

Consultation Document

**Draft Family Procedure Bill on
procedural reforms for the family
justice system**

February 2022

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**DRAFT FAMILY PROCEDURE BILL ON
PROCEDURAL REFORMS FOR THE
FAMILY JUSTICE SYSTEM**

Judiciary

February 2022

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Purpose

- 1.1 The Judiciary is consulting the public on the draft Family Procedure Bill (“FPB”) at **Appendix A**. It seeks to legislate for a consolidated set of procedural rules to enhance the efficiency and cost-effectiveness of the family justice system. The objective is to provide accessible and comprehensive procedural rules for the courts and all court users pursuant to the recommendations in the Judiciary’s Final Report on the Review of Family Procedure Rules¹ (“the Final Report”) published in May 2015.
- 1.2. The FPB will be refined as appropriate in light of the comments received during the consultation before it is introduced to the Legislative Council. Upon enactment of the Family Procedure Ordinance (“FPO”), a designated rule-making authority will be established to make the Family Procedure Rules (“FPR”). The FPR will then be put forward by the rule-making authority for further consultation in due course.
- 1.3 The Judiciary would like to emphasise that the current exercise only aims to give effect to **procedural reforms for the family justice system**. There is no intention to introduce any changes to the substantive law or policy relating to family and matrimonial matters, as they fall within the purview of the respective Policy Bureaux of the Government. Nonetheless, the consolidation and streamlining of procedures for family proceedings will bring about certain consequential technical amendments to existing legislation to ensure compatibility and consistency.

¹ The Final Report is available at:
https://www.judiciary.hk/doc/en/other_information/fpr/final_report.pdf

Background and Justifications

Perceived problems with the family justice system

- 1.4 Hong Kong's family justice system embraces a wide range of subject matters, covering family and matrimonial matters, with both the High Court and the Family Court (a division of the District Court which is for the time being assigned by the Chief Justice to deal with matrimonial and family proceedings) exercising concurrent jurisdiction. The court-related procedures for these matters are sometimes highly fragmented and convoluted, dispersed over many pieces of principal legislation, multiple subsidiary legislation, and an array of Practice Directions. In other words, there are no dedicated rules to govern the majority of family proceedings.
- 1.5 The current piecemeal and unnecessarily complex procedures have given a perception that they are not easy to understand (especially for the layman), and not conducive to efficient disposal of proceedings. It is not uncommon that associated proceedings arising from the same causes are determined by procedures derived from a confusing mixture of primary and secondary legislation, with parties spending a disproportionate amount of time and costs to address procedural issues peripheral to the issue in dispute. These perceived deficiencies in the family justice system would hinder the instillation of cultural change towards settlement without resorting to litigation.

Procedural review to promote efficient disposal of family-related disputes

- 1.6 In March 2012, the former Chief Justice appointed the Working Party on Family Procedure Rules ("the Working Party") to examine and make recommendations for changes to the current procedures in the family jurisdiction. In February 2014, the Working Party published an interim report and conducted a public consultation exercise². Drawing on comments received from the public consultation exercise, the Working Party published the Final Report in May 2015, making 133 recommendations to improve court procedures for the family

² The Interim Report and Consultative Paper is available at:
https://www.judiciary.hk/doc/en/other_information/fpr/interim_report_and_consultative_paper.pdf

justice system. The former Chief Justice accepted all the recommendations in the Final Report. No changes to the various policies relating to family and matrimonial matters were proposed by the Working Party as these were matters more suitable to be considered by relevant Policy Bureaux of the Government.

- 1.7 A key recommendation of the Final Report is that a single set of self-contained procedural rules dedicated to family-related proceedings, applicable to the Court of First Instance (“CFI”) and the Family Court, should be made. The aim would be to make the family justice system more efficient, cost-effective and user-friendly, reaping the benefits of the earlier Civil Justice Reforms where applicable.
- 1.8 An Implementation Committee chaired by a Judge of the High Court has been set up within the Judiciary to oversee the implementation of the recommendations of the Final Report through to the introduction of new legislation. The FPB has been drafted under the auspices of the Implementation Committee.

2.1 Over the years, the procedural rules for family and matrimonial matters have been developed in a rather *ad hoc* manner to cater for various aspects of family litigation. To enable and facilitate the consolidation of these widely scattered procedural rules into one single set, it is necessary that a dedicated piece of primary legislation be introduced to provide a clear legal basis for the exercise. In this regard, the FPB has been formulated for to provide common definitions, prescribe for jurisdictional matters, confer the necessary rule-making power to an appropriate authority, etc. Special efforts have also been made to streamline its contents and use plain language as far as practicable.

Salient provisions

2.2 The FPB is divided into 5 parts. The salient provisions are summarised below –

- (a) **Part 1 (preliminary):** This part provides for certain general and basic matters, such as the short title of the FPB (which will become the FPO once enacted) and commencement arrangements. It also sets out definitions for certain terms used in the FPO and the FPR. In particular, the term “family proceeding” is given a comprehensive and detailed definition;
- (b) **Part 2 (jurisdiction and powers of the courts in family proceedings):** This part sets out the jurisdiction and powers of the courts in family proceedings. For instance, the matters for which the CFI has exclusive jurisdiction have been listed out and also matters such as the transfer and re-transfer of proceedings between the Family Court and the CFI. There is also a provision to empower the Registrar and Masters of the Family Court to handle certain procedural work on family-related proceedings (such as amendments to the originating process and time extensions) for the purpose of alleviating the heavy workload of the Judges in the Family Court;

- (c) **Part 3 (practice and procedure):** This part provides for the general practice and procedure to be adopted by the courts in relation to family proceedings subsequent to the procedural reforms. The provisions cover matters such as which court to commence family-related proceedings, appeal-related matters, mode of hearing, provision of fallback arrangement in the case of unforeseen procedural gap in the FPR, etc. Provisions relating to the making of Practice Directions and specification of forms are also included;
- (d) **Part 4 (Family Procedure Rules Committee):** This part contains provisions relating to the establishment of the Family Procedure Rules Committee (“FPRC”) as the single rule-making authority for the family-related procedural rules so as to ensure that the rules made are coherent, cohesive and consistent. The FPRC is modelled on the powers, composition and approach adopted for the two rules committees established for the High Court and the District Court. The rule-making powers of the FPRC are also expressly set out; and
- (e) **Part 5 (consequential and related amendments):** This part sets out consequential and related amendments to various existing family-related principal and subsidiary legislation, mainly for the purpose of consolidating key matters in the FPR, aligning terms and definitions, ensuring compatibility and consistency and removing any overlapping provisions with the FPO and the FPR.

Commencement arrangements

2.3 The FPO will provide for the establishment of the FPRC and empower it with the authority to make the FPR. To enable the FPRC to discharge its role, there is a practical need for provisions regarding its establishment and empowerment to commence earlier. Furthermore, there is also an imminent need to establish the Family Masters system prior to the full implementation of the FPR to provide immediate relief to the heavy workload of Family Judges. This would enable the Registrar and Masters of the Family Court to take up certain case management functions of Family Judges to enhance the overall efficiency in the disposal of proceedings. To this end, it is

proposed to bring selected clauses relating to the Family Masters system into operation upon enactment of the FPO, leaving the remaining clauses to commence with the FPR at a later stage. Clauses proposed to commence earlier are summarised below-

- (a) **Certain provisions in Clauses 1 to 3:** They provide for preliminary matters and definition of terms. They need to be brought into operation upon commencement of the FPO to underpin other provisions;
- (b) **Clause 15:** They provide that applications or matters in family proceedings which can be heard and determined in chambers by High Court Judges and Family Judges can also be heard and determined in chambers by the Registrar and Masters of the High Court and the Registrar and Masters of the Family Court under the general or special directions of High Court Judges and Family Judges, as the case may be. This provides the legal basis for the early setting up of a Masters system in the Family Court to provide immediate relief to the already heavy workload of Family Judges³; and
- (c) **Clauses 24, 25 and 26:** They provide for the establishment of the FPRC with the necessary rule-making authority. The commencement of these clauses would enable the FPRC to start work as soon as possible on preparing the FPR for further public consultation and the subsequent legislative process.

³ To underpin the implementation of Clause 15, it is planned that a new Practice Direction will be promulgated to set out the applications and matters that may be heard by the Registrar and Masters in chambers.

