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Booklet on Divorce & Maintenance

離婚及贍養費錦囊



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This booklet is for general reference purposes only;
*** and is not intended to be a comprehensive and authoritative ***
statement of the law or of the practice of the courts

Preface

Divorce is one of the greatest challenges in life. Apart from facing divorce trauma, both divorcing parties have to deal with matters such as maintenance and financial arrangements (called ancillary relief in HK legal jargon), child care and visitation arrangements, etc. If these matters are not dealt with properly or are dealt with through litigious court proceedings, the entire family may be plunged into conflict and chaos. This subjects both parties to even greater mental anguish and distress, and may even drag children into the vortex of parental conflict, affecting their psychological, emotional, and long-term development.

In light of this, we have compiled this booklet for families facing divorce with the following objectives in mind:

1. To help parents facing divorce prepare themselves and assist their children in adapting to changes in the family;
2. To enhance the understanding of divorce couples on the legal responsibilities and rights of divorce, as well as the services and resources related to divorce, so as to enhance their ability to handle divorce;
3. To encourage divorcing couples to prioritize the interests of their children and handle divorce matters in a harmonious and rational manner. In case of disagreement, they should seek mediation first and try to avoid litigation as much as possible, in order to maintain a cooperative partnership as parents and experience the commitment of parental love towards their children.

Mediation Centre
Hong Kong Family Welfare Society



Ways to help children adjust to their parents' divorce



1 Helping children to understand the reality of their parents' divorce

Younger children may not fully understand what divorce means. They may sometimes deny the reality, fantasizing about their parents reuniting or even giving up on the possibility of their parents reconciling. At this time, talking to your children about the reasons for divorce, such as extramarital affairs, debts, sexual inconsistency, etc., can be far more confusing and hurtful to them than helpful. Commenting on the other person's mistakes in front of the child will also form a psychological burden on the child. Parents should explain divorce to their children in age-appropriate terms, and directly stating that the parents are separating because they are unhappy living with each other. Children need emotional support from their parents and should be encouraged to express their doubts and feelings about family changes. Most children can come to terms with this reality within a year after their parents' divorce.

2 Informing children of parents' plans

When children learn that their parents will no longer live together, they may fear losing the love and care of one parent and the familiar family structure and daily routines. Therefore, parents should clearly, simply, and directly inform children about the future arrangements in their lives, such as living arrangements, caregiving, visitation schedules, schooling, etc., reassuring children that they will not be abandoned and that their parents still love them.

3 Encouraging children to keep in touch with the non-resident parent

Both parents should maintain close contact with their children and encourage them to maintain a good relationship with the other parent. Parents should also respect each other and avoid arguing in front of their children, allowing them to love and respect both mom and dad simultaneously.

4 Facilitating opportunities for children to talk with parents

When children understand their future plans, they should be given the opportunity to have a dialogue with their parents. Parents need to listen to their children's voices, understand their feelings, and affirm their parents' love for them.

5 Addressing children's feelings of anger and self-blame

Children may find it difficult to understand why their parents are divorcing. They may not want to blame either parent or may even believe they are to blame for their parents' divorce. Parents must help children understand that this is a decision made by adults and is irreversible. A peaceful separation between parents can help children reduce feelings of anger and self-blame, enabling them to accept and forgive both their parents and themselves, and making them feel empowered in life.

6 Avoiding involving children in parental conflicts

Asking children to choose sides, to relay messages between parents, or to spy on the other parent can increase children's anxiety and stress, greatly affecting their emotions, learning, social interactions, and overall adaptation to life and the future. Parents should communicate directly regarding parenting matters, avoiding involving third parties, and especially should not use children as "messengers" to relay messages to the other parent.

Parents should establish effective communication patterns and control their emotions and choice of words, treating each other with courtesy and mutual respect. While parents may not necessarily become friends after divorce, they will always be the parents of their children. If both parties can cooperate in raising their children and rebuild a cooperative "partnership," it will undoubtedly be of great help to the children.

7 Maintaining children's current living conditions as much as possible

Parents should allow children to continue attending their current school and try to maintain their existing social networks, caregivers, living environment, daily routines, etc. If changes are inevitable, parents should explain the changes and arrangements to their children in advance, allowing them sufficient time to adapt to the transition.





Divorce applications

1 Conditions prior to applying for divorce

Unless approved by the court, a petition for divorce can only be filed after at least one year of marriage.

