

LEGISLATIVE COUNCIL BRIEF

Marriage Ordinance (Chapter 181)

CIVIL CELEBRANT OF MARRIAGES APPOINTMENT APPEAL BOARD REGULATION

INTRODUCTION

As part of the scheme to appoint civil celebrants of marriages, the Secretary for Security has made the Civil Celebrant of Marriages Appointment Appeal Board Regulation (“the Regulation”). A copy of it is at **Annex**. It provides for the composition and operation of the Civil Celebrant of Marriages Appointment Appeal Board (“the Appeal Board”).

BACKGROUND AND JUSTIFICATIONS

2. The Marriage (Introduction of Civil Celebrants of Marriages and General Amendments) Bill (“the Bill”) to amend the Marriage Ordinance, Cap. 181 (“the Ordinance”) to, inter alia, provide for the appointment of civil celebrants of marriages (“civil celebrants”) and the regulation of their practice was passed by the Legislative Council on 16 November 2005 and the Amendment Ordinance was gazetted on 25 November 2005.

3. Section 5J of the Ordinance provides for the establishment of the Appeal Board to hear and determine the appeals lodged by a person who is aggrieved by any of the following decisions made by the Registrar –

Section 5B(3) -a decision to refuse the application for appointment or renewal of appointment as a civil celebrant;

- Section 5D(1) - a decision to cancel the appointment of a civil celebrant;
- Section 5D(9) - a decision to prohibit a person whose appointment has been cancelled due to the contravention of a code of practice or the conviction of an offence under the Ordinance from applying for appointment as a civil celebrant within a specified period; and
- Section 5E(1) - a decision to suspend the appointment of a civil celebrant for a specified period.

Under section 42 of the Ordinance, the Secretary for Security is empowered to make regulations to provide for the composition and operation of the Appeal Board and related matters.

THE REGULATION

5. The Regulation provides the necessary legislative backing for the composition of the Appeal Board for hearing and determining appeals and its operations. Details are as follows -

- (a) Sections 1 and 2 provide for the commencement date and definitions.
- (b) Sections 3 to 7 provide for the composition of the Appeal Board for the purpose of hearing and determining an appeal, the appointment of a Secretary to the Appeal Board, and service of notice, etc.
- (c) Sections 8 to 10 set out the procedure relating to the commencement of an appeal and the time limit for serving a notice of appeal.
- (d) Sections 11 to 20 provide for the procedures of the Appeal Board and related practices including the nature of the hearing, representation at the hearing and calling of witnesses and evidence etc.

LEGISLATIVE TIMETABLE

6. The legislative timetable will be –

Publication of the Regulation in the Gazette	13 January 2006
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Tabling in the Legislative Council for negative vetting	18 January 2006
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Commencement of the Regulation	14 March 2006
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IMPLICATIONS OF THE PROPOSAL

7. The Regulation is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the binding effect of the Ordinance. It has no productivity, environmental and sustainability implications.

8. The workload arising from the establishment of the Appeal Board will be absorbed by the Security Bureau and the Immigration Department. There may be financial implications arising from the remuneration of the Chairperson, Deputy Chairpersons and members of the Board, and for payment of allowances to witnesses. With a simple and objective set of eligibility criteria, we expect that the number of appeals and in turn the financial implications involved would be small, and the additional expenditure will be absorbed within the Secretary for Security's global allocation.

PUBLIC CONSULTATION

9. In the course of examining the Bill, we have kept the Legislative Council, the Law Society of Hong Kong and the Hong Kong Society of Notaries informed of the relevant implementation details including the setting up of a mechanism to deal with appeals against decisions of the Registrar to refuse, cancel or suspend the appointment of civil celebrants.

PUBLICITY

10. The Immigration Department will continue to publicize implementation details relating to the appointment of civil celebrants, including the function and operation of the Appeal Board.

