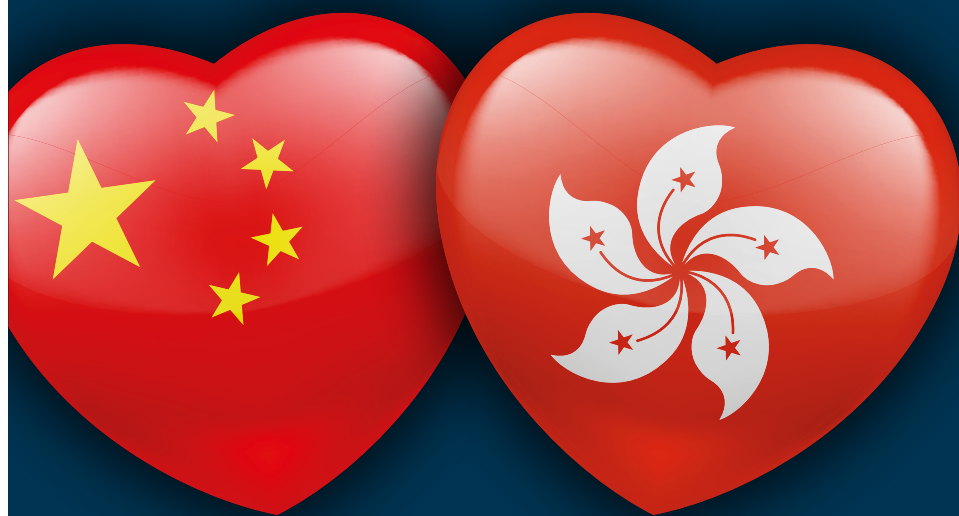


# DIVORCE IN A NEW ERA



## RECIPROCAL RECOGNITION AND FAMILY JUDGMENTS BETWEEN MAINLAND CHINA AND HONG KONG

Authored by: Gabriel Tsui and Vivian Leu – PwC China & Hong Kong

### Introduction

Cross-border investment is no stranger to many couples nowadays. There are government-driven initiatives to facilitate residents in both Mainland China and Hong Kong to acquire assets or investments across the border.

**According to the Trade and Industry Department of Hong Kong, at the end of 2019, Mainland China was Hong Kong's second largest source of inward direct investment representing about 28.1% (HK\$4,081.0 billion) of the total inward direct investment.**

On 15 February 2022, Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance Cap. 639 was enacted and came into effect. The new law establishes mechanisms for (a) registration of specified orders in Mainland judgments given in matrimonial or family cases; (b) recognition of Mainland divorce certificates; and (c) application for certified copy of and certificate for Hong Kong judgments given in matrimonial or family cases.

The new law has been long-awaited and well received by matrimonial practitioners. Before the new law, divorcing parties in the Mainland may have had to re-litigate their cases in Hong Kong.

In our experience, for divorce proceedings with cross-border investments or assets, we often see needs to:-

1. seek disclosure of possible hidden income or assets
2. investigate for possible dissipated family assets
3. value investments and businesses

### (1) Seeking disclosure of possible hidden income or assets

One of the commonly requested services is to investigate transactions to uncover possible undisclosed or hidden assets based on available information. This is not an easy task because it requires clear instructions from the legal team and documentary evidence plus an experienced team of accountants, otherwise the investigation may merely look for a needle in a haystack.

It is not rare to see non-disclosure of assets in a divorce proceeding, especially when the couple comes from different jurisdictions or where their business dealings are scattered in different regions. We often receive enquiries for investigation into personal accounts and company books and records in both the Mainland China and Hong Kong when there is suspicion of the opposing party not making full, frank and clear disclosure.

**These include analyses on personal income level/ sources and spending patterns, trends/ variances in the company's financial records, etc.]**

In cases where substantial assets are involved, supporting analyses not only assist the legal team to make further disclosure applications but also strengthen the case arguments.

In HCMJ v HYM [2020] HKFC 164, the wife alleged that the husband had an undisclosed business in Mainland China and Hong Kong. She supported her allegation by naming several companies and bank accounts which had not been disclosed by the husband. After considering different evidence to

substantiate the income and expense level, the judge commented “Apparently from the evidence, the lifestyle of himself, the wife and the children do not match with the income and assets of the husband... The husband’s scale of business in PRC is huge, I have no doubt to conclude he has hidden funds. I then should quantify realistically and reasonably, also in broadest terms, the value of the matrimonial asset and the true financial position of the husband.”



## (2) Investigate into possible dissipated family assets

With today’s global financial systems, money can move from one account to another within seconds, even out of a jurisdiction to another. Assets can be transferred from one company to another company, some even to trusts or offshore places such as BVI, Cayman Island, Samoa, etc.

Companies may be set up in offshore locations. Some of the jurisdictions provide high privacy to the company owners as they require the owner’s consent for the public to obtain shareholder’s information.

In addition, we have seen cases whereby there are significant cash withdrawals from bank accounts before or during a divorce proceeding. In *CSY v CPK* [2019] HKCU 3031, the wife challenged the husband about some cash withdrawals made shortly before separation and at a time when the wife had already threatened divorce. The cash withdrawals from the husband’s bank accounts totaled approximately HK\$4.4 million. The husband explained all cash withdrawals were foreign exchange services for his client but the judge found “it is hard to accept the scale of service involving millions of dollars.”

The level of assets in the matrimonial pool can change within a short period of time.

**Without a detailed look into one’s finances such as analyses of changes in assets, tracing of funds to a certain entity or trust, ultimate owner research, the true picture of the matrimonial assets which should be subject to asset divisions may not be revealed.**



## (3) Value investments and businesses

Valuation is often one of the most sought-after services in cases where ownership of business or investment is involved. In some cases, we are asked to value businesses that were disposed of in the past because a spouse has question about the consideration.

### More examples of valuation needs include

- **valuing assets believed to be misappropriated or transferred out of the matrimonial pool;**
- **quantifying past spending as a supporting proof for a maintenance application; and**
- **hypothetical valuation analysis for company or business based on certain add-on or adjustments allowed by the Courts.**

In *LYH v YHKB* [2022] HKFC 81, the husband sold the assets of a family company 4 months after the consent order for ancillary was made, without making full and frank disclosure to the wife. The deal was therefore not included in the valuation report for various family companies which are subject to asset division. The judge commented that “the wife “would not have accepted the methodology of valuating EEL and the E Group by assessing the net asset value as in the Tact Report”, and/or “would probably

not have agreed the settlement on her ancillary relief without making further discovery” on the negotiation with Avnet”.

## Investigation considerations

The discussion above is only a summary of commonly observed financial-related issues in divorce proceedings. A team of experienced accountants will be able to provide services in areas such as

- **fund flow analysis to identify a spouse’s spending pattern and tracing of possible dissipation of assets;**
- **review and analyse the company’s books and records to assess the value of the company and value of the parties’ interest.**
- **e-discovery services for recovering supporting documents that would be useful in assessing the parties’ true financial status.**

## Conclusion

With the new law coming into effect, parallel divorce proceedings in mainland China and Hong Kong for the same matrimonial cause of actions are believed to be more cost-effective. However, it is crucial to engage a valuation expert or investigation expert at an early stage, to assist the legal advisor and the party to identify areas to request for further disclosure, any traces of dissipated family assets and the valuation of the parties’ investment and businesses.