2 How to apply for divorce

In the case of a unilateral application (i.e. ex-parte petition), the petitioner (i.e. the applicant) is required to complete a Petition for Divorce form and submit it in person to the Family Court Registry.

If both parties agree to jointly file for divorce, the co-applicants (i.e. both parties) must prove to the court that they have been separated for at least 1 consecutive year and complete a joint application form and submit it in person to the Family Court Registry.

3 Divorce grounds

The petitioner must prove that he/she has reason (or basis) for finding that the marriage has come to an end, i.e. what the court calls "the marriage has broken down irretrievably".

(a) In the case of a unilateral application (i.e. ex-parte petition), the court will admit as evidence one or more of the following facts:

- The other spouse had committed adultery and the petitioner finds it intolerable to live with the spouse;
- The petitioner cannot reasonably be expected to live with the spouse because of his/her conduct;
- Before filing for divorce, the petitioner and spouse have lived separately for at least one continuous year and the spouse has consented to the divorce;
- Before filing for divorce, the petitioner and spouse have lived separately for at least two consecutive years (in which case the spouse's consent to divorce is not required);
- Before filing for divorce, the petitioner has been abandoned by the spouse for at least one continuous year.

(b) In the case of a joint application, both parties must prove to the court that they have lived separately for at least one continuous year prior to the divorce application.

4 How to obtain a divorce petition form

You can: (a) Obtain the petition form in person at the Family Court Registry at the following address: M2, Wanchai Law Courts, Wanchai Tower, 12 Harbour Road, Wan Chai, Hong Kong

(b) Download the required petition form from the Judiciary's website at: (Court Services & Facilities > Forms > Family Court)



Each different ground for divorce requires a different divorce application/petition form. Therefore, before obtaining a form, it is important to consider the particular divorce ground relied upon in the divorce application/petition.

Forms required for divorce application

Applicable Forms	Joint application	Unilateral applications (i.e. Ex-parte petitions)				
	Separated for 1 year	Adultery by spouse	Unreasonable to live with spouse's behavior	Separated for 1 year	Separated for 2 years	Abandoned by spouse
Form 2: Divorce petition		✓ (Adultery)	✓ (Behavior)	✓ (Consent one year)	✓ (2 years separation)	✓ (Desertion)
Form 2B: Statement as to arrangement for children		✓	✓	✓	✓	✓
Form 2C: Joint application	✓					
Form 2D: Statement as to arrangement for children	✓					
Form 3: Notice of proceedings		✓	✓	✓	✓	✓
Form 4: Acknowledgment of service		✓	✓	✓	✓	✓
Family mediation certificate	✓	✓	✓	✓	✓	✓

*Please note: The original or a sealed copy of the marriage certificate and the application form must be submitted to the Family Court Registry.

Divorce decision-making

Divorce procedure (Joint application)

Married for at least one year (except with court approval)



Submit a joint application to the court

- Apply to the Family Court on your own or
- Represented by a lawyer



Listing for hearings

If the court finds that the applicant has provided sufficient evidence regarding the contents of the application form, it will issue a certificate and file it. Both parties will receive a copy, which will outline the terms they have agreed upon. The litigants do not need to attend the hearing, and the court will issue a decree nisi.



Decree Nisi issuance (i.e. temporary divorce order)

Six weeks after the issuance of the decree nisi, the completed "Notice of Application for Decree Nisi to be Made Absolute (Joint Application)" (Form 5A) is submitted to file in the court applying to make the decree nisi absolute, formally terminating the marriage relationship between both parties.



Decree Absolute issuance (i.e. final divorce order)

The court must be satisfied that satisfactory arrangements have been made for the welfare of the children of the family.



*** The above procedure assumes no disputes between the joint applicants regarding custody and visitation arrangements for children and financial arrangements. ***

Divorce decision-making

Divorce procedure

(Unilateral, i.e. ex-parte, application)

Married for at least one year
(except with court approval)



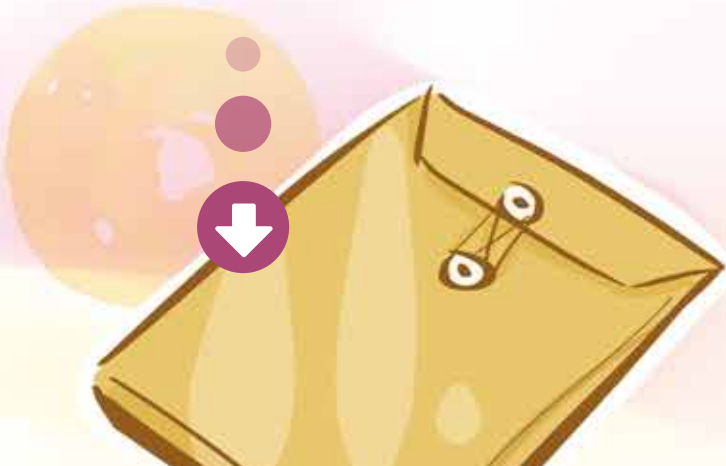
Filing a petition for divorce with the court

