Family Law Practice Committee's Response to the Consultation Paper on Better Supporting Children and Divorcees, and Reducing Acrimony in Divorce by the Ministry of Social and Family Development

A. OVERVIEW

1. This is the Family Law Practice Committee ("**Committee**") of the Law Society of Singapore's response to the Ministry of Social and Family Development's ("**MSF**") consultation paper of 2 May 2021[1] setting out recommendations for improving support for children and divorcees, and reducing acrimony in divorce in Singapore.

2. In our view, it appears that the the objectives of the proposed reforms are to ensure that families undergoing matrimonial proceedings are better supported, and that acrimony during proceedings are reduced in order to protect the welfare of parties and children involved, and in doing so, ensure that reforms do not inadvertently make divorces 'easy'.

3. In evaluating the MSF's recommendations, the Committee conducted a survey to gauge family lawyers' views and opinions as regards MSF's recommendations, which will be referred to in the paper. The survey (at **Annex A**) was made available from 6 July 2021 to 14 July 2021 and gathered a total of 110 respondents, including all members of the Committee. Respondents have varying number of years of experience. For more than half of them, 75% or more of their work involved family law matters. That said, the views and opinions provided herein should not be considered *fully* representative of the Family Bar at large.

4. This paper will be set out in five parts. Part I gives an overview of the current state of divorce in Singapore and outlines the need for its reform, namely, in the areas of enhancing support and introducing amicable divorces. Part II deals with the proposed measures to enhance support for divorcees and children involved. Part III introduces the concept of implementing 'amicable divorce' in Singapore to reduce acrimony in the divorce process, drawing upon the law of divorce in other jurisdictions, including Australia, Canada, England & Wales and Hong Kong. Part IV highlights the safeguards to be considered during the process of reform. Part V discusses the viability of reform of two of the existing five facts which must be proved to established irretrievable breakdown of marriage, namely the length of separation period. Lastly, Part VI concludes our views.

B. PART I – CURRENT STATE OF DIVORCE IN SINGAPORE

5. In Singapore, irretrievable breakdown of marriage is the sole ground for divorce, which must be evidenced by one or more of the following facts: (1) adultery, (2) unreasonable behaviour, (3) desertion, (4) three-year separation with consent, and (5) four-year separation without consent.[2]

6. There is a three-year minimum period[3] before divorce may be filed, *i.e.* anyone wishing to obtain a divorce must be married at least 3 years. Further, upon the grant of an Interim Judgment, the parties must wait a three-month period or allow the finalisation of the ancillary matters before the divorce can be finalised by court[4], with the grant of the Final Judgment. One party must file as the 'Plaintiff', and the other party is the 'Defendant'.