CHAPTER 3

MAJOR FEATURES OF THE REFORMED FAMILY PROCEDURE RULES

- 3.1 The FPR is a set of unified rules to be made by the FPRC. The purpose of the FPR is to align the procedures of the High Court and the Family Court with any current inconsistencies removed, and new necessary procedural arrangements introduced if none currently exists.
- 3.2 Subject to the guidance and deliberations of the FPRC (to be established under the FPO) which will also take into account views from the current public consultation exercise and the operational experience of the FPO (for provisions proposed to commence earlier), the content of the FPR is intended to be systematically and coherently set out in different Parts according to the specific aspects of family litigation being covered (preliminary framework at **Appendix B**). The FPR is envisaged to display a number of features distinct from existing procedural rules on family and matrimonial matters, as summarised in the following paragraphs.
- (a) *Each Part of the FPR to be self-contained*
- 3.3 To minimise the need for users to check and cross-reference other pieces of legislation, the procedures in each Part of the FPR will be sorted, reconciled and rationalised. In this regard, relevant applicable provisions in other legislation will be consolidated in a particular Part. Dedicated Practice Directions will be promulgated to provide more focused procedural guidance for individual Parts of the FPR. Relevant court forms will also be simplified to enhance accessibility by court users.
- 3.4 For example, a detailed set of rules will be made covering all categories of financial order for which applications may be made in matrimonial causes and family proceedings to which the FPR are to apply. In this regard, specific procedural requirements, such as the timing to make applications, documents required to support the applications, incidental matters such as application for interim orders and avoidance of disposition orders, etc. will be clearly and comprehensively set out, saving the need for parties to look up

applicable procedures otherwise prescribed by various statutory provisions⁴.

3.5 Similarly, the fees payable in respect of miscellaneous actions currently prescribed by various provisions and schedules will be brought together in a designated subsidiary legislation, thereby reducing the need for cross-referencing by court users.

(b) *Courts be given enhanced powers to promote expeditious case disposal*

3.6 The FPR will provide enhanced powers to the courts to promote expeditious and fair case disposal that is proportionate to the nature, importance and complexity of the issues, resulting in a more cost-effective family justice system.

3.7 For instance, the courts' powers in the use of alternative dispute resolution will be strengthened to encourage and facilitate its use at every stage of a proceeding.

(c) *Arrangements to discourage procedural abuse*

3.8 To discourage parties from pursuing any action that may result in prejudicing the efficient operation of the family justice system, new procedural arrangements will be introduced where appropriate.

3.9 For example, a procedure will be introduced to deter parties who have given undertakings to the court from breaching the undertakings intentionally. This is in addition to provisions setting out the legal consequences for breach of undertakings (e.g. contempt of court, committal for civil contempt, etc)

⁴ Such as the Separation and Maintenance Orders Ordinance (Cap. 16), the Guardianship of Minors Ordinance (Cap. 13), the Matrimonial Causes Ordinance (Cap. 179), the Matrimonial Causes Rules (Cap. 179A), the Matrimonial Proceedings and Property Ordinance (Cap. 192) and the Inheritance (Provision for Family and Dependents) Ordinance (Cap. 481).

(d) Updated in line with latest developments

3.10 The FPR will be updated in response to latest developments on procedural matters in family proceedings. While the scope of FPR does not include making changes to the substantive law, the rules which underpin the effective operation of the family justice system will aim to align with evolving legal developments and judgments, with identified discrepancies or shortcomings in the law rectified.

3.11 For instance, a set of judgment summons procedures compatible with the Hong Kong Bill of Rights will be introduced following the interpretation of relevant legal requirements given by the Court of Appeal in *YBL v LWC* [2017] 1 HKLRD 823.

(e) Use of plain language

3.12 To improve access to family justice, it is essential that parties have a clear understanding of the actions and associated consequences when taking forward legal proceedings. As such, the FPR will be drafted in plain language to ensure they are readily comprehensive where practicable. All the FPR will be carefully reviewed from the perspective of lay court users. In addition, dedicated efforts will be made to improve the presentation of the provisions to set out a simple, succinct and easy-to-follow structure.

CHAPTER 4

INVITATION OF VIEWS

4.1 The Judiciary invites the public to give views on the draft FPB as the proposed primary legislation to underpin the consolidated and streamlined procedural rules. The FPR will be put forward for consultation at a later stage.

4.2 Respondents are invited to give us their views on or before 13 April 2022 by the following means:

By email : jamescychan@judiciary.hk

By fax : 2501 4636

By post : Policy Support Division,
Judiciary,
Room 802-808, 8/F, High Block,
Queensway Government Offices,
66 Queensway, Hong Kong

4.3 It is voluntary for any respondent to supply his or her personal data upon providing comments. Any personal data provided with a response will only be used for the purpose of this consultation exercise. Unless otherwise specified, all responses will be treated as public information and may be published in future, in whole or in part, in any form without seeking permission or providing acknowledgement of the respondent.

4.4 The Judiciary may, either in discussion with others, whether privately or publicly, or in any subsequent report, refer to and attribute comments in response to this consultation paper. The Judiciary will respect the wish of respondents to remain anonymous and/or keep the views confidential in part or in whole. If the respondents do not request anonymity or confidentiality in their responses, the Judiciary will assume that the responses can be published in their entirety.

4.5 Respondents' comments and personal data collected may be passed to other relevant bodies for purposes related to this consultation exercise. The bodies receiving any personal data are bound by the purposes in their subsequent use of such data.

4.6 Any respondent providing personal data to the Judiciary in the response will have the right of access and correction with respect to such personal data. Any request for data access or correction of personal data should be made in writing to:

By email : aio@judiciary.hk

By fax : 2530 5102

By post : Access to Information Officer,
High Court Building,
38 Queensway, Hong Kong

Judiciary
February 2022

Family Procedure Bill

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A BILL

To

Amend and consolidate the law relating to the courts' jurisdiction, powers, practice and procedure in family matters; to establish the Family Procedure Rules Committee for making a consolidated set of family procedure rules; and to make related amendments.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Family Procedure Ordinance.
- (2) Subject to subsection (3), this Ordinance comes into operation on a day to be appointed by the Chief Justice by notice published in the Gazette.
- (3) The following provisions come into operation on the day on which this Ordinance is published in the Gazette—
 - (a) sections 1, 2, 3(1) (except paragraph (e)) and (2) and 15;
 - (b) Part 4.

2. Interpretation

- (1) In this Ordinance—
CFI means the Court of First Instance;

CFI Judge (原訟法庭法官) means—

- (a) the Chief Judge;
- (b) a judge, recorder or deputy judge mentioned in section 4(1) of the High Court Ordinance (Cap. 4); or
- (c) a Justice of Appeal acting as a judge of the CFI under section 4(2) of the High Court Ordinance (Cap. 4);

child (未成年人) means a person under 18 years of age;

court (法庭) means the CFI or the Family Court;

Family Court (家事法庭) means a division of the District Court assigned by the Chief Justice to deal with family proceedings;

Family Judge (家事法官) means a judge, as defined by section 2 of the District Court Ordinance (Cap. 336), who sits in the Family Court;

family proceeding (家事法律程序)—see section 3;

financial order (財務命令)—see section 4;

High Court Judge (高等法院法官) means—

- (a) a CFI Judge; or
- (b) a Justice of Appeal of the Court of Appeal;

inherent jurisdiction (固有司法管轄權), in relation to a child, means the CFI's power to make an order, or determine an issue, in relation to the child (including in a wardship proceeding) where it would be just and equitable to do so unless restricted by an enactment or case law;

inherent jurisdiction proceeding (固有司法管轄權法律程序) means a proceeding started in the CFI under its inherent jurisdiction, including an application made under section 26 of the High Court Ordinance (Cap. 4) to make a child a ward of court and a proceeding relating to the wardship of a child;

judge (法官) means a CFI Judge or a Family Judge;

Master (聆案官)—

- (a) in relation to a family proceeding in the High Court, means a Master of the High Court; and
- (b) in relation to a family proceeding in the Family Court, means a Master of the District Court;

Master of the District Court (區域法院聆案官) means a Master within the meaning of sections 14, 14A and 14B of the District Court Ordinance (Cap. 336);

Master of the High Court (高等法院聆案官) means a Master as defined by section 2 of the High Court Ordinance (Cap. 4);

matrimonial cause (婚姻訴訟) means a proceeding for any of the following matters—

- (a) divorce;
- (b) nullity of marriage;
- (c) judicial separation;
- (d) presumption of death and dissolution of marriage;

Practice Direction (實務指示) means a direction made under section 22(1) by—

- (a) the Chief Justice; or
- (b) a High Court Judge designated by the Chief Justice under section 22(2);

prescribed (訂明) means prescribed by the Rules;

Registrar (司法常務官)—

- (a) in relation to a family proceeding in the High Court, means the Registrar of the High Court; and
- (b) in relation to a family proceeding in the Family Court, means the Registrar of the District Court;

Registrar of the District Court (區域法院司法常務官) means the Registrar as defined by section 2 of the District Court Ordinance (Cap. 336);

Registrar of the High Court (高等法院司法常務官) means the Registrar as defined by section 2 of the High Court Ordinance (Cap. 4);

Rules (《規則》) means the rules made by the Rules Committee under Part 4;

Rules Committee (規則委員會) means the Family Procedure Rules Committee established by section 24.