- Apply to the Family Court on your own or
- Represented by a lawyer or
- Apply to the Legal Aid Department for assistance



Confirmation of delivery of documents

1. Petitioner to serve a sealed copy of the petition on the respondent through a third party or by post
2. The Respondent is required to submit an acknowledgement of service (Form 4) to the Court within eight days



Listing for Hearing

(relating to child custody arrangements, access arrangements, financial arrangements, etc.)

〈Lack of consensus on financial arrangements〉

- Submission of Financial Statement (Form E)
- First appointment
- Financial Dispute Resolution Hearings (presided over by a Master or Judge of the Family Court)

〈Lack of consensus on child custody and access arrangements〉

- The court will instruct the Social Welfare Department to prepare a Social Investigation Report
- Submission of Children's Form (Form J)
- An appointment is made for the Children's Dispute Resolution Hearing
- Children's Dispute Resolution Hearing (to be presided over by a Master or Judge of the Family Court)



Decree Nisi issuance (i.e. temporary divorce order)

Six weeks after the issuance of the decree nisi, the completed "Notice of Application for Decree Nisi to be Made Absolute (Petition)" (Form 5) is submitted to file in the court applying to make the decree nisi absolute, formally terminating the marriage relationship between both parties.



Decree Absolute issuance (i.e. final divorce order)

The court must be satisfied that satisfactory arrangements have been made for the welfare of the children of the family.

Divorce applications: Q&A

1 What is separation, and is living in the same house with the other spouse considered as separation?

Separation can mean that one of the spouses moves out, or still lives in the same house, but both parties must sleep in separate rooms, have no intimacy, not eating together, no social life together, and resembling two separate households.



2 How long does the divorce process take?

If both parties agree, it usually takes about 7-9 months. If there are disputes, it may take 1-2 years or more, depending on the complexity of the case.



3 Do I have to hire a lawyer for divorce?

Not necessarily. Divorced persons can apply for divorce by themselves by obtaining an application form from the Family Court Registry. Legal advice should be sought before filing a petition or application. The petitioner/applicant should consider seeking legal assistance in the following situations:

- (a) The spouse does not agree to the divorce;
- (b) The parties cannot reach an agreement on the children or financial arrangements.



4 How can I reduce the legal costs required for divorce?

Accepting family mediation service to help both parties reach an agreement on divorce issues can greatly reduce the cost of divorce proceedings, shorten the time of the entire divorce process and reduce the pressure of litigation.

5 Do I have to go to court for a divorce?

According to current court procedure, if there is no dispute between the parties and the judge has no special direction, (for example, if the parties receive family mediation service, complete the divorce agreement with the assistance of the mediator, and apply to the court for divorce with the agreement), and if the judge is satisfied with the content of the agreement, it is likely that only internal court approval is required without a court hearing, and both parties will be granted a divorce; on the other hand, if there are disputes, a court appearance is necessary.

Children custody & access arrangements

1 Custody

Custody rights refer to the authority exercised by parents in raising their children, including making important decisions for them, such as choosing schools, religion, medical care, talent development plans, etc., to safeguard and promote the health, development, and general welfare of the children. Parents vested with custody rights have the responsibility to act as legal representatives for their children. Custody orders are generally categorized as:

(a) Sole custody

The parent with sole custody can make important decisions for the children, but should consult the other party on important children matters.

(b) Joint custody

Both parties have custody at the same time, and both parties must jointly negotiate and make important decisions for their children.

The court will usually consider making an order for joint custody and assume that the parents are able to make reasonable decisions jointly for the children and are able to cooperate with each other in important matters of children's upbringing.



2 Care and control

That is, the various kinds of care and discipline of the parent in the daily life of the children to protect the children from harm. To facilitate the care of the children, the parent residing with the children is usually given care and control.

3 Access (child visitation)

Refers to the right of children to maintain contact with a parent who is not living together. Orders for access are generally divided into:

(a) Reasonable access

Parents can negotiate a reasonable time and place of visitation for more flexibility.

