

立法會

Legislative Council

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Paper for the House Committee meeting on 4 November 2005

Report of the Bills Committee on Marriage (Introduction of Civil Celebrants of Marriages and General Amendments) Bill

Purpose

This paper reports on the deliberations of the Bills Committee on Marriage (Introduction of Civil Celebrants of Marriages and General Amendments) Bill.

Background

2. Celebration of marriages in Hong Kong is governed by the Marriage Ordinance (Cap. 181), under which marriages can be celebrated at the marriage registries by the Registrar of Marriages or deputy registrars between 9:00 am and 7:00 pm, or at licensed places of worship by competent ministers between 7:00 am and 7:00 pm. Apart from these arrangements, the Chief Executive (CE) may grant a special one-off licence to authorise the celebration by the Registrar or a competent minister of a marriage for a couple at a time and place other than those specified above. Such licences are normally granted to those marrying parties who are imprisoned or hospitalised, and those who are unable to celebrate their marriages at marriage registries or licensed places of worship.

3. Under existing legislation, any person who intends to get married has to give a notice of intended marriage to the Registrar who shall then exhibit a copy of the notice at his office. One of the marrying parties also has to make an affidavit before the Registrar that there is no impediment of kindred or alliance or any other lawful hindrance to the marriage. The Registrar will then issue a certificate of the Registrar under section 9 of the Ordinance so that celebration of marriage before the Registrar or a competent minister can proceed.

4. According to the Administration, there is increasing public demand for the Government to provide more flexible marriage solemnisation services and to make use of private sector resources in providing such services. The Administration now proposes to meet this demand by enabling the Registrar to appoint eligible persons as civil celebrants. Under the proposal, solicitors and notaries public who meet the specified criteria in the Bill will provide the pool of candidates for appointment at the initial stage.

The Bill

5. The Bill mainly seeks to provide for a statutory framework for the appointment of civil celebrants to celebrate marriages. Part 1 of the Bill deals with the short title and commencement of the Bill. Part 2 contains substantive provisions on the appointment, regulation, obligations and practice of civil celebrants. It also provides for the establishment of a Civil Celebrant of Marriages Appointment Appeal Board to hear and determine appeals against the decisions of the Registrar to refuse, cancel or suspend an appointment. Part 3 of the Bill contains consequential amendments to related legislation. Part 4 of the Bill contains miscellaneous amendments and amendments aiming to modernise the drafting style of certain provisions of the Marriage Ordinance without changing their legal effect.

The Bills Committee

6. At the House Committee meeting on 3 June 2005, a Bills Committee was formed to scrutinise the Bill in detail. Chaired by Hon Margaret NG, the Bills Committee has held seven meetings, including one meeting to gauge the views of the relevant professional bodies. The Bills Committee has also considered the submissions received. The membership list of the Bills Committee is in **Appendix I**. A list of organisations and persons who have given views to the Bills Committee is in **Appendix II**.

Deliberations of the Bills Committee

Eligibility criteria for appointment as civil celebrants (clauses 4 and 24)

7. Clause 4 of the Bill adds a new Part 3 to the Marriage Ordinance to provide for the appointment of civil celebrants and regulation of their practice. Under the proposed section 5A in the new Part 3, the Registrar of Marriages is empowered to appoint civil celebrants of marriages upon application. The criteria for appointment are prescribed in the proposed Schedule 4 in clause 24. In essence, a person may apply for appointment as a civil celebrant if –

- (a) he is a solicitor having not less than seven years of post-qualification experience and holding a current practising certificate, or he is a notary public and holding a current practising certificate;
- (b) he is not the subject of a disciplinary order during the three years immediately preceding the date of the application; and
- (c) he has completed such training as specified by the Registrar.

8. Under the proposed section 5B in the new Part 3, the Registrar may consult the professional body concerned on whether the applicant meets any criterion prescribed in Schedule 4. An appointment will be valid for five years, and be renewed upon application, subject to all the criteria in Schedule 4 being met. The appointment or renewal of appointment of civil celebrants will be published in the Gazette.

9. The Bills Committee has enquired about the reasons for selecting solicitors and notaries public as eligible persons for appointment as civil celebrants. Members have also asked about the rationale for adopting seven-year post-qualification experience as a criterion for appointing a solicitor as civil celebrant. Hon Albert Jinghan CHENG has suggested that Justices of Peace (JPs), Legislative Council (LegCo) Members and competent ministers should also be considered for appointment as civil celebrants.

10. The Administration has advised that the main objective of appointing civil celebrants is to meet the public demand for more flexible and convenient marriage solemnisation services. The Administration has considered setting up an appointment system which involves open examination and independent monitoring of the service standard. However, such an approach will be costly and require substantial manpower and financial resources from the Registrar. The approach proposed in the Bill takes advantage of the capabilities of the Law Society of Hong Kong and Hong Kong Society of Notaries in the screening of appropriate candidates as well as monitoring of service standards, and this will kickstart the civil celebrant arrangement in a cost-effective manner.