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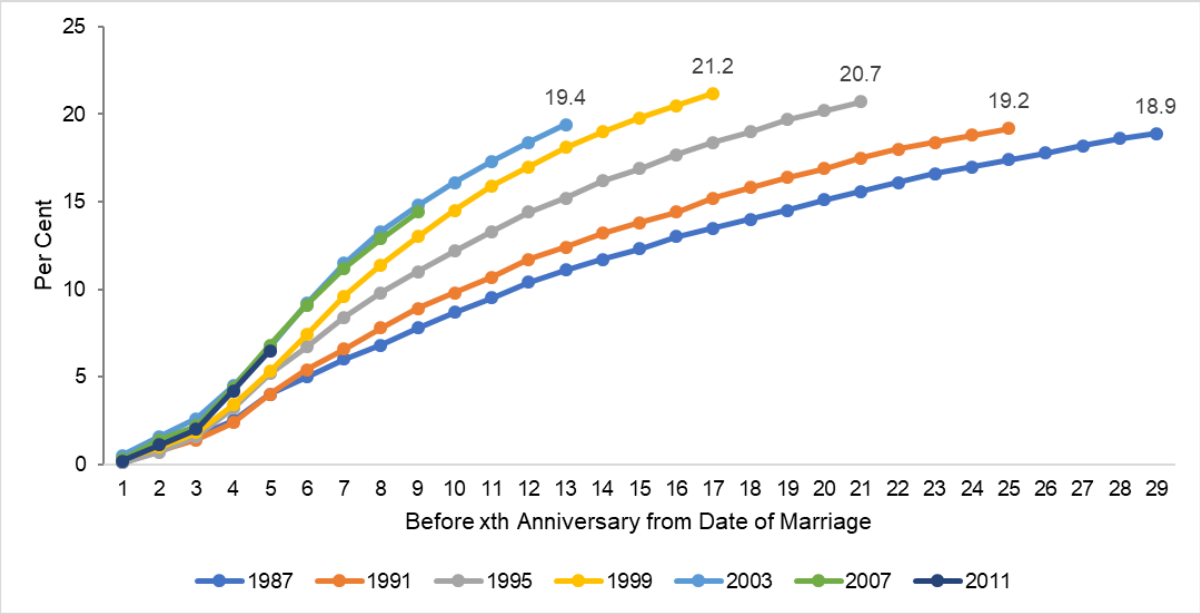
[1] Ministry of Social and Family Development website <https://www.msf.gov.sg/publications/Pages/Consultation-Paper-Better-Support-Children-and-Divorcees-and-Reduce-Acrimony-in-Divorce.aspx> (accessed on 8 August 2021)
[2] Women's Charter 2009 s 95
[3] Women's Charter 2009 s 94
[4] Women's Charter 2009 s 99

7. There has been an upward trend of divorces in Singapore. The Committee notes that the MSF looked at the cumulative marriage dissolution rates of selected marriage cohorts from 1987 to 2011.

Table 1: Cumulative Marriage Dissolution Rates of Selected Marriage Cohorts from 1987 to 2011[5]



8. In May 2020, the Family Justice Courts announced the court's application of Therapeutic Justice to all matrimonial proceedings. This is a '*lens of care'* which aims to encourage a shift in mindset towards the resolution of family disputes, in that it should be non-adversarial in nature.[6]

9. As part of the implementation of therapeutic justice, the need to ensure that our laws, procedure, and practice reduces acrimony, enhance child centricity, and encourage families to heal, comes to the fore. The current divorce law and procedure in Singapore may make such objectives difficult to achieve, as, unless the facts of separation are met, one would have to prove adultery, unreasonable behaviour, and desertion which are fault-based facts. Unreasonable behaviour is currently the most common fact used to support a divorce application.[7] In 2020, 52.7% of plaintiffs cited unreasonable behaviour as the reason for divorce under the Women's Charter, and 44.3% relied on separation-based grounds (living apart for three years or more).[8] The present reforms relating to amicable divorce could potentially have a greater impact on those who currently seek to rely on fault-based grounds.

10. Furthermore, this paper also considers the various proposals MSF has to support families, through counselling, mediation, and parenting programmes, ensuring that the families affected have different means of being supported.

[5] Ministry of Social and Family Development website <https://www.msf.gov.sg/publications/Pages/Consultation-Paper-Better-Support-Children-and-Divorcees-and-Reduce-Acrimony-in-Divorce.aspx> (accessed on 8 August 2021)
[6] Singapore Family Justice Courts website <https://www.familyjusticecourts.gov.sg/what-we-do/family-courts/divorce> (accessed on 8 August 2021)
[7] Fortis Law website <https://fortislaw.com.sg/publications/getting-a-divorce-in-singapore-a-marriage-which-has-irretrievably-broken-down-and-the-five-facts-to-prove-it/#_ftn5> (accessed on 11 August 2021)
[8] Singapore Department of Statistics website <https://www.singstat.gov.sg/-/media/files/publications/population/smd2020.pdf> (accessed on 16 August 2021)

C. PART II – ENHANCING SUPPORT FOR DIVORCEES AND CHILDREN

Provision Of Extended Counselling And/Or Parenting Programmes For Parties And Their Children

a. More support for children affected by divorce

i. Have all parents of children under the age of 21 years attend the MPP, including those on the simplified track, before filing a divorce application. This is so all parents understand the impact of the divorce on them and their children; and
ii. Have all minor children whose parents are undergoing divorce attend programmes to help them cope better with the divorce.