(b) Defined access

The frequency, time and place of visits to the children are specified in the court order.

(c) Supervised access

The non-resident parent must be supervised by the resident-parent, a relative or a third party (e.g. a social worker) when visiting the children.



Children custody: Q&A

1 If the parties decide to divorce, how should they decide on children custody arrangements?

The court must prioritize the best interests of minor children as its paramount consideration, which includes considering the following factors:



(a) Children welfare

- The physical, emotional, and educational needs of the child
- Whether the parent or carer can properly take care of the child's needs
- The relationship between the child and the parents
- The age and gender of the child
- Sibling unity
- Cultural, religious background and other special circumstances relating to the child
- Harm or risk of harm to the child
- Possible impacts due to environmental changes
- Parent's physical or psychological disability or illness
- The personality and character of the parents

(b) The child's wishes (taking into account his/her age and understanding)

2 What if the parties cannot reach an agreement on custody and access arrangements for the children?

The court will direct the Social Welfare Department to prepare a social investigation report on the family background, past children care situations, the current situation of each family member, and the views of the parents/children/other interested parties on the custody and access arrangements, etc.. Meanwhile, the court may also encourage the parties to accept family mediation service to facilitate reaching a consensus on children arrangements.

The judge will make orders on children custody and access arrangements based on the investigation report and other relevant evidence. Ideally, the parties should first discuss the interests of the children through family mediation and determine the proper custody of the children, care arrangements, and arrangements for the time for them to spend time with the children, so as to alleviate the negative impact of the dispute on the children.

Maintenance and division of property

1 Types of Maintenance

It can be divided into two types: 〈a〉 for children; and 〈b〉 for spouse.

2 Method of payment of maintenance

- (a) One-time lump sum payment
- (b) Lump sum payment by installments
- (c) Periodic payments
- (d) Lump sum and periodic payments, etc.

3 Factors considered by the court when dealing with spousal maintenance and division of property

If an agreement is reached through mediation and submitted to court, the judge is likely to issue an order in accordance with the agreement between the parties if the terms of the agreement are considered reasonable.

If the parties cannot reach an agreement, they will have to go through financial dispute resolution process; and to disclose all assets, income and expenditure to the court. The court will then generally consider the following matters to determine the arrangement and amount of spousal maintenance:

- (a) The earning capacity and assets owned by both parties
- (b) Financial needs and burdens of both parties
- (c) Standard of living before the marriage broke up
- (d) Age of both parties and length of marriage
- (e) Mental or physical health condition
- (f) Contribution of both parties to the welfare of the family
- (g) Benefits lost by both parties due to divorce

4 Factors considered by the court when dealing with child maintenance

The ultimate goal of the court in dealing with child maintenance is to ensure fairness to all parties, and in particular, to ensure the well-being of the family's children is protected. If the parties cannot reach an agreement, they have to undergo financial dispute resolution process for the court to make an order. Taking into account the earning capacity and assets, as well as the financial needs and burdens of both parties, the court will normally consider the following matters to determine the arrangement and amount of child maintenance:

- (a) Financial needs of the child
- (b) The earning capacity and assets of the child
- (c) The mental or physical health of the child
- (d) The standard of living of the family before the breakdown of the marriage
- (e) The manner in which the child was being and in which the parties expect the child to be educated



Maintenance Q&A



1 Under what circumstances can maintenance be applied for?

- (a) Divorce
- (b) Separation
- (c) Not divorced but the other party fails to provide financial support

If there is genuine need, during the divorce application, you may apply to the court for maintenance while the proceeding is pending determination, that is, maintenance pending suit in case of divorce. At the same time, you may engage family mediation service at the above different stages to try to negotiate and reach a consensus on maintenance.

2 If I am eligible to apply for maintenance but choose not to apply for maintenance; but apply for Comprehensive Social Security Assistance, is it okay?

The Social Welfare Department will require an applicant to first seek maintenance from the ex-spouse, and consider applying for government assistance only if difficulties are encountered.

3 If I give up applying for maintenance, may I apply again in the future?

For the ex-spouse's application for maintenance, the application can only be made with the consent of the court. If the maintenance order has stated there is a "clean break" arrangement, you will not be able to claim maintenance from the other party in the future. As for the children, even if no request for child support is made to the other party before the divorce, the court will still deal with such application made in the future.

4 How long do I have to pay maintenance to my ex-spouse?

If the person receiving maintenance remarries, or either party dies, the maintenance payer is no longer required to pay.