ENQUIRY

11. Enquiries may be directed to Mr Alan K M CHU, Principal Assistant Secretary for Security at 2810 2506.

Security Bureau
11 January 2006

**CIVIL CELEBRANT OF MARRIAGES APPOINTMENT
APPEAL BOARD REGULATION**

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CIVIL CELEBRANT OF MARRIAGES APPOINTMENT APPEAL BOARD REGULATION

(Made by the Secretary for Security under section 42 of the Marriage Ordinance (Cap. 181))

PART 1

PRELIMINARY

1. Commencement

This Regulation shall come into operation on 14 March 2006.

2. Interpretation

In this Regulation, unless the context otherwise requires –

“appellant” (上訴人) means a person who lodges an appeal under section 5K of the Ordinance;

“Board Secretary” (秘書) means the Secretary to the Appeal Board appointed under section 5(1);

“Chairperson” (主席) means the Chairperson of the Appeal Board appointed under section 5J(3) of the Ordinance;

“Deputy Chairperson” (副主席) means –

- (a) the Deputy Chairperson of the Appeal Board appointed under section 5J(3) of the Ordinance; or
- (b) where more than one Deputy Chairperson of the Appeal Board is so appointed, any Deputy Chairperson of the Appeal Board.

PART 2
GENERAL PROVISIONS

3. Composition of Appeal Board for hearing appeal

(1) For the purposes of hearing and determining an appeal, the Appeal Board shall comprise –

- (a) the Chairperson or Deputy Chairperson; and
- (b) any 2 members of the Appeal Board appointed under section 5J(3) of the Ordinance.

(2) The Chairperson or Deputy Chairperson shall preside at all proceedings before the Appeal Board.

(3) Every question before the Appeal Board arising in relation to an appeal shall be determined by the opinion of the majority of the persons comprising the Appeal Board for the purposes of that appeal.

4. Provision where Chairperson is absent

(1) If, for any period, the Chairperson is precluded by absence from Hong Kong or any other cause from exercising his functions, the Deputy Chairperson shall act on behalf of the Chairperson and as such to exercise and perform all the functions of the Chairperson during that period.

(2) If 2 or more persons are appointed as Deputy Chairpersons under section 5J(3) of the Ordinance, the Secretary for Security may appoint any one of them to act on behalf of the Chairperson during the period mentioned in subsection (1).

5. Board Secretary

(1) The Secretary for Security shall appoint a person to be the Secretary to the Appeal Board.

(2) The Chairperson may give to the Board Secretary such directions as he thinks fit for the purposes of this Regulation.

(3) The Board Secretary shall comply with any direction given under subsection (2).

6. Conduct of proceedings

Subject to this Regulation, the Appeal Board may determine its own procedure for the purposes of hearing and determining an appeal.

7. Serving of notice

Where this Regulation authorizes or requires any document or notice to be served, the document or notice may be served in person or sent by post.

PART 3**LODGING APPEAL****8. Notice of appeal**

(1) An appellant shall commence an appeal by serving on the Board Secretary a notice of appeal in writing.

(2) The notice of appeal shall be served within 90 days after the date on which the appellant was notified of the decision appealed against or within such longer period as the Chairperson may allow.

(3) The notice of appeal shall be in such form as the Chairperson may specify.

(4) The notice of appeal shall –

- (a) set out the grounds of the appeal and the facts relied on; and
- (b) include a copy of all the documents the appellant intends to rely on and the particulars of all the witnesses he intends to call at the hearing.

9. Serving notice of appeal on Registrar

The Board Secretary shall, as soon as reasonably practicable after receiving a notice of appeal, serve a copy of the notice on the Registrar.

10. Registrar to prepare summary of facts for Appeal Board

The Registrar shall, as soon as reasonably practicable after receiving a notice of appeal –

- (a) prepare a written summary of the facts of the case and the reasons of the decision appealed against; and
- (b) serve the summary on the Board Secretary and a copy of the summary on the appellant.

