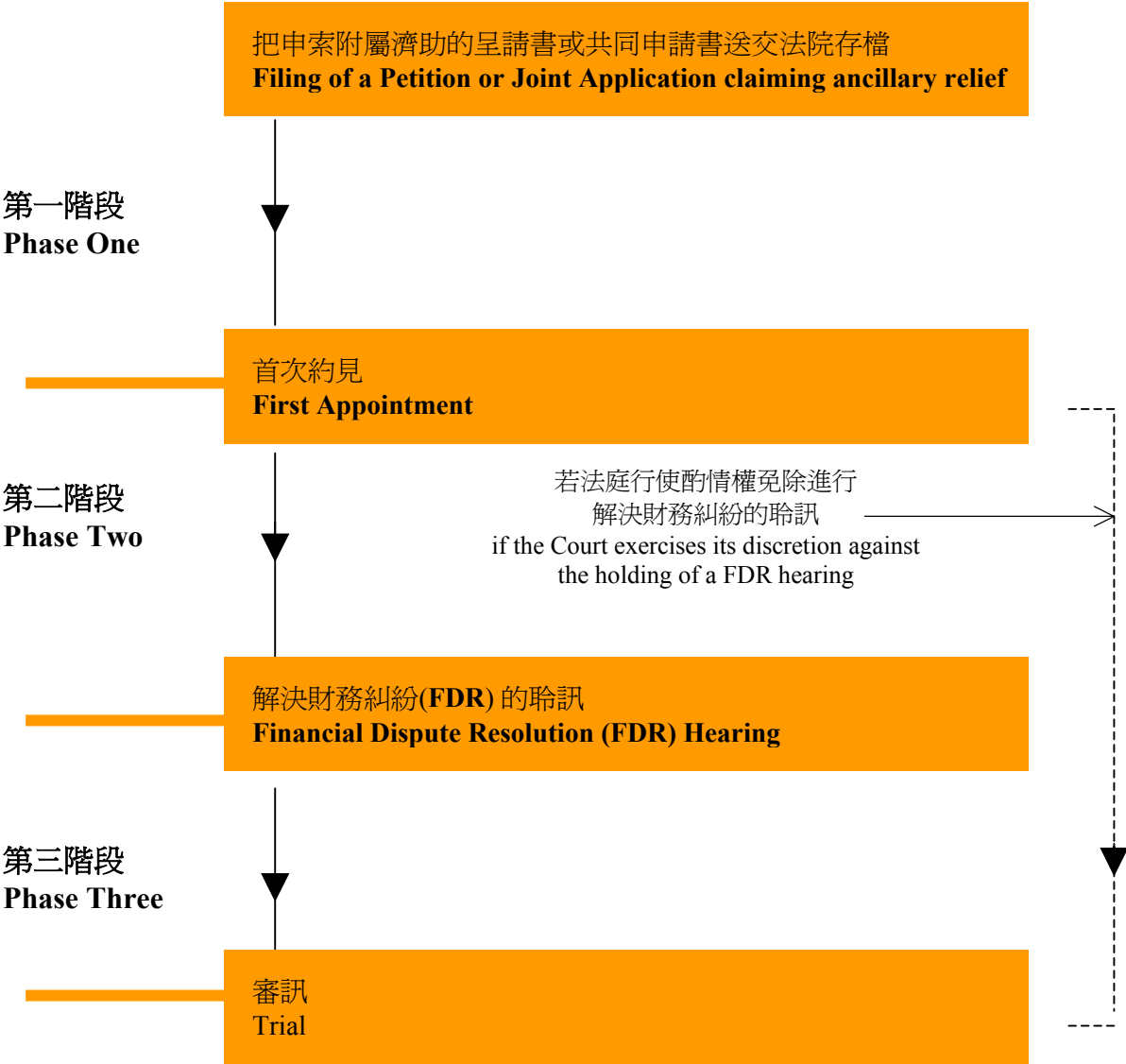


婚姻訴訟附屬濟助 程序改革試驗計劃

Pilot Scheme for the
Reform of Ancillary Relief Procedures
in Matrimonial Proceedings



改革後的程序大致上可分為三個階段，每個階段均以法庭聆訊為作結。
The reformed procedures are broadly divided into three phases, with each phase concluding with a ‘milestone’ court hearing.



Introduction

The existing ancillary relief¹ procedures in matrimonial proceedings have been in place since 1972. They have, however, been criticized for giving too much leeway to litigants to transform ancillary relief proceedings into a battlefield for the exhaustion of their marital antagonisms. This prolongs the emotional trauma of divorce and often results in the dissipation of family assets.