5 In addition to maintenance, may I propose to divide property?

Yes, if both parties cannot reach an agreement on maintenance and division of property, they may apply to court for an order on maintenance and division of property. If mediation fails and litigation is required, both parties must disclose to the court all the assets they own (including solely owned, jointly owned, Hong Kong and overseas properties) for the court's consideration.

6 What is nominal one dollar maintenance?

If one party does not have enough assets and income to pay actual maintenance to the other party when the two parties are divorced, the court might issue a nominal maintenance order requiring one party to pay the other party a nominal maintenance of one dollar per year. The maintenance payee may retain the right to claim maintenance in the future. If the financial situation of the party paying maintenance improves in the future, the maintenance payee may apply to the court for variation of the maintenance order.



Maintenance Q&A

7 How long does child maintenance normally required to be paid?

Spousal maintenance and property distribution do not include child maintenance. The court will separately award child maintenance until the child reaches the age of 18 or completes full-time education, whichever is the later, or until special circumstances arise justifying the court to make orders on ancillary relief.

8 When the financial burden of the payee increases, can the payer be required to increase the maintenance?


You may first seek family mediation service to discuss and reach an agreement for varying the maintenance, and to apply to court for a variation order on the terms of the agreement. If the parties cannot reach an agreement, you may consider filing an application to the court, but the payee must provide sufficient justification. The court will consider granting a variation order having regard to all the circumstances of the case, including any changes in any matter, such as illness, disability, unemployment or increase in living expenses of the child, etc.

9 What should I do if the payer has insufficient income or is unable to pay maintenance?

You may first seek family mediation service to discuss and agree for varying the maintenance, and apply to the court for a variation order on the terms of the agreement. If the parties cannot reach an agreement, you may consider filing an application to the court, but the payer must provide sufficient justification, as in the case of the previous paragraph.



10 What should the payee do if the payer does not pay maintenance?

- (a) Apply for a judgment summons requiring the payer to appear in court to explain
 - If the court accepts the payer's explanation, the maintenance order may be varied.
 - If the court does not accept the payer's explanation, the court may sentence the payer to imprisonment, or while suspending the order of committal, order the payer to pay the amount owed. If he/she fails to comply, he/she may be sentenced to imprisonment.
- (b) Apply for an Attachment of Income Order requiring the payer's employer to pay the payee's maintenance direct from the payer's wages. The court may also consider requiring the payer to pay the interest on the arrears and/or the surcharge on the arrears. For details (including the conditions for applying for interest and surcharge, the method of calculation, relevant legal procedures and reasons for refusal to pay, etc.), please refer to the Home and Youth Affairs Bureau's webpage on "Interest and surcharge on arrears of maintenance".
- (c) Depending on the assets owned by the payer, the payee may also consider applying to the court to freeze the payer's bank account, or for a charging order on property etc.

11 If the other party does not allow me to visit my children, may I withhold payment of maintenance? Furthermore, if he/she accuses me of not paying maintenance, can I sue him/her of not allowing me to meet my children?

- Maintenance and child access arrangements should be dealt with separately. Both parents have the responsibility to provide for their children regardless of whether they have access to them. On the other hand, regardless of whether maintenance is paid or not, the parent living with the child should also allow the child to have reasonable chance to meet with the non-resident parent, so that the child can enjoy the love and care of the parents.

Tips for the payer

- 1 You must try your best to pay on time. If you have any difficulties, discuss with the payee as early as possible; avoid losing contact or blocking communication due to face-saving or wishing to make up the outstanding amount later in one go. This can be very confusing for the child and the payee. If the payer has the courage to face difficulties, the child will learn from the parents' courage in adversity and have respect for them. Please do not avoid meeting your child because you cannot afford to pay maintenance, as what your child needs is the love of the parents.
- 2 Do not give your child too many material things as means for compensation or bonding. This will only cause your child to become materialistic and unruly in behaviour.
- 3 If you doubt about the payee's use of money for your child, discuss with the payee as soon as possible. Direct payment of living expenses for the child is one possible method.
- 4 If it is difficult to reconcile with the payee on maintenance, do not stop paying maintenance as the child will be harmed most. If you encounter difficulties, you can use family mediation service to reach an agreement to vary the maintenance.