11. The FLPC ran a series of questions seeking the Family Bar's views on the provision of extended counselling and/or parenting programmes for parties undergoing divorce and their children. In essence, we sought the Family Bar's views on:

    a. Whether the Mandatory Parenting Programme (MPP) should be extended to all parties undergoing divorce, including those on the simplified divorce track (Question 4); and
    b. Whether minor children of parties to a divorce should attend programmes to help them cope better with the impact of divorce (Question 5), and what concerns these programmes should target (Question 6).

12. The results demonstrate that while the respondents were generally in favour of these proposals, there are concerns over the manner and efficacy in which these programmes will be implemented.

13. Broadly speaking, we agree that enhanced emotional and mental support would benefit parties undergoing a divorce and their children, in particular, those of minor ages. Feedback obtained however evinces that there is a serious and pressing need to ensure that there are sufficient well-trained, compassionate, and non-judgmental support services to persons intending to proceed with divorce proceeding or where proceedings have already commenced. This stems from the Respondents' clients' experience with existing programmes, where clients have given feedback that the existing MPP may not achieve the aims which it has set out to achieve. We examine these concerns further below.

14. Regarding extending the MPP to the simplified divorce track (Question 4), roughly 60% of respondents were in favour of this proposal. Comments obtained reflect that the extension of MPP should be provided on the basis that all parties should be made to understand the impact of divorce on children, whether or not they are able to reach a pre-writ agreement on the divorce or not. Concerns were raised on whether the requirement to attend MPP would be mandatory and/or necessary, and whether it would become an obstable to parties benefitting from a quick dissolution. However, the Committee notes that whilst parties on the simplified track may not appear to be in as high a state of acrimony compared to parties not on the simplified track, this does not mean that the children were not exposed to conflict and/or are not exposed to ongoing conflict. The Committee is therefore of the view that all cases on the simplified divorce track, where there are children involved, should in the least, have the option of attending the MPP, even if not mandatory.

15. As to the proposal to provide counselling and/or other support to minor children, feedback from the respondents was largely positive, with approximately 74% in favour of this proposal. We received a great amount of feedback regarding this proposal, and raise the following points for consideration:

a. Overwhelmingly, respondents were concerned about whether these programmes would take on a one-size-fits-all approach, especially given the consideration that the term 'minor children' covers a wide range of ages. For instance, respondents raised queries on whether toddlers and young children would be required to attend, and whether parental involvement would be required, which may not necessarily serve to reduce acrimony and may also heightened tensions if the relevant counsellor is not adequately trained to support children or families. It is worth considering if a minimum age limit, as was suggested by one respondent, should be imposed.

b. There were also concerns about whether adequate support can be provided, given the high complexity of child issues and respondents' clients' past dealings with counsellors conducting the MPP, could be better qualified and more sensitized to the possible varying child issues at hand including the differing age appropriate developmental needs of the children. There were also concerns that not having properly or adequately trained counsellors could potentially re-traumatise or exacerbate existing anxieties, stressors or trauma suffered.

c. It was proposed that programmes affecting minor children should be optional, and consented by both parents, especially when child issues are not contested. Where parties undergoing divorce have (admirably) managed to keep their children out of the battleground, the children should not be subjected to microscopic examination of their family affairs by persons they would view as strangers.

d. It is also proposed that where there are complex child issues such as where there are already concerns of gatekeeping, alienating, abuse, neglect etc. expressed, whether such programmes would help to alleviate and address concerns, or exacerbate matters instead. Where there are already concerns before the filing of divorce, such concerns should be identified early so that steps may be taken to address these issues.

16. It can therefore be seen from Question 6 of the survey that respondents were most concerned about the age group of the child, followed by the need for parental involvement, logistical difficulties, quality of the programme, and difficulties and/or challenges in encouraging children to attend, bearing in mind that in acrimonious divorces, it is not uncommon for children caught up in family strife to refuse contact with the non-resident parent.