In recent years, a number of common law jurisdictions have introduced changes to their ancillary relief proceedings. In November 1999, the Chief Justice appointed a Working Group to consider the reform of our ancillary relief procedures with a view to making them quicker, cheaper, less adversarial and more conducive to a culture of settlement.

The Working Group has recommended a set of reformed procedures and a two-year pilot scheme to test their effectiveness.

The Chief Justice has accepted the Working Group's recommendation. On 4 September 2003, the Chief Justice made the Matrimonial Causes (Amendment) Rules 2003 for the effective implementation of the pilot scheme. The Rules will commence operation on 29 December 2003. The Chief Justice has also issued a practice direction to regulate proceedings under the pilot scheme.

¹ The term 'ancillary relief' is defined in rule 2 of the Matrimonial Causes Rules, Chapter 179 and means-

- (a) an avoidance of disposition order,
- (b) a lump sum order,
- (c) an order for maintenance pending suit,
- (d) a periodical payments order,
- (e) a secured periodical payments order,
- (f) a settlement of property order,
- (g) a transfer of property order,
- (h) a variation of settlement order, or
- (i) a variation order

Who will be affected?

The pilot scheme applies to all cases involving claims for ancillary relief, except for those in which nominal maintenance only (i.e. \$1 per annum) is claimed.

When the resolution of a custody dispute is integral to the resolution of an ancillary relief dispute, that custody dispute will also fall under the pilot scheme.

All claims for ancillary relief contained in petitions or joint applications which are filed on or after 29 December 2003 are subject to the pilot scheme. Claims contained in petitions or joint applications filed prior to 29 December 2003 will not be subject to the pilot scheme unless the parties agree and the court so orders. If so, and depending on the stage of that prior litigation, it may be necessary to seek directions from the court.

All parties will be subject to this pilot scheme whether or not they have attempted family mediation.

What are the aims of the pilot scheme?

- To identify the issues which are important to the parties and to encourage them to reach settlement on those issues.
- To reduce unnecessary costs, delay and personal distress for the parties.
- To ensure that the parties are made aware at every stage of the proceedings of the costs incurred to date and, where appropriate, the costs that may be incurred if the matter is to proceed.
- To curb exhaustive and unnecessary disclosure of financial information, especially copious discovery (and copying) of documents so that the parties and the court can, at a reduced cost, focus on the matters of material relevance.

What are the main features of the pilot scheme?

- Substitution of affidavits of means with a detailed disclosure of financial information in a standardized form (the 'Financial Statement'). All parties must file a Financial Statement notwithstanding the level of their affluence.
- Mandatory attendance of the parties at the First Appointment and the Financial Dispute Resolution (FDR) hearings.
- Once a date for the hearing of the First Appointment is given, a timetable is thereby created. Such timetable cannot be altered without the leave of the court.
- The First Appointment will be presided over by the judge who will 'manage' the case. The issues must be defined and a broad range of directions will be given at the First Appointment to ensure that the matter proceeds to resolution economically and with a minimum of delay.
- The FDR hearing will take place after the filing of all necessary documents on a date fixed at the First Appointment. This hearing is presided over by the judge who has been given management of the case. The purpose of the FDR hearing is to explore possible grounds for settlement. All settlement proposals that the parties have made to each other, together

with any fresh proposals, will be tabled at the hearing to enable the parties to seek common ground for settlement. The judge, where appropriate, will attempt to facilitate settlement.

- If a settlement is not obtained at the FDR hearing, the matter will be set down for trial before another judge.
- A requirement for the parties or their legal representatives to submit at each hearing a statement of costs incurred by them to date. The purpose of this is to ensure that both the parties and the court are, at each milestone event, kept aware of the costs incurred to date and thereby their impact on the family assets.
- Matters of custody are often integral to ancillary relief proceedings. At the First Appointment, the judge will have discretion to seek a way to best manage the collateral custody proceedings, perhaps by directing that custody issues be resolved first in a separate hearing, and the ancillary relief hearings will be consequent upon that resolution.

What are the reformed ancillary relief procedures?

Broadly speaking, the reformed ancillary relief procedures are divided into *three* phases, each phase concluding with a ‘milestone’ court hearing. While the parties are allowed flexibility between these ‘milestone’ hearings, the hearings themselves cannot be moved except on compelling grounds and with the consent of the court. A clear timetable provides certainty and meets the criticism that ancillary relief proceedings all too often are allowed to drag on indefinitely.