Tips for the payee

- 1 Do not ask your child to recover maintenance from the payer when encountering such issues, nor should you argue on maintenance or speak ill of the payer in the presence of your child. However, payee may share with the child about the financial pressure of the family and guide the child to learn how to manage money properly, which is very helpful for the child to learn to face adversity.
- 2 Do not deny the payer access to your child even if maintenance from the payer is not received. The payer's failure to fulfil promise will make the payee angry and disappointed, but it is not advisable to cut off or obstruct the payer's contact with the child as punishment. The child will only perceive violence being met with violence, and the beloved child of the parties will in fact be the one harmed most.
- 3 Sharing the use of maintenance for the child with the payer from time to time might effectively alleviate the payer's concerns and disputes about the use of maintenance. This will help the other party to continue to provide maintenance.
- 4 Family mediation service can be used if the payer is in arrears of maintenance payments. If the payer is unwilling, the payee can apply to the court to require the payer to pay the arrears in maintenance and related costs to the payee.



Maintenance and property arrangements

How to work out on post-divorce maintenance arrangements?

The following general principles are worth considering when formulating maintenance:

- Live within one's means, broaden sources of income and reduce expenditure
- Take into account the needs of all members of the family
- Splitting one family into two is likely to result in an increase in overall expenses. If resources are limited, members of the family might have to work together to adjust the standard of living downwards
- Distinguish between "needs" and "wants" before spending money
- Consider making periodic reviews and adjustments in the future



The first step for frank negotiation is for parties to have clear understanding of each other's financial situation. Thus, please sort out your financial information clearly so that everyone can understand the income and expenses of each family member before negotiation to make it easier to find a mutually acceptable solution on maintenance. You may refer to the following example on the method of organizing financial information of the father or mother (caregiver – who adopts the major role of childcare) (The following figures are merely examples, so each family condition may vary a lot):

1. Financial revenue and expenditure

Income	Monthly average
Monthly salary (if unstable, the average monthly salary over the past year)	\$25,000
Total annual income of father/mother: \$300,000 ÷ 12	
Double pay and bonus (total ÷12) \$15,000 ÷ 12	\$1,250
Interest on loans	
Rental income	
Comprehensive Social Security Assistance Income	
Other income (please specify:)	
Average gross monthly income	\$26,250

2. Estimated expenses (monthly calculation)

Approximate estimates of expenditures for the following items can be made based on past experience, or projected future conditions.

	Father / Mother (Caregiver)	Children (e.g. one child)
Property instalments /rent (rent \$10,000) Average expenses for self and daughter	\$5,000	\$5,000
Rates and government rent	0	0
Management fee	0	0
Water, electricity, gas, telephone bills, internet charges	\$400	\$400
Household supplies and miscellaneous expenses	\$250	\$250
Meals	\$3,000	\$2,500
Clothing (including school uniform), personal grooming	\$500	\$300
Transportation	\$1,000	\$400
Medical expenses (including medical insurance)	\$500	\$600
Insurance premium	\$1,000	
Mandatory Provident Fund / Provident Fund	\$1,000	
Taxes (required monthly reserves)	\$1,000	
Entertainment	\$500	\$500
Favor/Gift	\$500	
Dependent parents	\$2,000	
Tuition fee/further education fee/tutorial fee		\$2,000
Books and stationery		\$500
Children's pocket money		\$500
Extracurricular activities fees		\$1,000
Childcare fees/domestic helpers (including foreign domestic helper tax, airfare, insurance, etc.)		
Others:		
Total monthly expenses	\$16,650	\$13,950
Monthly balance (total income - total expenses)	\$26,250 - \$30,600 (i.e. \$16,650 + \$13,950) = - \$4,350	

From the above table, we note the current monthly expenditure of the father or mother (caregiver) for the child is \$13,950 and he/she has a monthly deficit of about \$4,350. The father or mother (caregiver) can discuss with the other party on how to share the child's and his/her own living expenses, and decide on an amount of maintenance acceptable to both parties, taking into account the needs of both parties and the child.

Disputes and mediation

If separated/divorced persons take matters on custody, maintenance, property distribution, etc. to the court, apart from having to bear unpredictable time, mental and financial losses, parties in the lawsuit might have greater hostility and mutual hatred towards each other. This makes it more difficult for parties to co-operate in child rearing.

In fact, most disputes can be resolved through mediation. Experience has showed that to reach a consensus is the best way to resolve disputes over child custody and visitation, maintenance and division of property for divorced couples. Through family mediation service, both parties can discuss various post-divorce/separation arrangements harmoniously and rationally, with the focus on the interests of the children. It is also hoped that parents will jointly shoulder the responsibility of taking care of their children in a co-operative manner and be their parents forever.