Counselling For Individuals, Before, During And Even After Divorce Proceedings

b. More support for those undergoing divorce

i. Provide online and face to face counselling for those who are unsure and want to save their marriages;
ii. Provide counselling support before, during and even after the divorce for those who need it

17. We next turn to address proposals to extend provision of counselling to (1) parties who may wish to save their marriages and (2) parties who need such services before, during, and even after divorce. On this, response was overwhelmingly positive, being 88% in favour for the former and 91% in favour for the latter.

18. The respondents recognised the need to do all that is necessary to support marriages whenever possible and welcome such upstream intervention. Feedback given was by and large again about raising concerns on the quality of social service providers who have, from feedback received from clients, sometimes appear to be capricious, and at times, judgmental, unsympathetic, and ill-equipped to deal with the issues faced by parties undergoing divorce. One query was whether such counselling would extend to financial counselling, given that financial issues are a common source of frustration for parties undergoing divorce.

Pre-Writ Mediation

> iii. Provide pre-filing mediation to help couples reach an agreement on arrangements for their children or on difficult aspects of their divorce.

19. The Committee sought the Family Bar's views on whether pre-writ mediation should be made available for parties to reach agreements on child arrangements or difficult aspects of their divorce.

20. The survey demonstrates that whilst respondents were cautiously in favour of such a proposal, this was subject to the proviso that pre-writ mediation must be provided by legally-trained professionals. In fact, 81.7% of respondents stressed that MSF requires that such services should only be provided by persons who are trained mediators experienced in family law.

21. The reasons for the above can be summarized as follows.

    a. First, any agreement reached at pre-writ mediation will have legal effect. We highlight that reaching an agreement is more than just resolving the emotional and mental burdens on parties and involves coming up with a legally binding agreement that would set the framework for parties' obligations in the years to come.

    b. Second, the drawing up of binding agreements is a specialized professional skill set, and it would be highly inappropriate if persons not trained in law were to oversee the drawing up of such agreements as they are not professionally qualified to render such services, especially if mediators are generally absolved from liability. The Committee is concerned that parties to a divorce end up facing new issues because of poorly drawn-up or poorly thought-out agreements, which could be completely avoided if the parties had the benefit of an experienced family mediator supporting the mediation process.

    c. Third, it would also be inappropriate if parties were to bind themselves to a legal agreement without first having the benefit of legal advice. If parties are not given the option of having legal representation at pre-writ mediation, we query the extent to which parties are clear about their rights and whether any agreement reached would truly be reflective of parties' needs and wishes, and whether such agreements would be susceptible to being set aside or varied. There are also concerns that parties may feel pressured to settle if they attend pre-writ mediation without a representative protecting their concerns, because of issues relating to power imbalance, or the style of mediation inadvertently causing pressure. In all, the majority of respondents felt that it is imparative for parties to make informed decisions

before entering into such agreements. After all, if parties are fully appraised of their legal rights, the mounting of legal challenges against such agreements and indeed the efficacy of such agreements, could be kept in check.

22. Ultimately, we are of the view that extension of counselling and mediation services is a positive step in the right direction. These services should be made available to all parties, even if they were not the persons who initiated the divorce.

D. PART III – AMICABLE DIVORCES

i. Introduce an "amicable divorce" option for those who mutually consent to divorce. This has two aspects:

1. Allow parties to jointly file for divorce, so as not to identify a Plaintiff or a Defendant; and
2. Not require the couple to prove at least one of the 5 facts (i.e. adultery, unreasonable behaviour, desertion, separation of 3 years with consent, and separation of 4 years without consent), if they both agree that the marriage has irretrievably broken down.

23. Majority of respondents (77.78%) were in favour of introducing an amicable divorce option for those who mutually consent to divorce. Respondents who opposed it mainly did so in the interest of preserving the sanctity of marriage and argued that the acrimony stemmed more from the ancillary matters than the grounds for divorce.

