judgment debtors

8.56 In legal proceedings, it is crucial to locate the Respondent to serve the court documents. However, there seems to be no legal basis to draw in police assistance at present. The Team recommends strengthening assistance from relevant government departments to locate payers. NZIR serves as a good example by setting up an information hub to locate debtors and to obtain information on their financial circumstances. Subject to relevant laws, Hong Kong government departments should also help the creditors to locate debtors if they have relevant information.

8.57 According to section 51A of the PDPO, Cap. 486, personal data held by the court in the course of performing judicial functions is exempt from the data protection principles. Therefore, if the Court holds personal information on the payer over the course of performing judicial functions, disclosure of such information for the purpose of locating the payer may not be in breach of PDPO, and hence it appears that the court can use such information to locate payers.

b) Facilitate the Access to Information

8.58 The Team recommends that the Government review its policy on the information accessibility to maintenance debtors for protecting children’s upbringing. That requires amendments to relevant Ordinances and governmental administrative arrangements. Together with the statutory power granted by the court, judgment creditors can access information regarding the debtors under court order to recover maintenance arrears. For instance, checking records from the ImmD, Transportation Department, Housing Department and Treasury can help creditors take further legal actions.

8.59 During maintenance enforcement litigation, there is a concern over access to personal information in accordance with the Personal Data (Privacy) Ordinance. Whether parties to litigation are entitled to withhold disclosure on the grounds that documents contain “personal data”, the use of which is restricted under the Personal Data (Privacy) Ordinance Schedule 1 (“Data Protection Principle 3 – use of personal data”), the Court has made it clear that the

administration of justice requires parties to comply with their disclosure obligations and that the reason of personal data do not provide grounds for refusal. Section 60B documents how personal data can be used for purposes other than was originally collected for if (among other things) its use is required by order of the court or in legal proceedings in Hong Kong. The courts may allow a party to redact parts of a document if certain personal data is irrelevant (e.g., see *Mimi Wong v Raymond Hung* [2011] 5 HKLRD 241, at para. 82). Although there is no record of judgments explicitly related to the exemption from s58(2) of the PDPO to enforce maintenance orders, it is still noteworthy to consider two judgments that illustrate sufficient cause for the use of personal data to enforce a court order or civil dispute:

- In a judgment handed down by the then Deputy Judge Saunders in *Man Hok Pui v Man Leung Yuk Sin*, D.J. Suit No. 1425 of 1988, he said on page 10 of the said judgment that “I accordingly find that where a person is in breach of a Court order and another person, being entitled to the benefit of that order, wishes to enforce the order, then, by virtue of the provisions of section 58(2) of the PDPO, a data user is exempted from the provisions of the data protection principle 3, and may supply the information upon appropriate request.”
- In *Tse Lai Yin Lily v Incorporated Owners of Albert House* [1999] 1 HKC 386, the Hon. Mr. Justice Suffiad said on page 393 of the judgment that “unlawful or seriously improper conduct” extended beyond criminal conduct to include civil wrongs and that the “most natural meaning that can be given to the word “unlawful” is that it normally describes something which is contrary to some law or enactment or is done without lawful justification or excuse”.

8.60 The maintenance payer’s failure to pay maintenance according to the court’s order is considered unlawful as there is no lawful justification or excuse for such failure. As enforcing the maintenance order against the payer remedies his or her unlawful conduct, the relevant department is asked to apply the exemption provided by section 58(2) of the PDPO and disclose the payer’s last known address. Examining the two judgments above, such measure is not disproportional to the public interest and privacy protection. To establish clearer guidelines, legislators/relevant bodies (e.g., The Law Reform Commission of Hong Kong) can consider reforming aspects referred to under the Hong Kong law by the Secretary of Justice or the Chief Justice. Cases eligible for exemption can be clearly stated to prevent skewing the balance between privacy protection and safeguarding the public interest.

8.61 Regarding what can be learnt from other jurisdictions’ experiences, in Taiwan’s case, the Compulsory Enforcement Act serves as a basis for enforcement²³⁰. Applicants can apply for

²³⁰ Judicial Yuan. The Compulsory Enforcement Act. Retrieved on 25 May 2022, from: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=B0010004>

compulsory enforcement on the basis of maintenance orders or private divorce agreements (with or without mediation). If the paying parent's asset or income source is known, such information is to be supplied by the applicant to the court. If it is not known, the applicant can apply for investigation of the debtor's assets. Compulsory enforcement is to be applied to courts in municipalities in which the assets are located. If the assets or their location are unknown, enforcement should be applied at courts in the municipality of debtors' residences. Successful enforcement does not require the presence of the debtor in court. The debtor can apply for objection for adjustment to his financial circumstances and needs. In a 2019 amendment, compulsory enforcement was capped at one-third of debtors' monthly income and the remaining portion should be at least 1.2 times the municipalities' minimum living expense (Articles 115 & 122 of the Compulsory Enforcement Act). The Compulsory Enforcement Act applies to a wide range of financial obligations or debts and it is not specific to maintenance recovery. The act covers properties, assets, savings and income etc. Thus, in Taiwan, financial obligations have priority over privacy concerns.

8.62 In relation to Hong Kong's divorce and maintenance context, maintenance recovery is suggested based on children's rights and welfare. Maintenance is more than a financial obligation, but provides essential and much-needed resources for children. When making policy and legislation considerations, it is important for the government and legislators to place a heavier weight on the rights of children to receive essential living expenses compared to privacy concerns of paying parents. A main point of consideration is whether privacy concerns really should be a paramount rule over one's lawful obligations and whether it has become a means for some to evade their responsibilities, which harms the rights of children. In terms of compatibility with public opinion, it is suggested that public consultation be carried out to raise awareness in the community before implementation. In spite of collecting the view of the public, the consultation will also create an opportunity to raise awareness that entails behavioural change.

Proportionality analysis of the proposed legislative measures

- 8.63 It is observed that some jurisdictions may impose punishments or administrative measures that restrict the maintenance of defaulter's certain personal rights that are enshrined by the Basic Law and Bill of Rights (HKBOR). If these measures were to be implemented in Hong Kong, the restrictions on the defaulters, with the legitimate aim of securing timely maintenance, should satisfy the four-step proportionality test as laid down in *Hysan Development Co. Ltd v Town Planning Board* [2016] 9 HKCFAR 372.
- 8.64 The principle of proportionality has been adopted across many common law systems, becoming a primary tool for Hong Kong to manage conflict between individual rights and public interest. The court is duty-bound to protect rights under the Basic Law and the Bill of Rights by balancing societal and individual interests against each other with the four-step proportionality test to

examine whether the restriction or limitation: a) pursues a legitimate aim; b) is rationally connected to that legitimate aim; c) is no more than necessary to accomplish that legitimate aim; and d) whether a reasonable balance had been struck between the societal benefits of the encroachment and the inroads made into the constitutionally protected rights of the individual, asking in particular whether the pursuit of the societal interest resulted in an unacceptably harsh burden on the individual.

8.65 To find a fair balance, proportionality between the drawbacks of the law (the infringement of individual rights) and the benefits it is designed to achieve (the purpose of the law and administrative measures) can be considered in light of the following non-exhaustive factors²³¹

- a) Nature of the rights: a court must assess the importance of a particular right in the overall constitutional scheme;
- b) The importance of the limitation's purpose: to be reasonable, the limitation of a right must serve an important purpose or policy adopted by the Government and reflect universal value. Sometimes a section of the ordinance is actually protecting another important right stated in another section(s) of the law. The crucial question is how to determine which facts are private in nature. The right to privacy can be divided into two categories: a) Privacy rights protecting personal autonomy (preventing intrusions into one's private life); and b) Privacy rights protecting information (preventing disclosures and access to information);
- c) The nature and extent of the limitation: in general, the more serious the measure's impact on the right, the more persuasive the justification must be. The infringement of rights should not extend past the warranted purpose in which the limitation seeks to achieve;
- d) The relation between the limitation and its purpose: a causal connection between the law and its purpose, meaning whether the law serves the purpose it is designed to serve; and
- e) Less restrictive means to achieve the purpose: limitation must achieve benefits that are in proportion to the costs of the limitation. However, it is important to note that this is only one and not the sole consideration. The limitation will not be proportionate if other means that do not restrict rights or restrict rights to the same extent can also be employed to achieve the same ends. If a less restrictive (but equally effective) alternative method exists to achieve the same purpose, then the less restrictive method must be prioritised.

8.66 It is necessary to assess the importance and purpose of a right in context rather than in the abstract. Social interests, particularly children's rights, should be more highly ranked in the hierarchy of values meriting protection in society even if it may reasonably restrict certain individual rights. The family/children development provided a compelling objective to allow some curtailment of

²³¹ South African Law Commission. (2002). Publication of Divorce Proceedings: Section 12 of the Divorce Act (Act 70 of 1979). https://doi.org/https://www.justice.gov.za/salrc/reports/r_prj114_2002aug.pdf

individual rights in the present context. The proposed measures may restrict individual rights but it may be less deleterious as compared to the impact of maintenance arrears, and also the clear message of parental responsibility that brings to the public at large.

8.67 Indeed, there is no absolute standard or sequential checklist to determine reasonableness and necessity. Whether the purpose of the limitation is reasonable or necessary will depend on the circumstances in a case-by-case application. Hence, the Government may consider undergoing the proportionality test to examine whether the proposed legislative measures legitimately balance the possible infringement of payers' fundamental rights to reach its aim, i.e. implementing administrative measures to make payers show up at the Court, or comply with the maintenance order.

Demonstrations of reasonable balance between societal benefits and of the encroachment and the inroads made into the constitutionally protected rights of the individual

8.68 **Suspension of passport and driver's license in Ontario, Canada.** The Canadian example of suspending one's passport and driver's license provides us with insights we should take into consideration. Regarding the first two steps of the proportionality analysis, these two measures served a legitimate aim of enforcing the fallen behind payment and restoring the payment on time. It also reflects the rational connection between suspensions and the aim to protect the rights and interests of the vulnerable. It is legally reasonable to restrict the rights of irresponsible payers to a certain extent as a means to enforce them to fulfil their obligations.

8.69 The third step of the proportionality analysis involves asking whether those measures are proportionate means to achieve the legitimate aim. In Ontario, there are 10 enforcement measures to recover the support arrears, which allows the OFRO to take the optimal and most available measure(s) under unique circumstances in each case. The measure used would be no more than was necessary to accomplish that legitimate aim, i.e. one measure works on a defaulter but not another to recover the arrears. These measures are not manifestly without reasonable foundation and are proportionate means of achieving the legitimate aim.

8.70 The fourth step of the proportionality analysis requires the court to make a value judgment to balance between the societal benefits of suspending a driver's license and passport, and the inroads of an individual's constitutionally protected rights. Canada strives to uphold values that underlie an open and democratic society based on human dignity, equality and freedom, which are vital elements to establish and maintain an open and democratic society. Even though the *Canadian Charter of Rights and Freedoms* is an important document to protect individual rights, it is noted that certain rights under the Charter are not absolute, such as rights to enter or leave Canada. As stated in the *Family Responsibility and Support Arrears Enforcement Act, 1996*, this right can be limited should parents evade parental responsibility.

- 8.71 In addition, to protect the rights and respect the cultural diversity of indigenous people, the ability to enforce support orders is affected by whether the support payor and recipient are Status or Non-Status Indians. The *Indian Act* protects Status Indians' property and income is held on reserve unless the person entitled to support is also a Status Indian. This means the OFRO has to take other enforcement measures that do not target any property or income held on reserve, such as suspending their driver's licence, to exert authority upon Status Indians.
- 8.72 **The debate of new enforcement measures in South Korea.** In 2018, several bills strengthening the implementation of child support payments received cross-party support in the 20th National Assembly. Criminal sanctions against payers who failed to pay for child support were referenced, which were practised in some OECD countries, such as the US, Canada and the UK. Stakeholders, such as victims of the child support arrear, felt as if they did not have sufficient legal protection. They also disagreed that the arrear is a simple debt issue, but is directly related to the child's right to survive. The Federation of Child Support (양육비해결총연합회) and Childcare Expenses Resolution Group (양육비해결모임 대표) also urged the national government to sincerely consider the proposed bill to protect children from inadequate financial support^{232,233}.
- 8.73 During the debate, the Government of South Korea was conservative regarding the proposed measures such as restrictions on driver's licenses, prohibition of departure, and the listing of those who failed to pay for child support. The police viewed that there was no direct connection between the failure to pay child support and suspension of the driver's license, which may violate the principle of prohibition of unfairness and may result in an unconstitutional lawsuit in the future. The Ministry of Justice opposed the disclosure of personal information and the ban on departure as these actions should be subjected to criminal prosecution, yet the issue of child support is a civil issue for divorced families. Hence, the bills were floundered in the National Assembly.
- 8.74 However, one incident changed the course of development. "Bad Fathers" was a website founded by Koo Bon-chang (구본창) in 2018 that openly addressed the issue of child support arrears, and also disclosed the identity of the defaulters. Perhaps posting the payer's information would be their last resort to settle the unpaid payment, as he noticed that some "Bad Fathers" users had already exhausted all available means, including legal actions, to enforce child support. The website successfully resolved 113 out of 400 unpaid child support cases. Nevertheless, the

²³² 임헌정.(2020). 양육비해결총연합회, '배드파더 게시물 금지 가처분' 관련 회견. Retrieved from: <https://www.yna.co.kr/view/PYH20201113093200013>

²³³ 김치연.(2020). "양육비 문제 해결되면 아이들이 행복...감옥 무서워도 활동". Retrieved from: <https://www.yna.co.kr/view/AKR20201031054200004>

website became controversial due to the potential breach of privacy by disclosing individuals' personal information without consent²³⁴.

- 8.75 Later, Koo and his colleagues were sued for defamation by five Koreans who were featured on the website. In 2020, the Suwon District Court cleared Koo and his colleagues of defamation charges as they did not make any profit from the website but instead served the public interest²³⁵. The website not only controversially made payers pay the support, but its widespread impact also aroused public attention to urge the national government to introduce a bill that criminalises parents' failure to give legal child support - "Bad Fathers" came as a call for the government to implement new enforcement measures.
- 8.76 Out of public interest, the Government of South Korea eventually announced that the law amendment had passed the plenary session of the National Assembly in December 2019 and will come into effect in June 2021, allowing the Minister of Gender Equality and Family to request relevant government departments to cancel or suspend the driver's license and ban on leaving the country for those who have not fulfilled the obligation to pay child support. It is also possible to disclose the list of child support payers if the payers do not explain the default of child support for at least three months after the request from the payees.
- 8.77 The revision of the law indicates the government's eagerness to prioritise the child's interest and provides reassurance that the new enforcement measures are constitutional and legally proportional. Although the "Bad Fathers" incident was resolved, similar situations in which people had to take matters into their own hands to attract public attention and policy change should be avoided in the future. The government may choose policy intervention to guard against such extreme measures. Enforcement measures can follow the protocol, be held accountable through monitoring, and allow individuals the freedom to file for an appeal, so enforcement measures can protect both the rights of the payee and payer.
- 8.78 **Local experience.** Referencing the court of appeal case CACV481/2020 CWYL VS LTYE, when judges grant existing or recommended enforcement orders, it is important to consider the proportionality of the orders. Orders should be granted on a case-by-case basis, considering each case in accordance with its unique context and circumstances. Additionally, the duration of the enforcement could be highlighted. For instance, the suspension of driving licenses and other prohibitions should not be permanent measures, and the court may discharge any enforcement order by its discretion.

²³⁴ 이재영.(2020). 무죄 받은 배드파더스, 구본창 대표는 누구...113 건 양육비 미지급 해결. Retrieved from: <https://www.etoday.co.kr/news/view/1845514>

²³⁵ 김지환.(2020). 양육비 미지급 부모 신상공개 '배드파더스' 관계자 무죄. Retrieved from: https://www.ytn.co.kr/_ln/0103_202001150416072440

8.79 The aforementioned case discharged a Prohibition Order restraining the Respondent / ex-husband from leaving Hong Kong on the grounds that the travel restriction disproportionately interfered with his freedom of movement under Article 31 of the Basic Law and his common law right to work. The Court of Appeal found a lack of consideration given to the Respondent's constitutional right to freedom of movement guaranteed under the Basic Law, and his common law right to work. The Court also emphasised the importance of the right to pursue one's job or profession, noting that this right had been deeply entrenched in the common law, dating back centuries. These were material factors that should not have been ignored by the Deputy Judge. Moreover, the enforcement proceedings were not expected to conclude quickly. A strong case is required to keep the Respondent in Hong Kong, particularly when the travel ban would have an adverse impact on his employment situation and impede his ability to pay the Petitioner.

8.80 **Conclusion.** While individual rights and data privacy are important rights, interests protected under laws have to be balanced against other important rights and the public interest. In fact, breaching privacy for compliance with court orders for maintenance payment is inevitable for some jurisdictions. For instance, the Government of Canada aims to strike a balance between the competing rights of the individuals and supporting that individual's family through legislation. For instance, the ORFO provides uncooperative individuals with sufficient notice and different options to respond before taking away individual rights. When mailing the First Notice of Driver's Licence Suspension, respondents are given 30 days before the suspension takes place and can reply in three ways (immediately paying, working on a payment agreement, asking for a refraining order to stop the suspension for a short period of time). Nevertheless, it is useful to conduct a study to assess the public's acceptability in Hong Kong.

8.81 Regarding the first two steps of the proportionality analysis, it appears that they are likely to be satisfied in Hong Kong. Even though there are no direct connections, for example, between the right to drive vehicles or the freedom of movement and paying maintenance, the connection is rational as creating restrictions to limit certain rights can encourage people to perform their corresponding duties to support their children or ex-spouses as shown in the above cases.

8.82 In order to determine whether other jurisdictions' enforcement measures (including Taiwan) are necessary to accomplish the legitimate aim (step 3 of proportionality analysis) and whether a balance had been struck between the societal benefits of the encroachment and the inroads made into the constitutionally protected rights of the individual (step 4 of proportionality analysis), the following factors may be relevant for consideration²³⁶:

- a) the seriousness and scale of the default of maintenance in Hong Kong;

²³⁶ Legislative Council, Paper for the Bills Committee on Protection of Endangered Species of Animals and Plants (Amendment) Bill 2017 (2017). <https://www.legco.gov.hk/yr16-17/english/bc/bc06/papers/bc0620171129ls-15-e.pdf>.

- b) implementation of the new measure's benefits to the community;
- c) the social and cultural values related to maintenance and parental responsibility;
- d) the effectiveness of the enforcement actions taken under the existing regulatory regime;
- e) whether there are ways other than the new measure to achieve the policy objective of increasing maintenance compliance in Hong Kong; what are the other alternatives that have been explored by the Administration and why other alternatives are not considered to be feasible, or cannot achieve the same policy objective;
- f) the amount of total maintenance arrears by defaulters;
- g) whether the new measure represents the minimum impairment on rights guaranteed by the Basic Law and HKBOR; and
- h) whether there are any other measures to minimize the impairment or damage that may be caused to defaulters apart from the new measure.

8.83 On one hand, the Hong Kong Government can examine the above considerations and weigh the purpose, effects and importance of the infringing defaulters' enshrined rights. On the other hand, the constitutionality of the legislation is dictated by the nature and effect of the infringement caused. The court may choose to not mechanically adhere to a sequential checklist and engage in a balancing exercise to arrive at an informed, final judgment on proportionality.

Recommendation 7: To facilitate the improvement and development of the legislative measures on maintenance enforcement: a) the function of locating debtors should be strengthened and b) relevant regulations should be refined/clarified.

D. Recommended Policy Initiatives

8.84 The Team identified multiple challenges to protect divorced populations from the aftermath of divorce in current legislative measures and social services. Major issues include the lack of an integrated platform for divorce-related knowledge, ineffective maintenance systems, and insufficient financial support for individuals. Failure to address such issues can compromise the welfare of affected families, exacerbating the impact of divorce on families.

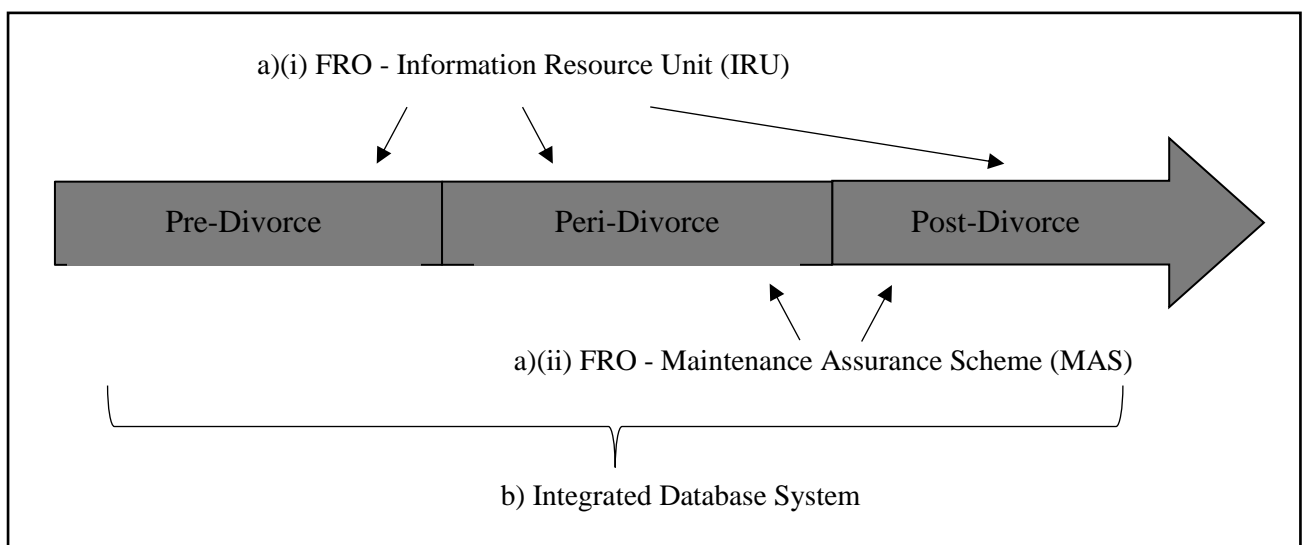
8.85 In our understanding, SCSCs provide services and referrals related to co-parenting and custody, but do not handle maintenance matters. Custody and maintenance issues are also better tackled separately by different bodies in order to prevent either party from using the custodial issue as leverage in maintenance issues, and vice versa. Out of the 67 IFSCs+ISCs, 41 are run by SWD. Only those run by SWD can perform statutory duties. FSA for IFSC requires a minimum of 503 cases per 13 workers, which translates to around 39 cases per worker. Based on interviews with

current SWD IFSC workers, the current caseload in IFSCs ranges from 30-50 cases per worker. It is, therefore, safe to assume that IFSC workers are working at 90%-130% of their required capacity. Additionally, SWD IFSC workers are already responsible for many statutory duties as their wide scope of work includes working with children under the Director of Social Welfare custody by Care or Protection Order, disabled persons under the Director of Social Welfare custody, and conducting intakes and referrals for Non-refoulement Claimants.

8.86 The proposed FRO's aim is to provide specific services, namely to recover maintenance and enforce court orders. This is intrinsically different to IFSC's integrated service model which focuses on strengthening family relationships, and IFSCs and SCSCs do not provide maintenance-related services. The FRO will also take on the coordination and overall management of maintenance-related issues. Despite incentives to encourage private payment and private settlement, the suggested MAS will impose a substantial workload that is fundamentally different to the current services provided by IFSC & SCSC. Hence, the FRO will not duplicate existing services but improve its efficiency to provide a one-stop service to meet the needs of a growing number of divorces in the community.

8.87 In the long run, the Team recommends exploring the feasibility of implementing two main initiatives in Hong Kong: a) establishing a Family Responsibility Office (FRO) with an (i) Information Resource Unit (IRU) to promote divorce-related knowledge and provide appropriate referral services, and a (ii) Maintenance Assurance Scheme (MAS) to strengthen maintenance enforcement and provide temporary financial aid to payees encountering financial difficulties during legal enforcement, and b) setting up an Integrated Database System (IDS) to capture important divorce-related data. Figure 8.1 presents the timeline of the recommendations.

Figure 8.1 Timeline of the recommended policy initiatives



8.88 It is suggested that all recommendations are guided by the following principles:

- a) **Reliable.** Services should be reliable for all individuals to use. In the IRU, the information provided should be accurate, evidence-informed and updated; in the MAS, the maintenance should be collected and distributed on time without a build-up of arrears. Also, MAS assessments should be efficient and ex-gratia support payments should also be distributed on time, in order to ensure individuals can rely on the payments during financial hardships in maintenance enforcement litigation.
- b) **Accessible.** Divorce is a complicated process involving considerable stress and confusion. Basic divorce-related information and a step-by-step guide to available services can be provided online to help relieve some uncertainty and distress. Online resources may include straightforward application procedures and information presented through multiple mediums, such as video clips or websites.
- c) **Comprehensive.** Different needs arise at various stages of the divorce process. Comprehensive services can be provided by the MAS to carry out the following functions: conducting a preliminary diagnosis of needs, making referrals to appropriate services, and providing follow-up services on cases in IRUs; collecting and distributing payments, obtaining relevant data for assisting the payees to obtain a court order, enforcing orders and make appropriate referrals when required in the MAS; and assessing users' eligible amount of support payment and establishing feasible repayment plans with individuals in the MAS, etc. Summarised in Table 8.1, the provision of such services can be funnelled into the following branches.

Table 8.1. Summary of the FRO's possible branches and their corresponding responsibilities

| Program | Units | Responsibilities |
|----------------|---------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| MIP | Integrated Resources Unit | Overall management, coordination, producing updated information packages producing presentation materials, booklets, and videos for face-to-face and online MIP (different sets of materials may need to be produced to suit different groups of users, e.g. ethnic minority users); answering enquiries; providing and consultation, assessment and referral as necessary; conducting capacity building courses. |
| | | Deployment of professional staff at SCSCs (1 for each SCSC, total 5): Conducting face-to-face sessions; receiving enquiries, making assessments and referrals; designing and conducting capacity building courses. |

| | | |
|-----|------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| MAS | Casework Unit | <ul style="list-style-type: none"> • Case intake • Regular review with receiving parents. • Locating and contacting paying parents in case of default or missed payments. • Assessment of default and disputes. • Making referrals to IFSC/SCSC for mediation. • Assisting service users on legal proceedings. |
| | Finance Unit | <ul style="list-style-type: none"> • Be responsible for the collection and delivery of maintenance payments from the MASPS. • Compilation of overall payment reports including those from private payments. |
| | Legal Unit | <ul style="list-style-type: none"> • Provision of legal advice to Case Work Unit. • Liaison with lawyers on legal enforcement cases. • Compilation of case records to support legal enforcement. |
| | Administration Support | <ul style="list-style-type: none"> • Support for casework unit and overall operation. • Folder maintenance & filing. • Deployment of administrative/technical staff at SCSCs (0.5 for each SCSC; total 2.5) |
| | IT Support | Develop and maintain IT system for case management & communication with other government departments. |

- d) **Integrated.** Services should be seamlessly-knit with improved communication between the community services in Hong Kong. The IRU aims to provide a one-stop platform to address the clients' needs by facilitating their access to appropriate services. The MAS and IDS also require collaboration across different departments to ensure the services have a strong foundational network to support their functions.
- e) **Powerful.** Services should be manned by professionals with statutory power to provide quality service to the target users. Professionals should receive relevant training and have extensive experience in the field. Furthermore, services in the FRO should be backed up by statutory authority, in order to ensure that divorcees receive mandatory education on managing divorce (IRU), and pay responsibly according to orders (MAS).
- f) **Inclusive.** Services should be user-friendly, non-stigmatising, and catered to all the affected populations regardless of gender, age, and ethnicity. For instance, given the significant

population of ethnic minorities in Hong Kong, information disseminated through the internet, booklets, or short clips should be multilingual.

- g) **Child-centred.** Services should uphold the child's best interest principle as enshrined in the United Nations Convention on the Rights of the Child. For example, FRO promotes the welfare of children going through the family justice system. The concept of co-parenting will be promoted in the FRO to all divorcing parents.

8.89 It is critical that individuals, the community, and the Government work hand in hand to achieve these goals, especially because the proposed recommendations require an immense amount of resources and funding. On an individual level, it is important to encourage concepts of co-parenting and parental responsibility. For instance, payers should comply with maintenance orders and honestly reveal their financial circumstances. This would lower the reliance on CSSA, as governmental aid should act as the last resort for divorcees facing hardship. On a societal level, it is important to provide community support to divorcees. For instance, society should be well-informed about the consequences of divorce on families with the aims to reduce stigma towards divorcees. Lastly, on an institutional level, the Government should support divorced families by actively promoting public education on their responsibility, and implementing cost-effective policies to minimise preventable causes, such as payers' reluctance to provide maintenance.

8.90 The following is a summarised table of the recommended policy initiatives.

Table 8.2 Summary Table of the Recommended Policy Initiatives

| FRO = Family Responsibility Office; IRU = Information Resource Unit; MAS = Maintenance Assurance Scheme; IDS = Integrated Database System | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------|------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Unit | Programme | Aims/Purposes/Objectives |
| FRO | IRU | <ol style="list-style-type: none"> 1. Ensure divorcees are informed about their rights, available services, and the concepts of parental responsibility and co-parenting 2. Ensure divorcees receive equal access to information and help their need 3. Ensure quality professional services are provided to divorced families |
| | MAS | <ol style="list-style-type: none"> 1. Ensure payers comply with maintenance orders 2. Reduce reliance on public resources (e.g., CSSA, LAD) 3. Help parents meet their obligations (parental responsibility) 4. Protect divorcees facing financial hardships following the default on maintenance 5. Provide financial assistance to payees who may struggle financially during maintenance enforcement litigation, but are not eligible to receive CSSA |
| IDS | | <ol style="list-style-type: none"> 1. Assist the surveillance, monitoring, and understanding of the current divorce situation 2. Facilitate the formulation of effective policies to address current challenges in divorce with evidence-based practices |
| Service Principles | | |
| 1. Reliable; 2. Accessible; 3. Comprehensive; 4. Integrated; 5. Powerful; 6. Inclusive; 7. Child-centred | | |
| Details | | |
| FRO | IRU | Target users: (1) All divorced and separated persons; (2) Service providers (e.g. legal practitioners, social workers) |
| | | Functions: (1) Mandatory Information Programme (online and offline); (2) Triage assessment and referral; (3) Capacity-building courses |
| | | Location: Court buildings and government district offices |
| | MAS | Target users: All divorced persons with MO, AIO; People experiencing the default of maintenance; Guardians; Maintenance payees facing financial hardships during maintenance enforcement litigation |
| | | Conditions: Optional for those compliant with MO; Compulsory for those that are likely to not comply with MO (evidence should be reviewed and decided by Judge; e.g. all divorced persons with AIO). |
| | | Functions: (1) Administrative work (collect and distribute maintenance payments); (2) Executive power (enforce court orders to recover maintenance); (3) Execution of the ISP – collect the levy, disburse payments and collect repayment |
| | | Eligibility for ISP: (1) Obtained a maintenance order; (2) Not a CSSA recipient; (3) Currently facing financial hardships from the default of maintenance; (4) Applied for enforcement orders to recover outstanding maintenance |
| | | Levy: Increase the marriage registration fee, depending on the amount of compensation |
| Location: Government district offices | | |
| IDS | | Functions: (1) Collect and record divorce-related data; (2) Maintain and manage the IDS; (3) Provide relevant data for research, discussion, planning and decision-making within the government and in the community |

| FRO-IRU | FRO-MAS | | IDS |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Feasibility | | | |
| Statutory Power <ul style="list-style-type: none"> Likely to be granted with court approval Supported by a 2015 court case, wherein the Judge ordered petitioners and respondents to attend the co-parenting course, “A Beam of Hope” | Public Acceptance <ul style="list-style-type: none"> Multiple organisations have conducted studies on divorce, with similar conclusions and recommendations to improve the current maintenance system The Hong Kong Legislative Council passed a motion urging the government to improve maintenance recovery in 1999 Educate the public on the detrimental impacts of divorce to de-link the relationship between ominous thoughts and the ISP | Overseas and local experiences <ul style="list-style-type: none"> Some jurisdictions provide available advance payments to compensate for unpaid (or late) payments by maintenance payers. Non-means-tested loan schemes and ex-gratia payments are common practices by Governments. Examples include: NLSFT and PWIF | Manpower <ul style="list-style-type: none"> Staff in responsible bureau/department with statistical support from C&SD, for planning and designing the IDS. Staff for liaison with relevant government departments for data collection. Staff for data input and compilation. |
| Service Overlap <ul style="list-style-type: none"> Does not overlap with existing services Facilitates the connection between service users and existing community services Takes reference from the tight network of community partners in IFSCs | Statutory Power <ul style="list-style-type: none"> Does not take the authority away from the Court (ultimate power of the Court) Guidelines should be set to indicate clear powers and limitations of MAS | Fairness/User-pay policy <ul style="list-style-type: none"> Government invests start-up money for the fund, and around HK\$13 million will be injected into the fund. Increase registration fee within a reasonable range | Overseas Experience <ul style="list-style-type: none"> Database systems are a common practice in overseas jurisdictions, such as the UKDS^[4] |
| Overseas Jurisdictions <ul style="list-style-type: none"> The OMIP has been shown to have high overall satisfaction rates The MIP in the FRO can refer to previous experiences of the OMIP in building and developing the programme | Sustainability <ul style="list-style-type: none"> User-pay principle (for both parties) Adopt a policy similar to the Direct of Legal Aid’s First Charge (for those that cannot provide service fees)^[1] | Perceived Social Responsibility <ul style="list-style-type: none"> It is common that the public shares risks together to minimise the adverse impacts of unfortunate incidences (e.g. TAVA^[2], TICF^[3]) Public education to destigmatize the ominous thoughts for promoting the concept of levy from the marriage registration fee | Data Collection Method <ul style="list-style-type: none"> Data collection methods should be user-friendly and concise to improve the quality of the obtained data |
| | Conditional Assistance <ul style="list-style-type: none"> Possible abuse of the Plan by payers that try to evade such responsibility and project significant financial implications on the Plan. | | Data Privacy <ul style="list-style-type: none"> Ensure data privacy and security Supported by Statistics Canada, the UKDS |

[1] Director of Legal Aid’s First Charge; [2] Traffic Accident Victims Assistance Scheme; [3] Travel Industry Compensation Fund; [4] UK Data Service

Family Responsibility Office (FRO)

8.91 The FRO provides two main functions to serve separated populations: the Information Resource Unit (IRU) and the Maintenance Assurance Scheme (MAS).

Executive body

8.92 The FRO's main role is to execute court judgments and ensure compliance of maintenance payers. Its role is municipal in nature. As it would provide information on legal issues and social services regarding divorce proceedings, the FRO should proactively collaborate with relevant authorities, including the Judiciary, SWD, and Administration Wing under the Chief Secretary for Administration's Office.

8.93 In view that a new Family Court Building is to be established in Causeway Bay, the interviewed legal practitioners welcome the Government to consider the inclusion of the FRO on the Ground Floor of the new Family Court Building, or to collect opinions on the design of the Court from lawyers who may identify potential limitations in the current design of the Family Court facilities. The Government may also consider placing the FRO in existing District Offices, which are government municipal facilities that share similar functions to the FRO such as public enquiries, legal advice, referrals, and administration. Exact details, which are beyond the scope of the present study, can be worked out by related government bureaux.

Information Resource Unit (IRU)

8.94 **Rationale and aims.** Findings indicated that although FRUs in IFSCs aim to help individuals build resilience and strengths, they are preoccupied with serving diverse populations²³⁷. FRUs tackle a wide range of tasks, including the provision of information, educational programmes, outreach, and parent-child activities to serve families in the community. More discussion has been given previously in paragraphs 8.86-8.87. Therefore, although they could provide divorced persons with accurate information and referrals to the right services, they may struggle to provide the full, specialised support that divorced populations need.

8.95 In fact, many divorced persons especially new arrivals are unaware of divorce-related information and local services in Hong Kong. There is a need to address the lack of sufficient informational support and the lack of specialised referral services for divorced populations.

²³⁷ Department of Social Work and Social Administration, The University of Hong Kong. (2010). Building Effective Family Services: Review on the Implementation of the Integrated Family Service Centre Service Mode. Retrieved on 6 Jun 2022 at: https://www.swd.gov.hk/doc/family/IFSC/ReportonReviewontheImplementationoftheIFSCservicemode_w3c.pdf

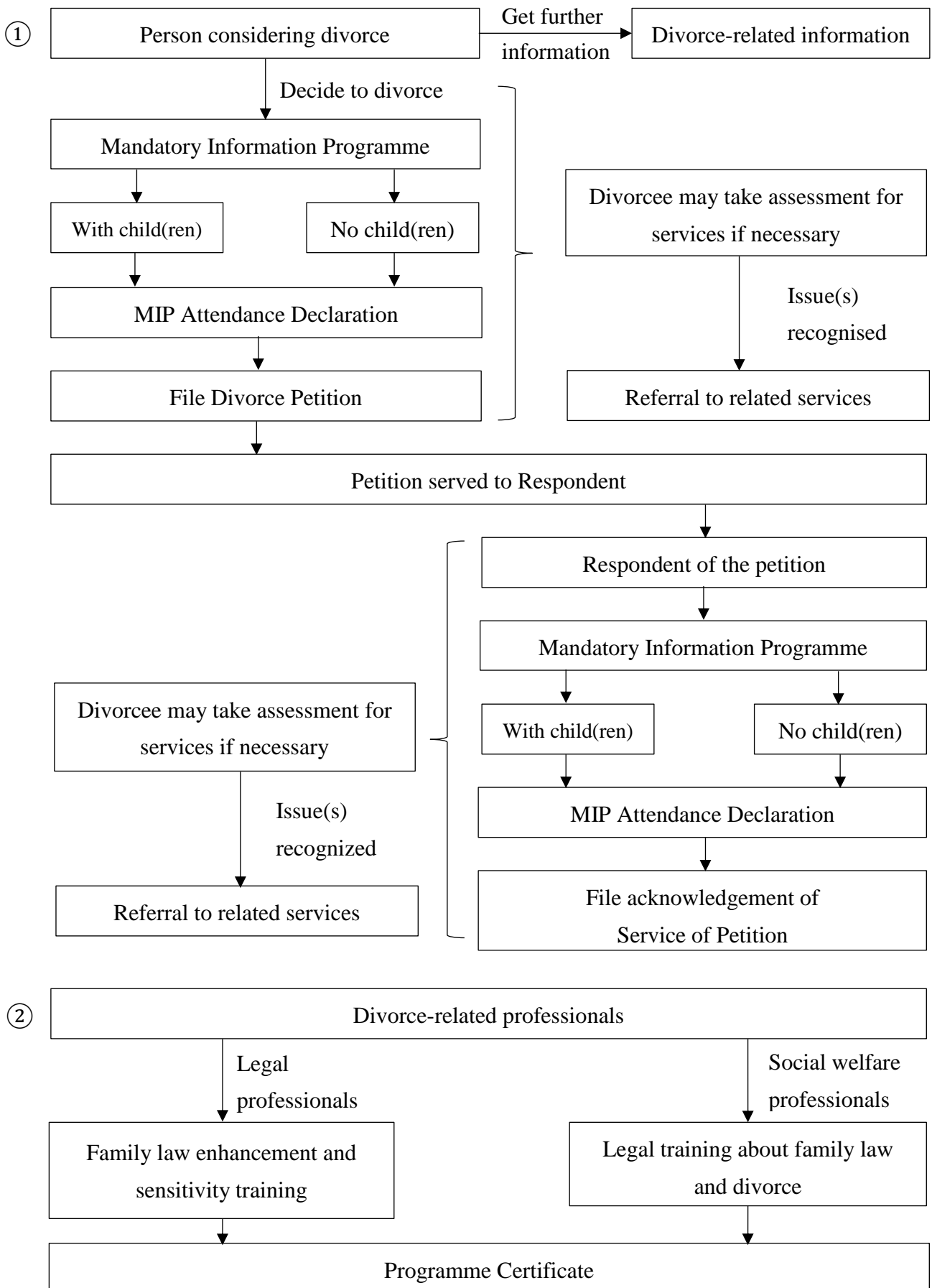
8.96 The IRU provides holistic support to divorcing individuals and empowers their functioning following marital breakdowns, from planning divorce to after decree nisi is granted. The Ecological Systems Theory (viewing systems as consisting of sub-systems constantly in dynamic interactions creating mutual influences) and the Public Health Approach (emphasising the need to provide preventive, supportive and remedial services to users with different needs) guide the formulation of the mission of the IRU, which aims to:

- a) Ensure divorcees are informed about their rights, the services available, and the concepts of parental responsibility and co-parenting;
- b) Ensure divorcees receive equal access to information and help they need; and
- c) Ensure quality professional services are provided to divorced families.

8.97 **Overview and functions.** The IRU should perform the function of promoting divorce-related knowledge, information and resource to divorced families, tighten up the triage and referral system to connect local services, and support capacity-building for service providers. Specifically, the Team recommends that the FRO provide: a) a Mandatory Information Programme (MIP), b) a triage assessment and referral station, and c) capacity-building courses for services providers across disciplines.