11. The Administration has further advised that solicitors and notaries public who meet the specified criteria will provide an adequate pool of candidates for appointment at the initial stage. Their legal knowledge and familiarity with the administration of oaths and taking of declarations will enable them to perform competently the duties of a civil celebrant, including acceptance and transmission of marriage notices and taking of affidavits and declarations.

12. As regards the proposed seven-year post-qualification experience for solicitors to be eligible for appointment as civil celebrants, the Administration has clarified that the requirement is set with reference to the post-qualification experience for notaries public, as the latter are primarily solicitors having not less than seven years of post-qualification experience. The purpose is to ensure that only qualified persons with sufficient maturity and professional experience will be appointed as civil celebrants. For counting of post-qualification experience, the Administration proposes 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 seven years or more. The Law Society has agreed to provide the certification service at cost and will take into account the relevant experience of an in-house solicitor in counting the post-qualification experience, even if the solicitor concerned does not possess a practising certificate during the period of his in-house practice. The Administration will move a Committee Stage amendment (CSA) to amend Schedule 4 in clause 24 of the Bill to clearly spell out the arrangement.

13. The Administration has also informed the Bills Committee that a CSA will be introduced to refine paragraph 1(a)(i) of the new Schedule 4. The CSA will amend the said paragraph to the effect that the condition for compliance with the Legal Practitioners (Risk Management Education) Rules for the issue of a practising certificate under section 6 of the Legal Practitioners Ordinance (Cap. 159) will be considered as unconditional, as all solicitors will be required by the Law Society of Hong Kong to undertake a mandatory risk management education course.

14. Regarding the criterion that an applicant for civil celebrant must have attended such training as specified by the Registrar of Marriages, the Administration has advised that it is liaising with the Law Society on the training for solicitors. The Law Society has agreed to consider including briefing sessions for civil celebrants in the Continuing Professional Development Courses. In this connection, the Immigration Department will assist the Law Society in providing up-to-date information relating to the practice of civil celebrants.

15. On the suggestion of appointing JPs, LegCo Members and competent ministers as civil celebrants, the Administration is of the view that these persons may not possess the requisite professional training and support to accept and transmit marriage notices and verify the relevant documents. The Administration does not intend to extend the scheme to these persons at the initial stage. However, the Administration will review the arrangement in a year's time after implementation.

16. The Administration has further advised that the proposal of appointing civil celebrants caters specifically for secular marriages, which are different from marriages celebrated by ministers according to the rites or usages of marriages observed in their respective religions. Should there be a need for the marrying parties to celebrate a marriage by a competent minister outside a licensed place of worship, an application may be made to CE for a special licence to be granted for that purpose under section 11 of the Ordinance.

17. Despite the Administration's explanation, Hon Albert Jinghan CHENG remains of the view that, to be consistent with the spirit of providing flexibility for celebrating marriages, ministers should be allowed to celebrate marriages outside a licensed place of worship, without having to apply for a special licence under section 11 of the Marriage Ordinance.

Code of Practice (clause 4)

18. Under the proposed section 5C in clause 4 of the Bill, the Registrar of Marriages may issue a Code of Practice for the purpose of providing practical guidance in respect of the professional conduct of civil celebrants. The Code of Practice and its commencement date will be published as general notice in the Gazette.

19. In response to the Bills Committee, the Administration has advised that the Code of Practice is not subsidiary legislation, and its publication in the Gazette is only for public information. For the avoidance of doubt, the Administration has agreed to move CSAs to the Bill to specify that such general notices in the Gazette are not subsidiary legislation. The Administration has also undertaken to provide a copy of the draft Code of Practice for Members' reference.

Cancellation and suspension of appointment (clause 4)

20. Under the new section 5D in clause 4 of the Bill, the Registrar of Marriages may cancel the appointment of a civil celebrant under any of the following situations –

- (a) if the civil celebrant ceases to meet or, at the time of his appointment or reappointment, does not meet any of the criterion prescribed in Schedule 4;
- (b) if the civil celebrant contravenes a Code of Practice;
- (c) if the civil celebrant is convicted of an offence under the Marriage Ordinance;
- (d) upon the written request of the civil celebrant; or

- (e) if the civil celebrant dies.

A civil celebrant who has his appointment cancelled under (b) or (c) above is prohibited from applying for appointment for a period not longer than three years. The cancellation of appointment will be published in the Gazette.

