A. GENERAL DESCRIPTION OF THE LEGAL CONSEQUENCES OF DIVORCE A. GENERAL DESCRIPTION OF THE LEGAL CONSEQUENCES OF DIVORCE Once a marriage relationship is dissolved in a legal sense (i.e. a divorce decree/order has been granted by the Court), each party will no longer be a spouse and both parties are free to remarry. Certain rights that are available to each party as a spouse will be either lost or affected upon divorce, for example: certain benefits under a former spouse's life insurance will be lost; social security benefits may be lost or changed; taxation status will be changed (e.g. married person's allowance); medical insurance provided by a former spouse's employer will be lost; and divorce will cause any testamentary gift (e.g. gift in the will) to a former spouse or benefits under a family trust to lapse. Both parties lose rights that were given to them under certain matrimonial legislations, in particular their "matrimonial home rights". However, as far as children are concerned, each parent (unless otherwise ordered by the Court) retains parental responsibility on divorce and there is an obligation on both the father and the mother to provide their children with financial support. Orders for financial provision, or property adjustment orders (if any), made by the Court in accordance with the law in favour of either of the parties to the marriage will take effect upon divorce. Orders for settlement (e.g. transfer or take over of any property), or variation of settlement, in respect of any child of the family will also take effect upon divorce. All other orders for children take effect as soon as they are made. NULLITY The Court of First Instance and the District Court have jurisdiction to declare a marriage null under the Matrimonial Causes Ordinance if: (1) either parties to the marriage was domiciled in or had a substantial connection with Hong Kong at the date of the petition; or (2) either parties to the marriage was habitually resident in Hong Kong throughout the period of three years immediately preceding the date of petition; or (3) both parties to the marriage were residents in Hong Kong at the date of the petition; or (4) the respondent in the proceedings was resident in Hong Kong at the date of the petition; or (5) the marriage was celebrated in Hong Kong. A void marriage is regarded by law as never having taken place. On the other hand, a voidable marriage is valid and subsisting until declared void by a decree of nullity. There are several circumstances under which a marriage can be declared null and void by the Court, depending on whether the marriage took place after 30 June 1972 or before 1 July 1972, such as: A. GROUNDS UPON WHICH MARRIAGE AFTER 30 JUNE 1972 WILL BE NULL AND VOID (1) That it is not a valid marriage under the Marriage Ordinance, that is to say at the time of the marriage: the parties to the marriage are within the prohibited degrees of kindred and affinity (e.g. marriage between brother and sister); or either party is under the age of 16; or the parties have intermarried (marriage between blood relatives) in disregard of certain requirements as to the formation of marriage (2) That the marriage is otherwise invalid by the law of Hong Kong (3) That at the time of the marriage either party was already lawfully married (4) That the parties are not respectively male and female B. GROUNDS UPON WHICH MARRIAGE AFTER 30 JUNE 1972 WILL BE VOIDABLE (1) That the marriage has not been consummated due to the incapacity or refusal of one party to do so (Ground 1) (2) Either party to the marriage did not validly consent to it due to reasons such as duress, mistake, unsoundness of mind (Ground 2) (3) Either party was suffering from mental disorder at the time of the marriage (Ground 3) (4) Either party was suffering from communicable venereal disease (Ground 4) (5) The respondent was pregnant by some person other than the petitioner at the time of the marriage (Ground 5) However, the court shall not, in proceedings instituted after 30 June 1972, grant a decree of nullity on the ground that a marriage is voidable (whether the marriage took place before or after 1 July 1972) if the respondent satisfies the court:- (a) that the petitioner, with knowledge that it was open to him to have the marriage avoided, so conducted himself in relation to the respondent as to lead the respondent reasonably to believe that he would not seek to do so; and (b) that it would be unjust to the respondent to grant the decree. Such provision replaces, in relation to any decree to which it applies, any rule of law whereby a decree may be refused by reason of approbation, ratification or lack of sincerity on the part of the petitioner or on similar grounds. Without prejudice to the above, the court shall not grant a decree of nullity on the grounds mentioned in the said Grounds 2, 3, 4 & 5 unless the

court is satisfied that the proceedings were instituted within 3 years from the date of the marriage. Without prejudice to the above, the court shall not grant a decree of nullity on the Grounds 4 & 5 unless the court is satisfied that the petitioner was at the time of the marriage ignorant of the facts alleged. C. VOID OR VOIDABLE MARRIAGE CELEBRATED BEFORE 1 JULY 1972 Marriage which took place before 1 July 1972, will be void on any of the following grounds:- (1) That the parties to the marriage are within the prohibited degrees of consanguinity or affinity (meaning descended from the same ancestor) (2) That the former husband or wife of either party to the marriage was living at the time of the marriage and the marriage with such former husband or wife was then in force (3) That the consent of either party to the marriage was obtained by force or fraud (4) That the marriage is invalid by the law of Hong Kong Such marriage will be voidable by the law of Hong Kong on any of the following grounds:- (1) That the marriage has not been consummated due to refusal of either party to do so (2) That at the time of the marriage either party to the marriage: was of unsound mind; or was a mentally disordered person to the extent as to be unfitted for marriage and the procreation of children; or was subject to recurrent attacks of insanity or epilepsy (3) That the respondent was at the time of the marriage suffering from communicable venereal disease (4) That the respondent was at the time of the marriage pregnant by some person other than the petitioner (5) At the time of the marriage either party to the marriage was impotent or incapable of consummating the marriage If the marriage is declared null (invalid), each party will be free to remarry in the same way as if a divorce had been granted. The Court has the same power to make orders relating to money and children as it does in divorce and judicial separation proceedings. A decree of nullity granted after 30 June 1972 on the ground that a marriage is voidable shall operate to annul the marriage only as respects any time after the decree has been made absolute, and the marriage shall, notwithstanding the decree, be treated as if it had existed up to that time. B. RESOLUTION METHODS OTHER THAN DIVORCE B. RESOLUTION METHODS OTHER THAN DIVORCE Divorce is a traumatic process to go through and has far-reaching impact. It may not be your best solution in the end. Even if both parties have decided to live apart, you may want to settle the problems in an amicable way. There are other options which you can consider. 1. APART FROM GOING TO COURT TO APPLY FOR A DIVORCE, ARE THERE ANY OTHER CHANNELS THROUGH WHICH UNHAPPY SPOUSES CAN SETTLE THEIR DIFFERENCES? WHAT ARE THE DIFFERENCES BETWEEN THESE OTHER CHANNELS AND DIVORCE PROCEEDINGS? 1. APART FROM GOING TO COURT TO APPLY FOR A DIVORCE, ARE THERE ANY OTHER CHANNELS THROUGH WHICH UNHAPPY SPOUSES CAN SETTLE THEIR DIFFERENCES? WHAT ARE THE DIFFERENCES BETWEEN THESE OTHER CHANNELS AND DIVORCE PROCEEDINGS? You may consider making use of the following alternatives:- (i) Deed of Separation – It refers to a separation agreement that can be made between the two parties by themselves. The agreement can specify a period of separation, and what the parties will do with their children (if any) and how their children’s and each other’s maintenance will be provided. It is recommended that a lawyer be consulted before such an agreement is made. A deed of separation is appropriate where the parties are in a harmonious relationship and there is a good chance that each party will agree to be bound by the terms. But the downsides of this option are: If any party has breached the term(s) of the Deed, the other party can only sue the breaching party for breach of contract. The enforcement of it is different from the enforcement of a court order made in divorce or judicial separation proceedings. Legal Aid is not available for negotiating a deed of separation. In situations where proceedings for divorce or judicial separation are issued subsequently, the existence of a deed of separation does not prevent the Court from making a different order even though the deed embodies terms to the effect that the parties intended it to be final: because the law provides that any term in a deed that restricts the right of any party to apply to the Court in future proceedings shall be void. But in future proceedings the Court will usually be inclined to uphold the terms of the deed (assuming it was made voluntarily and each party had the opportunity to seek independent legal advice) unless there is very good reason to do otherwise. (ii) Separation Order – Under some circumstances, and if no agreement can be reached, one party can apply to the District Court for a separation order together with maintenance orders (e.g. Either party may be ordered by the Court to give financial

support to the other party, and/or the children, for the costs of living.) provided that he or she has not committed adultery. In the case of a wife, she may apply where the husband has been convicted of having assaulted her, or has deserted her, or is guilty of persistent cruelty to her, or her infant children, or has knowingly transmitted venereal disease to her, or has compelled her to be a prostitute, or is a habitual drunkard or drug addict. In the case of a husband, he may apply where the wife has been guilty of persistent cruelty to his children or is a habitual drunkard or drug addict. If the Court finds that there are sufficient grounds, it may order that the parties be separated, i.e. they need not live together any more although they are still legally husband and wife (they are not free to re-marry at this stage). The Court may also make orders relating to the custody of the children and the maintenance of the other spouse and of the children. (iii) Judicial Separation - A spouse or couple may apply to the District Court for a judicial separation, which is a legal process through which parties obtain formal recognition of their separation. The minimum 1 year rule of marriage does not apply to judicial separation. However, to get a judicial separation, the applicant has to prove basically the same facts as they would in a divorce.[see Part III on Divorce] The effect of a judicial separation is the same as a separation order, i.e. the parties are still husband and wife but they need not cohabit. Parties who are judicially separated are not free to re-marry. The Decree is only granted subject to the requirement that satisfactory arrangements have been made for the welfare of any children. There are several possible reasons why a couple would apply for judicial separation instead of divorce, for example: when one or both parties are opposed to divorce on either religious or moral grounds; one party does not wish to give the other the ability to remarry; when the parties have been married for less than 1 year and are therefore unable to apply for divorce; in order to prevent the loss of benefits available only to a spouse. The existence of a judicial separation decree does not preclude either party from applying for divorce subsequently. (iv) Mediation - Family mediation is an alternative way to settle family dispute other than going to Court. It has been increasingly used by separating or divorcing couples to settle issues arising from marriage breakdown. What is "family mediation"? In practical terms, family mediation is a problem-solving process designed to help separating/divorcing couples reach their own mutually acceptable agreements regarding on-going arrangements for their children and/or the resolution of financial matters. It is a voluntary process in which a trained, impartial third person (the mediator) can assist both parties to communicate and negotiate issues in a confidential setting. In a family mediation session, the mediator will help you to: discuss and decide which areas are in dispute; explore each party's needs and interests; expand options and select the most suitable solution; draw up your agreement in detail setting out how you have agreed to solve each problem. Mediators? Who are they? Mediators come from various professional backgrounds. They usually have qualifications in law, psychology, social work or social science. They are specially trained and have to meet accreditation requirements covering knowledge and skills in negotiation and dispute resolution. They are also required to abide by a Code of Practice. Mediators are neutral. They do not take sides with either party; do not make decisions for parties; do not provide legal advice. Parties will be encouraged to consult their own lawyers for legal advice. do not offer counselling or therapy but may suggest such services; suggest new avenues to explore; help parties assess their own case realistically, assess the feasibility of the decisions; and help parties to explore settlement proposals in depth and find the solutions. 2. WHAT ARE THE ADVANTAGES OF FAMILY MEDIATION? 2. WHAT ARE THE ADVANTAGES OF FAMILY MEDIATION? Family Mediation provides a mean of reducing the cost, expense, uncertainty, trauma and delay of litigation. You may save some time and money in not having to contest matters in court. It also helps to improve communication between you and your partner and reduces the tension, bitterness and conflict that you may encounter in an adversarial litigation system. Mediation can also help both parties be better prepared to deal with future disputes e.g. continuing parental responsibilities. You make your own decisions and reach agreements which you and your former partner are more willing and ready to comply with. Family Mediation can improve your ability to communicate with your former partner.

Family Mediation can enhance your continuing relationship as parents and help you work better together as parents in the long-run. Does Family Mediation take a long time? It depends very much on the complexity and dimensions of the issues the parties need to settle. The degree of mutual cooperation and readiness to participate in the family mediation sessions also count. If issues are less complicated and the process goes smoothly, it may only take 2 or 3 mediation sessions, each lasting for about 2 hours, for the parties to reach agreement. Do I need to pay for the Family Mediation Service? You will have to pay if you retain the service of a private mediator. Some non-governmental agencies charge a fee according to a sliding scale based on the user's income, but a few agencies provide the service for free. Any other concerns about Family Mediation? Family Mediation may not be suitable for everyone. You will first have to attend an intake interview in which the mediator will assess whether family mediation is suitable for your particular circumstances. Family Mediation may not be appropriate for all disputes, e.g. in cases of child abuse, domestic violence, etc. as fear may prevent one party from negotiating freely. Legal advice can be sought by either party at any stage of the family mediation. Both parties have the right to terminate the family mediation at any time. Both parties must appreciate that what the other party says in a family mediation session cannot be used in any legal proceedings. Agreements drafted in the family mediation session are not legally binding. You may, after seeking a lawyer's advice on it, apply to the court to have your agreement made into a court order which will make the agreement legally binding. Confidentiality Family Mediators are required by their Code of Practice to observe confidentiality in respect of all matters disclosed in the family mediation session. When parties agree to enter family mediation, they will also be required by the mediator to sign an agreement that all negotiations are to be privileged and conducted on an unprejudiced basis. 3. ARE THERE ANY FORMAL ORGANIZATIONS OR VOLUNTARY AGENCIES PROVIDING FAMILY MEDIATION SERVICES TO COUPLES BEFORE OR AFTER DIVORCE? 3. ARE THERE ANY FORMAL ORGANIZATIONS OR VOLUNTARY AGENCIES PROVIDING FAMILY MEDIATION SERVICES TO COUPLES BEFORE OR AFTER DIVORCE? (a) You may seek more information regarding Family Mediation Services from the Judiciary at: the Mediation Co-ordinator's Office (Address: Room 111-116, Wanchai Tower, 12 Harbour Road, Hong Kong; Telephone: 2180 8063 or 2180 8065; Fax: 2180 8052) located within the Family Court building; or the Family Court Registry (Address: M2, Wanchai Law Courts, Wanchai Tower, 12 Harbour Road, Hong Kong; Telephone: 2840 1218; Fax: 2523 9170; E-mail: familycourt@judiciary.hk) (b) You may consult your own lawyer or social worker, etc. (c) You may also contact the following organizations: Caritas – Hong Kong Caritas Family Service 1/F., Caritas House, 2 Caine Road, Central, Hong Kong Tel. 2669 2316, 2843 4670 Fax. 2676 2273 Hong Kong Catholic Marriage Advisory Council Marriage Mediation & Counselling Service Room 101-109, M2 Level, Tsui Cheung House, Tsui Ping (North) Estate, Kwun Tong, Kowloon Tel: 2782 7560 Fax: 2385 3858 Hong Kong Christian Service 2/F., 33 Granville Road, Tsimshatsui, Kowloon Tel: 2731 6227 / 2731 6316 Fax: 2724 3520 / 2731 6333 Hong Kong Council of Social Service 12/F, Duke of Windsor Social Service Building, 15 Hennessy Road, Wanchai, Hong Kong Tel: 2864 2958 Hong Kong Family Law Association c/o G.P.O. Box 11417, Hong Kong Tel: Nil Fax: 2845 9168 Website: http://www.hkfla.org.hk Hong Kong Family Welfare Society Hong Kong Family Welfare Society Mediation Centre Western Garden, 80A, First Street, Sai Ying Pun, Hong Kong Tel: 2561 9229; 2832 9700 Fax: 2811 0806 Email Address: mediationcentre@hkfws.org.hk Website: http://www.mediationcentrehk.org Hong Kong International Arbitration Centre 38/F, Two Exchange Square, 8 Connaught Place, Hong Kong Tel: 2525 2381 Fax: 2524 2171 E-mail: adr@hkiac.org Website: http://www.hkiac.org Hong Kong Sheng Kung Hui Welfare Council 5/F., Holy Trinity Bradbury Centre, 139 Ma Tau Chung Road, Kowloon Tel: 2713 9174 Fax: 2711 3082 Kornhill Alliance Church Family Service Centre Rm 1006-1010, Kornhill Metro Tower, 1 Kornhill Road, Quarry Bay, Hong Kong Tel: 2516 5113 Fax: 2516 5505 Resource The Counselling Centre Suite 501, Ruttonjee House, 11 Duddell Street, Central, Hong Kong Tel: 2523 8979 Fax: 2845 7352 Shatin Alliance Community Services Centre G/F, Block E & F, Yue Tin Court, Shatin, N.T. Tel: 2648 9281 Fax: 2635 4795 St. James' Settlement 4/F., 85 Stone Nullah Lane, Wanchai, Hong Kong Tel: 2835 4342 Fax: 2833 9940 Yang Memorial Methodist Social Service Family Service Division G/F, Central Commercial Tower, 736 Nathan Road,

Mongkok, Kowloon Tel: 2171 4001 Fax: 2388 3062 The Hong Kong Federation of Women Free legal advice hotline: 2893 3303 The Hong Kong Federation of Women's Centre Hotline: 2386 6256 Free Legal Advice Scheme (Application can be made to any District Office, Home Affairs Department, Tel: 2835 2500) The Scheme has nine Legal Advice Centres each of which is in a district office. The nine district offices in which the Legal Advice Centers are operating are: Central and Western District Office (Tel: 2852 4377) Eastern District Office (Tel: 2896 6968) Island District Office (Tel: 2852 4324) Kwun Tong District Office (Tel: 2342 3431) Shatin District Office (Tel: 2158 5352) Tsuen Wan District Office (Tel: 3515 5805) Wan Chai District Office (Tel: 2835 1996 / 2835 1997) Wong Tai Sin District Office (Tel: 3143 1168) Yau Tsim Mong District Office (Tel: 2399 2111) Website: http://www.dutylawyer.org.hk/en/free/legal.asp DIVORCE IV. DIVORCE C. PRE-CONDITIONS FOR DIVORCE C. PRE-CONDITIONS FOR DIVORCE If you want to petition for a divorce on your own account, basically you have to fill in a petition form and take it personally to the Family Court Registry, M2, Wanchai Law Courts, Wanchai Tower, 12 Harbour Road, Hong Kong. If you and your spouse have agreed to apply jointly to the Court, you should fill in a joint application form together, and submit it as above. Will I need a lawyer? Probably yes. Submitting a petition or joint application for divorce puts legal proceedings in motion, so you will find it very helpful and safe to seek legal advice before any submission to the Court is made. You will particularly need a lawyer in the following circumstances: your spouse does not agree to a divorce; neither of you can agree on the arrangements to be made for the children or on financial matters. Each year, the Law Society of Hong Kong publishes a Directory of Hong Kong Law Firms which includes a list of firms handling matrimonial cases. This directory can be found and consulted in the Public Enquiry Service Centres of District Offices, public libraries, and at the office of the Law Society of Hong Kong. 1. WHAT CAN I DO IF I CANNOT AFFORD TO RETAIN A LAWYER TO REPRESENT ME IN DIVORCE OR MATRIMONIAL PROCEEDINGS? 1. WHAT CAN I DO IF I CANNOT AFFORD TO RETAIN A LAWYER TO REPRESENT ME IN DIVORCE OR MATRIMONIAL PROCEEDINGS? Application for free or subsidised legal assistance In seeking legal advice, you may approach the Free Legal Advice Scheme administered by the Duty Lawyer Service (Tel. 2835 2500). In seeking legal representation in court, you may try to apply to the Legal Aid Scheme administered by the Legal Aid Department (Tel: 2537 7677), or to the Bar Free Legal Service Scheme administered by the Hong Kong Bar Association (E-mail: bflss@hkba.org). Please also note that while the staff of the Family Court Registry will give information relating to divorce procedures, they are not lawyers and they are not permitted to offer legal advice. 2. CAN I GET A DIVORCE IN HONG KONG? WHAT CONDITIONS DO I NEED TO COMPLY WITH? 2. CAN I GET A DIVORCE IN HONG KONG? WHAT CONDITIONS DO I NEED TO COMPLY WITH? You should note the following items (a) to (c) before presenting a divorce petition to the Court. a. Place of marriage The place of marriage is not of main concern. Provided that your marriage was validly constituted in the country where the marriage was celebrated, and the validity of your marriage can be proved, then subject to the following factors, you can apply for divorce in the Court of Hong Kong. b. Conditions to comply with One of the following conditions must be satisfied before an application or petition for divorce can be dealt with by a Hong Kong Court: either of the parties to the marriage was domiciled in Hong Kong on the date of the petition or application; either of the parties to the marriage was habitually resident in Hong Kong throughout a period of 3 years immediately preceding the date of the petition or application; or either of the parties to the marriage had a "substantial connection" with Hong Kong on the date of the petition or application. It is pertinent to note that whether a "substantial connection" exists will depend on all the circumstances of each case, including but not limited to, the length of time the parties have lived in Hong Kong prior to their application for divorce, how long they intend to stay in Hong Kong, whether the parties have employment in Hong Kong, and whether they have acquired assets or taken a lease of property in the territory. c. Length of marriage — the "one year rule" In general, subject to the following exceptions, no petition for divorce could be presented to a Hong Kong Court before the expiration of the period of 1 year from the date of the marriage (section 12 of the Matrimonial Causes Ordinance , Cap. 179). There are 2 possible exceptions to this "one

year rule”: exceptional hardship being suffered by the petitioner (“petitioner” being the applicant or the party presenting the petition for divorce); or exceptional depravity on the part of the respondent (“respondent” being the applicant's spouse / petitioner's spouse). However, in determining the application for divorce before the expiration of the period of 1 year from the date of the marriage, the Court shall have regard to the interests of any child of the family within the meaning of section 2 of the Matrimonial Proceedings and Property Ordinance, Cap. 192 (which can also include a child who is not the natural child of one of the parties to the marriage) and to the question whether there is reasonable probability of a reconciliation between the parties during the remaining period before one year has expired. 3. SHALL I CHOOSE TO APPLY FOR DIVORCE IN HONG KONG? 3. SHALL I CHOOSE TO APPLY FOR DIVORCE IN HONG KONG? a. Alternative option Given the fact that Hong Kong is an international financial centre, it is common in Hong Kong for either or both parties to a marriage to have a close connection with another country, this is particularly so among the expatriates. It is important to consider from a pragmatic perspective whether or not Hong Kong is the best place to initiate the divorce proceedings. The following factors are of relevance: How each country under consideration deals with divorce, the custody of children, and the financial matters — there may be vast significant differences, particularly over financial matters. For instance, in the US and Canada, they have ‘community property’ laws, so that “marital property” (i.e. property acquired during the marriage) is divided equally on divorce. One cannot obtain a divorce in Australia or New Zealand until you have been separated for a year. New Zealand courts approach the division of capital assets in a similar way as in the States and Canada and do not place as much emphasis on maintenance rights as the courts in Hong Kong do. Also, although the systems of divorce in Hong Kong and in England and Wales are very similar, they are not identical. It is important to have regard to the ease of enforcement of any court orders obtained against his or her spouse. For example, if your spouse refused to pay alimony, what action can be done against his or her assets? (It is usually convenient and most beneficial to charge or freeze against his or her assets when the court orders are made in the country in which the non-complying spouse lives and/or the main family assets are situated). It is usually more convenient to initiate the divorce proceedings in the country in which you reside because of the easier access to your lawyers and attendance in court if necessary. If either or both parties to the marriage have substantial or close connections with one or more alternative countries or if your spouse is intending to institute proceedings in one country when it occurred to you that the legal system of another country might be available and of greater benefit to you, then you should seek legal advice from a matrimonial lawyer in each country before starting any divorce proceedings in order to make an informed decision. This has to be done without delay, failing which time (which is closely related with costs) would be wasted. If both parties commence divorce proceedings in different countries, it is likely that it would give rise to a costly dispute over which country is the most appropriate place or forum for dealing with the divorce. The parties may even compete to obtain the first divorce decree, since the forum or the country in which the first decree is made will then be empowered to deal with the important ancillary matters of children and finance. b. Recognition of Hong Kong divorce decrees For the sake of saving unnecessary costs, before you start the divorce proceedings, it is vital to check for the recognition of the divorce decree that you intend to obtain, that is, whether it would be recognized by the Hong Kong Court, or whether the Hong Kong divorce decree is recognized by other countries. Although the divorce decree granted by Hong Kong Court is recognized in many countries, it is not recognized in all places. In this regard, you should consult your lawyers. 4. OTHER THAN THE MARRIAGES REGISTERED UNDER THE MARRIAGE ORDINANCE IN HONG KONG, WHAT OTHER TYPES OF MARRIAGES ARE RECOGNIZED BY HONG KONG LAW? CAN A COUPLE WHOSE MARRIAGE IS REGISTERED IN A FOREIGN COUNTRY, OR A COUPLE MARRIED THROUGH TRADITIONAL CHINESE CUSTOMS, OR A NON-REGISTERED COUPLE APPLY FOR DIVORCE IN HONG KONG? 4. OTHER THAN THE MARRIAGES REGISTERED UNDER THE MARRIAGE ORDINANCE IN HONG KONG, WHAT OTHER TYPES OF MARRIAGES ARE RECOGNIZED BY HONG KONG LAW? CAN A COUPLE WHOSE MARRIAGE IS REGISTERED IN A FOREIGN COUNTRY, OR A COUPLE MARRIED THROUGH TRADITIONAL CHINESE

CUSTOMS, OR A NON-REGISTERED COUPLE APPLY FOR DIVORCE IN HONG KONG? Registered Marriage Since 7th October,1971, a couple in Hong Kong can only validly marry in accordance with the Marriage Ordinance (Cap. 181 of The Laws of Hong Kong). This generally means that it must be a voluntary union for life of one man with one woman to the exclusion of all others and that the marriage ceremony must be carried out at one of the Marriage Registries or licensed places of worship. This is called a registered marriage. Foreign Marriage A foreign marriage celebrated outside Hong Kong in accordance with the law in force at the time and in the place where the marriage was performed is generally recognized as a valid marriage similar to a marriage registered in Hong Kong. Chinese Customary Marriage and Modern Marriage However, apart from registered marriages and foreign marriages, the law also recognizes as valid 2 other types of marriage if they were contracted in Hong Kong before 7th October, 1971. - Chinese Customary Marriage The first type is Chinese customary marriage. It is a marriage celebrated in accordance with the traditional Chinese customs that were accepted at the time of the marriage, either in the part of Hong Kong where the marriage took place, or in the parties' family place of origin, usually their native place in China. - Modern Marriage The other type is called a modern marriage, which is one where an unmarried man and a woman neither of which was less than 16 years of age went through an open ceremony in the presence of at least two witnesses in such a manner that a reasonable person would think that a marriage has been celebrated. For this type of marriage, the kind of marriage ceremony performed did not have to be in accordance with formal Chinese law and custom, it would be valid and subsisting as long as a reasonable man thinks a marriage had taken place. It is important to note that the ceremony had to be 'open' in the sense that it was so held that it was known and could be seen by all those who were not particularly invited to participate. This requirement would be satisfied by, for example, leaving the door of the room in which the ceremony took place open. This type of marriage is also called validated marriage. Parties to these 2 latter types of marriage (Chinese customary marriage and modern marriage) can have them post-registered at the Marriage Registry. If one party refuses to post-register it, the other may apply to the District Court for a declaration that such a marriage exists and thereafter can post-register it unilaterally. Parties to a registered marriage or a foreign marriage seeking a divorce must go through the Family Court of Hong Kong. To obtain a divorce in a Chinese customary marriage situation, the party or parties must first of all have the marriage post-registered or declared valid by the District Court. If the parties agree to divorce, they must go before a designated public officer who will explain the consequences to them and ask them to sign an agreement. If only one party wants a divorce, he or she can apply to the court in the usual way , but only after the registration or declaration of the marriage as stated above. In the case of a modern marriage, if both parties agree, they can divorce by going before a designated public officer and by signing a written document. The written document sets out unequivocally the final and complete dissolution of the marriage and must be signed in the presence of 2 witnesses. Either party to these 2 types of marriages can, upon divorce, apply for maintenance (financial support) if the need arises. 5. WILL A CONCUBINE AND THE RELEVANT CHILDREN BE LEGALLY RECOGNIZED? CAN THEY BE PARTIES IN DIVORCE PROCEEDINGS? 5. WILL A CONCUBINE AND THE RELEVANT CHILDREN BE LEGALLY RECOGNIZED? CAN THEY BE PARTIES IN DIVORCE PROCEEDINGS? Since 7th October, 1971, no man can lawfully take a concubine in Hong Kong. But in the case of a Chinese customary marriage, concubines taken before that date will be recognised and their children will be considered legitimate. D. PROCEDURES AND GROUNDS FOR DIVORCE D. PROCEDURES AND GROUNDS FOR DIVORCE Divorce and matrimonial proceedings are generally heard in the Family Court section of the District Court before a District Court judge and proceedings for divorce must be instituted either by a petition for divorce or by an application for divorce. If it becomes clear that a case raises a difficult point of law or involves assets of considerable value then either party can apply to transfer the case to the High Court. A High Court judge is more experienced and therefore better qualified to deal with complicated cases. Certain matters must be commenced in the High Court, such as application for wardship (i.e. The custody of the child is given to the Court. More details of wardship are discussed in

the ensuing Q&A;). 1. WHAT ARE THE GROUNDS FOR DIVORCE? MUST I EXPLAIN WHY I WANT A DIVORCE? 1. WHAT ARE THE GROUNDS FOR DIVORCE? MUST I EXPLAIN WHY I WANT A DIVORCE? In law, there is in fact only one ground for presenting a petition for divorce, namely, that the marriage has broken down irretrievably. Under section 11A of the Matrimonial Causes Ordinance(Cap. 179 of the Laws of Hong Kong) , except in the case of a Joint Application for divorce, the Court shall not hold the marriage to have broken down irretrievably unless the applicant for divorce (i.e. the petitioner) satisfies the Court of one or more of the following facts: that your spouse has committed adultery and you find it intolerable to live with your spouse; that your spouse has behaved in such a way that you cannot be reasonably expected to live with your spouse; Usually it is a series of misconducts or intolerable behaviour. However, a single incident of grave misconduct is enough; that you and your spouse have lived apart for a continuous period of at least 1 year before filing the petition and that your spouse consent to a divorce; that you and your spouse have lived apart for a continuous period of at least 2 years immediately before filing the petition for divorce (in such a case your spouse's consent to a divorce is not required); that your spouse has deserted you for a continuous period of at least 1 year immediately before filing the petition for divorce. In the case of a Joint Application for divorce, both parties must prove either or both of the following two conditions to the Court (section 11B of the Matrimonial Causes Ordinance): that the parties to the marriage have lived apart for a continuous period of at least 1 year immediately preceding the making of the application; OR that not less than 1 year prior to the making of the application a written notice (Form 2E) signed by both parties of their intention to apply to the court to dissolve their marriage was given to the Court and that the notice was not subsequently withdrawn. If there are children of the family who are under the age of 18, you must include in your petition your proposal as to their custody and access. If you wish to apply for ancillary relief such as maintenance, transfer of property, division of matrimonial assets, etc., you should also pray so in your petition. Note: According to section 11C of the Matrimonial Causes Ordinance, a husband and wife shall be treated as "living apart" unless they are living with each other in the same household. 2. HOW DO I APPLY FOR DIVORCE? (WITH A BRIEF SUMMARY OF THE RELEVANT PROCEDURES) 2. HOW DO I APPLY FOR DIVORCE? (WITH A BRIEF SUMMARY OF THE RELEVANT PROCEDURES) You are advised to consult a lawyer before submitting the relevant documents and attending hearings in the Family Court. You need to go through the following stages:- (Stage 1) Presenting a petition for divorce (Stage 2) Serving (delivering) my petition to my spouse (Stage 3) Fixing a court hearing date (Stage 4) Decree Nisi - a tentative court order for divorce (Stage 5) Final order for divorce (Stage 1) Presenting a petition for divorce To start divorce proceedings, you need to fill in: Form 2 Petition (the form that you need to fill in depends on your particular circumstances or grounds for divorce) Form 2B Statement as to the arrangements for children (if applicable) Form E Financial Statement for financial dispute (if applicable) Form 3 Notice of Proceedings Form 4 Acknowledgement of Service (case number and name of parties only, other items to be completed by the respondent) In the case of a Joint Application (which means you and your spouse have agreed to apply together for a divorce), you need to fill in: Form 2C Joint application Form 2D Statement as to the arrangements for children (if applicable) All forms you need are available from the Family Court Registry and may be completed in English or Chinese. When you have filled them in, take them to the Family Court Registry for filing, together with your original marriage certificate or a certified true copy. The filing fee is $630. You will be given a case number, which must be marked on any subsequently filed documents. (Stage 2) Serving (delivering) my petition to my spouse Now that you have started legal proceedings, you are known as the "petitioner" and your spouse is known as the "respondent". After filing your petition, you must arrange for a sealed copy ("sealed" meaning a copy with the court's chop on it) of the petition to be served on every other party to the proceedings, either by hand or by post. Note that you must not serve the petition on the respondent yourself. Instead you must use the services of a third person, or send the petition by post. If the petition fails to reach the respondent by hand or by post, the petition can be advertised in newspapers (with the