Phase One

This phase commences with the filing of a petition, joint application or defence in which a claim for ancillary relief, other than only nominal maintenance, is contained and concludes with the holding of the First Appointment.

- The date of the First Appointment will in the ordinary course of events be some 10 to 14 weeks ahead. A later date within such time frame may be given, if, for example, difficulties are anticipated in serving process on the other party.
- At least 28 days before the First Appointment, the parties must simultaneously exchange their respective Financial Statements. A failure to file the Statement on due date may be penalized in costs. Where one party only is in the position to file and exchange the Financial Statement, that party shall be at liberty to file the Statement in a sealed envelope so that it cannot be read by the defaulting party until that party has filed his/her Statement and is in the position to exchange his/her Statement.
- After the exchange of the Financial Statement, and at least 14 days before the hearing of the First Appointment, the parties are required to file the following documents:
 - a concise statement of the issues between the parties;
 - a brief chronology relevant to the matters in issue;
 - a confirmation of service of notice of the First Appointment; and
 - if necessary, a questionnaire or request for particulars which, by reference to the statement of issues, sets out further information and/or documents requested from the other party.

- The parties must attend the First Appointment unless prior leave is obtained from the court.
- The parties are obliged to provide a statement of their costs incurred to date.
- If the court at the First Appointment exercises its discretion against the holding of a FDR hearing, then Phase Two effectively becomes Phase Three leading directly to trial.

Phase Two

This phase proceeds from the First Appointment and concludes with the FDR hearing.

- All correspondence between the parties aimed at settlement will be considered at the FDR hearing. A schedule setting out such correspondence, together with an updated statement of issues is to be filed by the applicant at least 7 days before the FDR hearing.
- The parties must attend the FDR hearing unless prior leave is obtained from the court.
- All matters canvassed at the FDR hearing are without prejudice. Similarly, if the parties pursue their negotiations after the FDR hearing, those negotiations will be without prejudice.
- At the FDR hearing, the judge sits essentially in the role of a 'facilitator', assisting the parties to try to reach a settlement.
- The parties are obliged to provide a statement of their costs incurred to date.
- The FDR hearing may be adjourned from time to time to enable the parties to consider their positions.
- If no settlement is reached at the FDR hearing, the judge will take no further part in the proceedings between the parties other than to give any further necessary directions, and the court will then fix a date for trial before another judge.

Phase Three

This phase proceeds from the conclusion of the FDR hearing, if that has not been fully successful, and concludes with the trial.

- At least 21 days before the trial, the applicant must file and serve an open proposal and the respondent must, within 7 days of receipt of that open proposal, file his or her open proposal.
- At the commencement of the trial, each party must submit a final statement of their costs, such costs being estimated to the end of the trial.
- The trial will proceed in the usual manner before a judge other than the one who presided at the FDR hearing. As the issues will have been defined at the First Appointment and pleadings kept within realistic limits, hearings are expected to be shorter.

How can I obtain further information on the reformed ancillary relief procedures?

You may approach the Family Court Registry for further information and assistance.

Address/Enquiries

Address : M2 Floor, Wanchai Law Courts, Wanchai Tower
12 Harbour Road, Hong Kong

Telephone No.: 2840 1218

Fax No. : 2523 9170

Business Hours of Family Court Registry

Monday to Friday 9:00 a.m. to 1:00 p.m.

2:00 p.m. to 5:00 p.m.

Saturday 9:00 a.m. to 12:00 noon

- Proceedings in the Family Court are adjourned and the Family Court Registry is closed when tropical cyclone signal No. 8 or a black rainstorm warning is issued.
- The proceedings will resume and the court will open as usual in the morning if such signal or warning is cancelled before 6:00 a.m.
- The proceedings will resume and the court will open at 2:30 p.m. if such signal or warning is cancelled between 6:00 a.m. and 10:00 a.m.
- The proceedings will remain adjourned and the Family Court Registry will remain closed for the whole day if such signal or warning is cancelled after 10:00 a.m.
- If the hearing of your case is affected by a tropical cyclone or rainstorm warning, please listen to announcements on the radio and television about resumption of hearings and opening of the Registry. You may also call the Family Court Registry to enquire about the matter.

Judiciary
December 2003
(1st Edition)

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香港特別行政區政府新聞處設計
政府物流服務署印

Designed by the Information Services Department
Printed by the Government Logistics Department
Hong Kong Special Administrative Region Government