PART 4

HEARING AND DECISION

11. Date, time and place of hearing

(1) Upon receipt of a notice of appeal, the Board Secretary shall fix the date, time and place of the hearing.

(2) The Board Secretary shall, not less than 28 days before the date of hearing, serve on the appellant and the Registrar notice of the date, time and place of the hearing.

(3) A notice under subsection (2) shall be in such form as the Chairperson may specify.

12. Hearings to be in public except in special circumstances

(1) Subject to subsection (2), the hearing of an appeal shall be in public.

(2) The Appeal Board may –

- (a) with the consent of the parties to an appeal or on application by either party to an appeal; and
- (b) on being satisfied that it is appropriate to do so,

by order direct that the whole or any part of the hearing shall take place in private and give directions as to the persons who may be present.

(3) The Appeal Board may, with the consent of the parties to an appeal, determine the appeal without an oral hearing on the basis of written submissions on oath or affirmation only.

13. Representation

(1) At the hearing of an appeal, the appellant –

- (a) may appear in person; or
- (b) may –
 - (i) be represented by a barrister or a solicitor within the meaning of the Legal Practitioners Ordinance (Cap. 159); or
 - (ii) with the approval of the Chairperson or the Deputy Chairperson who presides at the hearing, be represented by any other person authorized by the appellant in writing.

(2) The approval required under subsection (1)(b)(ii) shall not be unreasonably withheld.

(3) At the hearing of an appeal, the Registrar –

- (a) may appear in person; or
- (b) may be represented by –

- (i) a legal officer within the meaning of the Legal Officers Ordinance (Cap. 87);
- (ii) a barrister or a solicitor within the meaning of the Legal Practitioners Ordinance (Cap. 159); or
- (iii) any public officer of the Immigration Department authorized by him in writing.

14. Languages

The hearing of an appeal may be conducted in the English or Chinese language or both as the Appeal Board thinks fit.

15. Appeal Board not confined to grounds set out in notice of appeal

The Appeal Board may consider any matter which appears to it to be relevant to the grounds of an appeal notwithstanding that there is no reference to the matter in the notice of appeal.

16. Witnesses and evidence

(1) The Appeal Board may receive and consider any material (whether in the form of oral evidence, written statement, document or otherwise) which appears to it to be relevant to the issues in an appeal notwithstanding that the material would not be admissible as evidence in a court of law.

(2) The Appeal Board may by notice in writing signed by the Chairperson (or the Deputy Chairperson if he is presiding) require any person to attend any hearing of the Appeal Board to –

- (a) give evidence;
- (b) produce any document or other thing in that person's possession, custody or power; or
- (c) answer any question,

relating to any issue in the appeal.

(3) The Appeal Board may administer oaths and affirmations and may examine on oath, affirmation or otherwise any person attending before it.

(4) Every witness in hearings of the Appeal Board shall be entitled to the same privileges in respect of the giving of evidence and the production of any document or other thing as he would be entitled to if appearing as a witness in civil proceedings before the Court of First Instance.

(5) The Appeal Board may allow in respect of a witness who attends a hearing of the Appeal Board a professional witness allowance, expert witness allowance or loss allowance not exceeding the professional witness allowance, expert witness allowance or loss allowance, as the case may be, that may be allowed under the Criminal Procedure (Witnesses' Allowances) Rules (Cap. 221 sub. leg. B) in respect of a witness.

(6) If a sum allowed under subsection (5) is not claimed within 3 months from the date on which it was allowed, it shall cease to be payable.

17. Abandonment of appeal

(1) An appellant may, at any time, abandon the appeal or any part of the appeal by notice in writing served on the Board Secretary.

(2) An appellant who serves a notice under subsection (1) shall at the same time serve a copy of such notice on the Registrar.