21. Under the proposed section 5E, if a civil celebrant contravenes a Code of Practice, his appointment may be suspended by the Registrar of Marriages for a period not longer than 18 months. A civil celebrant who is suspended from practice as a solicitor or notary public will also have his appointment as civil celebrant suspended. The suspension of appointment will be published in the Gazette.

22. The Hong Kong Bar Association has commented that the proposed prohibition period (in which a civil celebrant cannot re-apply for appointment once his appointment is cancelled) and the proposed suspension period are too short, and has suggested a longer period of five years and three years respectively. The Administration advises that the proposed prohibition period is appropriate because the main deterrent lies in the cancellation of appointment itself, and the prohibition aims to prevent a person from immediately re-applying for appointment after cancellation of his appointment. Moreover, the proposed prohibition period is consistent with the second criterion for appointment as civil celebrant as specified in Schedule 4, i.e. an applicant must not be the subject of a valid order made by the respective professional disciplinary tribunals during the three years immediately preceding the date of application for appointment as civil celebrant.

23. As regards the suggestion of lengthening the suspension period, the Bills Committee notes that suspension of appointment is based on a breach of a less serious nature than that for cancellation of appointment. If an appointment is valid for five years only, it is not unduly short to set a suspension period of not more than 18 months to maintain relativity.

24. The Bills Committee also notes that the civil celebrant concerned will be given the chance to make representation before the Registrar makes a decision on whether or not to cancel or suspend his appointment. In this connection, the Administration has proposed to move CSAs to sections 5D and 5E under clause 4 to spell out more clearly the period within which a person may submit his representation after the Registrar has issued a written notice to him. The cancellation or suspension of appointment will not take effect before expiry of the 14 days (or any longer period decided by the Registrar) allowed for making representation or consideration of any representation.

Civil Celebrant of Marriages Appointment Appeal Board (clause 4)

25. The Bills Committee notes that the proposed section 5J under clause 4 provides for a Civil Celebrant of Marriages Appointment Appeal Board to hear and determine appeals relating to refusal of application, suspension and cancellation of appointment. The Chairperson, Deputy Chairpersons and members of the Appeal Board shall be appointed by the Secretary for Security, and such appointments will be published in the Gazette. The decision of the Appeal Board on an appeal shall be final.

Invalid marriages (clauses 9 and 13)

26. The Bills Committee notes that under section 12 of the Ordinance, before a certificate is issued by the Registrar, one of the parties of the intended marriage will have to appear before the Registrar or a civil celebrant personally and make an affidavit that he or she believes there is no impediment of kindred or alliance or any other lawful hindrance to the marriage, and that the consent to the marriage has been obtained if either party to the intended marriage is of or over 16 and below 21 years of age. Section 27(1) of the Ordinance further stipulates that no marriage shall be valid which will be null and void on the ground of kindred or affinity in England or Wales.

27. Some members have expressed concern that civil celebrants may not be familiar with the laws of England and Wales in advising marrying parties whether their proposed marriage would fall within the prohibited degrees of kindred or affinity. To assist the public and civil celebrants to better understand such prohibitions, the Administration has agreed to move CSAs to include a new Schedule 5 to the Ordinance to set out the prohibited degrees of kindred or affinity.

28. Some members have expressed concern about the circumstances under which a marriage may be regarded as invalid, as stipulated in the amended section 27(2) under clause 13. They have requested the Administration to clarify what are the duties and obligations of civil celebrants, and whether any negligence on the part of a civil celebrant will render a marriage invalid.

29. The Administration has explained that under section 27(2), a marriage will be null and void 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 authorised by a special licence, or when celebrated under para (b) of the proviso to section 21(3) or under section 39), or under a false name, or by a person not being a competent minister or the Registrar or his deputy, or if either party to the marriage is under 16 years of age. In clause 13 of the Bill, an amendment to section 27(2) is proposed 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.

30. The Administration has advised that the amendment proposed in the Bill does not seek to impose any duty on the Registrar of Marriages, a minister or civil celebrant of marriages solemnising a marriage, to carry out an investigation into the status of the marrying parties. Nevertheless, it is envisaged that the civil celebrant will take reasonable steps, e.g. check the identity documents of the marrying parties to ensure that the marriage is not celebrated under a false name and that both the marrying parties are of or over the age of 16. They should also ensure that a certificate of the Registrar has been issued before solemnising a marriage.

31. In response to concerns raised by members, the Administration has agreed to introduce a CSA to amend the proposed section 27(2) in clause 13 to refine the scope of “knowingly and wilfully acquiesce”, in order to retain the original intention of section 27(2) of the Ordinance.

32. Some members of the Bills Committee have also asked about the possibility that a marriage will be deemed invalid because of defects in the appointment of a civil celebrant. The Administration has advised that a new section 5F in clause 4 clearly stipulates, for the avoidance of doubt, that defects in the appointment process will not affect the validity of marriages.