approval of the Court) as a substitute way to notify the respondent. In the case a Joint Application, there is no need to arrange for a sealed copy to be served on the other party. (Stage 3) Fixing a court hearing date After your petition has been served on the respondent you should next apply to the Registrar for directions to set down the case for trial (i.e. to fix a date for a court hearing), using an application form obtainable from the Family Court Registry. Your petition or application will be set down for hearing in one of the following lists on payment of the stated fee: Special Procedure List: $630 Defended List: $1,045 Where a petition is concerned, before the case can be set down, the Registrar must be satisfied that the petition has been served on the respondent. This can be proved either by showing that the respondent has completed and returned a Form 4 (Acknowledgment of Service) to the Registrar, or by having the person who served the documents on the respondent file an affirmation confirming that the petition has been delivered to the respondent. Joint Applications will be set down provided that the relevant documents are in order. The Registrar will make directions on the date, place and time of the trial and will notify you and the other parties. (Stage 4) Decree Nisi – a tentative court order for divorce Special Procedure List If you have petitioned for divorce but the respondent does not file an answer in response to your petition, the petition will be set down in the Special Procedure List. Joint Applications also come under the Special Procedure List. After the Registrar has given directions for trial, he will consider the evidence you have filed. If he is satisfied that you have proved the contents of the petition or application, he will make and file a certificate to that effect. Both parties will receive a copy, endorsed with the terms they have agreed. There is no need for either party to attend the hearing. The Court will grant a decree nisi (a tentative court order) dissolving the marriage. Defended List Where a petition for divorce is made and the respondent has filed an answer, the petition will be set down in the Defended List. In such cases, the Court will either grant a decree nisi dissolving the marriage, or will dismiss the petition if insufficient evidence is found. In the case of a petition listed on the Defended List, either or both of the parties may need to attend the court hearing. In the event of court granting the decree of divorce, if the question of child custody and access arises, or if there are applications for ancillary relief by either party, the court will adjourn these matters to Chambers with directions for social investigations report and filing of affidavit of means by the parties where appropriate. (Stage 5) Final order for divorce 6 weeks after the Court has granted a decree nisi, you can apply for your decree to be made absolute (a final order for divorce) by sending a completed "Notice of Application for Decree Nisi to be made Absolute" to the Court, using Form 5 (for a petition) or Form 5A (for a joint application). If there are children of the marriage, the decree nisi will not be made absolute until the Court declares that it is satisfied with the arrangements made for them. The Registrar will issue a Certificate of Decree Absolute to each party if the registrar is satisfied that the statutory requirements have been complied with. (For more details of the above procedures, you may also visit the website of the Judiciary of Hong Kong on “How to apply for a divorce”.) 3. WHEN WILL THE DIVORCE PROCEEDINGS BE COMPLETED? HOW LONG WILL IT TAKE BEFORE I CAN MARRY AGAIN? 3. WHEN WILL THE DIVORCE PROCEEDINGS BE COMPLETED? HOW LONG WILL IT TAKE BEFORE I CAN MARRY AGAIN? The time for the completion of a divorce application will vary from case to case. It is subject to the Court’s caseloads, the length of the hearing and the fact that if there are children of the marriage, the decree nisi will not be made absolute until the Court declares that it is satisfied with the arrangements for them. The Judiciary has the following performance pledge (for reference only): Waiting Time i) Dissolution of marriage - from setting down for trial to actual hearing - Special Procedure List 50 days - Defended List (1-day hearing) 110 days ii) Financial applications - from filing of summons to hearing (1-day hearing) 110-140 days Wherever possible, the Judiciary will reply at once to correspondence from members of the public. In any case, it will issue an interim reply within 10 days and a full response within 30 days of receiving such correspondence. E. MATTERS AFFECTING CHILDREN E. MATTERS AFFECTING CHILDREN In general, child custody refers to a court order for care and control over the child / children. The parent who is given custody after divorce shall

be responsible for the daily care of the child and for making routine everyday decisions about his or her welfare. Joint custody may also be given. In order to give a child maximum stability, in practice, it is usually in the interests of a child for the child to live in one parent's home and to visit the other parent on a regular basis ("visiting access"). However, such visits can, and often do, extend to a number of days or even weeks during school holidays. In reality, where the circumstances warrant, it is possible for a child to spend half of his or her time in one parent's household and half in another parent's home. Parents are encouraged to reach amicable agreement , whenever possible, to avoid making costly application to Court. If both parents want a joint custody, where both parents together make all the important decisions regarding their child's upbringing, the Court would grant a joint custody if it can be assured that the arrangement will work. Joint custody is now generally encouraged as it is considered good for parents to realize that they both have a responsibility towards their child and their parental duties do not cease on the breakdown of the marriage. Obviously, no matter what kind of custody is granted, a high level of agreement and cooperation between the parties is encouraged and required. 1. WHAT FACTORS WILL BE CONSIDERED BY THE COURT IN AWARDING CUSTODY OF A CHILD TO EITHER OR BOTH PARTIES? 1. WHAT FACTORS WILL BE CONSIDERED BY THE COURT IN AWARDING CUSTODY OF A CHILD TO EITHER OR BOTH PARTIES? In all matters relating to children in family proceedings, the welfare of the child is the first and paramount consideration for the Court. While each case will depend on its own facts , the Court would take into account all relevant factors which include: the preservation of the status quo; the ages of the parents and child; the personality, capability and character of the parents; the financial resources of the parents; the physical and mental health of the parents and child; the accommodation available to the child; the child's own wishes and views, if any; the benefit of keeping the siblings together with one parent; the religion and culture of the family; professional reports such as medical, school, or court welfare officer's reports (e.g. about the child's family relationship, living conditions, mental or health elements, etc.). Note that the aforesaid factors are just factors commonly considered by the Court, they are not exhaustive. Upon hearing all the relevant evidence, the Court, bearing in mind that the interests and welfare of the child is of prime importance, would balance the factors against each other, depending on the circumstances of each case. Some important factors are further elaborated below: Status quo Many professionals especially child psychologists opined that it is in the best interests of a child, to avoid a disruption of the familiar life of a child. If a child has already settled well with one of the parents and is used to and happy with his/her surroundings and lifestyle, the Court is unlikely to consider taking the child away from that parent unless there are other compelling reasons. Main carer Naturally, a child will develop a strong bonding with his or her main caregiver. The child may be dealt with a blow, whether emotionally or otherwise, if he or she is separated from his or her close main carer or guardian suddenly. The damage done should not be under-estimated. It is therefore considered desirable for a child to stay with the parent who has hitherto been his or her main caregiver, so as to maintain the status quo. Child's wishes While it is an important factor, it should be noted that children's views are not overriding. The overriding factor is still the welfare and the interests of the child. Child's view will generally be heard and considered by the Court, but the weight to be given to such views would depend on the age and the level of understanding of the child concerned. The wishes of older children will play a material part in deciding with whom their custody will be granted. Any views and wishes of the children must be ascertained with great care. This is usually done by an appointed court welfare officer. One should avoid creating an impression that they are being asked to make a choice between their beloved mother and father. This would pose a heavy emotional burden on the child. Though it is rather common, it is wrong for either parent to attempt to exert influence on a child regarding his / her view. Children's wishes are usually best expressed through a court welfare officer. Keeping siblings together To avoid any emotional trauma, it is regarded as desirable that siblings, in particular those who are nearer in age, should be kept together rather than being split between their parents. It is only in rare circumstances

which, if it is considered best to do so, that split orders would be made by the Court. Even so, every effort should be made by the parties to ensure that the siblings can see each other regularly. Again, the damage caused by the separation of siblings when they are young should not be under-estimated. Age of the parties and the child The age of the parents and the child are also a material factor to be considered. The Court is more likely to award custody of babies and young children to the mother. If one parent is particularly old, it is likely that the Court will take this as a factor that would reduce his or her ability to care for the minor or child. Sex of the child This is usually not a very important factor. However, this might have a bearing on the Court's consideration when all other factors are equal. For instance, statistics show that a girl about to go through puberty might fare better with her mother and a boy of the same age might fare better with his father. Capability of the parents to fulfil the needs of the child As said, each case depends on its own facts. The same applies to the growth and upbringing of a child, whose needs and ability varied from child to child. Thus, a child's needs will be considered and balanced against the health, capability and resources of each parent. The misbehaviour of a party, e.g. adultery does not necessarily affect or reduce his or her ability as a parent. After all, the prime consideration for the court is the welfare of the child. 1. MY WIFE WANTS TO APPLY FOR DIVORCE AND SHE PLANS TO TAKE OUR ONLY DAUGHTER OUT OF HONG KONG DURING THE WAITING PERIOD. CAN I STOP HER? 1. MY WIFE WANTS TO APPLY FOR DIVORCE AND SHE PLANS TO TAKE OUR ONLY DAUGHTER OUT OF HONG KONG DURING THE WAITING PERIOD. CAN I STOP HER? Wardship If that is the case, you may consider instituting wardship proceedings in the High Court. Wardship proceedings can be instituted at any time when there are special concerns about a child's welfare such as when it is suspected that a child would be, or has been, removed from Hong Kong. Once wardship proceedings have been instituted, the Court has very wide and far-reaching powers to make any order, including financial provision that is necessary to protect the interests and welfare of the 'ward' / the child. In cases where a child has been taken out of Hong Kong, the Court can order that the child be sought and found, seeking the cooperation and assistance of other relevant authorities such as the Immigration Department. Once a child is made as a 'ward', he or she is automatically prohibited from leaving Hong Kong without the consent of the Court. Wardship proceedings are an entirely different form of proceedings which can be issued irrespective of any divorce or separation proceedings. It can be started quite quickly by any interested party - which is not necessarily a parent. If circumstances are justified, wardship proceedings could be commenced by the Director of Social Services, who is empowered to protect children. The issuing of wardship proceedings immediately makes the child concerned a Ward of the Court. Once a child becomes a "Ward of the Court", this means that the Court has the custody of that child and every major decision regarding that child's welfare must be referred to the Court by making application accordingly. This would incur costs and, subject to the caseloads of the Court, can be very time-consuming. That child remains a ward of the court until the child reaches the age of majority, or until a special Court order is made to end the wardship. Wardship proceedings should not be instituted lightly, but only where there are good grounds to justify it. 2. MY WIFE REFUSES TO SEE ME AND LET ME KNOW WHERE OUR DAUGHTER IS, WHAT SHOULD I DO? HOW CAN I PREVENT MY SPOUSE FROM SNATCHING OUR CHILD? 2. MY WIFE REFUSES TO SEE ME AND LET ME KNOW WHERE OUR DAUGHTER IS, WHAT SHOULD I DO? HOW CAN I PREVENT MY SPOUSE FROM SNATCHING OUR CHILD? A number of steps may be considered. (1) Wardship Proceedings First, where the circumstances warrant, the child could be made a ward of court as described above. (2) Deposit of travel documents at solicitor's office supported with a solicitor's undertaking not to release them without consent of Court or relevant parties As aforesaid, wardship proceedings could be very costly and time-consuming, it should therefore not be instituted lightly. If you are concerned about your child's ability to travel, either on his or her own travel document or on the strength of the travel documents of your spouse, you can request that the relevant travel documents be deposited at a solicitor's firm together with the solicitor's undertaking not to release these travel documents without your consent or the Court's consent. However, this option is not absolutely secure as it may not prevent your spouse

from obtaining a fresh or duplicate travel documents without your knowledge. (3) Prohibition Order If the deposit of the relevant travel documents as security is not feasible or not secure enough, you can consider applying for a prohibition order, which can be made within the divorce or separation proceedings. This is an order prohibiting the removal of the child from Hong Kong or out of your custody, care and control. If either wardship proceedings or prohibition order is involved, your acting solicitor should immediately notify the Immigration Department by serving it with the prohibition order or wardship proceedings. The Immigration Department would then be obliged to notify all ports and airports and to stop or prevent the relevant child from leaving Hong Kong. (4) Child Abduction and Custody Ordinance In order to avoid the harmful effects of wrongful removal or retention of children in foreign countries, the Child Abduction and Custody Ordinance (Cap. 512 of the Laws of Hong Kong) has provisions to protect the interests' of the relevant people. The Department of Justice would also co-operate with the Contracting States of the "Convention on the Civil Aspects of International Child Abduction" (which have the convention relationship with Hong Kong), and would assist the relevant parties in the return of those children to Hong Kong. For more details, please visit the Department of Justice's webpage. 3. CAN ONE PARENT TAKE A CHILD OUT OF HONG KONG UPON THE GRANT OF A CUSTODY ORDER? 3. CAN ONE PARENT TAKE A CHILD OUT OF HONG KONG UPON THE GRANT OF A CUSTODY ORDER? It is not uncommon that divorced couple fears that the former spouse would take the child out of Hong Kong either permanently (e.g. for emigration) or for holiday without his or her advance notice, thereby depriving him or her of the opportunity of child's visiting access. In view of this, custody orders are endorsed with a notice in the form of a direction that neither parent is entitled to remove the child from Hong Kong unless the following conditions are met: obtain the approval of the Court; OR obtain the written consent of the other parent who is not responsible for taking the child out of Hong Kong, AND the giving of a general undertaking by the parent (who will take the child out of Hong Kong) to the Court to return the child to Hong Kong after any fixed period spent abroad or at the end of any agreed period, or earlier if called upon to do so by the Court. Holidays Disputes often arose between divorced couple over the division of holidays in respect of child access. Costly application would have to be made to the Court to resolve the disputes if the parties failed to come up with an agreement. To save cost, upon the making of a custody order with the aforesaid (a) or (b) restriction specified on it, it is possible to file with the Court a general undertaking to return the child after any holiday period spent abroad. This means that when you want to take the child out of Hong Kong, all you need to do is to obtain your spouse's written consent. It is only when your spouse unreasonably withheld his or her consent that an application will have to be made to the Court. In the case of a normal holiday, it is unlikely that the Court will refuse the application unless there is good reason to do so. If you believe that your spouse would object to you taking your child to overseas for holidays, you should inform your solicitor well in advance so that there is ample time for your solicitor to make the necessary application to the Court and to have an early hearing. Permanent removal from Hong Kong If a parent, who is granted with the custody of a child, intends to leave Hong Kong permanently for some reasons, that parent must make an application to Court so as to obtain an order from the Court allowing him or her to remove the child permanently from Hong Kong. If the other parent opposes such application, the judge will have to balance the child's loss of regular contact with that parent against the liberty of the applicant parent (granted with custody) to choose where he or she wishes to live. The Court will not usually interfere with the choice of the parent with custody, if his or her decision to move is a reasonable one. As said, the Court would have regard to the interests of the child, which is of paramount consideration. 2. MY DAUGHTER HAS BEEN LIVING WITH MY HUSBAND SINCE I SEPARATED FROM HIM TWO YEARS AGO. HOW LIKELY IS THAT I WILL BE GRANTED CUSTODY OF MY DAUGHTER IF I APPLY FOR A DIVORCE NOW? 2. MY DAUGHTER HAS BEEN LIVING WITH MY HUSBAND SINCE I SEPARATED FROM HIM TWO YEARS AGO. HOW LIKELY IS THAT I WILL BE GRANTED CUSTODY OF MY DAUGHTER IF I APPLY FOR A DIVORCE NOW? As said, it is essential to maintain the status quo of a child so as to avoid disruption of the familiar life of a child. If a child has already settled well with one of the parents

and is used to and happy with his/her surroundings and lifestyle, the Court is unlikely to consider taking the child away from that parent unless there are other compelling reasons. Therefore you are unlikely to be granted custody of your daughter in this circumstance unless you can present other compelling reasons. However, you may have generous access to (i.e. to see) your child as approved by the Court. 1. WHAT FACTORS WILL THE COURT CONSIDER IN ASSESSING THE PROVISION OF CHILD MAINTENANCE? 1. WHAT FACTORS WILL THE COURT CONSIDER IN ASSESSING THE PROVISION OF CHILD MAINTENANCE? In accessing what financial provision should be made for a child, the Court shall consider all the circumstances of the case, especially the following matters: the standard of living enjoyed by the family before the breakdown of marriage; the financial needs of the child; any physical or mental disability of the child; the manner in which the child was being brought up and in which the parties to the marriage expected him or her to be educated; the financial resources and needs or obligations of the parties to the marriage; the any income, earning capacity (if any), property, or other financial resources of the child. According to section 7 of the Matrimonial Proceedings and Property Ordinance , the Court is obliged to place the child, so far as it is practicable and just to do so, in the financial position in which the child would have been if the marriage had not broken down and each of those parties had properly discharged his or her financial obligations and responsibilities towards the child with the two considerations of: the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future; the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future. The aforesaid principle is easier said than done. In practice, most divorce cases would bring about a drop in their standard of living for all parties concerned, including the children. This is because usually there would be insufficient resources to maintain the previous lifestyle upon the break up of the family. Other factors to be noted in relation to step children As said, a ‘child of the family’ can include a child who is not the natural child of one of the parties to the marriage. Nowadays, given the increasing rate of divorce, there are many children who are living with a step-parent. In such cases, according to section 7 of the Matrimonial Proceedings and Property Ordinance , the Court is obliged to have regard of the following factors, among the circumstances of the case-: whether that party (against whom the claim is being made) had assumed any responsibility for the child's maintenance and, if so, to the extent to which, and the basis upon which, that party assumed such responsibility and to the length of time for which that party discharged such responsibility; whether in assuming and discharging such responsibility that party did so knowing that the child was not his or her own; the liability of any other person to maintain the child. F. FINANCIAL MATTERS F. FINANCIAL MATTERS Upon ascertaining what assets or capital, including shares, saving schemes, and endowment policies, or an interest in a trust fund, are available in the ‘family pot’ for distribution, approximate values for each has to be attributed. Thus, it is important that value of each property has to be agreed between the parties, if not, it has to be decided by the Court. Then, the Court has to consider whether it is fair or practical to leave the capital as it presently stands or whether some adjustment needs to be made. In deciding what adjustment to make, if any, the Court will consider all of the factors referred to below. 1. HOW WOULD THE COURT DEAL WITH OR DIVIDE THE MATRIMONIAL PROPERTIES BETWEEN THE HUSBAND & WIFE UPON DIVORCE? 1. HOW WOULD THE COURT DEAL WITH OR DIVIDE THE MATRIMONIAL PROPERTIES BETWEEN THE HUSBAND & WIFE UPON DIVORCE? There are some general principles regarding the division of properties between the parties upon divorce: a. Ownership of property Disputes about bank accounts can arise in respect of ownership of the funds and property purchased with the funds derived therein. If a bank account is in a spouse's name, then it appears that any money in the account belongs to that person, unless there is a contrary intention or another spouse has made a contribution to the fund. If a bank account is held in joint names, then it appears that any money in the account belongs to both parties jointly, unless there is a contrary intention, e.g. that the account was put into joint names for convenience. As a general rule, any property acquired with the funds from a bank account belongs to the

purchaser. Thus, if a husband draws money from a joint account to purchase shares or real property in his sole name, then it appears that these properties belong to him. But if the parties have pooled their resources together, the Court may treat the joint account as a 'common pool' and held that investments purchased by the husband with money from the joint account belonged to both husband and wife in equal shares, albeit the husband had made larger contributions to the joint account than the wife. b. A roof over each party's head The Court will ensure that, wherever possible, there is a roof over each party's head. This is in particular so when there are children in the family. The Court will ensure that the children are properly taken care of by providing them a secure home. c. Percentage of the total capital available Hong Kong Court used to assess the 'reasonable requirements' of the spouses and divided the assets accordingly. Leftover assets have very often been awarded to the breadwinner, usually the husband. However, the Court of Final Appeal of Hong Kong had ruled in LKW v DD (2010) 13 HKCFAR 537 that a wife is entitled to half of the couple's assets when they divorce in Hong Kong. This 50/50 rule will have major impact in cases where the financial assets are substantial. As a consequence, pre- and post-nuptial agreements will be extremely important for those in Hong Kong who wish to protect his/her personal wealth. d. Maintenance or "Clean Break" Apart from the share of joint capital, a wife may also be entitled to periodic maintenance. It is the court's duty to consider whether a "clean break" (i.e. to terminate the financial dependency of one party against another party) is appropriate on each case. "Clean break" refers to the distribution of property and/or payment of one lump sum (in one go or by instalments) once and for all, so that the parties can put behind their unhappiness behind and start afresh without having to be reminded of the grievances of the breakdown of marriage or going through the burden of litigation again (e.g. to enforce for the arrears of periodical payments). The rationale for making a lump sum order is to meet the wife' s reasonable requirements, and to recognize her contribution as a mother to the children and/or wife to the marriage. If she has actively participated in the family business or provided finance to the business, the lump sum award will be increased over and above her reasonable requirements so as to recognize the fact that she has 'earned' a share in the family assets. However, no lump sum order will be made unless the respondent has capital assets out of which to pay it without crippling his earning power. Is "clean break" possible? Subject to the financial strength of the party being asked to provide maintenance (usually the husband), if there is a great antipathy and tension between the parties, the Court will usually strive to achieve a clean break if possible. The amount of the lump sum required to achieve a 'clean break' varies from case to case. It is closely linked to the level and duration of maintenance that the applicant (usually the wife) could otherwise expect. The lump sum should cover the applicant's financial needs for that period. If necessary, accountants can come up with a figure that takes the various factors into account, including the life span of a party, the predicted rates of interest and inflation. But such exercise is very costly and should only be taken if they are helpful and provide material assistance to the Court. Unnecessary use of accountants or experts is highly discouraged and would increase costs. Considerations for the husband A husband's liability to pay maintenance to his divorced wife ceases upon her remarriage. Thus, if it is likely that his divorced wife will remarry in the near future, it will not be in his interests to pay a large capital (cash and/or real estate) to achieve a clean break. This is because such capital is not repayable upon her remarriage. On the other hand, he should not forget that clean break, if achieved, would terminate his divorced wife's financial dependency on him. The husband can then put all the shadow and unhappiness of the marriage behind him and start a new life. Considerations for the wife As to the wife in a clean break situation, it is beneficial to her because she has financial independence. She is in possession of the capital sum and has the flexibility to use the money as she wishes. She does not have to go through the burden of litigation again (e.g. to enforce for the arrears of periodical payments; any possible application by her husband to vary the level of maintenance downwards by reason of his own change of circumstances). The downside of having a clean break is that the lump sum is awarded on an once and for all situation. If the capital turns out to be

insufficient to meet her needs or she fails to budget or invest it wisely, there is no point of return. She could not go back to Court and claim against her husband again. This holds true even if her divorced husband becomes rich after the divorce. e. Ownership of a business If a husband derives his income mostly from his own business which has a capital value, dispute can arise as to the valuation of the business. If the business has its own premises or worthy possessions (real estate, cash, stocks, equipment etc), then valuations of these assets can be obtained by appointing a qualified person (e.g. accountants) to do so. If the business is not going to be sold either now or in the near future, its main value is the income which it would generate. This is in particular so if the husband is going to pay periodic maintenance to the wife and/or children, who will benefit from the continuity of the business, which would generate regular incomes. The reason why disputes can arise between the parties is because business valuations provided by accountants instructed on behalf of each party are often very different, as different accounting approaches may be used. In practice, the accountant appointed by the husband would usually adopt an approach that would result in a relatively low capital value of the business while the wife's accountant would tend to take an approach that would reflect the 'true picture' of the business worth. If the accountants cannot agree on a valuation, they may have to be called to give evidence at the hearing. This is likely to be rather costly. 2. WHAT FACTORS WILL THE COURT CONSIDER IN ASSESSING THE KIND AND THE AMOUNT OF MAINTENANCE (OR ALIMONY) TO BE MADE FOR A SPOUSE? 2. WHAT FACTORS WILL THE COURT CONSIDER IN ASSESSING THE KIND AND THE AMOUNT OF MAINTENANCE (OR ALIMONY) TO BE MADE FOR A SPOUSE? In deciding who should pay alimony to whom, the Court is obliged to take into account the conduct of the parties and all the circumstances of the case. Those circumstances include the following, which are laid down in section 7 of the Matrimonial Proceedings and Property Ordinance (but they are not exhaustive): a. The income, earning capacity, property, and other financial resources which each of the parties has or is likely to have in the foreseeable future The Court will consider the overall financial position of each party both at the time of proceedings and in the 'foreseeable future', regardless of the sources or whereabouts of the assets or income. For instance, where one party has remarried or is about to remarry, the additional expense of running two households will be taken into account. Full and frank disclosure of each party's assets must be made to the Court. Should it be discovered that it was not done so, adverse inference could be drawn against the party failing to make full and frank disclosure. The Court will take into account how the various assets of each party have been derived in order to make a fair decision. Although property acquired before marriage or by inheritance had in many jurisdictions been accorded a class of its own, in the ordinary course, this factor can be expected to carry little weight, if any, in a case where the claimant's financial needs cannot be met without recourse to this property. Also, the Court will neither speculate nor base its decision on mere possibilities. The receipt of the asset or income must be reasonably certain and within the foreseeable future. This is particularly important when considering the relevance of potential inheritances (e.g. inheriting a family company or assets from a deceased or retired person). b. The financial needs, obligations, and responsibilities which either of the parties has or is likely to have in the foreseeable future Other than the financial resources now holding or to be received, the Court will also consider the outgoings, debts, and financial liabilities of each party. Parties should also give details of any financial obligations they have, including the expenditure on children and their school fees, regular allowance made to parents or other dependants. c. The standard of living enjoyed by the family before the breakdown of the marriage The lifestyle enjoyed by the parties during marriage will reflect on what their needs are. It is helpful to assess whether the financial claim is reasonable or not. For example, how to ensure that the standard of living of both parties will not be significantly declined after divorce? However, in reality, it would be more expensive for a couple to live apart than to live together. It is therefore common that both parties will suffer a reduction in the standard of living upon marriage breakdown, unless the divorced couple is very well-off. d. The age of each party and the duration of the marriage These factors carry weight. Certainly, there will

be vast difference in the award of maintenance between a short marriage where the wife is in her twenties; a short marriage where the wife is in her sixties; and a long marriage. If the marriage is short, the husband's obligations to maintain the wife will be relatively lower. Also, a young woman is expected to secure a job to support herself easier than a middle-aged woman, particularly if the latter has been out of the job market for a long time. It is pertinent to note that the period of cohabitation before the marriage does not count towards the length of the marriage. The rationale behind is: the legal rights and obligations of the parties do no come into existence until the wedding ceremony has taken place. Therefore a long period of cohabitation followed by a short marriage will not be treated in the same way as a long marriage, albeit the parties have been in cohabitation for a long time. However, each case has to be decided in accordance with its facts. The Court would take into account of all the circumstances of the case, which may regard the long period of cohabitation as a material circumstantial factor. e. Any physical or metal disability of either of the parties If one of the parties suffers from any kind of disability, whether physical or mental, this would certainly affect his / her ability to gain independence or to fend for himself or herself, This factor is relevant in assessing the 'needs' of the claimant. f. The contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family The Court will look at the contributions, financial or otherwise, that each party has made. It is common that during marriage, on the one hand, the husband work hard, whether through employment or operating his own business, to earn money for the household, while the wife's essential contribution was that of a caretaker of the home, a companion to her husband and as a mother. There is generally no bias in favour of the money earner and against the homemaker and child carer. The Court recognizes the different, but complementary and equal, roles of husband and wife in the marriage partnership. g. The value to either of the parties of any benefit which that party will lose as a result of the dissolution of the marriage The Court will take into account any benefits that the parties will lose upon divorce. For instance, the loss of benefits under a former spouse's medical insurance and/or life insurance, the loss of married person's allowance, the loss of benefits used to receive from another party's family trust, etc. 4. CAN HUSBAND OBTAIN MAINTENANCE FROM WIFE? 4. CAN HUSBAND OBTAIN MAINTENANCE FROM WIFE? Yes, it makes no difference to the availability of financial relief for either party whether the petition for divorce or separation is filed by the husband or the wife. Although there is a common law presumption that the husband should maintain the wife, the law does not differentiate claims made by a wife against her husband and claims made by a husband against his wife. The same duty is imposed by statute (law) on a wife, if she does have the financial resources. However, in practice, a man may encounter a higher difficulty to claim financial support from his ex-wife. 5. WHAT KIND OF MAINTENANCE ORDER (OR FINANCIALLY RELATED ORDER) IS THE COURT EMPOWERED TO MAKE? 5. WHAT KIND OF MAINTENANCE ORDER (OR FINANCIALLY RELATED ORDER) IS THE COURT EMPOWERED TO MAKE? Maintenance pending suit (while application for divorce is in process) - This order also called "interim maintenance". As its name suggests, this order is for the provision of maintenance pending the grant of final divorce decree. This is because very often there would be an interim period or a time gap between the filing of petition for divorce and the court hearing and the grant of the final divorce decree. Such kind of order cannot last beyond the final divorce decree. It will terminate in any event upon the death of either party. This order is subject to variation and the amount so ordered to be paid is not necessarily any indication of the amount which may be order to be paid upon the granting of the decree. Periodical payments order - This is an order for maintenance which is to be paid after the final decree. The Court is empowered to limit the duration of the maintenance to a specified time, subject to the needs of the payee (the receiving party) and the circumstances of each case. This kind of order will normally terminate upon the death of either party or the remarriage of the payee. However, the Court may limit the duration of the order to an earlier time. Also, if there is any subsequent change of circumstances on the part of either payee or payer, this order can be varied. Secured periodical payments order - secured periodical payments are ordered where there is

reason to believe that the party ordered to make the payment will not pay them. As its name suggests, these are maintenance payments which are secured or guaranteed. However, it is pertinent to note that the secured provision is not to be a general charge on all assets. The Court is obliged to specify the assets on which security is to be given. The payments will continue until the death of the payee (not the payer, the party making payment), or the remarriage of payee, or an earlier date as specified by the Court. This order will only be imposed if there are reasonable grounds to believe that the common periodical payments order will be ineffective to carry out in practice and there are sufficient funds or assets of the payer whereby the payments can be secured e.g. where the payer has sufficient means but has a history of failing to abide by order so made (as in the interim maintenance order), poor record of financial irresponsibility, or has vowed to resist payment of maintenance if so ordered. Lump Sum Order – It is an order for the payment of a capital sum in the case when the payee is entitled to one lump sum only. This order is closely related to the 'clean break' sought by a claimant. The capital sum payable under such order can be paid in various instalments. However, this order cannot be varied subsequently, because it is an 'once and for all' order that is intended to create finality in litigation. The amount paid out is not recoverable in any event. Property Adjustment Order – It is an order whereby one party is ordered to transfer to another his or her interest in property such as real properties, stocks, or car, etc. This kind of order, once made, cannot be varied. Situations under which property adjustment order will be made is when, for example, there is a need to allow each spouse a share in the capital value of the family assets, especially the matrimonial home. Settlement of property order – This is an order requiring one party to transfer specified property for it to be held on trust. The trustee(s) will hold the property for the benefit of the beneficiary, (usually either the other party or the child of the marriage) in accordance with the terms of a trust deed. This type of order is not common and factors such as the child's welfare, the income, earning capacity, property and other financial resources which each parent has or likely to have in the foreseeable future will be taken into account. Variation of settlement order – Where a trust (which is sometimes called a settlement) is already in existence, the Court can vary the terms of that trust or settlement. Again, such an order is not common. 6. WHAT IS "NOMINAL MAINTENANCE"? SHOULD I APPLY FOR SUCH MAINTENANCE FROM MY SPOUSE IN DIVORCE PROCEEDINGS? 6. WHAT IS "NOMINAL MAINTENANCE"? SHOULD I APPLY FOR SUCH MAINTENANCE FROM MY SPOUSE IN DIVORCE PROCEEDINGS? In circumstances where a wife is not in need of any maintenance at the time of divorce but wishes to retain her rights to apply for the same in future, she can seek a nominal maintenance order. This might perhaps be a payment of HK$1 per annum which in practice is never actually made. However, such order is subject to the possibility of variation subsequently. Husbands should be aware that by agreeing to pay nominal maintenance, there is a risk that they may find themselves having to pay a higher level of maintenance in the future. From a wife's point of view, a nominal order will give her a sense of security as her maintenance claim is reserved rather than dismissed. 7. IF THERE IS A CHANGE OF FINANCIAL STATUS FOR A SPOUSE, WILL THE MAINTENANCE ORDER BE SUBSEQUENTLY ADJUSTED OR VARIED BY THE COURT? 7. IF THERE IS A CHANGE OF FINANCIAL STATUS FOR A SPOUSE, WILL THE MAINTENANCE ORDER BE SUBSEQUENTLY ADJUSTED OR VARIED BY THE COURT? As periodic maintenance payments can last for a number of years, their level is open to variation if there is a subsequent change in the circumstances of either party such as the loss of employment or inflation. The original order can be varied to reflect the change in circumstances. Note that no clean break can be achieved with child's maintenance, which can always be varied, according to the needs of the child. It is usually varied upwards as the child grows older and becomes more expensive to maintain. Example one: Mr. A applied for a reduction in the payments he was making to his ex-wife because he had been made redundant and the only replacement job he could find had a considerably lower salary. The Court may accept that he could no longer afford to pay at the old rate. Example two: Connie found two years after the award of financial maintenance that she could no longer manage on the maintenance she was receiving. Her former husband had received a pay rise and agreed that the payments should be increased. The original order