(2) In this Ordinance—

- (a) a reference to a proceeding being started has the same meaning as the proceeding being commenced or instituted even though the words “commenced”, “instituted” or similar expressions are used in relation to such a proceeding in another Ordinance; and
- (b) a reference to a permission of a court to do an act has the same meaning as the leave of the court to do the act even though the word “leave” is used in relation to such an act in another Ordinance.

3. **Meaning of family proceeding**

(1) A family proceeding is—

- (a) a proceeding that falls within the CFI’s inherent jurisdiction;
- (b) a matrimonial cause;
- (c) a proceeding other than a matrimonial cause started under the Matrimonial Causes Ordinance (Cap. 179);
- (d) a proceeding started under—
 - (i) an Ordinance specified in subsection (2); or

-
- (ii) any subsidiary legislation made under the Ordinance; or
 - (e) a proceeding started under any repealed legislation.
- (2) For subsection (1)(d)(i), the following Ordinances are specified—
- (a) the Guardianship of Minors Ordinance (Cap. 13);
 - (b) the Separation and Maintenance Orders Ordinance (Cap. 16);
 - (c) the Marriage Reform Ordinance (Cap. 178);
 - (d) the Marriage Ordinance (Cap. 181);
 - (e) the Married Persons Status Ordinance (Cap. 182);
 - (f) the Legitimacy Ordinance (Cap. 184);
 - (g) the Maintenance Orders (Reciprocal Enforcement) Ordinance (Cap. 188);
 - (h) the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189);
 - (i) the Matrimonial Proceedings and Property Ordinance (Cap. 192);
 - (j) the Adoption Ordinance (Cap. 290);
 - (k) the Parent and Child Ordinance (Cap. 429);
 - (l) the Inheritance (Provision for Family and Dependants) Ordinance (Cap. 481);
 - (m) the Child Abduction and Custody Ordinance (Cap. 512);
 - (n) the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (Cap. 639).

(3) In subsection (1)(e)—

repealed legislation (被廢除法例) means any of the following subsidiary legislation repealed by the Schedule—

- (a) the Attachment of Income Order Rules (Cap. 13 sub. leg. A);
- (b) the Matrimonial Causes Rules (Cap. 179 sub. leg. A);
- (c) the Maintenance Orders (Reciprocal Enforcement) Rules (Cap. 188 sub. leg. A);
- (d) the Domestic and Cohabitation Relationships Violence Rules (Cap. 189 sub. leg. A);
- (e) the Adoption Rules (Cap. 290 sub. leg. A);
- (f) the Convention Adoption Rules (Cap. 290 sub. leg. D).

4. **Meaning of *financial order***

(1) A financial order—

- (a) is an order made under a provision specified in subsection (2); and
- (b) includes an order that varies, discharges or suspends such an order, or revives such an order that has been suspended.

(2) For subsection (1)(a), the following provisions are specified—

- (a) section 10(2), 11(1)(b), 12(b) or 13(2), (3) or (4) of the Guardianship of Minors Ordinance (Cap. 13);
- (b) section 5(1)(c), (d) or (e), 7 or 9 of the Separation and Maintenance Orders Ordinance (Cap. 16);
- (c) section 17A of the Matrimonial Causes Ordinance (Cap. 179);
- (d) section 6 of the Married Persons Status Ordinance (Cap. 182);

- (e) section 5, 6 or 10 of the Maintenance Orders (Reciprocal Enforcement) Ordinance (Cap. 188);
- (f) section 3, 4, 5, 6, 6A, 8, 11, 13, 15, 16, 17 or 23 or Part IIA of the Family Proceedings and Property Ordinance (Cap. 192) (except section 29AC of that Ordinance concerning the leave of the High Court or the District Court being required for applications for financial relief);
- (g) section 4, 7, 8 or 9 of the Inheritance (Provision for Family and Dependents) Ordinance (Cap. 481).

5. Application of this Ordinance

- (1) This Ordinance applies to every family proceeding, whether it is in the High Court or the Family Court.
 - (2) To avoid doubt, unless otherwise provided by this Ordinance, this Ordinance applies to a family proceeding that was started in, or transferred or retransferred to, the High Court or the Family Court before the commencement date of this section.
-

Part 2

Jurisdiction and Powers of Courts in Family Proceedings

6. Matters within CFI's exclusive jurisdiction

- (1) Subject to section 7(2), the CFI has exclusive jurisdiction over the family proceedings for the following matters—
 - (a) an application for interim relief under section 21M of the High Court Ordinance (Cap. 4);
 - (b) an application to obtain consent of the CFI to the marriage of a ward of court under section 14(2) of the Marriage Ordinance (Cap. 181);
 - (c) an appeal against the decision of the Registrar (as defined by section 2 of the Marriage Ordinance (Cap. 181)) (*Registrar of Marriages*) on a person's right to forbid a certificate of the Registrar of Marriages being issued under section 18 of that Ordinance;
 - (d) an application under Part 5 of the Adoption Ordinance (Cap. 290) in relation to an adoption to which the Convention (as defined by section 20A of that Ordinance) applies;
 - (e) an application under section 23B of the Adoption Ordinance (Cap. 290) by the Director of Social Welfare for an order passing care and control of an infant (as defined by section 2 of that Ordinance) with a view to the adoption of the infant by a person not residing in Hong Kong;
 - (f) an application under Part 2 of the Child Abduction and Custody Ordinance (Cap. 512).

- (2) Subject to section 7(2), the CFI also has exclusive jurisdiction over an application for an order that may be made under the CFI's inherent jurisdiction, including an application to make a child a ward of court.

7. Matters within Family Court's jurisdiction

- (1) Unless otherwise provided by an enactment, the Family Court has jurisdiction over all family proceedings.
- (2) The Family Court has jurisdiction over a family proceeding that falls within the CFI's exclusive jurisdiction if the proceeding is transferred by the CFI to the Family Court under section 8(3) or 9(2).
- (3) The Family Court has jurisdiction over a family proceeding even if the amount claimed in the proceeding is more than the limit of the District Court's jurisdiction under the District Court Ordinance (Cap. 336).
- (4) The Family Court has jurisdiction to make an order concerning interest in or related to land in a family proceeding even if the annual rent or the rateable value of the land, ascertained under the Rating Ordinance (Cap. 116), is more than the limit of the District Court's jurisdiction under the District Court Ordinance (Cap. 336).

8. Transfer of proceedings between CFI and Family Court

- (1) This section applies in relation to every family proceeding (other than an inherent jurisdiction proceeding).
- (2) The Family Court may, on its own initiative or on a party's application, transfer a family proceeding before it to the CFI either in whole or in part if, having regard to all the circumstances, the Family Court considers that the proceeding ought to be heard in the CFI.

- (3) The CFI may, on its own initiative or on a party's application, transfer or retransfer a family proceeding before it to the Family Court, either in whole or in part—
 - (a) for the conduct of a financial dispute resolution hearing or a children dispute resolution hearing; or
 - (b) if, having regard to all the circumstances, the CFI considers that the proceeding ought to be heard in the Family Court.
- (4) If a family proceeding has been transferred from the CFI to the Family Court, the Family Court may not retransfer the proceeding back to the CFI unless—
 - (a) the Family Court is satisfied that there is a change in circumstances since the transfer from the CFI such that, having regard to all the circumstances, the Family Court considers that the proceeding ought to be heard in the CFI; or
 - (b) the Family Court is so directed by the CFI.