Liability of civil celebrant

33. Some members have expressed concern that civil celebrants may be claimed for negligence in discharging their duties, especially if such negligence may render a marriage null and void.

34. The Administration has advised that whether a civil celebrant will be liable in civil law (e.g. tort or contract) or criminal law for any omission will depend on the facts of individual cases. A civil celebrant shall also comply with the Code of Practice in providing his services. In the event that a civil celebrant does not comply with the Code of Practice, the registrar may suspend or cancel his appointment. According to the Legal Practitioners Ordinance (Cap. 159), all practising solicitors have to comply with the indemnity rules made by the Law Society. In this connection, the Law Society of Hong Kong has indicated to the Bills Committee that the professional indemnity scheme for solicitors will be extended to cover the duties of civil celebrant.

Defence and penalty (clauses 15, 16, 17, 50, 51, 52 and 57)

35. Ms Miriam LAU has expressed concern that a civil celebrant may be subject to double jeopardy, if the civil celebrant is liable to the penalty in the new section 31A and also disciplinary proceedings of the professional body concerned.

36. The Administration has responded that 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 the Administration's view amount to double jeopardy in that sense. The penalties in the new section 31A deal with breaches of the statutory requirements. It will be for the professional body concerned to consider whether professional conduct which warrants disciplinary proceedings is involved.

37. Hon Audrey EU and Hon Andrew CHENG have requested the Administration to review the penalty provisions in the Bill to maintain relativity and consistency with offences of similar nature in the principal Ordinance. Hon Audrey EU has also requested the Administration to review the drafting of the new section 31A to ascertain whether the defence of "reasonable excuse" should apply to other offences listed in this section.

38. The Administration has provided additional information on the level of penalty for other offences in the principal Ordinance. The Administration has advised that a lower level of fine is proposed for less serious offences in relation to non-compliance with procedural requirements. For offences relating to the integrity of a civil celebrant and have implications for the standard of services provided by a civil celebrant and regulation of practice of civil celebrants, a heavier penalty is proposed.

39. In examining the proposed section 30 in clause 14, Hon Andrew CHENG noted that a minister or civil celebrant who wilfully celebrates a marriage in case of a minor, or celebrates a marriage contrary to any other provision of the Ordinance, will be guilty of an offence and liable to a fine at level one or two-year imprisonment. Hon Andrew CHENG has queried why a level one fine is imposed for this offence, as the offence is rather serious, while a heavier fine is imposed for less serious offences under the same Ordinance. In this connection, members have requested the Administration to review and revise the penalty in the proposed section 30 and the penalties in other provisions in the Ordinance to maintain overall consistency.

40. The Administration has subsequently reviewed the penalty in other provisions of the Ordinance. The Administration has agreed to introduce a CSA to clause 51 to revise the penalty under section 30 to a fine at level five and two-year imprisonment, having regard to the severity of the offence under the section. After reviewing the existing seven offences in the Ordinance, the Administration has also proposed to raise the level of penalty for five offences involving deliberate acts of fraud or deceit, which are of a more serious nature. For this purpose, the Administration will introduce CSAs to raise the level of penalty in sections 29, 32, 33 and 39(3)(a) and (b) to a fine at level five and two-year imprisonment.

41. In examining the Administration's draft CSAs relating to the penalty for offences in sections 29, 30, 33 and 39 of the Ordinance, Senior Assistant Legal Adviser 1 has pointed out that by substituting the existing drafting of "triable either summarily or upon indictment" to "liable to a fine at level 5 and imprisonment for 2 years" in the sections concerned, the effect would be making the relevant offences only triable summarily in magistrate courts, and not either summarily or upon indictment as in the existing sections. Hon Margaret NG has expressed concern that the Administration has not drawn the Bills Committee's attention to the implications of these CSAs. The Administration has explained that it is appropriate for these offences with the proposed penalty to be tried in magistrate courts. The Administration has also pointed out that some other offences in the Marriage Ordinance are only triable summarily, and the draft CSAs are consistent with the existing policy.

42. The Administration has also agreed to add the element of "without reasonable excuse" to the offences created under proposed sections 31A(1), 31A(3) and 31A(5). These proposed sections relate to requirements for a civil celebrant to deliver specified documents to the Registrar within 14 days of cancellation or suspension of his appointment, to notify the Registrar if he ceases to meet any eligibility criteria prescribed in the proposed Schedule 4 within 14 days of such cessation and to forward a certificate of the Registrar to either of the proposed parties as soon as practicable.

Celebrating marriages inside licensed places of worship

43. Hon Andrew CHENG has requested the Administration to consider allowing civil celebrants to celebrate marriages inside licensed places of worship. The Administration has responded that the policy intention is to have separate arrangements for secular marriages and religious marriages because of their distinct nature. At present, only competent ministers are allowed to celebrate marriages at licensed places of worship, and secular marriages will not normally be allowed in licensed places of worship.

