



Child Support: What Do You Need to Know?

Produced in partnership with Alfred Ip of Hugill & Ip



Divorce is not uncommon in Hong Kong. Figures published in October 2019 by the Hong Kong Government's Census and Statistics Department stated that over 20,000 divorce decrees were issued in 2018. Regardless of the underlying reasons for divorce, it is stressful for all parties involved, but when children are involved, it complicates matters further.

The primary decision to be made with regards of children in the event of a divorce is care and control, which we previously discussed in our article [Family Focus Week: Custody of Children](#). Once that has been decided, custodial parents are entitled to claim financial support from the other parent.

How do I make a claim for child support?

Claims can be brought on behalf of children born within marriage under [section 5\(2\)](#) and [section 6\(1\)](#) of the [Matrimonial Proceedings and Property Ordinance \(Cap. 192\)](#) ("MPPO"), and children born out of wedlock under [section 10](#) of the [Guardianship of Minors Ordinance \(Cap. 13\)](#) ("GMO") for:

1. *A lump sum payment* – through a single payment or by instalments – for the purposes of:
 - a. immediate and non-recurring needs of minor children; and/or
 - b. enabling any liabilities or expenses reasonably incurred in maintaining the minor children before the making of the order to be met;
2. *Periodical payments* for the maintenance of the minor children, including education for a specified period;
3. *Secured periodical payments* for the maintenance of the minor children, including education for a specified period;
4. Transfer and settlement of property that the parent is entitled.

Can child maintenance orders be made before the divorce is finalised and granted?

Yes, the Court an order for a lump sum payment, periodical payments, or secured periodical payments may be made before, on, or after the granting of the decree of divorce, of nullity of marriage or of judicial separation. If the aforementioned proceedings are dismissed after the beginning of the trial, an order can be made immediately or within a reasonable period after the proceedings are dismissed.

Can stepchildren be included in child maintenance orders?

This will be dependent on the circumstances, but it is possible for financial provisions to be granted to include the maintenance of stepchildren, as orders for financial provisions are specified under [section 5 of the MPPO](#) are made "for the benefit of a child of the family."

The Court considered the issue of who constitutes a “child of the family” in *LNL v HPYA* [2016] HKLRD 261. The term “child of the family” is [defined in the MPPPO](#) under two limbs:

- a. a child of both those parties
- b. any other child who has been treated by both parties as a child of their family
with the second definition being relevant in LNL.

The child, “CH” was the natural child of the wife, whose relationship with CH’s natural father ended in 2003. Subsequently in 2006, the wife began a relationship with the husband, and the two married in 2013. The husband filed for divorce in 2014, pleading that there was “*no child of the family now living,*” which was disputed by the wife, maintaining that CH had been treated as a child of the family.

The Court considered several major factors to decide whether CH was treated as a child of the family:

1. husband referring to CH as his son;
2. husband suggesting a change in CH’s name to adopt the husband’s surname, and second character to be changed according to genealogy of the husband’s family both before and after the marriage of the couple;
3. CH’s school handbook signed by the husband on many occasions, suggested the “*logical conclusion*” to the Court that “*the husband actually saw himself as a parent of CH and that he treated CH as his own child*”;
4. CH was listed as a child of the family in the husband’s Form E - which is the standard form used in Hong Kong in relation to financial disclosure of the parties for the Family Court to decide on ancillary relief - during a previous divorce proceeding (withdrawn) brought by the wife;

The Court also accepted, among other considerations, the wife’s submission that the husband’s payment to her for rent and household expenses and to CH for pocket money indicated the husband had taken parental responsibility.

Ultimately, the Court found that CH was treated by both parties as a child of the family.

In such cases, under [section 7 of the MPPPO](#), the Court is also obligated to have regard to the circumstances of the case in addition to the following factors:

- a. whether the party had assumed any responsibility for the child’s maintenance and, if so, to the extent to which, and the bias upon which, that party assumed such responsibility and to the length of time for which that party discharged such responsibility;
- b. whether in assuming and discharging such responsibility that party did so knowing that the child was not his or her own;
- c. whether any other person has the liability to maintain the child.

What factors do the Courts consider in assessing provision of child support?