8.98 An overview of the flow of the proposed IRU can be seen in the following figure (Figure 8.2). The proposed flow is divided into two streams: ① is for divorced families, ② is for the service providers.

Figure 8.2 Overview of the proposed IRU



Mandatory Information Programme (MIP)

8.99 The MIP should be mandated by the Family Court. Before filing the divorce petition, individuals considering divorce should be required to attend the MIP, with consequences for uncooperative parties and those with unauthorised non-attendance. The MIP can promote education on divorce-related knowledge, including legal procedures in divorce, legal rights, relevant local services, and the concepts of co-parenting and parental responsibility, etc. The MIP should be disseminated online and offline to accommodate divorcees, and the language used should be jargon-free and simple to understand.

8.100 Furthermore, the content of the MIP should be slightly adjusted depending on whether the individual: a) has financial and child arrangements; b) has financial arrangements only; c) has child arrangements only; and d) has no arrangements. For instance, the MIP for those with child arrangements should cover concepts like co-parenting, whereas the MIP for those without any arrangements should cover information like enhancing mental wellness. This can be done by having divorcees fill in basic information about their divorce (e.g. have children) online, and the system can direct divorcees to the appropriate MIP. Following the completion of MIP, individuals should fill in the declaration form with the programme reference number as proof of completion, and it will be used as one of the required documents for the filing of divorce petition and the acknowledgement of service of the petition.

8.101 In high-conflict cases, parties may refuse to cooperate with each other. The Family Court has to be in a position to decide what constitutes reasonable cooperation, with penalties for uncooperative parties and those refusing to attend the MIP without reasonable grounds. Full attendance in the MIP programme can be challenging as it requires time. It is suggested launching a MIP pilot scheme through co-creating a programme similar to the MIP in collaboration with NGOs. For example, the Hong Kong Family Welfare Society's "A Beam of Hope-Pilot Project" provides parent coordination and co-parenting services for divorced families. The preliminary checklist distributed at court can also ask individuals if they have heard of or enrolled in the MIP, and judges can also direct parties during the First Appointment to attend the MIP arranged by designated social workers within a certain period. Upon gradual widespread awareness and knowledge about the MIP pilot scheme, MIP can be executed on a full scale.

8.102 The recommendation of setting up MIP in Hong Kong is supported by the previous success of MIPs from overseas experiences. In Ontario, divorcees are mandated to participate in the MIPs (OMIPs) within 45 days of the commencement of a family law proceeding as the first step in divorce proceedings in court²³⁸. It aims to encourage divorcees to settle disputes whenever possible and to smoothen the whole divorce process. It is a two-hour presentation that provides

²³⁸ Ministry of the Attorney General. (2018). *Family justice services*. https://www.attorneygeneral.jus.gov.on.ca/english/family/family_justice_services.php#mip

attendees with information about the family court system and process, local resources and programmes, common issues facing family law litigants, alternatives to litigation, and the effects of divorce on the parties and their children. The OMIPs are available at family courts and online, (e.g. Legal Aid Ontario's Family Law Information Programme), increasing the flexibility and accessibility of the OMIPs. The FRO can therefore take reference from the OMIPs in building its curriculum.

Triage assessment and referral station

- 8.103 The proposed FRO can establish a triage assessment and referral station for divorced families. Specialised assessment forms, which is vital in screening individual need²³⁹, can be developed to better identify the multifarious needs of individuals and families, and refer them to the appropriate services at the right time. It is important that the assessment forms carefully screen individuals' needs, as highlighted in the 2019 HKFWS research report. The findings of that report also showed that improvements from parents attending co-parent courses also varied with their levels of motivation and commitment. It suggested that careful screening of parents' quality and needs is critical, as courses can be delivered in various formats and packages to cater for different population subgroups. Furthermore, the 2001 FSR Report indicated that constant assessments should be done to ensure users' needs are met at different intervention phases; this renders support for a triage assessment and referral station in the FRO.
- 8.104 In collaboration with the Duty Lawyer Service administered by the government's Administration Wing under the Chief Secretary's Office, the triage assessment and referral station designated for divorce or matrimonial matters may be set up as small booths across nine legal advice centres. Professionals including lawyers and social workers equipped with knowledge of divorce or matrimonial matters will station at the FRO to consult those with divorce or family conflict issues.
- 8.105 The FRO should establish a robust network that connects with existing services such as the IFSCs, FCPSUs, and SCSCs to enable efficient cross-service integration. This facilitates early identification of familial needs and enables service development, as supported by the success of IFSCs in the 2001 Report. The FRO can take reference from how the IFSCs build and maintain networks with key community partners including other service units of the SWD (e.g. FCPSUs), NGOs (e.g. Integrated Children and Youth Services Centres), District or Legislative Councils, and local organisations (e.g. schools). Similarly, FROs should aim to build similar partnerships as IFSCs to connect with existing services and key community partners. Such tight collaborations are essential to provide timely and comprehensive support to clients, promote effective communication across stakeholders, and avoid redundancies in the provision of services. In order

²³⁹ 2019 HKFWS research report

to avoid overlaps of work in IFSC services, some redeployment and realignments of existing services are needed. Nevertheless, the IFSC has been overburdened by divorce cases. The reorganization of services in the Government provides an opportunity to improve the present situation and address service gaps. Information on divorce procedures and services as well as on MIP will be available at FRO, district offices, and IFSCs for persons considering divorce. Parties deciding to the divorce may apply for MIP by filling in a form on their situation that is available at all district offices and also online. After receiving the forms, the staff of IRU will contact the applicants to arrange for MIP attendance, online or at SCSCs. Apart from referral services, service recommendations should also be provided if divorcees have to care for the elderly, children with special education needs, or persons with disabilities.

Capacity building courses

8.106 The IRU may also develop training courses and host forums for service providers across disciplines, including legal professionals, social workers, counsellors, etc., to enhance their capacity and ability to deal with divorce-related issues. This takes reference from the West Kowloon Mediation Centre, which provides training to maintain or enhance mediators' standards. The IRU training course should equip service providers with knowledge of general divorce-related legal information, existing local services, and specialised counselling skills, whereas forums to collect regular feedback from service providers enable a better understanding of current needs to better implement training and enhance service quality. Ultimately, this could pave the way for specialisation (certification of specialists and supervision of such specialists) within this field.

Target service users

8.107 The IRU aims to promote education on divorce-related matters and disseminate relevant information and resources to all divorced and separated families at different phases of divorce. The proposed MIP covers topics beyond maintenance, including co-parenting, parental responsibility, mental health, etc. that impact the majority of the divorced population regardless of their social and financial background. The Team, therefore, suggests that the MIP be provided to all divorced populations.

8.108 In light of the rise in self-represented individuals in Family Court in recent decades, it is important for the public to obtain more divorce-related information. Regardless of the litigants' financial background, some may not fully understand the process of divorce and are not sufficiently prepared. Some may miss the required documents or provide incorrect information. Others who receive reminders from their ex-spouse's lawyers may also feel sceptical due to distrust. The MIP can also normalise concepts of family responsibility and reduce stigmatisation associated with seeking help on divorce-related matters. The Team emphasises the function of the MIP in raising the parents' sense of responsibility and their awareness of children's needs to

safeguard the children’s well-being in divorced families. There is currently basic information about the divorce process on the Hong Kong Judiciary website. However, given the nature of the Judiciary, divorce is framed in a legalistic manner rather than one that interconnects to important social and welfare considerations. It also lacks wider support information and guidance that may reduce the burden on the court or allow reconciliation between parties. To frame the issue of divorce in a more appropriate manner, the IRU may integrate factual legal and support information for all litigants.

8.109 Parties that have previously attended the MIP would be exempted from attending the MIP when filing for a divorce petition or acknowledgement of service of the petition. For professional development, the FRO aims to provide support for service providers that work with separated, divorcing or divorced families to enhance their service quality.

Feasibility of IRU

8.110 **Statutory power.** The effectiveness of the IRU depends on its statutory power, as functions under the IRU require mandates by the Judiciary. From previous cases, the Team finds the current recommendation is highly likely to be accepted by courts. In a court case, the Judge ordered the parties to attend a co-parenting education programme called “A Beam of Hope” organised by the HKFWS following divorce; in another court case involving expatriates who cannot speak or understand Cantonese, the Judge ordered the parties to complete the “online US court approved co-parenting education programme” following divorce. These cases provide evidence that Judges are inclined to mandate families (except those with high conflict or that involved domestic violence) to receive divorce-related education such as co-parenting courses.

8.111 Standing Committee on Legal Education and Training (SCLET) under Legal Practitioners Ordinance (Cap. 159) is a statutory body established to keep the local system and provision of legal education and training under review, evaluated and assessed²⁴⁰. IRU may learn from SCLET in terms of overseeing the provision of MIP to the general public and other training/programmes for divorce-related professionals, in order to maintain and monitor the quality of the programmes. Unlike SCLET, the abovementioned programmes will be also delivered by the FRO itself.

8.112 **Distinction.** The value of IRU lies in its uniqueness, and it is important to draw clear distinctions between the IRU from existing community services (see Table 8.2), such as the SCSCs regarding target groups, purpose, and positioning. Rather than providing problem-focused interventions like in IFSCs, the MIP in the IRU provides an overview of divorce-related topics and existing services in Hong Kong. Instead of targeting individuals and families facing difficulties, the IRU targets the broader divorced population with or without children. Unlike services for voluntary

²⁴⁰ Standing Committee on Legal Education and Training. (2019). *Functions*. <https://www.scler.gov.hk/eng/functions.htm>

participation, IRU conducts MIP which is compulsory for all divorcing couples to intervene earlier in the divorce process and enables access to other community services.

8.113 The proposed IRU provides MIP and triage services to divorcees while continuing to collaborate with district-based IFSCs to deliver effective services. After the FRO's triage service identifies the needs and level of urgency of divorcees, it may then refer divorcees to IFSCs to receive appropriate services on a case-by-case basis. The distribution of the service above can greatly save costs as the FRO is able to centralise resources and manpower to tackle issues of divorce. The FRO can organise the MIP, a one-off programme for people contemplating divorce, in locations such as court buildings, district offices, or government office buildings. The MIP can also be delivered through an online format, which means that it is not bound by geographical location. For the triage service, referrals can be made to receive duty lawyer services. Therefore, the FRO's specialisation in providing these services in a few centralised locations can be more effective than training a large number of staff to perform these functions at the many IFSCs across Hong Kong.

8.114 As explained in Table 8.3, IRU receives a mandate from the Judiciary, and MIP carries with it the court's authority. If IFSCs are to administer MIP, they would need to exercise authority mandated by the court to require divorce applicants to attend the programme as well as monitor whether divorce applicants have completed the programme. This would place an extra burden on IFSC colleagues. Moreover, some IFSCs are run by NGO's which do not serve statutory cases. They may not be able to exercise authority for a mandatory programme. Hence, IFSC may not be the most suitable body for rendering MIP. For online programmes, users can access the programme anywhere without going to the district-based IFSCs. It will be more cost-effective to have one special unit to administer the online programmes to a large number of users than to involve 60+ IFSCs to each serve a smaller number of users.

Forms of delivery

8.115 **Face-to-face programmes** can be conducted at the SCSCs. The contents of the programme will include a talk on divorce-related matters, ranging from attendees' rights, available resources, the impact of divorce on children, and concepts of parental responsibility to co-parenting. The programme will also introduce the MAS. Videos on children's needs and parental responsibilities should be produced and shown. Upon completion of MIP at SCSCs, the participants will be issued a certificate through IRU to be attached to the divorce application. (In case of social distancing restrictions, this can be replaced by real-time Zoom sessions where the MIP staff members can directly respond to their enquiries.)

8.116 The FRO, and hence IRU carries with it statutory power, exercising authority mandated by the Court to conduct MIP. As the SCSCs are run by NGOs that are not able to exercise authority for

MIP, the IRU will be the administrative body to coordinate with SCSCs in utilizing their services and will be responsible to issue the official attendance certificate.

- 8.117 **Online programmes** are available for divorcees who look for convenience and flexibility. The information and video provided would be similar to that of a face-to-face package. A basic online test will be administered to ensure the attendees have gone through the materials; Upon passing the test, the participants will be issued a certificate to be attached to the divorce application.
- 8.118 Additionally, divorcees can easily access FRO services through filling out a form about their current situation at any district office. Promotions can inform divorcees with related concerns to directly seek help at a district office. This does not require extra manpower as district office staff only collects and then passes the forms to the Duty Lawyer Service, who will have colleagues screen the forms and organise meetings with divorcees according to case needs and urgency.
- 8.119 **Local experiences.** To ensure that our services are reachable and applicable to all divorce cases, the IRU is proposed under the FRO. The IRU provides comprehensive content, such as MIP with legal and social service information, to cater to divorcees' multifarious needs. A good example would be new arrivals and ethnic minorities' support services provided by the Home Affairs Department (HAD). HAD provides information (e.g. service handbooks), activities (e.g. education talks on racial harmony) and services (e.g. familiarization courses, employment seminars, language classes, experience sharing and visits) to cater to new arrivals and ethnic minorities' multifarious needs. Similarly, the IRU can also be established as a unit like the Race Relations Unit in division III of HAD in FRO to provide these services to better meet the needs of divorcees.

Table 8.3 Service distributions among IFSCs, SCSCs and proposed IRU of FRO

| Existing services | | Possible collaboration | Proposed services |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| IFSCs | SCSCs | | FRO - IRU |
| Main target groups | | | Main target groups |
| Individuals and families | Separated/divorcing/divorced parents | | All divorced populations and service providers |
| <p><i>Family Resource Unit</i></p> <ul style="list-style-type: none"> The main objective is to strengthen the family bond and develop the strength and resilience of individuals and families, not limited to divorced families. FRU provides developmental and preventive services to families in the community with drop-in services, information giving, family life education, parent-child activities, educational/developmental groups/programmes, mutual help groups, volunteer development, social networking and outreach, etc. | <ul style="list-style-type: none"> The SCSCs are specialised centres to provide one-stop co-parenting support services for separated/divorcing/divorced parents having difficulties and conflicts in cooperating relating to the issue of care and contact arrangement of the children. Though the service of SCSCs emphasises child-focused intervention, it is not uncommon for SCSCs to address the needs of individuals and couples, such as rendering emotional support, divorce-related information, general legal advice, and making referrals for community resources appropriate. In addition to the child-focused intervention for divorced families, SCSCs also assist in promoting the concept of parental responsibility through public | <ul style="list-style-type: none"> These governmental bodies may have frequent information exchanges to provide service users with more updated lists of social services. | <p><i>MIP</i></p> <ul style="list-style-type: none"> IRU receives a mandate from the Judiciary, and MIP carries with it the court's authority. Not all IFSC can carry out statutory duties. Those SWD IFSC that can do so are already saturated with other statutory duties. Thus IFSC may not be the most suitable unit for this function. In order to effectively coordinate services for around 20,000 cases (i.e., about 40,000 spouses) per year that have met the requirement, a special centralised unit is required to manage MIP and coordinate services from existing service providers. Administering the online programme with a single specialized unit would be a better option than coordinating it among 41 SWD IFSCs (with information adjusted according to child and financial arrangement). For the face-to-face sessions (e.g. information giving/ talks/ video sessions), we may refer to the work of the Integrated Mediation Office. With a large number of service targets, these sessions can be more frequently held to suit the schedule of the divorcing parties and serve a more significant number of people at the same time in FRO. |

| Existing services | | Possible collaboration | Proposed services |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| IFSCs | SCSCs | | FRO - IRU |
| Main target groups | | | Main target groups |
| Individuals and families | Separated/divorcing/divorced parents | | All divorced populations and service providers |
| | education/publicity, especially to different stakeholders and professionals. | | <p>IFSCs may need to accumulate a certain number of service targets to hold talk/ video sessions if there is to be an efficient use of the workforce.</p> <ul style="list-style-type: none"> IFSCs may act as an outlet for disseminating information leaflets and answering inquiries as they are currently doing. But this cannot serve as a replacement for MIP. |
| <p><i>Family Support Unit</i></p> <ul style="list-style-type: none"> The main objective is to render timely support services to prevent further deterioration of individual or family problems. FSU provides support services to vulnerable or at-risk individuals and families. Support services include parenting and family management training, support groups, referrals for assistance and brief counselling, etc. | | <ul style="list-style-type: none"> The FRO's triage assessment and referral station would quickly check in with potential service users. It may identify the various needs of individuals and families and refer them to IFSC/SCSC at the right time. | <p><i>Triage assessment and referral station</i></p> <ul style="list-style-type: none"> Since MIP is mandatory in divorce proceedings, it is an excellent opportunity to introduce triage assessment and referral services where they participate in the offline MIP programme. This service may motivate the divorced person to seek help with the increased accessibility to social services. |
| <p><i>Family Counselling Unit</i></p> <ul style="list-style-type: none"> The main objective is to assist individuals and families in regaining resilience, restoring family functioning and preventing family breakdown and tragedies. FCU provides intensive counselling, therapeutic groups and crisis intervention, etc. to individuals and families in crisis. | | <ul style="list-style-type: none"> Social workers from IFSCs and SCSCs would participate in capacity-building courses to increase the sensitivity of divorce-related topics and share experiences regarding family services with other divorce service providers. | <p><i>Capacity building courses</i></p> <ul style="list-style-type: none"> Regular courses will be offered to frontline social workers, counsellors, teachers, lawyers, medical personnel, police, Housing Department officers, etc. to raise their effectiveness in serving divorcing and divorced families. IRU may also coordinate with other units such as the SWD Training Unit and |

| Existing services | | Possible collaboration | Proposed services |
|--------------------------|--------------------------------------|-------------------------------|--------------------------------------------------------------------------------------------|
| IFSCs | SCSCs | | FRO - IRU |
| Main target groups | | | Main target groups |
| Individuals and families | Separated/divorcing/divorced parents | | All divorced populations and service providers SCSCs to design and conduct the courses. |

8.120 On an operational level, FRO may organise MIP services in collaboration with different government bureaux or departments. For example, a MIP session only takes 2-3 hours and does not require a permanent and large venue. HYAB or HAD may provide venues with the size of conference rooms or small function rooms to host MIP sessions regularly. Online MIP sessions can also be provided to lessen the need for physical venues. FRO's core office can hire staff that books venues, organises staff work schedules, provides participation proof of MIP programs, and handles enquiries. This operation model is similar to the collaboration between the Duty Lawyer Service and the HAD to provide Free Legal Advice Scheme in district Home Affairs Enquiry Centres.

8.121 **Overseas jurisdictions.** The effectiveness of the OMIPs provides support for the MIP. A report by the Ministry of Attorney General in Ontario reported OMIP participants' overall satisfaction rate to be 81.7% in 2016-17 and 2017-18. Most participants found the information provided useful. Similarly, Hunt and Sopik (2015) showed that 90% of the respondents found that the OMIPs helped them better understand court processes and legal terminologies, and it built a knowledge base of family law. Interestingly, litigants who are represented found the OMIPs more useful than that unrepresented litigants²⁴¹. The value of OMIP was the information was simple to understand and reinforced the users' understanding of legal concepts, as the information conveyed by their lawyer may have been too overwhelming.

8.122 Participants' primary complaint was all sessions are held during working hours. Currently, the OMIPs are available offline (family court), and online (Legal Aid Ontario's Family Law Information Programme). Not only did this increase flexibility for participants, but Bowers et al. (2011)²⁴² also found no significant difference in understanding, knowledge and expected behaviour changes between the two modes of delivery. Standardised information dissemination in a neutral setting is therefore crucial to the promotion of fair dispute resolution. In addition, some divorcees and children are ethnic minorities, so programmes and promotional materials in English or other languages can be included.

8.123 Hong Kong may learn from the OMIPs about the programme design and its mandatory features. To ensure participants understand what was covered in the programme, it is possible to incorporate quizzes, especially for the online programme as it can automatically generate feedback.

²⁴¹ Hunt, J., & Sopik, J. (2015). The misplaced information programme? A study of Ontario's mandatory information programme. *Canadian Family Law Quarterly*, 35(1), 31.

²⁴² Bowers, J. R., Mitchell, E. T., Hardesty, L., & Hughes Jr, R. (2011). A REVIEW OF ONLINE DIVORCE EDUCATION PROGRAMMES. *Family Court Review*, 49(4), 776-787.

Alternative and supplementary measures

8.124 While MIP ensures that all divorcees are informed about their rights, the services available, and the concepts of parental responsibility and co-parenting, it is understood that current society may be wary of participation that is “mandatory”. While balancing the needs of the divorced families and the social reality, a less effective alternative of a voluntary Divorce Information Programme (DIP) may be considered, with the goal to reach as many divorce applicants as possible. The following points should be noted. Firstly, the IRU, a central administrative body of the programme, will need to take action to implement the followings:

- a) A comprehensive booklet prepared by a central unit is to be given to all persons filing for divorce.
- b) The promotion of DIP is to be expanded. The promotional materials produced by a central unit are to be delivered via various means, such as TV, and social media. Collaboration with TV stations on the format of (insert advertisement) may be considered. Meanwhile, the SCSCs which are responsible to deliver face-to-face DIP also need to step up the promotion of such programmes in their district.
- c) Access to online programmes should be made as user-friendly as possible, so as to strongly encourage those not opting for face-to-face programmes at SCSCs to receive the information.
- d) Apart from the promotion of DIP, IRU also needs to promote the concepts of family responsibility to the general public and attempt to reduce the stigmatization of help-seeking on divorce-related matters.

Secondly, on the legal front, the following may be done:

- e) Similar to practice directives that require lawyers to encourage family mediation, practice directives require lawyers to encourage participation in DIP.
- f) The Family Court may particularly direct the divorcing spouses to attend DIP.

Maintenance Assurance Scheme (MAS)

Rationale and aims

8.125 Maintenance can have a profound impact on divorcees and children financially, physically and psychologically. Although Hong Kong law has always regarded maintenance disputes as a private matter between parties, the default of maintenance often results in divorcees using public resources like the CSSA and legal aid to maintain a basic living and take enforcement actions. Findings show that maintenance goes beyond the idea of ‘private debt’ as it involves the interests of children, spouses and the public. The proposed MAS aims to:

- a) Ensure payers comply with maintenance orders;
- b) Reduce reliance on public resources (e.g., CSSA, LAD);
- c) Help parents meet their obligations (parental responsibilities);
- d) Protect divorcees facing financial hardships following the default of maintenance; and
- e) Provide financial assistance to payees who may struggle financially during maintenance enforcement litigation, but are not eligible to receive CSSA.

8.126 The MAS should be carried out in small batches for piloting. The piloting should be aimed at buffering incoming caseloads so that the FRO can establish appropriate staffing and detailed operation protocol. For example, the MAS can serve the applicants with maintenance orders granted in the most recent year first, gradually opening its service to applicants from previous years.

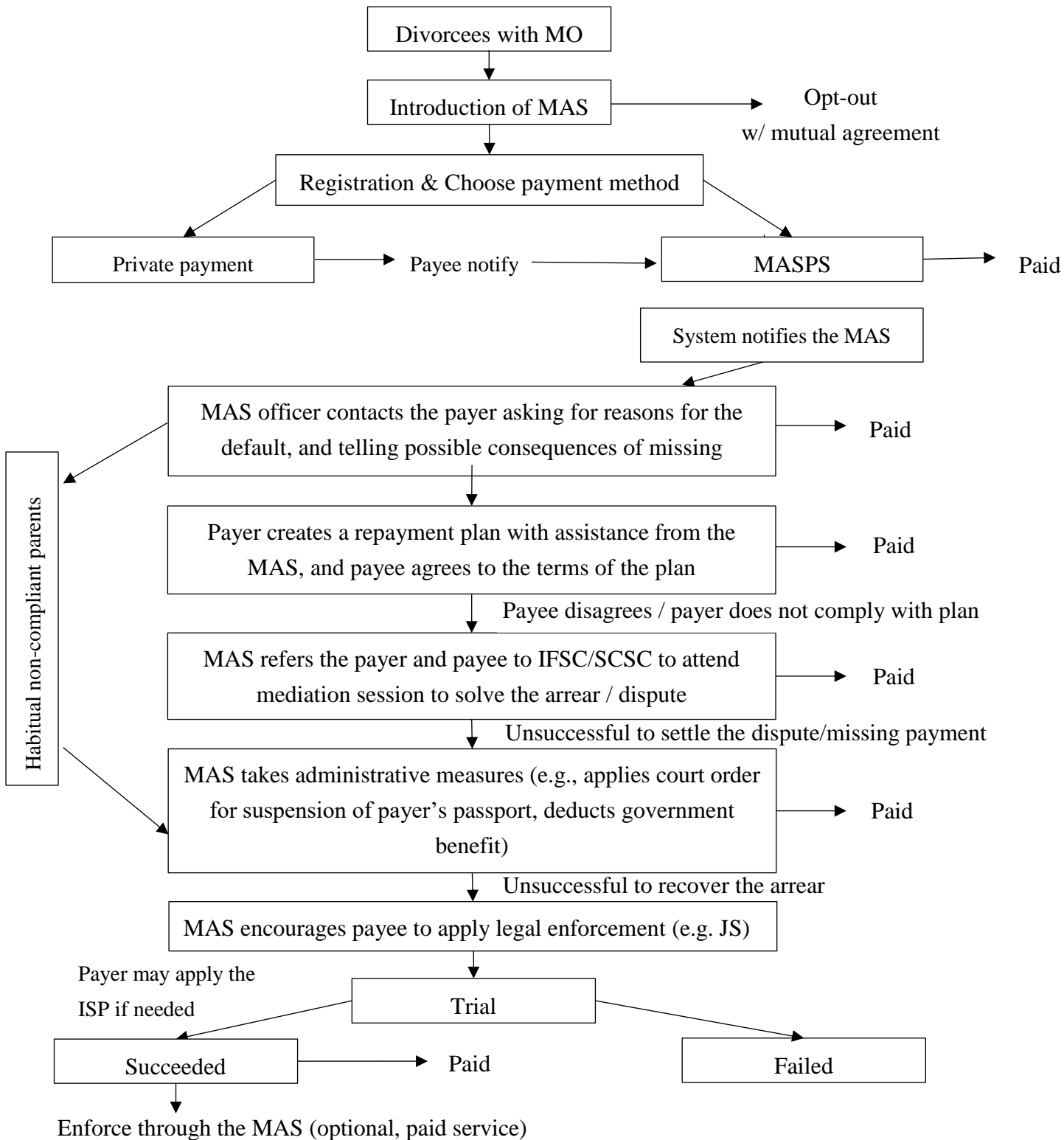
Power

8.127 The MAS should be given statutory power to effectively enforce maintenance orders and collect payments, i.e. attachment of income. The MAS should leave other authorities with the court. The court should remain a higher authority than the FRO. Parents can either decide on their own child support & spousal support arrangements or apply to the court to decide and issue maintenance orders accordingly. If parents decide to resort to litigation, they are required to first go through a mandated amount of mediation. In case it fails, they can then proceed to apply for a maintenance order.

Overview and functions

8.128 An overview of the flow of the proposed MAS can be seen in the following figure (Figure 8.3).

Figure 8.3 Overview of the proposed MAS



Administrative power (collect and distribute maintenance payments)

8.129 After the maintenance order or interim maintenance order is granted, the court should require both parties to fill in the form to declare their decision to join the MAS. They can opt-out from the MAS if a mutual agreement on not participating in MAS is reached. Nevertheless, MAS staff should confirm their contact information, register the case, and brief both parties on their responsibilities. The method of collection will be implemented according to the maintenance order, via private payment or MAS payment system (MASPS). The court should encourage private payments. If AIO is issued, MAS should collect maintenance from the payer's employer.

- **Private Payment** – both parties should keep a record of payments in case problems arise so MAS can still enforce any overdue payments.
- **MAS Payment System [MASPS] (including AIO)** – the MASPS collects and transfers payments between both parties. The parties that utilise this service should submit a simple form with the court order, and the payer will be charged a fee each time for making payments for the maintenance of the MASPS, similar to the amount charged by banks (e.g. 1-5%). Maintenance payees who are survivors of domestic violence and/or CSSA recipients should be able to proceed directly to the MASPS service without charges.

8.130 The MAS will contact payers first to understand the reasons behind the arrears. If it is due to circumstantial changes (e.g. unemployment), the MAS can develop repayment plans with payers. Mediation should also be encouraged. A panel of accredited mediators could be formed as part of the pilot scheme. The MAS may follow the footsteps of the Mediator Mentorship Scheme (MMS) of the Small Claims Mediation Pilot Scheme that not only resolves maintenance disputes but also boosts the professional standing of Hong Kong mediators²⁴³. The MAS aims to solve disputes before payers apply for variation orders, which often takes months.

8.131 Mediation should be charged depending on the amount of arrears involved. With reference to the Director of Legal Aid's First Charge, for arrears below HK\$109,200 (HK\$9,100 for 12 months), the service fees should be the lowest, and parties should be directed to the mediator mentorship. Using the same threshold in the Small Claims Tribunal, parties with arrears between HK\$109,201 and HK\$136,500 are eligible for the MMS with higher service fees. Parties with arrears that exceed HK\$136,500 are recommended to hire private practice mediators.

Executive power (enforce court orders to recover outstanding payments)

8.132 If the payer still refuses to pay after the mediation/repayment plan, the MAS may help locate the payer from the government database (e.g., public housing rental records, records in the Land

²⁴³ Joint Mediation Helpline Office. (2019). *Small Claims Mediation Pilot Scheme & Mediator Mentorship Scheme: Application and mediation rules*. https://www.jointmediationhelpline.org.hk/pdf/MMS_Rules.pdf

Register) to reduce payees' difficulty in gathering proof. For instance, if the MAS found out that the payer has other assets, it may advise the payee to apply for a garnishee order and/or writ of fieri facias. The MAS can also advise the payee to apply for JS if the payer fails to comply with the repayment plan or the agreement after the mediation. This can therefore reduce the workload of the court without compromising its authority.

8.133 After obtaining a court order, MAS staff should serve legal documents and take appropriate steps to comply with the court judgments. Currently, the Bailiffs are responsible for enforcement. The proposed MAS will take over tasks from them, which may require legal or regulation change. Administrative measures will be included in the MAS by legislation after its establishment, as seen below:

Table 8.4 The use of administrative measures before and after the proposed MAS

| Proposed Measures | Description | Purpose (before MAS) | Purpose (after MAS) |
|------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Suspend passport and driving licenses | A possible consequence if the payer does not appear in court hearings after JS is served (Refer to para. 8.41-8.43) | <ul style="list-style-type: none"> • To be used after JS if the defendant (payer) is absent • Intervention terminated if payer attends the Court | <ul style="list-style-type: none"> • May be used when the payer refuses to pay after the repayment plan and mediation • Intervention terminated if payer pays or mutual agreement made |
| Transfer Judgment debtor's Information to CRAs | If the payer does not attend the Court for examination after enforcement actions are taken, litigation records will be reported to CRAs (Refer to para. 8.44-8.46) | <ul style="list-style-type: none"> • Once the enforcement litigation is filed, the record will be automatically sent to CRAs • Increases deterrent effect • Promote mediation for resolving disputes, as it is confidential and its result will not be recorded in the CRAs as a settlement. This is because mediation is an agreement instead of an enforcement award. | |
| Deduct Government Benefits and Tax Refunds | The Government can make this suggestion whenever the tax refund policy applies to the following fiscal year (Refer to para. 8.47-8.48) | <ul style="list-style-type: none"> • To use after JS if the defendant (payer) is absent and when the Government delivers a benefit/tax refund | <ul style="list-style-type: none"> • MAS may arrange government benefit deductions to recover arrears with Treasury once the repayment plan is made. |
| Extend Payment Options | The Government can consider establishing new type(s) of funds for divorced families. (Refer to para. 8.49-8.51) | <ul style="list-style-type: none"> • Any moment • Responsible/operated by/administered by Financial Services and the Treasury Bureau | |
| Order to Furnish a Banker's Guarantee | The defaulter has to furnish a security deposit placed against future maintenance defaults. (Refer to para. 8.52-8.53) | <ul style="list-style-type: none"> • To furnish a banker's guarantee to make a security deposit from the defaulter who has multiple histories of non-payment after the Court's order | <ul style="list-style-type: none"> • May be used when the payer refuses to pay after the repayment plan and mediation |

Target service users

- 8.134 The MAS should be optional for divorcees who did comply with maintenance orders and can be arranged upon request. However, when the default of maintenance occurs and legal proceeding begins, both parties should be obligated to enter into MAS that avail them with both administrative and legislative measures. Also, the guardian who has a maintenance order is eligible to enrol for MAS²⁴⁴.
- 8.135 The new mechanism not only targets divorcees with child maintenance orders but also covers those with both child and spousal maintenance orders. A spousal maintenance order is often granted for a shorter period of time than a child maintenance order in jurisdictions like New Zealand, the UK, and Canada, to promote the economic self-sufficiency of each spouse within a reasonable period of time. The Canadian system considers spousal support as compensation to the spouse who forgoes his/her ability to earn during the marriage and enables payees to transition from being financially dependent to being financially independent. Similarly, in Hong Kong, there is also no obligation for the ex-spouse to provide life-long support after divorce.
- 8.136 As most maintenance agencies we assessed (New Zealand, South Korea, and the UK) only target child maintenance issues, it seems unconvincing to suggest that the proposed MAS in Hong Kong should target both child and spousal maintenance. Yet, it is worth considering as spousal maintenance compliance can affect the child's best interest. Ontario's current policies take the interdependence between spousal and child maintenance into account. They recognise that a primary purpose of spousal maintenance is sharing the costs of caring for children. The eligibility criteria to obtain spousal support assistance in OFRO indicates that childcare justifies spousal support for the primary carer of the child. For instance, if the applicant was previously in a permanent relationship and had to care for their child(ren) during that period of time, their childcare responsibilities may have prevented them from building their careers. Without spousal maintenance, the single parent may now have to look for a job at the cost of less time to care for their child(ren), or solely rely on child maintenance if the payer refuses to pay spousal maintenance. Hence, support for spousal maintenance can act in the best interest of the child(ren) by lowering the risks of poverty among single-parent households. Although Hong Kong has a different set of criteria than Ontario to qualify for spousal maintenance, offering assistance to spouses with both child and spousal maintenance by the proposed MAS to safeguard the child's well-being is still worth considering.
- 8.137 Furthermore, as enforcement measures do not distinguish between child and spousal maintenance, enforcement of spousal maintenance is given equal support and attention. Instead, the duration of spousal maintenance is generally shorter and will be inapplicable if the recipient

²⁴⁴ The term of "guardian" is defined by the Guardianship of Minors Ordinance, Cap. 13.

enters a new civil partnership/remarries, or if either party passes away within the effective period of the order.

8.138 Whenever the AIO is issued (at the beginning of MO or after the court hearing on the default in maintenance), the case is automatically directed to the MAS. The debtors' employer will also be approached by MAS to transfer the money deducted from the payer's income to the payee.

Execution of the Interim Support Plan (ISP)

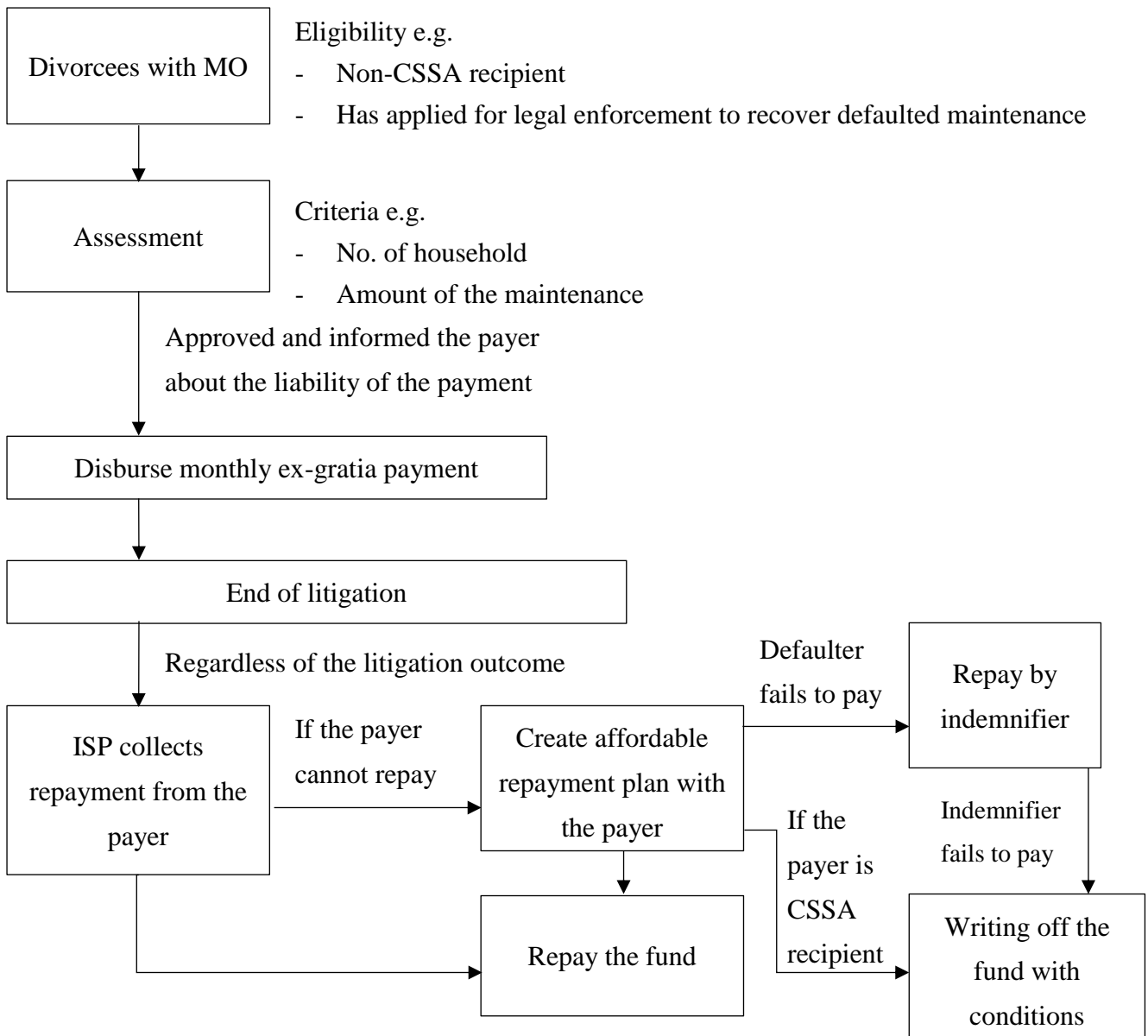
8.139 In order to recover arrears in maintenance, payees could consider taking legal enforcement actions as the last resort if mediation or repayment plans fail. Without available financial assistance, payees who take enforcement actions will still have to suffer financially during the complicated and lengthy legal procedures. This is particularly concerning for middle-income families that are not eligible or unwilling to apply for CSSA. They therefore may rely on advancing loans from their credit card, relatives and friends, exacerbating their problems due to high-interest rates and discrimination by others.

8.140 The proposed ISP provides short-term financial assistance to those in need during the legal enforcement process that seeks to address service gaps and issues that arise from defaults in maintenance. Specifically, the plan aims to:

- a) Protect divorcees and their children from facing further financial hardships during litigation for maintenance enforcement;
- b) Provide immediate interim financial assistance to families, who are unwilling or not eligible to receive CSSA; and
- c) Utilise assessment methods such as means test screenings to validate applicant eligibility can guard against potential fraud and abuse of MAS services.

8.141 To achieve the aims outlined, the ISP should perform several functions, including: a) collecting levy from marriage registration fees and administering the fund, b) disbursing an ex-gratia payment to divorcees for basic living; and c) collecting repayment from payers by virtue of vested subrogation right or the amendment of relevant laws for such power. If litigation lasts beyond two years, divorcees should consider applying for CSSA instead. An overview of the proposed ISP (Figure 8.4) is shown below:

Figure 8.4 Overview of the proposed ISP



8.142 **Function 1. Collect levy from marriage registration fees and administer the fund.** The Team explored the option of collecting levies from couples at the marriage registration to protect them in case of a future divorce. This is similar to the model adopted by the Travel Industry Compensation Fund (TICF)²⁴⁵ to offer protection to outbound travellers. The TICF covers ex-gratia payments to outbound travellers who suffer the loss of outbound fares and personal injuries or death in accidents during outbound activities provided by travel agents. Prior to 2009 when the levy was suspended, travel agents had to pay 0.15% of any received outbound tour fare to the TICF. By the end of June 2019, the TICF had a balance of HK\$678 million.

²⁴⁵ Established in 1993 under section 32C of the Travel Agents Ordinance, Cap. 218.

8.143 If the ISP adopts the same model, marriage registration fees should increase from the current rate of HK\$305. The yearly ratio of divorce to marriages remains ~34 - 40% since 2001 (See Appendix I.4). The THS Report No. 61 also suggests that 3.8% of all divorces involve default of maintenance. As we do not maintain statistics on the average outstanding maintenance amount, the following is an estimation of the potential increase in registration fees based on different levels of support.

