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The 2007 Hague Convention from an Asian perspective and enforcing maintenance decisions in Hong Kong

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Current situation in Hong Kong, China

- UN Convention on the Recovery Abroad of Maintenance 1956, the 1958 Hague Convention relating to Maintenance Obligations or the 1973 Hague Convention relating to Maintenance Obligations are NOT applicable
- The old “Commonwealth Scheme” continues to be applicable

Before 1 July 1997

- Reciprocating domestic legislation among the Commonwealth jurisdictions
- *Maintenance Orders (Reciprocal Enforcement) Ordinance* (Chapter 188 of the Laws of Hong Kong)

Since 1 July 1997

- Reciprocity maintained with jurisdictions which continues to accord similar benefits to maintenance orders from Hong Kong SAR
- No additional jurisdiction has been designated

Legislative framework under the Ordinance

- "maintenance order" of a reciprocating country can be registered at the District Court and enforced as if it is an order made by the District Court
- "provisional order" may be made against a person in a reciprocating country in certain circumstances or to vary a "maintenance order" but both are subject to confirmation by the reciprocating country
- Department of Justice acts on behalf of the Registrar who in turn represents the interest of the recipient of the maintenance order

Designated Jurisdictions

- For maintenance orders generally: United Kingdom, Bermuda, Manitoba, Saskatchewan, Ontario, Isle of Man
- For maintenance orders other than affiliation orders: The Commonwealth of Australia and its territories, Brunei, British Columbia, Malaysia, New Zealand, Singapore, The Solomon Islands, South Africa, Sri Lanka

Limited number of cases (2000-2012)

- Outgoing cases
2001-2004, 2006, 2011 : Nil
4 cases to the UK from 2005-2008
2 cases to Singapore from 2005-2010
2 cases to Australia from 2009-2012
- Incoming cases
31 cases from Canada from 2000-2012
23 Cases from the UK from 2000-2012
6 cases from Singapore from 2003-2010
2011: Nil

Usefulness of the 2007 Hague Convention for the Asia Pacific (1)

Administrative Co-operation:

- Current difficulties: language barriers, frequency of movement and the frequent need for variations
- Chapter II provides for an effective and efficient administrative cooperation mechanism, with mostly free services

Usefulness of the 2007 Hague Convention for the Asia Pacific (2)

Effective Access to Procedures:

- Current difficulties: financial obstacles, especially for creditors in developing countries
- Chapter III provides for a simplified and speedy system for processing applications
- Provision of free legal assistance subject to a limited exception for countries not yet ready to provide free legal assistance in all cases

Usefulness of the 2007 Hague Convention for the Asia Pacific (3)

Recognition and Enforcement:

- Current difficulties: no uniform regional instrument, different forms of maintenance decisions, different jurisdictional rules and grounds for refusal
- Chapter IV resolves most of these difficulties by a comprehensive coverage of maintenance decisions, jurisdictional filters and common grounds of refusal

Usefulness of the 2007 Hague Convention for the Asia Pacific (4)

Application to Public Bodies:

- Current difficulties: Substantial costs to public bodies for benefits in place of maintenance but no effective means for recovery from the debtors
- Chapter VII provides for the rules for seeking reimbursement by public bodies as applicants

Some challenges under the 2007 Hague Convention

- Finding a competent authority that is capable of discharging the wide range of functions required by the Convention and putting in place necessary legislation to discharge the functions
- Financial burden for providing free legal assistance
- Compatibility of the mechanism under the Convention with internal law

Conclusion

Fourth Asia Pacific Regional Conference of the Hague Conference on Private International Law (Manila, 2011) “Recognized the importance of the Convention and its Protocol ... and encouraged States in the Region to become Contracting States to the Convention and its Protocol; and Acknowledged the role of the Convention in inviting reforms to domestic systems for the recovery of child support and other forms of family maintenance in the Region”

End

Thank you!