Fees to be charged by civil celebrants

44. The Bills Committee has sought the views of the Administration, the Law Society and the Society of Notaries on whether it was necessary to set a limit on the fees to be charged by civil celebrants. The Bills Committee has also requested the Administration to provide information on the overseas practice for members' reference.

45. The Administration has advised that it is open-minded on the fees to be charged by civil celebrants. The Administration has also advised that in Australia and New Zealand, the fees for solemnising marriages are not prescribed in the legislation and are regulated by market force. In British Columbia of Canada, as the services rendered by civil celebrants are regarded as community services, the fees are prescribed in the legislation.

46. The Bar Association considers that there should be a fixed fee to be charged by civil celebrants. The Law Society and the Society of Notaries, however, have no strong views on the fees to be charged by civil celebrants. These two professional bodies are of the view that it is more appropriate for the fees to be determined by market force.

47. Hon Miriam LAU has expressed concern that under the proposed section 6A(2), a civil celebrant will not be allowed to charge any fee for acceptance, collection and transmission of the notice of marriage, the affidavit and written consent for marrying persons below 16 years of age. As the collection and transmission of such documents will incur administrative and travelling expenses, Hon Miriam LAU considers that it is reasonable for civil celebrants to charge a fee for collection and transmission of these documents. In view of such concern, the Administration has agreed to move CSAs to delete the proposed section 6A(2) from the Bill, and to reflect a consequential amendment in clause 26 following the deletion of section 6A(2).

Impact on revenue

48. Some members have enquired about the impact of the legislative proposal on Government revenue. The Administration has advised that the administrative costs for processing applications for appointment of civil celebrants will be fully recovered from the applicants. The proposed fee is \$650 for application and \$350 for appointment. Assuming that about 30% of eligible solicitors and notaries will be interested in becoming a civil celebrant over the first five years, the estimated annual revenue will be about \$200,000.

49. The Administration has also advised that during the initial implementation of the civil celebrant scheme, the Immigration Department will maintain existing services at the marriage registries. However, it is not possible to estimate at the present stage the extent of revenue loss owing to the shift of demand to the new services of civil celebrants. The Immigration Department will review its service level in due course to ensure that its services will remain cost effective.

Miscellaneous amendments and amendments to modernise the drafting style of certain provisions in the Marriage Ordinance (Part 4 of the Bill)

50. The Bills Committee has noted that a new style has been adopted by the Department of Justice in this Bill in that provisions relating to modernisation of drafting style are grouped under one single part (Part 4) in the Bill. While the Bills Committee has no objection to the new style, the Chairman of the Bills Committee is of the view that the new drafting approach should only be adopted if it will make it easier for Members and relevant parties to understand and scrutinise the bills concerned.

51. The Bills Committee has noted that Part 4 of the Bill also contains miscellaneous amendments other than those for modernising the drafting style. For example, some definitions are added to make the references to the defined expressions more precise, and other amendments are made to achieve terminology consistency or to improve the presentation and clarity of the provisions concerned.

52. While most of the amendments in Part 4 do not seek to change the policy or the substance of the existing provisions, the Bills Committee has noted that certain changes proposed by the Administration under this Part may change the legal effect of the original provisions. For example, the amendments to section 29 under clause 50 of the Bill will make it an offence if a person, who knowing that no consent has been “produced” in accordance with section 14(1A) of the Marriage Ordinance, marries or assists or procures any other person to marry a person under 21 years of age. However, under the original section 29 of the Ordinance, a person will be guilty of an offence only if he knows that the written consent has not been “obtained”.

53. Hon Margaret NG has expressed dissatisfaction that such an amendment has changed the nature of the offence or policy for prosecution in respect of the existing section 14. Hon Margaret NG considers that the Administration should not try to introduce a change without having discussed with Members or explicitly explained the policy intent and implications of such a change. Concerning the proposed amendments to section 29, Hon Margaret NG and Hon Miriam LAU are in favour of retaining the original term “obtained” instead of changing it to “produced”, in order to adhere to the original intention of section 29. The Administration has agreed to move CSAs to this effect.

Follow-up actions to be taken by the Administration

54. The Administration has agreed to undertake the following follow-up actions –

- (a) to report to the Panel on Security on the outcome of the Administration’s review on the operation of the civil celebrant scheme one year after it has come into operation and whether other categories of persons, such as JPs and LegCo Members, should be eligible for appointment as civil celebrants; and
- (b) to provide the draft Code of Practice for civil celebrant to Members for reference.

