

Information paper on
4 October 2005

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

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

Background

This paper sets out our response to the remaining items (a) to (c) in the letter from Clerk to Bills Committee of 25 July 2005 and an outstanding issue raised at the meeting on 21 June 2005 –

- (a) Hon Andrew Cheng's suggestion of providing flexibility for civil celebrants to celebrate marriages inside licensed places of worship, and whether they would be allowed to do so under the proposed new section 21(3A) or by obtaining special licences under section 11 of the Marriage Ordinance, (Cap.181) ("the Ordinance");
- (b) the legal effect of the word "and" linking (a) and (b) under the new section 21(3A) in clause 12;
- (c) circumstances under which a marriage would be regarded as invalid and whether marriages celebrated by civil celebrants would be affected by defects in the appointment process under the amended section 27(2) in clause 13; and
- (d) criteria for counting the years of post-qualification experience of a solicitor, e.g. the experience of in-house lawyers.

Flexibility for civil celebrants to celebrate inside licensed places of worship

2. Our proposal for appointing civil celebrants of marriages (civil celebrants) caters for secular marriages, which are different from religious marriages celebrated by ministers at licensed places of worship according to rites or usages of marriage observed in their respective religions. Due to the distinct nature of secular and religious marriages, secular marriages will not normally be allowed in licensed places of worship.

3. Section 11(1) of the Ordinance provides that “the Chief Executive may, when he sees fit, grant a special licence in the prescribed form..., and authorizing the celebration of a marriage between the parties named at a place and at a time specified in the licence.” However, the proposed section 21(3A) in clause 12(6) of the Bill makes it clear that “A marriage celebrated by a civil celebrant (a) may take place at any hour; and (b) shall take place at any place which is a place in Hong Kong other than the office of the Registrar and a licensed place of worship.” The two sections, when read together, mean that even if a special licence in respect of a marriage is granted for the marrying parties to marry at a licensed place of worship, a civil celebrant will not be allowed to celebrate the marriage at the licensed place of worship.

Legal effect of the word “and” in new section 21(3A)

4. The word “and” between subsections (a) and (b) of the proposed section 21(3A) means that both conditions as to the time and place must be complied with for a marriage celebrated by a civil celebrant. Since the nature of subsection (a) (i.e. a marriage celebrated by a civil celebrant may take place at any hour) is such that it cannot be contravened, a marriage would be null and void under the proposed section 27(2)(a)(i)(C) if the condition under subsection (b) is not complied with.

Validity of marriage and defects in appointment process

5. Section 27(1) of the Ordinance provides that no marriage shall be valid which would be null and void on the ground of kindred and affinity in England or Wales. It shall also be null and void, under section 27(2) of the Ordinance, if both parties knowingly and wilfully acquiesce in its celebration in any place other than the office of the Registrar or a licensed place of worship (except when authorized by a special licence, or when celebrated under proviso to section 21(3)(b) or under section 39), or under a false name, or without a certificate of the Registrar or a special licence, or by a person not being a competent minister or the Registrar or his deputy, or if either party to the marriage is under the age of 16 years. In clause 13 of the Bill, we have proposed amendment to section 27(2) to further stipulate that a marriage shall be null and void if the marriage is not celebrated by a civil celebrant in accordance with the proposed section 21(3A) and the parties knowingly and wilfully acquiesce in its celebration. We will propose a CSA to amend the proposed section 27(2) in clause 13 of the Bill so as to refine the scope of the adverbial phrase “knowingly and willfully acquiesce” to the effect that the original intention of section 27(2) will be maintained.

6. Section 27(3) in the Ordinance provides that no marriage shall, after celebration, be deemed invalid by reason that any provision of the Ordinance, other than those in sections 27(1) and 27(2), has not been complied with. Now in clause 4 of the Bill, we further propose a new section 5F stipulating that defects in the appointment process would not affect the validity of marriages. We do not think that the proposed section 5F is a redundant provision even though there is a section 27 in the Ordinance. The proposed section 5F is to set out, for avoidance of doubt, that defects in the appointment process would not affect the validity of marriages. We therefore propose to retain the proposed section 5F and will propose a CSA to clarify our intention.

Criteria for counting post-qualification experience

7. Paragraph 1 in the proposed Schedule 4 in Clause 24 of the Bill provides that a solicitor is eligible for appointment as a civil celebrant if, among other criteria, he fulfils the following one, i.e. holding a current practising certificate and having not less than 7 years of

post-qualification experience. For counting of post-qualification purpose, we propose to require an applicant to submit a certificate issued by the Law Society of Hong Kong certifying that he has practised as a solicitor for an aggregate of 7 years or more and will propose a CSA to amend Schedule 4 in clause 24 of the Bill to reflect the arrangement accordingly. The Law Society has agreed to provide the certification service at cost and will take into account relevant experience of an in-house solicitor in counting the post-qualification experience even if the concerned solicitor does not possess a practising certificate during the period of his in-house practice.

Security Bureau
29 September 2005