During the mediation process, the family mediator will assist the parties in a neutral and impartial manner to assist both parties in the confidential process:

- Discuss the respective needs and concerns of both parties
- Identify the disputes/matters that need to be discussed between the parties
- Search for various feasible options and choose the most suitable solution
- Draw up a legally binding agreement. After signing, the parties may apply to the Family Court for an order based on the terms of the agreement

Family Mediation Practice Direction PD 15.10 (Effective May 2012)

- Courts at all levels are now actively promoting family mediation
- Regardless of whether a lawyer is engaged or the divorce is handled on one's own, the party (including the petitioner, respondent or co-applicant) must complete a "Family Mediation Certificate" to express his/her willingness to accept mediation services, and submit it to the Family Court Registry for filing
- The court may make an adverse costs order against a party who has not participated in mediation without reasonable excuse



Family mediation Q&A

1 When should family mediation service start?

Family mediation service can be commenced at any stage before or during divorce proceedings and there is no need to stop the relevant legal proceedings.

2 What is the difference between receiving and not receiving family mediation service?

Family mediation service can help both parties reach an agreement on issues such as child care (custody and visitation), maintenance, property arrangements, etc. after divorce. The advantages of receiving this service include:

- Greatly reduce the time and mental pressure on both parties caused by litigation
- Save litigation fees
- Assist both parties in choosing the most appropriate solution having regard to the interests of the children and both parties, and
- Increase the motivation of each other to fulfil the agreement
- Reduce the pain of the children and both parties
- Promote continued cooperation in the parenting of the children

3 Is it necessary to engage a lawyer while receiving family mediation service?

When dealing with divorce, parties should seek legal advice as much as possible to protect their rights and interests. However, it is not necessary to undergo the divorce through a lawyer.



4 Can I apply for maintenance through family mediation service during divorce?

Yes. Both parties can make a maintenance agreement with the assistance of a mediator and implement it immediately during the divorce application.

5 If I have difficulty communicating with my spouse, can I accept family mediation service unilaterally?

Only if both parties agree to separate/divorce and are willing to attend the mediation interview together can they receive family mediation service. The parties need to inform the other party of their intention to separate/divorce and have contacted our Centre (you can provide the other party with service information such as leaflets or the website of the Mediation Centre www.mediationcentrehk.org). If the other party does not object, our Centre can contact him/her and invite him/her to accept this service. This can make the other party more psychologically prepared, and may be more willing to accept family mediation service.

6 Can the parties or the family mediator make the contents of the family mediation meeting public or present it to the court?

When both parties begin to receive family mediation service, the family mediator and both parties must sign a consent form promising to keep the discussions during the mediation process confidential, with the exception of the final settlement agreement. According to the confidentiality privilege of mediation, the contents discussed during the mediation process may not be used as evidence in court, so the legal rights of both parties are properly protected.

7 Is the mediated settlement agreement legally binding?

Once signed by both parties, the mediated settlement agreement becomes legally binding. If both parties agree, you can:

- (a) Submit the divorce application together with the mediated settlement agreement to the Family Court on your own, and apply to the court for an order in accordance with the terms of the agreement; or
- (b) Submit the mediated settlement agreement to the lawyer to apply for a court order in divorce on your behalf.

Family mediation, divorce services and related community resources

Mediation services and divorce services

Mediation Centre

1. Family Mediation Service

Objectives: To help separated / divorced persons to deal with their disputes in a peaceful and rational manner, and to reach a mutually acceptable and legally binding family mediated settlement agreement, so that the interests of both parties and their children will be taken into account and they can continue to co-operate in the upbringing and development of their children.

Enquiries Telephone: 2561 9229



2. Legal Consultation Services

2.1 Legal Seminar

- Provides legal knowledge on divorce:
 - (a) Divorce Procedures
 - (b) Custody
 - (c) Access
 - (d) Maintenance
 - (e) Division of Property
- Guidelines to help divorced couples and children adapt to life after divorce
- Introducing family mediation service - to help you reduce the time, money and psychological pressure caused by divorce.

2.2 Face-to-Face Legal Consultation Service

- Legal Consultation rendered by a lawyer
- To get legal information and preliminary advice on problems related to divorce, e.g. maintenance, child care, family assets, etc.
- Interview time: 20 minutes. Registration is required.