24. In relation to removing the terminology of 'plaintiff' and 'defendant' where parties jointly file for divorce, again a majority were in favour of doing so, including suggesting that parties be known as 'husband' and 'wife' or 'mother' and 'father' where proceedings involved children. However, we question whether such labels would lead to an unconscious gender bias and is in fact "neutral".

25. Other possible suggestions raised as to alternative terminology included 'applicant' and 'respondent', 'party A' and 'party B' or even using parties' initials as a form of identification. Majority (79.82%) supported the idea of applying a more neutral terminology to all divorce cases, not just amicable divorces, although some commented that most lay people are indifferent towards the labels and clients have rarely taken issue with this aspect of divorce proceedings.

26. In terms of the proposal of allowing parties to jointly file for divorce without having to prove any of the five facts, 56.88% of respondents were in favour of doing so. This survey did not seek input on removal of the five facts where the divorce was not by mutual consent, since the focus of the consultation paper is on introducing amicable divorce proceedings (*i.e.* where both parties agree).

27. Amongst those not in favour of removing the five facts, the most common issue raised was again that of trivialising the sanctity of marriage, especially where one party committed adultery or where there were egregious acts of unreasonable behaviour and the other wishes to have his/her reasons reflected in the divorce, even when both parties agree that the marriage has broken down. A pertinent question raised here was how tightly the Family Court judges would scrutinise whether a marriage has irretrievably broken down, since there are no longer any criteria (*i.e.*, 5 facts) to be proven, and whether an introduction of this new option could result in the legal threshold of sole ground of "irretrievable break down" not being met and/or diluted, and hence, deviating from precedent.

Amicable divorces in other jurisdictions

28. Singapore would not be the first country to implement the concept of amicable divorces, sometimes known as 'no-fault divorce' in other jurisdictions. It should be noted that the concept of 'no-fault divorce' is wider than 'amicable divorce', and some jurisdictions do not require mutual consent.

29. In Australia, since 1975, the only ground for divorce has been the irretrievable breakdown of the relationship, evidenced by 12 months of separation. Similarly, Canada has implemented no-fault divorce since 1968, where the only ground for divorce is marriage breakdown, demonstrated by living apart for one year or more, or "*treated the other spouse with physical or mental cruelty of such a kind as to render intolerable the continued cohabitation of the spouses*".

30. England and Wales, and Hong Kong currently have legal systems for divorce most akin to Singapore's, which will be analysed in greater detail below.

31. English law has "*irretrievable breakdown of marriage*" as the sole ground for divorce, evidenced by one of the five facts – adultery and intolerability, unreasonable behaviour, desertion, two years separation with consent and five years separation without consent.

32. On 6 April 2022, the requirements for divorce in England and Wales under the Matrimonial Causes Act 1973 was replaced by the Divorce, Dissolution and Separation Act ("**DDSA**") 2020. The implementation of the DDSA will replace the requirement of establishing one of the five facts for divorce with a statement from the applicant/applicants that the marriage has broken down irretrievably, and the court must take this statement as conclusive evidence that the marriage has indeed broken down.[9]

33. In a recent consultation paper[10], the UK Government cited disincentivising allegations about other party's conduct and reducing unnecessary acrimony and anxiety as reasons for the shift to no-fault divorce. Moreover, the existing separation-based facts unfairly discriminated against those who could not afford, practically or financially, to live apart before divorce and finances are finalised. The UK Government recognised the merits in making provisions for joint applications for divorce, thus introduced that option whilst keeping the option for just one party to initiate the process. Safeguards which have been introduced in England will be discussed below, under **Part V** below.

34. Hong Kong has a dual system of divorce law: divorce on the ground of irretrievable breakdown under Part III of their Matrimonial Causes Ordinance, and divorce by mutual consent under Part V of their Marriage Reform Ordinance. To prove irretrievable breakdown of marriage, the petitioner must prove one or more of the following facts: adultery and intolerability, unreasonable behaviour, desertion, living apart for at least one year with consent, or living apart for two years.[11] Under divorce by mutual consent[12], parties will file a joint notice of intention to divorce, wait for a minimum of a year, then apply jointly to the court to have their divorce made final.