18. Failure of appellant to attend hearing

(1) If at the time fixed for the hearing of an appeal, the appellant fails to attend the hearing either in person or by a barrister, solicitor or authorized representative, the Appeal Board may –

- (a) if it is satisfied that the appellant's failure to attend was due to illness or any other reasonable cause, postpone or adjourn the hearing for such period as it thinks fit;
- (b) proceed to hear the appeal; or
- (c) by order dismiss the appeal.

(2) Where an appeal is dismissed under subsection (1)(c), the appellant may, within 28 days after the making of the order for dismissal, apply to the Appeal Board for a review of the order by serving a notice in writing on the Board Secretary.

(3) A notice under subsection (2) shall be in such form as the Chairperson may specify.

(4) An appellant who serves a notice under subsection (2) shall at the same time serve a copy of such notice on the Registrar.

(5) The Appeal Board may, if satisfied that the appellant's failure to attend the hearing was due to illness or any other reasonable cause, set aside the order for dismissal.

(6) Where the Appeal Board sets aside an order for dismissal under subsection (5), the Board Secretary shall –

- (a) fix the date, time and place for a fresh hearing of the appeal so as to enable the hearing to commence as soon as is reasonably practicable; and
- (b) not less than 14 days before the date so fixed serve on the appellant and the Registrar notice of the date, time and place of the hearing.

19. Record of proceedings

The Appeal Board shall keep a summary or record of proceedings in every appeal in such form as the Chairperson may specify.

20. Reasons for decision

(1) The Appeal Board shall give reasons in writing for its decisions. Those reasons shall include its findings on material questions of fact and a summary of the evidence or other material on which those findings were based.

(2) The Board Secretary shall serve a copy of the Appeal Board's decision and of the reasons for the decision on the parties to an appeal.

Secretary for Security

2006

Explanatory Note

This Regulation regulates the making of appeals to the Civil Celebrant of Marriages Appointment Appeal Board ("the Appeal Board").

2. Under the Marriage Ordinance (Cap. 181), the Registrar of Marriages ("the Registrar") has power to appoint persons who meet certain prescribed criteria to be civil celebrants of marriages to celebrate marriages. The Registrar also has power to suspend or cancel the appointment of a civil celebrant of marriages, or to prohibit a person whose appointment is cancelled from applying again in a certain period of time. Persons who are aggrieved by the decision of the Registrar in relation to civil celebrants of marriages may lodge an appeal to the Appeal Board.

Part 1

3. Part 1 contains the commencement date (section 1) and definitions (section 2).

Part 2

4. Part 2 contains general provisions relating to the Appeal Board.

5. Section 3 prescribes the composition of the Appeal Board for the purposes of hearing and determining an appeal.

6. Section 4 provides for the situation where the Chairperson of the Appeal Board is precluded from exercising his functions.
7. Section 5 provides for the appointment of a Board Secretary.
8. Section 6 relates to the procedure of the Appeal Board.
9. Section 7 relates to service of notices.

Part 3

10. Part 3 sets out the provisions relating to the commencement of an appeal.
11. Section 8 sets out the time limit for serving a notice of appeal and the form of the notice of appeal, etc.
12. Sections 9 and 10 set out respectively the duty of the Board Secretary and the Registrar on receiving a notice of appeal.

Part 4

13. Part 4 sets out the provisions relating to the hearing and determination of an appeal.
14. Section 11 requires the Board Secretary to fix a date, time and place for hearing the appeal and to give not less than 28 days' notice to the Registrar and the appellant.
15. Sections 12 to 16 deal with various aspects of the hearing of the appeal, such as the nature of the hearing, representation at the hearing, the language to be used, witness and evidence, etc.
16. Section 17 allows the appellant to abandon the appeal or any part of it at any time.
17. Section 18 makes provision for the situation where the appellant fails to attend the hearing.
18. Section 19 requires the Appeal Board to keep a record of the proceedings.
19. Section 20 requires the Appeal Board to give reasons for its decisions.