9. Transfer of matters within CFI's inherent jurisdiction

- (1) This section applies only in relation to an inherent jurisdiction proceeding.
- (2) The CFI may, on its own initiative or on a party's application, transfer an inherent jurisdiction proceeding before it to the Family Court either in whole or in part if—
 - (a) the nature of the issues of fact or law involved makes the proceeding more suitable for hearing in the Family Court; and
 - (b) the proceeding falls within the Family Court's jurisdiction.
- (3) The Family Court may, on its own initiative or on a party's application, retransfer the proceeding back to the CFI if the

Family Court is satisfied that there is a change in circumstances since the transfer from the CFI such that, having regard to the nature of the issues of fact or law involved, the Family Court considers that the proceeding ought to be heard in the CFI.

- (4) However, the Family Court must retransfer that proceeding back to the CFI if—
 - (a) a decision is required as to whether the child involved should remain a ward of court;
 - (b) the Family Court has no jurisdiction in dealing with the matter in issue; or
 - (c) the Family Court is so directed by the CFI.
- (5) In considering whether a proceeding should be transferred or retransferred from one court to another, the court must regard the best interests of the child involved as the paramount consideration.

10. Determination of family proceedings started under other Ordinances

If the court exercises the jurisdiction under this Ordinance over a family proceeding started under another Ordinance, the court must make its determination in accordance with the provisions of that Ordinance and any subsidiary legislation made under that Ordinance.

11. Power to make declaration of beneficial ownership in favour of or against third party

In a family proceeding, the court has power to make a declaration of beneficial ownership in favour of or against a third party.

12. Finality of court order subject to power of variation and suspension etc.

- (1) Unless otherwise provided by an enactment, an order of the court in a family proceeding is final and conclusive between the parties.
- (2) The court has power to vary, suspend, rescind, discharge or revive an order made by it, including the following powers—
 - (a) power to rescind an order and relist the application on which it was made;
 - (b) power to replace an order (appearing for any reason to be invalid) by another order that the court has power to make;
 - (c) power to vary an order with effect from when it was originally made.

13. Powers of judge

- (1) If an enactment or a Practice Direction provides for the court to perform a function in relation to a family proceeding, then unless otherwise provided by another enactment, the function may be performed—
 - (a) in relation to a proceeding in the CFI—by a CFI Judge; and
 - (b) in relation to a proceeding in the Family Court—by a Family Judge.
- (2) A CFI Judge hearing a family proceeding has all the powers conferred on a judge of the Court of First Instance by the High Court Ordinance (Cap. 4) in relation to civil cases.
- (3) A Family Judge hearing a family proceeding has all the powers conferred on a judge of the District Court by the District Court Ordinance (Cap. 336) in relation to civil cases.

14. Power of judge in chambers

A judge may exercise in chambers the jurisdiction vested in the court in relation to family proceedings as provided by the Rules.

15. Jurisdiction, powers and duties of Registrar and Master

- (1) The Registrar may under the general or special directions of a judge hear and determine an application or matter in a family proceeding that may be heard and determined in chambers.
 - (2) All the jurisdiction, powers and duties conferred on the Registrar in relation to family proceedings may be exercised and performed by a Master.
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Part 3

Practice and Procedure

16. Proceedings generally in Family Court

Subject to section 17, a family proceeding for a matter must start in the Family Court unless—

- (a) the CFI has exclusive jurisdiction in the matter;
- (b) another enactment requires the proceeding to start in the CFI; or
- (c) there are exceptional circumstances.

17. Proceedings in original court for specific applications

An application in relation to an order or direction referred to in the following provisions must be made to the court that made the order or direction—

- (a) section 4(4), 10(4), 11(2), 12(c), 14(2) or 20B(10) of the Guardianship of Minors Ordinance (Cap. 13);
- (b) section 7(1) or 9C(10) of the Separation and Maintenance Orders Ordinance (Cap. 16);
- (c) section 48(2) or (3), 48A(5) or 53B(10) of the Matrimonial Causes Ordinance (Cap. 179);
- (d) section 5(6) of the Maintenance Orders (Reciprocal Enforcement) Ordinance (Cap. 188);
- (e) section 7A of the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189);
- (f) section 11, 12, 13, 19(6), 23 or 28AB(10) of the Family Proceedings and Property Ordinance (Cap. 192);

- (g) section 13(1) of the Parent and Child Ordinance (Cap. 429) (in so far as it relates to the revocation or variation of a direction);
- (h) section 8(1), 9(2) or 18(1) of the Inheritance (Provision for Family and Dependants) Ordinance (Cap. 481).

18. Proceedings generally heard in private

- (1) Unless otherwise provided by an enactment, a family proceeding must be heard in private and in accordance with the Practice Direction on mode of hearing.
- (2) However, subject to subsection (3), a matrimonial cause must be heard in open court.
- (3) In a proceeding for nullity of marriage, evidence on the question of sexual capacity must be heard in private.
- (4) Despite subsection (1), the court may, having regard to Article 10 of the Hong Kong Bill of Rights set out in the Hong Kong Bill of Rights Ordinance (Cap. 383), order the hearing of a family proceeding to be open to the public.
- (5) Despite subsection (2), the court may, having regard to Article 10 of the Hong Kong Bill of Rights set out in the Hong Kong Bill of Rights Ordinance (Cap. 383), order the hearing of a matrimonial cause to be in private.

19. Appeals from CFI

- (1) Unless otherwise provided by an enactment, an appeal lies as of right to the Court of Appeal from an order of the CFI in a family proceeding.
- (2) No appeal lies to the Court of Appeal from the following orders or decision—
 - (a) an order of the CFI allowing an extension of time for appealing from an order;

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- (b) an order of the CFI that is provided by an enactment to be final;
 - (c) an order absolute for the dissolution or nullity of marriage by a party who, having had time and opportunity to appeal from the decree nisi on which the order was founded, has not appealed from that decree;
 - (d) (except with the permission of the CFI or the Court of Appeal) an order of the CFI made with the consent of the parties or relating only to costs which are by law left to the discretion of the court;
 - (e) a decision of the CFI in respect of which a certificate is granted under section 27C of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) and leave to appeal is granted under section 27D of that Ordinance in a family proceeding.
- (3) Unless otherwise provided by the Rules, no appeal lies to the Court of Appeal from an interlocutory order of the CFI in a family proceeding unless permission to appeal has been given by the CFI or the Court of Appeal.
- (4) Permission to appeal may be given—
- (a) in respect of a particular issue arising out of the interlocutory order; and
 - (b) subject to the conditions considered by the court hearing the application to be necessary in order to secure the just, expeditious and economical disposal of the appeal.
- (5) Permission to appeal must not be given unless the court hearing the application is satisfied that—
- (a) the appeal has a reasonable prospect of success; or
 - (b) there is some other reason in the interests of justice for the appeal to be heard.

20. Appeals from Family Court

- (1) Unless otherwise provided by an enactment, no appeal lies to the Court of Appeal from an order of a Family Judge in a family proceeding unless permission to appeal has been given by a Family Judge or the Court of Appeal.
- (2) No appeal lies to the Court of Appeal from an order absolute for the dissolution or nullity of marriage by a party who, having had time and opportunity to appeal from the decree nisi on which the order was founded, has not appealed from that decree.
- (3) An appeal lies as of right to a Family Judge in chambers from an order of a Master in a family proceeding.
- (4) An appeal also lies as of right to the Court of Appeal by a person against whom an order is made under section 20, 48B, 52D, 52E or 53(3) of the District Court Ordinance (Cap. 336).
- (5) Permission to appeal may be given—
 - (a) in respect of a particular issue arising out of the order referred to in subsection (1); and
 - (b) subject to the conditions considered by the Family Judge or the Court of Appeal hearing the application to be necessary in order to secure the just, expeditious and economical disposal of the appeal.
- (6) Permission to appeal must not be given unless the Family Judge or the Court of Appeal hearing the application is satisfied that—
 - (a) the appeal has a reasonable prospect of success; or
 - (b) there is some other reason in the interests of justice for the appeal to be heard.

21. Application of High Court rules and practice

To the extent that no provision is made by this Ordinance or the Rules for the practice or procedure applicable to a family proceeding in the

High Court or Family Court, the Rules of the High Court (Cap. 4 sub. leg. A) and the practice of the High Court apply unless the court conducting the proceeding otherwise directs.