may be varied to reflect such change of circumstances. Sometimes parties would agree that maintenance should be increased annually by a certain percentage or in line with an established inflation measuring index. This can avoid making costly regular applications back to the Court. However, note that not all kinds of court orders can be varied. The following orders can be varied: Interim maintenance (Maintenance pending suit) Periodical payments The instalments by which a lump sum is payable An order for the sale of property. The following orders cannot be varied: Lump sum orders Property adjustment orders That is because these orders (lump sum orders & property adjustment orders) are 'once and for all' orders. They are intended to create finality in litigation so that the parties can put their antipathy behind and plan for the future without worrying about whether an order will be overturned. 8. IF I GOT A LARGE SUM OF MONEY AFTER THE DIVORCE (E.G. WINNING LOTTERY OR INHERIT A FORTUNE FROM FAMILY), DO I HAVE TO SHARE WITH MY EX-SPOUSE FROM THE MAINTENANCE? 8. IF I GOT A LARGE SUM OF MONEY AFTER THE DIVORCE (E.G. WINNING LOTTERY OR INHERIT A FORTUNE FROM FAMILY), DO I HAVE TO SHARE WITH MY EX-SPOUSE FROM THE MAINTENANCE? This Question can be answered in two parts:- Before the granting of maintenance order The Court in assessing maintenance to be made for a divorced spouse is obliged to have regard not only to the financial resources and needs, obligations and responsibilities which the parties have at present, but also prospective assets which each of them is likely to have in the foreseeable future. Prospective assets include, but not limited to, lump sum pension payable on retirement, capital sum due to be received under a settlement or which might be received on the dissolution of a partnership, gratuity payable on termination of contract etc. In many cases, the prospective asset consists not of something in which the party already has a vested or contingent interest but simply something which he or she is likely to inherit. The issue is whether the asset is one which the party is likely to have in the foreseeable future. If it is, then the Court will have regard to it in considering whether to make a lump sum order, or whether to adjourn the application for further payment. Thus, where the husband has reasonable prospect of receiving substantial assets, it may affect the amount of the lump sum which he is ordered to pay to the wife, or they may justify an order which provides the wife with capital or further capital on the happening of a future event or they may make it appropriate to adjourn her application until that event occurs. Because of the Court's duty to have regard to the foreseeable future, it is necessary to take into consideration not only existing liabilities but also those which are likely to be incurred in the foreseeable future. Similarly, the prospective assets and liabilities of the wife have to be taken into account in the application for maintenance. After the order of maintenance was granted The Court has wide powers to vary or discharge certain orders (whether or not made by consent) or to temporarily suspend and revive any provision contained therein. The Court has a wide discretion in variation proceedings. It can take into account increases in both the capital and income resources of the payer. There is a recent UK Court of Appeal case ruling that when seeking variation of periodical payments, there is no need to show a change of circumstances, or an exceptional or material change of circumstances. As the Court has an absolute discretion, it can look at the case afresh, and need not regard the original order as the starting point. However, when exercising its powers in variation proceedings, the Court must consider all the circumstances of the case, it must give first consideration to the welfare of any child of the family aged under 18, and any changes of circumstance including any change in any of the matters to which the Court was required to have regard when making the original order. The Court will be vigilant to ensure that the variation application is not a disguised form of appeal. 9. WHAT CAN THE WIFE/HUSBAND DO IF THE OTHER PARTY REFUSED OR FAILED TO MAKE MAINTENANCE PAYMENT? 9. WHAT CAN THE WIFE/HUSBAND DO IF THE OTHER PARTY REFUSED OR FAILED TO MAKE MAINTENANCE PAYMENT? You may consider the following ways to enforce the court order for maintenance against your spouse: a. Judgment summons You can apply for a judgment summons. Under the judgment summons, your spouse is being summoned to Court to reveal his or her financial strength to settle the arrears. There should be no delay in pursuing for the outstanding amount as the court might refuse to enforce the Order of payment for those arrears due more than 12 months before proceedings to enforce the payment of them have begun. The

judge has the power to make a new order for payment of the amount due or to commit your spouse to prison (according to Rule 87 of the Matrimonial Causes Rules) if he or she cannot justify his or her failure to pay. If your spouse fails to attend the hearing, the court will adjourn the case to a further hearing. If he or she still fails to attend on the adjourned hearing, the judge can commit him or her to prison in his or her absence. Any committal to prison can be suspended on terms relating to the payment of the debt. b. Attachment of income to satisfy order With reference to section 28 of the Matrimonial Proceedings and Property Ordinance, where a maintenance order has been made against a maintenance payer and: a court is satisfied that the payer has without reasonable excuse failed to make any payment which he is required to make by the maintenance order; or a court is satisfied that there are reasonable grounds to believe that the payer will not make full and punctual payment in compliance with the maintenance order; or the payer and designated payee agree to the making of an order under this section; and there is any income capable of being attached payable to the payer, the Court may order the income to be attached as to the whole or part of the amount payable under the maintenance order and the amount attached to be paid directly from the payer's sources of income (e.g. his/her employer) to the specified payee. However, the payer could retain certain amount for his/her reasonable living expenses before such deduction. c. Prohibition order It is possible to apply to the Court on an ex-parte basis (applied unilaterally by one of the parties only) for an order that your spouse be prevented from leaving Hong Kong pending recovery of the debt. If granted, the order is served on the Director of Immigration and your spouse will not be allowed to depart if he or she attempts to leave Hong Kong. This procedure can be very effective in particular when your spouse travels frequently as it is likely to cause your spouse considerable inconvenience. However, you should bear in mind that the Court is reluctant to limit a person's liberty in this way. Therefore such an application should only be made as a last resort only when every other method of enforcement has been exhausted and proved inappropriate. G. MATRIMONIAL HOME G. MATRIMONIAL HOME I. FLOWCHART FOR DIVORCE IN HONG KONG I. FLOWCHART FOR DIVORCE IN HONG KONG (FOR REFERENCE ONLY) **Flowchart for Divorce in Hong Kong is written by Dr. Chiu Man-chung and Mr. Dennis Ho, extracted from Social Welfare and Law: Communication and Empowerment (Expanded Second Edition), co-edited by Chiu Man-chung, Hung Shirley and Chong Yiu Kwong PROTECTION FOR VICTIMS IN DOMESTIC VIOLENCE V. PROTECTION FOR VICTIMS IN DOMESTIC VIOLENCE What is domestic violence? Domestic violence not only covers physical violence, but also covers any act that is regarded as ‘molestation’. Therefore, the following acts can also be possibly treated as domestic violence: Physical abuse Verbal abuse Psychological abuse If you are in doubt, please contact the police or any support services for consultation. Who is eligible for protection? Under the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189), the following categories of persons are within the scope of injunction orders, commencing on 1 January, 2010: Spouse or former spouse; Cohabitant or former cohabitant ((whether of the same sex or of the opposite sex) who live together as a couple in an intimate relationship); Child of the victim or child who lives with the victim; Victim’s step-father, step-mother, step-grandfather or step-grandmother; Victim’s father-in-law or mother-in-law who is the natural parent, adoptive parent or step-parent of the victim’s spouse; Victim’s grandfather-in-law or grandmother-in-law who is the natural grandparent, adoptive grandparent or step-grandparent of the victim’s spouse; Victim’s son, daughter, grandson or granddaughter (whether natural or adoptive); Victim’s step-son, step-daughter, step-grandson or step-granddaughter; Victim’s son-in-law or daughter-in-law who is the spouse of the victim’s natural child, adoptive child or step-child; Victim’s grandson-in-law or granddaughter-in-law who is the spouse of the victim’s natural grandchild, adoptive grandchild or step-grandchild; Victim’s brother or sister (whether of full or half blood or by virtue of adoption); The brother or sister (whether of full or half blood or by virtue of adoption) of the victim’s spouse; The victim’s step-brother or step-sister; The step-brother or step-sister of the victim’s spouse; The victim’s uncle, aunt, nephew, niece or cousin (whether of full or half blood or by virtue of adoption); The uncle, aunt, nephew, niece or cousin (whether of full or half blood or by virtue of adoption)

of the victim's spouse; or The spouse of any brother, sister, step-brother, step-sister, uncle, aunt, nephew, niece, cousin. What can I do immediately if my spouse assaults me and my children? If you or your children are assaulted or threatened by your spouse/partner or person listed in the previous section, you should report the matter to the police. For any emergency, please contact 999. The police officers who deal with the incidents are all professionally and specially trained in the domestic violence area. Therefore you should not worry about their knowledge and experience in dealing with your particular situation. According to their code of conduct, you should be interviewed by an officer of the same gender, if available, and separately from the perpetrator to ensure privacy and safety. You will never be asked in the presence or hearing of the abuser if he/she wants to bring a criminal complaints against the abuser and whether he/she would be prepared to give evidence at court hearing. Please be noted that if there is evidence of a crime, the perpetrator should be arrested, irrespective of your wishes. The arresting officer should explain the procedure and inform you of the arresting officer's number and the name of the Police Station to which the abuser will be taken. If there is insufficient evidence to support the report against the abuser, the situation and reasons should be explained to you. You shall also be given by the officer some information about support services and hotlines for practical and emotional support. If you do not have immediate danger from your perpetrator or you do not want him or her to be arrested, you may consider the following options: a) Injunction Orders 1. What injunction orders are available? Under the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189), an application can be made by the eligible person to the District Court or the Court of First Instance, the court may grant an injunction which either: (1) restrains the offender from using violence against the applicant or a child living with the applicant; or (2) excludes the offender from the matrimonial/shared home or from a specified part of the matrimonial/shared home or from a specified area, regardless of ownership of the property. Where a Power of Arrest has been attached to an injunction, a police officer may arrest, without warrant, if you are being abused and threatened again by the perpetrator. 2. How long do the injunction orders last? The maximum length of an injunction order is 24 months. The order can be renewed once as the court sees appropriate. 3. Can I apply for injunction orders without informing the abuser? The Court may make an order at first without the abuser being told about it. In other words you may apply to the Court without telling him/her what you are going to do. However, the written order must be served upon the perpetrator before it is of any effect. You must therefore take steps to ensure that you are in a place of safety until the order has been served. 4. How can I apply for the injunction orders? The application forms for injunction orders can be obtained either from a solicitor, the Legal Aid Department, or the Family Court Registry. Legal Aid Department hotline Telephone: 2537 7677 Fax: 2537 5948 Website: http://www.lad.gov.hk/eng/ginfo/5day.html E-mail: ladinfo@lad.gov.hk Family Court Registry Address: M2, Wanchai Law Courts, Wanchai Tower, 12 Harbour Road, Hong Kong Telephone: 2840 1218 Fax: 2523 9170 Website: https://www.judiciary.hk/en/about_us/contactus.html#FC E-mail: familycourt@judiciary.hk Opening hours: Monday to Friday 8:45 a.m. to 1:00 p.m.; 2:00 p.m. to 5:30 p.m. (Closed on Saturdays, Sundays and Public Holidays) Due to the complexity of the procedures, you are recommended to find solicitors' assistance if possible. For any possible financial assistance, the Legal Aid Department will be of help. b) Harmony House Harmony House provides a refuge (or shelter) for battered women. It is a safe retreat for women, with or without children, who are in immediate danger of violence. The main concern is the safety of and the support for the battered women, and to provide a temporary residential service to these women. Most of the residents stay for about 2 weeks, but in special cases, the period of stay may extend up to 3 months. During their stay the refuge provides the residents with individual and group counselling and other related resources and services. The refuge also encourages mutual support and foster community spirit among the residents. Each resident had her own free time and privacy. In order to provide the immediate service to battered women, the refuge has a 24 hours hot line service, battered women may contact the refuge directly by ringing 2522 0434. Men facing domestic violence can also call the Harmony House (men's hotline) at 2295 1386. For more

details about Harmony House, you can also visit its website. c) Support Services There are governmental as well as non-governmental organisations (NGOs) who offer practical (eg. medical, financial and housing advice) and emotional support for victims of domestic violence. Some organisations provide services to anyone, whilst some other will serve particular groups. You can refer to the following resource list for assistance: (as updated in June, 2011) 1) Organisations for all victims a) Social Welfare Department Telephone: 2343 2255 (General enquiry) Website: https://www.swd.gov.hk/en/index/site_pubsvc/page_family/sub_listofserv/id_VSPforVFV/ b) Family Crisis Support Centre operated by the Caritas-HK Telephone: 18288 (24 hour hotline) Website: http://fcsc.caritas.org.hk/ 2) Organisations for female victims (with or without children) Target Group Women with or without children who are in immediate danger of violence or having serious personal or family problems. Cases admitted to the refuge centres may stay at the refuge for two weeks but the period of stay may be extended to a maximum period of 3 months. a) Harmony House Telephone: 2522 0434 (24 hour hotline) Website: https://www.harmonyhousehk.org/eng/content/contact-us b) Wai On Home for Women Telephone: 2793 0223 c) Serene Court Telephone: 2787 6865 d) Sunrise Court Telephone: 2890 8330 e) Dawn Court Telephone: 2243 3210 3) Organisations for male victims a) Harmony House: Third Path - Man Services Telephone: 2295 1386 (Mon & Wed & Fri: 2 p.m.-10 p.m. excluding public holidays) Fax: 2304 7783 Email: hh3path@harmonyhousehk.org Website: https://www.harmonyhousehk.org/eng/content/contact-us 4) Oragnisations for lesbian victims a) Les Corner Telephone：5281 5201（with Whatsapp Email：lescorner2015@gmail.com Website: https://www.facebook.com/lescorner2015 5) Organisations for gay victims a) Rainbow of Hong Kong Telephone: 2769 1069 Website: https://www.rainbowhk.org/ b) Harmony House: Third Path - Man Services Telephone: 2295 1386 (Mon & Wed & Fri: 2 p.m.-10 p.m. excluding public holidays) Fax: 2304 7783 Email: hh3path@harmonyhousehk.org Website: https://www.harmonyhousehk.org/eng/content/contact-us L. CASE ILLUSTRATION L. CASE ILLUSTRATION Scenario: Mr. J and Ms. A are a couple with a 12-year-old son. Mr. J is an accountant and his wife Ms. A is a nurse. Their son has just entered secondary school this year. Ms. A suspects that Mr. J has a mainland mistress and their relationship has been deteriorating in recent years. They have sought assistance from some family mediation agencies but they still failed to settle their differences. The family used to live in a flat (in which the mortgage payments are shared between the couple) but Mr. J moved out last year. Ms. A, who cannot stand the existing relationship, has decided to petition for divorce. Question 1: It seems that Mr. J does not object to divorce. Can Ms. A present a divorce petition to the Family Court at this stage? Answer 1 Question 2: What should Ms. A do when she applies for divorce? Answer 2 Question 3: If the child prefers to live with Ms. A, does it mean that Mr. J has no chance to obtain his son's custody? Answer 3 Question 4: A divorce decree has been granted and the child's custody has been granted to Ms. A. Can Mr. J see or does he have visiting access to his son? Answer 4 Question 5: The Court ordered that Mr. J has to provide financial support for his son. When will he be discharged of such liability?Answer 5 Question 6: Can Ms. A apply for maintenance pending suit (interim maintenance) for herself before the completion of divorce proceedings? Answer 6 Question 7: The Court ordered that Mr. J should pay maintenance to Ms. A. Are there any ways to ensure that Mr. J will make maintenance payment to Ms. A after the divorce? Answer 7 Question 8: When will Mr. J be discharged from his liability to pay maintenance to Ms. A? Answer 8 Question 9: Mr. J has suffered a pay-cut and he doesn't want to pay maintenance to Ms. A. Are there any ways that Mr. J can avoid paying the maintenance? Answer 9 Question 10: Will Mr. J still be required to pay the mortgage even if he is not awarded to use the matrimonial home? Answer 10 Answer 1: It is a concrete ground for divorce petition if Ms. A and Mr. J have lived apart for a continuous period of at least 1 year before filing the petition, and that Mr. J agrees to divorce. For other valid grounds, please refer to "What are the grounds for divorce?". Also unless the Court allows otherwise, a divorce petition can be presented only if the parties have been married for at least 1 year. Ms. A and Mr. J should have no problem in this aspect. Answer 2: Please refer to "How to apply for divorce?" Answer 3: No, it may not. In any proceedings relating to a child, the welfare

of the child is the first and paramount consideration. Each case will depend on its own facts. When dealing with a dispute over a child, the Court will take into account all the relevant factors (e.g. the personality, financial resources of the parents, etc.). The child's view is not overriding. It has to be balanced with other factors. Answer 4: Mr. J may have visiting access to his son. Visiting access refers to the contact with the parent who does not have the custody of the child / children. The parent without care and control of the child can and should continue to play an important parental role. It is important to point out that the making of a sole custody order to one parent does not remove the other parent's right to be involved in his or her child's upbringing. Such a parent is always able to make an application to the Court on any individual question of the child's welfare and to ask the Court to rule on a dispute. Further, even if a parent has sole custody, the Court would disapprove of that parent making a major change to the child's life without at least informing the other parent, assuming that the parents were still in contact with each other. Answer 5: In normal circumstances, court orders for periodical payments, secured periodical payments, a lump sum, and a transfer of property can only be made in favour of a child who is below 18 years old. However, payments under an existing order can extend beyond 18 if the child is or will be attending an educational establishment or undergoing some form of training, or if there are special circumstances which justify it (such as the child being disabled) or that make it appropriate to do so. Answer 6: Yes, Ms. A can apply for this maintenance which is available for the duration of the divorce proceedings only. It would be terminated upon the grant of the final decree of divorce (decree absolute), or earlier if the Court do orders. The Court is required to make such order as is reasonable. Answer 7: Ms. A can consider applying for the following orders:- (1) Secured periodical payments Order – As its name suggests, these are maintenance payments which are secured or guaranteed. However, it is pertinent to note that the secured provision is not to be a general charge on all assets. The Court is obliged to specify the assets on which security is to be given. The payments will continue until the death of the payee (not the payer, the party making payment), or the remarriage of payee, or an earlier date as specified by the Court. This order will only be imposed if there are reasonable grounds to believe that the common periodical payments order will be ineffective to carry out in practice and there are sufficient funds or assets of the payer whereby the payments can be secured e.g. where the payer has sufficient means but has a history of failing to abide by order so made (as in the interim maintenance order), poor record of financial irresponsibility, or has vowed to resist payment of maintenance if so ordered. (2) Lump Sum Order – It is an order for the payment of a capital sum in which the payee is entitled to one lump sum only. This order is closely related to the 'clean break' sought by a claimant. The capital sum payable under such order can be paid in various instalments. However, this order cannot be varied subsequently, because it is an 'once and for all' order that are intended to create finality in litigation. (3) Property Adjustment Order – It is an order whereby one party is ordered to transfer to another his or her interest in property such as real properties, stocks, or car, etc. This kind of order, once made, cannot be varied. Answer 8: The maintenance order will usually terminate upon the death of either party or the remarriage of the payee (the one who receives the maintenance). However, the Court can limit the duration of the maintenance payment to a shorter specified time. Answer 9: A court order must be strictly followed, failing which is a contempt of court (with a fine or an imprisonment penalty). In general, a payer can apply to the Court for variation of maintenance order if there is a change in circumstances (e.g. being bankrupt, made redundant, etc.) that render him unable or reduce his ability to pay the maintenance. Answer 10: It is possible that the original mortgage will be retained or a new mortgage will be taken. Depending on the circumstances, it may be necessary for the husband (Mr. J) to continue to pay, or at least to partly contribute to, the mortgage repayments. This can either be effected by direct payment to the mortgagee or through the maintenance paid to Ms. A. In circumstances where the property (and therefore the mortgage) is to be held in the wife's sole name and the wife does not have an independent income of her own, the mortgagee may require the husband to guarantee the

payments. MARRIAGE AND COHABITANT ISSUES I. MARRIAGE AND COHABITANT ISSUES A. AN OVERVIEW A. AN OVERVIEW The right to marry is a constitutional right provided by Article 37 of the Basic Law which states that “the freedom of marriage of Hong Kong residents and their right to raise a family freely shall be protected by law”. The minimum age for marriage in Hong Kong is 16. However, if either party is over 16, but still under 21, and is not a widow or widower, written consent to the marriage is required. Although the written consent is usually provided by a parent or guardian (section 14 and Schedule 3 of the Marriage Ordinance (“MO”), Cap. 181), a judge may also give permission if there is no one more appropriate available (section 18A of the MO). Parties are free to marry whoever they choose as long as they are both single at the time of the marriage and of the opposite sex. Therefore, someone may divorce his/her spouse, and then marry another single opposite sex party, or even at some time later remarry his or her original spouse. B. TYPES OF MARRIAGES IN HONG KONG B. TYPES OF MARRIAGES IN HONG KONG Various types of marriages are recognized by Hong Kong law. A. REGISTERED MARRIAGE Since 7th October 1971, a couple in Hong Kong can only validly marry in accordance with the Marriage Ordinance. This generally means that it must be a voluntary union for life of one man with one woman to the exclusion of all others and that the marriage ceremony must be carried out at one of the Marriage Registries or licensed places of worship in Hong Kong. This is called a registered marriage. In addition, section 21(3A) of the MO states that a marriage celebrated by a civil celebrant can take place at any place in Hong Kong apart from the office of the Registrar and a licensed place of worship. B. FOREIGN MARRIAGE A foreign marriage celebrated outside Hong Kong in accordance with the law in force at the time and in the place where the marriage was performed is generally recognized in Hong Kong as a valid marriage similar to a marriage registered in Hong Kong. If the marriage was conducted and registered overseas, the marriage itself will not be governed by Hong Kong Law. However if the parties to the marriage choose to have a divorce in Hong Kong, they may do so and the laws of Hong Kong in relation to the divorce proceedings will apply. C. CHINESE CUSTOMARY MARRIAGE AND MODERN MARRIAGE Apart from registered marriages and foreign marriages, the law also recognizes as valid two other types of marriage if they were conducted in Hong Kong before 7th October, 1971. CHINESE CUSTOMARY MARRIAGE The first type is a Chinese customary marriage. It is a marriage celebrated in accordance with the traditional Chinese customs that were accepted at the time of the marriage, either in the part of Hong Kong where the marriage took place, or in the parties’ family place of origin, usually their native place in China. MODERN MARRIAGE The other type is called a modern marriage, which is where an unmarried man and woman, neither of whom is less than 16 years of age, went through an open ceremony in the presence of at least two witnesses in such manner that a reasonable person would think that a marriage has been celebrated. It is important to note that the ceremony has to be ‘open’ in the sense it was known and could be seen by all those who were not particularly invited to participate in the ceremony itself. This requirement would be satisfied by, for example, leaving the door of the room in which the ceremony took place open. This type of marriage is also called validated marriage. Parties to these two latter types of marriage (Chinese customary marriage and modern marriage) can have the marriage post-registered at the Marriage Registry (that is, the marriage can be registered at the marriage registry after the event has taken place). Registering a customary or validated modern marriage “legalizes” the marriage and allows it to be legally valid, enforceable and binding. Sections 7 and 8 of the Marriage Reform Ordinance (“MRO”), Cap. 178 provide for what constitutes customary and validated modern marriage. Section 9 of the MRO provides for the registration of customary and validated marriages. Evidence needs to be produced indicating the customary or validated marriage was celebrated in Hong Kong before 7 October 1971. Two witnesses to the marriage are required to give statutory declarations to confirm that they were present during the wedding ceremony. These documents need to be submitted to the Marriage Registration and Records office. Once the application is approved by the Registry, the customary or validated marriage is registered. If one party refuses to have the marriage registered after it has taken place the other party may apply to the District Court for a declaration that such a marriage exists and thereafter that party can post-register it

unilaterally. D. OFFENCES UNDER THE MARRIAGE ORDINANCE D. OFFENCES UNDER THE MARRIAGE ORDINANCE Under sections 29 and 30 of the Marriage Ordinance , any person, minister or civil celebrant who, knowing that a written consent from the proper person has not been obtained, marries or assists or procures any other person to marry a person under the age of 21 years who is not a widow or widower commits an offence and shall be liable to a fine at level 5 (currently $50,000) and imprisonment for two years. Under section 32 of the MO , any person who wilfully removes or alters any notice, certificate, licence or other document kept or filed by the Registrar pursuant to, or for the purposes of, the provisions of this Ordinance shall be liable to a fine at level 5 (currently $50,000) and to imprisonment for six months. Under section 33 of the MO , any person who knowingly and wilfully celebrates or pretends to celebrate a marriage, not being legally competent to do so, shall be guilty of an offence triable either summarily or upon indictment, and shall be liable to a fine at level 5 (currently $50,000) and to imprisonment for two years. E. NUPTIAL AGREEMENTS E. NUPTIAL AGREEMENTS As long as society continues to evolve, matrimonial law is ever changing. Agreements made between couples before or after marriage become more common. Premarital and post-marital agreements are known as nuptial agreements. Nuptial agreements are contracts, entered into by couples, which determine the rights and obligations of each of them in the event their marriage fails. Premarital agreements are drawn up and signed before marriage, while post-marital agreements are made during the marriage. Post-marital agreements can be made either while the couple is still together, or when they separate. Post-marital agreements entered into during separation are known as “separation agreements”. The content of nuptial agreements normally include terms for: division of property maintenance for support of a spouse other financial arrangements such as trusts, company share transfers etc. More complex agreements may arise where specific terms for a financial award result in the breakdown of the marriage. F. MARRYING NON-HK RESIDENTS F. MARRYING NON-HK RESIDENTS Generally, spouses of Hong Kong permanent residents do not have the right of abode in Hong Kong unless they fall within Schedule 1 of the Immigration Ordinance, Cap. 115. A. HONG KONG RESIDENTS WITH SPOUSES FROM OVERSEAS (OTHER THAN MAINLAND CHINA) A. HONG KONG RESIDENTS WITH SPOUSES FROM OVERSEAS (OTHER THAN MAINLAND CHINA) For spouses from overseas (other than Mainland China), if they wish to enter Hong Kong to reside, they need to apply for a dependant visa. They must show that they are dependants of their spouses who are either Hong Kong permanent resident or a resident who is not subject to a limit of stay (i.e. a resident with the right to land or on unconditional stay). The following conditions must be satisfied for a successful dependant visa application: Reasonable proof of a genuine relationship between the applicant (“dependant”) and the spouse residing in Hong Kong (“sponsor”); the applicant should be of clear criminal records and raise no security or criminal concerns for the HKSAR; the sponsor can substantially support the dependant and provide suitable accommodation during his/her stay in Hong Kong. For more details on the application for a dependant visa, please visit the website of the Immigration Department. Upon successful application for a dependant visa, the spouse from overseas is not prohibited from taking up employment in the HKSAR. B. HONG KONG RESIDENTS WITH SPOUSES FROM MAINLAND CHINA B. HONG KONG RESIDENTS WITH SPOUSES FROM MAINLAND CHINA For details about applying for a marriage registration in Mainland China, you may refer to the website of the Beijing Office of the HKSAR Government. According to Article 22 of the Basic Law , for entry into the HKSAR, people from Mainland China (including a Mainland spouse) must apply for approval. A Mainland resident who wishes to settle in Hong Kong must apply for an Exit-entry Permit for Travelling to and from Hong Kong and Macao (also known as a “One-way Permit”) from the office of the Exit-entry Administration of the Public Security Bureau where his/her household registration is kept in China. The process and issue of One-way Permits are administered by the Public Security Bureau in accordance with Mainland Chinese laws, policies and regulations. Therefore, if a Mainland spouse wishes to come to Hong Kong for family reunion, he/she needs to apply for a “One-way Permit” from the public security authority in the place of his/her household registration in China. The mainland spouse may also apply to bring along his/her minor children (i.e. under 18 years of age) from the Mainland to Hong Kong. For more details,

please refer to the website of the Immigration Department. C. FOREIGNERS OR MAINLAND RESIDENTS WORKING/STUDYING IN HONG KONG WITH SPOUSES FROM OVERSEAS (INCLUDING MAINLAND CHINA) C. FOREIGNERS OR MAINLAND RESIDENTS WORKING/STUDYING IN HONG KONG WITH SPOUSES FROM OVERSEAS (INCLUDING MAINLAND CHINA) For foreigners or mainland residents who are: working in Hong Kong (as a professional, for investment to establish/join in business, or for training); or studying in a full-time undergraduate or post-graduate local programme in a local degree-awarding institution; or permitted to remain in the HKSAR as an entrant under the Capital Investment Entrant Scheme or the Quality Migrant Admission Scheme, their spouses and unmarried child (children) under the age of 18 may apply to join him/her for residence in Hong Kong. The following conditions must be satisfied for a successful dependant visa application: Reasonable proof of a genuine relationship between the applicant (“dependant”) and the spouse residing in Hong Kong (“sponsor”); the applicant should be of clear criminal records and raise no security or criminal concerns for the HKSAR; the sponsor can substantially support the dependant and provide suitable accommodation during his/her stay in Hong Kong. For sponsors who have been admitted for employment (as professionals, for investment to establish/join in business or for training); and entrants under the Capital Investment Entrant Scheme or the Quality Migrant Admission Scheme, their spouses or children may take up employment in the HKSAR upon successful application for a dependant visa. However, dependants of sponsors who have been admitted to study are not permitted to take up employment unless they have obtained prior permission from the Director of Immigration. For more details, please visit the website of the Immigration Department: Foreigners working/studying in Hong Kong Mainland residents working/studying in Hong Kong G. BENEFITS AND WELFARE ENJOYED BY MARRIED COUPLES G. BENEFITS AND WELFARE ENJOYED BY MARRIED COUPLES A. MARRIED PERSON’S ALLOWANCE A. MARRIED PERSON’S ALLOWANCE Regardless of whether the spouse is a Hong Kong resident, a married taxpayer in Hong Kong can claim the married person’s allowance in any year of assessment if the taxpayer is married at any time during that year, and; he/she is not living apart from his/her spouse; or he/she is living apart from his/her spouse but is maintaining or supporting the spouse; AND the spouse does not have any income chargeable to salaries tax; in which case it does not matter whether the taxpayer and his/her spouse have elected the joint tax assessment or the personal tax assessment. “Marriage”, in the context of the Inland Revenue Ordinance (IRO), refers to a heterosexual marriage between a man and a woman. “Spouse” is defined in section 2 of the IRO as a husband or a wife. A “husband” is a married man and a “wife” is a married woman. B. DEPENDENT PARENT AND DEPENDENT GRANDPARENT ALLOWANCE B. DEPENDENT PARENT AND DEPENDENT GRANDPARENT ALLOWANCE A taxpayer in Hong Kong may claim allowance in respect of each dependent parent / grandparent maintained by him/her or his/her spouse, provided his/her spouse is not living apart from the taxpayer during the year. To qualify for the allowance, the dependent parent / grandparent must at any time during the year be: ordinarily resident in Hong Kong; aged 55 or more, or eligible to claim an allowance under the Government’s Disability Allowance Scheme; and residing with the taxpayer or his/her spouse, without paying full cost, for a continuous period of not less than 6 months, or have received from the taxpayer or his/her spouse not less than $12,000 in money within the taxation year in question. If the dependent parent / grandparent resides with the taxpayer continuously throughout the whole year without paying the full cost, the taxpayer is also entitled to the Additional Dependent Parent and Grandparent Allowance. In the context of considering a taxpayer’s eligibility for the dependent parent / grandparent allowance, the term “ordinarily resident in Hong Kong” means that the dependant must be habitually and normally resident in Hong Kong. To determine whether a dependant is ordinarily resident in Hong Kong, the Inland Revenue Department may consider objective factors including: the number of days he / she stayed in Hong Kong; whether he / she has a permanent dwelling in Hong Kong; whether he / she owns a property for residence outside Hong Kong; whether he / she works or carries out a business in Hong Kong ; whether his / her relatives are mainly residing in Hong Kong. A “parent” means: natural father or mother / step parent; or natural father or mother / step parent of one’s spouse; or a parent by whom one or one’s spouse was legally adopted; or a parent of one’s deceased spouse. A “grandparent” means: natural