Table 8.5 Estimation of increase in the marriage registration fee

| Estimated Amount of Monthly Payment | Increase in Registration Fee |
|--------------------------------------------|-------------------------------------|
| HK\$5,000 | HK\$65 – HK\$80 |
| HK\$10,000 | HK\$130 – HK\$160 |
| HK\$15,000 | HK\$195 – HK\$240 |
| HK\$20,000 | HK\$260 – HK\$320 |
| HK\$25,000 | HK\$325 – HK\$400 |
| HK\$30,000 | HK\$390 – HK\$480 |

8.144 The estimation outlines the increase in registration fee needed to pay off the maintenance in arrears every year. It does not cover the administrative cost. While impossible to achieve a low levy rate of 0.15% (just as TICF), given the high marriage expenses in Hong Kong, a slight increase in the registration fees may not be unacceptable. The actual increase in the registration fee will depend on the average amount of support to be disbursed. It should also be noted that the initial levy collections cannot immediately support payments, so the government should expect to cover the first two or three years of payment to provide time for raising the founding fund.

8.145 Although collecting levies at marriage registration is not common in overseas maintenance enforcement agents, government departments or statutory bodies often collect levies in order to ensure sustainability and maintain specific work based on the user-pay principle. Examples include: the vehicle license fee as the levy for Traffic Accident Victims Assistance Fund (TAVA), TICF, Levy on Insurance Premium, and the levy under the Construction Industry Council Ordinance (CICO). Overseas examples include: Soft Drinks Industry Levy (the UK), a levy on soft drinks that contain over five grams (g) of sugar per 100 millilitres (mL) to reduce child obesity; and the Carbon Tax (Canada), where new revenues generated from increasing the carbon tax will be used to provide carbon tax relief and protect affordability, maintain industry competitiveness, and encourage new green initiatives.

8.146 A board under the statute of the MAS is recommended, which will perform the following tasks:

- a) To administer the fund of the ISP with subrogation right;

- b) To make recommendations to the Government on the rate of levy on the marriage registration fee; and
- c) To review applications upon request from applicants aggrieved by any decision of the commissioner for the MAS in respect of the application for the interim support.

8.147 **Function 2 - Disburse ex-gratia payment.** Through the ISP, the Government works to ensure that no divorcees in Hong Kong will be denied access to basic living conditions because of the lack of means and resources. As the average amount of unpaid maintenance is not set, the Team tentatively propose the maximum amount of monthly support to be equivalent to the standard rates and supplements from CSSA or the amount stated in the maintenance order, whichever is lower. As disbursement is considered the last resort for non-CSSA applicants, the ISP should therefore be responsive and provide the payment once the application is eligible with valid proof, such as records of maintenance non-payment in each month of the litigation period, to ease applicants' immediate financial hardships.

8.148 It is recommended that the amount disbursed should not change once the monthly disbursement begins, even if the application for Variation of Maintenance Order is filed after the commencement of the JS applications. The rationale behind this is that the ISP is designed to provide immediate and interim financial assistance to payees during the maintenance recovery process, and relieve financial hardships and the stress caused by the prolonged litigation. However, if the payer applies for variation orders and/or finds it difficult to repay the ISP immediately, s/he may work out an affordable repayment plan with the MAS. Furthermore, if financial inability is established by the MAS, e.g. if the payer is the CSSA recipient, then the amount owed can be written off as described below. The Team is however unable to estimate the expected proportion of cases that will apply for variation orders or encounter such issues, due to limitations in data.

Figure 8.5 Procedures of the proposed ISP

- Eligibility for Interim Support, e.g.:*
- Non-CSSA recipient
 - Has applied for legal enforcement to recover defaulted maintenance
 - Shows proof of evidence that the payer doesn't comply with the order during the litigation period

| ← (Up to 12 months) Defaulted maintenance → | ← (Up to 24 months) Enforcement litigation → | Litigation result |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">↑ Enforcement application</p> <p>[Matrimonial Proceedings and Property Ordinance (Cap. 192) section 12(1) - A person shall not be entitled to enforce through the court the payment of any arrears due under an order made by virtue of section 3, 4(1), 5(2), 8(5) or 8(6) without the leave of the court if those arrears became due more than 12 months before proceedings to enforce the payment of them are begun.]</p> | <p>Ex-gratia covered by the ISP for interim support to the payee (petitioner/judgment creditor) during the litigation for up to 24 months</p> <p>[Before the application of ISP is approved and the ex-gratia is given out, FRO should send a notice to the maintenance defaulter about FRO will exercise the subrogation right to require payers to repay the amount received by the payees during the litigation from the ISP. (logic similar to the PWIF)]</p> | <p>FRO will arrange repayment with the defaulted payer, regardless of the litigation outcome</p> <hr/> <p>1. ISP collects repayment from the payer If the payer cannot repay</p> <p>2. Create an affordable repayment plan with the payer</p> <hr/> <p>Writing off the fund with conditions if:</p> <p>1. If the payer is CSSA recipient</p> |

8.149 Function 3 – Manage repayment from payers. Any rights and remedies of support payment given to the payees will be transferred to the ISP board by subrogation right to settle the disbursement. By exercising the subrogation right, once the litigation is over, the ISP will require payers to repay the amount received by the payees during the litigation from the ISP. To ensure that the amount of support is recovered as much as possible, the ISP should a) require the payees to sign a consent form to acknowledge the terms and conditions of the plan; b) inform the payers about the liability of the payment as soon as possible; c) confirm the subrogation right with payees so that the payment will be returned to the ISP by the payers after litigation; and d) suggest that the payer get an indemnifier to guarantee the remaining payment in case the repayment is paid by instalment. The amount and number of instalments (payment schedule) should be decided

by the ISP. A feasible repayment scheme will be tailor-made for the payers. The Government should use their best endeavour to recover the advanced support fund from the payers. The advanced support fund may only be written off under the following circumstances:

- a) on the compassionate ground if the defaulter has passed away, or is permanently unfit for work on account of severe disability and his / her indemnifier(s) (where appropriate) is unable to repay the debt for the debtor
- b) where all efforts to contact a defaulter and his / her indemnifier(s) (where appropriate) have failed, and the support proves irrecoverable (e.g., the defaulter and indemnifier are CSSA recipients); or
- c) where write-off action is advised by the Board or the government.

8.150 This proposed Plan is guided by the rationale that the ultimate responsibility of paying maintenance is on payers. It is therefore not reasonable to require payees to repay the support payment, even when the maintenance arrear is successfully recovered. Therefore, if the ISP failed to recoup the support payment, as the inevitable last resort, the advanced support fund should be considerably written off.

Feasibility of MAS

8.151 Policy administration:

- a) **Statutory power.** Granting statutory power to MAS allows it to effectively perform its functions. Some statutory bodies also perform executive functions as prescribed in the legislation. For instance, the Hospital Authority enjoys power prescribed by the law²⁴⁶ to manage and administer its daily operations under the admission of the ordinance. It is imperative for MAS to have close collaboration with the Judiciary. The MAS is guided by the maintenance order, and will not override court decisions. The MAS will simply act as the “go-between” between the court and divorcees, facilitating payments between divorcees. In the event of maintenance arrears, the main role of the MAS is to check on payers’ circumstances (e.g. access government database) and develop repayment plans to recover arrears effectively, reducing reliance on legal enforcement. While this may be functionally similar to the Court’s examination during enforcement order hearings, it does not affect the court’s power to grant enforcement orders. Neither do repayment plans compromise the Court’s authority as decisions made in the repayment plans are not legally binding and are not official enforcement.

²⁴⁶ Hospital Authority Ordinance, Cap.113.

- b) **Streamlined process of obtaining orders.** In Hong Kong, enforcement order is obtained after lengthy court proceedings. The court should consider issuing enforcement orders readily if the payee/MAS provides sufficient proof. If the payer’s income source is obvious, the Court should issue an AIO alongside maintenance orders unless the receiving party waives such protection, and direct it to the MAS in order to ensure maintenance compliance. This shortens the time needed to recover arrears.
- c) **Staff with the required skill set.** Staff members need to receive adequate training and be capable of handling their tasks. In addition to administrative and legal staff, social workers can be staffed to better identify divorcees’ needs and make appropriate referrals. Feedback channels should be established to address users’ difficulties and complaints. The Government should also review and monitor the effectiveness of the MAS every year and make results public to uphold transparency and increase public confidence.
- d) **Robust IT system.** The IT system needs to be able to process voluminous data from MAS to provide accurate information to users. The UK experience highlighted the crucial role IT system plays in its success, despite it being costly to develop and maintain. It also alleviates the staff’s workload and improves work efficiency.
- e) **Seamless collaboration between government departments.** Different government departments can develop stronger collaborations during the processing of cases. The Team suggests that the Government set up an inter-disciplinary work platform and allocate staff to handle their department-related affairs. To stay informed of the case’s latest developments, officers in different departments should remain in frequent contact with each other and obtain updated information through the IT system. Department heads need to regularly review work progress with realistic KPIs and resolve operational difficulties encountered.

8.152 Public acceptance of policy legitimacy:

- a) Public acceptance is also needed for the smooth execution of the MAS. Since 1997, various organisations in Hong Kong have conducted studies on divorce. They found common understandings of the impact of divorce and maintenance on divorcees, and stakeholders showed readiness to participate in the discussion of maintenance policy. In 1999, the Legislative Council passed a motion urging the Government to “improve the procedure for recovering alimony so as to enhance its efficiency, and to set up an alimony council to assist in the collection and payment of alimony to single-parent families”. This reflects the public’s openness and eagerness towards improvements in maintenance recovery procedures for decades.
- b) In Chinese tradition, “preparing” for divorce can be deemed “ominous” and may not be accepted by the public. However, this depends on how the ISP is promoted. Instead of preparing the couple for the potential risk of divorce, it can be introduced as an important

channel to educate the public on the adverse impacts of divorce on divorcees, and how a slight increase in registration fees can protect vulnerable individuals. De-linking the rationale from specific individuals can allow the public to be more willing to contribute to alleviating this problem together.

- c) Under the current judicial system, only the court has the power to determine who pays, the maintenance amount, and grant enforcement orders. The Government should refer to overseas experiences to draft a law that authorises the MAS, and establish clear guidelines indicating the scope of powers. The MAS can then pursue orders within the current system, while the ultimate power still rests in the court.
- d) For the ISP to be feasible, the public needs to perceive it as a social responsibility. Some may question the decision to collect levies from couples instead of using public resources to support the aid or strengthen enforcement measures. However, it is common that the public shares the risk together to minimise the adverse impacts of unfortunate incidents. Apart from the TICF and PWIF, the TAVA Fund also provides financial aid to road traffic accident victims or to surviving dependants in cases of death. Its main source of income is the levy on license vehicles and driving licenses and government contributions. In this case, vehicle owners and drivers also bear the risk of undesired consequences (e.g. accidents) with the public. In a sense, all married couples are potential users of the ISP, and will be able to use this ‘insurance’ to maintain basic living in case of divorce, should they encounter future hardships from outstanding maintenance.

8.153 Long-term financial sustainability:

- a) The feasibility of the MAS also depends on its sustainability. The Team, therefore, recommends the Government charge payers cover the administrative/legal cost for enforcement actions. The Government can use in-house lawyers or nominate a lawyer on the panel to handle litigations (e.g. applying for an order). If the applicant has financial difficulties and fails to pay the related costs, the Team recommends introducing a policy similar to the Director of Legal Aid's First Charge. Following successful lawsuits, all costs of enforcement must be repaid to the government as service fees.
- b) The ISP should benefit all parties equally and address public concerns. For instance, those getting married may find the ISP unfair, as those who were married before the launch of the ISP are eligible for the IS fund without paying. Furthermore, high-income persons may not rely on the ISP even if they divorce in the future. To support vulnerable populations who depend on the ISP, the Government can consider funding the initial investment of approximately HK\$13 million (the mean number of marriages from 1986-2018 times the marriage registration fee), as the sum is equivalent to paying for potential users prior to the

ISP in effect. This allows married couples to be eligible for the ISP once they file for divorce after the establishment of the ISP.

- c) A concern may be where the ISP should turn for additional funding if necessary. To address this issue, it is important to bear in mind the underlying user-pay principle and the principle of the ISP, which is a fund contributed by couples to provide prompt relief to payees when payers refuse to pay. Therefore, it is important that the ISP maintains a healthy reserve so it can cope with all contingencies. Increasing the current marriage registration fee of HK\$305 should be made clear to the public. It would be prudent to increase the fee before the ISP runs into financial difficulties as a result of payments disbursed.
- d) Given that the spirit of ex-gratia payment offers payment as a favour or from a sense of moral obligation rather than because of a legal requirement, it usually does not work as a loan that relies on the debtor's loan repayment capacity. Referring to the Protection of Wages on Insolvency Fund (PWIF)'s reports, the average subrogation income in 2011-2020 was HK\$8,723,432 per year, contributing 1.73% of the total income on average and representing 12.58% of the ex-gratia payment released on average each year. Nonetheless, the Government provides ex-gratia to eligible cases without hesitation. The mechanism of subrogation is to avoid "double-benefit" as the maintenance creditor could not enjoy the money that serves the same purpose/nature from two sources (i.e. from the payer and the Government). In other words, subrogation right is not merely for repayment but a way to avoid double-benefit. Thus, writing off the "debt" is seemingly inevitable if the ex-spouses of the ISP beneficiaries cannot repay or do not intend to repay. It is also unrealistic to expect the IS payment to be fully recovered merely by their repayment. Yet, this subrogation right could help the ISP generate alternative income apart from the levy obtained from the marriage registration fee.
- e) Likewise, the idea of having an indemnifier is to provide an alternative income source. This mechanism reminds the defaulter of their responsibility to repay because the ex-gratia helped them cover their expenses on paying maintenance during the litigation. Otherwise, the MAS will urge the indemnifier to pay off the arrears if the payer fails to repay the ex-gratia, which may deteriorate the relationship between the payer and his/her indemnifier. Hence, it may induce deference to the defaulter to repay or follow the repayment plan for the ISP which is customized, realistic and affordable.
- f) Additionally, unlike the ISP which serves a relatively stable number of divorcees due to the court's caseload capacity, the PWIF is greatly affected by Hong Kong's economic environment. For instance, during the 2002-2003 to 2005-2006's fiscal years, the PWIF received a large number of applicants and struggled to provide applicants with the large sum of money needed. Yet, the Hong Kong Government has been supportive towards the PWIF by providing it with bridge loans totalling over HK\$ 695 million. From the Government's

support, it is evident that the Government acknowledges that the PWIF makes a significant contribution to maintaining harmonious industrial relations and social stability in Hong Kong. It also demonstrates the Government's ability to financially aid the PWIF even during difficult times. Therefore, the Government is capable to support the ISP under special circumstances where such assistance is justifiable²⁴⁷.

- g) If payees are allowed to be paid directly from the Plan before enforcement litigation, it would be tantamount to subsidise payers who are then relieved from their obligation to pay maintenance upon the issuance of enforcement. Payers might attempt to abuse the Plan by evading responsibility and that could cause significant financial implications for the Plan. Therefore, the ISP should provide conditional assistance with the aid of eligibility assessments to prevent defraud as far as possible. Therefore, eligibility for assistance should only apply to non-CSSA recipients (with no double benefit) who have applied for legal enforcement to recover defaulted maintenance.
- h) **Learning from local and overseas experiences.** Apart from the TICF, the PWIF Board provides ex gratia payment to an employee when the employer becomes insolvent. The ISP can refer to the mechanism of subrogation rights from the PWIF to ensure a better chance to recoup the advancements. The ISP can also refer to TAVA
- i) Some jurisdictions such as the UK, Norway, Sweden and Germany provide advance payments to compensate overdue (or late) payments by maintenance payers. This aims to guarantee that payees receive a minimum allowance when payers do not meet their financial obligation, and in turn, allow the authorities to pursue payers to repay the respective payment. ISP will position itself as the last financial resort apart from the existing safety net (i.e. CSSA) and set thresholds to safeguard sustainability. It will for instance require the payee to pursue legal enforcement so as to recover the advanced support fund as much as possible.

8.154 The progressive measure of policy effectiveness:

- a) The Government may consider launching a pilot MAS programme to test its effectiveness and identify problems during the implementation. Foreign agencies like the UK's CSA have failed in part because there was no pilot testing before implementation. Pilot testing helps gain feedback from the public and explores the potential for further implementation of the MAS in Hong Kong. During the implementation, regular evaluation of MAS is crucial to the improvement of service quality and thus strengthens public confidence.

²⁴⁷ Economic Development and Labour Bureau (Labour Branch). (2002). *Legislative Council Brief: Financial Assistance to the Protection of Wages on Insolvency Fund* (TC 10/602/2 Pt. 3). Legislative Council. https://www.legco.gov.hk/yr02-03/english/panels/mp/papers/tc_10_602_2_pt.3.pdf

Possible advances and challenges of MAS

8.155 The MAS is expected to contribute some positive effects:

- a) MAS may increase divorcees' motivation to apply for maintenance as it provides an institutionalised scheme with comprehensive support for divorcees. Increasing parties' sensitivity to their rights and obligations as well as strengthening the social norm of maintenance compliance may reduce divorcees' hesitation in applying for maintenance orders;
- b) Some divorcees may not apply for MO due to the lack of faith in ex-spouses' willingness to pay maintenance. As the intermediary body to monitor, collect, and transfer payments between both parties, MAS documents transaction records, prompts the payer to pay, or even communicates with defaulters and possibly recovers maintenance arrears before deploying enforcement. It helps prevent communication breakdown or hostility between parties (payers and payees), especially for divorcees from high-conflict families who no longer need to communicate with hostile payers to collect maintenance; and
- c) MAS allows maintenance issues to be promptly identified, ensures early intervention, and speeds up the maintenance recovery process. MAS can also apply various measures to enforce maintenance to recover arrears by introducing more significant consequences, increasing the deterrent effect against payers. Thus, MAS will reduce maintenance arrears by encouraging payers to make regular and timely payments in the long run.

8.156 The responsible case management of MAS as a government service can strengthen maintenance orders as an effective way to provide financial support to divorced households. Therefore, it may encourage divorcees to consider using MO to secure their financial needs instead of relying on their own ability or social assistance like CSSA. Emphasis should be placed on how the MAS can execute enforcements and monitor payments effectively, resolving cases where the payer refuses to pay.

8.157 The MAS might face challenges. Firstly, overseas experiences suggest that divorcees sometimes abuse maintenance agencies, such as harassing payers by claiming that payment is overdue. The MAS should therefore review the authenticity of clients' claims. If the claim is proven to be true, the MAS can contact the payer to update payment situations. Secondly, MAS may face high costs, especially on IT systems and overhead. Yet, the user-pay principle ensures that MAS is sustainable. It can also be an effective trade-off if the MAS can relieve the burden on other public resources, such as the LAD and CSSA.

8.158 MAS will bring about a huge change in maintenance, especially in payments and legal procedures. Therefore, the Team recommends consulting all stakeholders before the launch of

MAS, especially divorcees, legal practitioners, social welfare practitioners and relevant government officers.

Integrated Database System (IDS)

Rationale and Aims

8.159 As mentioned at the beginning of the chapter, the Judiciary currently does not record comprehensive statistics related to divorce. The missing information makes it difficult for understanding the divorce situation in Hong Kong for formulating evidence-based effective policies to mitigate the problem. The Team identified this problem in the first study and the situation has become more acute in the present study. At present, it is not possible for us to provide any in-depth evaluation on some of the important matters, such as the effectiveness of JS, and the divorce risk between cross-boundary and local marriages. This may be a barrier to understanding divorce profiles and identifying reasons for divorce, which may hinder the development of effective policies to aid the divorced population. In this study, the Team had to request hard copies of the divorce files from the Family Court (all are in hardcopy) and attempted to collect relevant data from NGOs and law firms to make up for the shortfall. However, we were only able to access 200 files out of the 20,000 cases in a year. The Team, therefore, proposes setting up an integrated database system to collect relevant divorce-related statistics in Hong Kong, which aims to:

- Assist the surveillance, monitoring, and understanding of the current divorce situation
- Facilitate the formulation of effective policies to address current challenges in divorce with evidence-based practices

8.160 The Family Court is very supportive of this suggestion of the setting up of IDS as the Court also sees the value in understanding this serious social problem in Hong Kong and it can use the updated information for its own deliberation.

Executive body

8.161 In light of the nature of services and the experience in analysing data, the Team recommends that the Government should operate and maintain the IDS with the support of C&SD. The designated bureau/department should be the one which looks care and take charge of the issue of divorce. The database should be comprehensive and capture all the related information on divorcees for social and public policy formulation as seen in overseas jurisdictions.

8.162 The proposed IDS should collect the data from the Judiciary and relevant government departments (e.g. SWD, HYAB). Collected data should then be compiled and integrated into the IDS. This is another practicable initiative, as the Family Court keeps essential records and

information on each divorce case. This could also facilitate the Judiciary to carry out its role of keeping comprehensive data for the legal profession.

Functions

a) *Collect and record divorce-related data*

8.163 The main function of the IDS is to collect divorce-related data from different parties. Data collection should be done over time, ranging from before the issuing of decree nisi and after decree absolute. Information to note on the petition includes the date of marriage, occupation, place of residence, the reason for marriage breakdown, number of children, arrangements of the custody of the child and ancillary relief (if any) and date of the divorce application. When the divorcees obtain the decree absolute, or when the arrangement of FDR and CDR is settled, the relevant data (e.g. type of custody, type and amount of the ancillary relief, etc.) should also be recorded.

8.164 Statistics related to matrimonial causes (e.g., enforcement orders such as JS and AIO) should also be stored in the database. Apart from the number of annual enforcement applications, other essentials such as socio-demographics of petitioners and respondents, duration and amount of the arrears should also be recorded.

8.165 The Government should encourage relevant government bureaux/departments to contribute to the collection of data on service provisions for the divorced population. For instance, SWD can document the socio-demographic data of the service users, including the number of households, monthly household income, type of housing, the use of services; Judiciary can collect more detailed information on the socio-economic background (e.g. Cross-border marriage, length of the marriage, etc) when they apply for divorce proceedings. At the community level, authorities should regularly conduct surveys to collect data from different stakeholders such as social workers and lawyers to identify divorce-related issues and potential service gaps.

b) *Maintain and manage the integrated database system*

8.166 A promising future direction for the Government can be the development of an electronic platform to record professional support for each divorce family upon having issued the divorce petition at the Family Court. When family members use other professional services, service providers can scan the QR code or record their progress on the current case and share it with other providers. The data centre can integrate newly added data into the system, so various professionals handling the same case can stay informed. The Electronic Health Record Sharing System (eHealth) serves as a good reference for system setup, data privacy and system security²⁴⁸.

²⁴⁸Electronic Health Record Sharing System (e-Health). <https://www.ehealth.gov.hk/en/index.html>

8.167 The IDS and its interface should be user-friendly and can easily store and retrieve collected data.

This requires the system to have several features. For instance, error detection stands out as one of the most essential features. In the Central Registry of Divorce Proceedings²⁴⁹ that collects demographic information annually in Canada, data would be checked before they are converted into the database to ensure its quality and accuracy. The method of data storage should also be carefully considered, in order to ensure data can be securely stored and retrieved in an organised and consistent manner. Furthermore, the system should be continuously updated every year for better system maintenance.

c) *Provide relevant data for research, discussion, planning and decision-making within the Government and in the community*

8.168 The 2017 Policy Address²⁵⁰ outlined the government policy to open up government data for free public use, providing support for the database system to record data that will be readily accessible to the public. This enables the Government to develop and implement divorce policies to address divorce-related issues, researchers to monitor the divorce situation in Hong Kong, and service providers to deliver evidence-led service provision and enhancement.

8.169 The court can also use the recorded data to facilitate its operation. For instance, keeping a record of domestic violence data can prevent granting custody orders to abusive divorcees. Furthermore, the court could use the data to actively provide feedback to professionals and update them on the progress of each case. This may allow professionals to be informed of case judgments, review their services, and enhance service provision and efficiency.

Feasibility

8.170 **Manpower.** Sufficient manpower will be required to enhance the data collection process and to set up the IDS. A task force that involves policymakers, researchers, legal practitioners and social service providers in the Government will be required to decide what kind of information should be collected, for what purposes, and who should be informed of the findings for policy and services planning. Data collection facilitated by the Family Court needs to be supported by additional manpower.

8.171 **Overseas Experience.** Setting up integrated database systems is common in overseas jurisdictions, such as the UK Data Service (UKDS) and Statistics Canada. The UKDS is a national database service for social science researchers that compiles a wide range of data for

²⁴⁹ Statistics Canada. (2011). *Vital Statistics - Divorce Database*. Retrieved from:

<https://www23.statcan.gc.ca/imdb/p2SV.pl?Function=getSurvey&SDDS=3235&lang=en&db=IMDB&dbg=f&adm=8&dis=2#a3>

²⁵⁰ The Government of the Hong Kong Special Administrative Region. (2017). *The Chief Executive's 2017 Policy Address*. Retrieved from: https://www.policyaddress.gov.hk/2017/eng/policy_ch03.html

users, including UK census data, longitudinal studies, governmental surveys, etc. In a 2010 evaluation of the forerunner to UKDS, namely the Economic and Social Data service (ESDS), it has been reported that the ESDS was highly reputable for holding a wide range of data, and in providing opportunities for innovative policies. An Economic Impact Evaluation in 2012 also found high returns on investment and provided benefits to the service users²⁵¹. Statistics Canada is the national statistical agency that provides social, economic, and census data to the public. The statistical database holds a range of divorce-related data that would be a useful reference for Hong Kong. In the 2017 Statistics Canada evaluation, 73% of the consulted participants reported satisfaction with the website, and 77% were able to complete their tasks with the provided information. They proved that setting up an integrated database system can improve research and inform public policy.

8.172 **Data Collection Method.** Careful design of data collection forms should be required to ensure the quality of the obtained data. The self-declaration forms in use should be user-friendly. It should be concise and include essential questions that capture important information and are presented using comprehensible layouts. This would increase public acceptance, avoid under- and overreporting, and reduce survey fatigue, therefore increasing data accuracy.

8.173 **Data Privacy.** In accordance with the PDPO, it should be ensured that the IDS do not disclose any personal information that might reveal an individual's identity. For instance, all divorce data published by Statistics Canada are guided by multiple confidentiality rules. The UKDS has meanwhile set up a standard end user license / special license to secure access to confidential information that could breach privacy. Adopting similar features will enable the Judiciary to collect detailed data (e.g. amount of maintenance owed) for research purposes, but also protect users' privacy.

Recommended Policy Initiatives: The policy initiatives of FRO and IDS are the needed long-term infrastructures to effectively prevent possible adverse impacts of divorce and formulate policies to manage divorce issues in Hong Kong.

²⁵¹ Charles Beagrie Ltd, & Centre for Strategic Economic Studies. (2012). *Economic impact evaluation of the Economic and Social Data Service*. <https://esrc.ukri.org/files/research/research-and-impact-evaluation/economic-impact-evaluation-of-the-economic-and-social-data-service/>

Overall Concluding Remarks

This Report by the HKU Research Team on the *Further study of the phenomenon of divorce* in Hong Kong in 2021 cannot be completed without the contribution of various departments and organisations, front-line staff and administrators, service users and service providers, community partners and other stakeholders. The report aims to provide a holistic and in-depth review of various divorce-related issues and policy suggestions, especially on the collection systems of maintenance payments and the enforcement of maintenance orders. After completing the 2013 and 2021 studies, the Team is deeply convinced that with the growing number and complexity of divorces, there should be ongoing research to monitor the trend in divorce in Hong Kong. Timely research and the use of more complete front-line data that are currently missing (e.g. family history of risk factors such as DV, crime and mental illness). It will help provide a complete picture of divorce in Hong Kong and formulate more targeted and effective measures, services, and collaborations with international stakeholders to foster the well-being of intact and divorced families. Divorce is a tragic and undesirable event to many people; it is important to mitigate its negative impacts on those involved especially on the well-being of the children and spouses who have been affected. The recommendations made in this report, hopefully, can help. For these recommendations to be effective, a concerted effort is needed and continuous monitoring and surveillance are also recommended.

– End of Report –

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Appendix A – Composition of the Research Team

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| Tang, Wong & Chow, Solicitors | Law firm and Practicing Solicitors |

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| | |
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| Mr. Kerin CHAM | International Social Service Hong Kong Branch, Integrated Family Service Centre |
| Mr. Lincole CHAN | The Salvation Army |
| Ms. Maggie M.K. CHAN | Caritas – Hong Kong (up to mid-September, 2019) |
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| Prof. Anita NYBERG | Professor emerita, Gender studies, Stockholm University, Sweden |
| Dr. Lue FANG | Postdoctoral Fellow, Asia Research Institute, National University of Singapore |

Appendix B – Full List of Participating Government Departments, NGOs and Legal Practitioners / Law Firms (According to Alphabetic Order)

The Research Team is grateful for the generous support from the government departments, legal and community partners, and the efficient assistance from their representatives in contributing data to our study.

Department of Justice

Home Affairs Bureau

Hong Kong Housing Authority

Hong Kong Judiciary

Hong Kong Police Force

Legal Aid Department

Legal Associations / Practitioners / Law Firms

Boase Cohen & Collins, Solicitors

Hong Kong Bar Association

Ms. Jacqueline W.H. MAK

Ms. Sally S.Y. WONG

Rowdget W. Young & Co., Solicitors

Tang, Wong & Chow, Solicitors

The Hong Kong Family Law Association

The Law Society of Hong Kong

Non-Governmental Organisations

Caritas – Hong Kong

Christian Family Service Centre

Harmony House

Hong Kong Catholic Marriage Advisory Council

Hong Kong Christian Service

Hong Kong Family Welfare Society

Hong Kong Single Parents Association

International Social Service (Hong Kong Branch)

St. James' Settlement

The Hong Kong Council of Social Service

Tung Wah Group of Hospitals

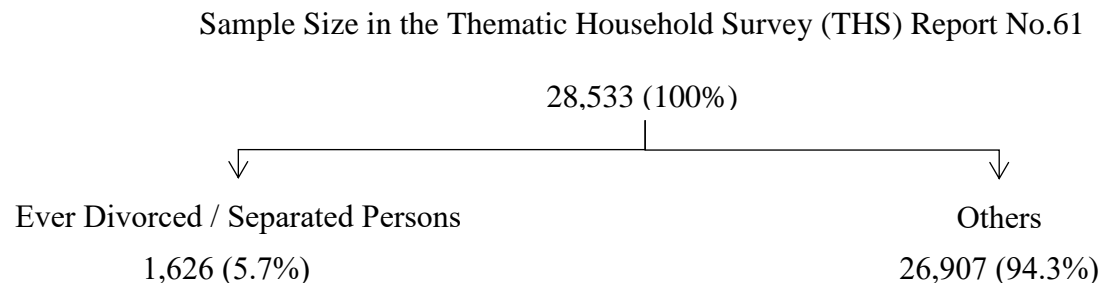
Yang Memorial Methodist Social Service

Social Welfare Department

Appendix C – Findings from the Thematic Household Survey (THS) Report No.61

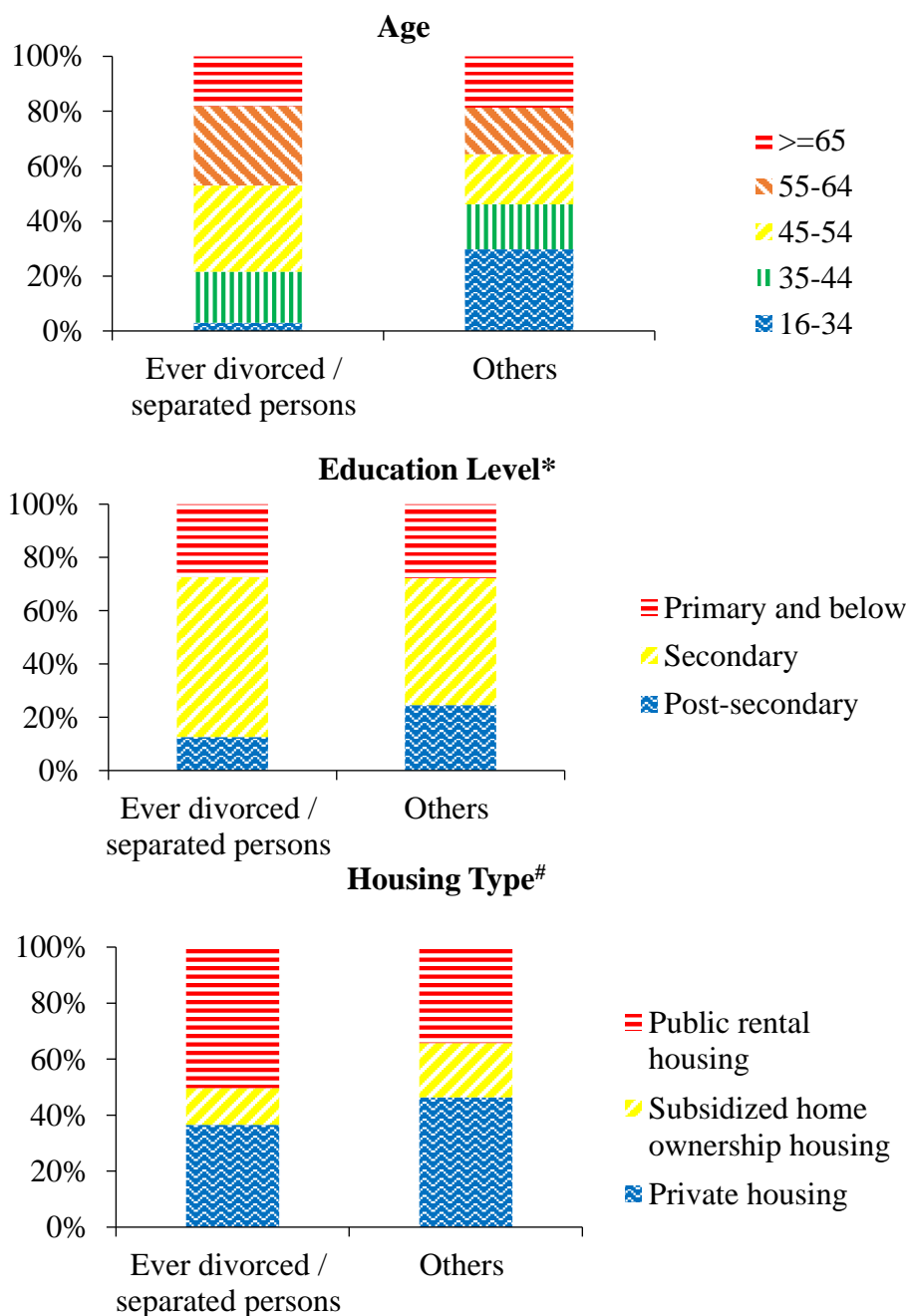
Appendix C.1 – Sample Size

Figure C.1 Sample Size



Appendix C.2 - Samples of Ever Divorced / Separated Persons and Others

Figure C.2 Samples^ of Ever Divorced / Separated Persons and Others



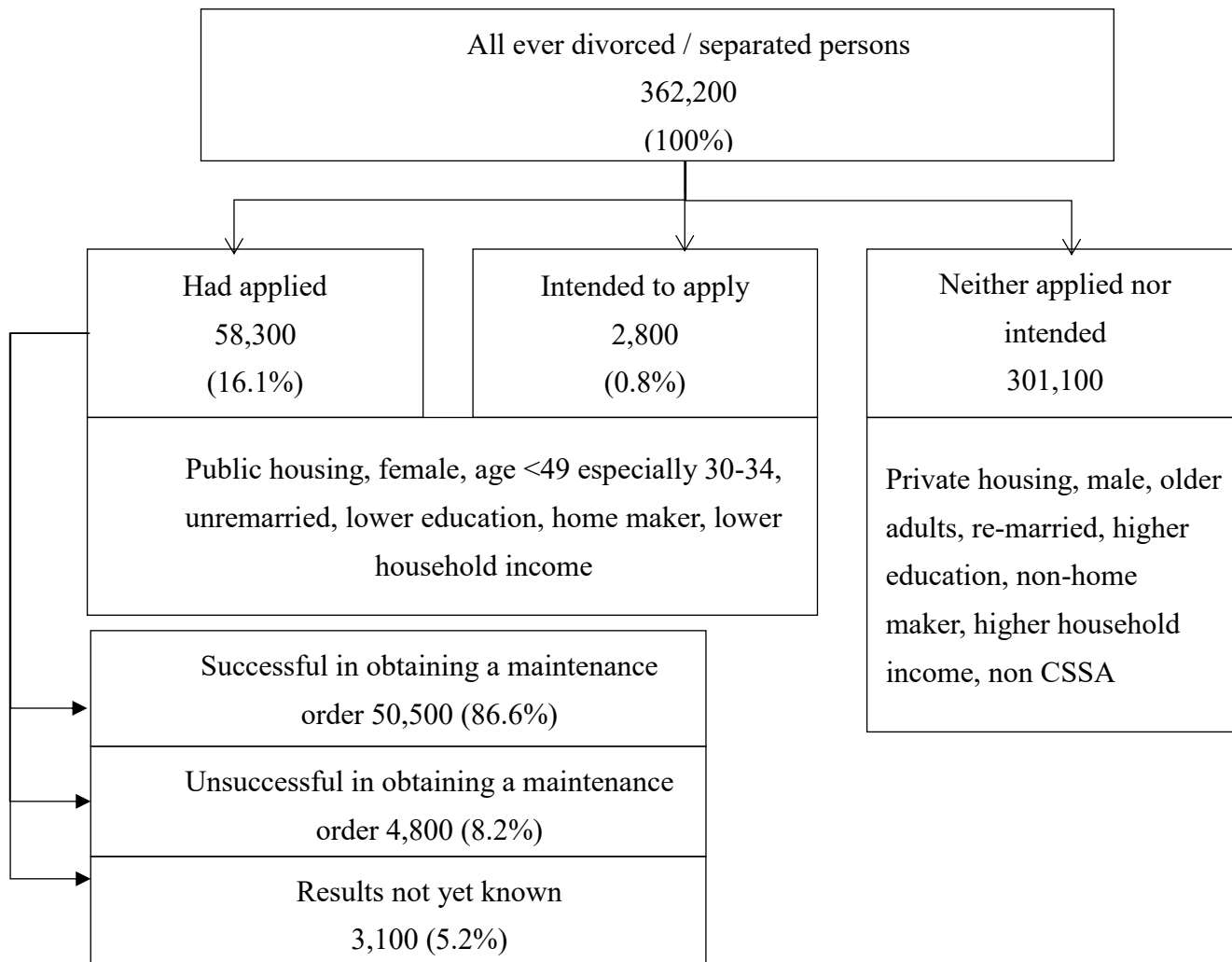
Note: ^Data was from Thematic Household Survey Report No.61.

