

**LegCo Panel on Home Affairs
Subcommittee to study discrimination
on the ground of sexual orientation**

**Marriage Certificates Issued by
Overseas Countries for Homosexual Couples**

Purpose

This paper aims to inform Members:

- a) whether marriage certificates issued by overseas countries for homosexual couples could be recognized in Hong Kong; and
- b) whether the court in Hong Kong will, as a matter of policy and legal power, hear divorce and estate cases concerning homosexual couples whose marriages are registered in overseas countries

2. On (a), our legal advice is that same sex marriage certificates contracted in overseas countries are not recognized in a Hong Kong court for the purpose of matrimonial proceedings under the Matrimonial Causes Ordinance i.e. the pronouncement of a decree of divorce, nullity, judicial separation or presumption of death and dissolution of marriage or any other order thereunder. The power of a Hong Kong court to make such decree or order is limited to those which relate to a monogamous marriage. A monogamous marriage is defined as a marriage which was (if it took place outside Hong Kong) celebrated or contracted in accordance with the law in force at the time and in the place where the marriage was performed and recognized by such law as involving the voluntary union for life of one man and one woman to the exclusion of all others.

3. Regarding (b), under Hong Kong laws, monogamous marriage if it took place outside Hong Kong is defined in the Matrimonial Causes Ordinance Cap. 179 as a marriage celebrated or contracted in accordance with the law in force at the time and in the place where the marriage was performed and

recognized by such law as involving the voluntary union for life of one man and one woman to the exclusion of all others. Accordingly the courts which have jurisdiction over only monogamous marriages have no power as conferred by the laws of Hong Kong to hear divorce cases relating to homosexual marriages registered overseas. Cases concerning distribution of estate of persons dying intestate are administered under the Intestate Estate Ordinance Cap. 73. The terms “husband” and “wife” are simply defined in Cap. 73 to mean in relation to a person a husband or wife of that person by a valid marriage. Although the words “man” and “woman” are not used, it seems that homosexual marriages registered overseas are not covered due to the requirement that a marriage must be the voluntary union of one man and one woman to the exclusion of all others under the Marriage Ordinance Cap. 181.

Home Affairs Bureau
November 2001