Committee Stage Amendments

55. In addition to the CSAs described in the above paragraphs to address members' concerns, the Administration will also move CSAs to refine the drafting of certain provisions in the Ordinance and in the Bill. A full set of the final draft of CSAs is in **Appendix III**.

Date of Resumption of Second Reading debate

56. The Bills Committee supports the resumption of Second Reading debate on the Bill on 16 November 2005, subject to the introduction of CSAs by the Administration.

Advice sought

57. Members are invited to note the deliberations of the Bills Committee.

Council Business Division 2
Legislative Council Secretariat
2 November 2005

**Bills Committee on
Marriage (Introduction of Civil Celebrants of Marriages and
General Amendments) Bill**

Membership list

Chairman	Hon Margaret NG
Members	Hon Miriam LAU Kin-yee, GBS, JP Hon Andrew CHENG Kar-foo Hon Audrey EU Yuet-mee, SC, JP Hon LI Kwok-ying, MH Hon Albert Jinghan CHENG (Total : 6 Members)
Clerk	Mrs Constance LI
Legal advisers	Mr LEE Yu-sung Mr Arthur CHEUNG
Date	21 June 2005

Appendix II

Organisations / individuals that have given views to the Bills Committee on Marriage (Introduction of Civil Celebrants of Marriages and General Amendments) Bill

1. The Law Society of Hong Kong
2. Hong Kong Society of Notaries
- * 3. Hong Kong Bar Association
- * 4. Mr LO Kai-wing
- * 5. Mr YIP Ming
- * 6. Mr Simon PATKIN of “Capitalist Solutions”

(* written submissions only)

MARRIAGE (INTRODUCTION OF CIVIL CELEBRANTS
OF MARRIAGES AND GENERAL AMENDMENTS) BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Security

Clause

Amendment Proposed

New

By adding -

"3A. Section added

The following is added -

**"2A. Certain notices are not
subsidiary legislation**

A notice under section 5, 5A(4)(c), 5C(3),
5D(6)(a), 5E(7) or 5J(5) is not subsidiary
legislation."."

4

- (a) In the proposed section 5A(4)(c), by deleting "general".
- (b) In the proposed section 5C(3), by deleting "general".
- (c) In the proposed section 5D(1)(a), in the English text, by deleting "at".
- (d) In the proposed section 5D(1)(a)(i) and (ii), in the English text, by adding "at" before "the time".
- (e) In the proposed section 5D(3)(a), in the English text, by deleting "at".
- (f) In the proposed section 5D(3)(a)(i) and (ii), in

the English text, by adding "at" before "the time".

(g) In the proposed section 5D(4), by deleting everything after ", the" and substituting "Registrar shall give the person a written notice of the intention and the reason for the proposed cancellation."

(h) In the proposed section 5D, by adding -

"(4A) If the Registrar gives a notice to a person under subsection (4), the person may, within 14 days after the date of the notice or such longer period as the Registrar may allow, make representation to the Registrar in the manner specified in the notice.

(4B) The Registrar shall not cancel the appointment of a person until -

(a) the 14-day period or longer period (if any) referred to in subsection (4A) has expired and the person has not made any representation; or

(b) the person has made representation and the Registrar has considered the representation."

(i) In the proposed section 5D(6)(a), by deleting "general".

(j) In the proposed section 5E(3), by deleting

everything after ", the" and substituting -

"Registrar shall give the person a written notice of -

- (a) the intention;
- (b) the reason for the proposed suspension; and
- (c) the length of the proposed suspension period."

(k) In the proposed section 5E, by adding -

"(3A) If the Registrar gives a notice to a person under subsection (3), the person may, within 14 days after the date of the notice or such longer period as the Registrar may allow, make representation to the Registrar in the manner specified in the notice.

(3B) The Registrar shall not suspend the appointment of a person until -

- (a) the 14-day period or longer period (if any) referred to in subsection (3A) has expired and the person has not made any representation; or
- (b) the person has made representation and the Registrar has considered the representation."

(l) In the proposed section 5E(4)(a), by deleting

- "subsection (3)(a)(iii)" and substituting "(3)(c)".
- (m) In the proposed section 5E(5)(a)(i), in the English text, by deleting "was" and substituting "is".
 - (n) In the proposed section 5E(5)(a)(ii), by adding "subsequently" after "is".
 - (o) In the proposed section 5E(5)(b)(i), in the English text, by deleting "was" and substituting "is".
 - (p) In the proposed section 5E(5)(b)(ii), by adding "subsequently" after "is".
 - (q) In the proposed section 5E(6), by adding ", during the suspension period," after "shall not".
 - (r) In the proposed section 5E(7), by deleting "general".
 - (s) In the proposed section 5F, by deleting "The" and substituting "Without prejudice to the generality of section 27(3), the".
 - (t) By deleting the proposed section 5H(1) and substituting -

"(1) For the purpose of investigating and obtaining evidence of any suspected offence under this Ordinance or of any suspected contravention of a code of practice, the Registrar may request a civil celebrant to provide information in relation to the practice of the civil celebrant. The civil celebrant shall provide such information as soon as practicable upon receiving the request

of the Registrar.".