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[9] United Kingdom, Ministry of Justice, Reducing Family Conflict: Government response to the consultation on reform of the legal requirements for divorce <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/793642/reducing-family-conflict-consult-response.pdf> (assessed 8 August 2021)

[10] United Kingdom, Ministry of Justice, Reducing Family Conflict: Reform of the legal requirements for divorce <https://consult.justice.gov.uk/digital-communications/reform-of-the-legal-requirements-for-divorce/supporting_documents/reducingfamilyconflictconsultation.pdf> (assessed 8 August 2021)

[11] Judiciary of the Hong Kong Special Administrative Region of the People's Republic of China website <https://www.judiciary.hk/en/court_services_facilities/divorce.html> (assessed 8 August 2021)

[12] Judiciary of the Hong Kong Special Administrative Region of the People's Republic of China website <https://www.judiciary.hk/en/court_services_facilities/divorce.html> (assessed 8 August 2021)

Impact of implementation of no-fault divorce on divorce rates in other jurisdictions

35. There were concerns that introducing the option of amicable divorces in Singapore may inadvertently lead to an increase in divorce rates. Since the advent of recent reforms in the UK and Hong Kong, there has been a rise in the divorce rates in both UK and Hong Kong[13]. After the enactment of no-fault divorce in 2006, Scotland experienced a sharp increase in the number of divorces from 10,875 in 2005 to 13,012 in 2006. Similarly, Australia's divorce rate rose in the 1960s and 1970s, peaking at 4.6 divorces per 1,000 residents in 1976, the year after no-fault divorce came into force.[14]

36. In most jurisdictions, the spike in divorce rate was followed by a downward trend, typically over a longer period of time. In Scotland, the number of divorces dropped right after it surged in 2006 and further reduced over time - there were 6,766 divorces in 2017.[15] Australia also observed a gradual decrease in its divorce rates, with divorce rates dropping below three per 1000 residents in subsequent decades after 1976,[16] recording 1.9 divorces per 1,000 residents in 2016, its lowest rate since 1976.[17] However, it should be pointed out that there may be other possible explanations for the subsequent fall in divorce rates, including a decline in overall marriage rates over the years in both jurisdictions, as well as the introduction of other forms of recognised or registered unions such as civil partnerships, the dissolution of which would not be reflected in divorce rates.

37. Whilst this is a matter for concern, the English Law Commission noted that there were reasonable explanations for the increase of divorces in England and Wales. Prior to the reforms, many marriages were already likely considered to be irretrievably broken but ended in permanent separation, rather than divorce. This was especially common in lower socio-economic groups who could not afford the expense of a divorce, but with a simplified procedure and greater affordability, such marriages that previously ended in separation were able to proceed for divorce.[18]

38. It is also possible that divorce rates might spike immediately after the implementation of the reforms because couples who were previously contemplating divorce based on the old facts might have chosen to wait. Additionally, the spike in divorce rates following reforms might be due to couples who were previously resigned to staying married on paper, because the no-fault option was not available to them. Thus, although changes to the divorce law might statistically have resulted in an increase in divorce rates, it is argued that it alone should not be the sole reason for concern, or the sole reason why this proposal should not proceed.

39. While it is important to preserve the sanctity of marriage, recognising amicable divorces will undoubtedly help to reduce the emphasis on pushing blame, reducing unhappiness, and making the process less painful especially where there are children involved, and whether having couples remaining married, though their marriage has broken down, would necessarily be beneficial for the children involved, and hence, society at large. Studies have shown that the continued exposure to high-conflict environments may pose a greater risk to children's well-being.[19] Further, children who witnessed their parents peacefully resolve their marital issues were shown to exhibit less distress than their high-conflict counterparts.