22. Practice Directions

- (1) The Chief Justice may make directions as to the practice and procedure of the court on one or more types of family proceedings.
- (2) The Chief Justice may designate a High Court Judge to make any of the directions referred to in subsection (1).

23. Rules Committee to specify forms

- (1) The Rules Committee may specify one or more forms to be used for a matter provided for in this Ordinance or for the purposes of any provision of this Ordinance.
 - (2) A form specified under this section must be completed in accordance with the instructions and directions that are specified in the form.
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Part 4

Family Procedure Rules Committee

24. Establishment of Family Procedure Rules Committee

- (1) The Family Procedure Rules Committee is established.
- (2) The Rules Committee consists of—
 - (a) the Chief Judge, who is the Chairperson;
 - (b) a High Court Judge nominated by the Chief Judge;
 - (c) the Registrar of the High Court, or a Master of the High Court nominated by the Chief Judge to represent the Registrar;
 - (d) the Principal Family Court Judge;
 - (e) a Family Judge nominated by the Chief Judge;
 - (f) the Registrar of the District Court, or a Master of the District Court nominated by the Chief Judge to represent the Registrar;
 - (g) a barrister nominated by the Hong Kong Bar Association;
 - (h) a solicitor nominated by The Law Society of Hong Kong; and
 - (i) the Secretary for Justice, or a legal officer in the Department of Justice nominated by the Secretary.
- (3) At a meeting of the Rules Committee, 4 members form a quorum if one of them is a member specified in subsection (2)(g) or (h).
- (4) The member specified in subsection (2)(c) is the secretary of the Rules Committee.

(5) In this section—

barrister (大律師) has the meaning given by section 2(1) of the Legal Practitioners Ordinance (Cap. 159);

legal officer in the Department of Justice (律政司律政人員) means a person holding one of the offices in the Department of Justice mentioned in Schedule 1 to the Legal Officers Ordinance (Cap. 87);

solicitor (律師) has the meaning given by section 2(1) of the Legal Practitioners Ordinance (Cap. 159).

25. Rule-making powers of Rules Committee

The Rules Committee may—

- (a) make rules for regulating and prescribing the practice and procedure for family proceedings in the High Court and Family Court;
- (b) in relation to any matter relating to a family proceeding, make rules for better carrying out the purposes of—
 - (i) the High Court Ordinance (Cap. 4), in particular sections 14, 14AA, 21M, 26, 41, 42, 44, 52A and 52B of that Ordinance;
 - (ii) the Guardianship of Minors Ordinance (Cap. 13), in particular section 20 of that Ordinance;
 - (iii) the Separation and Maintenance Orders Ordinance (Cap. 16), in particular section 9A of that Ordinance;
 - (iv) the Marriage Reform Ordinance (Cap. 178);
 - (v) the Matrimonial Causes Ordinance (Cap. 179), in particular sections 11A, 14 and 49 of that Ordinance;
 - (vi) the Marriage Ordinance (Cap. 181), in particular section 18A of that Ordinance;

- (vii) the Maintenance Orders (Reciprocal Enforcement) Ordinance (Cap. 188);
 - (viii) the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189);
 - (ix) the Matrimonial Proceedings and Property Ordinance (Cap. 192), in particular sections 12, 25 and 28 of that Ordinance;
 - (x) the Adoption Ordinance (Cap. 290), in particular section 5A of that Ordinance;
 - (xi) the District Court Ordinance (Cap. 336), in particular sections 47A, 47D, 52B, 53 and 53A of that Ordinance;
 - (xii) the Parent and Child Ordinance (Cap. 429), in particular sections 6 and 12 of that Ordinance;
 - (xiii) the Child Abduction and Custody Ordinance (Cap. 512); and
 - (xiv) the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (Cap. 639); and
- (c) without limiting paragraphs (a) and (b), for the purposes set out in section 26.

26. Rules for general matters

- (1) Without limiting section 25, rules may be made under that section for—
- (a) regulating case management;
 - (b) regulating matters relating to alternative dispute resolution;
 - (c) regulating proceedings involving a deceased person or the estate of a deceased person;

- (d) empowering the Registrar to deal with any matter relating to—
 - (i) costs to be taxed under a costs order; and
 - (ii) interests on taxed costs or costs of taxation;
- (e) prescribing the procedure in connection with the transfer and retransfer of family proceedings between the CFI and the Family Court;
- (f) regulating matters relating to appeals against orders of the court in family proceedings;
- (g) prescribing the jurisdiction of the court that may be exercised by the Registrar or a Master in family proceedings (including provision for appeals against orders made in the exercise of that jurisdiction);
- (h) prescribing fees and regulating matters relating to the fees and costs of family proceedings in the court;
- (i) prescribing when persons absent, but having an interest in a family proceeding, must be bound by an order made in the proceedings;
- (j) providing for the enforcement of orders made in family proceedings, including—
 - (i) the prohibition of judgment debtors and persons against whom claims are made from leaving Hong Kong and ordering the payment of compensation to them in prescribed circumstances;
 - (ii) ordering the appearance of judgment debtors for examination; and
 - (iii) the arrest and imprisonment of judgment debtors;
- (k) providing for matters relating to the variation, suspension, rescission, discharge or revival of an order made in a family proceeding;

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- (l) providing for the means by which particular facts may be proved in a family proceeding and the mode in which evidence of those facts may be given;
 - (m) regulating matters relating to the giving of expert evidence and the submission of expert reports;
 - (n) empowering the court to dispense with or relax any procedure, or shorten any time limit, specified in the Rules;
 - (o) regulating matters relating to family proceedings that, before the commencement date of this section, could be or have been provided for or regulated by rules of court made under the High Court Ordinance (Cap. 4);
 - (p) providing that a contravention of any provision of the Rules that relate to a specified Ordinance is an offence, punishable by a fine, imprisonment or both;
 - (q) making different provisions for different cases, including different provisions for—
 - (i) different courts specified in the Rules; or
 - (ii) different types of proceedings or jurisdictions specified in the Rules; and
 - (r) providing for incidental, supplemental and consequential matters that the Rules Committee considers necessary or expedient.
- (2) For subsection (1)(p), the maximum fine that may be prescribed for an offence is level 2 and the maximum imprisonment is 2 years.
- (3) In this section—
- specified Ordinance*** (指明條例) means—
- (a) the Guardianship of Minors Ordinance (Cap. 13);

- (b) the Separation and Maintenance Orders Ordinance (Cap. 16); or
 - (c) the Matrimonial Proceedings and Property Ordinance (Cap. 192).
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Part 5

Miscellaneous Provisions

27. Rule on computation of vacation period not to apply

Section 31 of the High Court Ordinance (Cap. 4) does not apply in relation to a family proceeding in the CFI.

28. Consequential and related amendments

The enactments specified in the Schedule are amended as set out in the Schedule.

Schedule

[ss. 3(3) and 28]

Consequential and Related Amendments

Part 1

Amendments to [] Ordinance and its subsidiary legislation

Part 2

Amendments to [] Ordinance and its subsidiary legislation

Explanatory Memorandum

The purpose of this Bill is to make procedural reforms to the family justice system based on the recommendations of the Chief Justice's Working Party on Family Procedure Rules as set out in the Final Report on the Review of Family Procedure Rules published in May 2015.

2. The Bill is divided into 5 Parts.

Part 1—Preliminary

3. Clause 1 sets out the short title and provides for commencement.
4. Clause 2 contains the definitions for the interpretation of the Bill. Clauses 3 and 4 respectively set out the meaning of *family proceeding* and *financial order*.
5. Clause 5 provides that the Ordinance to be enacted (*Ordinance*) is to apply to every family proceeding in the High Court or the Family Court (including a family proceeding started in, or transferred or retransferred to, the High Court or the Family Court before the commencement date of clause 5).

Part 2—Jurisdiction and Powers of Courts in Family Proceedings

6. Clauses 6 and 7 respectively set out the matters that are within the jurisdiction of the Court of First Instance (*CFI*) and the Family Court.
7. Clauses 8 and 9 deal with the transfer of proceedings between the CFI and the Family Court.
8. Clause 10 provides that if the CFI or the Family Court exercises the jurisdiction under the Ordinance over a family proceeding started under another Ordinance, any determination in the proceeding must

be made in accordance with that Ordinance and any subsidiary legislation made under that Ordinance.