(u) In the proposed section 5H(2), in the English text,
by deleting "at".

(v) In the proposed section 5H(2)(a) and (b), in the
English text, by adding "at" before "the time".

6 By deleting the proposed section 6A(2).

7 By deleting the clause.

9 In the proposed section 12(1)(b)(i), by deleting "not
any impediment of kindred or alliance" and substituting
"no impediment of kindred or affinity as provided in
section 27(1)".

12(16) By adding after the proposed section 21(7) -

"(8) For the avoidance of doubt, if a marriage
is celebrated by a civil celebrant, the civil
celebrant shall not act as a witness to that
marriage.".

13 By deleting the clause and substituting -

"13. Invalid marriages

(1) Section 27(1) is repealed and the
following substituted -

"(1) A marriage shall be null and void on
the ground of kindred or affinity as provided

in Schedule 5.".

(2) Section 27(2) is repealed and the following substituted -

"(2) A marriage shall be null and void -

(a) if -

(i) it is not celebrated -

(A) by the Registrar in the office of the Registrar;

(B) by a competent minister in a licensed place of worship; or

(C) by a civil celebrant in accordance with section 21(3A),

and it is not -

(D) authorized by a special licence;

(E) celebrated under paragraph (b) of the proviso to section 21(3); or

(F) celebrated under section 39;

(ii) it is celebrated under a false name; or

(iii) no certificate of the Registrar has been issued or no special licence has been granted in respect of the marriage,

and both parties knowingly and wilfully acquiesce in its celebration in such circumstances; or

(b) if at the time of its celebration any party is under 16 years of age."."

- 16
- (a) In the proposed section 31A(1), by adding "without reasonable excuse" after "who".
 - (b) In the proposed section 31A(3), by adding "without reasonable excuse" after "who".
 - (c) By deleting the proposed section 31A(4).
 - (d) In the proposed section 31A(5), by adding "without reasonable excuse" after "who".

- 17
- (a) In the proposed section 33A(1), by deleting "1 year" and substituting "2 years".
 - (b) In the proposed section 33B, by deleting "level 4" and substituting "level 5 and imprisonment for 2 years".

"SCHEDULE 2 [ss. 2 & 36]".

- 23 (a) In the English text, by deleting -
"Third Schedule [ss. 14, 18A & 42]"
and substituting -
"THIRD SCHEDULE [ss. 14, 18A & 42]".
- (b) In the English text, by deleting -
"Schedule 3 [ss. 14, 18A & 42A]"
and substituting -
"SCHEDULE 3 [ss. 14, 18A & 42A]".
- 24 (a) In the proposed Schedule 4, in paragraph 1(a)(i),
by adding "and the Legal Practitioners (Risk
Management Education) Rules (Cap. 159 sub. leg. Z)"
before "; and".
- (b) In the proposed Schedule 4, by deleting paragraph
1(a)(ii) and substituting -
"(ii) holding a certificate issued by The Law
Society of Hong Kong -
(A) certifying that he has practised as
a solicitor; or
(B) upon a statutory declaration by him
in such form as the Council of The
Law Society of Hong Kong may
determine certifying that he has
been employed while his name is on
the roll of solicitors within the

meaning of the Legal Practitioners Ordinance (Cap. 159) to provide legal service to the employer, for a period or periods in aggregate of not less than 7 years; or".

26(2) By deleting -

"section 31A(4) civil celebrant charging prohibited fee".

27 (a) In subclause (1), by deleting "(zo)" and substituting "(zp)".

(b) In subclause (2), by deleting "(zp)" and substituting "(zq)".

(c) In subclause (3), by deleting "(zq)" and substituting "(zr)".

35 By deleting subclauses (3) and (4) and substituting -

"(3) Section 7(3) is amended by repealing "the notices filed in his office under this section and copies" and substituting "all notices of intended marriage filed in his office under this section and copies of Part I".

(4) Section 7(4) is amended by repealing "filed under this section, produce to such person for inspection a copy" and substituting "of intended marriage filed under this section, produce to such person for inspection a copy of Part I".".

50 By deleting the clause and substituting -

"50. Section substituted

Section 29 is repealed and the following substituted -

"29. Marrying, etc., person under 21 without required consent

Any person who, knowing that -

(a) a written consent under section 14 is required in respect of the marriage of a party under 21 years of age; and

(b) no such consent has been obtained,

marries or assists or procures any other person to marry the person referred to in paragraph (a) shall be guilty of an offence and shall be liable to a fine at level 5 and imprisonment for 2 years."."