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[13] United Kingdom, The Ground For Divorce <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2016/07/LC.-192-FAMILY-LAW-THE-GROUND-FOR-DIVORCE.pdf> (assessed 8 August 2021)
[14] Australian Institute of Family Studies website <https://aifs.gov.au/facts-and-figures/divorce-australia/divorce-australia-source-data> (assessed 8 August 2021)
[15] Aware website <https://www.aware.org.sg/2021/07/make-divorce-more-amicable/> (assessed 16 August 2021)
[16] Australian Institute of Family Studies website <https://aifs.gov.au/facts-and-figures/divorce-australia/divorce-australia-source-data> (assessed 8 August 2021)
[17] Aware website <https://www.aware.org.sg/2021/07/make-divorce-more-amicable/> (assessed 16 August 2021)
[18] The Law Reform Commission of Hong Kong, *Grounds for Divorce and the Time Restriction on Petitions for Divorce within Three Years of Marriage* (1992) <https://www.hkreform.gov.hk/en/docs/rdivorce-e.pdf> (assessed 8 August 2021)
[19] Singapore Law Watch website <https://www.singaporelawwatch.sg/Headlines/make-divorce-more-amicable-opinion> (assessed 11 August 2021)

F. PART IV – SAFEGUARDS AND CONSIDERATIONS

There should be more marital counselling services provided for those who are unsure or wish to save their marriage. Current safeguards will remain, which includes the 3-year minimum marriage period before divorce can be filed, and the 3-month period before divorce is finalized, as the intention is to reduce acrimony in divorce, and not to make divorce "easier".

40. Whilst it is crucial to consider how introducing amicable divorce aids in reducing acrimony in divorce, it is also pertinent to ensure that there are sufficient safeguards in place so as not to make divorce "easier", and consider any additional safeguards that may be needed.

(i) More marital counselling services as a safeguard

41. MSF proposes that the provision of more marital counselling services as a safeguard to an increase in divorces. The responses received indicate that the overwhelming majority of respondents (90.74%) support the proposal for more counselling services to be made available to both contested and uncontested divorces.

42. Counselling should not be limited only to uncontested divorce cases as the aim of the counselling is to assist couples to explore ways to support their marriage or how to reduce acrimony in the intended divorce proceedings.

(ii) 3-year time bar as a safeguard

43. The respondents were generally divided as regards their views as to whether the 3-year time bar should be retained. While there are a few suggestions to reduce the time bar to file a divorce to 2 years, some practitioners highlight that a reduction in the time bar would not be in sync with HDB's minimum occupation period of 5 years for the sale of flats[20]. Accordingly, MSF must also dialogue with HDB to consider the practical considerations for parties who wish to rely on one of the separation-based facts but the 5 year period is not yet complete.

44. The responses also indicate that some of the respondents recognizes that the 3-year time bar for divorce serves an important purpose in preserving the sanctity of marriage which is a bedrock of society. Further, having such a safeguard may compel couples to work out teething issues in the early years of marriage and enable couples to understand each other better which is a necessary process in building a strong foundation in the marriage.

(iii) 3-month period before Interim Judgment can be finalized

45. In respect of the proposal to retain the 3-month period before the Interim Judgment can be finalized, the respondents were split in their views. Approximately half of the survey responses were in favour of an elimination of the 3-month period to finalize the Interim Judgment as the respondents indicate that the 3-month period may not have any utility as a safeguard against divorce. Instead, such a 3-month waiting period impedes parties from moving forward in their lives, including re-marriage. It is also regarded as an unnecessary measure in simplified uncontested cases.

46. However, a third of respondents indicate that the 3-month period believe that this should be retained since it serves as a cooling off period and there are cases *albeit* very rare, in which parties decide to reconcile after interim judgment has been granted.

[20] Housing & Development Board website <https://www.hdb.gov.sg/residential/selling-a-flat/eligibility> (assessed 8 August 2021)

The 5 Facts as a Safeguard

The 5 current facts should remain for those who prefer to cite them even where they agree on the divorce, as well as for those who do not agree on the divorce.

47. A large majority of the respondents (about 70%) do not believe that the 5 facts alone serve well as the current "safeguards" to discourage couples from divorcing. Accordingly, the other "safeguards" (as above) should be considered.