grandfather or grandmother / one’s adoptive grandparent / one’s step grandparent; or natural grandfather or grandmother / adoptive grandparent / step grandparent of one’s spouse; or grandparent of one’s deceased spouse. Only one individual can be granted an allowance for the same dependant. If more than one individual is entitled to the allowance for the same dependant, they must agree amongst themselves on who shall claim the allowance. If one has already been granted a deduction for elderly residential care expenses for a parent or grandparent, one will not be granted a dependent parent and dependent grandparent allowance for the same parent or grandparent for that same year of assessment. For more details about tax allowances for married couples, please visit the GovHK website. H. BIGAMY H. BIGAMY Bigamy is the act of entering into a marriage with one person while still legally married to another. It is a legal ground to nullify a marriage. A nullified marriage means the marriage is declared null and void, which means the marriage is treated as if it never existed. According to section 20(1) of the Matrimonial Clause Ordinance (MCO), Cap. 179 , when at the time of marriage either party has already been lawfully married, the said marriage is void. For example, if a person marries a second time without first completing the formal steps of divorce for his/her first marriage, then his/her second marriage is nullified. Section 18(1) of the MCO provides for the remarriage of divorced persons: “Where a decree of divorce has been made absolute and either- there is no right of appeal against the decree absolute; or the time for appealing against the decree absolute has expired without an appeal having been brought; or an appeal against the decree absolute has been dismissed; either party to the former marriage may marry again.” If someone got married in Mainland China or overseas and is undergoing a divorce process, as long as the divorce process is not completed and the status of that person is not “single”, then the said person cannot get married again in Hong Kong, as the marriage would be void under section 20(1)(c) of the MCO. Vice versa, if the party originally got married in Hong Kong but is getting married again in the Mainland or overseas, albeit undergoing divorce proceedings at the time the party gets married (assuming the proceedings are not yet completed), the said party commits bigamy, under section 45 of the Offences Against the Person Ordinance (Cap. 212). According to section 45 of the Offences Against the Person Ordinance (Cap. 212), any person who, being married, marries any other person during the life of the former husband or wife shall be guilty of an offence triable upon indictment, and shall be liable to imprisonment for seven years. I. COHABITATION I. COHABITATION Unmarried cohabitant couples do not have the legal status of married couples and thus do not enjoy the benefits attached to married couples, which includes tax, pension, medical and public housing benefits. The most important fact is that, regardless of how long the cohabitants have been living together, cohabitant couples are not recognized as married couples under the law. Thus, cohabitant couples fall outside the scope of the rights enjoyed by married couples. B. ESTATE PROVISION B. ESTATE PROVISION According to the Intestate Estate Ordinance (IEO), Cap. 73 , if a person has not married his/her cohabiting partner, and his/her cohabiting partner dies intestate (without a will), he/she cannot share in the estate of his/her cohabiting partner(section 4). According to section 2 of the IEO , “intestate” also includes a person who leaves a will but dies intestate as to some beneficial interest in his/her estate. However, the Inheritance (Provision for Family and Dependants) Ordinance (Cap. 481) provides a way for a cohabiting partner to apply for financial provision from his/her deceased partner, even if the deceased partner leaves no will and no legal status of husband or wife exists. According to section 3(1)(b)(ix) of the Inheritance (Provision for Family and Dependants) Ordinance , any person who has been maintained wholly or substantially by the deceased immediately before the deceased’s death can apply for financial provision from the deceased person’s estate. Therefore, if a cohabiting partner can prove that he/she has been maintained by the deceased partner, then he/she can still receive maintenance from the deceased’s estate. C. PROTECTION FROM VIOLENCE IN COHABITATION C. PROTECTION FROM VIOLENCE IN COHABITATION Hong Kong laws seek to protect cohabitants from violence in their relationships. The Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189) allows victims of violence, whether in marriage or cohabitation relationships, to seek legal remedies and apply for court injunctions. For example, a

person may apply for a restraining order to prevent the perpetrator or abusive partner from entering or remaining in their residence: under (Section 3B of the Domestic and Cohabitation Relationships Violence Ordinance). For more details about domestic violence, please read “ Domestic violence and assistance ”. D. PARENTAL RIGHTS D. PARENTAL RIGHTS Where unmarried cohabitants have children, the mother has all the rights and authority regarding the child’s custody and upbringing, while the natural father does not have automatic parental rights. To enjoy parental rights, the natural father must make an application for a Court Order under (Section 3(1)(c) of the Guardianship of Minors Ordinance, Cap. 13). E. UPON SEPARATION E. UPON SEPARATION In the event of a breakdown in their relationship, cohabitants do not enjoy any legal rights. In particular, the law does not provide unmarried separated couples the same rights that are enjoyed by divorced couples following the breakdown of their marriage. J. TRANSSEXUAL MARRIAGE J. TRANSSEXUAL MARRIAGE Transsexual persons are those who have changed from one sex to another. Normally transsexuals change their gender by undergoing a sex reassignment medical treatment and surgery. They can then apply to change to a new identity card (HKID card) with the newly acquired gender. According to section 40 of the Marriage Ordinance , marriage involves a voluntary union for life of one man and one woman to the exclusion of all others. The Court of Final Appeal decision in W v Registrar of Marriages recognize a transsexual’s right to marriage. It was declared that the meaning of “woman” and “female” includes a post-operation male-to-female transsexual person whose gender has been certified by an appropriate medical authority as having changed after sex reassignment surgery. Accordingly, the Court held that under the law “W” is entitled to be included as “a woman” under the relevant provisions of the Marriage Ordinance, and therefore is eligible to marry a man. Further, the Court of Final Appeal held in Q & Tse Henry Edward v Commissioner of Registration that the underlying policy of the Commissioner of Registration requiring a full sex reassignment surgery (which involves a highly invasive surgery to remove the uterus and ovaries and construct an artificial penis for the female to male transgender persons) before amending the gender markers on their HKID cards, was unconstitutional. In other words, the completion of full sex reassignment surgery is not a necessary condition for amending the gender markers on transgender persons’ HKID cards. The appellants in that case have been medically certified that additional surgical procedures are not needed, the surgery carries certain post-operative risks and possible complications, and is medically unnecessary for many transgender persons, including the appellants. K. SAME-SEX MARRIAGE / CIVIL PARTNERSHIP K. SAME-SEX MARRIAGE / CIVIL PARTNERSHIP Under the Hong Kong law, marriage shall be a Christian marriage or the civil equivalent of a Christian marriage. Section 40 of the Marriage Ordinance (Cap. 181) states that marriage “implies a formal ceremony recognized by law as involving the voluntary union for life of one man and one woman to the exclusion of all others “. Therefore, same-sex couples are excluded from the legal institution of marriage, along with the benefits of marriage. Civil partnership (or same sex unions) is not recognized in Hong Kong. Under section 4 of the Marriage Reform Ordinance , marriage is defined as “the voluntary union for life of one man with one woman to the exclusion of all others…” It is worthy to note that under the UK Civil Partnership Act of 2004, British Nationals and BNO citizens already have the right to register as civil partners, meaning Hong Kong residents holding BNO status actually possess the right to register for civil partnership under UK law. However, they cannot register for civil partnerships in Hong Kong as the HKSAR government raised “strong objections” with the British consulate-general. Therefore, despite their “citizenship”, Hong Kong people do not have the British constitutional rights within Hong Kong. N. FAQ N. FAQ 1. IS THERE ANY AGE RESTRICTION FOR MARRIAGE IN HONG KONG? 1. IS THERE ANY AGE RESTRICTION FOR MARRIAGE IN HONG KONG? The minimum age for marriage in Hong Kong is 16. However, if either party is over 16, but still under 21, and is not a widow or widower, written consent to the marriage is required. The written consent is usually provided by a parent or guardian. Any person, minister or civil celebrant who, knowing that a written consent from the proper person has not been obtained, marries or assists or procures any other person to marry a person under the age of 21 years who is not a widow or widower commits an

offence and shall be liable to a fine and imprisonment. For more details, please go to Matrimonial Matters > Marriage and co-habitant issues > An overview. 2. MY WIFE IS AN AUSTRALIAN. I WANT HER TO COME TO HONG KONG AND LIVE WITH ME. WHAT DO I HAVE TO DO? 2. MY WIFE IS AN AUSTRALIAN. I WANT HER TO COME TO HONG KONG AND LIVE WITH ME. WHAT DO I HAVE TO DO? For spouses from overseas (other than Mainland China), if they wish to enter Hong Kong to reside, they need to apply for a dependant visa. They must show that they are dependants of their spouses who are either Hong Kong permanent resident or a resident who is not subject to a limit of stay (i.e. a resident with the right to land or on unconditional stay). The following conditions must be satisfied for a successful dependant visa application: Reasonable proof of a genuine relationship between the applicant (“dependant”) and the spouse residing in Hong Kong (“sponsor”); the applicant should be of clear criminal records and raise no security or criminal concerns for the HKSAR; the sponsor can substantially support the dependant and provide suitable accommodation during his/her stay in Hong Kong. For more details, please refer to Matrimonial Matters > Marriage and co-habitant issues > Marrying non-HK residents. 3. I GOT MARRIED IN THE MAINLAND CHINA A FEW YEARS AGO BUT MY HUSBAND HAS LEFT ME AND DISAPPEARED. I WANT TO MARRY ANOTHER MAN IN HONG KONG NOW. IS THERE ANY RISK THAT I MAY BE COMMITTING BIGAMY? 3. I GOT MARRIED IN THE MAINLAND CHINA A FEW YEARS AGO BUT MY HUSBAND HAS LEFT ME AND DISAPPEARED. I WANT TO MARRY ANOTHER MAN IN HONG KONG NOW. IS THERE ANY RISK THAT I MAY BE COMMITTING BIGAMY? If you got married in Mainland China, as long as the divorce process is not completed and your status is not “single”, then you cannot get married again in Hong Kong. Vice versa, if the party originally got married in Hong Kong but is getting married again in the Mainland or overseas, albeit undergoing divorce proceedings at the time the party gets married (assuming the proceedings are not yet completed), the said party commits bigamy. Any person who, being married, marries any other person during the life of the former husband or wife shall be guilty of an offence triable upon indictment, and shall be liable to imprisonment for seven years. For more about bigamy, please visit Matrimonial Matters > Marriage and co-habitant issues > Bigamy. 4. I SUSPECT THAT MY WIFE IS HAVING AN AFFAIR WITH ANOTHER MAN. CAN THIS BE A REASON FOR DIVORCE? 4. I SUSPECT THAT MY WIFE IS HAVING AN AFFAIR WITH ANOTHER MAN. CAN THIS BE A REASON FOR DIVORCE? Adultery is one of the reasons a party can use to prove that the marriage has broken down irretrievably, which is the legal grounds for divorce in Hong Kong. You have to establish the fact of adultery. You have to show that your wife has committed adultery, and you find it intolerable to live with her. However, if you and your wife continue to live together for more than six months following the act of adultery, you will not be entitled to rely on the fact of adultery. Besides, you must have certain knowledge that adultery has occurred, not only a belief that there has been adultery. To know more about this, please go to Matrimonial Matters > Marriage and co-habitant issues > Adultery. 5. I AM A WOMAN COHABITATING WITH MY BOYFRIEND. WE HAVE NO PLANS OF GETTING MARRIED. WOULD THIS JEOPARDIZE US IN THE LEGAL SENSE? 5. I AM A WOMAN COHABITATING WITH MY BOYFRIEND. WE HAVE NO PLANS OF GETTING MARRIED. WOULD THIS JEOPARDIZE US IN THE LEGAL SENSE? Unmarried cohabitant couples do not have the legal status of married couples because they do not enjoy the benefits attached to married couples, which include tax, pension, medical and public housing benefits. The most important fact is that, regardless of how long the cohabitants have been living together, cohabitant couples are not recognized as married couples under the law. Thus, cohabitant couples fall outside the scope of the rights enjoyed by many married people. If you want to know more, please refer to Matrimonial Matters > Marriage and co-habitant issues > Cohabitation. 6. I AM GETTING MARRIED VERY SOON. MY FATHER IS VERY RICH AND HE DOES NOT TRUST MY FIANCÉE. HE HAS SUGGESTED ME TO MAKE A NUPTIAL AGREEMENT WITH MY FIANCÉE. WHAT IS A NUPTIAL AGREEMENT? 6. I AM GETTING MARRIED VERY SOON. MY FATHER IS VERY RICH AND HE DOES NOT TRUST MY FIANCÉE. HE HAS SUGGESTED ME TO MAKE A NUPTIAL AGREEMENT WITH MY FIANCÉE. WHAT IS A NUPTIAL AGREEMENT? Agreements made between couples before or after marriage are known as nuptial agreements. Nuptial agreements are contracts, entered into by couples, which determine the rights and obligations of each of them in the event their marriage fails. Premarital agreements are drawn up and signed before marriage, while post-marital agreements are made during the marriage.

Post-marital agreements can be made either while the couple is still together, or when they separate. Post-marital agreements entered into during separation are known as “separation agreements”. The content of nuptial agreements normally include terms for division of property maintenance for support of a spouse other financial arrangements such as trusts, company share transfers etc. More complex agreements may arise where specific terms for a financial award result in the breakdown of the marriage. For more about nuptial agreements, please visit Matrimonial Matters > Marriage and co-habitant issues > Nuptial agreements. 7. DO NUPTIAL AGREEMENTS HAVE ANY LEGAL STATUS? 7. DO NUPTIAL AGREEMENTS HAVE ANY LEGAL STATUS? Nuptial agreements, other than separation agreements, are not as a general rule considered binding in the usual contractual sense in law in Hong Kong. There is no specific legislation concerning nuptial agreements, and not many court cases have addressed the topic of nuptial agreements. However, such agreements (not being separation agreements) could be taken into account when deciding the outcome in divorce proceedings in Hong Kong courts involving ancillary relief and division of financial assets under the Matrimonial Proceedings and Property Ordinance as “circumstances of the case” or “conduct”, and may be upheld in part or in whole. When the court needs to determine whether or not to make an order in accordance with a nuptial agreement, the question of fairness is a key issue. As ruled in an English case, nuptial agreement should be given effect (that is, enforced) if it was “freely entered into by each party with a full appreciation of its implications unless in the circumstances prevailing, it would not be fair to hold the parties to their agreement.” This principle was followed in Hong Kong. On the other hand, according to the Matrimonial Property and Proceedings Ordinance, separation agreements (agreements entered between couples once they have separated or on the occasion of their separation) are valid contracts. To understand more about this, please visit Matrimonial Matters > Marriage and co-habitant issues > Nuptial agreements. CUSTODY OF CHILDREN AND GUARDIANSHIP III. CUSTODY OF CHILDREN AND GUARDIANSHIP Article 19 of the Convention requires States Parties to “take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child” . Protective measures should include social programmes to support the child and those caring for the child for preventing, identifying, reporting, referring, investigating, treating and for following up on child maltreatment by judicial involvement where necessary. B. APPOINTMENT OF A GUARDIAN BY THE COURT B. APPOINTMENT OF A GUARDIAN BY THE COURT The Protection of Children and Juveniles Ordinance (PCJO), Cap. 213 is a key Ordinance in the protection of children and juveniles. It is a close companion to the Juvenile Offenders Ordinance. The words “child” , “young person” and “juvenile court” have the same meaning in both ordinances. A child is a person under 14 years of age. A young person is a person who has attained 14 years of age but is under 16 years of age. A “juvenile” for the purposes of the PCJO is a person of 14 years of age or upwards but under the age of 18 years. A juvenile court for the purposes of the PCJO is a juvenile court according to the Juvenile Offenders Ordinance. Under section 34 of the PCJO , a juvenile court, either on its own volition or upon the application of the Director of Social Welfare (“the Director”), which is satisfied that any person of or above the age of seven years brought before the court, or any other person under the age of seven years, is a child or juvenile in need of care or protection, may appoint the Director to be the legal guardian of such child or juvenile. Alternatively, the court may commit the care to any person, whether a relative or not, who is willing to undertake the care of the child, or to any institution which is willing to do so. The court can also order parents or guardians to enter into a recognizance to exercise proper care and guardianship or place the person for a specified period, not exceeding three years, under the supervision of a person appointed for the purpose by the court. The PCJO enables police officers and social workers to take action to protect a child or juvenile in need of care or protection. Police officers and social workers authorised by the Director have the responsibility to intervene to protect a child or juvenile in need of care or

protection. According to section 34(2) of the PJCO , a child or juvenile in need of care or protection is a child or juvenile who: has been or is being assaulted, ill-treated, neglected or sexually abused; or whose health, development or welfare has been or is being neglected or avoidably impaired; or whose health, development or welfare appears likely to be neglected or avoidably impaired; or who is beyond control, to the extent that harm may be caused to him or others; and who requires care and protection. In those situations a care or protection order may be sought from the Juvenile Court. In deciding whether or not to apply for a care or protection order all the circumstances of the child, his or her family, and any possible adverse long term effects on the child or juvenile, must be considered. Article 9 of the Convention requires States Parties to ensure that children are not separated from their parents except when the competent authorities decide that separation is necessary for the best interests of the child, for example in cases of neglect or abuse by the parents. Article 3 of the Convention provides “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” Not every suspected child abuse or child neglect case will therefore warrant an application for a Care or Protection Order under the PCJO . The possible adverse effects of care and protection proceedings make it realistic for the Director and the police to solicit the co-operation of parents and careers before resorting to action to remove a child from the family. C. THE GUARDIANSHIP OF MINORS ORDINANCE C. THE GUARDIANSHIP OF MINORS ORDINANCE The Guardianship of Minors Ordinance, Cap. 13 plays an important role in arrangements for the long term welfare of children. Sections 6(1) and 6(2) of the Ordinance enable parents and current guardians to appoint other people to act as future guardians for their children who are still minors in the event of the death of the parents or current guardians. In April 2012, the Labour and Welfare Bureau of the HKSAR Government prepared a standard appointment form with explanatory notes to assist with appointing guardians. That form should be used if you need to appoint a guardian to look after your children in the event of your death. It may be accessed here). A separate form is needed for each appointment of a guardian. The appointment form must contain the names, addresses, and identity card numbers of the persons making the appointment, and the names and identity card numbers of the person(s) being appointed as guardian or guardians. The appointment form must confirm that in making the appointment the views of the minor have been taken into account so far as this is practicable with regard to the minor’ s age and ability tounderstand. A guardian, or guardians, can be appointed to act together with a surviving parent. An appointment may be made by two or more persons acting jointly. Appointment forms must be dated and signed either by the person(s) making the appointment or by another person at the direction, and in the presence, of the person(s) making the appointment; and attested by two witnesses. An appointment has no effect unless the appointed person(s) accept(s) the office either expressly or impliedly by conduct. Ideally the person appointed should sign the appointment form to confirm his/her acceptance of the appointment. A person appointed as the guardian of a minor has, on assuming guardianship, parental rights and authority with respect to the minor. A guardian appointment terminates when the child reaches 18 or dies. It similarly ends if the guardian dies or is removed from guardianship by the court. A guardian appointed by a parent or guardian may be removed by the court if the court thinks this is in the best interests of the minor. When considering appointing a guardian, both the relationship between the child and the intended guardian(s), and the child’ s views on the intended appointment, should be considered so far as this is practicable depending on the child’ s age and ability to understand. 1. WHEN AND HOW GUARDIANSHIP TAKES EFFECT Under section 7 of the Ordinance a person appointed by a parent or guardian as the guardian of a minor automatically assumes guardianship over the minor upon the death of the appointing parent or appointing guardian if:- the appointing parent or appointing guardian has a custody order over the minor immediately before he or she dies; or the appointing parent or appointing guardian lived with the minor immediately before dying AND the minor does not have any surviving parent or other surviving guardian when the appointing parent or appointing guardian dies. In all other cases, a person appointed as

aguardian may, after the appointing parent or appointing guardian dies, apply to the court to assume guardianship over the minor. In those cases the court may order the person to act jointly with the surviving parent or surviving guardian; to act as the guardian after the minor no longer has any parent or guardian; to act as the guardian of the minor at a time of, or after the occurrence of, an event specified by the court; to be removed as a guardian; or to act as the guardian of the minor to the exclusion of the surviving parent or surviving guardian. 2. DISPUTES BETWEEN JOINT GUARDIANS Joint guardians should be appointed with sufficient care that they can work together in the best interests of the children. When considering whom to appoint as a guardian, thought must be given to the relationship the child has with the intended appointee, the child’s views about the intended appointment, and how that relationship is likely to develop over time. Under section 9 of the Ordinance, where two or more persons act as joint guardians of a minor and they are unable to agree on any question affecting the welfare of the minor, any of them may apply to the court for its direction, and the court may make such order regarding the disagreement as it may think proper. This could include the removal of a guardian, as the welfare of the child is the first and paramount consideration. Under section 21 of the Ordinance, where one of the disagreeing joint guardians is the surviving parent, the court can make such order regarding the custody of the minor; and the right of his or her surviving parent to have access to the minor, as the court thinks fit having regard to the best interests of the minor. Orders can be made requiring the surviving parent to contribute to the financial support of the child depending upon the means of the surviving parent. Matters relating to Guardianship and attendant disputes are heard in the District Court, though they may be removed to the Court of First Instance on the application of either party under section 24 of the Ordinance if the Court of First Instance thinks this is appropriate in the particular case involved. 3. REVOCATION OF GUARDIAN APPOINTMENT An appointment of a guardian under the Ordinance revokes any earlier appointment (including one made in a will) made by the same person in respect of the same minor, unless the purpose of the later appointment is to appoint an additional guardian. An appointment (including one made in a will) is revoked if the person who made the appointment revokes it by a written and dated document that is signed either by the person who made the appointment or by another person, at the direction, and in the presence, of the person who made the appointment and is attested by two witnesses. An appointment under the Ordinance (other than one made in a will) is revoked if, with the intention of revoking the appointment, the person who made it destroys the document by which it was made or instructs any other person to destroy the document in the person’s presence. If an appointment under the Ordinance is made by two or more persons acting jointly the appointment may be revoked by any of them. The person who revokes the appointment must notify all other persons who jointly made the appointment of the revocation. D. CUSTODY OF CHILDREN D. CUSTODY OF CHILDREN In Hong Kong, proceedings relating to the custody of children are contained in: the Guardianship of Minors Ordinance (GMO), Cap. 13 ; the Matrimonial Causes Ordinance (MCO), Cap. 179 ; the Matrimonial Proceedings and Property Ordinance (MPPO), Cap. 192 ; and the Separation and Maintenance Orders Ordinance, Cap. 16 . 1. THE GUARDIANSHIP OF MINORS ORDINANCE The GMO governs court proceedings relating to the custody and upbringing of children. Under the GMO the welfare of the child in question is to be the first and paramount consideration of the courts. Under section 3 of the Ordinance, in any proceedings before any court relating to the custody or upbringing of a minor or the property of a minor, the best interests of the minor are the first and paramount consideration. Due consideration should be given to the views of the minor where it is practical to do so having regard to the minor’s age and understanding and to available information from the Director of Social Welfare.The rights and authority of the mother and father of a child are equal. Where the child is born out of wedlock however, the mother has all the parental rights and authority. Even so, an unmarried father may be granted some or all of the rights and authority he would have had as a father had the child been born legitimately (that is, had he and the mother been married). 2. CUSTODY OF CHILDREN IN MATRIMONIAL PROCEEDINGS The MCO governs divorce whilst the MPPO deals with ancillary and other relief in matrimonial proceedings. Section 19 of MPPO states

that the court may make such order as it thinks fit for the custody and education of a child in matrimonial proceedings such as divorce. Sole custody orders are currently the norm rather than the exception. Under a sole custody order the child lives with one parent, the custodial parent, who has the right to make the decisions regarding the upbringing of the child. The non-custodial parent is usually granted access, which enables contact to be maintained with the child. There is however increasing support for replacing custody orders with parental responsibility orders to emphasise that parents have a responsibility to work together in the best interests of their children and that protracted legal disputes over custody are not in best interests of children. For more details about matrimonial matters, please click here. 1. CUSTODY, CARE AND CONTROL, AND ACCESS 1. CUSTODY, CARE AND CONTROL, AND ACCESS Custody can be sole or joint. In recognition of the best interest of the children, the court normally makes order for joint custody and proceeds on the presumption that competent, loving parents possessed of sufficient objectivity to be able to make rational decisions in the interests of the child will be able to cooperate with each concerning matters of importance in the upbringing of the child. The decisions to be made by a custodial parent are those of real consequence in safeguarding and promoting the child's health, development and general welfare. They include decisions as to whether or not the child should undergo a medical operation, what religion the child should adhere to, what school the child should attend, what extracurricular activities the child should pursue, be it learning a musical instrument or being coached in a sport. A parent vested with custody has the responsibility of acting as the child's legal representative. Note however the non-custodial parent is always entitled to know and be consulted about the future education of the children and any other major matters. If (s)he disagrees with the course proposed by the custodial parent (s)he has the right to come to the court in order that the difference may be determined by the court. A non-custodial parent therefore has the right to be consulted in respect of all matters of consequence that relate to the child's upbringing The decisions to be made by a parent who (at any time) has care and control of the child are of a more mundane, day-to-day nature, decisions of only passing consequence in themselves but cumulatively of importance in moulding the character of the child. They include a host of decisions that arise out of the fact that the parent has physical control of the child and the responsibility of attending to the child's immediate care. They include decisions as to what the child will wear that day, what the child may watch on television, when the child will settle down to homework and when the child will go to bed. They also include the authority to impose appropriate discipline. Access is granted to the parent who does not have care and control and gives that parent the right to spend time with the child on a visiting or staying overnight basis. Access to a parent is a child's basic right and it is part of the responsibility the parent with care and control has towards the child that access should be facilitated and accommodated. 2. MAINTENANCE 2. MAINTENANCE A. Types of claim for child maintenance The parent with custody is entitled to claim for financial support for that child from the other parent, whether within divorce or judicial separation proceedings. If, by virtue of the needs of the child, immediate maintenance for a child is required, an application for interim maintenance pending suit (i.e. a final settlement or hearing) can be made to the Court. In such circumstances, the Court is empowered to make various interim financial orders, e.g. periodical payments, secured periodical payments, and a lump sum for a child at any time after the petition for divorce or separation has been filed and such an application is made. The Court can also make other orders at different stages of the proceedings: (1) on or after the making of the divorce decree nisi; (2) within guardianship of minors proceedings and (3) within wardship proceedings . B. Age until which provision for child maintenance lasts According to section 10 of the Matrimonial Proceedings and Property Ordinance , Court orders for periodical payments, secured periodical payments and a lump sum, etc can be made in favour of a child who is below 18 years old. However, the ordinance further stipulates that payments under an existing order can extend beyond 18 years old if the child is or will be attending an educational establishment or undergoing some form of training, or if there are special circumstances which justify it (such as the child being disabled) or that make it

appropriate to do so. 1. WHAT SHOULD I DO WHEN I RECEIVE A DIVORCE PETITION FROM MY SPOUSE? SHOULD I EMPLOY A LAWYER OR CAN I HANDLE IT MYSELF? 1. WHAT SHOULD I DO WHEN I RECEIVE A DIVORCE PETITION FROM MY SPOUSE? SHOULD I EMPLOY A LAWYER OR CAN I HANDLE IT MYSELF? When you receive or are served a divorce petition from your spouse, as stated in paragraph 1 of Form 3, you will have to fill in and return the Acknowledgment of Service (Form 4) to the registry. You have 8 days to return the Form 4 (including the day of service). In the Form 4, you will be required to fill in various information, including if you intend to defend the divorce, if there are any claims for financial relief or in relation to children matters. You may find it helpful to seek legal advice and engage a lawyer to deal with these matters, especially if you do not agree to the divorce, or if you and your spouse cannot agree on children and financial matters. 2. I GOT MARRIED TO MY PARTNER OUTSIDE HONG KONG; HOWEVER, WE LOST OUR MARRIAGE CERTIFICATE AND THE OVERSEAS GOVERNMENT DID NOT RE-ISSUE THE MARRIAGE CERTIFICATE TO US. HOW CAN I APPLY FOR DIVORCE IN HONG KONG UNDER THE CIRCUMSTANCES? 2. I GOT MARRIED TO MY PARTNER OUTSIDE HONG KONG; HOWEVER, WE LOST OUR MARRIAGE CERTIFICATE AND THE OVERSEAS GOVERNMENT DID NOT RE-ISSUE THE MARRIAGE CERTIFICATE TO US. HOW CAN I APPLY FOR DIVORCE IN HONG KONG UNDER THE CIRCUMSTANCES? Generally speaking, when applying for divorce, you will need to provide your original marriage certificate or a certified copy with the petition. You will not be able to file for divorce if you do not have your marriage certificate or a certified copy of the same. However, the petitioner can apply ex parte to the court to dispense with the filing of the certificate of marriage. If the certificate of marriage is not in English then, unless otherwise directed, it must be accompanied by a translation certified by a notary public or authenticated by affidavit or affirmation. 3. MY SPOUSE HAS DISAPPEARED FOR MANY YEARS AND I DO NOT KNOW HIS/HER WHEREABOUTS. HOW CAN I SERVE THE PETITION AND OTHER DOCUMENTS TO HIM/HER? 3. MY SPOUSE HAS DISAPPEARED FOR MANY YEARS AND I DO NOT KNOW HIS/HER WHEREABOUTS. HOW CAN I SERVE THE PETITION AND OTHER DOCUMENTS TO HIM/HER? You may apply to court for permission to use substitute mode of service, or to substitute notice of the proceedings by advertisement. An application for such permission shall be supported by an affidavit setting out the grounds on which the application is made. If the notice of proceedings is substituted by advertisement, The advertisement should contain the information in the petition and the form of any advertisement must be settled by the Registrar. 4. IF THE PETITIONER AND THE RESPONDENT STILL LIVE TOGETHER, CAN THE PETITION BE SERVED ON THE RESPONDENT BY THE PETITIONER DIRECTLY? 4. IF THE PETITIONER AND THE RESPONDENT STILL LIVE TOGETHER, CAN THE PETITION BE SERVED ON THE RESPONDENT BY THE PETITIONER DIRECTLY? You cannot directly serve your petition on the respondent even if you and the respondent still live together. Rule 14(3) of the Matrimonial Causes Rules (Cap. 179A) prohibits the petitioner from serving the petition himself or herself. You must either serve the petition through the help of a third person or by post. 5. MY SPOUSE INSISTS ON NOT RETURNING THE ACKNOWLEDGMENT OF SERVICE (FORM 4). IS THE PETITION SUSPENDED? 5. MY SPOUSE INSISTS ON NOT RETURNING THE ACKNOWLEDGMENT OF SERVICE (FORM 4). IS THE PETITION SUSPENDED? Your petition will not necessarily be suspended even if your spouse does not return the Acknowledgment of Service (Form 4) if you can prove that your petition for divorce was properly served to your spouse. The petition can be considered properly served on your spouse as long as an affidavit of service, made by the person who served the petition on your spouse, is provided. The affidavit of service will need to show the way in which the server knows about and could identify your spouse when serving the petition. Once you can show that your petition has been served on your spouse, the subsequent process for divorce can continue. 6. WHERE A DECREE NISI IS GRANTED, UNDER WHAT CIRCUMSTANCES WOULD THE DECREE NOT BE MADE ABSOLUTE OR BE REVOKED? 6. WHERE A DECREE NISI IS GRANTED, UNDER WHAT CIRCUMSTANCES WOULD THE DECREE NOT BE MADE ABSOLUTE OR BE REVOKED? Generally, a decree absolute will only be granted when all issues regarding the divorce are decided. The decree nisi would not be made absolute if any of the following applies: There are children in the family and arrangements for their welfare have not been made or decided by the court yet; There are still disputes over financial relief matters that the court has not yet decided on; There is an appeal against the decree nisi and an application for re-hearing or recission/revocation of the decree nisi is pending. A decree nisi may