51 (a) By renumbering the clause as clause 51(1).

(b) By adding -

"(2) Section 30 is amended by repealing everything after "an offence" and substituting "and shall be liable to a fine at level 5 and imprisonment for 2 years."."

52 By deleting everything after "amended by" and substituting "repealing everything after "shall be" and substituting "guilty of an offence and shall be liable to a fine at level 5 and imprisonment for 2 years."."

New By adding -

"52A. Penalty on unauthorized person celebrating marriage

Section 33 is amended by repealing everything after "an offence" and substituting "and shall be liable to a fine at level 5 and imprisonment for 2 years."."

57 (a) By adding -

"(1A) Section 39(1) is amended, in the proviso, in paragraph (c), by repealing ", in England or Wales" and substituting "as provided in section 27(1)"."

(b) By adding -

"(2A) Section 39(3) is amended by repealing everything after "an offence" and substituting "and shall be liable to a fine at level 5 and imprisonment for 2 years."."

New By adding after clause 57 -

"57A. Section added

The following is added -

"45. Saving

The amendments made to section 27 and paragraph (c) of the proviso to section 39(1) by the Marriage (Introduction of Civil Celebrants of Marriages and General Amendments) Ordinance (of 2005) shall not -

(a) validate a marriage which would have been invalid; or

(b) invalidate a marriage which would have been valid,

but for the enactment of that Ordinance."."

58(1) In the proposed Form 2, by deleting "就下述人士擬締結的婚姻已於 年 月 日" and substituting "於 年 月 日就下述人士擬締結的婚姻".

New By adding -

"60. Schedule 5 added

The following is added -

"SCHEDULE 5 [s. 27]

KINDRED AND AFFINITY

PART 1

1. In this Schedule -

"brother" (兄弟) includes a brother of the half blood;

"child" (兒童) means a person under the

age of 18;

"child of the family" (家庭子女), in relation to any person, means a child who has lived in the same household as that person and been treated by that person as a child of his family;

"sister" (姊妹) includes a sister of the half blood.

2. A marriage -

(a) solemnized between a man and any person specified in the first column of Part 2; or

(b) solemnized between a woman and any person specified in the second column of Part 2,

shall be null and void.

3. Subject to paragraph 4, a marriage -

(a) solemnized between a man and any person specified in the first column of Part 3; or

(b) solemnized between a woman and any person specified in the second column of Part 3,

shall be null and void.

4. A marriage referred to in paragraph 3 shall not be null and void by reason

only of affinity if -

- (a) both the parties to the marriage have attained the age of 21 at the time of the marriage; and
- (b) the younger party has not at any time before attaining the age of 18 been a child of the family in relation to the other party.

5. Subject to paragraph 6, a marriage -

- (a) solemnized between a man and any person specified in the first column of Part 4; or
- (b) solemnized between a woman and any person specified in the second column of Part 4,

shall be null and void.

6. A marriage referred to in paragraph 5 shall not be null and void by reason

only of affinity if -

- (a) both the parties to the marriage have attained the age of 21 at the time of the marriage; and
- (b) the marriage is solemnized -
 - (i) in the case of a

marriage between a man and the mother of a former wife of his, after the death of both the former wife and the father of the former wife;

(ii) in the case of a marriage between a man and the former wife of his son, after the death of both his son and the mother of his son;

(iii) in the case of a marriage between a woman and the father of a former husband of hers, after the death of both the former husband and the mother of the former husband; or

(iv) in the case of a marriage between a woman and a former husband of her

daughter, after the death of both her daughter and the father of her daughter.

PART 2

Prohibited degrees of relationship referred to in paragraph 2 of Part 1

For men	For women
Mother	Father
Adoptive mother or former adoptive mother	Adoptive father or former adoptive father
Daughter	Son
Adoptive daughter or former adoptive daughter	Adoptive son or former adoptive son
Father's mother	Father's father
Mother's mother	Mother's father
Son's daughter	Son's son
Daughter's daughter	Daughter's son
Sister	Brother
Father's sister	Father's brother
Mother's sister	Mother's brother
Brother's daughter	Brother's son
Sister's daughter	Sister's son

PART 3

Degrees of affinity referred to in
paragraphs 3 and 4 of Part 1

For men	For women
Daughter of former wife	Son of former husband
Former wife of father	Former husband of mother
Former wife of father's father	Former husband of father's mother
Former wife of mother's father	Former husband of mother's mother
Daughter of son of former wife	Son of son of former husband
Daughter of daughter of former wife	Son of daughter of former husband

PART 4

Degrees of affinity referred to in
paragraphs 5 and 6 of Part 1

For men	For women
Mother of former wife	Father of former husband
Former wife of son	Former husband of daughter".".