48. In England and Wales, there are safeguards in place to prevent abuse of the system and ensure that divorce is not made easier. These include keeping the statutory bar on divorce within the first year of marriage, and introducing a minimum timeframe of 6 months (twenty weeks between start of proceedings and decree nisi, and six weeks between decree nisi and decree absolute) for the entire divorce process, to ensure sufficient time between each stage for couples to reflect and reconsider[21].

E. PART V – OTHER SUGGESTIONS

49. Besides introducing amicable divorce, the Committee would like MSF to consider whether making amendments to the existing separation-based facts currently used to prove irretrievable breakdown of marriage would also help parties reduce acrimony.

50. At present, irretrievable breakdown of marriage can be proven by three years separation with consent, or four years separation without consent. In comparison to other jurisdictions, this is a rather lengthy period – Hong Kong's minimum separation period is one year with consent or two years without consent, Australia 's regime only requires one year, and New Zealand's regime requires two years.

51. As part of the Committee's survey, questions were asked regarding shortening the existing separation times of three and four years. Of those who responded to the survey, about 95% were in favor of reducing separation times, both with and without consent.

52. If the length of separation without consent could be reduced from the current period of 4 years, 39.62% of respondents felt that 2 years was an appropriate length, 29.25% opted for 3 years, and 27.36% for 1 year. With regards to separation (with consent), 42.99% were in favour of reducing it from the current period of 3 years to 1 year, 25.23% in favour of reduction to 2 years, and 23.36% in favour of reduction to six months.

53. Amongst the reasons cited in favour of a reduction in length of separation was that a longer timeframe was unnecessary for couples without children or those with adult children. Some also pointed out that if the intention of this proposal was to reduce animosity, then there should not be a need for a minimum period at all where separation was consensual, since there may be little utility compelling parties to stay in a marriage especially if counselling efforts have failed.

[21] United Kingdom, Ministry of Justice, Reducing Family Conflict: Government response to the consultation on reform of the legal requirements for divorce <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/793642/reducing-family-conflict-consult-response.pdf> (assessed 8 August 2021)

54. On the other hand, those against reducing the separation time argued that the current period of separation (3 years) may be a good indicator to the Court that the marriage has indeed broken down irretrievably, and the timeframe should be sufficient to prevent parties from acting in the heat of the moment.

55. If there is further consideration regarding the length of separation, the following must also be considered in tandem:
    a. There is a 5-year minimum occupation period for individuals living in HDBs, which currently comprises about 80% of Singapore's population. If the parties wish to separate whilst their 5-year minimum occupation period has not been completed, this may result in practical difficulties as well as challenges for individuals who have to live separately as different households within the same residence than is desirable.
    b. Under s 121(3) of the Women's Charter, maintenance in arrears can only be claimed going back 3 years.
    c. Under s 132(1)(i) of the Women's Charter, the court has the power to set aside any person's disposition of property made within the preceding 3 years if it were made with the intention of reducing that person's means to pay maintenance, or deprive that person's spouse of rights relating to that property.
    d. The required length of separation under the 5 facts may inadvertently affect the division of matrimonial assets, since the length of the marriage is one of the factors which the Court would take into consideration in the exercise of its discretion.

F. PART VI – CONCLUSION

56. In general, the Committee welcomes the proposals made for more support towards building healthy marriages as well as greater support for children and families through effective counselling and various multi-disciplinary approaches to engage parties contemplating and undergoing proceedings.

57. We must also recognize that the proposals which would help to ease the pain of going through divorce proceedings by making it more "amicable" may not yield the desired outcome of less acrimony for parties who are already engaged in high conflict.

58. On the other hand, the proposed changes to the law would change the landscape and social fabric of society where the termination of marriage can end swiftly if both parties want to call it quits, without having to satisfy any legal requirements on the grounds necessary for a divorce to be granted. The outcome may be a society that no longer promotes forbearance, tolerance, compromise, unconditional love - the essential qualities which make up long marriages in the many generations of society before us.

59. Thank you for your kind consideration of our views. We welcome questions or clarifications on the above.

For and On Behalf of the Family Law Practice Committee,
FLPC Co-Chairpersons
Wong Kai Yun and Kee Lay Lian