be revoked if: It appears that the marriage between the petitioner and the respondent has not irretrievably broken down. For example, if the parties have reconciled, or if the parties have continued to cohabit for a long period of time after the decree nisi was granted; The petition relies on the ground of 1 year separation with consent for divorce and the petitioner had misled the respondent in giving consent to the divorce; The petition relies on the ground of adultery for divorce and either party has misled the other on any matter when deciding to make the application for divorce; The court makes an order for the Secretary for Justice (a Proctor) to intervene and make arguments on any issues relating to the case. This may include arguing against the parties' decree nisi. 7. AFTER THE DECREE NISI IS GRANTED, IF THE PETITIONER DOES NOT APPLY FOR THE DECREE TO BE MADE ABSOLUTE (FORM 5), CAN THE RESPONDENT INITIATE THE PROCESS BY FILLING THE FORM 5? 7. AFTER THE DECREE NISI IS GRANTED, IF THE PETITIONER DOES NOT APPLY FOR THE DECREE TO BE MADE ABSOLUTE (FORM 5), CAN THE RESPONDENT INITIATE THE PROCESS BY FILLING THE FORM 5? Yes. Either the petitioner or the respondent can initiate the process to apply for the decree nisi be made absolute by the filing a Form 5. The law does not specify that only petitioners can make this application. 4. WHAT WILL HAPPEN IF A PARTY PASSES AWAY WHEN THE DECREE NISI WAS GRANTED BUT IS NOT MADE ABSOLUTE? 4. WHAT WILL HAPPEN IF A PARTY PASSES AWAY WHEN THE DECREE NISI WAS GRANTED BUT IS NOT MADE ABSOLUTE? If a party to the marriage passes away after the decree nisi was granted but before it was made absolute, the petition and decree nisi will not be revoked. The action and proceedings for divorce will end when a party passes away. The end of the action also means that the decree nisi will not be made absolute. A decree nisi is not the final order declaring that a marriage is dissolved. If a spouse passes away before the decree is made absolute, the will of the deceased spouse (if any) will still be executed as if the couple were still married. This means the surviving spouse will be entitled to the benefits provided under the deceased spouse's will (if any) as the widow or widower of the deceased. Once one of the spouses dies, the surviving spouse will not be able to make any financial claims against the estate of the deceased spouse under the divorce proceedings. Instead, the surviving spouse may be able to claim reasonable financial provision from the deceased spouse's estate under the Inheritance (Provision for Family and Dependents) Ordinance (Cap. 481). The surviving spouse can make an application to receive reasonable financial support. A former wife or former husband of the deceased (i.e. the decree absolute was granted before the deceased passed away) can also claim financial provision under the aforesaid Cap. 481, if he/she has not remarried and can show that he/she received financial maintenance from the deceased before their death. A. APPLICATION A. APPLICATION 3. CAN A CUSTODY ORDER BE VARIED? 3. CAN A CUSTODY ORDER BE VARIED? A custody order can be varied by the court. The parent or guardian who is making the application for variation of custody must be able to show that there is a material change of circumstance that requires a change in the existing custody arrangements. The court will regard the best interests of the child (who is under the age of 18) as the first and paramount consideration when deciding whether to vary a custody order. 4. WHAT HAPPENS IF NO PARTY WISHES TO TAKE CUSTODY OF THE CHILDREN? 4. WHAT HAPPENS IF NO PARTY WISHES TO TAKE CUSTODY OF THE CHILDREN? If no party wishes to take custody of a child who is under the age of 18, an application to the High Court can be made to make the child a ward of the court. This means the court will have custody over the child, and care and control will be delegated to a person to look after the child. Any interested party can make this application, including relatives of a child or the Director of Social Welfare. According to section 13 of the Guardianship of Minors Ordinance (Cap. 13), if it appears to the courts that there are exceptional circumstances that make it impracticable or undesirable to entrust a child to either of the parents, the court can appoint the Director of Social Welfare to take care of the child. There are currently 3 places in Hong Kong that a child can be taken to a place of refuge so that he/she can be protected or taken care of: Po Leung Kuk; Tuen Mun Children and Juvenile Home; Po Leung Kuk Wing Lung Bank Golden Jubilee Sheltered Workshop and Hostel 5. WHAT DOES A SOCIAL WELFARE REPORT DO IN ASSESSING THE PROVISION OF CHILDREN'S CUSTODY? 5. WHAT DOES A SOCIAL WELFARE REPORT DO IN ASSESSING THE PROVISION OF CHILDREN'S CUSTODY? A social welfare report looks at all the

circumstances relating to the child. This may include information on the child's physical, social, and psychological well-being. As established in the case of FJ v DTD (unrep., FCMC 14138/2012, 10th March 2020) at paragraph 34, a social welfare report acts as 'the eyes and ears of the court'. It helps the court understand a child's situation and lifestyle so that it can reach a decision about the upbringing of the child and what custody order should be made. The social welfare officer investigates on the court's behalf as to the arrangements for the children. This is done by interviewing the following people, and this is not intended to be an exhaustive list: (1) the children themselves if they are of a sufficient age and/or maturity to participate in such an interview; (2) the parents on their own; (3) each parent with the children; (4) any other carers, for example, new partners of the parents, relatives and the nanny; (5) the children's school teachers; and (6) other relevant concerned parties who may be able to provide helpful information in assisting the court's determination of the matter and the social welfare officer in making a recommendation to the court. 6. IF A PARTY DOES NOT AGREE WITH THE SOCIAL WELFARE REPORT, CAN HE/SHE ASK THE COURT TO REJECT IT AND CALL FOR ANOTHER REPORT? 6. IF A PARTY DOES NOT AGREE WITH THE SOCIAL WELFARE REPORT, CAN HE/SHE ASK THE COURT TO REJECT IT AND CALL FOR ANOTHER REPORT? At the hearing of an application in children matters, the social welfare officer's report will be adduced as evidence in court. If a party disagrees with the content of the report, the social welfare officer will be called to court to give oral evidence. The parties can cross-examine the social welfare officer and/or adduce evidence to challenge any matters contained in the report. A party can put forward their case to the court that the social welfare report should be rejected and provide evidence for this, but the court would not call for another report. As the court has discretion to make orders in children matters, the court is not obliged to accept matters recorded in the social welfare report or follow recommendations that the report makes. B. ENFORCEMENT B. ENFORCEMENT 4. WHAT DECISIONS CAN BE MADE FOR CHILDREN IF A PARENT IS GRANTED CUSTODY OF HIS/HER CHILDREN? 4. WHAT DECISIONS CAN BE MADE FOR CHILDREN IF A PARENT IS GRANTED CUSTODY OF HIS/HER CHILDREN? The parent who is granted custody would be able to make major decisions regarding the child's upbringing, including those that affect the child's medical care, health issues, education, religious believe etc. The parent granted sole custody, while having the final say on major decisions, must also consult the non-custodial parent on making these decisions. 5. WHAT DECISIONS CAN BE MADE FOR CHILDREN BY ONE PARENT IF BOTH PARENTS ARE GRANTED JOINT CUSTODY OF THEIR CHILDREN? 5. WHAT DECISIONS CAN BE MADE FOR CHILDREN BY ONE PARENT IF BOTH PARENTS ARE GRANTED JOINT CUSTODY OF THEIR CHILDREN? Usually simple and routine decisions can be handled by the parent with the care and control of the child. For example, deciding what the child will wear that day, when the child may watch television, what the child will eat and go to bed that day. 6. WHAT CAN A PARENT DO IF BOTH PARENTS ARE GRANTED JOINT CUSTODY OF THEIR CHILDREN AND THEY HAVE PARENTING DISPUTES? 6. WHAT CAN A PARENT DO IF BOTH PARENTS ARE GRANTED JOINT CUSTODY OF THEIR CHILDREN AND THEY HAVE PARENTING DISPUTES? Parents with joint custody who have parenting disagreements or disputes should consider using mediation or parenting co-ordination to resolve their dispute. If the parents have not yet reached an agreement, they will have to make an application to the court and for it to decide in the best interest of the child. 7. DOES A PARENT WHO IS GRANTED SOLE CUSTODY OF HIS/HER CHILDREN NEED TO CONSULT THE OTHER PARENT BEFORE MAKING DECISIONS FOR THEIR CHILDREN? 7. DOES A PARENT WHO IS GRANTED SOLE CUSTODY OF HIS/HER CHILDREN NEED TO CONSULT THE OTHER PARENT BEFORE MAKING DECISIONS FOR THEIR CHILDREN? Yes. The non-custodial parent still has the right to be consulted on all matters affecting the child, especially major decisions relating to the child's future, health, education, and religion. Therefore, the parent who is granted sole custody of his/her child should consult the other parent before making big decisions for their children (PD v KWW [2010] 5 HKC 543 at §§38-39). 8. CAN THE CUSTODIAL PARENT TRANSFER CUSTODY TO THE NON-CUSTODIAL PARENT IN PRIVATE? 8. CAN THE CUSTODIAL PARENT TRANSFER CUSTODY TO THE NON-CUSTODIAL PARENT IN PRIVATE? No. Transferring custody of a child in private would mean that the parents are in breach of the court order or parties' undertaking made to the court regarding custody matters. If the parents would want to vary the custody of

the child, an application should be made to court. 9. WHAT ARE STAYING ACCESS AND SUPERVISED ACCESS? 9. WHAT ARE STAYING ACCESS AND SUPERVISED ACCESS? Staying access means that the child will stay overnight with the parent who has access at the time as agreed by the parties or specified by the court. Supervised access means that a parent can visit the child under the supervision of a third party. Supervised access is usually carried out at social-welfare centre under the supervision of social worker. It is used to ensure the child's safety, while maintaining the parent-child relationship. 10. IF THE NON-CUSTODIAL PARENT IS GIVEN ACCESS, CAN THE CUSTODIAL PARENT STOP THE OTHER FROM VISITING HIS/HER CHILDREN? 10. IF THE NON-CUSTODIAL PARENT IS GIVEN ACCESS, CAN THE CUSTODIAL PARENT STOP THE OTHER FROM VISITING HIS/HER CHILDREN? As the non-custodial parent has the right to reasonable access / visitation, a custodial parent cannot stop the non-custodial parent from visiting his/her children unless there is a good reason to do so. An example of good reason is when there is a risk that the access posts risks to the child's physical or mental well-being. 11. IF THE NON-CUSTODIAL PARENT IS STOPPED BY THE OTHER FROM VISITING HIS/HER CHILDREN WITHOUT REASONABLE GROUNDS, WHAT CAN HE/SHE DO? 11. IF THE NON-CUSTODIAL PARENT IS STOPPED BY THE OTHER FROM VISITING HIS/HER CHILDREN WITHOUT REASONABLE GROUNDS, WHAT CAN HE/SHE DO? When the non-custodial parent is unreasonably prevented from visiting their child, he or she can try to remind the other parent that non-compliance with court orders or breaching an undertaking that was made to the court can amount to a contempt of court. If there is no improvement and the non-custodial parent continues to be denied access to the children, then the non-custodial parent may start committal proceedings for the other party's contempt of court. A person found in contempt of court may be committed, that is, imprisoned for a period of time. The court also has the power to refuse to hear submissions from a party in contempt of court until they have purged their contempt, known as a "Hadkinson order". 2. I GOT DIVORCED AND MY EX-WIFE RE-MARRIED. I CAN STOP GIVING HER FINANCIAL SUPPORT, BUT DO I STILL NEED TO PAY FOR MY CHILD'S MAINTENANCE FOR OUR CHILD WHO LIVES WITH HER? 2. I GOT DIVORCED AND MY EX-WIFE RE-MARRIED. I CAN STOP GIVING HER FINANCIAL SUPPORT, BUT DO I STILL NEED TO PAY FOR MY CHILD'S MAINTENANCE FOR OUR CHILD WHO LIVES WITH HER? You do not need to give financial support to your ex-wife if she re-marries, but you still need to pay for your child's maintenance. 3. MY WIFE FROM MAINLAND CHINA GAVE BIRTH TO A CHILD WHO IS PROVED BY THE DNA TEST TO BE NOT MY SON. IF I GET DIVORCED, DO I STILL NEED TO PAY FOR THE CHILD'S MAINTENANCE? DOES SHE NEED TO OBTAIN HONG KONG PERMANENT RESIDENCY BEFORE WE PROCESS THE DIVORCE? 3. MY WIFE FROM MAINLAND CHINA GAVE BIRTH TO A CHILD WHO IS PROVED BY THE DNA TEST TO BE NOT MY SON. IF I GET DIVORCED, DO I STILL NEED TO PAY FOR THE CHILD'S MAINTENANCE? DOES SHE NEED TO OBTAIN HONG KONG PERMANENT RESIDENCY BEFORE WE PROCESS THE DIVORCE? If it is proved that you are not the father of the child, you may not be obliged to pay child maintenance. However, if the child has been treated by you and your wife as if he/she is part of your family all along, then it is likely that you would have to pay for child maintenance if your wife makes an application for it. To apply for divorce in Hong Kong, you must show that the Hong Kong courts have jurisdiction to deal with your petition or joint application. Hong Kong courts will have the jurisdiction to deal with your divorce if either spouse at the date of the application: Is domiciled in Hong Kong, or Has been habitually resident in Hong Kong for the previous 3 years, or Has a substantial connection to Hong Kong. If one of the three options above fit your situation, you can apply for divorce. It is not a requirement that your spouse becomes a Hong Kong citizen. 3. CHILDREN' S DISPUTE RESOLUTION 3. CHILDREN' S DISPUTE RESOLUTION For all proceedings relating to children's matters, parties should always have in mind that the child's best interests are the most important consideration. The court will make orders and decisions with the best interests of the child in mind. Children's Dispute Resolution (CDR) is a process that happens before the actual trial for children matters. It aims to help parties in reaching an agreement quickly so that if negotiations are successful, there would be no need for parties to go through the hardships of a trial. The ultimate goal is to help the parties figure out how to effectively parent their children after the breakdown of the marriage. In doing this, it also helps the court and parties ensure that the children's best interests are looked after and that it is the most important factor.

The entire CDR process goes through: (1) the Children's Appointment, (2) the CDR hearing, and (3) Trial (if parties are unable to reach settlement). Children's Appointment Before the CDR hearing, the court usually sets a date for a 'Children's Appointment'. This is a hearing where parties will have to file and exchange various documents to prepare for the actual CDR hearing. The documents that are required include: The Children's Form (also known as Form J); A concise statement of issues relating to the children; A brief chronology of events; and, A list of orders and directions sought from the court. At the Children's Appointment hearing, the judge may also give directions, for example (depending on each case) order a social welfare report to be made, allow parties to file affidavits / affirmations, ask parties to try mediation, appoint a person or guardian to separately represent the child etc. Note that the Children's Appointment may be heard at the same as the First Appointment (the first step in FDR) if parties also have financial disputes that need to be resolved. CDR Hearing Not less than 14 days before the CDR hearing, the parties are required to file and exchange detailed proposals for the future arrangements of the children. The parties should also be prepared to personally attend the CDR hearing as they will have to actively take part in negotiations and discussions. Not only do the parties have to personally attend the CDR hearing, they must also try their best to reach an agreement on all the children matters. The setting of a CDR hearing is not as formal as a usual hearing or trial. In a CDR hearing, the judge acts as a facilitator or 'the middle person'. The judge's role is to assist the parties in their discussions, negotiation, and settlement. Therefore, there may be occasions where the judge speaks directly to the parties and not through their legal representatives. This usually creates a more relaxed atmosphere so that it promotes free and spontaneous discussions between all parties. The judge may also give indications on an issue in dispute. He or she may suggest what decision would be made on a particular point the case does go to trial. This gives the parties a reality check and allows them to reflect on whether there are things they can settle on without having to waste time and money by going to trial. The judge could also propose other options that the parties may have not considered before. Children's representation by an adult or legal representation is not automatic in family proceedings. Even if the court thinks that the child should also be represented in the proceedings between the parents, it must be a separate person or someone who is not already involved in the case. Separate representation would not usually be allowed if the child's view is clear from the evidence, like the social investigation report, an expert report etc. Whether the court will allow the child to be separately represented depends on the circumstances of each case. Some examples of when the child can be separately represented include: if the child may be suffering harm from severe dispute between the parties; if the child has complex medical or mental issues; if the family has more than one child and the welfare of one child is in conflict with the other; or if there are serious allegations of physical, sexual or other abuse against the child. Ultimately, if the child is being separately represented, the role of the guardian or appointed person is to represent and safeguard the child's interests. The things that have been discussed or exchanged by the parties in the CDR hearing will not be privileged and can be brought up at subsequent hearings or at trial. Note that the CDR hearing may be conducted at the same time with the FDR hearing (if parties have financial matters that need to be resolved). Trial If the parties are only able to reach a partial settlement or cannot reach a settlement at all, the case will go to trial. The trial will be conducted in the traditional and formal way, it will not be set up like a CDR hearing where parties can openly discuss and negotiate with each other. At trial, the parties will have to present their case and argue why their proposals for the children's arrangement is the one the court should adopt and make orders on. The trial will be conducted in front the same judge who conducted the CDR. For a more technical guide on CDR procedures and separate representation for children, please see Practice Direction 15.13 and Practice Direction SL6. 3. WHAT GUIDELINES AND STEPS WILL THE COURT FOLLOW TO DECIDE ON THE DIVISION OF MATRIMONIAL FINANCE? 3. WHAT GUIDELINES AND STEPS WILL THE COURT FOLLOW TO DECIDE ON THE DIVISION OF MATRIMONIAL FINANCE? Courts in Hong Kong used to follow the approach in C v C, which many people call the need-based

approach which focus on the wife's 'reasonable requirements' to work out a sum of money to achieve a clean break so that she can live comfortably for the rest of her life. However, many have criticised that this as discriminatory because if the husband was the breadwinner of the family and wife was only entitled to money that was sufficient for her living requirements, the husband would be left with a much larger sum to enjoy. Also, if the wife was relatively old or older than the husband, her needs for the rest of her life would be less, resulting in a smaller proportion of assets despite contributing to a long marriage. About a decade later, courts in Hong Kong no longer followed the approach in C v C, but adopted the principles used in the English case of White v White. This case set down the rule for an equal split of matrimonial assets between husband and wife when they divorce. The court would only be allowed to depart from this 50/50 split rule if there was a very good reason to do so. The term used for this approach is famously called the 'yardstick of equality'. In 2010, the court in LKW v DD made the guidelines for the division of matrimonial assets / finance even clearer. This is the guiding case that courts still follow to this day in applying the factors listed under section 7(1) of MPPO. LKW v DD laid down 4 principles and 5 steps to guide a court's decision: 4 PRINCIPLES The objective of fairness - the result must be fair and just; The rejection of discrimination - the husband and wife hold an equal status even if they had different roles in the family during the marriage; The yardstick of equality - the court's starting point should be to split the matrimonial assets equally and only depart from this if there is a good reason; and, The rejection of minute retrospective investigations into conduct and why the marriage failed, or who made the bigger contribution to the marriage. 5 STEPS Identify the assets, liabilities, income, and expenses of each party as of the date of the hearing; Assess the parties' financial needs; Deciding to apply the 50/50 sharing principle; Consider whether there are good reasons for departing from the 50/50 equal division; and, Deciding the outcome as to how to distribute the marital assets of the parties. On top of the 4 principles and 5 steps, the court should at the same time consider the 7 non-exhaustive factors laid down in section 7(1) of the Matrimonial Proceedings and Property Ordinance (Cap. 192). Often times, the parties only have enough assets to meet their financial and housing needs. If there is no money left after satisfying the needs of the parties, the court would not need to go through step 3 and step 4 in the 5-step approach. The outcome would be decided based on how much each party needs. Only in big money cases or where there is still money left from the matrimonial assets after satisfying the parties financial needs, does the court need to go through steps 3 and 4. 1. A MARRIED COUPLE TOGETHER OWNS A FLAT WHILE THE HUSBAND CONTRIBUTED TO THE MAJORITY PART OF THE MORTGAGE LOAN. UPON DIVORCE, CAN THE HUSBAND CLAIM ABSOLUTE OWNERSHIP OF THE FLAT AND REFUSE TO SPLIT THE PROCEEDS DERIVED FROM SELLING THE FLAT? 1. A MARRIED COUPLE TOGETHER OWNS A FLAT WHILE THE HUSBAND CONTRIBUTED TO THE MAJORITY PART OF THE MORTGAGE LOAN. UPON DIVORCE, CAN THE HUSBAND CLAIM ABSOLUTE OWNERSHIP OF THE FLAT AND REFUSE TO SPLIT THE PROCEEDS DERIVED FROM SELLING THE FLAT? Even though the husband can claim absolute ownership of the flat, it does not mean he can refuse to split the sale proceeds of the flat. This is because the flat will be a part of the matrimonial pot (or assets) and be subject to the 50/50 equal division rule, or to be divided as the court ordered. It does not make a big difference that the husband has full ownership of the property or not. 2. IF THE PROPERTY IS OWNED BY A PARTY IN MAINLAND CHINA OR OVERSEAS, HOW WOULD THE PARTY'S INTEREST BE CONSIDERED BY THE COURT IN AWARDING GRANTING ANCILLARY RELIEF? 2. IF THE PROPERTY IS OWNED BY A PARTY IN MAINLAND CHINA OR OVERSEAS, HOW WOULD THE PARTY'S INTEREST BE CONSIDERED BY THE COURT IN AWARDING GRANTING ANCILLARY RELIEF? The court will look at the parties' assets and property outside of Hong Kong. As long as the Mainland China or overseas property was acquired during the marriage of the parties, it is very likely that the court will consider it as part of the matrimonial pot (or assets). The court will then decide on the division of matrimonial assets all together according to section 7(1) of the Matrimonial Proceedings and Property Ordinance and the principles laid down in LKW v DD. 3. IF THE PROPERTY IS CO-OWNED BY A PARTY AND HIS/HER MOTHER (A) IN A JOINT TENANCY OR (B) IN A TENANT IN COMMON, HOW WOULD THE PARTY'S INTEREST BE CONSIDERED BY THE COURT IN GRANTING ANCILLARY RELIEF? 3. IF THE PROPERTY IS

CO-OWNED BY A PARTY AND HIS/HER MOTHER (A) IN A JOINT TENANCY OR (B) IN A TENANT IN COMMON, HOW WOULD THE PARTY'S INTEREST BE CONSIDERED BY THE COURT IN GRANTING ANCILLARY RELIEF? Only the party' s share in the property would be taken into account by the court, regardless of whether he/she holds it as a joint tenant or tenant in common. In a case where the property is equally co-owned by the party and his/her mother, only 50% of the value of the property would be counted as matrimonial assets and be calculated. This means, the remaining 50% interests in the property will still belong to the mother. The party' s share would be subject to division when the court decides the order for ancillary relief. The party holding the property may argue that it is a non-matrimonial asset and should not be included in the matrimonial pot for division. Some factors that may taken into account by the court when deciding whether the property is matrimonial or not include: When the property was purchase - before or after the parties' marriage? Who has lived in the property and for how long. Whether the spouse of the party who co-owns the property was allowed to use and live in the property. How the property was purchased and who funded the purchase. Whether there was a specific purpose for purchasing the property. 4. ARE THE PENSIONS OF MY HUSBAND/WIFE COUNTED AS ASSETS WHEN THE COURT DEALS WITH THE MATRIMONIAL PROPERTY? 4. ARE THE PENSIONS OF MY HUSBAND/WIFE COUNTED AS ASSETS WHEN THE COURT DEALS WITH THE MATRIMONIAL PROPERTY? If the pension has not realised or is still illiquid because the party has not retired yet, it is not an asset and will most likely be exclude from the matrimonial pot. However, if the pension has already been realised into cash, then it is an asset. If the parties do not have a lot of money, the pensions would be brought into the pool of assets and be split so that the parties' needs can be met. It is only when there are surplus funds for division can the parties and the court consider excluding the pensions from the matrimonial pot or not. 5. DOES FINANCIAL SUPPORT FROM PARENTS OF A DIVORCING PARTY CONSIDERED AS FINANCIAL RESOURCES OF THE PARTY? 5. DOES FINANCIAL SUPPORT FROM PARENTS OF A DIVORCING PARTY CONSIDERED AS FINANCIAL RESOURCES OF THE PARTY? Financial support from parents of a divorcing party is considered as financial resources of that party. It will only be a factor for the court' s consideration when deciding what ancillary relief to make, but it will not be included as part of the parties' matrimonial pot. 6. IS PROPERTY PURCHASED DURING THE SEPARATION PERIOD COUNTED AS THE FINANCIAL RESOURCES OF THE PURCHASING PARTY? 6. IS PROPERTY PURCHASED DURING THE SEPARATION PERIOD COUNTED AS THE FINANCIAL RESOURCES OF THE PURCHASING PARTY? Assets or properties acquired or purchased by one party after or during a period of separation may qualify as non-matrimonial property. This is if the purchasing party acquired it with his personal means and not by using the assets that were created during the marriage. This means if the purchasing party uses funds or resources that are part of the matrimonial pot to acquire other properties, the newly purchased property would still be counted as financial resources of the purchasing party. 7. TO AVOID THE MAINTENANCE ORDER, MY HUSBAND DELIBERATELY QUIT HIS JOB AND APPLIED FOR COMPREHENSIVE SOCIAL SECURITY ASSISTANCE (CSSA) UPON RECEIPT OF THE DIVORCE PETITION. WHEN CONSIDERING HIS EARNING CAPACITY AND INCOME, WOULD THAT KIND OF TRICK WORK? 7. TO AVOID THE MAINTENANCE ORDER, MY HUSBAND DELIBERATELY QUIT HIS JOB AND APPLIED FOR COMPREHENSIVE SOCIAL SECURITY ASSISTANCE (CSSA) UPON RECEIPT OF THE DIVORCE PETITION. WHEN CONSIDERING HIS EARNING CAPACITY AND INCOME, WOULD THAT KIND OF TRICK WORK? The court will not only look at the husband' s earning capacity and income at that present moment. As stated in section 7(1) of the Matrimonial Proceedings and Property Ordinance, the court will also take into account the husband' s earning capacity and income in the foreseeable future. If the husband is still capable of finding a job and working to support himself, the court will consider this in deciding how to split the matrimonial assets and when making a maintenance order. Therefore, if the husband is making an obvious attempt to avoid providing maintenance, this trick may not work. There is no automatic exemption for CSSA recipients to pay maintenance. In all cases for ancillary relief, the courts will have regard to the principles laid down in section 7 of the Matrimonial Proceedings and Property Ordinance (Cap. 192) and LKW v DD. That said, the assets, liabilities, income and expenses of each party remain an important concern in making the relevant order. Further note that under section 7(1)(g), in making an ancillary order, the court will have regard to 'the value to either of the

parties to the marriage of any benefit which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring'. Thus whether a CSSA recipient will be ordered to pay maintenance depends on the relative wealth of the parties and if CSSA is given on a household basis, whether the parties would lose such social benefits. The amount of CSSA received is calculated at 'Recognized Needs' minus 'Assessable Income'. 'Assessable Income' includes maintenance. Thus, it is advisable for CSSA recipients to disclose their maintenance to SWD as the maintenance amount will be regarded as an evaluation condition for receiving CSSA. 8. IF MY SPOUSE OWES ME A DEBT, CAN I CLAIM BACK THE MONEY IN THE DIVORCE PROCEEDINGS? WOULD IT BE COUNTED AS THE FINANCIAL RESOURCES OF THE PARTIES? WOULD THE COURT HANDLE THE DEBT CASE? 8. IF MY SPOUSE OWES ME A DEBT, CAN I CLAIM BACK THE MONEY IN THE DIVORCE PROCEEDINGS? WOULD IT BE COUNTED AS THE FINANCIAL RESOURCES OF THE PARTIES? WOULD THE COURT HANDLE THE DEBT CASE? Debts owed by one spouse to another would be considered as a liability in the matrimonial pot. The court may take this into account when distributing assets if it does not require any detailed retrospective investigation and the evidence is clear. However, it should be noted that it is not the function of the family court to deal with substantial debt claims. However, the court has no power to order a spouse to pay off any debts owed to the other spouse in matrimonial proceedings. 10. FINANCIAL DISPUTE RESOLUTION 10. FINANCIAL DISPUTE RESOLUTION The Financial Dispute Resolution (FDR) process consists of 3 stages and aims to deal with disputes over financial matters between parties quickly and efficiently. The 3 stages are: First Appointment; FDR Hearing; Trial (if parties do not reach a settlement after FDR) PREPARATION FOR FIRST APPOINTMENT AND FINANCIAL STATEMENT (FORM E) The purpose of a First Appointment hearing is to gather all the relevant documents and information that is needed to for the FDR Hearing. After a claim for ancillary relief by a party is filed, the court will set down a date for the first appointment and notify both parties. Before the First Appointment hearing, parties will have to file and exchange with each other their Form E. Form E has 7 parts in total: General Information Assets, Liabilities, and Summaries of Assets and Liabilities Income Current Monthly Expenses Other Information Orders Sought Schedule of Attachments It is important that documentary evidence is also provided to support the information given in Form E. Even if those documents are not available at the time Form E is filed, it should be filed to the court and given to the other party as soon as they are obtained. In relation to the Form E, the parties are required to make full and frank disclosure of their financial situation in it. This means the parties need to disclose all the information that is relevant to what is asked for in the Form E. Further, this obligation is on-going, which means that even after filing the Form E, if there are any big changes in the party's financial situation, it should be included and updated in the Form E. If a party is found to have deliberately been untruthful and does not make full and frank disclosure, the court may draw an adverse inference against the untruthful party (i.e. that he/she has hidden funds), be more favourable to the innocent party in the final order, and even requires the dishonest party to pay costs in the end. In serious cases, criminal proceedings for perjury may be taken against the untruthful party. Even if a party knows that the other has not disclosed everything that is relevant to the financial dispute, parties should refrain from using 'self-help' measures to obtain those hidden or undisclosed documents. For example, a party should not take documents that have been stored in a password protected safe or personal computer that is in the matrimonial home. Doing so would be a clear breach of privacy and confidence. It may result in the court finding that those documents obtained are not admissible or cannot be used in court because the way it was taken is unfair. Other than the Form E, the parties will have to prepare a First Appointment bundle. In this bundle, various documents must be included so that the court can deal with the case properly and make directions to move the case forward to the next step. These documents include: A list of directions and orders sought; Questionnaire / list of documents sought from the other party - questionnaires are used to seek more information and detail or clarification from things that the other party has disclosed in their Form E; A concise statement of issues between the parties; A chronology of events. FIRST APPOINTMENT HEARING At the First Appointment hearing, the judge will consider the orders sought from

both parties and make appropriate directions to manage the case. Some common examples of the orders and directions made by a judge at the first appointment hearing include: allowing leave to file and serve parties' questionnaires; ordering a party to disclose further information and documents; ordering that parties agree on the value of a particular asset; order that a Single Joint Expert be appointed so that there is a formal valuation of a property or company. There may be a few First Appointment hearings if all the necessary information and documents are not ready or parties seek further case management directions from the court. The case will only proceed to FDR hearing when it is ready. Note that the First Appointment hearing may be heard at the same time as the Children's Appointment (the first step in CDR) if parties also have children matters that need to be resolved. FDR hearing The purpose of the FDR hearing is to explore the options for settlement of the parties' claims for financial relief so that the high costs and uncertainty of trial can be avoided. Parties should note that they must have obtained their Decree Nisi before the FDR hearing. Prior to the FDR hearing, both parties will need to prepare a FDR bundle. The bundle will need to include all the offers made, proposals, and correspondences between both parties. Both parties are required to attend the FDR hearing and try their best to negotiate for a settlement. The parties or their legal representatives will make submissions to the court and present the strengths of their case and weaknesses of the other party's case. The judge in the FDR hearing acts as the facilitator and assists the parties in their discussion for settlement. After hearing the parties' suggestions and submissions, the judge may indicate the likely outcome of the case, how the matrimonial assets are to be divided if the case proceeds to trial. Often, after the judge tells the parties of his or her thoughts and indications, 15-30 minutes will be given to the parties to leave the courtroom and discuss between themselves. Afterwards, the parties would return into the courtroom for an update on the negotiations. This may also happen for a few rounds in order to increase the chances of reconciliation. Settlement cannot happen unless both parties consent to the terms and agreement. Further, the consented settlement will take effect only after the parties have obtained a decree absolute. At the FDR hearing, parties cannot claim privilege in any offers or counteroffers made before the FDR hearing. On the contrary, any offers, counteroffers, proposals, and discussions made at the FDR hearing cannot be disclosed at trial and cross-examine the other side on the same. The aim of this is to facilitate negotiation and settlement between parties without the fear of their attempts at settlement being used against them in the future if trial commences. In addition, the FDR hearing may be heard together with the CDR hearing (if both parties dispute on children-related issues). TRIAL If the parties do not reach a settlement, the parties' financial dispute will have to go to trial. While offers and discussions made at the FDR hearing cannot be disclosed at trial, open proposals or open offers (the amount to be allocated by the proposed parties) made for the purpose of the trial can and will be raised and cross-examined by the other party at trial. 1. IF THE OTHER PARTY FAILS TO SUBMIT THE FINANCIAL STATEMENT (FORM E), WHAT SHOULD THE PARTY DO? 1. IF THE OTHER PARTY FAILS TO SUBMIT THE FINANCIAL STATEMENT (FORM E), WHAT SHOULD THE PARTY DO? If one party does not file his / her Form E, the party ready to file can file his / her Form E in a sealed envelope at the court to demonstrate that the timeline for filing the Form E has been adhered to. You could ask the court to make an order for him/her to file the Form E by a certain date. If he/she still fails to file the Form E before the deadline, he/ she could be found in contempt of court. You can then make an application to the court that the other side has ignored or failed to comply with a court order. A person found in contempt of court may be committed, that is, imprisoned for a period of time. The court also has the power to refuse to hear submissions from a party in contempt of court until they have purged their contempt, known as a "Hadkinson order". 2. IS THERE ANY PENALTY FOR NOT SUBMITTING FORM E? 2. IS THERE ANY PENALTY FOR NOT SUBMITTING FORM E? A party may be required to pay the costs for certain proceedings that were wasted or could not go ahead because the Form E was not filed. 3. WILL THE FDR HEARING BE SUSPENDED IF THE OTHER PARTY DOES NOT SUBMIT FORM E? 3. WILL THE FDR HEARING BE SUSPENDED IF THE OTHER PARTY DOES NOT SUBMIT FORM E? The FDR process will have to be suspended if a party does not submit the Form E. As the Form