*Persons aged 16 and over

#Persons aged 16 and over

Appendix C.3 – Proportion of Maintenance Applications

Figure C.3 Proportion of Maintenance Applications



Appendix C.4 – Maintenance Application and Sociodemographic Backgrounds

Figure C.4 Maintenance Application and Age Group²⁵² (p < 0.001)

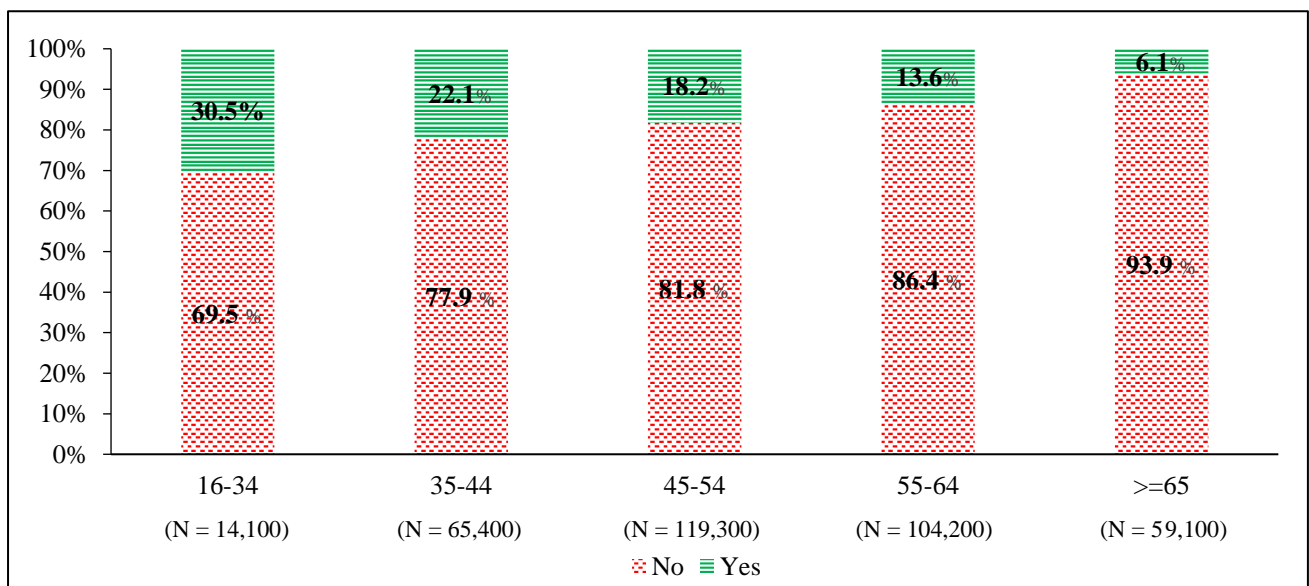
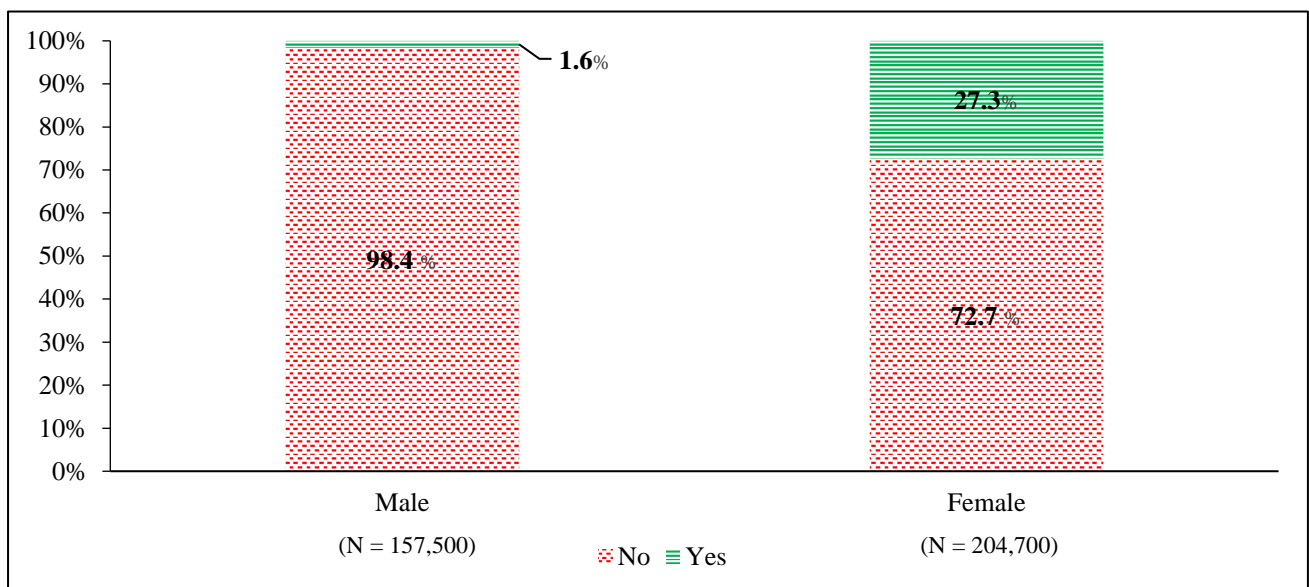


Figure C.5 Maintenance Application and Sex Group²⁵³ (p < 0.001)



²⁵² The percentages may not add up to 100% due to rounding.

²⁵³ The percentages may not add up to 100% due to rounding.

Figure C.6 Maintenance Application and Marital Status²⁵⁴ ($p < 0.001$)

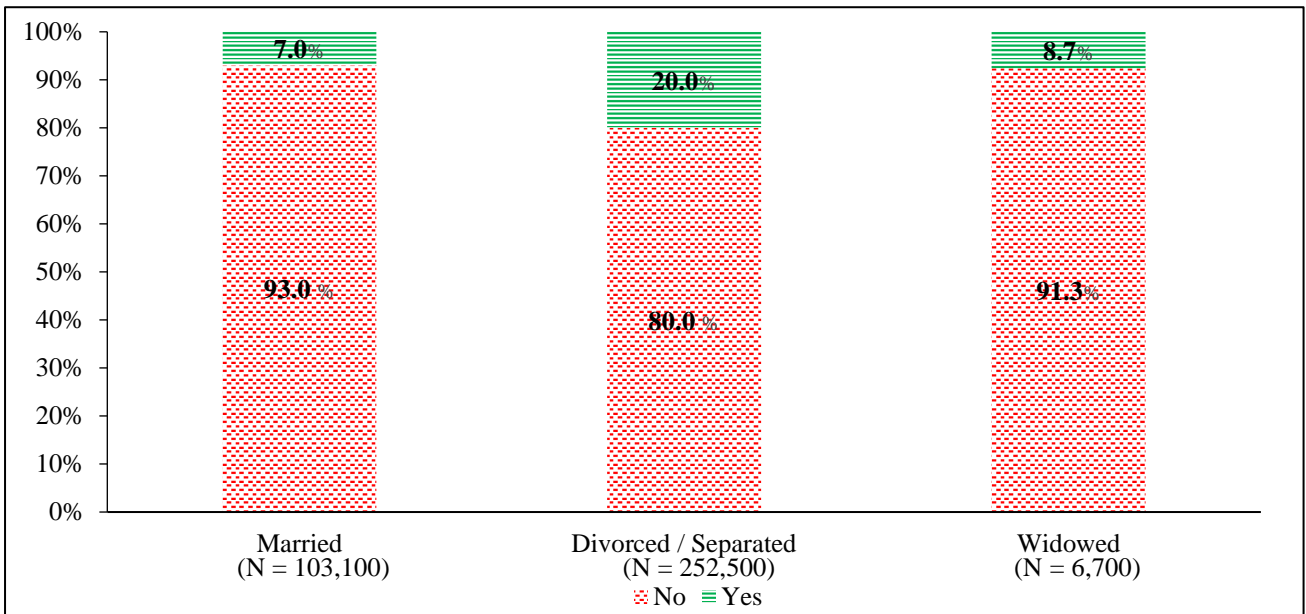
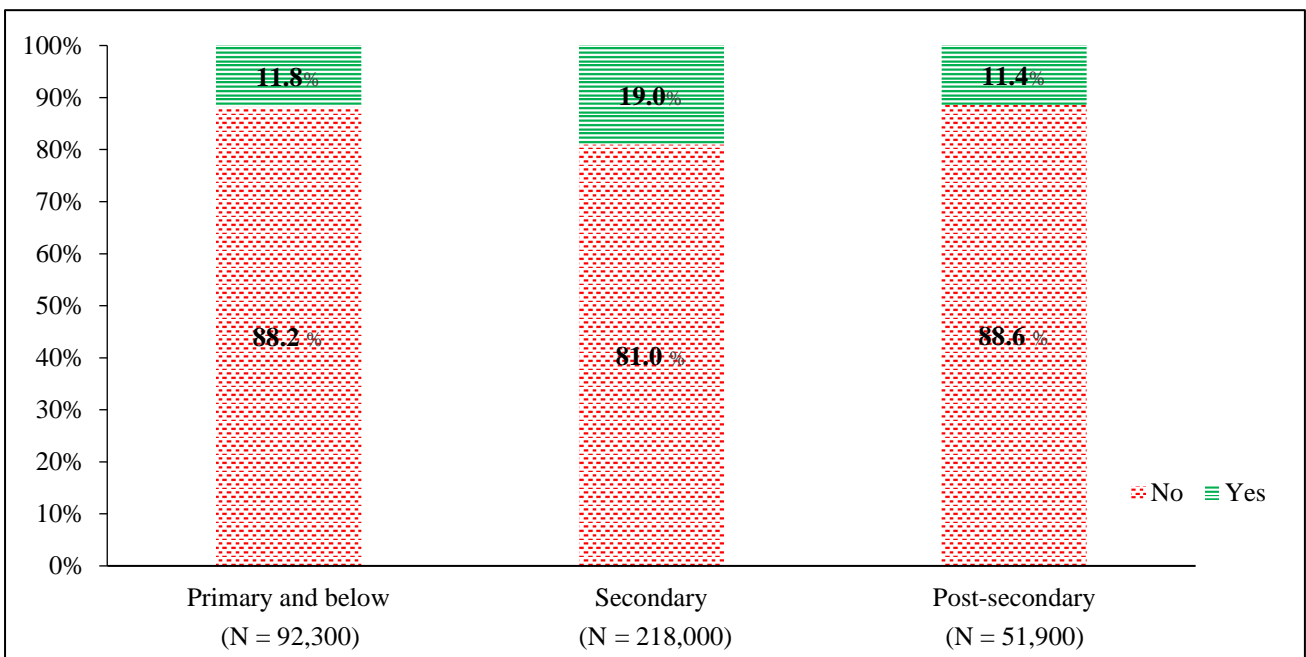


Figure C.7 Maintenance Application and Education Level²⁵⁵ ($p < 0.001$)



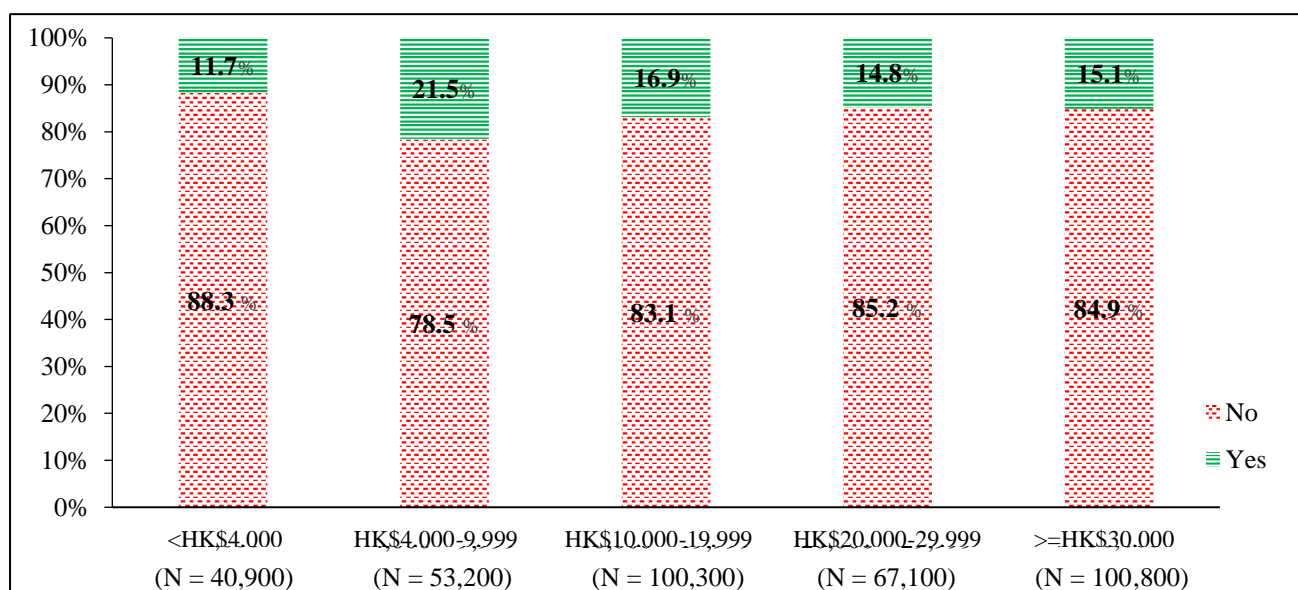
²⁵⁴ The percentages may not add up to 100% due to rounding.

²⁵⁵ The percentages may not add up to 100% due to rounding.

Figure C.8 Maintenance Application and Economic Activity Status²⁵⁶ (p < 0.001)



Figure C.9 Maintenance Application and Household Income²⁵⁷ (p < 0.001)



²⁵⁶ The percentages may not add up to 100% due to rounding.

²⁵⁷ The percentages may not add up to 100% due to rounding.

Figure C.10 Maintenance Application and Housing Type²⁵⁸ ($p < 0.001$)

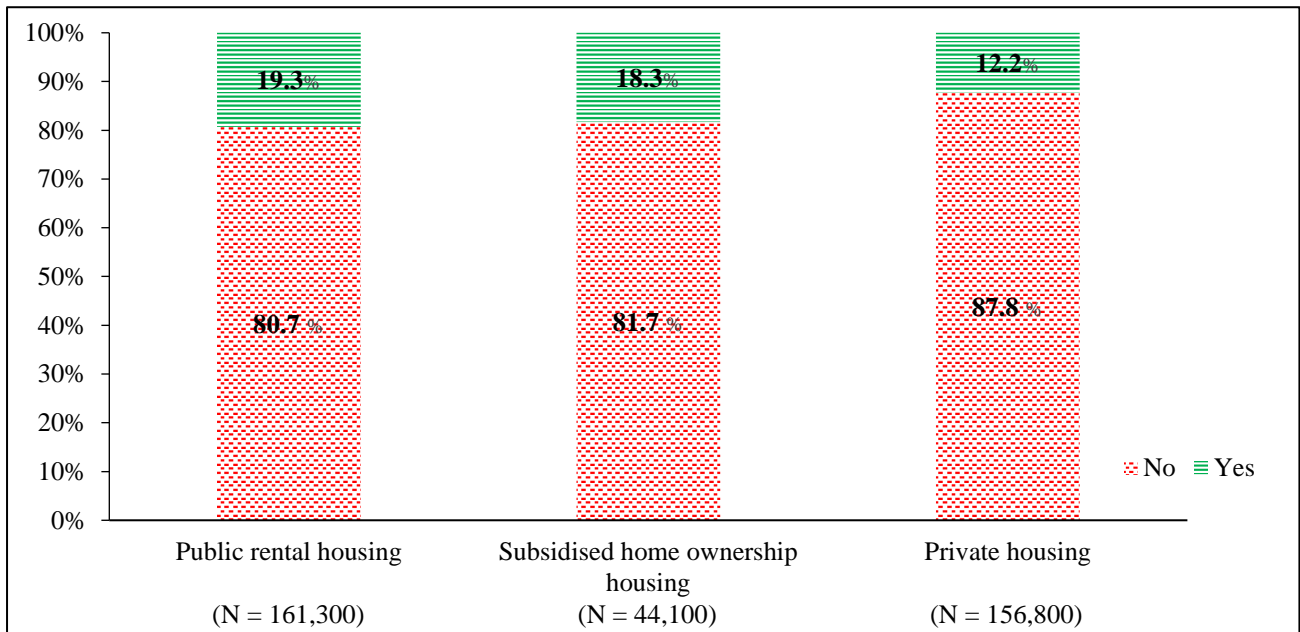
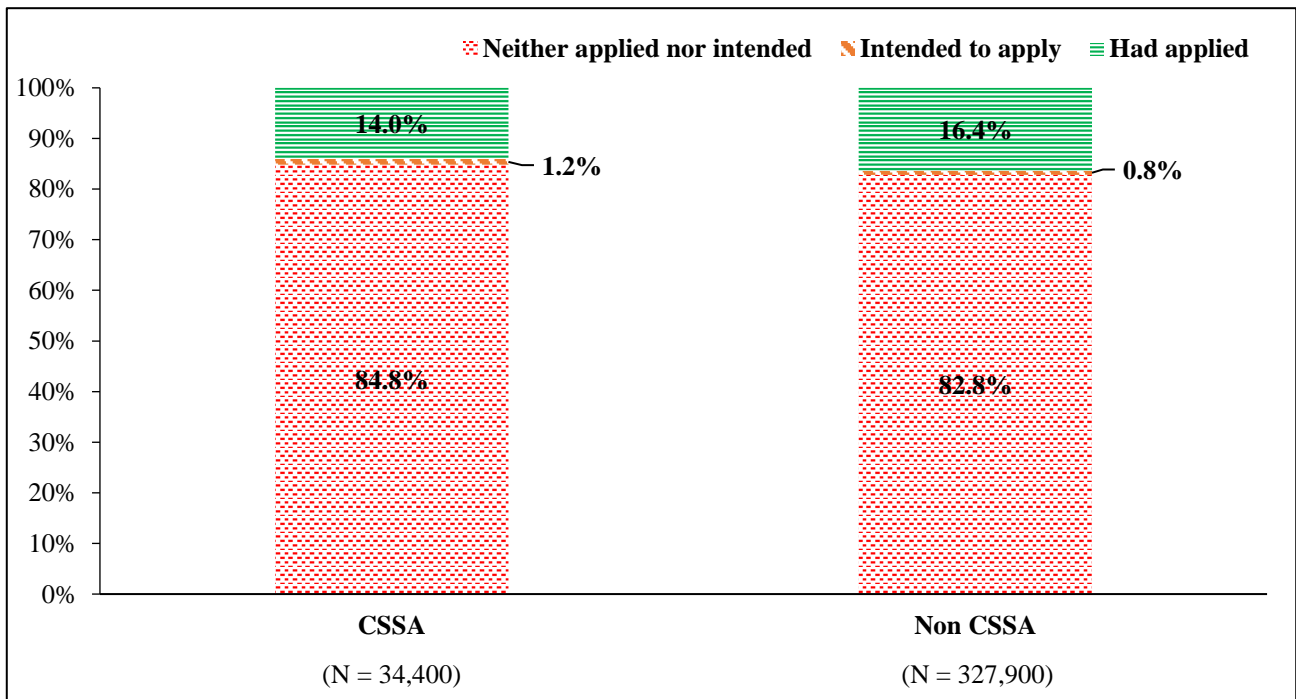


Figure C.11 Maintenance Application and CSSA Application²⁵⁹ ($p < 0.001$)

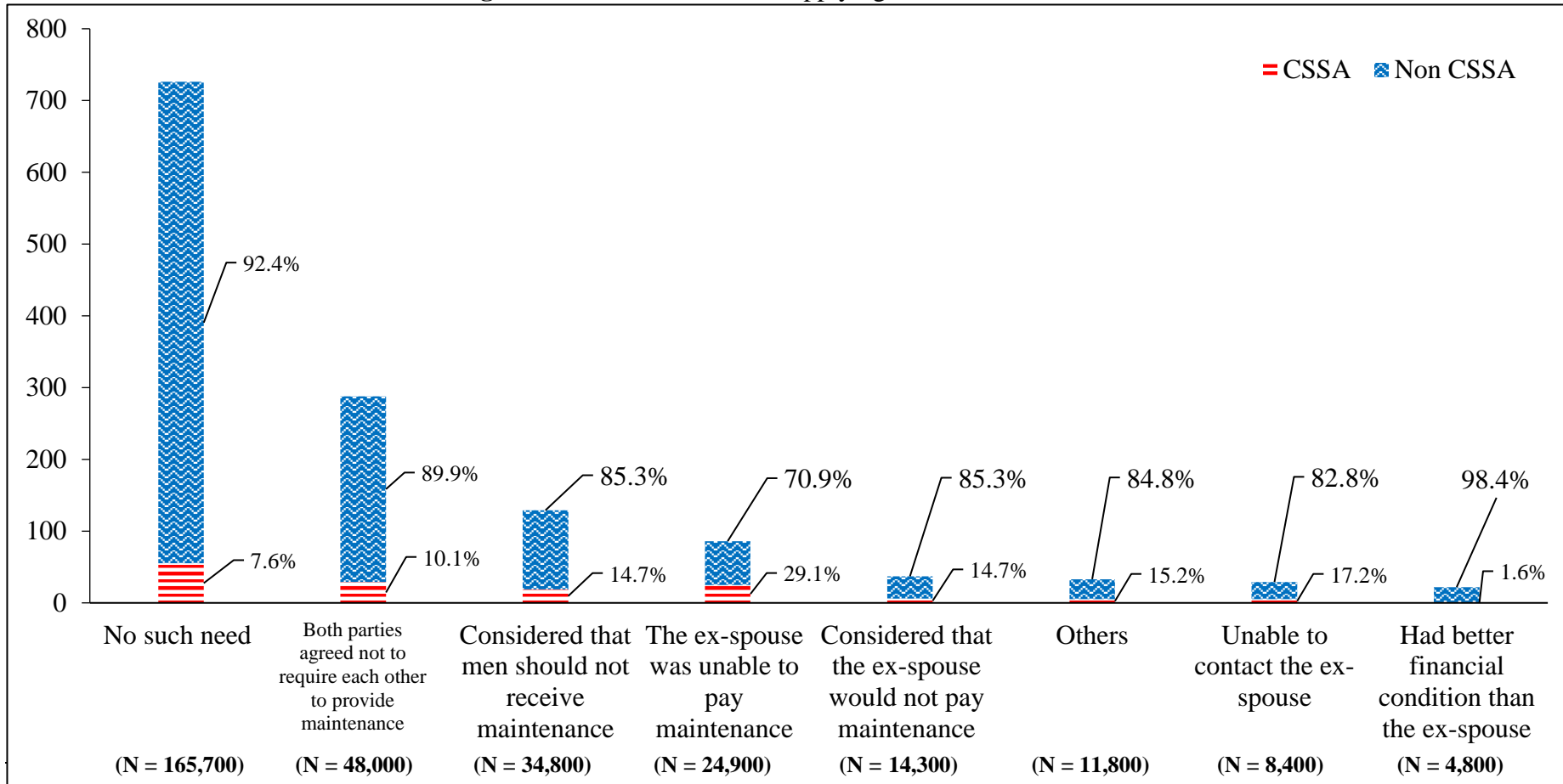


²⁵⁸ The percentages may not add up to 100% due to rounding.

²⁵⁹ The percentages may not add up to 100% due to rounding. Sample results were used for this Figure.

Appendix C.5 – Reasons for Not Applying for Maintenance Orders

Figure C.12 Reasons for Not Applying for Maintenance Orders^{260, 261}



²⁶⁰ Data was from THS Report No.61. Sample results were used for this Figure.

²⁶¹ One person may report two or more reasons; therefore, the sum may exceed the total population. This figure excluded those ever divorced/ separated persons whose ex-spouses would provide maintenance according to the maintenance agreement (e.g. 4,600 persons).

Appendix C.6 – Status of Receiving Maintenance in Full by Respondents’ Sociodemographic Backgrounds (THS Report No.61)

Figure C.13 Status of Receiving Maintenance and Gender Group²⁶² (p < 0.001)

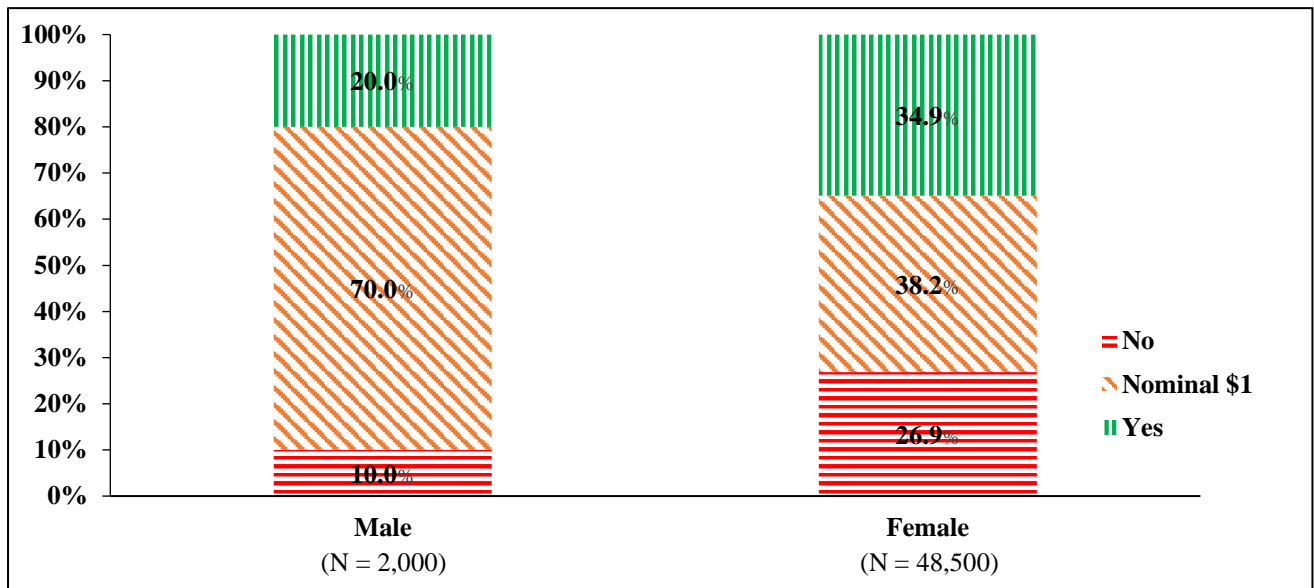
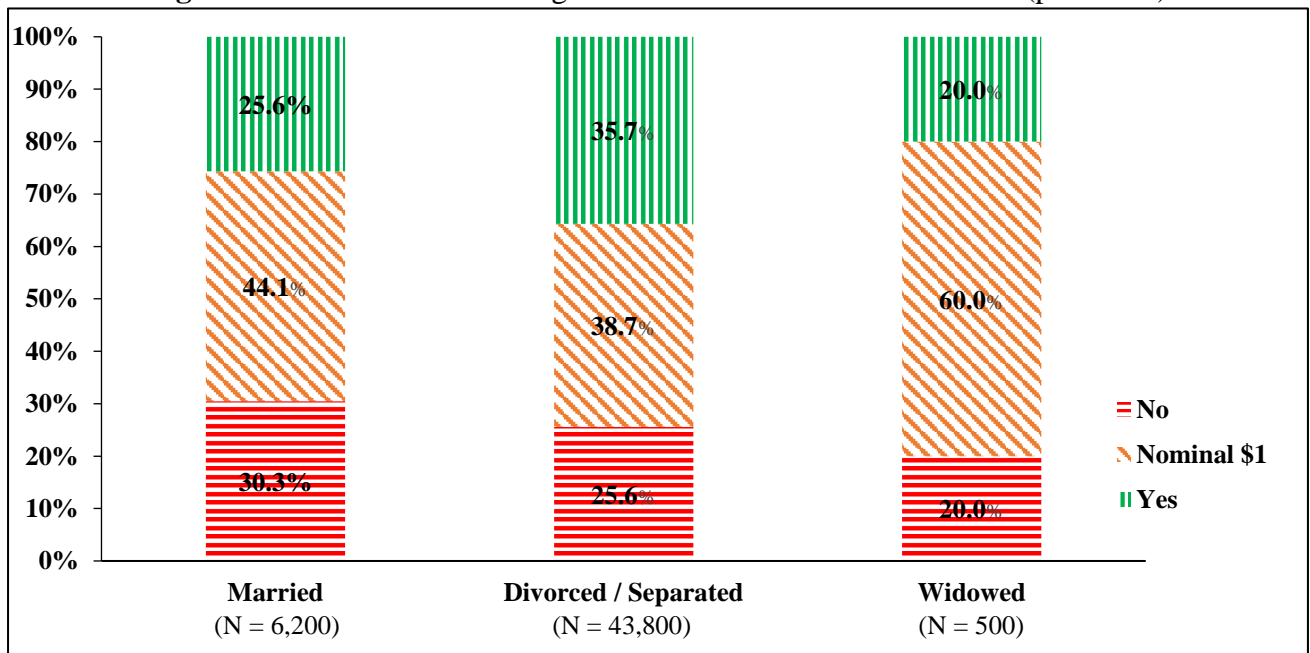


Figure C.14 Status of Receiving Maintenance and Marital Status²⁶³ (p < 0.001)



²⁶² Data was from THS Report No.61. Regression models were used to analyse the data.

²⁶³ Data was from THS Report No.61. Regression models were used to analyse the data.

Figure C.15 Status of Receiving Maintenance and Education Level²⁶⁴ ($p < 0.001$)

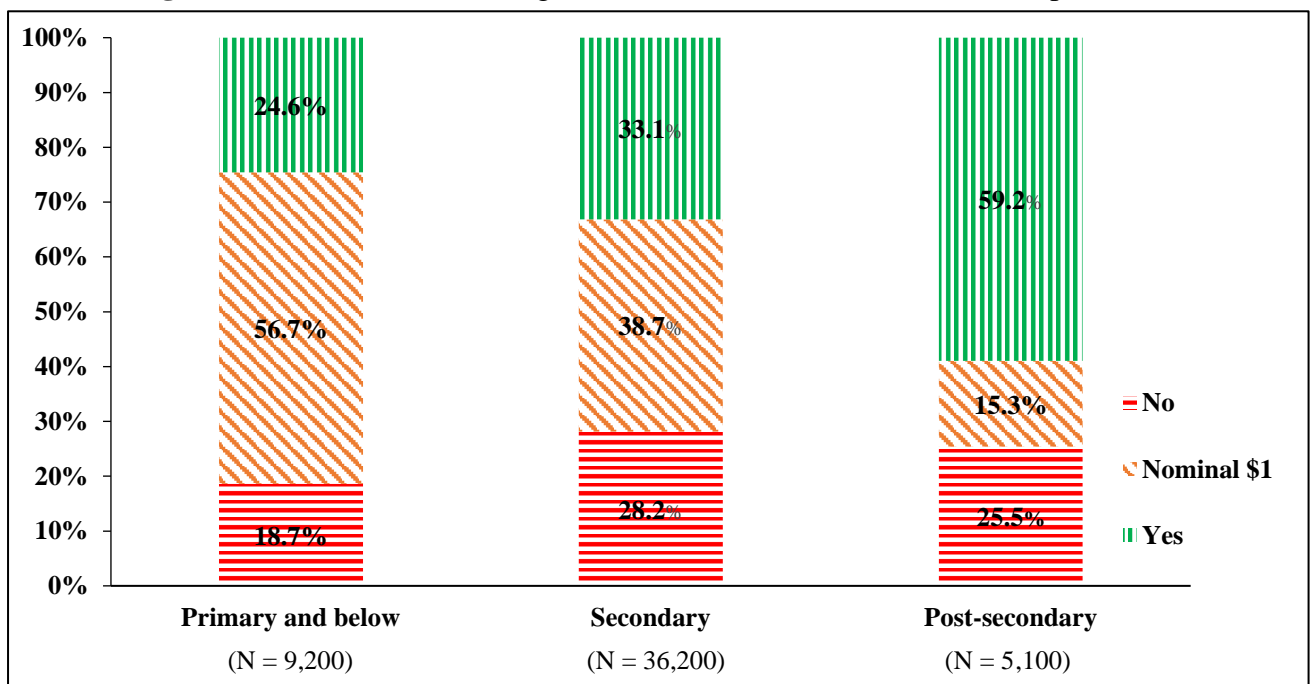
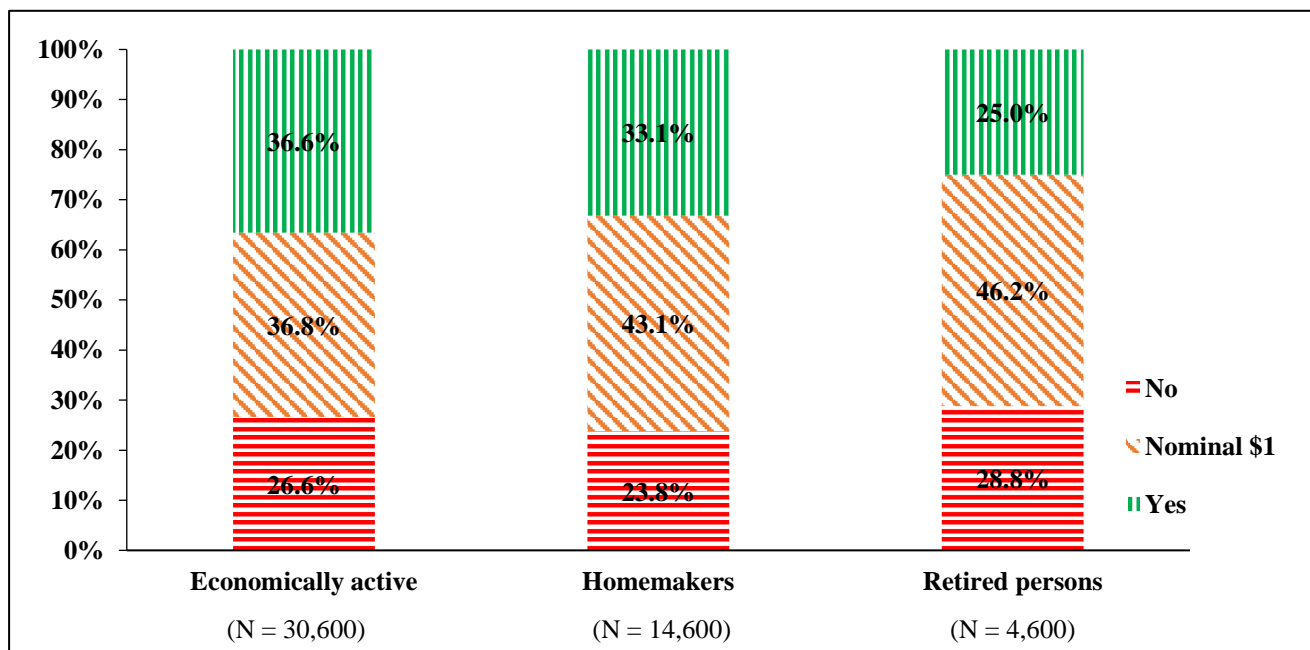


Figure C.16 Status of Receiving Maintenance and Economic Activity Status²⁶⁵ ($p < 0.001$)



²⁶⁴ Data was from THS Report No.61. Regression models were used to analyse the data.

²⁶⁵ Data was from THS Report No.61. Regression models were used to analyse the data.

Figure C.17 Status of Receiving Maintenance and Occupation²⁶⁶ ($p < 0.001$)

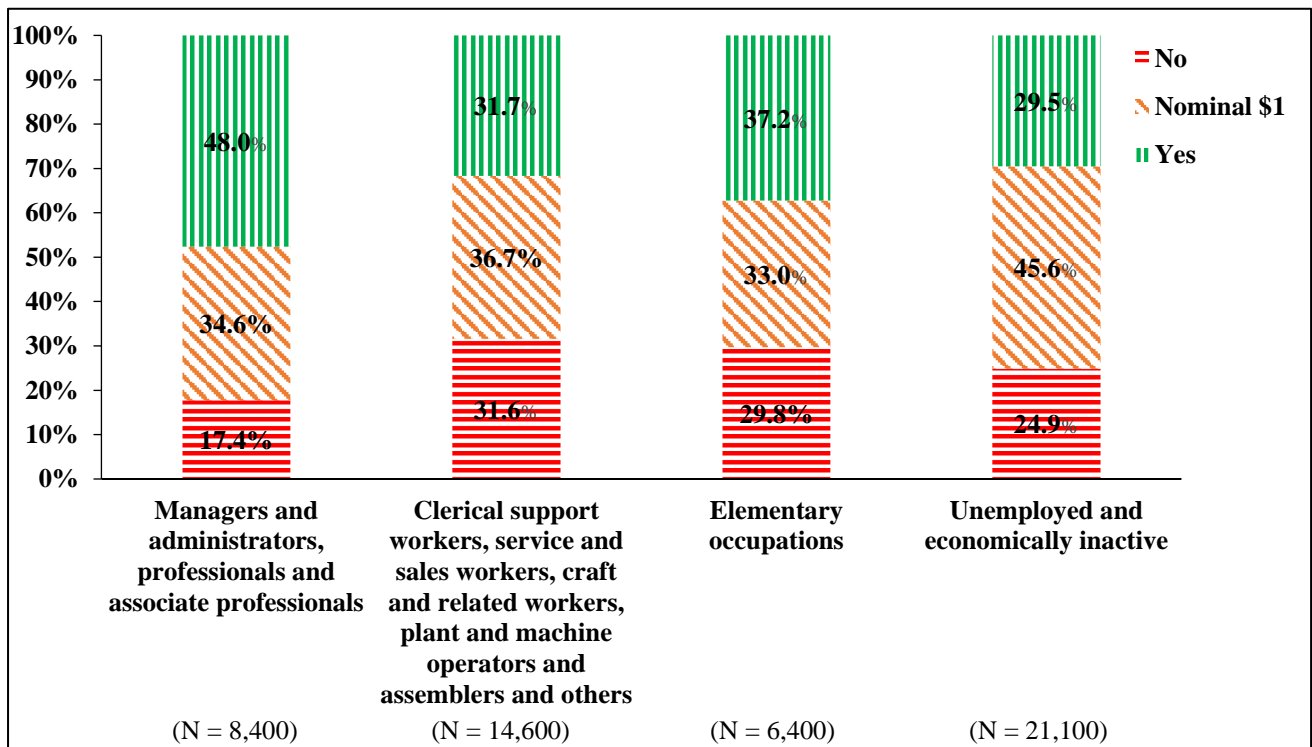
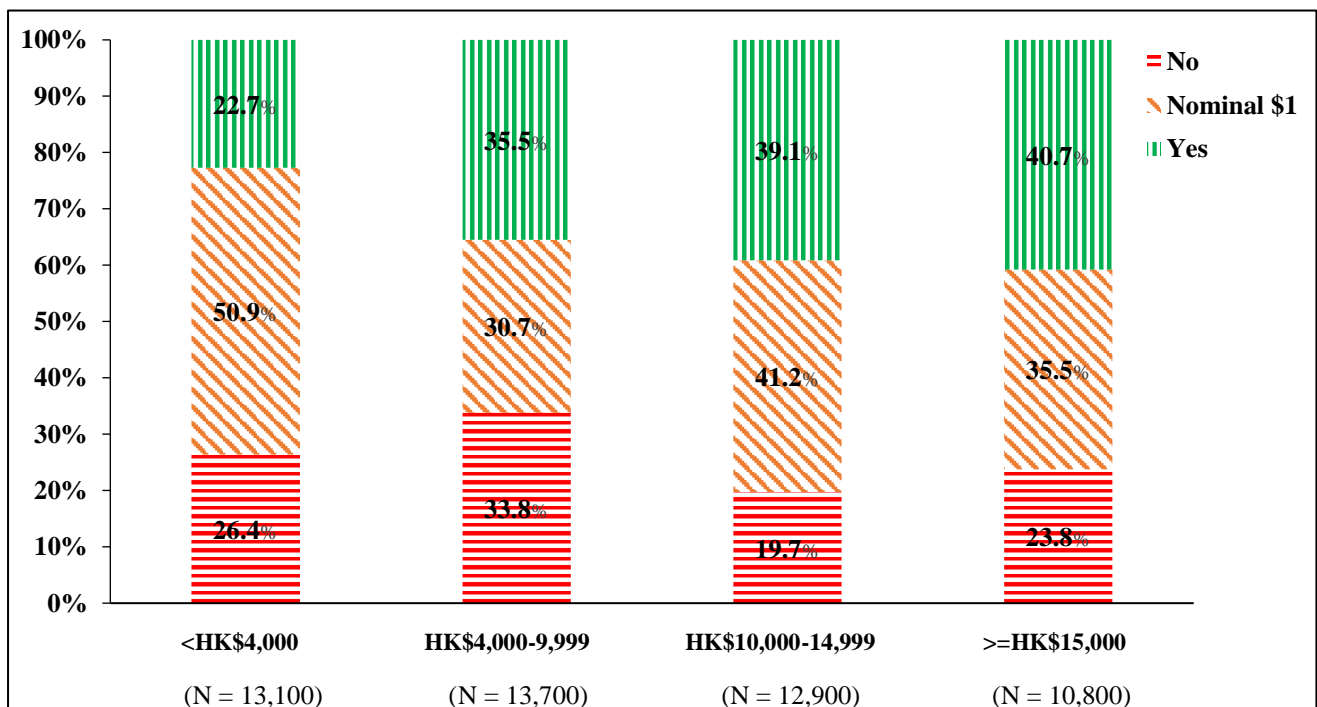


Figure C.18 Status of Receiving Maintenance and Personal Income²⁶⁷ ($p < 0.001$)



²⁶⁶ Data was from THS Report No.61. Regression models were used to analyse the data.

²⁶⁷ Data was from THS Report No.61. Regression models were used to analyse the data.

