

Information paper on
7 September 2005

**Bills Committee of the Legislative Council
Marriage (Introduction of Civil Celebrants of Marriages and
General Amendments) Bill**

**Miscellaneous issues on the Marriage (Introduction of Civil
Celebrants of Marriages and General Amendments) Bill
("the Bill") raised at the meeting on 21 July 2005**

Background

Pursuant to the Bills Committee's request, this paper provides our response to items (d) to (g) in the letter from Clerk to Bills Committee of 25 July 2005 –

- (a) whether civil celebrants would be subject to double jeopardy for non-compliance with the statutory requirements, i.e. disciplinary hearings of their respective professional bodies and penalty in the Bill;
- (b) Hon Audrey Eu's suggestion of providing a reasonable defence provision for offences under the new section 31A in clause 16;
- (c) whether the proposed levels of penalty for non-compliance with the statutory requirements by civil celebrants were proportionate to the gravity of the offences; and
- (d) consider moving a Committee Stage amendment to delete the proposed section 31A(4) following the deletion of the proposed new section 6A(2).

We will provide response to the other three items separately.

Double jeopardy

2. The rule of double jeopardy is that a person may not be prosecuted twice for the same offence. Being convicted of an offence under statute and at the same time being sanctioned by a professional body does not in our view amount to double jeopardy in that sense. We note that according to section 7(2)(c)(i) of the Practising Certificate (Special Conditions) Rules (Cap. 159 sub.leg.Y), if a solicitor is convicted of an offence involving dishonesty or deception, the Law Society of Hong Kong may add a special condition to his practising certificate, for example, a special condition stating that the solicitor may only practise in an employment that has been approved by the Council of the Law Society. In this case, the solicitor is subject to both the sanction of the law and his professional body.

Level of penalty and reasonable defence for offences

3. We consider the level of penalty for non-compliance with a statutory requirement by a civil celebrant reasonable and proportionate to the gravity of the offence. From the summary of the offences at **Annex**, one may notice that level 1 fine is proposed for those less serious offences in relation to non-compliance with procedural requirements. Examples include failure for a civil celebrant to transmit, as soon as practicable, documents specified in the proposed section 6A(1)(c) (including a marriage notice, a prescribed fee and an affidavit of no impediment to marriage) for a marrying party to the Registrar (the proposed section 31(2)(a) in clause 15 of the Bill); failure to transmit a certificate of marriage to the Registrar within 7 days after a marriage (the proposed section 31(2)(b) in clause 15 of the Bill) and failure to provide, as soon as practicable, to the Registrar such information in relation to his practice as a civil celebrant (the proposed section 31A(2) in clause 16 of the Bill).

4. For offences that relate to the integrity of a civil celebrant and have implications for the standard of services provided by a civil celebrant and regulation of the practice of civil celebrants, heavier penalty such as level 3 and level 4 fine is proposed. Examples include failure for a civil celebrant to deliver his notice of appointment or reappointment, notices of intended marriages and marriage certificates which have been supplied to him within 14 days after cancellation or suspension of his

appointment (proposed section 31A(1) in clause 16 of the Bill); failure for a civil celebrant to notify the Registrar within 14 days of his cessation to meet any criterion prescribed in the proposed Schedule 4 as in force at the time of his appointment (the proposed section 31A(3) in clause 16 of the Bill); and failure to forward the certificate of the Registrar to either of the proposed parties as soon as practicable (the proposed 31A(5) in clause 16 of the Bill).

5. A heavy penalty, i.e. 1-year imprisonment and level 5 fine is proposed for the offence for a person or a civil celebrant who knowingly provides false information to the Registrar in order to procure an appointment, avoid cancellation/suspension of an appointment or avoid a prohibition notice under the proposed section 5D(7) (the proposed section 33A in clause 17 of the Bill). Such a level of penalty is proposed after we have considered the gravity of the above offence and the level of penalty for similar offences in other ordinances. For example, a person who fraudulently procures himself or any other person to be registered as a certified public accountant by means of any misleading, false or fraudulent representation or statement shall be guilty of an offence and shall be liable on conviction to a fine of \$20,000 and 1-year imprisonment under section 42(b) of the Professional Accountants Ordinance, Cap. 50.

6. We agree to add reasonable excuse defence for the offences under the proposed sections 31A(1) and 31A(3) where the requirements are for a civil celebrant to deliver specified documents to the Registrar within 14 days of cancellation or suspension of his appointment and to notify the Registrar if he ceases to meet any criterion prescribed in the proposed Schedule 4 within 14 days of such cessation. For the offence under the proposed section 31A(5) in clause 16 of the Bill where the requirement is for a civil celebrant to provide the certificate of the Registrar to either of the proposed parties as soon as practicable, reasonable defence is not necessary because a civil celebrant will not be convicted if he can show that it is not practicable for him to comply with the above requirement.

Proposed section 31A(4)

7. We agree to provide a draft Committee Stage amendment for Members' comments in due course to delete the proposed section 31A(4) in clause 16 of the Bill following deletion of the proposed section 6A(2) in clause 6 of the Bill.

Security Bureau
5 September 2005

Summary of offences for civil celebrants

Offences	Level of penalty
Proposed section 31(2)(a), clause 15 <ul style="list-style-type: none">• Failure for a civil celebrant to transmit, as soon as practicable, documents specified in the proposed section 6A(1)(c) to the Registrar	Level 1 (\$2,000 ¹)
Proposed section 31(2)(b), clause 15 <ul style="list-style-type: none">• Failure for a civil celebrant to transmit a certificate of marriage to the Registrar within 7 days after a marriage	Level 1 (\$2,000)
Proposed section 31A(2), clause 16 <ul style="list-style-type: none">• Failure for a civil celebrant to provide, as soon as practicable, to the Registrar such information in relation to his practice	Level 1 (\$2,000)
Proposed section 31A(1), clause 16 <ul style="list-style-type: none">• Failure for a civil celebrant to deliver his notice of appointment/reappointment, notices of intended marriage and marriage certificates within 14 days after cancellation or suspension of his appointment	Level 3 (\$10,000)
Proposed section 31A(3), clause 16 <ul style="list-style-type: none">• Failure for a civil celebrant to notify the Registrar within 14 days of his cessation to meet any criterion prescribed in the proposed Schedule 4 as in force at time of his appointment	Level 3 (\$10,000)

¹ Schedule 8 to the Criminal Procedure Ordinance, Cap. 221.

Offences	Level of penalty
<p>Proposed section 31A(4), clause 16</p> <ul style="list-style-type: none"> To repeal due to removal of the proposed section 6A(2) in clause 6 	<p>Level 3 (\$10,000)</p>
<p>Proposed section 31A(5), clause 16</p> <ul style="list-style-type: none"> Failure for a civil celebrant to forward the certificate of the Registrar to either of the proposed parties as soon as practicable 	<p>Level 4 (\$25,000)</p>
<p>Proposed section 33A(1), clause 17</p> <ul style="list-style-type: none"> A civil celebrant provides false information to the Registrar to procure an appointment, avoid cancellation/suspension of appointment or avoid the prohibition notice under the proposed section 5D(7) 	<p>Level 5 (\$50,000) and 1-year imprisonment</p>
<p>Proposed section 30, clause 14</p> <ul style="list-style-type: none"> A civil celebrant wilfully celebrates a marriage in case of a minor (over 16 but under 21 years of age not being a widow or widower) without a written consent as required A civil celebrant wilfully celebrates a marriage contrary to any other provisions in the Ordinance, or knowing that any provision has not been complied with 	<p>Level 1 (\$2,000) <u>or</u> 2-year imprisonment</p>