E is required to be filed before the First Appointment hearing, failing to do so will result in the hearing being adjourned. FDR cannot go ahead without a party's Form E. 4. WHAT CAN A PARTY DO IF HE/SHE KNOWS THAT THE OTHER PARTY DOES NOT MAKE FULL AND FRANK DISCLOSURE IN FORM E? 4. WHAT CAN A PARTY DO IF HE/SHE KNOWS THAT THE OTHER PARTY DOES NOT MAKE FULL AND FRANK DISCLOSURE IN FORM E? The party will have to show why or even produce evidence to prove why they think the other party has not made full and frank disclosure in Form E. This is presented to the court for consideration. If the court finds that there is non-disclosure, the untruthful party may be punished. The usual sanction for a failure to make adequate financial disclosure is in an adverse costs order, that is, (i) the parties should bear their own costs, (ii) a successful but non-compliant party should lose entitlement to part of its costs, or (iii) in the most serious cases, a party should pay indemnity costs. In addition, the court may draw an adverse inference that would affect the ultimate division of the marital assets. Parties are reminded to be careful in obtaining documents belonging to the other party that may be private and confidential. 'Self-help' remedies like going through the other party's private computer or locked and password protected safe to get evidence is frowned upon by the court (see Sim Kon Fah v JBPB & Co [2001] 4 HKLRD 45). 5. DOES THE COURT INVESTIGATE THE TRUTHFULNESS AND WHOLENESS OF THE INFORMATION STATED IN FORM E? 5. DOES THE COURT INVESTIGATE THE TRUTHFULNESS AND WHOLENESS OF THE INFORMATION STATED IN FORM E? The court does not investigate the truthfulness and wholeness of the information in Form E by itself unless a party has a claim that the other party has been withholding information. The party making this claim will still need to show why this is the case. Where the affidavit or form E disclosure by the payer is obviously deficient, the Court should not hesitate to make robust assumptions about his ability to pay. The Court is not confined to the mere say-so of the payer as to the extent of his income or resources. In such situation, the Court should decide in favour of the payee. 11. PILOT SCHEME ON PRIVATE ADJUDICATION OF FINANCIAL DISPUTES IN MATRIMONIAL AND FAMILY PROCEEDING 11. PILOT SCHEME ON PRIVATE ADJUDICATION OF FINANCIAL DISPUTES IN MATRIMONIAL AND FAMILY PROCEEDING Parties in family proceedings are encouraged to try to reach settlement through alternative dispute resolution (ADR), which means methods of resolution that are not court or trial based. Examples of ADR include Collaborative Practice, family mediation, financial dispute resolution (FDR), and children dispute resolution (CDR). Private Financial Adjudication (PFA) is another option of ADR. Essentially, parties can choose to use the PFA procedure to settle their dispute with the help of an appointed adjudicator. PFA is similar to arbitration. This pilot scheme was initially introduced in 2015 and has been extended to run until January 2024. Parties can choose to use the PFA process when their disputes involve the following issues: An application for ancillary relief, other financial orders and/or financial relief under Part II and Part IIA of the Matrimonial Proceedings and Property Ordinance (Cap. 192); An application for maintenance and/or financial orders under the Guardianship of Minors Ordinance (Cap. 13); An application under section 3 of the Separation and Maintenance Orders Ordinance (Cap. 16) for an order for payments under sections 5(1)(c), (d), (e) and 9 of the same ordinance; An application for financial provision under the Inheritance (Provision for Family and Dependants) Ordinance (Cap. 481); Any other applications of a financial nature in Matrimonial and Family Proceedings to which the court agrees that the procedures should apply; and An application for costs in respect of any of the above applications or proceedings. The PFA process cannot adjudicate any of the following matters: Any proceedings for divorce (the main suit itself), nullity, judicial separation, and presumption of death and dissolution of marriage; and Any disputes on children's custody, care and control, access, education or upbringing; and Any other proceedings not covered above PFA applies strictly to financial disputes and has no bearing on matrimonial cause (ie any proceedings in relation to divorce; nullity; judicial separation; presumption of death and dissolution of marriage). If parties agree to use PFA, there will not be a trial in court for the issue of financial matters. PFA can only be initiated after the exchange of Form E and the court advises parties to participate in family mediation and/or FDR before engaging in PFA. The key difference between PFA and trial is that PFA requires parties to agree

to this process, and mutually appoint an adjudicator to decide their dispute. Parties will have to engage in private adjudicator and agree between themselves who to appoint. They will also have to agree to be bound by the decision made by that adjudicator. The decision will need to be approved by the Family Court. Only in very limited circumstances can the arbitral decision be challenge, e.g. error in law. To participate in the PFA, the parties are required to sign a PFA agreement that sets out key terms and seek approval from the court. Some key terms that must be included are: Whether the parties have attended family mediation or a FDR hearing; The scope of issues that will be dealt with through the PFA process; After signing the agreement, the parties will jointly make an application to seek the court's approval to appoint a private adjudicator and start the PFA. Court proceedings between the parties would also be stayed pending the PFA. Parties agree to be bound by the decision/s of the private adjudicator whether in terms of procedures or the adjudication. The adjudicator's decision shall be final subject only to the overriding discretion of the court as to whether, and in what terms, to make the order/s embodying the decision and that the parties agree to take all necessary steps to see such orders are made. The parties will file a PFA report and a consent summons incorporating the terms of the decision of the adjudicator after the PFA. The parties will also dispose of matrimonial assets in accordance with these provisions An example of a PFA agreement can be found in Practice Direction SL9. 2. PUBLIC HOUSING RIGHTS 2. PUBLIC HOUSING RIGHTS 1. WHAT FACTORS WILL BE CONSIDERED BY THE COURT IN AWARDING USE OR POSSESSION OF THE MATRIMONIAL HOME (THE MAIN RESIDENTIAL HOME OF A COUPLE)? 1. WHAT FACTORS WILL BE CONSIDERED BY THE COURT IN AWARDING USE OR POSSESSION OF THE MATRIMONIAL HOME (THE MAIN RESIDENTIAL HOME OF A COUPLE)? That would depend very much on the family's needs, resources and all the other aforesaid factors that the Court is required to consider. Matrimonial home is often the parties' most valuable asset. The nature of the matrimonial home is one of the material factors to be considered. i. Rented home Either one party (usually the party who is responsible for looking after the daily welfare of the children) will remain in the rented home, so as to maintain status quo for the children. As to the responsibility for the payment of rent in such case, it would depend on the facts of each case. Alternatively, where circumstances warrant, alternative accommodation will be found for both parties. ii. Quarters provided by an employer of a spouse If a quarter is provided by one of the parties' employer, the other party will usually have to vacate upon divorce, as he / she is no longer the spouse of the other party. In such circumstances, the vacating party may have the right to claim for the costs of alternative accommodation from the other party, as it would be his / her substantial "needs". iii. If the parties own their home The Court has a wide discretion to order the transfer of matrimonial home, in whoever's name(s) it is held, by way of a property adjustment order, or payment of a lump sum necessitating its sale. The following options are opened: 1. Sale The property can be sold by agreement. The net sale proceeds can be split in different combination: i.e. equal shares, agreed shares or a percentage of share decided by the Court as it sees fit. The particular circumstances of each party's contributions, needs and liabilities will dictate the amount of shares each party would be entitled to e.g. the need to re-house the children or to redeem a mortgage. 2. Transfer Ownership of the property can be transferred from one party to the other either outright or upon payment of a sum of money (while the title in the property remains in the payer). Generally, if there are children who are going to live with the wife, to maintain status quo, an attempt will be made to preserve the matrimonial home for them rather than for the husband. Of course, this is subject to the facts of each case in particular the parties' resources. If the Court found that the value of the property being transferred is more than the wife's total entitlement to capital, then for the sake of fairness, the wife is expected to compensate the husband by paying him a lump sum equivalent to the ascertained "gain". If the wife cannot immediately compensate her husband for the "gain", the property can be transferred into the wife's name subject to the husband's legal charge on the property (in the same way as a mortgage). In this case, the husband can maintain an interest which can be expressed as a lump sum or as a percentage share of the property. His interest can be realized at a later date. If both

parties are unable to discharge the mortgage on the matrimonial home immediately, subject to the approval of the mortgagee, the mortgage will also have to be transferred into the wife's name. In such case, the wife will be responsible for the repayment of the mortgage. If the wife does not have an independent income or stable income, the mortgagee may require the husband to guarantee the repayment of mortgage. 3. Joint ownership If one party wants to reside in the matrimonial home upon divorce, where the circumstances warrant, such as the child is living there and the parties have sufficient financial resources, the matrimonial home can be retained in joint names and have it sold at a later specified date such as when the child has reached a specified age or finished his / her full-time education, whichever is the later. Upon sale, the net sale proceeds would be divided in equal shares, agreed shares, or a percentage of shares that the Court sees fit. Unless and until the matrimonial home is sold, the party who lives with the children would be granted exclusive occupation. 4. Where both parties have an interest in the home There are circumstances whereby the husband is retaining an interest either in the matrimonial home or an alternative accommodation. This is particularly so where the husband has an ongoing commitment to the repayment of mortgage. The husband's interest can either be secured by joint ownership, or by a legal charge on the property whereby his interest can be expressed as a lump sum or as a percentage share of the property. In either situation, the parties had to agree as to when the husband will be able to realize his interest. The following events are usually the specified time: Upon the death, remarriage, or cohabitation of the wife; When the child or the youngest child has reached a specified age or completed his or her full-time education; or When both parties reached agreement for sale. However, this type of arrangement is a viable option only if the husband is quite well-off and does not need capital immediately. There is a risk for the wife is this option is invoked. Although the wife can enjoy exclusive occupation (with children, if any) of the matrimonial home for quite some time, she will have to accommodate herself from her share of the net sale proceeds when the matrimonial home is eventually sold (unless she has other resources). If her share of the net sale proceeds turns out to be insufficient (to acquire another replacement property), she has no other capital or mortgage potential to resort to. Also, one should not overlook the fact that whenever both parties have an interest in the matrimonial home, there is a potential for conflict. Thus, If possible, avoid such kind of settlement, as the parties have already suffered enough tension and antipathy upon divorce. They should avoid conflict or costly litigation again. If it is not feasible, one should try to anticipate potential problems that would arise and make advance provision for their eventuality e.g. payment for interior or external renovation, it is reasonable for each party to contribute to such expenses in accordance with the respective percentage share in the property. H. COSTS H. COSTS The approach in making orders on costs are different for ancillary relief matters and children matters. For ancillary relief, the starting point is costs would be awarded to the party who wins the issue, matter or case. However, it is quite easy for courts to depart from this starting point. This is because family courts have a wide discretion in making cost orders. There may be different factors affecting the court's decision on costs, especially when it would impact or reduce the amount of assets available for the parties to divide. These factors may include: Whether one or both parties rely on legal aid to conduct the proceedings; If there are sufficient assets to meet the parties needs if costs are ordered; Whether there was misconduct during the trial or proceedings - for example, if there was serious non-disclosure of documents or unnecessary delay created by a party; A party unreasonably refusing to participate in financial dispute resolution hearing. The court will look at the overall impression of the parties and the case to determine what orders to make in relation to costs. For proceedings relating to children matters, the courts will adopt the starting point of not making cost orders. This means the parties will have to pay for their own legal costs incurred in children proceedings. The reasoning behind this is that a party should not be penalised simply for making an application to show what is in the child's best interests. The court also has a wide discretion to make a costs order in exceptional circumstances, that is, deviating from 'no order as to costs'. Some examples of cost orders that were

justified and made was where a party: Acted unreasonably in the proceedings; Put forward a groundless position at trial; Made false and purely speculative allegations against the other party / parent of the children; Failure to make full and frank disclosure; Unreasonably refused to participate in mediation or Children's Dispute Resolution hearing. J. OVERSEAS DIVORCE AND LEGAL SEPARATIONS J. OVERSEAS DIVORCE AND LEGAL SEPARATIONS Courts in Hong Kong will recognise parties who have divorced or have had a legal separation overseas if: Either spouse was a habitual resident in the place where divorce was obtained; or, Either spouse was a national of the place where divorce was obtained. However, a divorce (or legal separation) obtained overseas will not be recognised in Hong Kong if one of the spouses were not given sufficient notice or opportunity to take part in the divorce proceedings or if it is against public policy. Parties who have obtained an overseas divorce that is recognised by Hong Kong courts can also apply for financial/ancillary relief against their former spouse through Hong Kong courts. However, if one of the divorced parties remarries, he/she cannot make an application for financial relief against the other divorced party. If a divorced party wishes to make an application for financial relief, he/she must show that Hong Kong courts have the jurisdiction to deal with the claim. The requirements are that at the date of making this application or on the date the overseas divorce was obtained, either of the divorced parties: Was domiciled in Hong Kong, or Was a habitual resident in Hong Kong for the previous 3 years, or Had a substantial connection with Hong Kong. K. RECIPROCAL ENFORCEMENT OF CIVIL JUDGMENTS OF MATRIMONIAL AND FAMILY CASES IN HONG KONG AND MAINLAND CHINA K. RECIPROCAL ENFORCEMENT OF CIVIL JUDGMENTS OF MATRIMONIAL AND FAMILY CASES IN HONG KONG AND MAINLAND CHINA On 15 February 2022, the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (Cap. 639) ("the Ordinance") came into force. This Ordinance allows the orders and judgements of family-related cases in Mainland China decided after 15 February 2022 to be recognised in Hong Kong courts, and vice versa. Essentially, it will make it more convenient for cross-border families or parties with assets in Hong Kong and Mainland China to enforce court orders and awards. The parties will not need to go to court again and argue on the same dispute in Hong Kong and in Mainland China. This will save a considerable amount of time and money used for litigation. The Ordinance gives recognition in 3 general areas: Mainland judgments on care-related orders, status-related orders, and maintenance-related orders; Valid Mainland divorce certificates; and, Issue of certified copy of Hong Kong Judgments and certificate for Hong Kong Judgments so that it can be used and enforced in Mainland China. Care-related orders are court orders that involve children under 18 years old. For example, this could be orders deciding which party has the custody of the child, who is the guardian of the child, who has access and the access schedule etc. Status-related orders refer orders that involve the court declaring the parties are granted a divorce, or that the marriage is invalid. An order in relation to the parentage of a person also falls under this category. Maintenance-related orders include maintenance for children under 18 years old, spousal maintenance, dependent persons who rely on a parties' financial maintenance etc. The scope of Hong Kong courts recognising Mainland judgements is wide since there can be many options when courts make a care-related or maintenance-related order. Courts in Hong Kong can give effect to Mainland judgements that order a transfer of a party's property, payment of a sum of money to a party, and even declare which party the property belongs to. To recognize and enforce a Mainland judgment, the Mainland judgment must be registered in Hong Kong Courts. A party to a Mainland Judgment given in a matrimonial or family case may apply to the District Court for a registration order to register a specified order (i.e. care-related orders, status-related orders, or maintenance-related orders). There is no exact time limit on when Mainland judgments should be registered as the date on which time begins running varies depend on the circumstances. Generally, registering the judgment within 2 years from its effective date is ideal. A. PUBLIC HOUSING A. PUBLIC HOUSING Parties who were living in Public Rental Housing (PRH) flats prior to divorce who cannot reach an agreement as to the living arrangements in the PRH flat should approach the Housing Department (HD) for housing arrangements after the divorce proceedings have finalised. Depending on the

applicant’ s means and individual circumstances, the HD may grant tenancy of the parties’ existing flat to either party or allocate an additional flat to the divorcees. In general, divorce cases seeking PRH tenancy are split into 2 categories: Divorce cases not involving additional PRH resources; and, Divorce cases involving additional PRH resources. Divorce cases not involving additional PRH resources The HD will usually favour the grant of the tenancy to: The party having custody of all children (provided that there are no other occupants entitled to the PRH flat); The party comprising all authorised occupants (i.e. grown up children, the party’ s parents); The party having the legal right to live with the child continuously and permanently (in the case of joint custody of children). The party who has not given custody of any children has to leave the PRH flat upon divorce and will need to find other accommodation. If this party has difficulties in finding other accommodation, he/she can: Apply for a temporary housing unit in the New Territories subject to fulfilling PRH eligibility requirements / criteria; and Apply for PRH as a one-person application. The applicant will be allowed to have a reduction waiting time equivalent to the length of his/her PRH tenancy, with the maximum reduction capped at 3 years. Divorce cases involving additional PRH resources The HD may allocate separate housing units for divorced parties who each have custody of one or more children if they satisfy the following 2 tests: Comprehensive means test (CMT) - household income and asset of the family members who will live together if PRH is granted does not exceed the limit for PRH applications; and Domestic property test (DPT) - all family members must not own any domestic property in Hong Kong. Parties who fail the CMT and the DPT will be required to move out of the PRH flat and find their own accommodation. Parties who only fail the CMT can still apply to live in a temporary housing unit in the New Territories for 1 year before they have to move out and find their own accommodation. B. GOVERNMENT SUBSIDIZED HOUSING SCHEMES B. GOVERNMENT SUBSIDIZED HOUSING SCHEMES If the owner or spouse of the former Home Ownership Scheme (HOS) has divorced and wants to apply for HOS again, the Housing Department will consider individual cases at its discretion. As for the transfer of flats of government subsidized housing schemes, a copy of the divorce decree absolute and court order are needed in the application made to the Housing Authority. The current policy is that a maximum of two co-owners are allowed on a single flat. SURROGACY AND ARTIFICIAL INSEMINATION VI. SURROGACY AND ARTIFICIAL INSEMINATION I. OVERVIEW I. OVERVIEW A. THE HUMAN REPRODUCTIVE TECHNOLOGY ORDINANCE The relevant legislation is the Human Reproductive Technology Ordinance , Cap. 561 , Laws of Hong Kong. The Ordinance is designed to regulate reproductive technology procedures, and the use of embryos and gametes for research and other purposes; to confine the provision of reproductive technology procedures to infertile couples, subject to any express provision to the contrary in any code; and to regulate surrogacy arrangements (whereby the woman to whom it relates would be a surrogate mother if she carries a child pursuant to the arrangement). Reproductive technology procedures are medical, surgical, obstetric or other procedures (whether or not provided to the public or a section of the public) assisting or otherwise bringing about human reproduction by artificial means, and include- in vitro fertilization; artificial insemination; the obtaining of gametes; manipulation of embryos or gametes outside the body; a procedure specified a procedure specified by the Secretary of Food by notice in Gazette to be a reproductive technology procedure; and gender selection achieved or intended to be achieved by means of a procedure which falls within this definition, but excludes a procedure specified a procedure specified by the Secretary of Food by notice in Gazette not to be a reproductive technology procedure. The Ordinance states that no person may carry on any activity which consists of or involves- providing a reproductive technology procedure; conducting embryo research; or handling, storing or disposing of a gamete or embryo used or intended to be used in connection with a reproductive technology procedure or embryo research; unless the person has a licence issued by the Council on Human Reproductive Technology (section 13 and Part IV of the Human Reproductive Technology Ordinance). B. THE COUNCIL ON HUMAN PRODUCTIVE TECHNOLOGY The Council on Human Productive Technology was established under section 4 of the Human Reproductive Technology Ordinance to regulate the issues discussed above. It is responsible for regulating and issuing

licences on reproductive technology procedures and related activities. The requirements and fees payable relating to the implementation of the licensing system are set out in the Human Reproductive Technology (Licensing) Regulation , Cap. 561A and the Human Reproductive Technology (Fees) Regulation , Cap. 561B, Laws of Hong Kong. The Council also prepares and maintains a code of practice giving guidance about the proper conduct of any relevant activity authorized by any licence and the proper discharge of the functions of the person responsible, as well as any other persons to whom the licence applies (sections 5 and 8 of the Human Reproductive Technology Ordinance). For more information about the Council on Human Productive Technology, please visit the official website. II. SURROGACY II. SURROGACY An important aspect of the Human Reproductive Technology Ordinance is the regulation of surrogacy arrangements. A “surrogate mother” means a woman who carries a child- pursuant to an arrangement- made before she began to carry the child; and made with a view to any child carried pursuant to the arrangement being handed over to, and the parental rights being exercised (as far as practicable) by, another person or persons; and conceived by a reproductive technology procedure. A person must not, for the purposes of a surrogacy arrangement, use gametes other than the gametes of two persons who are- the parties to a marriage; and the persons to whom the surrogate mother, pursuant to the arrangement, hands over any child carried and persons who will exercise parental rights over the child (Sections 14 of the Human Reproductive Technology Ordinance) The suitability of a woman to be a surrogate mother should be assessed by a registered medical practitioner who is not responsible for the reproductive technology procedures regarding the surrogacy, by taking into account the woman’s marital status, history of pregnancy, and physical and mental fitness to carry a baby. Counselling must be provided by a multi-disciplinary team of the reproductive technology centre for the commissioning couple, and surrogate mother and her husband (if any) to ensure that all parties concerned understand the medical, social, legal, moral and ethical implications of surrogacy. In assessing the surrogate mother (and her husband, if any) and the commissioning couple, the welfare of the child is of paramount importance. The assessment should take into account their physical, mental and social well-being, including the following factors: their commitment to having and bringing up a child or children; their ability to provide a stable and supportive environment for any child born as a result of surrogacy; their medical histories and the medical histories of their families; their ages and likely future ability to look after or provide for a child’s needs; their ability to meet the needs of any child or children who may be born as a result of surrogacy, including the implications of any possible multiple births or disability; any risk of harm to the child or children who may be born, including the risk of inherited disorders, problems during pregnancy, and of neglect or abuse; and the possible attitudes of other members of the family towards the child. A surrogate mother is not a “parent” of the child in law. Section 12 of the Parent and Child Ordinance , Cap. 429 , Laws of Hong Kong, provides that:- unless authorized or subsequently approved by the court. The court may make an order providing for a child to be regarded in law as the child of the parties to a marriage (referred to in this section as “the husband” and “the wife”) if- the child has been carried by a woman other than the wife as the result of the placing in her of an embryo or sperm and eggs or her artificial insemination; the gametes of the husband or the wife, or both, were used to bring about the creation of the embryo; and the conditions in subsections (2) to (7) are satisfied. The husband and the wife must apply for the order within six months of the birth of the child or, in the case of a child born before the commencement of this section, within six months of such commencement. At the time of the application and of the making of the order- the child’s home must be with the husband and the wife or either of them; and the husband or wife, or both of them, must- be domiciled in Hong Kong; have been habitually resident in Hong Kong throughout the immediately preceding period of one year; or have a substantial connection with Hong Kong. At the time of the making of the order both the husband and the wife must be at least 18 years old. The court must be satisfied that both the father of the child (including a person who is the father by virtue of section 10), where he is not the husband, and the woman who carried the child have freely, and

with full understanding of what is involved, agreed unconditionally to the making of the order. Subsection (5) does not require the agreement of a person who cannot be found or is incapable of giving agreement, and the agreement of the woman who carried the child is ineffective for the purposes of that subsection if given by her less than six weeks after the child’s birth. The court must be satisfied that no money or other benefit (other than for expenses reasonably incurred) has been given or received by the husband or the wife for or in consideration of- the making of the order; any agreement required by subsection (5); the handing over of the child to the husband and the wife; or the making of any arrangements with a view to the making of the order, Subsection (1)(a) applies whether the woman was in Hong Kong or elsewhere at the time of the placing in her of the embryo or the sperm and eggs or her artificial insemination. Where an order is made under subsection (1), the Registrar of the court shall notify the Registrar of Births and Deaths, in such manner as may be prescribed, of the making of that order. For more details about surrogacy, please refer to Part XII of the Revised Code of Practice issued by the Council on Human Reproductive Technology. III. ACTS PROHIBITED BY THE HUMAN REPRODUCTIVE TECHNOLOGY ORDINANCE III. ACTS PROHIBITED BY THE HUMAN REPRODUCTIVE TECHNOLOGY ORDINANCE Section 15 of the Human Reproductive Technology Ordinance sets out prohibitions in connection with embryos, against sex selection and against the provision of reproductive technology to unmarried couples: No person shall- for the purposes of embryo research- bring about the creation of an embryo; or combine human and non-human gametes or embryos or any part thereof such as to give rise to a two-cell zygote; keep or use an embryo after the appearance of the primitive streak; place any non-human gametes or embryo or any part thereof in any human; place any human gametes or embryo or any part thereof in any animal; replace the nucleus of a cell of an embryo with a nucleus taken from any other cell; or clone any embryo. No person shall, for the purposes of a reproductive technology procedure, keep or use any fetal ovarian, or fetal testicular, tissue. No person shall, by means of a reproductive technology procedure, cause the sex of an embryo to be selected, whether directly or indirectly (including by the implantation of an embryo of a particular sex in the body of a woman), except where-- the purpose of such selection is to avoid a sex-linked genetic disease specified in Schedule 2 which may prejudice the health of the embryo (including any foetus, child or adult which may arise from the embryo); and not less than two registered medical practitioners each state in writing that such selection is for that purpose and such disease would be sufficiently severe to a person suffering it to justify such selection. For the purposes of subsection (1)(b), the primitive streak shall be taken to have appeared in an embryo not later than the end of the period of 14 days beginning with the day when the gametes are mixed, not counting any time during which the embryo is stored. Subject to subsections (6), (7) and (8), no person shall provide a reproductive technology procedure to persons who are not the parties to a marriage. Without prejudice to the operation of section 14 , subsection (5) shall not apply in the case of a reproductive technology procedure provided to a person who is to be a surrogate mother where the procedure is provided pursuant to the surrogacy arrangement under which she is to be the surrogate mother. It is hereby declared that- subject to paragraph (b), subsection (5) shall not operate to prohibit the continuation of a reproductive technology procedure provided to persons who were the parties to a marriage when gametes were, or an embryo was, placed in the body of a woman pursuant to the procedure; paragraph (a) shall not operate to permit any further gametes or further embryo to be placed in the body of that woman pursuant to that procedure. Subsection (5) shall not apply in the case of ‘the obtaining of gametes Section 16 of the Ordinance prohibits commercial dealings in prescribed substances (“prescribed substance” means ” “a gamete or embryo” or “ fetal ovarian, or fetal testicular tissue”): No person shall- whether in Hong Kong or elsewhere, make or receive any payment for the supply of, or for an offer to supply, a prescribed substance intended to be used for the purposes of any reproductive technology procedure, embryo research or surrogacy arrangement; seek to find a person willing to supply for payment a prescribed substance referred to in paragraph (a); initiate or negotiate any arrangement involving the making of any payment for the supply of, or for an offer to supply, a prescribed substance referred to in

paragraph (a); or take part in the management or control of a body of persons corporate or unincorporate whose activities consist of or include the initiation or negotiation of any arrangement referred to in paragraph (c). Without prejudice to the generality of subsection (1)(b), no person shall cause to be published or distributed, or knowingly publish or distribute, an advertisement- inviting persons to supply for payment a prescribed substance referred to in subsection (1)(a) or offering to supply any such prescribed substance for payment; or indicating that the advertiser is willing to initiate or negotiate any arrangement referred to in subsection (1)(c). Most importantly, section 17 of the Ordinance prohibits surrogacy arrangements on a commercial basis: No person shall- whether in Hong Kong or elsewhere, make or receive any payment for- initiating or taking part in any negotiations with a view to the making of a surrogacy arrangement. offering or agreeing to negotiate the making of a surrogacy arrangement; or compiling any information with a view to its use in making, or negotiating the making of, surrogacy arrangement; seek to find a person willing to do any act which contravenes paragraph (a); take part in the management or control of a body of persons corporate or unincorporate whose activities consist of or include any act which contravenes paragraph (a); or carry out or participate in any act in furtherance of any surrogacy arrangement where he knows, or ought reasonably to know, that the arrangement is the subject of any act which contravenes paragraph (a). Without prejudice to the generality of subsection (1)(b), no person shall cause to be published or distributed, or knowingly publish or distribute, an advertisement relating to surrogacy arrangements, and whether or not the advertisement invites persons to do any act which contravenes subsection (1)(a). A person who contravenes sections 13 , 14 , 15 , 16 or 17 commits an offence and is liable to a fine at level 4 (currently $25,000) and to imprisonment for six months on the first conviction; and on a subsequent conviction, to a fine at level 6 (currently $100,000) and to imprisonment for two years (section 39 of the Human Reproductive Technology Ordinance). FAQ FAQ 1. IS SURROGACY REGULATED IN HONG KONG? 1. IS SURROGACY REGULATED IN HONG KONG? In Hong Kong, surrogacy is regulated by the Human Reproductive Technology Ordinance. The Ordinance is designed to regulate reproductive technology procedures, and the use of embryos and gametes for research and other purposes; to confine the provision of reproductive technology procedures to infertile couples, subject to any express provision to the contrary in any code; and to regulate surrogacy arrangements (whereby the woman to whom it relates would be a surrogate mother if she carries a child pursuant to the arrangement). The Ordinance states that no person may carry on any activity which consists of or involves: providing a reproductive technology procedure; conducting embryo research; or handling, storing or disposing of a gamete or embryo used or intended to be used in connection with a reproductive technology procedure or embryo research; unless the person has a licence to do so. The Council on Human Productive Technology was established to regulate the issues discussed above. It should be noted that a surrogate mother is not a “parent” of the child in law. For more information about the Ordinance and the Council on Human Productive Technology, please visit Matrimonial Matters > Surrogacy and artificial insemination > Overview. 2. CAN ANY ADULT FEMALE BE A SURROGATE MOTHER? 2. CAN ANY ADULT FEMALE BE A SURROGATE MOTHER? The suitability of a woman to be a surrogate mother should be assessed by a registered medical practitioner who is not responsible for the reproductive technology procedures regarding the surrogacy, by taking into account the woman’s marital status, history of pregnancy, and physical and mental fitness to carry a baby. Counselling must be provided by a multi-disciplinary team of the reproductive technology centre for the commissioning couple, and surrogate mother and her husband (if any) to ensure that all parties concerned understand the medical, social, legal, moral and ethical implications of surrogacy. In assessing the surrogate mother (and her husband, if any) and the commissioning couple, the welfare of the child is of paramount importance. It should be noted that a surrogate mother is the legal mother of the child unless a parental order made by the court says otherwise. For more details, you may refer to Matrimonial Matters > Surrogacy and artificial insemination > Surrogacy. 3. CAN I PAY SOMEONE TO BE A SURROGATE MOTHER? 3. CAN I PAY SOMEONE TO BE A SURROGATE MOTHER? The Human Reproductive Technology Ordinance prohibits surrogacy arrangements on a