Figure C.19 Status of Receiving Maintenance and Housing Type²⁶⁸ (p < 0.001)

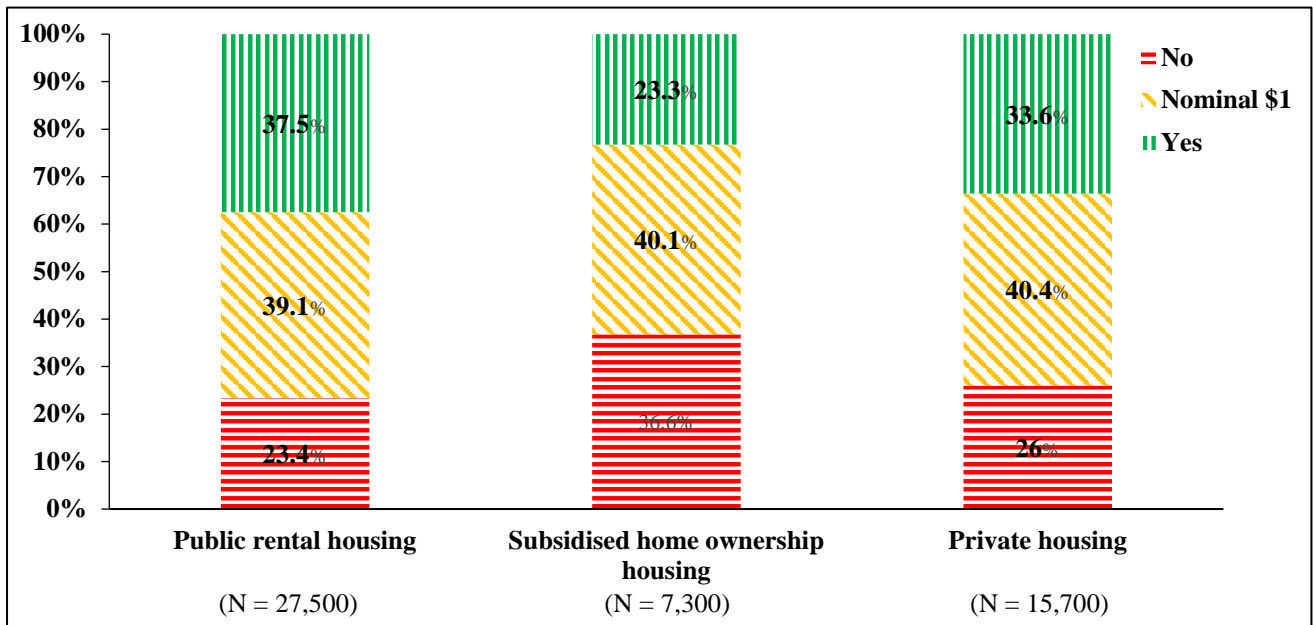
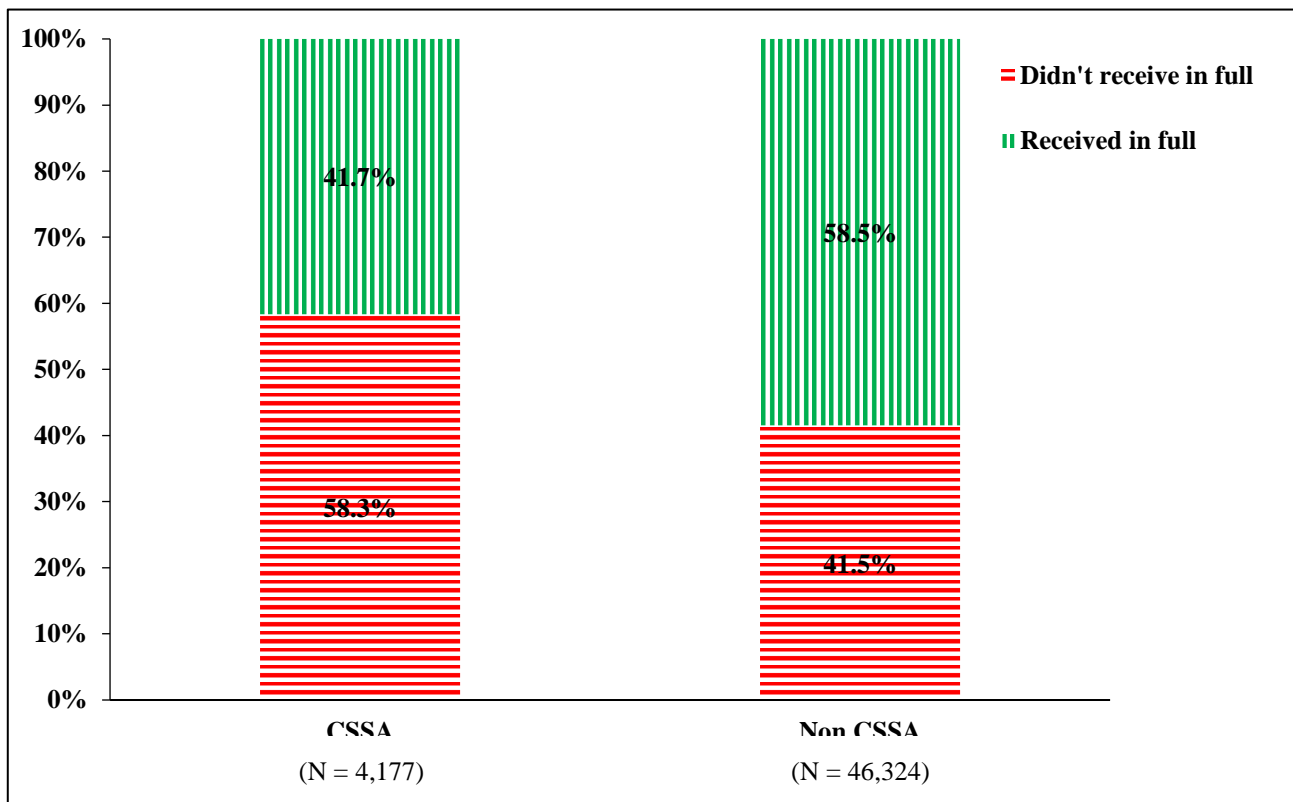


Figure C.20 Status of Receiving Maintenance and CSSA Application²⁶⁹ (p < 0.001)



²⁶⁸ Data was from THS Report No.61. Regression models were used to analyse the data.

²⁶⁹ Data was from THS Report No.61. Regression models were used to analyse the data.

Appendix C.7 - Maintenance Status and Taking Legal Actions

Figure C.21 Maintenance Status and Taking Legal Actions

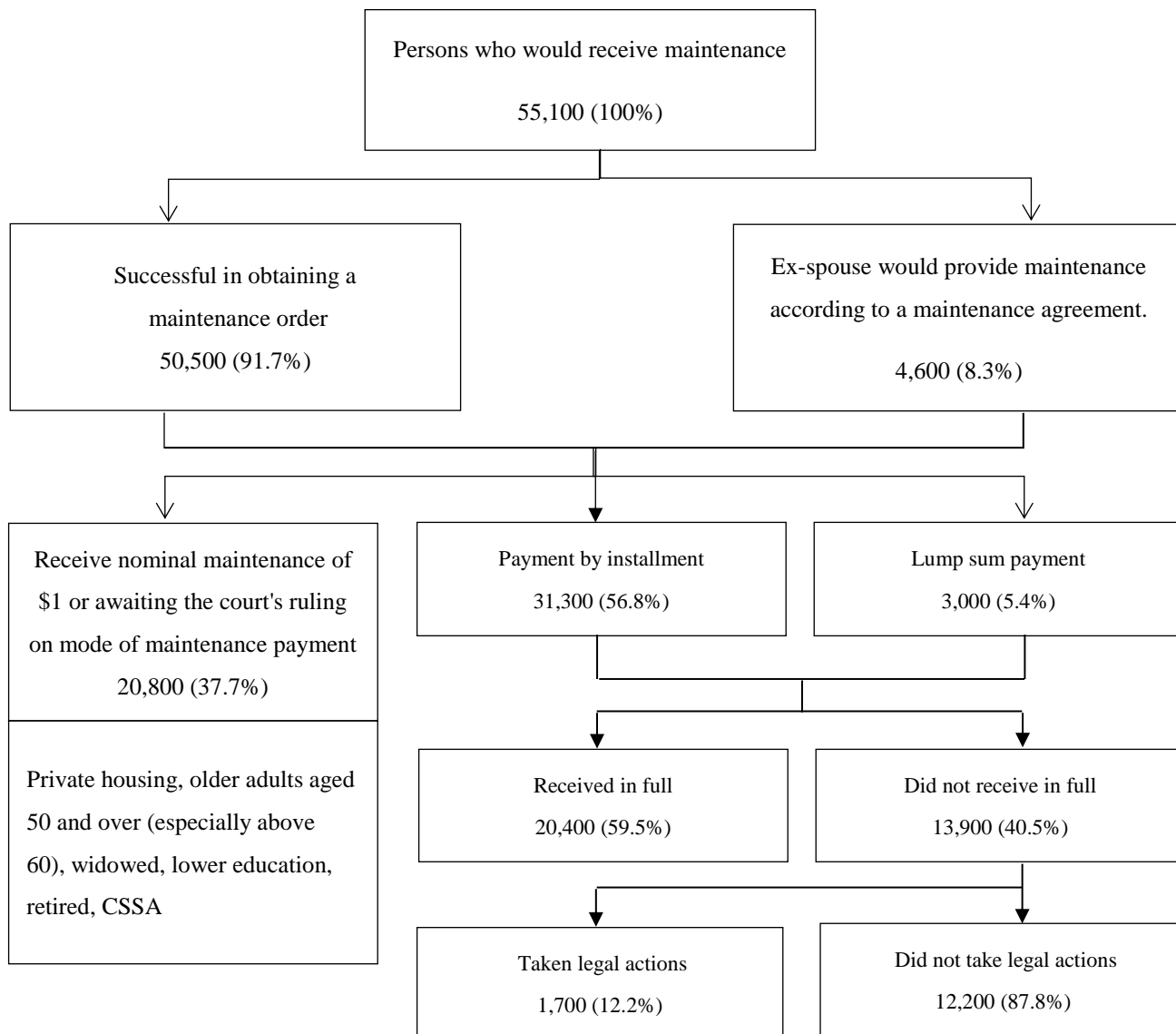
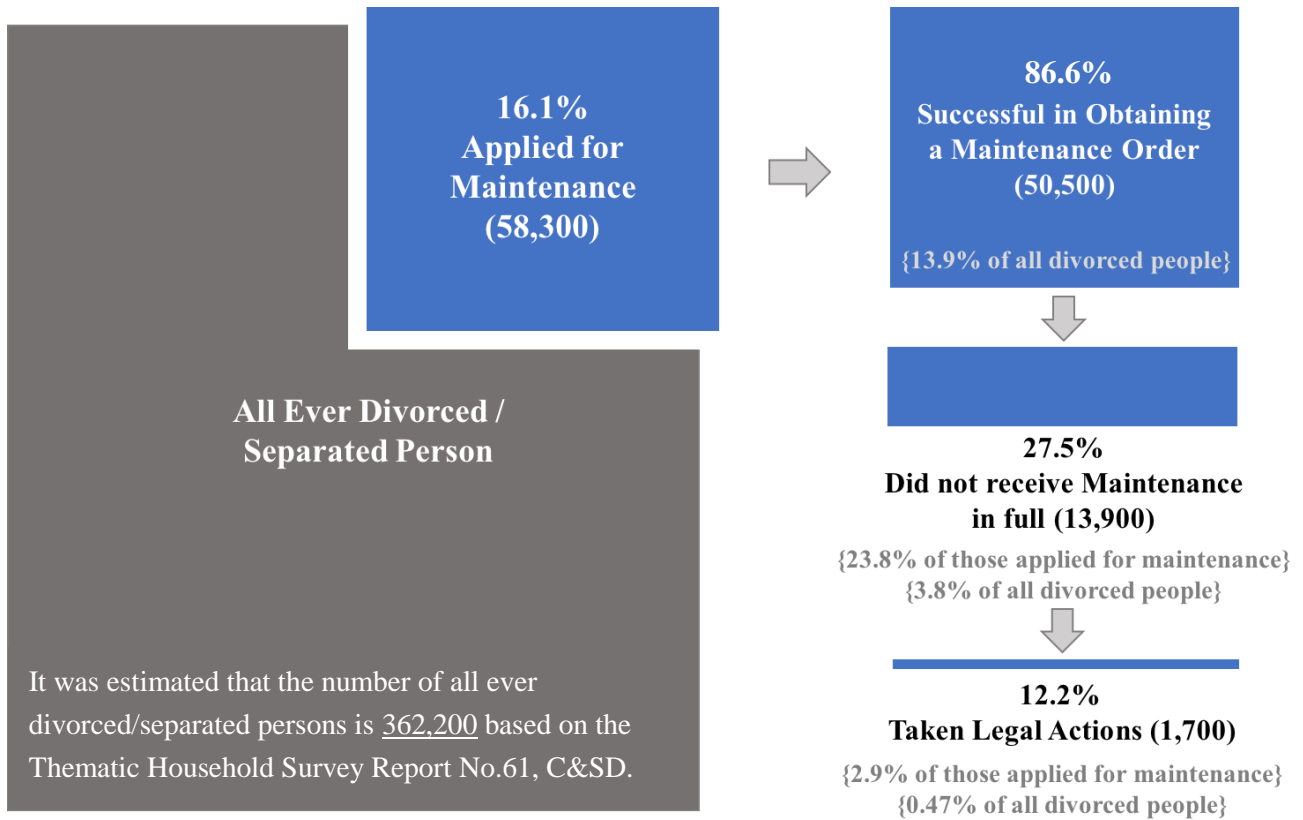
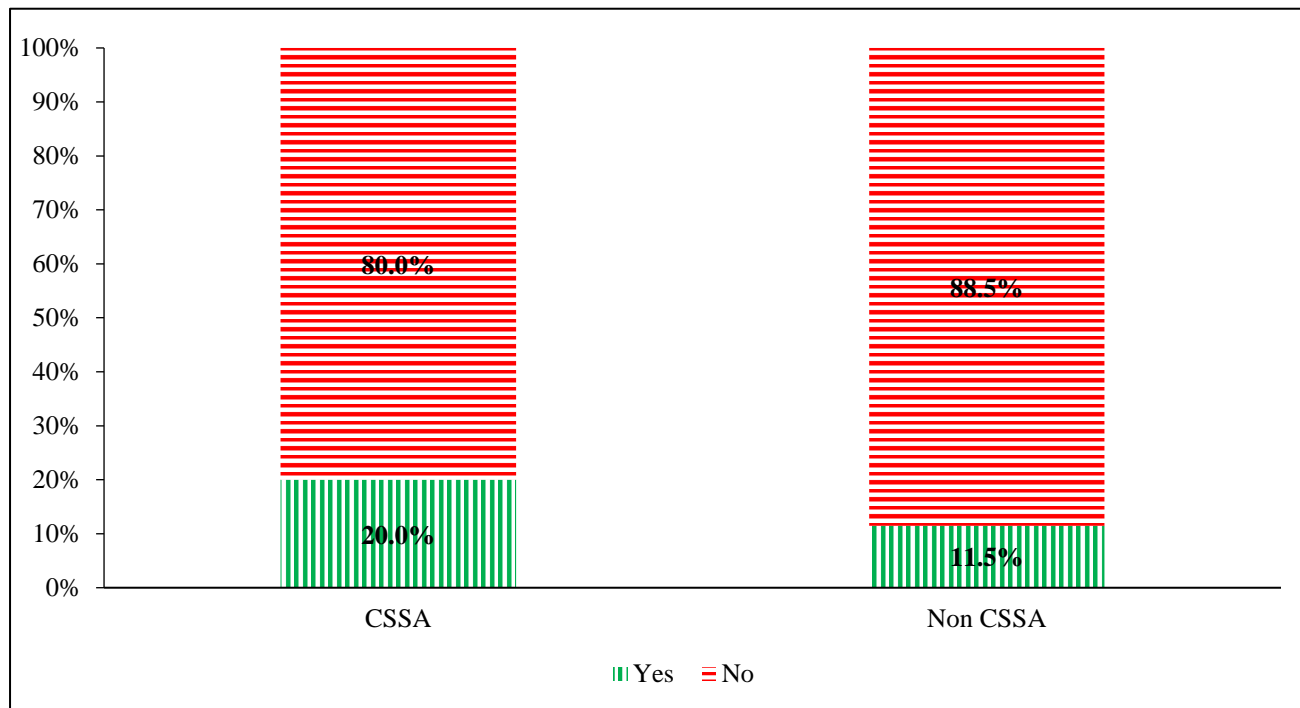


Figure C.22 Divorced people with maintenance issues.



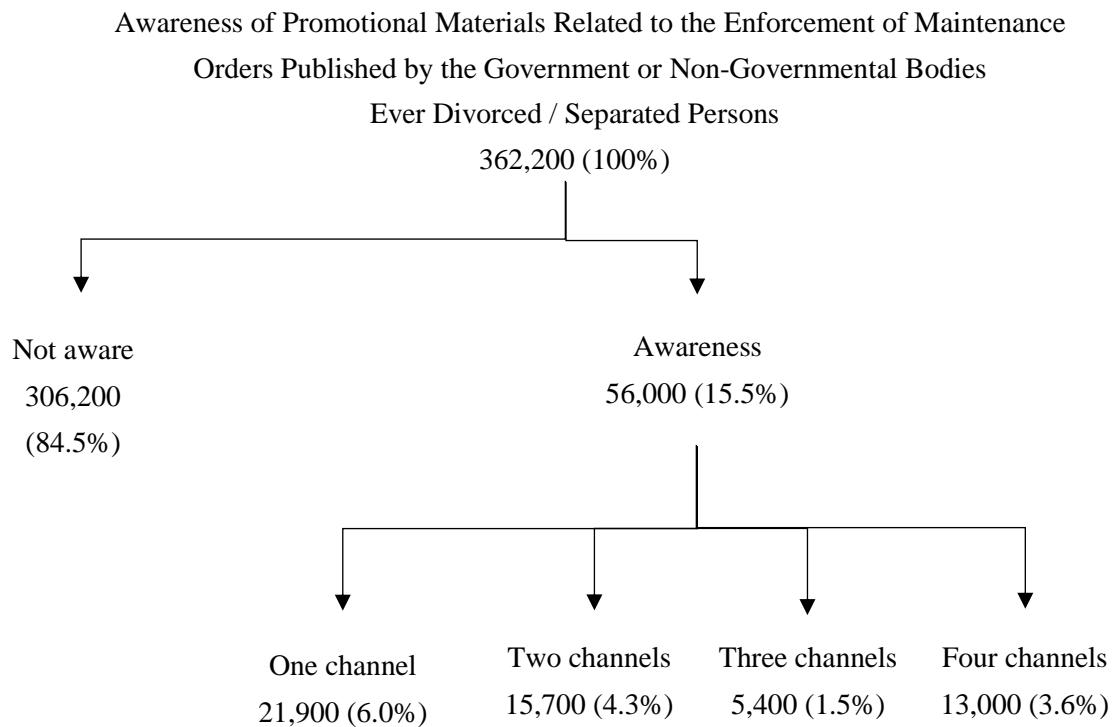
Appendix C.8 - Relationship between Taking Legal Actions and CSSA Application (p < 0.001)

Figure C.23 Relationship between Taking Legal Actions and CSSA Application²⁷⁰ (p < 0.001)



²⁷⁰ Data was from THS Report No.61. Regression models were used to analyse the data.

Appendix C.9 - Awareness of 4 Channels of Promotional Materials Related to the Enforcement of Maintenance Orders Published by the Government or Non-Governmental Bodies



- | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> 1. TV announcement / voice recordings by the Government 2. Printed publications (e.g. leaflet/booklet, CD-ROMs etc.) 3. Information about the “Surcharge on Arrears of Maintenance” 4. Other promotional activities organized by non-Government bodies |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Figure C.24 Awareness of 4 Channels of Promotional Materials Related to the Enforcement of Maintenance Orders Published by the Government or Non-Governmental Bodies

Appendix D – e-Form Questionnaire

Background: This 2018 study intends to get social workers and lawyers to present the array of divorce issues, service needs and ways out in Hong Kong through reporting on cases in their case back. Case collection should include cases with Decree was made Absolute on or after 1st January 2000 till the date of filling out this form. An e-version has been created to facilitate efficiency and accuracy in entries.

There are 6 sections in the current version:

- a) **Background Information**
- b) **Information about the marriage**
- c) **Information on Divorce Proceedings**
- d) **Information about Decree Absolute & Orders granted**
- e) **Enforcement of Court Order**
- f) **Specific Remarks on the Case**

| | |
|----------------------------------------------------------------------------------------|--------------------------------------------------------------------|
| Project serial number: _____ (e.g.01A08, Organisation 01, worker A, case 08) | e-Form Submission Date: ____ / ____ / ____ (DD/MM/YYYY)* |
|----------------------------------------------------------------------------------------|--------------------------------------------------------------------|

| Reasons for Inclusion | | |
|----------------------------------------------------------------------------------------------------------------|-----------------------------|-------------------------|
| Please indicate <i>ONE</i> primary reason with ✓; and <i>MULTIPLE</i> secondary reasons with X (if applicable) | | |
| Maintenance Delivery/Financial Problems | Extra Marital Affairs | Young age at Marriage |
| Domestic Violence (Spouse/Child) | Communication Conflicts | Teen Parents |
| Addiction (Gambling, substance abuse, IT) | Emotional Issues | Cross Border Marriage |
| Fertility and Sex Issues | Behavioural Issues | Parenting Conflict |
| Elderly / In-law Issues | Problem with parents-in-law | Others, please specify: |

| A Background Information | |
|----------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Principal Client (e.g. as at the date of divorce application) | |
| 1. | Approximate age: _____ |
| 2. | Sex: <input type="checkbox"/> Male <input type="checkbox"/> Female <input type="checkbox"/> Others |
| 3. | Years of domicile in Hong Kong <input type="checkbox"/> Over 7 years <input type="checkbox"/> Less than 7 years, please specify: _____ Years _____ Months |
| 4. | Residence Location: <input type="checkbox"/> Hong Kong <input type="checkbox"/> mainland China <input type="checkbox"/> Others (Please specify): _____ |
| 5. | Highest education level completed: <input type="checkbox"/> No schooling/pre-primary <input type="checkbox"/> Primary <input type="checkbox"/> Lower Secondary <input type="checkbox"/> Upper Secondary <input type="checkbox"/> Diploma/Certificate <input type="checkbox"/> Sub-degree Course <input type="checkbox"/> Undergraduate <input type="checkbox"/> Post-graduate <input type="checkbox"/> Others (Please specify): _____ |
| 6. | Occupation: _____ |
| 7. | Economic Activity Status: <input type="checkbox"/> Full-time employment <input type="checkbox"/> Part-time employment <input type="checkbox"/> Unemployed <input type="checkbox"/> Homemaker <input type="checkbox"/> Retired <input type="checkbox"/> Full-time Student <input type="checkbox"/> Others, please specify: _____ |
| 8. | Does Principal Client's job require regular travelling to mainland China and/or overseas? <input type="checkbox"/> Yes (Go to Q9-10) <input type="checkbox"/> No <input type="checkbox"/> Unknown |
| 9. | ONLY IF Q8 Yes: what is the frequency of travelling? Approximately _____ times per year <input type="checkbox"/> Unknown |
| 10. | ONLY IF Q8 Yes: where did Principal Client travel to? <input type="checkbox"/> mainland China <input type="checkbox"/> Overseas <input type="checkbox"/> mainland China & Overseas <input type="checkbox"/> Unknown |
| 11. | Medical history documented by medical assessment (multiple selection): <input type="checkbox"/> Mental, Please specify: _____ <input type="checkbox"/> Physical, Please specify: _____ <input type="checkbox"/> Not applicable |
| 12. | Relationship with in-laws <input type="checkbox"/> Positive <input type="checkbox"/> Little contact <input type="checkbox"/> No contact <input type="checkbox"/> Negative Relationship <input type="checkbox"/> Unknown Relationship Please specify details: _____ |
| 13. | Was this the first marriage for Principal Client? <input type="checkbox"/> Yes <input type="checkbox"/> No (Go to Q14-15) |
| 14. | ONLY IF Q13 No: <input type="checkbox"/> Widow/Widower <input type="checkbox"/> Divorced Person |
| 15. | ONLY IF Q13 No: any child(ren) from previous marriage(s)? <input type="checkbox"/> Yes, how many: _____ <input type="checkbox"/> No |
| 16. | Principal Client's place of Residence at Time of Marriage <input type="checkbox"/> Hong Kong <input type="checkbox"/> mainland China (Province: _____) <input type="checkbox"/> Others (Please specify: _____) |
| ex-Spouse (e.g. as at the date of divorce application) | |
| 17. | Approximate age: _____ |
| 18. | Sex: <input type="checkbox"/> Male <input type="checkbox"/> Female <input type="checkbox"/> Others |
| 19. | Years of domicile in Hong Kong <input type="checkbox"/> Over 7 years <input type="checkbox"/> Less than 7 years, please specify: _____ Years _____ Months |

| | |
|---------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 20. | Residence Location: <input type="checkbox"/> Hong Kong <input type="checkbox"/> mainland China <input type="checkbox"/> Others (Please specify): _____ |
| 21. | Highest education level completed: <input type="checkbox"/> No schooling/pre-primary <input type="checkbox"/> Primary <input type="checkbox"/> Lower Secondary <input type="checkbox"/> Upper Secondary <input type="checkbox"/> Diploma/Certificate <input type="checkbox"/> Sub-degree Course <input type="checkbox"/> Undergraduate <input type="checkbox"/> Post-graduate <input type="checkbox"/> Others (Please specify): _____ |
| 22. | Occupation: _____ |
| 23. | Economic Activity Status: <input type="checkbox"/> Full-time employment <input type="checkbox"/> Part-time employment <input type="checkbox"/> Unemployed <input type="checkbox"/> Homemaker <input type="checkbox"/> Retired <input type="checkbox"/> Full-time Student <input type="checkbox"/> Others, please specify: _____ |
| 24. | Does ex-Spouse's job require regular travelling to mainland China and/or overseas? <input type="checkbox"/> Yes (Go to Q25-26) <input type="checkbox"/> No <input type="checkbox"/> Unknown |
| 25. | ONLY IF Q24 Yes: what is the frequency of travelling? Approximately _____ times per year <input type="checkbox"/> Unknown |
| 26. | ONLY IF Q24 Yes: where did ex-Spouse travel to? <input type="checkbox"/> mainland China <input type="checkbox"/> Overseas <input type="checkbox"/> mainland China & Overseas <input type="checkbox"/> Unknown |
| 27. | Medical history documented by medical assessment (multiple selection): <input type="checkbox"/> Not applicable <input type="checkbox"/> Physical, Please specify: _____ <input type="checkbox"/> Mental, Please specify: _____ |
| 28. | Relationship with in-laws <input type="checkbox"/> Positive <input type="checkbox"/> Little contact <input type="checkbox"/> No contact <input type="checkbox"/> Negative Relationship <input type="checkbox"/> Unknown Relationship Please specify details: _____ |
| 29. | Was this the first marriage for ex-Spouse? <input type="checkbox"/> Yes <input type="checkbox"/> No (Go to Q30-31) |
| 30. | ONLY IF Q29 ex-Spouse: No <input type="checkbox"/> Widow/Widower <input type="checkbox"/> Divorced Person |
| 31. | ONLY IF Q29 ex-Spouse: No, any child(ren) from previous marriage(s)? <input type="checkbox"/> Yes, how many: _____ <input type="checkbox"/> No |
| 32. | ex-Spouse's place of Residence at Time of Marriage <input type="checkbox"/> Hong Kong <input type="checkbox"/> mainland China (Province: _____) <input type="checkbox"/> Others (Please specify: _____) |
| Children | |
| 33. | Does Principal Client have any child(ren) from the marriage? <input type="checkbox"/> Yes (Go to Q34) <input type="checkbox"/> No (Proceed to Household Information Section) |
| 34. | ONLY IF Q33 Yes: How many dependent children as at the date of divorce application? Please indicate the number: _____ (1 or above, proceed to Child Section) |
| Child 1 (please add additional sheet if applicable) (e.g. as at the date of divorce application) | |
| 35. | Sex: <input type="checkbox"/> Male, _____ years old <input type="checkbox"/> Female, _____ years old |
| 36. | Place of Birth: <input type="checkbox"/> Hong Kong <input type="checkbox"/> mainland China <input type="checkbox"/> Others (Please specify: _____) |
| 37. | Highest education level completed: <input type="checkbox"/> No schooling/pre-primary <input type="checkbox"/> Primary <input type="checkbox"/> Lower Secondary <input type="checkbox"/> Upper Secondary |

| | |
|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | <input type="checkbox"/> Sub-degree Course <input type="checkbox"/> Undergraduate <input type="checkbox"/> Post-graduate Diploma/Certificate <input type="checkbox"/> Others (Please specify): |
| 38. | Health status: Is the child suffering from any serious disability or chronic illnesses or from the effects of any serious illness (as at the date of divorce application)? <i>Please specify Special Educational Needs (SEN) type if relevant:</i> 1. <i>Visual impairment</i> 2. <i>Hearing impairment</i> 3. <i>Physical disability (PD)- e.g. Microcephaly, cerebral palsy, muscular dystrophy</i> 4. <i>Intellectual disability (ID)</i> 5. <i>Speech and language impairment</i> 6. <i>Autistic spectrum disorder</i> 7. <i>Specific learning disability (SpLD, Dyslexia), [normal IQ]</i> 8. <i>Attention Deficit and Hyperactivity Disorder (ADHD)</i> 9. <i>Mental Illness (MI)</i> <input type="checkbox"/> Yes, please specify illness or SEN Type: _____ (Go to Q39-41) <input type="checkbox"/> No |
| 39. | <u>ONLY IF Q38 Yes:</u> The SEN Type was diagnosed by what form of health professions (multiple selection)? <input type="checkbox"/> Public hospitals / clinics <input type="checkbox"/> NGO Services <input type="checkbox"/> Private Services <input type="checkbox"/> Clinical psychologist of SWD <input type="checkbox"/> Educational psychologist from EDB |
| 40. | <u>ONLY IF Q38 Yes:</u> Any follow-up treatment required? Please provide details below. _____ |
| 41. | <u>ONLY IF Q38 Yes:</u> Any special aid / need? Please provide details below. _____ |
| 42. | Who was / were mainly responsible for making major decisions for child (similar to custody)? (Multiple options) <input type="checkbox"/> Principal Client <input type="checkbox"/> ex-Spouse <input type="checkbox"/> Grandfather <input type="checkbox"/> Grandmother <input type="checkbox"/> Grandfather in-law <input type="checkbox"/> Grandmother in-law <input type="checkbox"/> Domestic Helper <input type="checkbox"/> Others, please specify: _____ |
| 43. | Who was the main caretaker of the child? <input type="checkbox"/> Principal Client <input type="checkbox"/> ex-Spouse <input type="checkbox"/> Grandfather <input type="checkbox"/> Grandmother <input type="checkbox"/> Grandfather in-law <input type="checkbox"/> Grandmother in-law <input type="checkbox"/> Domestic Helper <input type="checkbox"/> Others, please specify: _____ |
| 44. | Who was / were the child reside with (multiple selection)? <input type="checkbox"/> Principal Client <input type="checkbox"/> ex-Spouse <input type="checkbox"/> Grandfather <input type="checkbox"/> Grandmother <input type="checkbox"/> Grandfather in-law <input type="checkbox"/> Grandmother in-law <input type="checkbox"/> Domestic Helper <input type="checkbox"/> Others, please specify: _____ |
| 45. | Who was/were maintaining the child (multiple selection)? <input type="checkbox"/> Principal Client, HK\$ _____ per month <input type="checkbox"/> ex-Spouse, HK\$ _____ per month <input type="checkbox"/> Grandfather, HK\$ _____ per month <input type="checkbox"/> Grandmother, HK\$ _____ per month |

| | | |
|--------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|
| | <input type="checkbox"/> Grandfather in-law, HK\$ _____ per month <input type="checkbox"/> CSSA, HK\$ _____ per month | <input type="checkbox"/> Grandmother in-law, HK\$ _____ per month <input type="checkbox"/> Others (Please specify: _____, HK\$ _____) |
| Household Information | | |
| Before the Grant of Decree Absolute | | |
| 46. | Did Principal Client and ex-Spouse co-habitat during the marriage? <input type="checkbox"/> Yes (Go to Q47-52) <input type="checkbox"/> No (Go to Q53-60) | |
| 47. | Number of dependent elderly people living in the same household: <input type="checkbox"/> No <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 4+ Please specify details: _____ | |
| 48. | Matrimonial Housing Type: <input type="checkbox"/> Self-owned Unit (Go to Q49) <input type="checkbox"/> Self-Owned (HOS/TPS) (Go to Q49) <input type="checkbox"/> Rent-free unit <input type="checkbox"/> Public housing (Go to Q50) <input type="checkbox"/> Rental Unit (Go to Q50) <input type="checkbox"/> Cubicle (Go to Q50) <input type="checkbox"/> Subdivided Flat (Go to Q50) <input type="checkbox"/> Quarter (Go to Q50) <input type="checkbox"/> Unknown <input type="checkbox"/> Others (Please specify): _____ (e.g. roof-top subdivided flat) (Go to Q50) | |
| 49. | Mortgage, management fee, Government Rent & Rates per month: around HK\$ _____ (please use “-1111” to indicate unknown) <input type="checkbox"/> Paid by self <input type="checkbox"/> Paid by others <input type="checkbox"/> Unknown Payer <input type="checkbox"/> Paid by both <input type="checkbox"/> Paid by ex-Spouse | |
| 50. | Rental payment per month: around HK\$ _____ (please use “-1111” to indicate unknown) <input type="checkbox"/> Paid by self <input type="checkbox"/> Paid by others <input type="checkbox"/> Unknown Payer <input type="checkbox"/> Paid by both <input type="checkbox"/> Paid by ex-Spouse | |
| 51. | Average Household Monthly Income before the divorce: HK\$ _____ (includes but not limited to employment earnings, investment income, non-social transfer cash income, recurrent social welfare benefits such as CSSA, Old Age Allowance etc.) | |
| 52. | Household size (NOT including domestic helper): <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 or above <input type="checkbox"/> Unknown | |
| 53. | Principal Client: Average Personal Monthly Income before the divorce: HK\$ _____ (includes but not limited to employment earnings, investment income, non-social transfer cash income, recurrent social welfare benefits such as CSSA, Old Age Allowance etc.) | |
| 54. | Principal Client: Housing Type: <input type="checkbox"/> Self-owned Unit (Go to Q55) <input type="checkbox"/> Self-Owned (HOS/TPS) (Go to Q55) <input type="checkbox"/> Rent-free unit <input type="checkbox"/> Public housing (Go to Q56) <input type="checkbox"/> Rental Unit (Go to Q56) <input type="checkbox"/> Cubicle (Go to Q56) <input type="checkbox"/> Subdivided Flat (Go to Q56) <input type="checkbox"/> Quarter (Go to Q56) <input type="checkbox"/> Unknown <input type="checkbox"/> Others (Please specify): _____ (e.g. roof-top subdivided flat) (Go to Q56) | |
| 55. | Principal Client: Mortgage, management fee, Government Rent & Rates per month: around HK\$ _____ (please use “-1111” to indicate unknown) <input type="checkbox"/> Paid by self <input type="checkbox"/> Paid by others <input type="checkbox"/> Unknown Payer | |
| 56. | Principal Client: Rental payment per month: around HK\$ _____ (please use “-1111” to indicate unknown) <input type="checkbox"/> Paid by self <input type="checkbox"/> Paid by others <input type="checkbox"/> Unknown Payer | |

| | |
|-------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 57. | Principal Client , Number of dependent elderly people living in the same household: <input type="checkbox"/> No <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 4+ Please specify details: _____ _____ |
| 58. | Ex-Spouse: Average Personal Monthly Income before the divorce: HK\$_____ (includes but not limited to employment earnings, investment income, non-social transfer cash income, recurrent social welfare benefits such as CSSA, Old Age Allowance etc.) |
| 59. | Ex-Spouse: Housing Type: <input type="checkbox"/> Self-owned Unit (Go to Q60) <input type="checkbox"/> Self-Owned (HOS/TPS) (Go to Q60) <input type="checkbox"/> Rent-free unit <input type="checkbox"/> Public housing (Go to Q61) <input type="checkbox"/> Rental Unit (Go to Q61) <input type="checkbox"/> Cubicle (Go to Q61) <input type="checkbox"/> Subdivided Flat (Go to Q61) <input type="checkbox"/> Quarter (Go to Q61) <input type="checkbox"/> Unknown <input type="checkbox"/> Others (Please specify): _____ (e.g. roof-top subdivided flat) (Go to Q61) |
| 60. | Ex-Spouse: Mortgage, management fee, Government Rent & Rates per month: around HK\$_____ (please use “-1111” to indicate unknown) <input type="checkbox"/> Paid by self <input type="checkbox"/> Paid by others <input type="checkbox"/> Unknown Payer |
| 61. | Ex-Spouse: Rental payment per month: around HK\$_____ (please use “-1111” to indicate unknown) <input type="checkbox"/> Paid by self <input type="checkbox"/> Paid by others <input type="checkbox"/> Unknown Payer |
| 62. | Ex-Spouse: Number of dependent elderly people living in the same household: <input type="checkbox"/> No <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 4+ Please specify details: _____ |
| After the Grant of Decree Absolute | |
| 63. | Did Principal Client and ex-Spouse co-habitat after the grant of Decree Absolute? <input type="checkbox"/> Yes (Go to Q64-71) <input type="checkbox"/> No (Go to Q72-85) |
| Principal Client and ex-Spouse co-habitat after the grant of Decree Absolute | |
| 64. | Housing Type: <input type="checkbox"/> Self-owned Unit (Go to Q65) <input type="checkbox"/> Self-Owned (HOS/TPS) (Go to Q65) <input type="checkbox"/> Rent-free unit <input type="checkbox"/> Public housing (Go to Q66) <input type="checkbox"/> Rental Unit (Go to Q66) <input type="checkbox"/> Cubicle (Go to Q66) <input type="checkbox"/> Subdivided Flat (Go to Q66) <input type="checkbox"/> Quarter (Go to Q66) <input type="checkbox"/> Unknown <input type="checkbox"/> Others (Please specify): _____ (e.g. roof-top subdivided flat) (Go to Q66) |
| 65. | Mortgage, management fee, Government Rent & Rates per month: around HK\$_____ (please use “-1111” to indicate unknown) <input type="checkbox"/> Paid by self <input type="checkbox"/> Paid by others <input type="checkbox"/> Unknown Payer <input type="checkbox"/> Paid by both <input type="checkbox"/> Paid by ex-Spouse |
| 66. | Rental payment per month: around HK\$_____ (please use “-1111” to indicate unknown) <input type="checkbox"/> Paid by self <input type="checkbox"/> Paid by others <input type="checkbox"/> Unknown Payer <input type="checkbox"/> Paid by both <input type="checkbox"/> Paid by ex-Spouse |
| 67. | Average Monthly Household Income after the grant of Decree Absolute: HK\$_____ (includes but not limited to employment earnings, investment income, non-social transfer cash income, recurrent social welfare benefits such as CSSA, Old Age Allowance etc.) |
| 68. | Household size (NOT including domestic helper): <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 or above <input type="checkbox"/> Unknown |
| 69. | Principal Client: Average Personal Monthly Income after the divorce: |

| | |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | HK\$ _____ (includes but not limited to employment earnings, investment income, non-social transfer cash income, recurrent social welfare benefits such as CSSA, Old Age Allowance etc.) |
| 70. | ex-Spouse: Average Personal Monthly Income after the divorce: HK\$ _____ (includes but not limited to employment earnings, investment income, non-social transfer cash income, recurrent social welfare benefits such as CSSA, Old Age Allowance etc.) |
| 71. | Number of dependent elderly people living under the same roof with both Principal Client and ex-Spouse: <input type="checkbox"/> No <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 4+ Please specify details: _____ |

| Principal Client and ex-Spouse did NOT co-habitat after the grant of Decree Absolute | |
|---------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 72. | Principal Client, Housing Type: <input type="checkbox"/> Self-owned Unit (Go to Q73) <input type="checkbox"/> Self-Owned (HOS/TPS) (Go to Q73) <input type="checkbox"/> Rent-free unit <input type="checkbox"/> Public housing (Go to Q74) <input type="checkbox"/> Rental Unit (Go to Q74) <input type="checkbox"/> Cubicle (Go to Q74) <input type="checkbox"/> Subdivided Flat (Go to Q74) <input type="checkbox"/> Quarter (Go to Q74) <input type="checkbox"/> Unknown <input type="checkbox"/> Others (Please specify): _____ (e.g. roof-top subdivided flat) (Go to Q74) |
| 73. | Principal Client: Mortgage, management fee, Government Rent & Rates per month: around HK\$ _____ (please use “-1111” to indicate unknown) <input type="checkbox"/> Paid by self <input type="checkbox"/> Paid by others <input type="checkbox"/> Unknown Payer |
| 74. | Principal Client: Rental payment per month: around HK\$ _____ (please use “-1111” to indicate unknown) <input type="checkbox"/> Paid by self <input type="checkbox"/> Paid by others <input type="checkbox"/> Unknown Payer |
| 75. | Principal Client: Average Monthly Household Income after the divorce: HK\$ _____ (includes but not limited to employment earnings, investment income, non-social transfer cash income, recurrent social welfare benefits such as CSSA, Old Age Allowance etc.) |
| 76. | Principal Client: Household size (NOT including domestic helper): <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 or above <input type="checkbox"/> Unknown |
| 77. | Principal Client: Average Personal Monthly Income after the divorce: HK\$ _____ (includes but not limited to employment earnings, investment income, non-social transfer cash income, recurrent social welfare benefits such as CSSA, Old Age Allowance etc.) |
| 78. | Principal Client: Number of dependent elderly people living in the same household: <input type="checkbox"/> No <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 4+ Please specify details: _____ |
| 79. | ex-Spouse: Housing Type: <input type="checkbox"/> Self-owned Unit (Go to Q80) <input type="checkbox"/> Self-Owned (HOS/TPS) (Go to Q80) <input type="checkbox"/> Rent-free unit <input type="checkbox"/> Public housing (Go to Q81) <input type="checkbox"/> Rental Unit (Go to Q81) <input type="checkbox"/> Cubicle (Go to Q81) <input type="checkbox"/> Subdivided Flat (Go to Q81) <input type="checkbox"/> Quarter (Go to Q81) <input type="checkbox"/> Unknown <input type="checkbox"/> Others (Please specify): _____ (e.g. roof-top subdivided flat) (Go to Q81) |
| 80. | ex-Spouse: Mortgage, management fee, Government Rent & Rates per month: around HK\$ _____ (please use “-1111” to indicate unknown) <input type="checkbox"/> Paid by self <input type="checkbox"/> Paid by others <input type="checkbox"/> Unknown Payer |
| 81. | ex-Spouse: Rental payment per month: around HK\$ _____ (please use “-1111” to indicate unknown) <input type="checkbox"/> Paid by self <input type="checkbox"/> Paid by others <input type="checkbox"/> Unknown Payer |

| | |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 82. | ex-Spouse: Average Monthly Household Income after the divorce: HK\$ _____ (includes but not limited to employment earnings, investment income, non-social transfer cash income, recurrent social welfare benefits such as CSSA, Old Age Allowance etc.) |
| 83. | ex-Spouse: Household size (NOT including domestic helper): <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 or above <input type="checkbox"/> Unknown |
| 84. | ex-Spouse: Average Personal Monthly Income after the divorce: HK\$ _____ (includes but not limited to employment earnings, investment income, non-social transfer cash income, recurrent social welfare benefits such as CSSA, Old Age Allowance etc.) |
| 85. | ex-Spouse: Number of dependent elderly people living in the same household: <input type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 4+ Please specify details: _____ |