Each case is unique for assessing child support. [Section 7 of the MPPPO](#) obliges the Court to place the child, as far as practicably possible, in the financial position which the child would have been in had the marriage not broken down, and each of the parties had properly discharged their financial obligations and responsibilities towards the child. The Court will consider the following matters:

- ◆ the financial needs of the child
- ◆ the income, earning capacity (if any), property and other financial resources of the child;
- ◆ any physical or mental disability of the child;
- ◆ the standard of living enjoyed by the family before the breakdown of the marriage;
- ◆ the manner in which the child was being and in which the parties to the marriage expected him to be educated.

When can a parent cease paying child support?

Financial provision for a child ceases when the child attains the age of 18 years. However, there are certain circumstances which allow financial maintenance to continue once the child reaches the age of 18 years:

- ◆ if the child is or will be receiving instruction at an educational establishment;
- ◆ if the child will be undergoing training for a trade, profession or vocation;
- ◆ if special circumstances (such as disability) which can justify the order.

Any orders for payment will also cease to have effect if the parent liable to make payments dies – except the arrears due under the order on the date of his/her death will still need to be paid by the estate – unless the maintenance agreement provides for the continuation of payments after their death.

What can be done if the party responsible fails or refuses to make payments?

If the parent responsible for making maintenance payments fails or refuses to pay, you can apply for a judgement summons. The Court will summon your (ex) spouse to reveal his or her financial strength to settle arrears. If the payor is found to have willfully refused to pay or disposed of assets to avoid payment, [rule 87 of the Matrimonial Causes Rules \(Cap. 179A\)](#) empowers the Courts to commit the payor to prison. The payor may also be committed to prison if they fail to attend an adjourned hearing. However, the Court cautioned in *X v Y* [2002] HKEC 823 that an order of commitment should be a last resort and reserved for a payor who has shown “contumelious disregard” to a maintenance order.

Under [section 28 of the MPPO](#), the Court may also attach the income of the payor to the whole sum or part of the amount payable under the maintenance order given that:

1. the Court is satisfied the payor has failed to make a payment required under a maintenance order without reasonable excuse; or
2. the Court is satisfied that there are reasonable grounds to believe that the payor will not make full and punctual payment in compliance with the maintenance order; or
3. the payor and the designated payee agree to the making of an order.

The amount attached will be paid directly from the payor’s employer to the named payee on the order. If you are afraid that your (ex) spouse will leave Hong Kong to avoid paying maintenance orders, it is possible to apply *ex-parte* (an application made unilaterally by one of the parties only) for an order to prevent your (ex) spouse from leaving Hong Kong pending recovery of arrears.

Additionally, the named payee of the maintenance order is also entitled to interest if they accrue on or after 1 May 2005; if the payor believe there is reasonable grounds not to pay interest, he or she may apply by summons (within reasonable time) to not pay the interest. You should pursue any outstanding payments as soon as practicably possible because the Court may refuse to enforce an order of payment due more than 12 months before application for a judgement summons.

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A qualified solicitor in Hong Kong since 2000, Alfred's speciality is dispute resolution, an area in which he is ranked by Chambers & Partners Asia Pacific as a 'Leading Individual'. Until recently he was partner in the Dispute Resolutions team and head of Private Client at a leading Hong Kong law firm.

Alfred is skilled in helping individuals and their families manage personal and wealth-related matters, including trust and probate (both contentious and non-contentious), family office, and mental capacity issues.

He is vastly experienced in all areas of probate and can help clients with estate planning, ranging from the proper drafting of a will to constructing complicated trusts, airtight from any potential perils.

Alfred is appointed by court as an administrator in estate disputes, and advises professional administrators on legal aspects of estate administration, both in Hong Kong and internationally.

In contentious cases, he acts for clients in probate actions, ranging from propounding the Will to having an executor removed. For clients requiring help in estate administration problems such as declaratory relief or disclosure of account, Alfred will apply to Court for the necessary directions and orders.

Alfred's professional skills are enhanced by his membership of the Society of Trust and Estate Practitioners ("TEP"), and of the Chartered Institute of Arbitrators. He is a CEDR accredited Mediator and a Notary Public.

In 2012, he won the Law Society of Hong Kong's Gold Award for services to the community for his pro bono initiative, "FreeWill", and he has received several pro bono service awards since.

In addition to his Private Client practice, Alfred has 20 years of experience in commercial litigation and dispute resolution. Moreover, he helps clients with issues regarding family law.

In March 2017, Alfred was appointed to sit as a Deputy District Judge.

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