commercial basis. Any person must not make or receive any payments for initiating or taking part in any negotiations with a view to the making of a surrogacy arrangement; offering or agreeing to negotiate the making of a surrogacy arrangement; or compiling any information with a view to its use in making, or negotiating the making of surrogacy arrangements, whether in Hong Kong or elsewhere. To understand more about this issue, please go to Matrimonial Matters > Surrogacy and artificial insemination > Acts prohibited by the Human Reproductive Technology Ordinance. 4. CAN I CHOOSE THE GENDER OF MY BABY BY MAKING USE OF HUMAN REPRODUCTIVE TECHNOLOGY? 4. CAN I CHOOSE THE GENDER OF MY BABY BY MAKING USE OF HUMAN REPRODUCTIVE TECHNOLOGY? The Human Reproductive Technology Ordinance sets out prohibitions in connection with embryos, against sex selection and against the provision of reproductive technology to unmarried couples. No person shall, by means of a reproductive technology procedure, cause the sex of an embryo to be selected, whether directly or indirectly (including by the implantation of an embryo of a particular sex in the body of a woman), except where the purpose of such selection is to avoid a sex-linked genetic disease specified in the Ordinance which may prejudice the health of the embryo (including any foetus, child or adult which may arise from the embryo); and not less than two registered medical practitioners each state in writing that such selection is for that purpose and such disease would be sufficiently severe to a person suffering it to justify such selection. If you want to know what other acts are prohibited by the law, please go to Matrimonial Matters > Surrogacy and artificial insemination > Acts prohibited by the Human Reproductive Technology Ordinance. 1. IF I GET MARRIED OUTSIDE HONG KONG, DO I NEED TO NOTIFY THE HONG KONG GOVERNMENT AND UPDATE MY MARITAL STATUS? 1. IF I GET MARRIED OUTSIDE HONG KONG, DO I NEED TO NOTIFY THE HONG KONG GOVERNMENT AND UPDATE MY MARITAL STATUS? There is no need to notify the Hong Kong government and update your marital status if you do not wish to do so. However, there may be a need to inform respective governmental departments concerned of your change in marital status for certain purposes such as registering spousal benefit or for tax purposes. It is also a criminal offence if you marry the same person (again) or another person in Hong Kong without disclosing that you are validly married outside Hong Kong. It is advisable to first inform the Immigration Department for the update in marital status, by a letter or through sending in a form named “Notification of change of Particulars Previously Registered”. 2. I GOT MARRIED OUTSIDE HONG KONG, BUT I AM WORRIED THAT THE MARRIAGE IS NOT RECOGNIZED IN HONG KONG. CAN I REGISTER MY MARRIAGE IN HONG KONG? 2. I GOT MARRIED OUTSIDE HONG KONG, BUT I AM WORRIED THAT THE MARRIAGE IS NOT RECOGNIZED IN HONG KONG. CAN I REGISTER MY MARRIAGE IN HONG KONG? An overseas marriage is recognised by Hong Kong government provided that it is a valid marriage in that jurisdiction, thus it is not necessary to register such marriage in Hong Kong again. The overseas marriage has to satisfy the requirements for solemnizing a valid marriage in Hong Kong, such as that both parties must consent and are able to give consent (i.e. at least 16 years old) to marry, cannot be a party to an existing marriage and cannot be within the prohibited degrees of relationships defined as kindred or affinity (generally means certain categories of family relatives). Hong Kong only recognises same-sex marriage for limited purposes such as taxation, inheritance rights and civil service benefits, as marriage is defined as a voluntary union for life of one man with one woman to the exclusion of all others. C. REGISTRATION AND CELEBRATION OF MARRIAGE C. REGISTRATION AND CELEBRATION OF MARRIAGE A. REQUIREMENTS FOR GETTING MARRIED IN HONG KONG A. REQUIREMENTS FOR GETTING MARRIED IN HONG KONG The minimum age for getting married is 16 years of age. If either party is between the age of 16 and 20 years, written consent from parent or guardian, or order of the court is required. There are no residential requirements for marrying parties and the parties may be of any nationality. The marriage has to be heterosexual and monogamous, and the parties cannot be within the prohibited degrees of relationships defined as kindred or affinity. As the parties have to declare their marital condition on the Notice of Intended Marriage, when a divorced person remarries, he/she must disclose the fact that he/she is ‘divorced’ on the marriage certificate. Kindred and affinity The marriage is invalid if there is a relationship between two persons defined as kindred or affinity. Generally speaking, parties that have kindred relationship i.e. parents/grandparents and children (including

adopted parent/children), brothers and sisters (including those of half-blood), and sisters/brothers of parents (blood related uncle and auntie) along with children of brother/sisters (nephews and nieces) could not be married. The concept of affinity is more complicated, it is a relationship created by bonding of marriage. Examples are children and grandchildren of former wife or husband (step-children/grandchildren) and former wife or husband of parents or grandparents (step-parent/grandparent). A marriage is not void by reason only of affinity if both parties are over the age of 21 and the younger party has not been “a child of the family” (living in the same household and treated as children) of the other party before the age of 18. For marriage with parents of former wife or husband, or former spouse of children, it is not void by reason only of affinity if both parties are over the age of 21 and the marriage is solemnized: In the case of marrying the mother of a former wife, after the death of both the former wife and her father; In the case of marrying the father of a former husband, after the death of both the former husband and his mother; In the case of marrying the former wife of his son, after the death of both his son and the mother of his son (i.e. his own wife); In the case of marrying the former husband of her daughter, after the death of both her daughter and the father of her daughter (i.e. her own husband). B. PROCEDURES FOR MARRIAGE REGISTRATION B. PROCEDURES FOR MARRIAGE REGISTRATION Marriage registration requires giving of a Notice of Intended Marriage to the Registrar of Marriages in the prescribed form either directly or through a civil celebrant of marriages. If all the statutory requirements are met and the notice has been exhibited in the marriage registry for at least 15 clear days, a Certificate of Registrar of Marriages would be given to enable the marrying parties to celebrate their marriage within three months from the date of notice. If you have successfully made an appointment for giving the notice at the marriage registry via telephone or online booking, either one of the marrying parties have to attend the selected marriage registry/office in person to give the notice as scheduled, bringing along proof of identity such as Hong Kong Identity Cards or travel documents of both marrying parties. If you intend to hold your marriage ceremony at a marriage registry, you can use the appointment booking system within 14 days before the 3 months period preceding the date of intended marriage, which will provide you with the date and time of the appointment for giving of the Notice of Intended Marriage and the priority number to choose a time slot of your marriage ceremony on the intended date of marriage. On the day of giving of the Notice of Intended Marriage, you will be allowed to select the exact time for marriage registration at your selected marriage registry, on a first-come-first-serve basis. Celebration of marriage shall take place in the presence of two or more witnesses. Religious celebration and civil celebration A marriage has to take place at a marriage registry by a Registrar of Marriages; in a licensed place of worship by a competent minister; or at any other place in Hong Kong by a civil celebrant of marriages. For religious celebration, the parties need to consult the officiating minister for the exact date, time and place of the wedding, then make an appointment booking for giving the Notice of Intended Marriage only. After giving the notice and exhibition of which for 15 clear days, the Certificate of Registrar of Marriages has to be collected at the respective registry and pass it to the concerned licensed place of worship. No marriage shall be celebrated in a licensed place of worship in the absence of a Certificate of Registrar of Marriages. For a marriage celebrated by a civil celebrant of marriages, the Notice of Intended Marriage could be given through the civil celebrant and the marriage could be celebrated after the issuance and within the validity of the Certificate of Registrar of Marriages. The venue of a Civil Celebrant Wedding is more flexible, basically it can be at any place in Hong Kong, other than the office of the Registrar and a licensed place of worship. C. VALIDITY OF MARRIAGE C. VALIDITY OF MARRIAGE A marriage means a voluntary union for life of one man with one woman to the exclusion of all others. All marriages celebrated under the Marriage Ordinance (Cap. 181) shall be good and valid in law to all intents and purposes. A marriage may be null and void on a number of grounds, for example, the married parties are of kindred or affinity; the marriage is not celebrated in a marriage registry by the Registrar of Marriages, by a competent minister in a licensed place of worship or by a civil celebrant; the marriage

is celebrated under a false name; no Certificate of Registrar of Marriages has been issued and both parties knowingly and wilfully acquiesce in its celebration in such circumstances; the marriage is not between a male and a female; the parties are already married at the time of marriage; or at the time of its celebration any party is under 16 years of age. For marriage validly and duly celebrated in foreign country between two persons domiciled in that country, such marriage would be accepted as valid in Hong Kong provided that such marriage would be valid if celebrated in Hong Kong. 1. WHAT ARE THE MERITS OF ENTERING INTO A SEPARATION AGREEMENT IF THE COUPLE PLAN TO DIVORCE? 1. WHAT ARE THE MERITS OF ENTERING INTO A SEPARATION AGREEMENT IF THE COUPLE PLAN TO DIVORCE? If both parties agree to be bound by the terms, a separation agreement could be a good resolution for couples planning to divorce to transit smoothly into divorce and maintain a harmonious relationship by clearly defining responsibilities. If the agreement has been in place for a significant period of time before the divorce hearing, the court would have difficulty ignoring it or be convinced to order differently from the term of a separation agreement, as the agreement has been working well for both parties before the hearing. C. SEPARATION AGREEMENTS C. SEPARATION AGREEMENTS There may be an agreement by the parties agreeing to live separately before proceeding to divorce, with terms such as the period of separation, arrangements for children and the matrimonial finance, assets or maintenance. The separation agreement could not include a term restricting the right to apply to the court for financial arrangement, as the court has the right to determine the appropriate reliefs. The separation agreement is prima facie unenforceable until and after the court determines whether it is fair to hold the parties to the terms of the agreement. The court would enforce the agreement on a finding that it is voluntarily entered into by each party with a full appreciation of its implication. The party seeking not to embrace the agreement must prove that there are good and substantial grounds showing that injustice would be done by holding the parties to the terms of the agreement, such as a compelling case of drastic change or unforeseeable circumstance, unfair or unconscionable circumstances surrounding the conclusion of the agreement, non-disclosure of material information etc. The separation agreement could be made orally, but the parties will have difficulties proving its existence and formalities. It is advisable that a separation agreement should be clearly and formally drawn in writing, with separate and independent legal advice sought before the signing of the agreement. A. LEGAL STATUS OF NUPTIAL AGREEMENTS A. LEGAL STATUS OF NUPTIAL AGREEMENTS Separation agreements are agreements entered between couples once they have separated or on the occasion of their separation. These are common because they are valid contracts, according to section 14 of the Matrimonial Property and Proceedings Ordinance (“MPPO”), Cap. 192. Furthermore, as in the Hong Kong Court of Appeal case of L v C, the courts have affirmed that such agreements should be upheld unless there is a compelling case of unforeseeable circumstances. If an agreement is made during marriage but before separation, then this is known as pre-separation post marital agreement. This is not a separation agreement under section 14 of the MPPO. These agreements will be governed by similar considerations as pre-marital agreements in accordance with the Radmacher principles discussed below. Nuptial agreements could be taken into account by the court when deciding the outcome in divorce proceedings involving ancillary relief and division of financial assets under section 7(1) of the MPPO as “circumstances of the case” or “conduct”, and may be upheld in part or in whole. When the court needs to determine whether or not to make an order in accordance with a nuptial agreement, the question of fairness is the key issue. In the UK, it is likely that the court will follow the terms of the nuptial agreement and hold the parties to their agreement if the parties: are shown to have understood the terms of the agreement; had independent legal advice; gave full and frank disclosure of their financial positions; were not under pressure when signing the agreement; did not exploit a dominant position; and if the agreement is not unjust. This list is not exhaustive but provides a general basic guideline. A nuptial agreement should be given effect (that is, enforced) if it was “freely entered into by each party with a full appreciation of its implications unless in the circumstances prevailing, it would not be fair to hold the parties to their agreement.” (See: UK case Radmacher v Grantino) In Hong Kong, the Court of Final Appeal

in SPH v SA adopted Radmacher as good law. B. PRE-MARITAL AGREEMENTS AND PUBLIC POLICY B. PRE-MARITAL AGREEMENTS AND PUBLIC POLICY Historically, pre-marital agreements were regarded as being contrary to public policy on the grounds that provision for a divorced wife and children of the family is a matter of public concern. In UK case Bennett v Bennett, the court said that “it is in the public interest that the wife and children of a divorced husband should not be left dependent on public assistance or on charity when he has the means to support them”. For example, if a party had not given full and frank disclosure before the signing of the pre-marital agreement and the wife is left destitute under the agreement, the agreement may be contrary to public policy. Another example might be that since the marriage, the parties’ financial situations may have drastically changed (for the better or worse), thus what was initially agreed under the pre-marital agreement might not be “fair” or reflective of the parties’ living standard during the marriage. Later, the UK court in the Radmachner case stated that pre-marital agreements are not contrary to public policy. Furthermore, pre-marital agreements cannot restrict parties from applying to the court for orders for financial arrangements. In Hong Kong, the Court of Final Appeal in SPH v SA endorsed the principle. 2. WHAT HAPPENS IF ONE OF THE PARTIES NO LONGER AGREES WITH THE TERMS OF THE SEPARATION AGREEMENT BEFORE THE HEARING? 2. WHAT HAPPENS IF ONE OF THE PARTIES NO LONGER AGREES WITH THE TERMS OF THE SEPARATION AGREEMENT BEFORE THE HEARING? Any change of the terms of the separation agreement should be agreed between both parties. If one parties no longer agrees with the terms of the separation agreement, the parties could sue the breaching party for breach of contract or seek to enforce the agreement in a civil action. 1. IS IT STILL BIGAMY IF I HAD SAME-SEX MARRIAGE IN A FOREIGN COUNTRY AND THEN MARRIED ANOTHER PERSON IN HONG KONG AFTERWARDS? 1. IS IT STILL BIGAMY IF I HAD SAME-SEX MARRIAGE IN A FOREIGN COUNTRY AND THEN MARRIED ANOTHER PERSON IN HONG KONG AFTERWARDS? Bigamy is a criminal offence of marrying someone while still being legally married to another, and it is a ground to nullify a marriage. Even if same-sex marriage is not legalized in Hong Kong, as long as the same-sex marriage is celebrated or contracted outside Hong Kong in accordance with the law in force at the time and in the place where the marriage was performed, and both parties have the capacity to marry in accordance with the law of each party’s domicile before marriage, you are still considered as legally married to another and liable to a charge of bigamy if you then married another person in Hong Kong. Individuals declaring themselves as ‘bachelor/spinster’ and later discovered to have already been married in a pre-existing relationship (recognized or unrecognized) overseas may still find themselves still liable for prosecution for making a “false declaration” for the purpose of procuring marriage and “bigamy”. The marriage would have to be dissolved after finalizing all the formalities of a divorce in the foreign country before being able to remarry in Hong Kong. 2. IN A DIVORCE PETITION, ONE OF THE PARTIES HAS BEEN ORDERED BY THE COURT TO PAY FOR THE OPPOSITE PARTY AN ANCILLARY RELIEF. IF THE PAYING PARTY LATER FOUND OUT THAT THE RECEIVING PARTY HAD BEEN LAWFULLY MARRIED TO SOMEONE ELSE IN MAINLAND CHINA WHEN THEY MARRIED, CAN THAT PARTY (A) SET ASIDE THE DECREE ABSOLUTE BASED ON THE NEW EVIDENCE, (B) REQUEST THE COURT TO DECLARE THE MARRIAGE NULL OR VOID ON THE GROUND OF BIGAMY, AND (C) REQUEST TO DISENTITLE THE OPPOSITE PARTY TO ANCILLARY RELIEF? 2. IN A DIVORCE PETITION, ONE OF THE PARTIES HAS BEEN ORDERED BY THE COURT TO PAY FOR THE OPPOSITE PARTY AN ANCILLARY RELIEF. IF THE PAYING PARTY LATER FOUND OUT THAT THE RECEIVING PARTY HAD BEEN LAWFULLY MARRIED TO SOMEONE ELSE IN MAINLAND CHINA WHEN THEY MARRIED, CAN THAT PARTY (A) SET ASIDE THE DECREE ABSOLUTE BASED ON THE NEW EVIDENCE, (B) REQUEST THE COURT TO DECLARE THE MARRIAGE NULL OR VOID ON THE GROUND OF BIGAMY, AND (C) REQUEST TO DISENTITLE THE OPPOSITE PARTY TO ANCILLARY RELIEF? If the paying party found out that the receiving party of the ancillary relief had been lawfully married to someone else during their marriage, the party could ask the court to set aside the decree absolute based on the new evidence and declare that the marriage is null and void on the ground of bigamy. However, this finding of bigamy does not automatically disentitle the party to ancillary relief, but is one of the factors to be taken into account when the court considers all the circumstances of the case when deciding on ancillary relief. The court may consider factors such as there being no outright deceit, equal or substantial contribution to the

family wealth, long history of cohabitation, acceptance of children from previous relationship into household etc. A. THE ABSENCE OF FACTUAL MARRIAGE IN HONG KONG A. THE ABSENCE OF FACTUAL MARRIAGE IN HONG KONG A couple in Hong Kong could only be validly married in accordance with the Marriage Ordinance (Cap. 181) since 7th October 1971. Hong Kong does not embrace the concept of factual marriage, which stands for a couple factually living and holding out as husband and wife but has not gone through the formalities of registering or celebrating their marriage according to the existing legal framework. Regardless of the duration of cohabitation, if the cohabitant couples do not celebrate their marriage and go through all the formalities required by law, they are not treated as married and their scope of “spousal” rights in areas of tax, pension, medical and public housing would not be compatible to those enjoyed by married couples. Currently there are laws protecting a party to a de facto relationship in terms of domestic violence, but no financial protection is provided to the partner unless there are children, and it is for the benefit of the children but not maintenance to the partner. 1. WHAT ARE THE DIFFERENCES BETWEEN A PRENUPTIAL AGREEMENT AND A COHABITATION AGREEMENT? 1. WHAT ARE THE DIFFERENCES BETWEEN A PRENUPTIAL AGREEMENT AND A COHABITATION AGREEMENT? A prenuptial agreement is an agreement entered into by a couple prior to marriage spelling out how the couple’s assets and debts are to be divided and maintenance to be provided should the couple divorce. Prenuptial agreements require a full disclosure of each person’s financial position, and generally must be a written document in order to be legally enforceable. The court when considering the grant of ancillary relief is not obliged to give effect to the prenuptial agreement, but would give appropriate weight to such an agreement. The court has the ultimate discretion granting the final order regarding financial provision and child issues albeit the terms of the agreement between both parties of the marriage. A prenuptial agreement is made in contemplation of marriage while a cohabitation agreement is made when individuals plan to live together. A cohabitation agreement is a specific type of contract between two individuals who are not married but romantically involved and cohabiting. This sort of agreement can outline each person’s rights and obligations for issues such as financial support, distribution of property and child custody after the end of the relationship. Currently the cohabitants’ legal rights in divorce proceedings are limited to a claim for children’s maintenance and whether a cohabitation agreement would have any effect on such proceedings is yet to be tested in court. The cohabitant may proceed a claim upon the breach of the cohabitation agreement in the contract law regime. 2. MY PARTNER IS A HONG KONG RESIDENT WHILE I AM NOT. WE HAVE BEEN LIVING TOGETHER FOR 1 YEAR. IS OUR CHILD BE ENTITLED TO HONG KONG PERMANENT RESIDENCY EVEN IF WE ARE UNMARRIED? 2. MY PARTNER IS A HONG KONG RESIDENT WHILE I AM NOT. WE HAVE BEEN LIVING TOGETHER FOR 1 YEAR. IS OUR CHILD BE ENTITLED TO HONG KONG PERMANENT RESIDENCY EVEN IF WE ARE UNMARRIED? A child born in Hong Kong to a parent who is a Hong Kong citizen could be entitled to Hong Kong permanent residency even if unmarried. The relationship of parent and child is taken to exist between a person and a child born to such person in or out of wedlock. According to Schedule 1 of the Immigration Ordinance (Cap. 115), a person of Chinese nationality born outside Hong Kong to a parent who has permanent residency in Hong Kong (as Chinese citizens born in Hong Kong or who have resided in Hong Kong for more than 7 years), or a person under the age of 21 born in Hong Kong to a parent who has the right of abode (non-Chinese nationals resided in Hong Kong for a continuous period of not less than 7 years and taken Hong Kong as place of permanent residence) at the time of his birth or any time before he attains the age of 21, is entitled to permanent residency and there is no requirement that the mother and father of the child has to be married. 3. DO I BEAR ANY RESPONSIBILITIES IF I CAUSE DAMAGES TO THE HOUSE OR THE NEIGHBOURHOOD WHERE I COHABIT WITH MY PARTNER? 3. DO I BEAR ANY RESPONSIBILITIES IF I CAUSE DAMAGES TO THE HOUSE OR THE NEIGHBOURHOOD WHERE I COHABIT WITH MY PARTNER? If a cohabitant cause damage to the house or the neighbourhood, he/she may be held liable to bear responsibilities to compensate such damages financially, and in appropriate cases, if he/she without lawful excuse destroys or damages any property belong to another (whether this person is a cohabiting partner) with intent to destroy or damage or being reckless as to whether it would destroyed or damaged, is liable for prosecution and the maximum

sentence of the criminal damage offence would be 10 years of imprisonment. 1. I AM LEGALLY MARRIED IN HONG KONG. IF LATER MY SPOUSE CHANGES SEX, IS MY MARRIAGE STILL VALID? 1. I AM LEGALLY MARRIED IN HONG KONG. IF LATER MY SPOUSE CHANGES SEX, IS MY MARRIAGE STILL VALID? Every marriage must be the union of one man and one woman. A person having received a full sex re-assignment surgery is to be treated as being of the sex re-assigned after the surgery. A marriage is void on the ground of “the parties not being respectively male and female”, and such gender should be the gender that has been certified by an appropriate medical authority to have changed as a result of sex reassignment medical treatment. In the Court of Final Appeal decision of Q & Tse Henry Edward v Commissioner of Registration, it was held that the underlying policy of the Commissioner of Registration requiring a full sex reassignment surgery (which involves a highly invasive surgery to remove the uterus and ovaries and construct an artificial penis) before amending the gender markers on their HKID cards, was unconstitutional. In other words, the completion of full sex reassignment surgery is not a necessary condition for amending the gender markers on transgender persons’ HKID cards. The appellants in that case have been medically certified that additional surgical procedures are not needed, the surgery carries certain post-operative risks and possible complications, and is medically unnecessary for many transgender persons, including the appellants. Therefore, if your spouse changes sex later in the marriage (having been medically certified and recognised as the changed gender), he/she would be recognised as persons of their re-assigned sex and the marriage would be void by reasons of not being heterosexual, as same-sex marriage is not legalised in Hong Kong. 1. RIGHTS AND BENEFITS ENJOYED BY SAME-SEX COUPLES MARRIED OVERSEAS IN HONG KONG 1. RIGHTS AND BENEFITS ENJOYED BY SAME-SEX COUPLES MARRIED OVERSEAS IN HONG KONG Government Departments (Immigration, Housing and Taxation) The court has recently advanced much of the welfare rights of same-sex couples married overseas. The court has recognised that same-sex or civil partners should be granted spousal/dependent visas by immigration authorities and be entitled to apply for public rental housing, and financial/spousal benefits relating to employment and taxation assessment (including tax allowances or deductions in respect of the same-sex spouse). Same-sex marriage would be regarded as valid for the purposes of the Inland Revenue Ordinance (Cap. 112) . Inheritance The court has also ruled that definitions of “valid marriage” and “husband and wife” in the provisions of ordinance relating to probate inheritance and intestates’ estate, which exclude same-sex couples legally married in foreign countries, are unlawful and unconstitutional, so same-sex spouse can claim as “surviving spouse” under the relevant ordinance. Death Inquiries There is now also no distinction between same-sex and opposite-sex spouses under the Coroners Ordinance (Cap. 504), relating to arrangements of the deceased to be conducted by their spouses, after-death service provided by government departments/Coroner’s courts and applying for a death certificate from the Immigration Department. Divorce, Maintenance and Parental Rights Same-sex partners can also enjoy equal parental rights over children, as guardianship and joint custody could be granted by court to non-biological, same-sex parent. Same sex couples could not obtain a divorce in Hong Kong, and while those heterosexual couples lawfully married and divorced in foreign jurisdictions could claim ancillary relief in Hong Kong, it is still uncertain whether the same would apply to same-sex couple as same-sex marriage is still not recognised in the Hong Kong. The definition of cohabitation relationship has been defined to include those same-sex couple living together in an intimate relationship in the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189), which provides protection of persons from violence in domestic and cohabitation relationship. Conclusion Same-sex marriage would be regarded as a valid marriage for certain purposes of an ordinance, such as immigration visas, inheritance, public rental housing, tax assessment and parental rights. The recognising of benefits and rights for same-sex couple in these area in court was not on promoting or recognising same-sex marriage as the court has held that the denial of the right for same-sex couples to marry did not constitute a violation of constitutional rights. Thus, a homosexual couple still has no right to be married in Hong Kong. The court has recognised the protection of the heterosexual and monogamous institution of marriage as

a legitimate aim, but any differential treatment between those in a heterosexual or same-sex marriage in an ordinance or policy has to be justified and rationally connected to the legitimate aim. 2. DO SAME-SEX COUPLES NEED TO GO BACK TO COUNTRIES WHERE THEY GOT MARRIED TO GET DIVORCED? DO THEY NEED TO UPDATE THEIR MARITAL STATUS TO THE HONG KONG GOVERNMENT AS DIVORCED? 2. DO SAME-SEX COUPLES NEED TO GO BACK TO COUNTRIES WHERE THEY GOT MARRIED TO GET DIVORCED? DO THEY NEED TO UPDATE THEIR MARITAL STATUS TO THE HONG KONG GOVERNMENT AS DIVORCED? Hong Kong law does not extend jurisdiction for divorce or decree of nullity to foreign same-sex marriage. Jurisdiction was extended under the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189) to encompass officially non-recognised relationships for some protective reliefs against domestic violence. Thus, same-sex couples may need to go back to countries where they got married or go to other countries that recognise dissolution of foreign same-sex marriage for their divorce. They have no obligation to update their marital status to the Hong Kong government unless it is required for other purposes such as welfare rights, housing policy or taxation or as required by law (such as to remarry in Hong Kong). L. BOGUS MARRIAGE L. BOGUS MARRIAGE Bogus marriages are those marriages with no genuine relationship between the parties and the marriages are entered into for reasons of benefits, such as financial rewards or to obtain the requisite documents for the purpose of entering and gaining permanent residency in Hong Kong (on the strength of “reunion with spouses”). 1. WHAT OFFENCES CAN BE CHARGED FOR BOGUS MARRIAGES AND WHAT ARE THE PENALTIES? 1. WHAT OFFENCES CAN BE CHARGED FOR BOGUS MARRIAGES AND WHAT ARE THE PENALTIES? The possible offences in relation to a bogus marriage include: conspiracy to defraud, liable on conviction to imprisonment for up to 14 years (common law offence and section 159C of the Crimes Ordinance (Cap. 200)); making false representation to immigration officers, liable to prosecution and upon conviction face a maximum fine of HK$150,000 and imprisonment of 14 years (section 42 of the Immigration Ordinance (Cap. 115)); any person who for the purpose of procuring a marriage knowingly or wilfully making a false oath or a false declaration would be liable to imprisonment for 7 years and a fine (section 34 of the Crimes Ordinance (Cap. 200)); or bigamy (marrying a person while still legally married to another person) shall be liable to imprisonment for seven years upon conviction (section 45 of the Offences Against the Person Ordinance (Cap. 212)). Aiders and abettors are also liable to prosecution and the same penalties. A person whose residency was obtained by any fraudulent means will have his/her Hong Kong identity card and residence status invalidated. In addition, he/she may be subject to a removal order to be sent back to his place of origin. 2. HOW TO PROVE THAT A MARRIAGE IS A BOGUS MARRIAGE? 2. HOW TO PROVE THAT A MARRIAGE IS A BOGUS MARRIAGE? The Immigration Department may carry out in-depth investigations in suspicious cases, such as conducting spot checks by home visits to collect circumstantial evidence and proof, conducting separate interviews, and obtaining admissions of the parties involved in a bogus marriage. Information may be gathered via different channels to verify the husband-and-wife relationships of the persons in the case, by asking questions on details of matrimonial relationships, checking on recollection of ceremonies and gifts, conducting inquiries of special memory of font moments, and seeking the provision of photos and videos, traces of living together as husband and wife, with support of objective evidence like the entry and exit record, etc. Lack of time spent or personal belongings of one party at home may bring the officers to doubt the existence of matrimonial relations. In some cases, officers may be able to find the parties’ contact with criminal syndicates arranging for bogus marriages, such as communication with a phone number provided in the advertisements to allure people to engage in bogus marriages, or a search may render pieces of evidence such as a memo of personal details of the spouse or teaching notes on how to answers questions and inquiries from Immigration Department. 3. IF I AM INVOLVED IN A BOGUS MARRIAGE, DOES THIS AUTOMATICALLY MEAN A NULLITY OF MARRIAGE? 3. IF I AM INVOLVED IN A BOGUS MARRIAGE, DOES THIS AUTOMATICALLY MEAN A NULLITY OF MARRIAGE? A bogus marriage does not automatically mean a nullity of marriage, and the court has determined whether bogus marriage should be annulled under section 20 of Matrimonial Causes Ordinance (Cap. 179). The petition for nullity is dismissed as under the relevant statutory regime of “grounds for decree of