Report of Domestic Violence

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| 86. | Has there been any report or threat of domestic violence? <input type="checkbox"/> Yes (Go to Q87-90) <input type="checkbox"/> No |
| 87. | ONLY IF Q86 Yes: who was/were the victim (multiple selection)? <input type="checkbox"/> Principal Client <input type="checkbox"/> ex-Spouse <input type="checkbox"/> Other Relatives |
| 88. | ONLY IF Q86 Yes: who was/were the abuser (multiple selection)? <input type="checkbox"/> Principal Client <input type="checkbox"/> ex-Spouse <input type="checkbox"/> Other Relatives, please specify _____ |
| 89. | ONLY IF Q86 Yes: please specify details (Multiple selection): <input type="checkbox"/> Physical <input type="checkbox"/> Sexual <input type="checkbox"/> Psychological (Please specify): _____ |
| 90. | ONLY IF Q86 Yes: assistance from (multiple selection): <input type="checkbox"/> Accident & Emergency Department <input type="checkbox"/> Police <input type="checkbox"/> NGOs <input type="checkbox"/> Social Welfare Department (A&E) <input type="checkbox"/> Shelter Home Service <input type="checkbox"/> Mental Health Professionals (Doctor, Psychologist, Counsellor) <input type="checkbox"/> Family Court for Injunction <input type="checkbox"/> Criminal Magistrates' Courts for Persecution Application <input type="checkbox"/> Others, please specify: _____ |
| 91. | Has there been any report or threat of child abuse? <input type="checkbox"/> Yes (Go to Q92-94) <input type="checkbox"/> No |
| 92. | ONLY IF Q91 Yes: Who was the abuser? <input type="checkbox"/> Principal Client <input type="checkbox"/> ex-Spouse <input type="checkbox"/> Others, please specify _____ |
| 93. | ONLY IF Q91 Yes: please specify details: (multiple selection) <input type="checkbox"/> Physical <input type="checkbox"/> Neglect <input type="checkbox"/> Sexual <input type="checkbox"/> Psychological |
| 94. | ONLY IF Q91 Yes: assistance from: (Multiple selection) <input type="checkbox"/> A&E <input type="checkbox"/> Shelter home <input type="checkbox"/> Police <input type="checkbox"/> NGOs <input type="checkbox"/> Social Welfare Department <input type="checkbox"/> Mental Health Professionals (Doctor, Psychologist, Counsellor) <input type="checkbox"/> Others, please specify: _____ |

B Information about the marriage

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| 95. | Approximate Length of courtship before marriage: _____ Month(s) _____ Year(s) |
| 96. | Did the parties co-habitat before marriage? <input type="checkbox"/> Yes, for how long? _____ Year(s) _____ Month(s) <input type="checkbox"/> No |
| 97. | Any child born before marriage? <input type="checkbox"/> Yes, number: _____ <input type="checkbox"/> No |
| 98. | Date of Marriage: _____ (YYYY) <input type="checkbox"/> Unknown |
| 99. | Place of Marriage _____ |

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| | <input type="checkbox"/> Hong Kong | <input type="checkbox"/> mainland China (Province:_____) | <input type="checkbox"/> Others (Please specify:_____) |
| 100. | Was the marriage a cross-boundary (Hong Kong – mainland China) marriage? | | <input type="checkbox"/> Yes <input type="checkbox"/> No |

| C Basic Information of Divorce Proceedings | |
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| 101. | Date of separation (<i>not treating other as spouse</i>) before filing the divorce proceedings? ____/____(MM/YYYY) <input type="checkbox"/> Unknown |
| 102. | Time to consider before filing the petition? Over _____Year(s)_____Month(s) <input type="checkbox"/> Unknown |
| 103. | Petition or joint application for divorce & date <input type="checkbox"/> Joint Application Date: _____/_____(MM/YYYY) <input type="checkbox"/> Unknown <input type="checkbox"/> Petition |
| 104. | Who initiated the divorce proceedings (Petitioner)? <input type="checkbox"/> Principal Client <input type="checkbox"/> ex-Spouse <input type="checkbox"/> Mutual |
| 105. | Parties represented by lawyers? <input type="checkbox"/> Principal Client <input type="checkbox"/> ex-Spouse <input type="checkbox"/> Both <input type="checkbox"/> Nil |
| 106. | Parties' lawyers assigned by Legal Aid Department? <input type="checkbox"/> Principal Client <input type="checkbox"/> ex-Spouse <input type="checkbox"/> Both <input type="checkbox"/> Nil |
| 107. | Heard about mediation service before petition? <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 108. | Use of mediation service before petition? <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 109. | Fact to support ground of divorce (as stated in the petition) <input type="checkbox"/> Adultery <input type="checkbox"/> Living apart for at least 1 year (with consent) (Go to Q111) <input type="checkbox"/> Unreasonable behaviour (Go to Q110) <input type="checkbox"/> Living apart for at least 2 years (without consent) (Go to Q112) <input type="checkbox"/> Having been deserted for at least 1 year |
| 110. | <u>ONLY IF Q109 Fact(s) to support ground of divorce: Unreasonable behaviour:</u> Please specify details. Who did it? <input type="checkbox"/> Principal Client <input type="checkbox"/> ex-Spouse Please specify details (multiple selection): <input type="checkbox"/> Failed to provide enough maintenance <input type="checkbox"/> Seldom returned home <input type="checkbox"/> Had a violent disposition <input type="checkbox"/> Had an extra-marital affair <input type="checkbox"/> Was addicted to gambling <input type="checkbox"/> Was a sexual abuser <input type="checkbox"/> Often scolded/ insulted the Petitioner <input type="checkbox"/> Showed no/ little love, care, concern <input type="checkbox"/> Others (Please specify): |
| 111. | <u>ONLY IF Q109 Fact to support ground of divorce: living apart for at least 1 year (with consent). Please specify details:</u> <input type="checkbox"/> Lived under the same roof <input type="checkbox"/> Lived apart in different addresses |
| 112. | <u>ONLY IF Q109 Fact to support ground of divorce: living apart for at least 2 years (without consent).</u> Please specify details. <input type="checkbox"/> Lived under the same roof <input type="checkbox"/> Lived apart in different addresses <input type="checkbox"/> No contact |
| 113. | Did Principal Client and ex-Spouse contact during and/or after living apart? <input type="checkbox"/> Yes (Go to 114) <input type="checkbox"/> No <input type="checkbox"/> Unknown |
| 114. | <u>ONLY IF Q113 Yes:</u> please specify form of contact: <input type="checkbox"/> Face to face at anytime <input type="checkbox"/> Telephone <input type="checkbox"/> Texted Message/emails/Whatsapp etc. <input type="checkbox"/> Message through the children <input type="checkbox"/> During pick up and drop off children <input type="checkbox"/> Others, please specify: |
| 115. | Did ex-Spouse oppose to the divorce (main suit) application? <input type="checkbox"/> Yes <input type="checkbox"/> No |

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| 116. | How to settle the divorce (main suit) <input type="checkbox"/> By Agreement or mediation <input type="checkbox"/> After Court hearing / ultimately? |
| 117. | Did the couple request service from NGO or private sectors due to the breakdown of the marriage? <input type="checkbox"/> Yes (Go to Q118) <input type="checkbox"/> No |
| 118. | ONLY IF Q117: Yes , What form of service did the couple request (multiple selection)? <input type="checkbox"/> Financial Assistance / food <input type="checkbox"/> Housing <input type="checkbox"/> Counselling service for adult bank <input type="checkbox"/> Family Mediation <input type="checkbox"/> Co-Parenting service <input type="checkbox"/> Counselling service for child <input type="checkbox"/> Free Legal Consultation <input type="checkbox"/> Visitation assistance <input type="checkbox"/> Unknown <input type="checkbox"/> Others, please specify: _____ |
| 119. | Did the couple request service from SWD due to the breakdown of the marriage? <input type="checkbox"/> Yes (Go to Q120) <input type="checkbox"/> No |
| 120. | ONLY IF Q119: Yes , What form of service did the couple request (multiple selection)? <input type="checkbox"/> CSSA/Emergency fund <input type="checkbox"/> Emergency/Temporary Housing <input type="checkbox"/> Counselling service for adult <input type="checkbox"/> Social Investigation Report(s) <input type="checkbox"/> Co-Parenting service <input type="checkbox"/> Counselling service for child <input type="checkbox"/> Clinical Psychologist Report(s) <input type="checkbox"/> Visitation assistance <input type="checkbox"/> Unknown <input type="checkbox"/> Others, please specify: _____ |

| D Information about Decree Absolute & Orders granted | |
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| Decree Nisi & Decree Absolute | |
| 121. | Date of granting of Decree Nisi (暫准離婚 令) ____ / ____ (MM/YYYY) <input type="checkbox"/> Not Yet Issued <input type="checkbox"/> Unknown |
| 122. | Date of granting of Decree Absolute (絕對離婚 令) ____ / ____ (MM/YYYY) <input type="checkbox"/> Not Yet Issued <input type="checkbox"/> Unknown |
| Order regarding Ancillary Relief & Maintenance & Costs | |
| 123. | Have Ancillary Relief or Maintenance been obtained from the court? <input type="checkbox"/> Yes (includes monthly maintenance, nominal maintenance, lump sum, shared sale proceeds of properties, transfer of property order) (Go to Q124-137) <input type="checkbox"/> No (Go to Q127) |
| 124. | Any monthly maintenance order for the Principal Client or ex-Spouse was made? <i>*(For nominal maintenance please select NO)</i> Yes, please specify HK\$ _____ <input type="checkbox"/> No |
| 125. | Who pays the maintenance (“the Payer”)? <input type="checkbox"/> Principal Client <input type="checkbox"/> ex-Spouse |
| 126. | Details of other maintenance order for receiver (“the Payee”) (multiple selection): <input type="checkbox"/> Lump sum (整筆付款), please specify HK\$ _____ <input type="checkbox"/> Shared sale proceeds of the properties, please specify amount: HK\$ _____ <input type="checkbox"/> Obtained a transfer of property order (Go to Q128) <input type="checkbox"/> Nominal maintenance HK\$1.00 per annum (Go to Q127) <input type="checkbox"/> Waived, not claim at the end (Go to Q127) <input type="checkbox"/> No other Maintenance Order |
| 127. | ONLY IF Q123 is No OR Q126 is Nominal maintenance or Waived not claim at the end , reason(s): <input type="checkbox"/> No such need <input type="checkbox"/> Receiver has support from own family <input type="checkbox"/> Receiver has better earning capacity, savings or other income sources other than the ex-Spouse |

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| | <input type="checkbox"/> Receiver has already received CSSA <input type="checkbox"/> Receiver would apply CSSA <input type="checkbox"/> Both parties agreed not to require each other to provide maintenance <input type="checkbox"/> Obtained a lump sum Order <input type="checkbox"/> Payer is unemployed <input type="checkbox"/> Payer has no fixed income <input type="checkbox"/> Payer has low income / no ability to work / receiving CSSA <input type="checkbox"/> Payer refused to disclose the source of income or assets <input type="checkbox"/> Unable to locate Payer residing / working in China <input type="checkbox"/> Unable to locate Payer's assets in China <input type="checkbox"/> Others, please specify reason(s): _____ |
| 128. | ONLY IF Q126, Obtained a transfer of property order: Details of property arrangement order: <input type="checkbox"/> Sold & shared the sale proceeds <input type="checkbox"/> Transfer title to self without receiving a lump sum <input type="checkbox"/> Resided by child(ren) & sell after their 18s <input type="checkbox"/> Transfer title to ex-Spouse & receiving a lump sum <input type="checkbox"/> Transfer title to child(ren) after their 18s <input type="checkbox"/> Transfer title to ex-Spouse without receiving a lump sum <input type="checkbox"/> Transfer title to self without receiving a lump sum <input type="checkbox"/> Other, Please specify: _____ |
| 129. | Details of maintenance order for child(ren) (multiple selection): <input type="checkbox"/> Monthly maintenance per child, please specify HK\$ _____ <input type="checkbox"/> Monthly maintenance for all children, please specify HK\$ _____ <input type="checkbox"/> Undertaking to pay school fees / extra-curriculum activities/ medical expenses / insurance premium <input type="checkbox"/> Others, please specify: _____ <input type="checkbox"/> Not Applicable |
| 130. | How monthly maintenance for spousal or children was collected? <input type="checkbox"/> Autopay to the Payee's bank account <input type="checkbox"/> Directly pass to the children (Go to 131) <input type="checkbox"/> Handover or bank transfer to the Payee (Go to 131) <input type="checkbox"/> Handover to the Payee via children (Go to 131) <input type="checkbox"/> Others, please specify: _____ (Go to 131) <input type="checkbox"/> Not applicable as no Spousal AND/OR Child Monthly Maintenance Order arranged |
| 131. | ONLY IF Q130, not via Autopay: Why autopay is not used? Please specify reasons: _____ |
| 132. | How legal costs were settled? <input type="checkbox"/> Principal Client paid all the costs <input type="checkbox"/> ex-Spouse paid all the costs <input type="checkbox"/> Equally shared the costs <input type="checkbox"/> Each to pay his/her own costs <input type="checkbox"/> Others (Please specify: _____) |
| 133. | Total legal costs spent by Principal Client? <input type="checkbox"/> HK\$ _____ (including Legal Aid First Charge and Party & Party Costs paid to ex-Spouse) <input type="checkbox"/> Unknown, paid by Legal Aid (Common Fund and/or Party & Party Costs) <input type="checkbox"/> Cannot remember <input type="checkbox"/> Unknown, paid by ex-Spouse |
| 134. | Was Legal Aid First Charge applicable to Principal Client? <input type="checkbox"/> Yes (Go to Q135) <input type="checkbox"/> No |
| 135. | ONLY IF Q134, Yes: Any issue on the execution of Legal Aid First Charge? <input type="checkbox"/> Yes, please specify: _____ <input type="checkbox"/> No |
| 136. | How to get the ancillary relief and maintenance order (multiple selection)? <input type="checkbox"/> by Negotiation <input type="checkbox"/> by Family Mediation (Go to Q137) <input type="checkbox"/> after Ancillary Relief Court trial <input type="checkbox"/> after Maintenance Pending Suit hearing |

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| 137. | ONLY IF Q136, By Family Mediation: What was the outcome of mediation? <input type="checkbox"/> Full agreement <input type="checkbox"/> Partial agreement <input type="checkbox"/> No agreement <input type="checkbox"/> Cannot proceed with agreement |
| Order regarding Custody, care & control, access arrangement (Skip if no Child) | |
| Is/are the order(s) applicable to all children? <input type="checkbox"/> Yes <input type="checkbox"/> No | |
| 138. | To whom was the child(ren)'s custody (responsible for making major decisions for child(ren)) granted? <input type="checkbox"/> Joint custody <input type="checkbox"/> Sole custody to ex-Spouse <input type="checkbox"/> Sole custody to Principal Client <input type="checkbox"/> Grandparents / Others (Please specify: _____) |
| 139. | Who has the care & control (responsible for daily routine) of the child(ren) after the grant of order? <input type="checkbox"/> Principal Client <input type="checkbox"/> ex-Spouse <input type="checkbox"/> Shared care and control <input type="checkbox"/> Grandparents / Others (Please specify: _____) |
| 140. | To whom was the child(ren)'s access right granted? <input type="checkbox"/> Principal Client <input type="checkbox"/> ex-Spouse <input type="checkbox"/> Grandparents (Please specify: _____) <input type="checkbox"/> Others (Please specify: _____) |
| 141. | How often is the day access arrangement? <input type="checkbox"/> Reasonable, upon agreement <input type="checkbox"/> Once a week <input type="checkbox"/> at least once a month <input type="checkbox"/> at least twice a month <input type="checkbox"/> Others, please specify details: _____ |
| 142. | Any staying access in place? <input type="checkbox"/> Yes (Go to Q143) <input type="checkbox"/> No |
| 143. | ONLY IF Q142 Yes: How often is the staying access? <input type="checkbox"/> Reasonable, upon agreement <input type="checkbox"/> Once a week <input type="checkbox"/> at least once a month <input type="checkbox"/> at least twice a month <input type="checkbox"/> Others, please specify details: _____ |
| Methods to Obtain Order | |
| 144. | How to get the custody & access arrangement order? <input type="checkbox"/> By Negotiation <input type="checkbox"/> By Family Mediation (Go to Q145) <input type="checkbox"/> After Court trial / hearings |
| 145. | ONLY IF Q144 By Family Mediation, What was the outcome of mediation? <input type="checkbox"/> Full agreement <input type="checkbox"/> Partial agreement <input type="checkbox"/> No agreement <input type="checkbox"/> Cannot proceed with agreement |
| 146. | ONLY IF Q136 AND/OR 144 By Family Mediation: How was mediation service known to Principal Client? <input type="checkbox"/> Social worker <input type="checkbox"/> TV / Media <input type="checkbox"/> Lawyer <input type="checkbox"/> Court/Judiciary Coordinator <input type="checkbox"/> Unknown <input type="checkbox"/> Others, please specify: _____ |
| 147. | ONLY IF Q136 AND/OR 144 By Family Mediation: How much in total was spent on mediation by Principal Client? HK\$ _____ <input type="checkbox"/> Paid by Legal Aid (Common Fund) <input type="checkbox"/> Unknown |
| E Enforcement of Court Order (Maintenance & access arrangement) | |
| Maintenance Arrangement | |
| 148. | Any issue on the execution of Ancillary Relief Order or Maintenance Order? <input type="checkbox"/> Yes (Go to Q149-190) <input type="checkbox"/> No |

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| 149. | <p>Was Maintenance Pending Suit payment / Interim maintenance Order (臨時/中期贍養費令) for the Payee paid according to Court Order?</p> <p><input type="checkbox"/> <input type="checkbox"/> No, never paid (Go to Q150-152) <input type="checkbox"/> No, only partially paid (Go to Q150-152)</p> <p>Yes</p> <p><input type="checkbox"/> No such Order was made</p> |
| 150. | <p><u>ONLY IF Q149 No, never paid OR No, only partially paid:</u> why not?</p> <p><input type="checkbox"/> Payer is unemployed <input type="checkbox"/> Payer refused for no reason <input type="checkbox"/> Payer has new responsibilities</p> <p><input type="checkbox"/> Payer want a set-off from Ancillary Relief payment (附屬濟助)</p> <p><input type="checkbox"/> Payer is missing <input type="checkbox"/> Others, please specify: _____</p> |
| 151. | <p><u>ONLY IF Q149 No, never paid OR No, only partially paid:</u> How long have it been outstanding since Maintenance Pending Suit Order?</p> <p><input type="checkbox"/> 0-6 Month(s) <input type="checkbox"/> 6-12 Months <input type="checkbox"/> >12 Months and until Ancillary Relief Trial</p> |
| 152. | <p><u>ONLY IF Q149 No, never paid OR No, only partially paid:</u> What is the accumulated amount of maintenance that is NOT paid to the Payee (until Ancillary Relief Trial)?</p> <p>Please specify period: _____ month(s) and HK\$: _____ <input type="checkbox"/> Unknown Period AND Amount</p> <p>(Use “-1111” for unknown period OR time)</p> |
| 153. | <p>Was monthly maintenance payment for the Payee paid according to Court Order since the grant of Decree Absolute?</p> <p><input type="checkbox"/> <input type="checkbox"/> No, never paid (Go to Q154-156) <input type="checkbox"/> No, partially paid (Go to Q154-156)</p> <p>Yes</p> <p><input type="checkbox"/> No such Order was made</p> |
| 154. | <p><u>ONLY IF Q153 No, never paid OR No, only partially paid:</u> why not?</p> <p><input type="checkbox"/> Payer is unemployed <input type="checkbox"/> Payer is missing <input type="checkbox"/> Payer refused for no reason</p> <p><input type="checkbox"/> Payer has remarried <input type="checkbox"/> Payers has new born child(ren) and/or step-child(ren)</p> <p><input type="checkbox"/> Payer's income or assets has reduced significantly</p> <p><input type="checkbox"/> Payer has bankrupted (破產) or under Individual Voluntary Arrangement (債務重組)</p> <p><input type="checkbox"/> Others, please specify: _____</p> |
| 155. | <p><u>ONLY IF Q153 No, never paid OR No, only partially paid:</u> How long have it been outstanding since Decree Absolute?</p> <p><input type="checkbox"/> 0-6 <input type="checkbox"/> 6-12 Months <input type="checkbox"/> >12 Months (Please specify: _____)</p> <p>Month(s)</p> |
| 156. | <p><u>ONLY IF Q153 No, never paid OR No, only partially paid:</u> What is the accumulated amount of maintenance that is NOT paid to the Payee?</p> <p>Please specify period: _____ month(s) and HK\$: _____ <input type="checkbox"/> Unknown Period AND Amount</p> <p>(Use “-1111” for unknown period OR time)</p> |
| 157. | <p>Was Maintenance Pending Suit payment / Interim maintenance Order (臨時/中期贍養費令) for child(ren) paid according to Court Order?</p> <p><input type="checkbox"/> <input type="checkbox"/> No, never paid (Go to Q158-160) <input type="checkbox"/> No, partially paid (Go to Q158-160)</p> <p>Yes</p> <p><input type="checkbox"/> No such Order was made</p> |
| 158. | <p><u>ONLY IF Q157 No, never paid OR No, only partially paid:</u> why not?</p> <p><input type="checkbox"/> Payer is unemployed <input type="checkbox"/> Payer refused for no reason <input type="checkbox"/> Payer has new responsibilities</p> <p><input type="checkbox"/> Payer want a set-off from Ancillary Relief payment (附屬濟助)</p> <p><input type="checkbox"/> Payer is missing <input type="checkbox"/> Others, please specify: _____</p> |
| 159. | <p><u>ONLY IF Q157 No, never paid OR No, only partially paid:</u> How long have it been outstanding since Maintenance Pending Suit Order?</p> |

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| | <input type="checkbox"/> 0-6 Month(s) <input type="checkbox"/> 6-12 Months <input type="checkbox"/> >12 Months and until Ancillary Relief Trial |
| 160. | <u>ONLY IF Q157 No, never paid OR No, only partially paid:</u> What is the accumulated amount of maintenance that is NOT paid to the Payee? Please specify period: _____ month(s) and HK\$: _____ <input type="checkbox"/> Unknown Period AND Amount (Use “-1111” for unknown period OR time) |
| 161. | Was monthly maintenance payment for child(ren) paid according to Court Order? <input type="checkbox"/> Yes <input type="checkbox"/> No, never paid (Go to Q162-164) <input type="checkbox"/> No, partially paid (Go to Q162-164) <input type="checkbox"/> No such Order was made |
| 162. | <u>ONLY IF Q161 No, never paid OR No, only partially paid:</u> why not? <input type="checkbox"/> Payer is unemployed <input type="checkbox"/> Payer is missing <input type="checkbox"/> Payer refused for no reason <input type="checkbox"/> Payer has remarried <input type="checkbox"/> Payers has new born child(ren) and/or step-child(ren) <input type="checkbox"/> Payer's income or assets has reduced significantly <input type="checkbox"/> Payer has bankrupted (破產) or under Individual Voluntary Arrangement (債務重組) <input type="checkbox"/> Others, please specify: _____ |
| 163. | <u>ONLY IF Q161 No, never paid OR No, only partially paid:</u> How long have it been outstanding since Decree Absolute? <input type="checkbox"/> 0-6 Month(s) <input type="checkbox"/> 6-12 Months <input type="checkbox"/> >12 Months (Please specify: _____) |
| 164. | <u>ONLY IF Q161 No, never paid OR No, only partially paid:</u> What is the accumulated amount of maintenance that is NOT paid to the Payee? Please specify period: _____ month(s) and HK\$: _____ (Use “-1111” for unknown period OR time) <input type="checkbox"/> Unknown Period AND Amount |
| 165. | How many months and how much was the total outstanding maintenance (including Payee and all children) accumulated before any recovery action? Please specify period: _____ month(s) and HK\$: _____ <input type="checkbox"/> Unknown Period AND Amount (Use “-1111” for unknown period OR time) |
| 166. | How did the family maintain basic living during the outstanding period (multiple selection)? <input type="checkbox"/> Payee's Salary <input type="checkbox"/> Credit card advancement <input type="checkbox"/> Loan from relatives or friends <input type="checkbox"/> Payee's Savings <input type="checkbox"/> Food bank <input type="checkbox"/> Loan from bank / financial institutes <input type="checkbox"/> CSSA <input type="checkbox"/> Others, please specify: _____ |
| 167. | Have the Payee taken action to recover the outstanding maintenance? <input type="checkbox"/> Yes <input type="checkbox"/> No (Go to Q168) |
| 168. | <u>ONLY IF Q167 No,</u> why not (multiple selection) <input type="checkbox"/> Abusive language by Payer <input type="checkbox"/> Do not know how to proceed <input type="checkbox"/> Long procedure at Court <input type="checkbox"/> Disgust attitude by Payer <input type="checkbox"/> Mental stress/ health reason <input type="checkbox"/> Complex procedure at Court <input type="checkbox"/> Payer has violent character <input type="checkbox"/> Busy for child caring <input type="checkbox"/> Complex procedure for Legal Aid application <input type="checkbox"/> Payer avoid payee <input type="checkbox"/> Only delay & partially unpaid <input type="checkbox"/> Legal Aid First Charge <input type="checkbox"/> Unable to locate Payer in HK <input type="checkbox"/> Payer moved to mainland China <input type="checkbox"/> Small sum, amount: _____ <input type="checkbox"/> Expensive legal costs <input type="checkbox"/> Payer works/resides overseas <input type="checkbox"/> CSSA is reliable and practical <input type="checkbox"/> Cannot serve the Court document on the Payer <input type="checkbox"/> Others, _____ |
| 169. | How to recover the outstanding maintenance? (multiple selection) <input type="checkbox"/> By telephone/ WhatsApp/ email made by the Payee himself / herself (Go to Q170-171) <input type="checkbox"/> Assisted by Social Worker or third party, please specify: _____ (Go to Q170-171) <input type="checkbox"/> Family mediation (Go to Q170-171) |

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| | <input type="checkbox"/> Court action (Go to Q172-188) |
| 170. | How long have the payee spent for the recovery process? <input type="checkbox"/> Less than 6 Months <input type="checkbox"/> Within 12 Months <input type="checkbox"/> Within 24 Months <input type="checkbox"/> Over 24 months |
| 171. | What is the result of the recovery? <input type="checkbox"/> Full recovery of the claim <input type="checkbox"/> Partial recovery of the claim, Amount claimed: _____ <input type="checkbox"/> Unable to Recover, reason: _____ <input type="checkbox"/> Have no result yet. |
| 172. | ONLY IF Q169: For Court action , it was taken out by: <input type="checkbox"/> Payee in person <input type="checkbox"/> via Legal Aid Department Government Counsel <input type="checkbox"/> Private lawyer via Legal Aid Assignment <input type="checkbox"/> Private lawyer |
| 173. | ONLY IF Q169: For Court action , Application for “Judgment Summons” (判決傳票)? <input type="checkbox"/> Yes (Go to Q174) <input type="checkbox"/> Not applied or consider to apply (Go to Q175) <input type="checkbox"/> Unknown |
| 174. | ONLY IF Q173: Yes , Why using Judgment Summons as the intervention? <input type="checkbox"/> Payer with stable employer <input type="checkbox"/> Others, please specify: _____ |
| 175. | ONLY IF Q173: No , Why NOT using Judgment Summons as the intervention? <input type="checkbox"/> Never heard of this <input type="checkbox"/> Disgust attitude by Payer <input type="checkbox"/> Payer is avoiding proceeding <input type="checkbox"/> Do not know how to apply <input type="checkbox"/> Long proceedings <input type="checkbox"/> Expensive legal costs <input type="checkbox"/> Others, Please specify: _____ |
| 176. | ONLY IF Q169: For Court action , Application for “Attachment of Income Order” (扣押入息令)? <input type="checkbox"/> Yes <input type="checkbox"/> Not applied or consider to apply (Go to Q178) <input type="checkbox"/> Unknown (Go to Q177) |
| 177. | ONLY IF Q176: Yes , Why using Attachment of Income Order as the intervention? <input type="checkbox"/> Payer with stable employer <input type="checkbox"/> Others, Please specify: _____ |
| 178. | ONLY IF Q176: No , Why NOT using Attachment of Income Order as the intervention? <input type="checkbox"/> Never heard of this <input type="checkbox"/> Disgust attitude by Payer <input type="checkbox"/> Payer is avoiding proceeding <input type="checkbox"/> Do not know how to apply <input type="checkbox"/> Long proceedings <input type="checkbox"/> Expensive legal costs <input type="checkbox"/> Others, Please specify: _____ |
| 179. | ONLY IF Q169: For Court action , Application for “Charging Order on Property”(押記令)? <input type="checkbox"/> Yes (Go to Q180) <input type="checkbox"/> Not applied or consider to apply (Go to Q181) <input type="checkbox"/> Unknown |
| 180. | ONLY IF Q179: Yes , Why using Charging Order on Property as the intervention? <input type="checkbox"/> Payer has landed property <input type="checkbox"/> Others, Please specify: _____ |
| 181. | ONLY IF Q179: No , Why NOT using Charging Order on Property as the intervention? <input type="checkbox"/> Never heard of this <input type="checkbox"/> Disgust attitude by Payer <input type="checkbox"/> No available property proceeding <input type="checkbox"/> Long proceedings <input type="checkbox"/> Expensive legal costs <input type="checkbox"/> Do not know how to apply <input type="checkbox"/> Others, Please specify: _____ |
| 182. | ONLY IF Q169: For Court action , Application for “Garnishee Order” (債權扣押令)? <input type="checkbox"/> Yes (Go to Q183) <input type="checkbox"/> Not applied or consider to apply (Go to Q184) <input type="checkbox"/> Unknown |
| 183. | ONLY IF Q182: Yes , Why using Garnishee Order as the intervention? Please specify reason(s): _____ |
| 184. | ONLY IF Q182: No , Why NOT using Garnishee Order as the intervention? |

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|---------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | <input type="checkbox"/> Never heard of this proceeding <input type="checkbox"/> Long proceedings <input type="checkbox"/> Do not know how to apply <input type="checkbox"/> Disgust attitude by Payer <input type="checkbox"/> Expensive legal costs <input type="checkbox"/> Others, Please specify: _____ <input type="checkbox"/> No information on bank |
| 185. | <u>ONLY IF Q169: For Court action,</u> Application for Warrant of Execution/Writ of <i>Fieri Facias</i> (扣押債務人財產令)? <input type="checkbox"/> Yes (Go to Q186) <input type="checkbox"/> Not applied or consider to apply (Go to Q187) <input type="checkbox"/> Unknown |
| 186. | <u>ONLY IF Q185: Yes,</u> Why using Warrant of Execution / Writ of <i>Fieri Facias</i> as the intervention? <input type="checkbox"/> Payer has known property <input type="checkbox"/> Others, Please specify: _____ |
| 187. | <u>ONLY IF Q185, No,</u> Why NOT using Warrant of Execution / Writ of <i>Fieri Facias</i> as the intervention? <input type="checkbox"/> Never heard of this proceeding <input type="checkbox"/> Long proceedings <input type="checkbox"/> Do not know how to apply <input type="checkbox"/> Disgust attitude by Payer <input type="checkbox"/> Expensive legal costs <input type="checkbox"/> Others, Please specify: _____ <input type="checkbox"/> No information on bank |
| 188. | What is the result of the recovery process after Court action? <input type="checkbox"/> Full recovery of the claim, please specify duration of the process: _____ month(s) <input type="checkbox"/> Partial recovery of the claim (Go to Q189) <input type="checkbox"/> Unable to Recover (Go to Q190) <input type="checkbox"/> Have no result yet. |
| 189. | <u>ONLY IF Q188: Partial recovery of the claim</u> Please specify amount: HK\$ _____, Duration of Process: _____ month(s), and Reason(s): _____ |
| 190. | <u>ONLY IF Q188: Unable to Recover</u> Please specify reason(s): _____ |
| Access Arrangement | |
| 191. | Any issue on the execution of access arrangement stated in Court Order? <input type="checkbox"/> Yes <input type="checkbox"/> No (Go to Section F) |
| 192. | Any difficulties in handover during access? <input type="checkbox"/> Yes (Go to Q193) <input type="checkbox"/> No |
| 193. | <u>ONLY IF Q192 YES:</u> please specify details: _____ |
| 194. | What is/are the main problem on access arrangement (multiple selection)? <input type="checkbox"/> Residing parent refused to facilitate <input type="checkbox"/> Non-residing parent refused to meet the Child(ren) <input type="checkbox"/> Child(ren) refused to meet Non-residing Parent <input type="checkbox"/> Others, please specify: _____ |
| 195. | For how long since the date of Order? <input type="checkbox"/> Over a period of _____ Year(s) _____ Month(s) <input type="checkbox"/> Unknown |
| 196. | Can SWD social worker or NGO or parental coordinator assist to resolve the issue? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Applicable |

| | |
|----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| F | Specific remarks on the case (can fill in either English or Chinese) Please enrich but also write concisely in not more than two pages, and highlight key points with key words. |
| 1 | <p>Critical case issues that are uncommon, of growing trend, or good for case illustration: e.g.</p> <ul style="list-style-type: none"> a. <i>Cross-boundary marriage, difficulties encountered within and/or after the marriage, hurdles in enforcing court orders, relocation of child(ren) etc.</i> b. <i>Issues related to independent child(ren).</i> c. <i>Custody, care & control, access arrangement NOT executed according to court Order.</i> d. <i>Both couple from remarriage.</i> e. <i>Adoption cases.</i> f. <i>Big age difference between couple</i> g. <i>Specific risk/protective/maintenance factors e.g.</i> <ul style="list-style-type: none"> i. <i>cancer after divorce, but boss very supportive, kept the job and paid for some of the medical expenses</i> ii. <i>mother with young dependent children had cancer after divorce, expected insurance does not cover, very depressed because of cancer and no money for treatment, might have to let Principal Client take over child custody</i> iii. <i>father as civil servant suffered long term physical illness, son was put under custody of mother. Son soon harassed by mother's boyfriend and had emotional problem. Son put under father's care, father passed medical board, enjoyed partial payment for early retirement. He sought intervention and improved relationship with son, now going to son's school to serve as volunteer and related well with son and classmates, other parents and teachers. Felt well-supported and enjoyed post trauma growth.</i> iv. <i>Divorce after child abuse by domestic helper who had affair with child's father</i> |
| 2 | <p>Specific needs for social and legal services, indicative of service gaps: e.g.</p> <ul style="list-style-type: none"> a. <i>Public education/ sex education to be well-prepared for marriage and parenthood; pre-marital counselling.</i> b. <i>Public education on family and personal finance management: what is mortgage; investment opportunities/traps</i> c. <i>Promotion on mediation</i> d. <i>Promotion on parent education</i> e. <i>Attitude and skills in breaking bad news to children</i> f. <i>Ways out to handle reluctance to pay maintenance</i> g. <i>Other aspects</i> |
| 3 | <p>Other issues deserving attention:</p> |

Appendix E – Interviews and Focus Groups Framework

The *Further Study* is a mixed-method study. The goal of the qualitative section of this study is to provide a detailed analysis of the following areas - a) personal experience in settling/handling a divorce, b) comments and opinions on the current divorce and maintenance recovery system in Hong Kong, c) perceived differences between local and cross-boundary marriage/divorce, and d) relationship between marriage age, divorce rate and length of marriage (please see Appendix E.1 – Areas to be Explored). The Team has identified four groups of stakeholders, including a) government personnel, b) social service providers, c) legal experts, and d) divorcees and other related stakeholders (please see Appendix E.2 - Full List of Interviewees). The Research Team has designed the consent form for the participants of interviews and focus groups to provide sufficient information so that they can make the voluntary decision regarding “to” or “not to” participate in the study (please see Appendix E.3 & E.4).

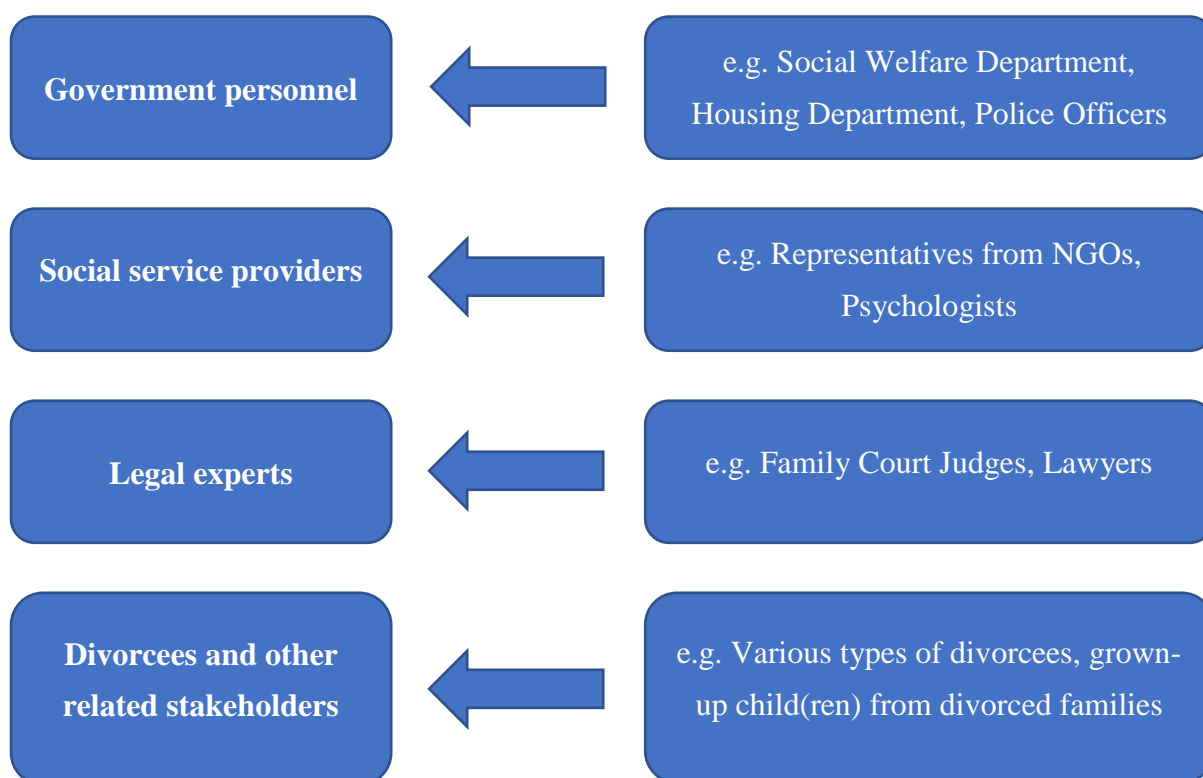


Figure E.1 Stakeholders of a Divorce Case

(i) **Government personnel**

For government personnel, the Team conducted three individual interviews and two focus groups in order to compile opinions on service demand, supply of divorce-related assistance, experience in handling divorce cases, comments and recommendations on the current divorce

and maintenance recovery system. Selected government personnel often provide services for divorced individuals, or assist in settling issues followed by a divorce.

For the interviews with the SWD personnel, the Research Team took reference from questions for social service providers, as personnel at the SWD have a similar role as other social workers but from a public administrative perspective. As the role of each government department is distinctive in a divorce case, the Research Team has tailored questions for the Housing Department and HKPF respectively.

The Research Team has already arranged two interviews with the SWD in early July 2019. An interview with a senior inspector of the Family Conflict and Sexual Violence Policy Unit, Crime Support Group of HKPF was arranged in late June 2019. One focus group with the Housing Department was then made in August 2019. Another focus group with the government officials from DoJ, HAB, LAD, and SWD was made in April 2022.

(ii) Social service providers

For social service providers, the Research Team conducted three individual interviews and three focus groups to compile their experience in handling a divorce case, views on the difficulties faced by divorcees, comments on the existing divorce and maintenance recovery system, and future recommendations on the divorce system development. The Research Team has designed the interview questions to assimilate insights from the providers (please see Appendix E.5 and E.8).