How to apply for legal consultation services:

Please fax or send the completed form to the organizing Centre. For details, please refer to service leaflets, contact Mediation Centre or visit the website <https://mediationcentrehk.org>



Family Resource Centre

Service Contents :

- Co-parenting education and counselling service
- Growth and therapeutic activities
- Mutual support groups for divorced couples and single parents
- Service for children adaption support, peer support and navigation service
- Legal consultation service related to divorce

Enquiries Telephone: 2465 6868



Jockey Club

‘Let Go and Let's Go’ Support Project for Divorce and Blended Families

Service Contents :

1 Recovery Work for Divorced Families with Children

- Therapeutic Support Services for Divorced and Blended Families
- Therapeutic Workshops / Groups for Parents
- Support Services for Grandparents from Divorced / Blended Families

2 Revamping Work for Remarried / Step / Blended Families

- Child-focused Coaching for Remarried and Blended Families
- Programme for Couple / Parents Preparing for Remarriage

3 Reconnect with the Community and Society



Enquiries: Project Helpline 8100 8020

Parent-child Connect Specialised Co-parenting Support Centre

Service Contents :

1 Service Helpline

2 Community Education Service

3 Support Services for Divorced Parents

- Child-focused Co-parenting' Education / Counselling and Coordination Services
- Child-focused Co-parenting Trainings / Workshops

4 Parent-child Contact Services

5 Children Counselling and Support Services

Service Hotline 8100 8883



Other community resources

1. The Specialised Co-parenting Support Centres

Districts Served	Name of Centre / Operator	Contact
Hong Kong Central & Western, Southern, Islands, Eastern and Wan Chai	The Hong Kong Catholic Marriage Advisory Council - KID First Specialised Co-parenting Support Centre (Hong Kong)	Tel : 2170 1788
Kowloon East Kwun Tong, Wong Tai Sin and Sai Kung	The Hong Kong Catholic Marriage Advisory Council - KID First Specialised Co-parenting Support Centre (Kowloon East)	Tel : 2170 4700
Kowloon West Kowloon City, Yau Tsim Mong, Sham Shui Po, Tsuen Wan and Kwai Tsing	Hong Kong Family Welfare Society - Parent-child Connect Specialised Co-parenting Support Centre	Tel : 8100 8883
New Territories East Shatin, Tai Po and North District	The Boys' and Girls' Clubs Association of Hong Kong - "Parent-child LINK" Specialised Co-parenting Support Centre	Tel : 2180 6559
New Territories West Yuen Long and Tuen Mun	St. James' Settlement - Circle of Love Specialised Co-parenting Support Centre	Tel: 3921 3909

2. Family Court Registry

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

Tel : 2840 1218



E-appointment system

Unrepresented litigants can make an appointment
online through the electronic appointment system to
submit a divorce petition or joint application to the
Family Court Registry.



3. Legal Aid Department

24 Hour Hotline (Telephone: 2537 7677)

HK Island office : 25/F, Queensway Government Offices, 66 Queensway,
Hong Kong :

Kowloon office : G/F, Mongkok Government Offices, 30 Luen Wan Street,
Mong Kok, Kowloon

4. Free Legal Consultation Services

- Home Affairs Department Telephone Enquiry Centre
Tel : 28352500
- The Law Society Free Legal Helpline
Tel : 82008002
- Legal Advice Scheme for Unrepresented Litigants on Civil Procedures
(Procedural Advice Scheme)
 - Admiralty Office
Room LG217, LG2/F, High Court Building, 38 Queensway, Hong Kong.
 - Wanchai Office
Room 437, 4/F, Wanchai Tower, 12 Harbour Road, Wan Chai, Hong Kong.
Tel : 2259 5017
- The Tel-Law Scheme <Free taped legal information>
Tel : 2521 3333 / 2522 8018

5. Home And Youth Affairs Bureau Interest and Surcharge on Arrears of Maintenance Ordinance

Webpage : <http://www.hyab.gov.hk/maintenance>



6. Resource Centre for Unrepresented Litigants

Address : Room LG105, Lower Ground Floor 1, High Court
Building, 38 Queensway, Hong Kong.

Tel : 2825 0586



7. Integrated Mediation Office

Address : Room 113, 1/F, Wanchai Tower, 12 Harbour
Road, Wanchai, Hong Kong

Tel : 2180 8066



The information on related resources in this booklet is based on the information at the time of
publication. If there is any change of the information in the future, it is nothing to do with the Hong
Kong Family Welfare Society (HKFWS) and the HKFWS would not bear any responsibility or liability.

Notes



A vertical sheet of white paper with a hand-drawn, irregular border. It features 15 horizontal blue lines for writing. In the top right corner, there is a small, detailed illustration of a pencil.

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