nullity”, there is no mentioning of a bogus marriage being a ground to declare the marriage void. The Court of Final Appeal has commented that a bogus marriage was still a marriage in the eyes of the law, even if no affection was involved nor the parties had slightest intention of living together or behaving in any way like a married couple - the alleged “bogus” part referred to the application to the Immigration Department for the purposes of which the marriage was entered into. A petition for divorce rather than a petition for nullity should be filed by a petitioner who wants to end a bogus marriage. M. RECORDS OF MARITAL STATUS M. RECORDS OF MARITAL STATUS Any individual with marriage registered in Hong Kong and wish to obtain a certified copy of marriage certificate, can apply for a search of marriage records and / or a certified copy of marriage certificate. A certified copy of the marriage certificate would be provided, or if the marriage record is not found or there is no application to have a certified copy of marriage certificate, a result slip of the marriage record search would be provided. An individual can apply for a certificate of absence of marriage record to prove that he/she has no registered marriage in Hong Kong. However, if the search result shows there are marriage record(s) in Hong Kong, a letter of marriage record indicating the date(s) of your previous marriage(s) will be issued. If the applicant is NOT the registered subject (the bridegroom or the bride), relevant person (the parent/legal guardian of the registered subject under the age of 18) or person with written consent from the registered subject/relevant person, the request must be in person or by post with supplementary information, including the relationship with the registered subject, the purpose(s) and the intended use of the search result and/or requested records, and all supporting documents, if any, to support the request. Explanation as to why the consent registered subject/relevant person is not obtained may be required. For example, applicant for a marriage record may provide death certificate of registered subject and proof of relationship with the deceased persons (birth certificate) to explain that a record is required for probate purposes. Another example is an official request from official/governmental authorities requiring a record for certain purpose or use. Each application would be assessed on its individual merits. PARENTAL RIGHTS AND DUTIES II. PARENTAL RIGHTS AND DUTIES The rights and authority over the child arise from the fundamental duty of the parents to ensure, guard and promote the best interest of the child. Children are vulnerable and dependent upon their parents for protection and nurturing of development. Parents have rights over the child and his/her property and such parental rights exist until the child reach the age of majority (the age of 18 years old in Hong Kong). These parental rights include parents’ decision on the child’s religion, education, discipline, medical treatment and accommodation. Parents could not transfer their parental rights and any agreement to give up parent rights are unenforceable. The following persons may exercise parental rights and duties: both the married parents; an unmarried mother; an unmarried father by order of the court; adoptive parents or prospective adoptive parents given interim custody; a woman impregnated with the assistance of medical treatment to carry a child (such as artificial insemination) and her consenting husband or male partner; gamete (sperm or egg) donor and their consenting married partners granted parentage by parental order; a guardian appointed by court; the Director of Social Welfare (on a parent signing the general form of consent to adoption, after a freeing order granted without consent of the parent, appointed by the Juvenile Court for protection of the juvenile or by the court in proceedings under Matrimonial Causes Ordinance (Cap. 179) or Matrimonial Proceedings and Property Ordinance (Cap. 192)). Under section 3 of the Guardianship of Minors Ordinance (Cap. 13), the rights and authority of mother and father will be equal and be exercisable by either without the other. That means their rights and authority are not dependent upon each other and could be exercised independently. However, for illegitimate children, the mother would have the same rights and authority as if the children are legitimate while the father could obtain some or all of the rights and authority on application to court. Neither parent has the authority to unilaterally make the more important decisions in relation to the child and neither party has pre-emptive right over the other. Thus, a spouse cannot unilaterally make decisions for their child without the consent of the other half, even if custody has been granted solely to one

party. The parties could apply to the court for differences not settled. 1. DO FATHERS HAVE PARENTAL RIGHTS OVER ILLEGITIMATE CHILDREN? IF AN ILLEGITIMATE CHILD IS BORN WITHOUT ACKNOWLEDGING THE FATHER DURING THE BIRTH REGISTRATION, CAN THE FATHER CLAIM THE PARENTAL RIGHTS LATER? IS CONSENT FROM THE MOTHER NEEDED? IS ANY PROOF (E.G., DNA REPORTS) NEEDED? 1. DO FATHERS HAVE PARENTAL RIGHTS OVER ILLEGITIMATE CHILDREN? IF AN ILLEGITIMATE CHILD IS BORN WITHOUT ACKNOWLEDGING THE FATHER DURING THE BIRTH REGISTRATION, CAN THE FATHER CLAIM THE PARENTAL RIGHTS LATER? IS CONSENT FROM THE MOTHER NEEDED? IS ANY PROOF (E.G., DNA REPORTS) NEEDED? The father of an illegitimate child does not automatically enjoy parental rights, but he needs to apply to the court claiming for a declaration deeming him as the father and entitling him to parental rights under section 3 of the Guardianship of Minors Ordinance (Cap. 13). The paramount consideration is the best interest of the child and the court has identified the following facts in consideration of the application: the father's degree of commitment to the child; the state of the father's current relationship with the child and his reasons for making the application. A mother's refusal to consent to the applicant or her hostility towards the father of the illegitimate child would not on its own be a reason to refuse the application. The father could claim the parental rights even if the child is born without acknowledging the father during the birth registration. However, in contested cases where the mother does not consent to the application, the burden is on the applicant (father of the illegitimate child) to prove parentage. The court often order proof of parentage by means of scientific evidence such as a DNA paternity test in proceedings involving paternity disputes, which would be the most direct and relevant proof beyond doubt, and any party refusing such a test would face drawing of adverse inferences from court unless cogent reasons are given to persuade the court otherwise. 2. DO SAME-SEX COUPLES ENJOY THE SAME PARENTAL RIGHTS AS OPPOSITE-SEX COUPLES IN HONG KONG? 2. DO SAME-SEX COUPLES ENJOY THE SAME PARENTAL RIGHTS AS OPPOSITE-SEX COUPLES IN HONG KONG? Same-sex marriage is not recognised under the laws of Hong Kong, so same-sex couples are not attributed to enjoy the same parental rights as heterosexual couples in Hong Kong even if both parties in a same-sex marriage consent to co-parenting the children. Only a biological parent may be listed as the legal parent. However, it is possible to apply to the court to formalise the parental rights of a non-biological partner in a same sex marriage. The court has ruled that a non-biological parent of a child born by his/her former same sex partner could be granted guardship rights, joint custody and shared care over the children, should the best interest of the child required. 3. CAN A YOUNG PERSON UNDER THE AGE OF 18 RECEIVE A PLASTIC SURGERY DESPITE THE OPPOSITION FROM PARENTS? 3. CAN A YOUNG PERSON UNDER THE AGE OF 18 RECEIVE A PLASTIC SURGERY DESPITE THE OPPOSITION FROM PARENTS? In general, a person who has attained the age of 18 has the capacity to give consent in Hong Kong. There is no specific law governing plastic surgery but for medical treatment. According to the Medical Council of Hong Kong's Code of Professional Conduct Guide, consent given by a child patient is not valid unless the child is capable of understanding the nature and implication of the proposed medical treatment. If the child is not capable of such understanding, consent has to be obtained from the child's parent or guardian. If the parental agreement is not obtained, medical practitioners could only lawfully act to safeguard a child's life or health on the basis of necessity. In practice, although it is not a legal requirement, many public and private hospitals in Hong Kong require parental consent for a child under 18 to undergo medical treatment. Parents' right to determine the treatment is not absolute and could be overruled by the court considering the best interest of the child. In some cases, plastic surgery may be required after cancer, trauma or severe abnormalities that could have major impact on the child's health and welfare. Some medical instruments, medication and implants may have a suggested minimum age for warranty by the manufacturer and it is highly unlikely a registered medical practitioner would take such risk for purely cosmetic purposes, although strictly speaking it may not be illegal to use such medical device. 4. POSSIBLE OFFENCES RELATED TO PARENTAL DUTIES 4. POSSIBLE OFFENCES RELATED TO PARENTAL DUTIES Parents have to ensure the safety of the child by provision of basic needs and cannot leave a child alone unattended. Corporal punishment is not recognised and should not be exercised by

parents as they would be subject to criminal liabilities just like any other persons causing harm to a child. Under section 26 of the Offences Against the Person Ordinance (Cap. 212), any person who unlawfully abandons or exposes any child, being under the age of 2 years, whereby the life of such child is endangered, or the health of such child is or is likely to be permanently injured, shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 10 years (indictment refers to a case tried in District Court or the Court of First Instance) or on summary conviction (tried in Magistrates' Court) to imprisonment for 3 years. The venue of the prosecution would be dependent on the harm or injuries of the children, complexity of case and likely sentence in court. On a serious offence where the life of the chid is endangered by the abandonment or circumstances of exposing the child to danger, prosecution would most likely be bring the case to District Court or the Court of First Instance on indictment. There is a similar provision under section 27 of the Offences Against the Person Ordinance (Cap. 212) where those in charge of child or young person under 16 assault, ill-treat, neglect, abandon or expose in a manner likely to cause such chid or young person unnecessary suffering or injury to his health (including injury to or loss of sight, or hearing, or limb, or organ of the body, or any mental derangement) such person shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 10 years; on summary conviction to imprisonment for 3 years. For the purposes of this section a parent or other person over the age of 16 having the custody, charge or care of a child or young person under that age shall be deemed to have neglected him in a manner likely to cause injury to his health if he fails to provide adequate food, clothing or lodging for the child or young person, or if, being unable otherwise to provide such food, clothing or lodging, he knowingly and wilfully fails to take steps to procure the same to be provided by some authority, society or institution which undertakes to make such provision for necessitous children or young persons. 5. CORPORAL PUNISHMENT VS VIOLENCE: WHAT IS THE BOUNDARY? 5. CORPORAL PUNISHMENT VS VIOLENCE: WHAT IS THE BOUNDARY? Corporal punishment involves any type of punishment in which physical force is used and is intended to cause some degree of pain or discomfort. It is a type of domestic violence if the parents, using violence or the threat of violence or abusive behaviour, inflict physical or psychological harm to the child. Parents should be cautious in their ways of disciplining their children. Conduct disapproved by court is not limited to violence or threats of violence or whether actual bodily harm is caused to a child, but whether the conduct could be serious and inimical to mental and physical health or hinder the welfare of the child (for example parents screaming and yelling, force long hours of homework or isolation in room, damage properties of children, leave a child alone unattended, not providing enough food and clothing etc.) Once this boundary is crossed, parents may be subject to prosecution and have their parental rights taken away or hindered by intervention from the court or Social Welfare Department for the protection of the children under harm or maltreatment. A. COMMERCIAL SURROGACY A. COMMERCIAL SURROGACY Hong Kong does not recognise commercial surrogacy agreements. In fact, it is a criminal offence to enter into such an agreement: no person shall make or receive any payment, whether in Hong Kong or elsewhere, for arranging, offering or taking part in a surrogacy arrangement, and this criminal offence is punishable with a level 4 fine and six months' imprisonment on first conviction (sections 17 and 39 of the Human Reproductive Technology Ordinance (Cap. 561)). It is a summary offence, with a time limit of six months "from the time when the matter of such complaint or information respectively arose" for prosecution. B. LEGAL PARENTHOOD OF CHILDREN OF SURROGACY ARRANGEMENTS B. LEGAL PARENTHOOD OF CHILDREN OF SURROGACY ARRANGEMENTS Under section 9(1) of the Parent and Children Ordinance (Cap. 429), the woman who carried a child as a result of the placing in her of an embryo or of sperm and eggs, and no other woman, is to be regarded as the mother of the child. Under section 10 of the Ordinance, a women who was a party to a marriage but carried a child in a situation of placing of embryo, sperms and eggs or artificial insemination, but the creation of the embryo was not brought about by the other party to the marriage, the other party to the marriage shall be regarded as the father of the child unless it is shown that he did not consent to the placing in her of the embryo or the sperm and eggs

or to her insemination (as the case may be). Lastly if the woman and her male partner obtained treatment services for placing of embryo, sperms and eggs or artificial insemination and resulted in the pregnancy not by the sperm of that men, he shall still be regarded as the father of the child. Thus the “default” position is that the surrogate mother is the legal mother of the child under Hong Kong law. If the surrogate mother has a husband or male partner whose sperm is not used, then the husband (if he consented to the pregnancy) or male partner (receiving such treatment service) is deemed the legal father. Parental Orders At present, there is simply no recognized scheme or legal procedure for seeking prior approval of surrogacy unless the surrogacy is conducted without any profit, bonus or reward given. The court may order commissioning parents to be legal parents of a child born out of a surrogacy agreement under section 12 of the Parent and Children Ordinance (Cap. 429). The couple who commissioned for the child must apply for a parental order shifting the parental status, all the legal rights and responsibilities to the couple within 6 months of the birth. The court has to consider the best interest of the children before granting of the parental order. The court highlighted the consequences of not making a parental order which may left the child without a legal parent, and the parental order is important as it confers permanent legal parenthood and parental responsibility on the commissioning parents, providing lifelong security for the child’s relationship with the parent. ABORTION VII. ABORTION Under section 47A of the Offences Against the Person Ordinance (Cap. 212), termination of pregnancy can only be legally performed if: it takes place within 24 weeks of pregnancy, unless it is necessary for saving the life of the pregnant woman; it is performed by registered doctors in specific hospitals and clinics (FPAHK Day Procedure Centre). This requirement does not apply if the termination is immediately necessary to save the life or to prevent grave permanent injury to the physical or mental health of the pregnant woman; and two registered medical practitioners agree in good faith that the termination of pregnancy should be performed and is performed by a registered medical practitioner. The doctors would only determine that a termination should be performed if: continuance of the pregnancy would involve risk to the life of the pregnant woman or be of injury to the physical or mental health of the pregnant woman, greater than if the pregnancy were not terminated; or there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormality as to be seriously handicapped. In cases where the pregnant woman is under 16 or has been the victim of a sexual offence (and has made a report to the police within 3 months of the offence), the doctor will automatically presume that the continuance of her pregnancy would involve risk of harm to the pregnant woman and may therefore perform a termination of pregnancy if requested. A. LABOUR INDUCTION A. LABOUR INDUCTION Labour induction refers to the process or treatment creating contractions in the uterus before labour to artificially stimulate childbirth and delivery. Labour induction could be recommended for delivery of the baby in necessary circumstance by the responsible medical practitioners. However, labour induction is also a method used to end a pregnancy in the second or third trimester by inducing the labour and delivery of the foetus. Induction abortion has the same legal requirement to be legal just like any other type of methods used for abortion. B. ILLEGAL ABORTION B. ILLEGAL ABORTION Under sections 46 and 47 of the Offence Against the Person Ordinance (Cap. 212): Any termination of pregnancy not performed by medical practitioners, or not in a designated clinic or hospital is illegal. Any termination of pregnancy performed by medical practitioners after 24 weeks is illegal, unless it is necessary to save the life of the pregnant woman. It is an offence for a woman to abort her own baby illegally. For women who intent to procure their own miscarriage with unlawful administration of poison or other noxious thing or by use of any instrument or means, the maximum sentence is 7 years. Any person who encourages a pregnant woman to go for an abortion is liable for criminal prosecution. Any person who with intent to procure the miscarriage of any woman and has unlawfully administered poison or other noxious thing or by use of any instrument or means shall be liable to a fine and imprisonment for life. Anyone who supplies or procures any poison or other noxious thing or by use of any instrument or means with knowledge of intended use for procuring miscarriage is liable to 3 years

imprisonment. A. ADULTERY A. ADULTERY Adultery must be a voluntary sexual intercourse occurred between a married person and a third party, and generally sexual intercourse is defined as penetration of a women's vagina by a man's penis. This means that same-sex infidelity may not qualify as "adultery". However, the petitioner could still claim that under "unreasonable behaviour" ground. The petitioner must also show it is intolerable to reside with the respondent committing the adultery, and there is a time limit called "the 6 months rule" - if the parties reside together for more than 6 months following the discovery of the adultery, the petitioner cannot claim that they considered it to be "intolerable to reside" with the respondent in court. Burden and Standard of Proof Most of the time, adultery is proved by confession evidence and statement of admission. It is advisable to keep some sort of evidence as to the confession made. Even if the admission is made orally, details of the confession should be recorded or noted down when the memory of such confession is still fresh in mind. The burden of proof remains on the person alleging adultery and the adultery must be proved to the satisfaction of the court on the balance of probability (i.e. more likely than not). The degree of probabilities of proof depends on the subject matter and in proportion to the gravity of the allegation: if the allegation is more serious, the court would require stronger evidence to establish occurrence. Direct and circumstantial evidence Direct evidence of "caught in bed" adultery case is rare, and when it is not available, court could infer from circumstances which lead to the necessary conclusion that adultery must have been committed. These include: "hotel cases" where the respondent may be found to have booked a double room at the hotel, went there with a third party and the court ruled that the explanation was uncredible. Photo and video evidence may assist the court in its finding but love letters/messages may not be strong proof as there are uncertainties as to who wrote it or whether one did take actions per the letter/message; if a married person is proved to have contracted venereal diseases but not from the other spouse, this is prima facie evidence of adultery. Evidence of affirmation or affidavit may be required; and if a child is born out of wedlock, this is also proof of the adultery. The court may direct for use of scientific DNA tests to determine the parentage. The child registered under the name of one of the spouses with another person by an entry in the register of births or any proof of birth is also prima facie evidence of adultery, unless the presumption that the party is the father/mother of that child is rebutted by proof on a balance of probabilities. 1. IS THERE ANY BENEFIT IN THE TRIAL OF CHILDREN ISSUES AND ANCILLARY RELIEF IF THE COURT ACCEPTS MY SPOUSE'S ADULTERY AS PROOF OF THE GROUND OF THE DIVORCE? 1. IS THERE ANY BENEFIT IN THE TRIAL OF CHILDREN ISSUES AND ANCILLARY RELIEF IF THE COURT ACCEPTS MY SPOUSE'S ADULTERY AS PROOF OF THE GROUND OF THE DIVORCE? In general, adultery has no bearing on the determination of child custody and granting of ancillary relief. The court may take into account obvious and gross misconduct if the matrimonial assets are dramatically reduced by excessive spending, so obviously extravagant overspending on mistress is a type of misconduct taken into account by court when considering the distribution of the matrimonial assets. However, the allegation of adultery without financial impact would have less relevance on the issue of ancillary relief. There is also no benefit in the trial of children custody even if the fact of adultery is established. The best interest of the child is the priority of court so even a cheating parent could be seen as a good caregiver/parent of the child. On the other hand, the court will also ascertain a child's wish so if extramarital relationship and inappropriate behaviour are exposed to the child leading to the child's distress or emotional turbulences, there may be some impact on the issue of child custody (for example, the child may not want to live with the parent and the adulterer). 2. CAN I GET COMPENSATION FROM MY SPOUSE IF THE COURT ACCEPTS MY SPOUSE'S ADULTERY AS PROOF OF THE GROUND FOR THE DIVORCE? 2. CAN I GET COMPENSATION FROM MY SPOUSE IF THE COURT ACCEPTS MY SPOUSE'S ADULTERY AS PROOF OF THE GROUND FOR THE DIVORCE? Unlike other jurisdiction where damages related to adultery can be claimed in civil proceedings, there is no financial compensation to be awarded to the "injured" spouse even if the court finds that the fact of adultery is established. Action for damages for adultery has been abolished in Hong Kong after 14 June 1996 so only action commenced before this date is not affected. B. UNREASONABLE BEHAVIOUR B.

UNREASONABLE BEHAVIOUR “Unreasonable behaviour” is established as a ground for divorce where the court is satisfied that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent. The behaviour could be both voluntary and involuntary, for example negative behaviour stemming from mental or physical illness could be such that it would be unreasonable to expect the petitioner to endure it, considering the capacity of the petitioner to withstand the stress, the steps taken to cope with it and the length of time bearing such behaviour along with the actual or potential effect on the petitioner. The illness itself is not “behaviour” so the petitioner needs to prove that the respondent has exhibited unreasonable behaviour as a consequence of such illness to establish a ground for divorce. The burden of proof is on the petitioner to show that the respondent has behaved as alleged, then the court will decide whether it is reasonable to expect them to continue living together, considering the subjective effect of such behaviour on that particular petitioner. The court will consider whether this particular wife or husband would find it unreasonable, given all the circumstances and the character and personalities of each party. Thus, impact of a behaviour on the petitioner is considered, but not whether such marital conduct is good or bad. Examples of unreasonable behaviour Mild particulars of unreasonable behaviour are encouraged to reduce objection from the other side. Some examples are: the parties have different values and attitudes, failed to communicate, no common interest, failed to show love and affection, slept in separate rooms etc. which do not have to be blameworthy. It could be the cumulative effect of minor acts as the court will consider the entire circumstances of the case, so the behaviour does not have to be extreme or uncommon for the court to find a sufficient ground for divorce. All kinds of domestic violence could be seen as unreasonable behaviour, including mental violence where no physical harm may be observed. A spouse intentionally and continuously using violent, abusive and controlling behaviour to the other, whether in the form of physical, verbal, psychological, emotional or financial means, could be sufficient evidence of “unreasonable behaviour”. Of course, the more serious the allegation is, the court requires stronger proof in evidence. A criminal record of domestic violence would be a strong piece of evidence in court, but it is not necessary for proving unreasonable behaviour, as there are many reasons why a criminal conviction may not be forthcoming. Time limit for the proof The petitioner must not be living with the respondent for a period of more than 6 months preceding the application for divorce since the petitioner needs to prove that the respondent has behaved in such a way, that the expectation of the petitioner to continue to live with the respondent is unreasonable. If you live with the spouse for a continuous period of six months after the date of the occurrence of the final incidence relied on by the petitioner, the court may form a view that the petitioner can be reasonably be expected to live with the respondent (it seems to suggest that the “unreasonable behaviour” is not so intolerable to the petitioner). C. DESERTION C. DESERTION The essence of desertion is the intentional permanent forsaking and abandonment of one spouse by the other, without consent and reasonable cause. The petitioner is required to prove both the physical separation and the respondent’s intention to bring a permanent end to cohabitation. The respondent must have deserted the petitioner for a continuous period of at least one year immediately preceding the petition for divorce, to be calculated excluding the actual day where the desertion happened. The burden of proof is on the petitioner, but intention to desert would easily be inferred by the mere act of leaving the matrimonial home. The standard of proof being the balance of probabilities (i.e. more likely than not) and the degree of probability depend upon the subject matter (the more serious the allegation, the stronger the evidence is required in proof). The intention to desert is presumed to continue once the desertion starts, however if an offer of reconciliation by the deserting spouse is rejected by the petitioner, then the petitioner could not rely on the ground of desertion. Constructive desertion Desertion is not defined merely by who left the matrimonial home first. If one party persists in doing things, without just cause or excuse, in which he/she knows would probably not be tolerated by the other party, and that no ordinary person would tolerate, then the forcing of the other party to leave may

be seen as “constructive desertion”. The party would be seen as being compelled to leave home due to the other party’s conduct, so the person behaving in such a way may be considered guilty of desertion instead of the party actually leaving home. It is necessary to prove that the person behaved in such a way knowing that the desertion would probably happen (by the other party leaving the matrimonial home due to the effect of the words or conducts). The necessary intention is inferred by presuming that a person intends the natural and probable consequences of his/her acts, no matter what his/her desire is. Such intention must be accompanied by conduct which made cohabitation virtually impossible and can be regarded as expulsion in fact, but not just bringing unhappiness to the other spouse. Examples may be bringing mistress into the matrimonial home or unreasonable and inconsiderate sexual demands. 1. IF MY SPOUSE HAS FAILED TO GIVE ME MONEY FOR HOUSEHOLD EXPENSES FOR A YEAR, DOES IT AMOUNT TO DESERTION? 1. IF MY SPOUSE HAS FAILED TO GIVE ME MONEY FOR HOUSEHOLD EXPENSES FOR A YEAR, DOES IT AMOUNT TO DESERTION? A mere failure to contribute to household expenses without physical separation does not amount to desertion. Even if there is physical separation, a failure to contribute to household expenses is likely insufficient to constitute an abandonment of the common obligations of the marriage. This is particularly so if there exists a reasonable cause, for example, the spouse was faced with genuine financial difficulties. 2. IF MY SPOUSE HAS JUST GONE AWAY FOR MORE THAN A YEAR WITHOUT TELLING ME THE REASON, CAN I GET A DIVORCE OUT OF DESERTION? DO I NEED TO SHOW HIS/HER INTENTION? 2. IF MY SPOUSE HAS JUST GONE AWAY FOR MORE THAN A YEAR WITHOUT TELLING ME THE REASON, CAN I GET A DIVORCE OUT OF DESERTION? DO I NEED TO SHOW HIS/HER INTENTION? If a spouse has gone away for more than a year without reasons given, the petitioner can get a divorce out of desertion, but the petitioner is still required to show the intention of the desertion. The act of leaving the matrimonial home without any reasonable cause or the other spouse’s consent is likely sufficient for the court to infer intention of the deserting spouse to bring the cohabitation to an end. However, such a presumption may be rebutted by evidence. 3. IF MY SPOUSE HAS GONE AWAY FOR MORE THAN A YEAR FOR A REASON (E.G., WANDERING AROUND THE WORLD, DEBT EVASION), CAN I GET A DIVORCE OUT OF DESERTION? 3. IF MY SPOUSE HAS GONE AWAY FOR MORE THAN A YEAR FOR A REASON (E.G., WANDERING AROUND THE WORLD, DEBT EVASION), CAN I GET A DIVORCE OUT OF DESERTION? Desertion only commences from the moment when physical separation and intention to bring cohabitation to an end coincides simultaneously. Here, the spouse has gone away for reasons other than bringing the cohabitation to an end. Therefore, desertion is unlikely to be made out. Further, if the spouse gave consent to the other half to go away, it would be a consensual separation and not desertion. D. SEPARATION D. SEPARATION The court may find that a marriage has broken down irretrievably where the petitioner satisfies the court that the parties to the marriage have lived apart for a continuous period of at least one year (with consent of parties to separate) or two years immediately preceding the presentation of the petition (without requirement of consent by the respondent). The day of separation is excluded from the computation of the two-year period. It is not open to the respondent to object to a petition where it is not disputed that the parties have lived apart for 2 years or more, except where there may be evidence of grave financial hardship. Hardship includes the loss of the chance of acquiring any benefit which the respondent might acquire if the marriage were not dissolved. Divorce will not be granted in situation where there is grave financial or other hardship to the respondent on a petition based on separation of two years, and that it would in all the circumstances be wrong to dissolve the marriage. The period of living apart must be continuous. However, if the parties resume living with each other for less than 6 months, then the separation period before the reconciliation will count towards the separation term, and the period of co-habitation will not be counted. If the period of cohabitation is more than 6 months, then the separation period before the reconciliation will not count towards the separation term (restart all computation of separation period). Is proof of intention needed? Can one party living away from home for business be taken as separation? When parties are not physically living together in the same place, it does not mean that they are living apart or have become separated because they may be forced to adopt such a lifestyle by, for example, the nature of their work. Instead, the courts have recognized

that spouses may be forced to live apart for various reasons, so a relationship does not end merely by reason of physical separation brought about by the pressure of external circumstances. There must be proof of “intent” in the sense that there is an absence of mutual emotional, economic and general support or ties after the parties’ physical separation, and a recognition by the parties that the marriage has come to an end. When the fact of separation is proved, the intent to bring the marriage to an end can be inferred by court. Separation under the same roof If there is an intent to separate but by force of circumstance the parties live in the same house (like one party having no resources to move out), then the petitioner must clearly and demonstrably lead entirely separate live and are no longer living together on a daily basis as husband and wife. The parties should sleep in different rooms, have separate living arrangements, divide domestic duties clearly (i.e. don’t do any housework for each other), no sharing of meals, have no intimate or romantic relationships and communicate an intent to separate in writing if possible. Even in circumstances where the parties are living in different bedrooms but, say for example, still have meals together with the child; help do some shopping or laundering, or socialising together, there is a risk of the court considering that the necessary degree of separation is not established. 1. IF THE SPOUSES DO NOT AGREE ON THE DATE OF SEPARATION, WHAT EVIDENCE CAN SERVE AS PROOF? 1. IF THE SPOUSES DO NOT AGREE ON THE DATE OF SEPARATION, WHAT EVIDENCE CAN SERVE AS PROOF? The following may be used as evidence in determining the date of separation: living arrangement, payment of utility bills and household expenses, financial support, gifts, maintenance of joint account, tax and other documents, correspondence during separation, last date of intimate relationship, recognition of relationship in public and private, photographs etc. 2. DUE TO THE COVID-19 PANDEMIC, MY SPOUSE HAS STAYED IN MAINLAND CHINA TO WORK FOR 2 YEARS WHILE I HAVE LIVED IN HONG KONG. CAN I RELY ON THE GROUND OF TWO YEARS’ SEPARATION TO GET A DIVORCE? 2. DUE TO THE COVID-19 PANDEMIC, MY SPOUSE HAS STAYED IN MAINLAND CHINA TO WORK FOR 2 YEARS WHILE I HAVE LIVED IN HONG KONG. CAN I RELY ON THE GROUND OF TWO YEARS’ SEPARATION TO GET A DIVORCE? A husband and wife shall be treated as living apart unless they are living with each other in the same household. However, ‘household’ does not mean ‘house’, the mere fact that the spouses do not physically live together does not necessarily mean that they have separated. Both parties could recognise that their matrimonial relationship as continuing even though they are physically separated. If due to some unpredictable event (such as COVID-19 pandemic requirements) the parties are separated in two cities, it is possible for the spouse to argue that the couple has not gone through a true separation, subject to further evidence of the circumstances and the view of the parties on whether the marriage is still subsisting. 1. WHAT ARE THE ESSENTIAL DIFFERENCES IN ESTABLISHING THE IRRETRIEVABLE BREAKDOWN OF MARRIAGES BY PROVING “FAULT” FACTS AND “NON-FAULT” FACTS? 1. WHAT ARE THE ESSENTIAL DIFFERENCES IN ESTABLISHING THE IRRETRIEVABLE BREAKDOWN OF MARRIAGES BY PROVING “FAULT” FACTS AND “NON-FAULT” FACTS? The court will hold that the marriage has broken down irretrievably if satisfied that one or more of the following five facts are established: adultery (“fault” facts) unreasonable behaviour (“fault” facts) one year’s separation with consent (“non-fault” facts) two years’ separation without consent (“non-fault” facts) desertion for a continuous period of at least a year (“fault” facts) There is no essential difference in proving “fault” or “non-fault” facts in terms of getting a divorce, except perhaps it is more expensive and time consuming to use grounds of “fault” facts because the spouses need to prove misconduct for the court to grant divorce, along with the risk of the spouse resisting the petition because there is disagreement with or unwillingness to agree with the allegation of the fault facts. Are there practical difficulties in proving “fault” facts? There are practical difficulties in proving “fault” facts as most of the time there is no direct evidence to prove the “fault” facts and it is a costly and difficult exercise to prove affairs between third party which often happened in private - a belief and suspicion is not enough. Practically if “non-fault” facts are available, the petitioner should avoid establishing the case with “fault” facts to reduce the risk and cost of litigation. 2. IF MY SPOUSE IS SENT TO JAIL, CAN I APPLY FOR A DIVORCE WITHOUT HIS / HER CONSENT? WHAT GROUND CAN I RELY ON? IF THE JAIL TERM IS LESS

THAN 2 YEARS, CAN THE PETITIONER RELY ON THE DESERTION GROUND? FOR A JAIL TERM OF 2 YEARS OR LONGER, CAN THE TWO YEARS' SEPARATION GROUND BE APPLIED? 2. IF MY SPOUSE IS SENT TO JAIL, CAN I APPLY FOR A DIVORCE WITHOUT HIS / HER CONSENT? WHAT GROUND CAN I RELY ON? IF THE JAIL TERM IS LESS THAN 2 YEARS, CAN THE PETITIONER RELY ON THE DESERTION GROUND? FOR A JAIL TERM OF 2 YEARS OR LONGER, CAN THE TWO YEARS' SEPARATION GROUND BE APPLIED? If the jail term is less than 2 years, it is unlikely that the petitioner can rely on the desertion ground. This is because the other spouse may establish a reasonable cause of forced separation due to imprisonment. He may also show that he has no intention to bring the cohabitation to a permanent end. If a jail term is of 2 years of longer, it is possible to rely on the separation for 2 years ground, which does not require the respondent's consent. In cases where physical separation is brought about by pressure of external circumstance (like a jail term), if one party intends to end the marriage during that period, such intent should be clearly expressed and/or communicated and there must be indication or recognition that the marriage has ended. This is because a "forced" physical separation may be distinguished from separation brought about by someone walking out of home who naturally intends the consequence of his/her acts (to end a marriage). If you continue to visit your spouse in jail or still hold out yourself as a spouse, it may not be justified as a "true" separation as a ground of divorce. A. APPOINTMENT OF A TEMPORARY GUARDIAN BY LIVING PARENTS A. APPOINTMENT OF A TEMPORARY GUARDIAN BY LIVING PARENTS Section 6(1) and (2) of the Guardianship of Minors Ordinance provide the legal basis for parents to appoint other people to act as future guardians for their children who are still minors in the event of the death of both parents, by way of a will or a deed of guardianship. In cases where the living parents are unable to take care of their children, parents could consider setting up a Deed of Temporary Guardianship to provide for appointment of a temporary guardian in circumstances where children may be physically separated from parents in unforeseen situations (like a quarantine order). There is no statutory regime at present to cater for a third party to be appointed as children's guardian if the children's parents are still alive. The Deed of Temporary Guardianship is the most that a parent can do to communicate to the authorities the intention of the parents, so that the children would not be placed in the custody and care of the Social Welfare Department or an orphanage should circumstances arise.