The Team arranged three individual interviews with two workers in NGOs (i.e. Hong Kong Single Parents Association (HKSPA), and Tung Wah Group of Hospitals), and a clinical psychologist in private practice, in June 2019. The Research Team also arranged three focus groups for workers from different NGOs (i.e. Caritas Family Crisis Support Centre, HKSPA, and New Arrival Women League) in June 2019.

(iii) Legal expert

For legal experts, the Research Team conducted one individual interview with a Family Judge, as well as two focus groups with two barristers and three solicitors respectively. The interview and focus groups aim to compile their views on the effectiveness of existing legal proceedings on divorce and maintenance recovery, and experiences in handling cross-boundary divorce, child(ren) related cases, and maintenance order cases. Their recommendations on the current system and views on adjusting the minimum marriage age without parental consent are also documented from July to November 2019. The Research Team has designed the interview

questions related to the aforementioned interests of our study (please see Appendix E.6 and E.9).

(iv) **Divorcees and other related stakeholders**

For divorcees, the Research Team conducted individual interviews and/or focus groups (as appropriate) to compile their experience in settling a divorce, views on marriage, comments on the current divorce and maintenance recovery system, and suggestions on the current system. The Research Team has designed the interview questions to explore participant thoughts, and feelings, as well as to delve into personal and sensitive divorce-related issues (please see Appendix E.7 and E.10). Three divorcees from Caritas, two divorcees from the HKSPA, one grown-up child from a divorced family and a family including one divorcee and two teenage children have been interviewed either through individual interviews or focus groups.

Sampling – Interviews & focus groups

The semi-structural interview has been used in the interviews/focus groups. The Team estimated the total sampling size of the interviews/focus groups will be approximately 20 (government personnel, legal experts, social service providers, divorcees and other related stakeholders). Although the Team hoped to host focus groups with the divorcees, NGOs recommended that individual interviews would be more appropriate due to privacy concerns. The Team will aim to widen the spectrum of interviewees and explore the feasibility to conduct focus groups. Eventually, the Research Team conducted nine individual interviews and eight focus groups involving 37 participants were held.

Privacy and confidentiality

The venue for all interviews and/focus groups have been taken either in the campus of The University of Hong Kong, interviewee's office or upon request. The duration of each session will be approximately 60 minutes. All interviews and focus groups have been audio-recorded. All recordings and transcriptions will be destroyed 5 years after the completion of the study.

Appendix E.1 – Areas to be Explored

Table E1. Areas to be explored

| | Areas of Questions | Government Personnel | Legal Experts | Social Service Providers | Divorcees and other related Stakeholders |
|----------|--------------------------------------------------------------------------------------------------|-----------------------------|----------------------|---------------------------------|-------------------------------------------------|
| 1 | Experience in Divorce | | | | ✓ |
| 2 | Two key gains out of divorce | | | | ✓ |
| 3 | Experience in Divorce related Work | ✓ | ✓ | ✓ | |
| 4 | Two key issues during divorce | ✓ | ✓ | ✓ | ✓ |
| 5 | Two key issues after divorce | ✓ | ✓ | ✓ | ✓ |
| 6 | Policies and Services to be increased or improved (e.g. divorce and maintenance recovery system) | ✓ | ✓ | ✓ | ✓ |
| 7 | Opinions on the readiness for marriage | ✓ | ✓ | ✓ | ✓ |
| 8 | Suggestions to prevent divorce and related problems | ✓ | ✓ | ✓ | ✓ |
| 9 | Other suggestions to the Research Team | ✓ | ✓ | ✓ | ✓ |

Appendix E.2 – Full List of Interviewees and Their Affiliations

Table E.2 Name of Interviewees and Their Affiliation

| | Interviewee | Organisation and Position |
|-----------------|--------------------------|-------------------------------------------------------------------------|
| Social Services | Ms. Doris CHONG | Women Centre: Social worker |
| | Dr. Paulina KWOK | Caritas Family Crisis Support Centre: Former Family Shelter Supervisor |
| | Ms. Florence LAI | Caritas: Senior Social Work Supervisor |
| | Dr. Anita LEUNG | Clinical Psychologist |
| | Mr. Patrick MAN | TWGHs School Social Services: Regional Director |
| | Ms. Mary NG | Primary school: Social worker |
| | Ms. Sira NG | Caritas: Project Director |
| | Mr. Sam WONG | New Arrival Women League: Social Worker |
| | Ms. Jessie S.C. YU | Single Parents Association: Chief Executive |
| Legal Services | A Family Court Judge | Family Court |
| | Ms. Corinne D'A REMEDIOS | Family Law Committee of the Hong Kong Bar Association: Chairperson |
| | Mr. Jeremy CHAN | Family Law Committee of the Hong Kong Bar Association: Vice-Chairperson |
| | Mr. Dennis C.K. HO | Family Law Committee of the Law Society of Hong Kong: Chairman |
| | Ms. Yun Yee LAI | Family Law Committee of the Law Society of Hong Kong: Committee member |

| | | |
|-----------------|--------------------------------|----------------------------------------------------------------------------------------------------------------|
| | Mr. Kenneth K.S. YUNG | Family Law Committee of the Law Society of Hong Kong: Committee member |
| Public Services | Ms. Ying Mei HO | Hong Kong Housing Authority: Assistant Housing Manager |
| | Ms. Kit Ling PANG | Social Welfare Department: Assistant Director |
| | Ms. Yvonne TAM | The Police Force Family Conflict & Sexual Violence Policy Unit Crime Support Group: Senior Inspector of Police |
| | Ms. Miu Seung Josephinena WONG | Hong Kong Housing Society: Assistant Housing Manager |
| | Ms. Yuk Shan YUEN | Social Welfare Department, Family and Child Protective Services Unit: Unit Head |
| | Mr. Mon On YUNG | Hong Kong Housing Authority: Housing Manager |
| | Mr. Kwong Yan KOO | Department of Justice: Senior Assistant Law Officer (Civil Law) (Advisory)II |
| | Ms. Kam Yung LEE | Social Welfare Department: Chief Social Work Officer (Domestic Violence) |
| | Miss Wai Han HO | Legal Aid Department: Assistant Principal Legal Aid Counsel / Civil Litigation 2 |
| | Mr. Kenneth CHAN | Home Affairs Bureau: Principal Assistant Secretary (Civic Affairs) 2 |
| | Mr. Stanley WONG | Home Affairs Bureau: Assistant Secretary (2)1 |

* 3 divorcees from Caritas, 2 counsellors and 2 divorcees from the Hong Kong Single Parents Association, one grown-up child from divorced family and a family including one divorcee and two teen-age children will remain anonymous.

Appendix E.3 – Consent Forms (English)



INFORMED CONSENT FORM

2018 Further Study on the Phenomenon of Divorce in Hong Kong

We are a team of researchers from the Department of Social Work and Social Administration at The University of Hong Kong. We are conducting a study commissioned by the HAB to provide a holistic review of the latest situation of divorce and matrimonial legislation issues in Hong Kong. We hope to make recommendations regarding divorce support services and policies to the Government.

We would like to invite you to participate in an interview. You will be asked about your experience and opinions in the system handling divorce cases in Hong Kong and your opinions on how the system could be improved, which can assist the development of social services and legal assistance regarding divorce in Hong Kong in the future. The interview will last for approximately 60 minutes and will be audio-recorded for data processing. All information obtained will be kept strictly confidential and for research purpose only. All of the obtained information will be securely stored in locked cabinets and/or encrypted computers at the researchers' office and destroyed 5 years after publication of first paper of the study.

Your participation in the study is entirely voluntary and you can withdraw at any time without negative consequences. The interview is not expected to cause any known risk and distress. If you experience any discomfort during the interview, we will provide immediate emotional support.

If you have any questions about the research, please feel free to contact 2831-5232 or email to csrp@hku.hk. If you have questions about your rights as a research participant, please contact the Human Research Ethics Committee, HKU (2241-5267). (Ref no.: EA1810023). Please complete and return the reply form for our follow-up actions. Thank you.

Yours sincerely,

Paul S.F. Yip, Ph.D.
Chair Professor / Principal Investigator
Social Work and Social Administration
The University of Hong Kong



Reply Slip

If you agree to take part in this project, please put a tick in the following box and sign your name beside it.

I agree to participate in this project.

Signature: _____

OR

If you do not agree to take part in this project, please put a tick in the following box and sign your name besides it.

I do not agree to participate in this project.

Signature: _____

Name: _____

Date: _____

HREC Reference Number: EA1810023



THE HONG KONG JOCKEY CLUB
Centre for Suicide Research
and Prevention
THE UNIVERSITY OF HONG KONG
香港大學香港賽馬會防止自殺研究中心



2018 香港離婚狀況進一步研究 須知及同意書

香港大學社會工作及社會行政學系正進行一項有關香港離婚狀況的進一步研究。鑑於香港離婚數字有上升趨勢，研究團隊受民政事務局委託對香港最新的離婚情況進行全面檢視，並希望就離婚引致的問題向政府提出建議。

香港大學現誠邀閣下參與研究中的面談。面談目的是了解您在離婚時遇到的問題、經驗以及對現時離婚制度和支援的意見，令將來婚姻法例可以全面發展並有效地實施。面談需時約 60 分鐘，內容將會被錄音作研究分析用途。

是次參與純屬自願性質，閣下可隨時終止參與是項研究，有關決定將不會引致任何不良後果。面談預料並不會帶來任何風險及不安，若閣下於期間感到任何不適，我們會提供即時的情緒支援。香港大學對獲得的所有資料皆只會作研究用途，個人資料將絕對保密並不會公開，所收集的資料會儲存在本研究中心上鎖儲物櫃及／或加有密碼的電腦裡，只有參與是次研究的工作人員才可以取得有關資料，資料記錄在研究發表後五年會被銷毀。

如您有任何問題，請於現在提出，您亦可致電我們（電話：2831-5232）或電郵 csrc@hku.hk 查詢。閣下想知道更多有關研究參與者的權益，請聯絡香港大學非臨床研究操守委員會（電話：2241-5267）。（參考編號：EA1810023）



香港大學社會工作及社會行政學系
項目首席研究員
葉兆輝教授 謹啟



回條

如您同意參與這項研究，請在以下空格內畫<✓>號，並在橫線上簽署。

我同意參與這項研究。

簽署: _____

或者

如您不同意參與這項研究，請在以下空格內畫<✓>號，並在橫線上簽署。

我不同意參與這項研究。

簽署: _____

姓名: _____

日期: _____

Appendix E.5 – Interview Questions for Social Service Providers (English)

1 Nature of Social Services

- 1.1 What form of services does your organisation provide in a divorce case?
- 1.2 What are the most common clients (demographics e.g. socio-economic status, education level) that would seek assistance from your organisation?
- 1.3 What are the most common reason(s) for the clients to seek for assistance from your organisation?

2 Experience in Handling Divorce Cases

- 2.1 Could you share two remarkable divorce cases you have had handled?
 - 2.1.1 What main issues could you identify in these cases?
 - 2.1.2 How did you assist in solving the issues?
 - 2.1.3 What are the major issues before, during and after a divorce respectively?
- 2.2 Could you share two remarkable divorce cases with child issues involved?
 - 2.2.1 What are the most prominent issues in divorce cases involving child(ren)?
 - 2.2.2 How often and in what way do the parents have conflicts in custody arrangement of the child(ren)?
 - 2.2.3 If you have experience handling with child(ren) in divorced families, what do the child(ren) need the most during and after a divorce?
 - 2.2.4 What are factors (e.g. types of parent-child relationship) that would decrease the risk of child(ren) experiencing negative impacts from a divorce?
 - 2.2.5 How would you assist in the access of child(ren) from the parent?
 - 2.2.6 How would you assist in the care and control of child(ren) from the parents?
- 2.3 Can you share two remarkable divorce cases involving maintenance orders?
 - 2.3.1 What are the most prominent issues in divorce cases involving maintenance orders?
What form of services did your organisation provide?
 - 2.3.2 What factors would lead to problems in paying or receiving maintenance?
- 2.4 Have you handled any cases that is of early marriage?
 - 2.4.1 What are the most prominent issues in divorce cases involving early marriages?
 - 2.4.2 What is the difference between early marriage cases and other cases?
- 2.5 Have you handled any cases which involves cross-boundary marriages?
 - 2.5.1 What are the differences between cross-boundary marriages and local marriages?
 - 2.5.2 Would the differences cause any unique marriage issue? How would you address these issues?
 - 2.5.3 Would the differences in the legal system between Hong Kong and the mainland cause any problems? (e.g. cross-boundary maintenance recovery).

3 Opinions and Views on Marriage

- 3.1 What do you think are the characteristics of a marriage that increase the risk of divorce?
- 3.2 Do you think there are any relationship between marriage age, duration of marriage, and divorce?
- 3.3 Do you think the ease of filing for a divorce nowadays increased the divorce rate in Hong Kong?
- 3.4 How would you comment on the relationship between socioeconomic status and the risk of divorce?
- 3.5 What do you think are the determinants of readiness in a marriage?
- 3.6 How would you comment on the impacts of in-laws and stepfamily in a marriage?

4 Law Enforcement

- 4.1 How would you comment on the existing divorce system in Hong Kong?
- 4.2 For cases involving maintenance and child(ren), what is the major issue regarding law enforcement?
- 4.3 Have you handled cases which involve the application for Judgment Summons?
 - 4.3.1 How would you comment on the effectiveness and availability of the application for Judgment Summons?

5 Policy and Recommendations

- 5.1 How would you comment on the existing maintenance recovery system in Hong Kong?
- 5.2 Based on your experience, how could the existing system improve?
- 5.3 Do you think premarital education can help with reducing divorce rate in Hong Kong?
 - 5.3.1 What should premarital education cover?
- 5.4 What is your comment on the existing family mediation services in Hong Kong?
- 5.5 If the minimum marriage age (without parental consent) were to be adjusted, what do you think will be the impacts and implications?

6 Others

Appendix E.6 – Interview Questions for Social Service Providers (Chinese)

1. 社會服務性質

- 1.1 您的機構為離婚人士或受影響人士提供什麼類型服務？可否提供幾個例子？
- 1.2 請形容最常向您們申請援助的人士各個狀況（如經濟狀況、教育程度等）。
- 1.3 最常向您們尋求協助的理由是什麼？

2. 處理離婚個案的經驗

- 2.1 請分享兩個對您印象最深刻的離婚個案。
 - 2.1.1 在處理這兩個離婚個案時，您認為該個案揭示了甚麼離婚引致的問題？
 - 2.1.2 您怎樣協助解決以上問題？
 - 2.1.3 離婚前、離婚期間和離婚後分別會遇上最大的問題是什麼？
- 2.2 請分享兩個對您印象最深刻的離婚個案（有受影響的孩子）。
 - 2.2.1 在處理有受影響兒童的離婚個案中遇到最大的困難和問題是什麼，與沒有孩子的個案上有何分別？
 - 2.2.2 雙方家長在撫養安排上出現分歧的情況有多常見？分歧大多出現在什麼地方？
 - 2.2.3 如果您有處理有受影響兒童的離婚個案，您覺得兒童們在家長離婚時和離婚後最需要的是什麼？
 - 2.2.4 什麼因素（例如家長和孩子關係）會增加或減少孩子在家長離婚期間的負面經歷和情緒呢？
 - 2.2.5 您會怎樣協助家長探視的個案呢？
 - 2.2.6 您會怎樣協助家長撫養的個案呢？
- 2.3 請分享兩個對您印象最深刻的離婚個案（有關追討贍養費）。
 - 2.3.1 在這兩個離婚個案中，事主遭遇哪種贍養費問題？ 貴機構提供了甚麼服務協助事主？
 - 2.3.2 有甚麼因素導致事主的贍養費支付或收取出現問題？
- 2.4 您是否處理過任何早婚案件？（其中一方的年齡為 21 歲以下）
 - 2.4.1 涉及早婚的離婚案件中最突出的問題是什麼？
 - 2.4.2 早婚案件與其他案件有何分別？
- 2.5 您是否處理過任何涉及跨境婚姻的案件？
 - 2.5.1 跨境婚姻相較本地婚姻有何不同？
 - 2.5.2 其相異之處會否令跨境婚姻出現較獨特的婚姻問題？在處理問題時又會否與處理本地婚姻個案不同？
 - 2.5.3 香港和內地法制的差異會否衍生出任何相關的問題？（例如需要跨境追討贍養費等）？

3. 對於婚姻的看法與意見

- 3.1 您認為哪些婚姻特徵會增加離婚風險？
- 3.2 您認為結婚年齡和婚姻長短、質素、離婚有何關係？
- 3.3 您認為現時提出離婚的簡易程序會增加香港的離婚率嗎？
- 3.4 您如何評價社會經濟地位與離婚風險之間的關係？

3.5 您認為一段長久而美滿婚姻的先備條件是什麼？

3.6 您如何評價姻親和再婚家庭對一段婚姻的影響？

4. 法律的執行

4.1 你會如何評價香港現時的離婚法例和制度？

4.2 對於涉及贍養費或兒童的案件，執法的主要問題是什麼？

4.3 您是否處理過涉及判決傳票申請的案件？

4.3.1 您如何評價判決傳票申請的有效性和實用性？

5. 政策與建議

5.1 您如何評價香港現有追討贍養費的系統？

5.2 根據您的經驗，現有系統可以如何改進？

5.3 您認為婚前教育可否有效減低香港的離婚率或減少其他涉及贍養費、撫養權等的離婚問題和訴訟？

5.3.1 婚前教育應涵蓋哪些內容？

5.4 您對香港現有的家事調解服務有何評價？

5.5 如果要調整最低合法結婚年齡（毋須家長同意），您認為哪個年齡最適當？您認為這個調整對大眾的影響是什麼？

6. 其他

Appendix E.7 – Interview Questions for Legal Field (English)

1. Nature of Cases

- 1.1 What form of legal service do you usually provide in a divorce case?
- 1.2 What are the most common problems (e.g. maintenance recovery, child custody) encountered by your clients who seek assistance from you?
- 1.3 What are the most common types of clients (demographics e.g. socioeconomic status, education level, gender) seeking services from you? Do you think the problems encountered by them are related to their social-economic status?

2. Law Enforcement (general)

- 2.1 Do you think the current legal system is effective in helping divorcees of low socioeconomic status or low education levels?
- 2.2 How would you comment on the strengths and weaknesses of different enforcement proceedings (including Judgment Summons, Charging Order, Garnishee Order, Attachment of Income Order and Writ of *Fieri Facias*)?
 - 2.2.1 How would you comment on the usage rate of above enforcement proceedings under current legislation and system?
 - 2.2.2 How would you comment on the effectiveness of the captioned legal proceedings in recovering maintenance?
 - 2.2.3 According to your experience, what are the cost(s) for recovering maintenance? (including intangible cost, such as negative emotions).
- 2.3 How have the new practice directions SL10.2 affected the Judgment Summons procedures?
 - 2.3.1 Have you seen any changes in the number of Examination Summons and Committal Summons?

3 Law Enforcement (cross-boundary marriages)

- 3.1 What are the differences in handling matrimonial causes in cross-boundary marriages? Can you name some common problems encountered in cross-boundary marriages? (e.g. respondent is back in the mainland, loss of contact).
- 3.2 The *Enforcement of Civil Judgments in Matrimonial and Family cases between Hong Kong and the mainland* was signed in 2017. Can you briefly comment the effects of this arrangement on cross-boundary marriages? How would this affect your handle of cases compare to before?

4 Law Enforcement (cases involving child)

- 4.1 When the case involves child(ren), what common issues would your client encountered? What are the differences while handling these cases? Are there any unique obstacles and difficulties?
- 4.2 How would you comment on the existing legal system on child custody?

5 Law Enforcement (maintenance)

- 5.1 What are the most common maintenance orders that you work with?
 - 5.1.1 What is the major rationale of the respective maintenance disorders (nominal order, lump sum order)?
- 5.2 What are the major obstacles in receiving maintenance?
- 5.3 Are there any groups at higher risk of failing in receiving maintenance? If yes, what are the mechanisms to recover outstanding payments?
- 5.4 Do you think the existing mechanisms for recovering outstanding payments is sufficient in Hong Kong?
 - 5.4.1 How do you think the existing enforcement methods can be strengthened? (e.g. suspension of Government issued license, welfare suspension/ deduction of tax refunds, transfer of defaulting maintenance payers' information to crediting agencies etc.)
- 5.5 What constitutes to the ineffectiveness of existing outstanding maintenance recovering mechanisms in Hong Kong?
- 5.6 If a Maintenance Board is to be introduced in Hong Kong, what do you think should be the role of the board in a divorce case?
 - 5.6.1 How would you comment on the feasibility of setting up such a board in Hong Kong?
 - 5.6.2 Do you think the maintenance payers will be more willing to pay maintenance to the board than to the maintenance payees?
 - 5.6.3 If the board can arrange payment to payees in advance, do you think it will lead to abuse of the system?
 - 5.6.3.1 How do you think can this issue be solved?

6 Policy and Recommendations

- 6.1 Do you think the existing divorce system is sufficient and effective in Hong Kong? What do you think shall be improved?
- 6.2 If adjusting the minimum marriage age in Hong Kong (without parental consent), what age do you think is suitable? And why?
- 6.3 What are the impacts and implications of adjustment on minimum marriage age in Hong Kong?

7 Others

- 7.1 You received our invitation letters to fill out the e-Form to assist us in collecting in-depth information for our case studies. Our study method received ethical approval from the Human Research Ethics Committee from The University of Hong Kong, and we promised to ensure the privacy and confidentiality of the information of the cases. Were there any difficulties in filling out the e-Form?
 - 7.1.1 Any suggestions for improvement?

Appendix E.8 – Interview Questions for Legal Field (Chinese)

1. 案件性質

- 1.1 您在離婚案件中通常提供哪種形式的法律服務？
- 1.2 您的客戶主要就甚麼問題（例如追討贍養費、孩子撫養權）尋求您的協助？
- 1.3 向您尋求協助的最常見客戶類型是什麼（例如社會經濟狀況，教育程度，性別）？您認為他們遭遇的問題與他們的社會經濟地位有沒有關係？

2. 法律問題（一般案件）

- 2.1 您認為目前的法律制度能否有效幫助社會經濟地位低或教育程度低的離婚人士？
- 2.2 您如何評價不同執法程序（包括判決傳票，押記令，第三債務人命令，扣押入息令和扣押債務人財產令狀）的優點和缺點？
 - 2.2.1 根據現行法例和制度，您對上述執法程序的使用率有何評論？
 - 2.2.2 您如何評價各個執法程序在追討贍養費方面的成效？
 - 2.2.3 根據您的經驗，您認為追討贍養費會造成哪些成本？（可包括非物質成本，例如負面情緒）
- 2.3 您認為新的實務指示 SL10.2 如何影響到判決傳票的程序？
 - 2.3.1 您認為有影響到詢問傳票和交付羈押傳票的數量嗎？

3. 法律問題（跨境婚姻）

- 3.1 在處理跨境婚姻的法律訴訟時，與本地婚姻有何不同？可否一些跨境婚姻常見的問題？（例如答辯人已返回內地，失去聯絡等）
- 3.2 香港和內地在 2017 年簽訂「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」（Enforcement of civil judgments in matrimonial and family cases between Hong Kong and the mainland），您可否簡單評價此安排對跨境婚姻的影響？在處理案件時和以往有何不同？

4. 法律問題（涉及兒童的案件）

- 4.1 當案件涉及兒童時，您的客戶一般會遇到甚麼問題？你在處理上又與其他案件有何不同？處理這些案件時的困難和障礙又有甚麼獨特之處？
- 4.2 您會如何評價現時有關離婚後兒童監護判決制度？

5. 法律問題（贍養令）

- 5.1 在您經驗中最常見贍養令安排是什麼？
 - 5.1.1 申請贍養令（象徵式贍養費命令，一筆過款額）的主要原因是什麼？
- 5.2 追討贍養費的主要障礙是什麼？
- 5.3 這些機制中存在哪些問題導致那些高風險群體在追討贍養費時遇到障礙？
- 5.4 您認為現時追討贍養費款項的機制在香港是否足夠？
 - 5.4.1 您認為現行的執法方法能如何提升效能？
- 5.5 香港現有的追討贍養費機制的缺點是什麼？
- 5.6 若香港將成立贍養費管理局，您認為該局應在離婚過程中扮演甚麼角色？

- 5.6.1 您如何評價在香港設立贍養費管理局的可行性？
- 5.6.2 您認為付款人會更願意支付贍養費給管理局多於支付給指定收款人嗎？
- 5.6.3 如果贍養費管理局能預先支付贍養費給指定收款人，您認為這個制度會被濫用嗎？
 - 5.6.3.1 您認為能怎樣解決這個問題？

6. 政策和建議

- 6.1 您認為現時有關離婚的法例、制度及支援是否充足並有效？您認為有甚麼地方可以改善？
- 6.2 如果要調整最低結婚年齡（毋須家長同意），您認為哪個年齡最適當？為甚麼？
- 6.3 您認為這個調整對大眾和法律的影響是什麼？

7. 其他

- 7.1 您收到我們的邀請信去填寫 e-Form，協助我們為研究而收集數據。我們的研究通過了香港大學研究操守委員會的通過，所有資料只會作研究用途，確保資料絕對保密並不會公開。您在填寫 e-Form 時有遇到什麼困難嗎？
 - 7.1.1 您有什麼建議方便我們日後作出改善嗎？

Appendix E.9 – Interview Questions for Divorcees or other Stakeholders (English)

Objectives

To collect qualitative comments from Divorcees on their views on marriage, divorce experience especially regarding maintenance and child care arrangements, and recommendations on policies and services improvement.

1 Basic Information on the Divorcee informant

- 1.1 What is your personal income, educational level, occupation, and housing type during the marriage? Any changes after the divorce?
- 1.2 Were you receiving CSSA during the marriage? Any changes after the divorce?

2 Information on the Marriage

- 2.1 How long was the marriage? How old were you when you got married?
- 2.2 Any child(ren) in the marriage?

3 Opinions and Views on Marriage

- 3.1 What factors did you consider before deciding to get married? Which determinants are most important to you?
- 3.2 What are your views on the usefulness of premarital education or counselling to improve marriages and prevent divorce?
- 3.3 What is your view on marriage duration and risks of divorce?
- 3.4 How do you think in-laws and stepfamilies have effect on the marriage?
- 3.5 Do you think the duration of marriage have an effect on marriage and divorce?

4 Divorce Experience

- 4.1 What are your reasons for filing a divorce?
- 4.2 How long did you take to consider filing the divorce? What did you consider before filing the divorce?
- 4.3 Was there any domestic violence (towards child and/or spouse) occurred during or after the marriage?
- 4.4 Were there any obstacles in filing the divorce? How did the obstacles affect you?
- 4.5 How long did the divorce procedure take?
- 4.6 Did you receive any form of support from the Legal Aid Department or NGOs during your divorce process?
 - 4.6.1 If yes, where/ how did you learn about their services?
 - 4.6.2 Were their services and assistance useful?
- 4.7 Can you recall two remarkable issues in your marriage?
- 4.8 Can you share two remarkable issues after your divorce?

- 4.9 How did the divorce affect your relationship with peers and family members? Were there stigmas and how did you prevent or handle them?

5 Maintenance

- 5.1 Did you ask for maintenance from your ex-spouse? Why?
- 5.2 Did you experience any obstacles in receiving maintenance payments? What are the obstacles and did the obstacles affect your daily living?
- 5.3 Did you ask for any assistance from SWD or other NGOs?
- 5.3.1 What is the role of SWD or other NGOs in assisting you with maintenance matters?
- 5.3.2 Was/ where their services effective?
- 5.3.3 What other forms of services can they provide to assist you with maintenance matters?
- 5.4 Was there outstanding maintenance?
- 5.4.1 Did you implement any enforcement proceedings to recover outstanding maintenance?
- 5.4.2 If yes, what were those enforcement proceedings? Were they effective?
- 5.4.3 Have you heard of Judgment Summons? Why or why not was this intervention used in your case?

6 Child Issues

- 6.1 Any child custody issue occurred during the divorce?
- 6.1.1 How did the issues affect you?
- 6.2 Where there any obstacles in settling the custody issue?
- 6.3 In your opinion, how did the divorce affect the child(ren)?
- 6.4 What are the greatest difficulties in a single-parent family?
- 6.5 Were family mediation services used?
- 6.5.1 If they were used, were they effective?
- 6.5.2 If they were not used, why not?

7 Cross-boundary Marriages

- 7.1 Where did you reside during the marriage? Did it change after the divorce?
- 7.2 Do you think the cross-boundary nature affected your marriage?
- 7.3 Do you think cross-boundary marriages have higher chance of divorce?
- 7.4 Do you think there are more problems in maintenance settlement for cross-boundary marriages compared with local marriages?
- 7.5 What should be done to educate the public on the laws and regulations to protect the rights of divorcees in Hong Kong?

8 Law Enforcement

- 8.1 Do you think the current law system is effective in supporting divorcees?

9 Recommendations on Policies and Services

- 9.1 Any existing policies and measures on divorce and maintenance shall be improved?
- 9.2 Do you think a Maintenance Service Board could assist in recovering outstanding maintenance? Why?
- 9.3 Do you think marriage age had an effect on your divorce? What do you think the minimum legal age of marriage should be?
- 9.4 Any other services/policies you think should be improved or implemented?

10 Others

- 10.1 Any other views or suggestions?

Appendix E.10 – Interview Questions for Divorcees or other Stakeholders (Chinese)

1. 基本資料

- 1.1 請問您個人每月平均收入大概是多少？請說明您在已婚時的教育程度、職業、房屋類型。以上資訊在離婚後有沒有轉變？
- 1.2 婚姻期間您和前配偶有沒有同居生活？離婚以後有沒有轉變？
- 1.3 婚姻期間您有沒有收取綜合社會保障援助計劃資助（綜援）？離婚以後有沒有轉變？
- 1.4 離婚以後，您在按揭或其他與財務有關的事項上有沒有遇到問題？

2. 婚姻有關的資料

- 2.1 您的婚姻維持多久時間？您結婚時的年齡多少？
 - 2.1.1 您在婚姻中有沒有育有孩子？
- 2.2 最近的婚姻是再婚還是首次結婚？您有沒有多於一次離婚的經驗？

3. 對於婚姻的看法

- 3.1 您結婚的最大原因是什麼？
 - 3.1.1 在離婚後，對您當初結婚的原因有甚麼影響？
- 3.2 您在結婚前有考慮什麼因素？經歷離婚後，你現在覺得結婚前應考慮哪些因素？
- 3.3 你覺得婚前教育能夠增加一對夫婦對婚姻的滿足感和減少婚姻之中的衝突嗎？
- 3.4 您覺得配偶家人和再婚家庭對一段婚姻有影響嗎？
- 3.5 您覺得一段婚姻時間上的長短對離婚有什麼影響？時間長短對婚姻的性質有什麼影響呢？
- 3.6 您在離婚以後覺得自己能夠投入另一段婚姻嗎？

4. 離婚經驗

- 4.1 您提出離婚的原因是什麼？
- 4.2 您或前配偶用了多少時間考慮離婚的呈請？有沒有什麼因素妨礙您提出離婚？
- 4.3 您的離婚是共同申請還是個人呈請的性質？
如果是單方面呈請的個案，對於對方單方面呈請有沒有什麼問題？
- 4.4 離婚處理的過程最後需時多久呢？
- 4.5 雙方是不是都由律師擔任代表呢？
- 4.6 婚姻中或離婚後有沒有出現家庭暴力（對孩子或配偶）的問題？
- 4.7 離婚呈請中有沒有遇到什麼障礙？
- 4.8 您可不可以列舉兩項婚姻中深刻的事情？
- 4.9 您可不可以列舉兩項離婚過程中深刻的事情？
- 4.10 您對您生活的滿意度在離婚之後有沒有轉變？怎樣轉變？為什麼？
- 4.11 您覺得離婚人士在社會上有沒有受歧視呢？還是香港社會對於離婚人士包容足夠呢？為什麼？
- 4.12 離婚有沒有影響您和家人、朋友的關係？

5. 離婚經驗（贍養費）

- 5.1 您有沒有向前配偶追討贍養費呢？
 - 5.1.1 贍養費的最終判決怎樣呢？
 - 5.1.2 以上的贍養費主要用於何處或使用人是誰？
- 5.2 您在追討贍養費時有沒有遇到什麼障礙？
 - 5.2.1 如果有，您有沒有向社會福利署或其他非政府機構申請支援？如果有申請，您得到甚麼服務？
 - 5.2.2 您覺得他們提供的服務有效嗎？
- 5.3 你的前配偶有沒有欠繳的贍養費？
 - 5.3.1 為追討欠繳的贍養費，您有沒有申請執行任何法律程序呢？
 - 5.3.2 若有，執行了什麼法律程序呢？你覺得有效用嗎？
 - 5.3.3 若沒有，您知道有甚麼法律途徑追討贍養費嗎？
 - 5.3.4 您有沒有聽過判決傳票？為什麼使用或不使用這個途徑追討贍養費呢？

6. 離婚經驗（如有孩子）

- 6.1 育有孩子有沒有構成離婚的成因？（例如：孩子的特殊需要、管教上的衝突等）
- 6.2 哪方擁有孩子的撫養權？是共同管養還是單方面管養呢？
 - 6.2.1 如果是對方單方面管養，有沒有在探視上有分歧呢？
 - 6.2.2 如果是單方面管養，雙方有沒有就撫養權判決上訴呢？
 - 6.2.3 誰是孩子的看護人？
 - 6.2.4 誰在金錢上扶養孩子？各方在撫養上有沒有分歧？
- 6.3 在撫養權判決上有沒有分歧呢？是什麼分歧呢？
- 6.4 你覺得離婚有沒有影響到孩子呢？是正面還是負面的影響呢？
 - 6.4.1 如果是正面的影響，為什麼？您在告知孩子您們離婚的信息有沒有得到協助？
 - 6.4.2 如果是負面的影響，為什麼？您覺得有什麼方法可避免以上負面的影響呢？
- 6.5 您的離婚有沒有影響到您跟孩子的關係呢？是正面還是負面的影響？
 - 6.5.1 如果是正面的影響，您在離婚過程有沒有得到什麼輔助您維持和孩子關係的服務呢？
 - 6.5.2 如果是負面的影響，有沒有什麼方法可避免呢？
- 6.6 您覺得離婚後的單親家庭遇到最大的困難是什麼？
- 6.7 有沒有使用家事調解服務呢？
 - 6.7.1 如有，您覺得有效嗎？如無效，您覺得可以怎樣改進該服務呢？
 - 6.7.2 如沒有，為什麼沒有使用以上服務？

7. 離婚經驗（跨境婚姻）

- 7.1 您在結婚時居於哪地方？在離婚後所居地有沒有轉變？
- 7.2 您覺得跨境婚姻的性質有沒有影響到您的婚姻？
- 7.3 您覺得跨境婚姻會不會有更大機率遇到離婚？為什麼？
- 7.4 您覺得香港跟內地法律制度的分別怎樣影響到您在離婚中的權利？
- 7.5 您覺得在追討贍養費上，跨境婚姻會比本地婚姻遇到更多困難嗎？什麼困難？
- 7.6 您覺得應該怎樣教育公眾，以讓大眾對有關離婚者的權益及有關離婚的法律有更深認識呢？

8. 法律的執行

8.1 總括您有認知或曾使用的法律程序和手法，您覺得現有的法律制度能有效地支援離婚人士嗎？

9. 政策與建議

9.1 哪些現有的政策或輔助服務在您經歷離婚時對您有較大的幫助？

9.2 您認為有沒有什麼現有的政策（有關離婚或追討贍養費）需要改進？應該怎樣改進呢？

9.3 您覺得在經歷離婚時什麼部門或公營機構支援您最多呢？

9.4 您覺得設立「贍養費管理局」對追討贍養費有幫助嗎？

9.5 您覺得結婚年齡對婚姻長短或質素有影響嗎？您覺得法定最低結婚年齡應該是多少，當中的原因是甚麼？

9.6 您覺得政府或公營機構應推行甚麼服務或政策以加強對離婚人士的支援？

10. 其他

Appendix E.11 – Interview Questions for Divorcees’ Children (English)

Objectives

To collect qualitative comments from divorcees’ children on how they view their parents’ divorce, how they were affected by the divorce, as well as comments and suggestions for improvements from service providers.

1 Basic Information of the child(ren)

- 1.1 How old were you when your parents divorced?
- 1.2 Who do you live with now (mother/father/others)?
- 1.3 Do you have other siblings?

2 Experience on Parents’ Divorce

- 2.1 What do you remember about your parents’ divorce?
- 2.2 What do you think about your parents’ divorce?
- 2.3 How was your relationship with your parents before the divorce?
 - 2.3.1 Did the relationship change after the divorce?
- 2.4 Did you receive any services (e.g. social workers, therapists, clinical psychologists) during and after your parents’ divorce?
 - 2.4.1 Were the services useful?
 - 2.4.2 Are you still receiving the services now?

3 Effect of Parents’ Divorce

- 3.1 How did your parents’ divorce affect you?
 - 3.1.1 Are there any examples?
- 3.2 How do you feel after your parents’ divorce?
- 3.3 Did your parents’ divorce affect your experience at school?
 - 3.3.1 Did your classmates know about your parents’ divorce?
 - 3.3.2 Did you share/ why did you not share about your parents’ divorce to your parents?
 - 3.3.3 Did you feel any difference in how others treated you after your parents’ divorce?
 - 3.3.4 Did you receive any support services from school?
 - 3.3.4.1 Did you want those services? If not, why not?
- 3.4 Who would you talk to when you feel upset or happy?

4 Comments and Recommendations for Services

- 4.1 How do you think about the services that you received from different professionals?
- 4.2 What services do you think can be improved?
- 4.3 What kind of help did you wish to receive but did not receive?

5 Others

- 5.1 What are your goals and aspirations?