9. Clause 11 confers power on the CFI and the Family Court to make a declaration of beneficial ownership in favour of or against a third party.
10. Clause 12 provides for the finality of a court order made in a family proceeding.
11. Clauses 13 and 14 set out the powers of a judge, and a judge in chambers, in family proceedings.
12. Clause 15 sets out the powers and duties of the Registrar (as defined by clause 2) and a Master (as defined by clause 2).

Part 3—Practice and Procedure

13. Clause 16 regulates the procedures for the start of a family proceeding and clause 17 regulates the procedures for making an application in relation to an order or direction referred to in the provisions set out in clause 17.
14. Clause 18 provides for the types of family proceedings that must be heard in private and those that must be heard in open court.
15. Clauses 19 and 20 deal with appeals from the CFI and the Family Court.
16. Clause 21 provides that the Rules of the High Court (Cap. 4 sub. leg. A) and the practice of the High Court are to apply to a family proceeding if the relevant practice or procedure is not provided for in the Ordinance, unless the court conducting the proceeding otherwise directs.
17. Clause 22 confers power on the Chief Justice to make directions as to the practice and procedure of the CFI and the Family Court in family proceedings.

18. Clause 23 empowers the Family Procedure Rules Committee (established by clause 24) (*Rules Committee*) to specify forms to be used for any matter provided for in, or for the purposes of, the Ordinance.

Part 4—Family Procedure Rules Committee

19. Clause 24 provides for the establishment of the Rules Committee.
20. Clauses 25 and 26 empower the Rules Committee to make rules for the purposes set out in those clauses.

Part 5—Miscellaneous Provisions

21. Clause 27 provides that section 31 of the High Court Ordinance (Cap. 4) (computation of vacation period) does not apply to a family proceeding in the CFI.
22. Clause 28 and the Schedule deal with consequential and related amendments to various legislation.

**Preliminary Framework of the
Reformed Family Procedure Rules**

General description	Major source of reference
<p>Part 1: Citation, application, interpretation, language and forms</p> <p>To stipulate that the FPR will apply to family proceedings in both the CFI and the Family Court, and to provide for other fundamental matters e.g. use of language, translation of court documents, general provisions about forms, etc.</p>	<ul style="list-style-type: none">• O. 1, RHC• Part 2, FPR 2010 (UK)
<p>Part 2: Overriding objectives</p> <p>To set out the underlying objectives of the FPR which are premised on the basic principles of the Civil Justice Reform, and to establish a framework for decision-making in procedural matters by the court and providing guidance in managing cases.</p>	<ul style="list-style-type: none">• O.1A, RHC
<p>Part 3: Effect of non-compliance</p> <p>To provide for the sanctions for non-compliance with the FPR, including the rule that the court may set aside the proceeding as well as the relief from sanctions.</p>	<ul style="list-style-type: none">• O. 2, RHC
<p>Part 4: Time</p> <p>To provide for how time should be reckoned in the FPR.</p>	<ul style="list-style-type: none">• O. 3, RHC
<p>Part 5: Alternative Dispute Resolution: The Court's powers</p> <p>To provide for the court's powers to encourage parties to family proceedings to use alternative dispute resolution.</p>	<ul style="list-style-type: none">• Part 3, FPR 2010 (UK)

General description	Major source of reference
<p>Part 6: Registrar and Masters</p> <p>To provide that a matter before the Registrar may at any time be adjourned by the Registrar to be heard before a judge, and that the judge may either dispose of the matter or refer it back to the Registrar with such directions as the judge thinks fit.</p>	<ul style="list-style-type: none"> • New Part to underpin the smooth operation of the FPR
<p>Part 7: General case management powers</p> <p>To consolidate the case management powers of the court to provide for a scheme of fair and consistent judicial case management to effectively carry out the procedural steps in the FPR in accordance with the underlying objectives.</p>	<ul style="list-style-type: none"> • O. 1B, RHC • Part 4, FPR 2010 (UK)
<p>Part 8: Commencement of proceedings</p> <p>To stipulate that family proceedings shall be begun at the Family Court, unless the CFI has exclusive jurisdiction in the matter, or an enactment or rule otherwise requires, or under exceptional circumstances in the case.</p>	<ul style="list-style-type: none"> • Rules 9 and 11, MCR • O. 6, RHC • Part 5, FPR 2010 (UK)
<p>Part 9: Service</p> <p>To stipulate the rules for service of originating applications and documents for family proceedings.</p>	<ul style="list-style-type: none"> • Rule 12, AIOR • Rules 14, 109-112, 119, MCR • O.11 and O.90, RDC • O.10, O.11 and O. 90, RHC
<p>Part 10: Acknowledgement of service</p> <p>To set out the rules for acknowledgement of service. In particular, to provide that parties to family proceedings should be required to provide an address in Hong Kong for service to facilitate quick and efficient service, while the court may dispense with the requirement for parties in case of genuine difficulty and hardship in compliance of the requirement.</p>	<ul style="list-style-type: none"> • Rule 15, MCR • O. 12, RHC

General description	Major source of reference
<p>Part 11: Procedure for applications in matrimonial causes</p> <p>To provide the rules for applications in matrimonial causes, in particular, to discourage the naming of co-respondents in such applications to avoid unnecessary embarrassment and hostility between the parties. Also, to provide that only the court could appoint medical examiners in proceedings for nullity on the ground of impotence or incapacity to consummate the marriage where it is necessary for the proper disposal of the case without any application thereby avoiding abuse of such procedures.</p>	<ul style="list-style-type: none"> • Rules 2, 5, 9, 12, 13, 15A, 15B, 15C, 16, 16A, 17, 18, 19, 21, 24, 30, 31 33, 47A, 49, 56A, 61, 62, 64, 65, 65A, 66 and 67, MCR • O. 18, RHC • Part 7, FPR 2010 (UK) • PD 7B, PD 15.3, PD 15.4
<p>Part 12: Applications for financial order</p> <p>To provide for the practice and procedures for an application for a financial order made in family proceedings. In particular, to codify the enhanced ancillary relief procedures stipulated in the relevant PD.</p>	<ul style="list-style-type: none"> • Rules 56B, 68, 68A, 69, 77, 80, 81, 82, 98, 99, 100, 103A, 103B and 103C, MCR • O. 15, RHC • Part 9, FPR 2010 (UK) • PD 15.11, PD 15.11A, PD 15.12
<p>Part 13: Applications under the Inheritance (Provision for Family and Dependents) Ordinance, (Cap. 481)</p> <p>To provide for the practice and procedures for proceedings brought under the Inheritance (Provision for Family and Dependents) Ordinance (Cap. 481) which allows a dependant to make an application for the court to order reasonable financial provision from the estate of a deceased person where his/her Will has made none or insufficient provision for the dependant, or if the dependant is not entitled to share the estate under intestacy rules and the deceased did not make a Will.</p>	<ul style="list-style-type: none"> • Rules 77, 101-103, MCR • Part 8, FPR 2010 (UK) • Part 57, Civil Procedure Rules 1998 (UK) • PD 57 (UK)

General description	Major source of reference
<p>Part 14: Applications under the Domestic and Cohabitation Relationships Violence Ordinance</p> <p>To stipulate the rules for the commencement and conduct of proceedings in relation to protection of persons from violence in domestic and cohabitation relationships.</p>	<ul style="list-style-type: none"> • Rules 2, 4-6, DCRVR • O. 32, RHC • Part 10, FPR 2010 (UK)
<p>Part 15: Proceedings relating to children apart from adoption proceedings</p> <p>To stipulate the rules covering all proceedings relating to children, including custody, education, supervision and care of children, guardianship, declaration of parentage, appointment of guardian ad litem, wardship proceedings, etc., and to codify the children dispute resolution procedures stipulated in the relevant PD.</p>	<ul style="list-style-type: none"> • O. 90 RHC /RDC • O. 121 RHC / RDC • Part 12, FPR 2010 (UK) • Part 3, Family Proceedings Rules 1991 (UK) • The Blood Tests (Evidence of Paternity) Regulations 1971 (UK) • PD 15.13, PD 23.1 • PD 12D (UK)
<p>Part 16: Procedure for applications in adoption proceedings</p> <p>To provide for the procedures and rules for applications relating to adoption of children.</p>	<ul style="list-style-type: none"> • Rules 2, 2A, 3, 5-33; Sch1 & 2, AR • Rules 2-4, 6-32, Sch 1 & 2, CAR • Part 14, FPR 2010 (UK)
<p>Part 17: Procedure for miscellaneous applications</p> <p>To set out the procedures covering miscellaneous family proceedings, including applications for declarations as to marital status, parentage, legitimacy, recognition of adoptions effected overseas, etc.</p>	<ul style="list-style-type: none"> • Section 18A, MO • Rules 14A and 28, AR • Rules 28 and 29, CAR • Rule 124, MCR • O. 7, RHC/RDC