Appendix E.12 – Interview Questions for Divorcees’ Children (Chinese)

1 基本資料

- 1.1 請問你你父母離婚時你多大？
- 1.2 你現在跟誰住 (爸爸/媽媽/其他)？
- 1.3 你有其他兄弟姊妹嗎？

2 父母的離婚經驗

- 2.1 你對你父母離異有什麼印象/記憶？
- 2.2 你對你父母離異有什麼看法？
- 2.3 你與父母的關係在他們離婚前是怎樣？
 - 2.3.1 與他們的關係有沒有因為他們的離婚而改變？
- 2.4 父母離婚時/後你有否接受協助/服務（例如：社工、治療師、臨床心理學家）？
 - 2.4.1 你覺得那些服務有幫助嗎？
 - 2.4.2 你現在有否繼續接受那些服務？

3 父母離異對你的影響

- 3.1 父母離異對你有什麼影響？
 - 3.1.1 有例子嗎？
- 3.2 父母離異後你感覺如何？
- 3.3 父母的離異有否影響你的校園生活？
 - 3.3.1 你的同學知道你的父母離異嗎？
 - 3.3.2 為什麼你有/沒有告訴你的同學你的父母離婚了？
 - 3.3.3 你有否覺得校園裡的人有因為你的父母離婚而跟你的相處有所改變？
 - 3.3.4 學校有為你提供一些支援服務嗎？
 - 3.3.4.1 你當時想接受那些服務嗎？如果不想，為什麼？
- 3.4 你在開心/不開心的時候會跟誰分享？

4 意見及建議

- 4.1 你對當時接受的服務有什麼意見？
- 4.2 你覺得哪方面可以有改進？
- 4.3 你在父母離婚時有否希望接受哪些服務，但是最終沒有被安排？

5 其他

- 5.1 你對將來有什麼目標/夢想？

Appendix F – Summary Tables of Overseas Maintenance Policies

Table F.1: Overview / General Legal Information

| | Source of doctrines | How to define who should receive spousal maintenance? |
|-------------------------------|-----------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Hong Kong | Matrimonial Proceedings and Property Ordinance, Cap. 192 | <p>(Upon Request)</p> <p>Either party to a marriage may apply to the Court. On granting a decree of divorce or any time thereafter, the Court may order either party in the marriage to pay the other.</p> |
| Mainland China | The Marriage Law Articles 39, 42. | <p>Article 39 At the time of divorce, the disposition of the property in the joint possession of husband and wife is subject to agreement between the two parties. In cases where an agreement cannot be reached, the people's court shall make a judgment in consideration of the actual circumstance of the property and on the principle of caring for the rights and interests of the wife and the child or children.</p> <p>Article 42 If, at the time of divorce, one party has difficulties supporting himself or herself, the other party shall render appropriate help from her or his personal property such as a dwelling house. Specific arrangements shall be made between both parties through consultation. If they fail to reach an agreement, the people's court shall make a judgment.</p> |
| Singapore (Non-Muslim) | Women's Charter and the Guardianship of Infants Act in the Family Law | <p>(Upon Request)</p> <ul style="list-style-type: none"> •Spousal maintenance is a legal obligation. •It is usually for women to claim, but it may be given to former husbands if they are incapacitated, unable to earn a living as a result of the disability or unable to support themselves. |
| Norway | Chapter 18 of the Marriage Act (Marriage Act of July 4, 1991, No. 47) | <p>(Upon Request)</p> <p>The duty of maintenance towards each other is grounded on the condition of marital cohabitation. Although it is uncommon for maintenance to be granted after divorce, such contributions may still be possible</p> |

| | Source of doctrines | How to define who should receive spousal maintenance? |
|------------------------|------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Sweden | Marriage Code of 1987 and the Parental Code in Swedish law | <p>(Upon Request)</p> <ul style="list-style-type: none"> •Swedish law provides for a maintenance obligation for spouses and divorced spouses. •Divorce terminates all economic ties between spouses. Hence, according to Marriage Code Chapter 5 section 7, following divorce, each spouse shall be responsible for his or her own support. |
| United Kingdom | The Matrimonial Causes Act 1973, Domestic Proceedings and Magistrates' Court Act 1978 and the Children Act 1989 | <p>(Upon Request)</p> <p>Spousal maintenance refers to maintenance that is paid by a husband or wife to their former spouse following a divorce.</p> |
| US (California) | The Uniform Marriage and Divorce Act enacted by the National Conference of Commissioners on Uniform State Laws (NCCUL) | <p>(Upon Request)</p> <p>Alimony can only be awarded where the party seeking support “lacks sufficient property to provide for his reasonable needs” and is “unable to support himself through appropriate employment”.</p> <p>(source: the controlling statute for spousal support is the California Family Code, Sections 4330 to 4339)</p> |
| Canada | the Divorce Act of 1985 | <p>(Upon Request)</p> <p>Under s.15.2 (4) of the Divorce Act, in making an order for spousal support the Court is to consider “the condition, means, needs and other circumstances” of either spouse.</p> |
| Australia | the Family Law Act 1975 (FLA) | <p>(Upon Request)</p> <p>A party to a marriage is liable to maintain the other party, to the extent that the first-mentioned party is reasonably able to do so, if, and only if, that other party is unable to support herself or himself adequately</p> |
| New Zealand | Part IV of the Family Proceedings Act 1980 | <p>(Upon Request)</p> <p>Spousal maintenance is granted under a needs-based framework. Essentially, liability by the paying party for maintenance grants is only available to the extent that it meets the reasonable needs of the payee party.</p> |

Table F.2: Criteria / Factors considered in determining the feasibility of enforcement

| | Spousal Maintenance | | | | | | | Child Maintenance | | | | |
|-------------------------------|-------------------------------------|-------------------------------|--------------------|------------------------------|-------------------------------------------------|-------------------------------------|-------------------------------------|-----------------------------------------------------------------------------------------------------|------------------------------|--------------------------------------------|----------------------------------------------|----------------------------------------------|
| | Standard of living prior to divorce | Financial statuses of parties | Length of marriage | Physical & mental well-being | Contributions by each party during the marriage | Possibilities for future employment | Other special reasons | Age of child(ren) | Disabilities | Actual Cohabitation with Parents / Custody | Financial status(es) and needs of child(ren) | Standard of living prior to parents' divorce |
| Hong Kong | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ (Loss of benefits due to divorce) | ✓ | ✓ | | ✓ | ✓ |
| Mainland China | Not Applicable | | | | | | | | | | | |
| Singapore (Non-Muslim) | ✓ | ✓ | | ✓ | ✓ | ✓ | | ✓ (Till 21, but can be waived if child(ren) does full-time national service or vocational training) | ✓ (No age limit if impaired) | | ✓ | ✓ |
| Norway | | | | ✓ | | ✓ | ✓ | ✓ (Till 18, or older under a private agreement) | | | | |

| | Spousal Maintenance | | | | | | | Child Maintenance | | | | |
|----------------------------------------------|-------------------------------------|-------------------------------|--------------------|------------------------------|-------------------------------------------------|-------------------------------------|-----------------------|--------------------------------------------------------------------------------------------|------------------------------|--------------------------------------------|----------------------------------------------|----------------------------------------------|
| | Standard of living prior to divorce | Financial statuses of parties | Length of marriage | Physical & mental well-being | Contributions by each party during the marriage | Possibilities for future employment | Other special reasons | Age of child(ren) | Disabilities | Actual Cohabitation with Parents / Custody | Financial status(es) and needs of child(ren) | Standard of living prior to parents' divorce |
| Sweden | | | | ✓ | | ✓ | | ✓ (Till 18, or 21 if still studying) | | ✓ | ✓ | |
| United Kingdom | ✓ | ✓ | | ✓ | | | | ✓ (Till 18, or 23 if still studying) | ✓ (No age limit if impaired) | | | |
| Canada | | ✓ | ✓ | | ✓ | ✓ | | ✓ (Till 18/19, depending on province; or until the completion of post-secondary education) | ✓ | | ✓ | |
| United States of America (California) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | ✓ (Till 18, or until the completion of high school education) | ✓ | ✓ | | |
| Australia | | ✓ | ✓ | ✓ | | ✓ | ✓ | ✓ (Till 18, or until completion of full-time | | | ✓ | |

| | Spousal Maintenance | | | | | | | Child Maintenance | | | | |
|--------------------|-------------------------------------|-------------------------------|--------------------|------------------------------|-------------------------------------------------|-------------------------------------|-----------------------|------------------------------------------------------|--------------|--------------------------------------------|----------------------------------------------|----------------------------------------------|
| | Standard of living prior to divorce | Financial statuses of parties | Length of marriage | Physical & mental well-being | Contributions by each party during the marriage | Possibilities for future employment | Other special reasons | Age of child(ren) | Disabilities | Actual Cohabitation with Parents / Custody | Financial status(es) and needs of child(ren) | Standard of living prior to parents' divorce |
| | | | | | | | | secondary education) | | | | |
| New Zealand | ✓ | | | | | ✓ | | ✓ (Till 18, or until completion of secondary school) | ✓ | | ✓ | |

Table F.3: Measures of Enforcement

| | Hong Kong | Mainland China | Singapore (Non-Muslim) | Norway | Sweden | United Kingdom | Canada | US California | Australia | New Zealand | |
|----------------------------------------|----------------------------|--------------------------|-------------------------------|------------------------------------------------------|--------------------------------------|--------------------------------|----------------------------------------|-----------------------------------|-----------------------------------|--------------------------------|---|
| Maintenance Collection Agencies | | | | ✓ The Collection Agency of the Labour and Welfare | ✓ Swedish Social Insurance Agency | ✓ Child Maintenance Service | ✓ Maintenance Enforcement Programme | ✓ Local Child Support Agencies | ✓ Department of Human Services | ✓ Inland Revenue Department | |
| Court Procedures | ✓ | ✓ | ✓ | ✓ | | ✓ | ✓ | ✓ | ✓ | ✓ | |
| Penalties | Garnishee Orders | ✓ | | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | |
| | Property Seizure | | ✓ | ✓ | ✓ | | ✓ | ✓ | ✓ | ✓ | |
| | License Suspension | | | | | | ✓ | ✓ | | | |
| | Passport Suspension | ✓ (Prohibition order) | | | ✓ (Overseas travel ban) | | | ✓ | ✓ | ✓ (Overseas travel ban) | |
| | Imprisonment | ✓ (only in rare cases) | ✓ | ✓ | ✓ | | | | ✓ | | ✓ |
| Fines | | | ✓ | ✓ | | | | ✓ | ✓ | | |

| | Hong Kong | Mainland China | Singapore (Non-Muslim) | Norway | Sweden | United Kingdom | Canada | US California | Australia | New Zealand |
|-----------------------------------|------------------|-----------------------|-------------------------------|---------------|---------------|-----------------------|---------------|----------------------|------------------|--------------------|
| Charging Order | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Judgment Summons | ✓ | | ✓ | | | ✓ | ✓ | | | |
| Attachment of Income Order | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | ✓ | ✓ |
| Freezing Injunction | | ✓ | | | | ✓ | ✓ | | | |
| Community Service | | | ✓ | | | | | | | |

Table F.4: Maintenance policy comparison

| | UK | Ontario (Canada) | New Zealand | South Korea | Taiwan | Singapore | Hong Kong |
|--------------------------------------------------------------|---------------------------------|-----------------------------|--------------------|--------------------|---------------|------------------|------------------|
| Corresponding Maintenance Policy | CMS (Successor of CMEC and CSA) | OFRO | NZIR | SKCSA | Legislation | Legislation | Legislation |
| Issue identifications | | | | | | | |
| Increase in single-parent families | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Persistent economic vulnerability of single-mother household | | | | ✓ | | | |
| maintenance non-compliance | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| High demand on single-parent social benefits | ✓ | ✓ | ✓ | ✓ | No data | No data | No data |

| | UK | Ontario (Canada) | New Zealand | South Korea | Taiwan | Singapore | Hong Kong |
|-------------------------------------------------------------|-----------|-----------------------------|--------------------|--------------------|---------------|------------------|------------------|
| High government expenditure on single-parent family welfare | ✓ | | ✓ | | No data | No data | No data |
| Need for enforcing court orders effectively | | ✓ | | | | | ✓ |
| Policy goals | | | | | | | |
| Protection of interests of children and spouses | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Collection and distribution of maintenance | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Assurance of social, moral and parental | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |

| | UK | Ontario (Canada) | New Zealand | South Korea | Taiwan | Singapore | Hong Kong |
|----------------------------------------------------|-----------|-----------------------------|--------------------|--------------------|---------------|------------------|------------------|
| responsibilities | | | | | | | |
| Public expenditure reduction | ✓ | | ✓ | | | | |
| Reduction of the Court's workload | ✓ | | ✓ | | | | |
| Child poverty alleviation | | | ✓ | ✓ | | | |
| Create work incentives | ✓ | | | | | | |
| Recognition of gender equality | | | ✓ | ✓ | | ✓ | |
| Service provision structure | | | | | | | |
| Child maintenance regimes in determining the child | Agency | Court | Agency | Court | Court | Court | Court |

| | UK | Ontario (Canada) | New Zealand | South Korea | Taiwan | Singapore | Hong Kong |
|----------------------------------------------------------------|------------------------------------------|----------------------------------------------------|-----------------------------------------------|----------------------------------------|------------------------------------------------------------------|---------------------------------------------------|-----------------------------------------------|
| support obligation | | | | | | | |
| Determination of spousal maintenance | Court | Court | Court | Court | Court | Court | Court |
| Explicit policy transfer from | From USA | No data | From Australia | No data | No data | No data | No data; based on the common law system |
| Service designs and conditions of access to the service | | | | | | | |
| Private transfers | Family-Based Agreement; CMS “Direct Pay” | Payments outside OFRO (withdrawal cases from OFRO) | Private Agreement; NZIR “Voluntary agreement” | Child support orders; informal support | Support orders; informal support | Maintenance orders; informal support | Maintenance orders; informal support |
| Mediated collection and forwarding | CMS “Collect and Pay” | OFRO | NZIR “Formula assessment” | SKCSA | Income deduction; Retrieved from the debtor’s social entitlement | Attachment of earning order executed by employers | Attachment income order executed by employers |
| Payee complains about unpaid | CMS | OFRO; Court | NZIR | SKCSA | Court | Court | Court |

| | UK | Ontario (Canada) | New Zealand | South Korea | Taiwan | Singapore | Hong Kong |
|-----------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|
| maintenance to | | | | | | | |
| Routine actions for recovery of maintenance arrears | Deduction of earnings or benefits | Attachment of earnings | Attachment of earnings | Mutual agreement through proactive consultation service | Court-mandated mediations (if appropriate) | Court-mandated mediations (if appropriate) | Multiple enforcement measures upon application to the Court |
| Further actions for persistent non-payment | Deductions from bank accounts/savings/pensions; Seizing and selling assets; Suspension of driving licenses; Imprisonment; Charging Order; Forced sale of the payer's property; County Court Judgments. | Deductions from bank account/savings/pensions; Deductions from benefits; Recovery through tax; Seizing and selling assets; Suspension of driving license and/or passport; Imprisonment; Interest charged on debt | Deductions from bank account/savings/pensions; Deductions from benefits; Recovery through tax; Seizing and selling assets; Imprisonment; Interest charged on debt | Direct payment order; Cancellation or suspension of driving license and ban on leaving the country; seizing assets and forcing auction; Order to provide collateral; Order to pay lump sums; fines/penalty; Imprisonment; Inducement of | Writ of Execution; The Urge for an Investigation on Performance; deduct the salary of the debtor; set up a mandatory fund; seizing and selling assets; forcing auction of assets | Garnishee orders; Prohibition order; Imprisonment; Charging Order; Judgment Summons; Attachment of income order | |

| | UK | Ontario (Canada) | New Zealand | South Korea | Taiwan | Singapore | Hong Kong |
|-------------------|----------------------------------------|----------------------------------------|----------------------------------------|------------------------------------------------------------------------------------------------------|----------------------------------------|----------------------------------------|----------------------------------------|
| | | | | decrease of credit rating; Recovery through tax | | | |
| Emergency support | No; other social benefits upon request | No; other social benefits upon request | No; other social benefits upon request | Yes; the payer will be forced to execute the indemnity to recover the cost of that emergency support | No; other social benefits upon request | No; other social benefits upon request | No; other social benefits upon request |

Table F.5: Proposed ISP in Hong Kong and similar plan adopted by South Korea

| | Hong Kong | South Korea |
|-------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Name of the plan | Interim Support Plan | Emergency assistance for temporary child support in SKCSA |
| Eligibility | <ol style="list-style-type: none"> 1. Those obtained a maintenance order 2. Those who are not receiving CSSA and facing financial hardships from the default of maintenance 3. Those who have applied for legal enforcement to recover defaulted maintenance | <ol style="list-style-type: none"> 1. Those who rear a minor under 19 due to divorce or absence of marriage and have not received child support from payers despite applications for implementation of child support to the SKCSA; 2. Those with a title of execution for child support (child support report or judgment); 3. Those who are not receiving livelihood payment under the National Basic Living Security Act or livelihood support under the Emergency Aid and Support Act; 4. The income of the household to which a payee belongs is below 50% of the middle income under Article 2-11 of the National Basic Living Security Act or a payee is subject to support for single-parent families under Article 5 and Article 5-2 of the Single-Parent Family Support Act; and 5. Anyone pertaining to any of the following: <ol style="list-style-type: none"> a. A crisis continues even after support from Article 9-1-1 of the Emergency Aid and Support Aid and the welfare of a child is at risk or has such a likelihood (e.g., diseases of children, failure to pay schools and meals, two-month or longer overdue rents and utilities); b. Subject children or payees have serious illnesses, and have been subjected to surgery or hospitalisation for one month or longer, which hinders daily life (i.e., cases where care is needed for an illness or an injury); c. Payees are mother-side or father-side grandparents; d. Payees face economic difficulties due to job loss or the closing of a business and the environment of a child's |

| | | |
|-----------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | <p>growth is unstable; or</p> <p>e. Other cases where the necessity for support is recognised by the Temporary Child Support Payment Screening Committee.</p> |
| Source of funding (initial and recurrent) | Initial support by the government as seed funding; funded by the marriage registration fee as the recurrent source of funding. | Recurrent support by the government |
| Nature (statutory or administrative) | Administered by MAS with statutory power | Administered by SKCSA with statutory power |
| Set-up (standalone or as part of another system) | As a part of MAS in the FRO | As a part of the SKCSA |
| Staffing (government employees or contract staff) | Core staff members can include administrative/legal staff and social workers. | There was no information about staffing that particularly take care of emergency child support. |
| Key features of the plan (e.g. mechanism for disbursement, ways to collect repayment/ bad debts, performance pledge) | <p>The Team explored the option of collecting levies from couples at the marriage registration to protect them in case of a future divorce.</p> <p>Through the ISP, the Government works to ensure that no divorcees in Hong Kong will be denied access to basic living conditions because of the lack of means and resources. As the average</p> | <p>If a child is at risk or at potential risk due to default of child support, SKCSA will temporarily provide emergency aid for child care. Temporary emergency child support will be offered so that a child does not fall into a problem due to economic difficulties.</p> <p>Procedure:</p> <ol style="list-style-type: none"> 1. Application for support: custodial single-parent may apply |

| | | |
|-----------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | <p>amount of unpaid maintenance is not set, the Team tentatively propose the maximum amount of monthly support to be equivalent to the standard rates and supplements from CSSA or the amount stated in the maintenance order, whichever is lower. Any rights and remedies of support payment given to the payees will be transferred to the ISP board by subrogation right to settle the disbursement.</p> | <p>if he/she meets the requirements</p> <p>2.1 Confirmation of documents and requirements: the Implementation Team conducts a review of related documents and checks if the qualifications are met</p> <p>2.2 Screening and decision: the Temporary Child Support Payment Screening Committee screens and resolves the applications</p> <p>3. Decision: whether to disburse payment to the applicant or not. After emergency support, the obligor will be subject to execute the right to indemnity.</p> <p>The support is KRW\$200,000 per child ((100,000 Won for a child if there is a child-rearing cost based on the Single-Parent Family Support Act) and covers nine months. If a crisis is not resolved after nine months, there may be an extension of up to three months (i.e., up to 12 months in total).</p> <p>There was no information about bad debts and performance pledges.</p> |
| <p>Assessment of the effectiveness of the plan</p> | <p>N/A</p> | <p>No available information about the assessment of the effectiveness of emergency child support.</p> |

| | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Review on the limitations of the plan | N/A | No available information about the limitation of emergency child support. |
| Performance of the plan (e.g. no. of cases handled, costs per case handled, length of time in handling each case, amount of bad debts, financial sustainability) | N/A | In 2019, a total of KRW\$670 million were used as emergency assistance funds to provide temporary child support for 660 minors from families who failed to receive child support |
| Features considered relevant or applicable to Hong Kong | N/A | A Temporary Child Support Payment Screening Committee is established to settle appeals from the applicants. Hence, a board under the statute of the MAS is recommended to administer the fund with subrogation right, make recommendations to the government to adjust the rate of the marriage registration fee if necessary, and review applications upon request. |

Appendix G – Divorce Procedures in Hong Kong

The following table provides a detailed summary of the divorce procedures in Hong Kong, including child and financial disputes (as at August 2020).

Table G.1 Summary of the divorce procedure in Hong Kong

| Time | Proceeding stage | Details | | Required documents |
|----------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Mediation can be taken place before the issue of the petition, anytime during the proceedings up to the trial. | | | | |
| Any time after 12 months from the Marriage | <p>A party (“Petitioner”) may file a Divorce by way of a Petition at the Family Court in Hong Kong</p> <p>OR</p> <p>Both parties can file a Divorce by way of a Joint Application at the Family Court in Hong Kong</p> <p>If:</p> <p>a) Either party is domiciled in HK; or</p> <p>b) Either party is a habitual resident in HK for 3 years; or</p> <p>c) Either party has a substantial connection with HK.</p> | <p>There are no restrictions on the place of the marriage, nationality of the parties or the whereabouts of the other party</p> <p><i>Potential hearing:</i></p> <p>However, if the jurisdiction of the petition or the divorce itself or the facts stated in the Petition were challenged by the other party, the Court will determine the jurisdiction by way of a hearing first.</p> <p>If the suit falls within the jurisdiction of Hong Kong, the other party will be named as “Respondent”.</p> | <p>The Petitioner must show that the marriage has broken down irretrievably based on any of the following facts:</p> <p>a) Adultery (needs a strict standard of proof)</p> <p>b) Unreasonable behaviours (behaviours that are not acceptable to the party and details of those behaviours must be pleaded in the Petition)</p> <p>c) One-year separation with the consent of the other party (written consent/ confirmation by the Respondent is required)</p> <p>d) Two-year separation (to state the month & year of</p> | <ol style="list-style-type: none"> 1. Divorce petition/Joint-Application with Statement of Truth 2. Statement as to Arrangement for Children 3. Certificate with Regard to Reconciliation 4. Certificate of Marriage; 5. Notice of Proceedings (Form 3) 6. Petitioner’s Certificate as to Mediation 7. Respondent’s Certificate as to Mediation; 8. A publication of Family Mediation. 9. Notice of First Appointment |

| | | | | |
|----------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|-------------------------------------------|
| | | | <p>commencement of the separation</p> <p>e) Desertion for over a year by the other party (rarely used nowadays)</p> | |
| Within one year from the issue of the Petition | Service of the petition (must be done by a third party but not the Petitioner) | <p>Deliver the divorce Petition to the Respondent by:</p> <ul style="list-style-type: none"> • Personal service (pass the documents to the Respondent in person); • Post (through the original post); • Insertion to letter box of the Respondent's address | | 1. Affirmation of Service of the Petition |
| Within 8 days from the date of service of the petition or ASAP | <p>Respondent's initial reply to the divorce to indicate his/her intention on the following 3 aspects:</p> <p>a) main suit;</p> <p>b) children arrangement; and</p> <p>c) ancillary relief & maintenance.</p> | <p>"Undefended suit" (agree to the divorce & the facts on petition):</p> <p>1. Respondent to file the Acknowledgement of Service (Form 4) to the Court</p> <p>OR</p> | | 1. Acknowledgement of Service (Form 4) |
| Within 28 days from Form 4 or before the set down of the case | <p>Respondents' "answer" following submission of Form 4</p> <p>(only for defended suits)</p> | <p>"Defended suit" (either disagrees with the Divorce or disagrees with the facts stated on the petition):</p> <p>1. Respondent to file the Acknowledgement of Service (Form 4) to the Court</p> <p>2. Respondent to file and serve the Answer stating the objection reason</p> | | 1. The Answer with the statement of Truth |

| | | | |
|------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Within 14 days from the Answer | Petitioners' "reply" to the "answer" (only for defended suits) | 3. Petitioner to file and serve the Reply ; or Petitioner can suggest to water-down the "particulars" in Petition to a mild revision or to withdraw the "behaviours" petition but to file a petition based on "separation by consent" if time permit to avoid wasting time and costs for a divorce trial | 1. The Reply with the statement of Truth |
| ① Divorce suit; ② Children arrangement (optional); ③ Ancillary relief (optional); ④ Special/ interim applications (optional) | | | |
| ③ 14-28 days before the First Appointment Hearing | ① Set down divorce suit ③ File financial statement | ① Set down the suit for directions by filing a Form 21 by the Petitioner (either "Undefended suit" or "Defended suit") ③ Both parties to file Finance Statement (Form E) (Standard Court Form of 20 pages) stating assets, liabilities, income and expenses of oneself and the children | 1. ① Form 21 2. ③ Form E 3. ③ First Appointment Bundle 4. ③ Draft Questionnaire on Form E |
| 10 ≤ weeks from the Petition | ② Children's Appointment ③ <i>First Appointment</i> | ③ Takes around 15 minutes | / |
| 10-12 ≤ weeks | ① Call-over hearing for divorce suit ① Undefended Suit: Decree Nisi ② Court orders on child arrangement ③ Court orders on ancillary relief ④ Special/ interim applications (if applicable) | ② If no consent for children arrangement, Court will make order for: a) Interim custody care & control and access arrangement b) Calling for Social Investigation Report (SIR) ③ If no consent on financial issues, Court can make order for a) Questionnaire on respective financial status (further discovery of documents and information) b) Maintenance pending suit (MPS) (upon Petitioner's application) c) Filing of Affirmation on certain issues | 1. ② Social Investigation Report with the statement of truth is prepared by the Social Work Officer of SWD FCPSU who will interview the parties, children-in-question, their caregivers and collect information from relevant parties (e.g., teacher or relevant helping professionals) to make |

| | | | |
|----------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | <p>④ Special/ interim applications (if applicable) The parties can make <i>Interlocutory applications</i> such as MPS, third-party interest on matrimonial properties, trust issues</p> | <p>recommendations for the Court's consideration)</p> <ol style="list-style-type: none"> 2. ③ Questionnaire 3. ③ Answer the Questionnaire with the statement of truth 4. ④ Summons 5. ④ Petitioner to file Supporting Affirmation 6. ④ Respondent to file opposing Affirmation 7. ④ Petitioner to file Replying Affirmation |
| <p>① 8 ≤ weeks</p> <p>④ 6-12 ≤ weeks</p> | <p>① Petitioner to file Affirmation to support case</p> <p>④ Court hearing on Interlocutory application</p> | <p>④ When all documents are filed and ready for a substantial hearing, the Court can set down for a hearing on Interlocutory application. FDR will be adjourned after the Interlocutory result.</p> | / |
| <p>① 8 ≤ weeks</p> <p>② 6-30 ≤ weeks</p> <p>③ 6-12 ≤ weeks</p> | <p>① Respondent to file Affirmation-in-reply</p> <p>② Both parties to file Children Statement Form J (Standard Court Form of 10 pages)</p> <p>② 1-2 Adjourned Children's Appointment</p> | <p>③ 2-3 months for every adjournment</p> | <ol style="list-style-type: none"> 1. ② Form J; or 2. ② Affirmation <p>② If necessary: Clinical Psychological Report with the statement of truth as recommended by SWD or as per the Court Order</p> |

| | | | |
|------------------------------|-------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | ③ 2-3 Adjourned First Appointment Hearings thereafter | | |
| 3 ≤ months | ① Pre-Trial Review | / | / |
| 6 ≤ months | ① Trial | ① Trial <ul style="list-style-type: none"> • 1 Day • Granted the Decree Nisi; or dismiss the Petition | / |
| 26 ≤ weeks from the petition | ② CDR (Children’s Dispute Resolution) ③ FDR (Financial Dispute Resolution) | ② Around half-2 days ③ Around 1-4 days. If FDR is unsuccessful, FDR Judge will transfer the case to Listing Judge <ul style="list-style-type: none"> • Directions for filing updated Form E, Affirmations from both parties, when the case is ready for trial, Court will assign a Trial Judge (separated judge who has no previous knowledge of the case) | 1. Hearing Bundle including Court documents filed 2. Written submission 3. Without prejudice and Open Proposal for settlement ③ When FDR transfers the case to Listing Judge 1. Updated Form E from both parties 2. Supporting Affirmations |
| 8 ≤ weeks from CDR and FDR | ② Trial and Pre-Trial Review ③ Pre-trial Review | ② CDR judges will set down for a Trial ② Pre-trial Review <ul style="list-style-type: none"> • Directions for calling updated SIR or Progress Report, Affirmation of the parties ③ Listing Judge transfers the case to Trial Judge for Pre-trial Review <ul style="list-style-type: none"> • Directions for logistics of the trial including the filing of expert reports (valuation report), Skeleton Argument and Authorities, Parties; Statement of Open Proposals and Reply on the Open Proposals | 1. ③ Expert reports with the statement of truth (valuation report) 2. ③ Skeleton Argument and Authorities 3. ③ Parties Statement of Open Proposal 4. ③ Reply on the Open Proposals |

| | | | |
|----------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|--------------------------------------------------------------------------|
| ② 8 ≤ weeks from Pre-Trial Review ③ 6 ≤ months from Trial | ② Trial for a final order ③ Trial for a final order | ② Takes 2 ≤ days ③ Takes 3 ≤ days | 1. ③ Trial Bundles 2. ③ Opening Submission 3. ③ Closing Submission |
| ② 4 ≤ weeks from trial ③ 8 ≤ weeks from Trial | ② Judgment on Children Arrangements ③ Judgment on Ancillary Relief | / | / |
| 6 weeks after the issuance of Decree Nisi | Obtained s.18 declaration (e.g. Final order for Custody, Care & Control, Access arrangement & children maintenance, not necessary for the ancillary relief for the spouse) | | |
| | Issue of Decree Absolute | | |
| Outstanding of <u>maintenance from the first month and up to 12 months</u> | The payee can take out enforcement proceedings to settle the outstanding maintenance for either spouse or children or for both. A fresh application for the additional outstanding 12 months is required. For handling the maintenance in arrears, the parties can undertake negotiations among themselves, via a third party (e.g. social worker, lawyers, relatives or friends) and family mediation. | | 1. <i>Inter-parte</i> Summons 2. Affidavit /Affirmation-in-support |
| Time | Proceeding stage | Details | Required documents |
| Every 3-4 months | Call-over hearings | 1-4 Call-over hearing (around 15 mins) | Respondent's Reply, if any |

| Final order (not applicable to MPS or Interim Maintenance) | | | |
|------------------------------------------------------------|-----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | <i>Application</i> | <i>Condition</i> | <i>Remark</i> |
| | Attachment of Income Order | Only if Judgment creditor has steady employment and stable income in Hong Kong which is known by the Petitioner | Apart from maintenance in arrears, petitioners can claim for <ul style="list-style-type: none"> • Interest • Surcharge • Costs of proceedings • Any sum due under the maintenance order |
| | Charging Order | Only if Judgment creditor has landed property in Hong Kong which is known by the Petitioner | |
| | Garnishee Order | Only if Judgment creditor has bank deposits at the bank account in Hong Kong which is known by the Petitioner | |
| | Writ of <i>Fieri Facias</i> | Only if Judgment creditor has valuable personal items in Hong Kong which is known by the Petitioner and the whereabouts of the items are also known | |
| | Prohibition Order | Only useful if Judgment creditor needs to go overseas for work, residence or holiday trip in the coming 3-4 months which is known by the Petitioner | |
| | | | |
| Time | Judgment Summons | Details | Remarks |
| 6-12 months | Examination stage | <ul style="list-style-type: none"> • Praeceptum for issue of JS • After granting leave, need to issue JS • 2-3 Call-over hearings in every 3-4 months • Judgment creditor have to file Updated Form E • Questionnaire may be filed to ascertain the financial situation | <ul style="list-style-type: none"> • Need personal service • Payer must attend the Court hearing |
| 6-12 months | Committal stage | <ul style="list-style-type: none"> • Must be after the Examination Stage • <i>Ex-parte</i> Summons [without notifying the Judgment creditor] • Statement of Grounds • Supporting Affirmation • After granting leave, need to issue <i>Inter-parte</i> Summons | <ul style="list-style-type: none"> • Need personal service |
| 12-18 months | Waiting time | Payer may delay the proceedings by applying for variation of the maintenance order once he received the application for JS | Updated Form E and Opposing Affirmation |
| | <i>Trial</i> | <i>Judgment</i> | / |

Appendix H – Statistics Provided by the Judiciary

Appendix H.1 - Number of divorce cases filed in the Family Court (2008 – 2018)

Table H.1 Number of divorce cases filed in the Family Court (2008 – 2018)

| Case Type | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 |
|---------------------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|
| Matrimonial Causes | 15,703 | 16,374 | 17,359 | 18,374 | 19,164 | 18,651 | 17,219 | 16,652 | 16,966 | 17,006 | 16,458 |
| Joint Application | 2,327 | 2,889 | 3,490 | 4,169 | 4,091 | 4,309 | 4,761 | 4,815 | 4,988 | 6,296 | 6,540 |
| Total | 18,030 | 19,263 | 20,849 | 22,543 | 23,255 | 22,960 | 21,980 | 21,467 | 21,954 | 23,302 | 22,998 |

Appendix H.2 - Number of Decree Absolute granted in the Family Court (2008 – 2018)

Table H.2 Number of Decree Absolute granted in the Family Court (2008 – 2018)

| Case Type | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 |
|---------------------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|
| Matrimonial Causes | 15,534 | 14,629 | 15,266 | 15,933 | 17,272 | 18,323 | 15,913 | 15,544 | 12,961 | 14,782 | 14,933 |
| Joint Application | 2,237 | 2,373 | 2,901 | 3,664 | 3,853 | 3,948 | 4,106 | 4,531 | 4,235 | 4,612 | 5,388 |
| Total | 17,771 | 17,002 | 18,167 | 19,597 | 21,125 | 22,271 | 20,019 | 20,075 | 17,196 | 19,394 | 20,321 |

Appendix I – Calculation Methods and Results

Appendix I.1 – Calculations on the Divorce Rate in Hong Kong

Table I.1 cDR, cDRI, Total Married Population and Divorce Decrees Granted (1991 - 2016)

| Year | Total Married Population | Divorce decrees granted | cDR | cDRI |
|------|--------------------------|-------------------------|------|------|
| 1991 | 2,603,149 | 6,295 | 1.11 | 2.42 |
| 1996 | 3,022,634 | 9,473 | 1.48 | 3.13 |
| 2001 | 3,244,193 | 13,425 | 2.00 | 4.14 |
| 2006 | 3,338,585 | 17,424 | 2.54 | 5.22 |
| 2011 | 3,473,926 | 19,597 | 2.77 | 5.64 |
| 2016 | 3,607,051 | 17,196 | 2.34 | 4.77 |

Table I.2 Percentage Change of cDR, cDRI, Total Married Population and Divorce Decrees Granted (1991 - 2016)

| Year | (% change) | | | |
|------|------------|---------|--------------------|-------------------------|
| | cDR | cDRI | Married Population | Divorce Decrees Granted |
| 1991 | - | - | - | - |
| 1996 | +33.33% | +29.60% | +16.11% | +50.48% |
| 2001 | +35.14% | +32.04% | +7.33% | +41.72% |
| 2006 | +27.00% | +26.12% | +2.91% | +29.79% |
| 2011 | +9.06% | +8.09% | +4.05% | +12.47% |
| 2016 | -15.52% | -15.49% | +3.83% | -12.25% |

Appendix I.2 – Calculations on the Survival Rate of Marriages and Hazard Rate of Divorce Among Marriages in Hong Kong and mainland China (C&SD Data)

Using the Hong Kong C&SD data, the Team presents further details on our calculation of the survival and hazard rate of marriages in Hong Kong and mainland China here:

- Define X as the number of years that divorce happens after marriage, if we denote by p_i the probability of $(X = i)$, i.e.

$$p_i = \Pr(X = i),$$

- Then the hazard rate of divorce at i years after marriage is defined by

$$h_i = \frac{p_i}{S_i} = \frac{p_i}{\Pr(X \geq i)} = \Pr(X = i | X \geq i).$$

- In practice, h_i can be estimated by the ratio of number of divorce and the number of marriages survived up to i years. Thus, the hazard rate of divorce after i years is

$$\hat{h}_i = \frac{y_i}{n_i},$$

- Where y_i is the number of divorces after i years and n_i is the number of marriages survived $i - 1$ years. The interesting calculation based on h_i is surviving of marriage past j years given survival past i years, i.e.

$$S_{i,j} = \Pr(X > j | X \geq i) = \prod_{k=i}^j (1 - h_k),$$

- Where in our result we report $S_{0,j}$.

Appendix I.3 – Calculations on the Marriage Survival Probability for Different Sex and Age in South Korea (1990 – 2017)

The marriage survival probability for different age-group and different sex is computed using marriage and divorce data in South Korea during 1990 - 2017. The mean of survival function summarises the survival of a marriage. However, this quantity underestimates the average of survival, since we cannot compute for large values of j (lack of data). Therefore, we use the Restricted Mean Survival Time in our calculation. The restricted mean survival time of a random variable T is the mean of the survival time $\min(T, \tau)$ limited to some horizon $\tau > 0$. It equals the area under the survival function $S(u)$ and it is defined as:

$$E\{\min(T, \tau)\} = \int_0^{\tau} S(u) du$$

Simply put, Restricted Mean Survival Time can be thought of as the year of marriage life expectancy. The Team fitted the Cox proportional hazards model to the data, as shown in Table J.5. Results show that marriage year, age group, and sex have significant effects on the divorce hazard, with the 25-29 age group being the less hazardous age group for any given marriage year and sex. The Schemper-Henderson of the proportion of variation that is explained by the fitted Cox model is 72.38%, which is high (100% is the maximum accuracy of the model), reflecting the accuracy of our fitted model when covariates were included in the model.

Table I.3 Cox proportional hazards model for data

| Analysis of Maximum Likelihood Estimates | | | | | | |
|-------------------------------------------------|-----------|-----------------|-------------|------------|----------------|---------------|
| | DF | Estimate | S.E. | | p-value | Hazard |
| Year of Marriage | 1 | -0.00396 | 0.0000826 | 2301.9294 | <.0001 | 0.996 |
| Age (15-19) | 1 | 0.26756 | 0.00710 | 1419.1698 | <.0001 | 1.307 |
| Age (20-24) | 1 | -0.84567 | 0.00680 | 15443.8423 | <.0001 | 0.429 |
| Age (25-29) | 1 | -1.27087 | 0.00674 | 35600.4853 | <.0001 | 0.281 |
| Age (30-34) | 1 | -0.78653 | 0.00675 | 13578.7602 | <.0001 | 0.455 |
| Age (35-44) | 1 | -0.14116 | 0.00677 | 434.8029 | <.0001 | 0.868 |
| Age (45-59) | 1 | 0.04142 | 0.00692 | 35.8805 | <.0001 | 1.042 |
| Age (60+) | 1 | 0 | - | - | - | - |
| Sex (Husband) | 1 | 0.00259 | 0.00108 | 5.7875 | 0.0161 | 1.003 |
| Sex (Wife) | 1 | 0 | - | - | - | - |

Appendix I.4 – Ratio of Marriage to Divorce Each Year in Hong Kong (2001 – 2016)

Table I.4 Ratio of Marriage to Divorce in Hong Kong (2001-2016)²⁷¹

| Year | Marriage | Divorce decrees granted | Ratio |
|-------------|-----------------|--------------------------------|--------------|
| 2001 | 32,825 | 13,425 | 40.9% |
| 2002 | 32,070 | 12,943 | 40.4% |
| 2003 | 35,439 | 13,829 | 39.0% |
| 2004 | 41,376 | 15,604 | 37.7% |
| 2005 | 43,018 | 14,873 | 34.6% |
| 2006 | 50,328 | 17,424 | 34.6% |
| 2007 | 47,453 | 18,403 | 38.8% |
| 2008 | 47,331 | 17,771 | 37.5% |
| 2009 | 51,175 | 17,002 | 33.2% |
| 2010 | 52,558 | 18,167 | 34.6% |
| 2011 | 58,369 | 19,597 | 33.6% |
| 2012 | 60,459 | 21,125 | 34.9% |
| 2013 | 55,274 | 22,271 | 40.3% |
| 2014 | 56,454 | 20,019 | 35.5% |
| 2015 | 51,609 | 20,075 | 38.9% |
| 2016 | 50,008 | 17,196 | 34.4% |

²⁷¹ Census and Statistics Department, Demographic Statistics Section. (2018). *Marriage and Divorce Trends in Hong Kong, 1991 to 2016*. Retrieved from <https://www.statistics.gov.hk/pub/B71801FB2018XXXXB0100.pdf>

Appendix J – Findings from the e-Form

Appendix J.1 - Reasons for Not Applying for Maintenance Orders

Table J.1 Reasons for Not Applying for Maintenance Orders

| Reasons for Not Applying for Maintenance Orders[#] | Amount (n=39) |
|------------------------------------------------------------------------------------------------|--------------------------|
| No such need | 12 |
| The receiver has already received CSSA / would apply CSSA / | 10 |
| The payer is unemployed / no fixed income / has low income / no ability to work/receiving CSSA | 10 |
| Both parties agreed not to require each other to provide maintenance | 3 |
| Unknown | 2 |
| Unable to locate Payer residing/working in China | 1 |
| The receiver has support from own family | 1 |

[#] Multiple answers were allowed.

Appendix J.2 – Common Forms of Maintenance Payments

Table J.2 Reasons for Not Applying for Maintenance Orders

| Have AR or maintenance orders been arranged (N=308) ¹ | 188 | (61.0%) |
|-----------------------------------------------------------------------------|------------|----------------|
| Monthly Maintenance Order (N=188) | 125 | (66.5%) |
| Spousal | 15 | (8.0%) |
| Child(ren) | 60 | (31.9%) |
| Both | 50 | (26.6%) |
| Nominal Maintenance (HK\$1.00 per annum) (N=308) | 68 | (36.2%) |
| Waived or on other maintenance (N=188) | 59 | (31.4%) |
| Other Maintenance ¹ (N=188) | 54 | (28.7%) |
| Lump Sum | 35 | (64.8%) |
| Shared Sale Proceeds of the Properties | 11 | (20.4%) |
| Obtained a Transfer of Property Order | 10 | (18.5%) |

¹ Multiple types are possible. The individual items may not necessarily sum up to the overall number.

Appendix J.3 - Reasons for Applying for Nominal Maintenance

Table J.3 Reasons for Applying for Nominal Maintenance

| Reasons[#] | Amount (n = 89) |
|-------------------------------------------------------------------------------------------------------------|------------------------|
| The receiver has already received CSSA | 25 |
| Payer has low income / no ability to work/receiving CSSA | 12 |
| No such need | 11 |
| Both parties agreed not to require each other to provide maintenance | 9 |
| Payer has no fixed income | 7 |
| Payer is unemployed | 5 |
| The receiver has a better earning capacity, savings or other income sources other than the ex-Spouse | 4 |
| The receiver would apply CSSA | 4 |
| Unknown | 3 |
| The receiver has support from own family | 2 |
| Payer refused to disclose the source of income or assets | 2 |
| Obtained a lump sum Order | 1 |
| Unable to locate Payer residing/working in China | 1 |
| The payer is likely to not pay | 1 |
| The payer is unwilling to settle maintenance | 1 |
| The receiver would not like to contact the payer anymore | 1 |
| Unable to locate Payer's assets in China | 0 |

Multiple answers were allowed.

Appendix J.4 – Key Characteristics of Cases Identified by Social Workers or Lawyers

Figure J.1 Key Characteristics of Cases Identified by Social Workers or Lawyers