General description	Major source of reference
	<ul style="list-style-type: none"> • O. 32, RHC • Part 3, Family Proceedings Rules 1991 (UK)
<p>Part 18: Pleadings</p> <p>To provide for the procedures and requirements for pleadings to facilitate defining of the real issues in dispute between the parties in advance of trial.</p>	<ul style="list-style-type: none"> • Rules 11, 18, 19, 21, 25, and 26, MCR • O. 18, RHC
<p>Part 19: Amendment</p> <p>To provide for the procedures for amending pleadings and other documents.</p>	<ul style="list-style-type: none"> • Rules 16, 16A, 17 and 24, MCR • O. 20, RHC
<p>Part 20: Parties</p> <p>To provide for the procedures for adding or changing a party to the proceeding, bringing family proceedings against the deceased's estate, including the requirement to serve notice to the newly added party.</p>	<ul style="list-style-type: none"> • Rule 23, MCR • O. 15, RHC
<p>Part 21: Discontinuance and withdrawal</p> <p>To set out the procedures in relation to discontinuance of an action and withdrawal of a claim.</p>	<ul style="list-style-type: none"> • Rule 7, MCR • O. 21, RHC
<p>Part 22: Miscellaneous provisions about payment into court</p> <p>To set out the procedures for payment into court, in particular to provide that money paid into court in family proceedings may not be paid out except in pursuance of an order of the court which may be made at any time before, at or after the trial or hearing of the originating application.</p>	<ul style="list-style-type: none"> • O. 22A, RHC
<p>Part 23: Interlocutory applications</p> <p>To set out the procedures for making interlocutory applications, in particular, every interlocutory</p>	<ul style="list-style-type: none"> • O. 32, RHC

General description	Major source of reference
application (including any application for interim relief in extant proceedings) must be made by summons.	
<p>Part 24: Disability</p> <p>To stipulate the rules governing representation of parties under a disability in family proceedings, including separate representation of children in family proceedings.</p>	<ul style="list-style-type: none"> • O. 80, RHC • Rules 105 - 107, MCR • PDSL 6
<p>Part 25: Vulnerable parties and witnesses</p> <p>To stipulate the court's duties and powers in relation to assisting parties and witnesses whose ability to participate in family proceedings and whose evidence may be diminished by reason of their vulnerability with a view to ensuring a fair hearing.</p>	<ul style="list-style-type: none"> • Part 3A, FPR 2010 (UK)
<p>Part 26: Statement of truth</p> <p>To set out the procedures relating to the submission of statements of truth by parties in family proceedings to verify documents including pleadings, witness statements, expert reports, etc, thereby ensuring that such documents which are put before the court accurately reflect the true case of a party.</p>	<ul style="list-style-type: none"> • O. 41A, RHC/RDC • Part 17, FPR 2010 (UK) • PD 15.12, PD 19.3 • PD 17A (UK)
<p>Part 27: Interim remedies, interlocutory injunctions and interim preservation of property</p> <p>To provide that the court may make an order for the detention, custody or preservation of any property, payment into court, and for making interim payments, etc, which is the subject matter of the family proceedings and on application of any party to such proceedings.</p>	<ul style="list-style-type: none"> • Rules 78, 81 and 84, MCR • O. 29, RHC
<p>Part 28: Securities for costs</p> <p>To stipulate the rules concerning the court's discretionary powers to order the applicants of family proceedings (other than matrimonial causes) to give such security for the respondent's costs of the</p>	<ul style="list-style-type: none"> • Rule 37, MCR • O. 23, RHC/RDC

General description	Major source of reference
proceedings in question or other proceedings.	
<p>Part 29: Discovery and inspection of documents</p> <p>To provide for the procedures for discovery and inspection for family proceedings. In particular, to empower the court to make orders on discovery of documents from a third party or non-party, thereby allowing the court to conduct a more comprehensive investigation into matters pertinent to the proceedings.</p>	<ul style="list-style-type: none"> • Rule 28, MCR • O. 24, RHC • Part 7, FPR 2010 (UK)
<p>Part 30: Interrogatories</p> <p>To provide for the procedures for serving interrogatories in family proceedings covering matters in question between a party to any family proceedings and any other party which are necessary either for disposing fairly of the causes or matters or for saving costs.</p>	<ul style="list-style-type: none"> • O. 26, RHC
<p>Part 31: Evidence</p> <p>To set out the procedural rules relating to evidence specifically for family proceedings so as to give clearer guidance to practitioners.</p>	<ul style="list-style-type: none"> • Rule 39, 40 and 41, MCR • O.27, O.32, O.38 and O.39, RHC • Parts 22-24, FPR 2010 (UK) • PD 15.15
<p>Part 32: Affidavit</p> <p>To provide the procedures on the giving of evidence in a family proceeding by an affidavit.</p>	<ul style="list-style-type: none"> • O. 41, RHC • Part 22, FPR 2010 (UK)
<p>Part 33: Experts and assessors</p> <p>To set out the procedural rules relating to expert evidence in family proceedings and hearings involving assessors to help the court on matters within the assessors' expertise.</p>	<ul style="list-style-type: none"> • O.33 and O.38, RHC • Part 25, FPR 2010 (UK)

General description	Major source of reference
<p>Part 34: Change of solicitors</p> <p>To stipulate the procedures for changing, appointing or removing a solicitor by parties in family proceedings and withdrawal of solicitor who has ceased to act for a party.</p>	<ul style="list-style-type: none"> • O.12 and O. 67, RHC/RDC • Part 26, FPR 2010 (UK)
<p>Part 35: Case management summons and conference</p> <p>To set out the procedural rules in relation to case management of family proceedings.</p>	<ul style="list-style-type: none"> • Rules 13, 33, 34 and 35, MCR • O.25 and O.32, RHC • Part 7, FPR 2010 (UK) • Part 29, Civil Procedure Rules 1998 (UK) • PD 5.2
<p>Part 36: Setting down and conduct of trials</p> <p>To consolidate the provisions relating to setting down and conduct of a trial in family proceedings.</p>	<ul style="list-style-type: none"> • Rules 44-55 and 81, MCR • O.15 and O.33, RHC/RDC • O. 35, RHC • Part 7 and Part 27, FPR 2010 (UK) • PD 15.15
<p>Part 37: Transparency of proceedings</p> <p>To set out the provisions relating to hearing and reporting of proceedings, as well as access to court documents. In particular, to stipulate that subject to certain exceptions such as judgment summons, family proceedings (except matrimonial causes) would not be open to the public but the court retains the discretion to order the hearing to be open to the public if it is of the view that none of the reasons for excluding the press and the public laid down in Article 10 of the HKBORO is satisfied in the circumstances of the case</p>	<ul style="list-style-type: none"> • Sections 3, 4 and 5 of JP(RR)O • Rule 121, MCR • O. 63, RHC • PD 15.15

General description	Major source of reference
concerned. Also, to provide for prohibition of public search and inspection of documents filed in the court registry in children proceedings, other than a decree or order made in open court, without leave of the court.	
<p>Part 38: Costs</p> <p>To set out the powers and discretion of the court as to costs in family proceedings.</p>	<ul style="list-style-type: none"> • Rule 91A, MCR • MC(F)R • O. 62, RHC/RDC • Part 28, FPR 2010 (UK) • PD 14.3, PD 14.5
<p>Part 39: Costs offer and payments into Court</p> <p>To set out the procedures for making costs offer and payments into the court.</p>	<ul style="list-style-type: none"> • Rule 91A, MCR • O. 62A, RHC/RDC • Part 28, FPR 2010 (UK) • PD 14.3
<p>Part 40: Transfer of proceedings</p> <p>To set out the procedures and practice for transfer and re-transfer of family proceedings between the Family Court and the CFI.</p>	<ul style="list-style-type: none"> • Rule 32(2), MCR • O. 78 and O. 4, RHC
<p>Part 41: Judgments and orders</p> <p>To stipulate the rules for the taking effect of, drawing up and entry of judgments and orders made by the court in family proceedings. In particular, to stipulate rules for applications for setting aside the judgments and orders on the ground of irregularity of service of documents required to be served on the other party including situations where service of documents under a substituted service order or where service of the documents was dispensed with under an order obtained by fraud or inaccurate information provided by the applicant.</p>	<ul style="list-style-type: none"> • Rule 55, MCR • O. 20 and O. 42, RHC

General description	Major source of reference
<p>Part 42: Appeals to the Court of Appeal</p> <p>To set out the rules for appeals in family proceedings from the CFI and the Family Court.</p>	<ul style="list-style-type: none"> • O. 58 and O. 59, RHC
<p>Part 43: Appeals from Masters</p> <p>To provide for the rules for appeals from the Registrar / Masters, including the rule that the appeal will be to a judge of the CFI or the Family Court in chamber, as the case may be.</p>	<ul style="list-style-type: none"> • O. 58, RHC
<p>Part 44: Enforcement of judgments and orders</p> <p>To stipulate the procedures and requirements for enforcement of judgments and orders for payment of money in family proceedings;</p> <p>To provide that an applicant is allowed to ask the court to decide on which method of enforcement is the most appropriate in the circumstances of a given case; and</p> <p>In relation to the enforcement of an undertaking, to prescribe the form of penal notice and statement to be signed by the person giving the undertaking so as to ensure that he or she is fully aware of the undertaking being given and the serious consequences it entails if breached.</p>	<ul style="list-style-type: none"> • Rules 86 and 91, MCR • O. 45, RHC/RDC • Part 33 and Part 37, FPR 2010 (UK) • PD 33A (UK)
<p>Part 45: Judgment summons</p> <p>To provide for the procedures for enforcement of a judgment debt by judgment summons to render it compatible with Articles 10 and 11 of the HKBORO in the light of the Court of Appeal’s judgment in <i>YBL v LWC</i> [2017] 1 HKLRD 823 and the relevant PDSL. In particular, the examination process and committal process are to be regarded as separate and distinct processes, and applied for under separate procedures.</p>	<ul style="list-style-type: none"> • Rules 87 and 88, MCR • O. 90A, RDC • O.48, O.49B and O.52, RHC • Part 33, FPR 2010 (UK) • PDSL 10.2

General description	Major source of reference
<p>Part 46: Examination of debtor, etc.</p> <p>To provide for the procedures for examination of judgment debtors in family proceedings.</p>	<ul style="list-style-type: none"> • O. 48, RHC/RDC
<p>Part 47: Execution and enforcement of judgment for money by imprisonment</p> <p>To provide for the procedures for execution and enforcement of judgment for money against judgement debtors in family proceedings by imprisonment.</p>	<ul style="list-style-type: none"> • O. 49B, RHC/RDC
<p>Part 48: Attachment of income order</p> <p>To provide for the making of attachment of income orders against maintenance payers who have defaulted in payment, without reasonable excuse, of maintenance due under the Guardianship of Minors Ordinance (Cap. 13), the Separation and Maintenance Orders Ordinance (Cap. 16) and the Matrimonial Proceedings and Property Ordinance (Cap. 192). In particular, to provide that the orders are applicable to maintenance pending suit for spouses, in addition to interim maintenance orders for children.</p>	<ul style="list-style-type: none"> • AIOR
<p>Part 49: Committal</p> <p>To provide for the procedures for making of order of committal in family proceedings, including the rule that the application must be made by way of summons.</p>	<ul style="list-style-type: none"> • Rule 90, MCR • O. 52, RHC/RDC • PD 33A (UK)
<p>Part 50: Charging orders and stop orders</p> <p>To provide for the making of charging orders and stop orders against judgement debtors in family proceedings.</p>	<ul style="list-style-type: none"> • O. 50, RHC/RDC
<p>Part 51: Garnishee proceedings</p> <p>To provide for the making of garnishee orders against judgement debtors in family proceedings.</p>	<ul style="list-style-type: none"> • O. 49, RHC/RDC

General description	Major source of reference
<p>Part 52: Prohibition orders</p> <p>To provide for the making of prohibition orders against judgement debtors in family proceedings.</p>	<ul style="list-style-type: none"> • O. 44A, RHC/RDC
<p>Part 53: Writs of execution: General</p> <p>To provide for the making of writ of execution, which includes writ of <i>feri facias</i>, writ of possession, writ of delivery, writ of sequestration and any further writ against the property of judgment debtors in family proceedings with a view to satisfying the judgment debt.</p>	<ul style="list-style-type: none"> • O. 46, RHC/RDC
<p>Part 54: Writ of <i>Fieri Facias</i></p> <p>To provide for specific rules for execution of writ of <i>feri facias</i>, covering sale of immovable and movable property.</p>	<ul style="list-style-type: none"> • O. 47, RHC/RDC
<p>Part 55: Receivers: Equitable execution</p> <p>To provide for the appointment of receivers by way of equitable execution in relation to those interests belonging to judgment debtors in family proceedings so as to prevent the latter from receiving the money and dealing with it to the prejudice of judgment creditors.</p>	<ul style="list-style-type: none"> • O.30 and O.51, RHC/RDC
<p>Part 56: Reciprocal enforcement of maintenance orders</p> <p>To provide for the manner in which maintenance orders issued by a reciprocating country are to be registered in Hong Kong, and the manner of enforcing orders so registered and <i>vice versa</i>.</p>	<ul style="list-style-type: none"> • MO(RE)R
<p>Part 57: Vexatious litigants</p> <p>To set out the procedures for dealing with vexatious litigants.</p>	<ul style="list-style-type: none"> • O. 32A, RHC

General description	Major source of reference
<p>Part 58: Record of proceedings</p> <p>To stipulate rules for record of family proceedings.</p>	<ul style="list-style-type: none"> • O. 68, RHC
<p>Part 59: Transitional and saving</p> <p>To provide for the transitional arrangements for implementation of the FPR. In particular, to lay down the general principle that the new rules are to apply to existing family proceedings as far as practicable.</p>	<ul style="list-style-type: none"> • Rule 127, MCR • PD 36A (UK)

Note:

- (1) The above general description of matters covered by the FPR and the major source of reference are indicative of the latest drafting work being undertaken by the Judiciary. They are subject to further revisions.
- (2) It is planned that a specific Part to provide for matters covered by the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Rules will be included in the FPR in the future. The matters include the practice and procedure relating to various applications under the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (Cap. 639), execution of registered orders, fees payable, etc.
- (3) It is planned that the fees payable in respect of miscellaneous actions in family proceedings currently prescribed by various legislation e.g. MC(F)R, DCCP(F)R, HCFR, etc, will be consolidated and prescribed in a designated subsidiary legislation, thereby reducing the need for cross-referencing by court users.

Table of abbreviations

AIOR	Attachment of Income Order Rules (Cap. 13A)
AR	Adoption Rules (Cap. 290A)
CAR	Convention Adoption Rules (Cap. 290D)
CFI	Court of First Instance of the High Court
DCRVr	Domestic and Cohabitation Relationships Violence Rules (Cap. 189A)
DCCP(F)R	District Court Civil Procedure (Fees) Rules (Cap. 336C)
FPR	Family Procedure Rules
FPR 2010 (UK)	Family Procedure Rules 2010 (UK)
HCFR	High Court Fees Rules (Cap. 4D)
HKBORO	Hong Kong Bill of Rights Ordinance (Cap. 383)
JP(RR)O	Judicial Proceedings (Regulation of Reports) Ordinance (Cap. 287)
MCR	Matrimonial Causes Rules (Cap. 179A)
MC(F)R	Matrimonial Causes (Fees) Rules (Cap. 179B)
MO	Marriage Ordinance (Cap. 181)
MO(RE)R	Maintenance Orders (Reciprocal Enforcement) Rules (Cap. 188A)
PD	Practice Direction
PD (UK)	Practice Direction (UK)
PDSL	Practice Direction Specialist List
RDC	Rules of the District Court (Cap. 336H)
RHC	Rules of the High Court (Cap. 4A)