

政制及內地事務局
政府總部
香港添馬添美道2號
政府總部東翼



CONSTITUTIONAL AND MAINLAND AFFAIRS BUREAU
GOVERNMENT SECRETARIAT
EAST WING
CENTRAL GOVERNMENT OFFICES
2 TIM MEI AVENUE, TAMAR
HONG KONG

13 October 2014

Clerk to Panel on Constitutional Affairs
Legislative Council Complex,
1 Legislative Council Road,
Central, Hong Kong
(Attn: Ms Joanne MAK)

Dear Ms MAK,

**Legislative Council Panel on Constitutional Affairs
Follow-up to the meeting on 16 June 2014**

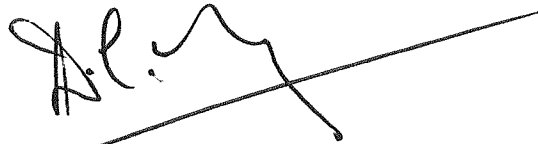
At its meeting held on 16 June 2014, the Panel of Constitutional Affairs discussed the Hearing of the third report of the Hong Kong Special Administrative Region under the International Covenant on Economic, Social and Cultural Rights. A member of the Panel asked whether marriages solemnised by consulates in Hong Kong for their respecting sending states' nationals (including marriage of same sex couples) are recognised legally as valid marriages under Hong Kong law.

2. The Department of Justice has advised that for a marriage celebrated in a foreign consulate in Hong Kong to be recognised under Hong Kong law, it must be demonstrated to have both essential and formal validity according to the laws which govern these issues. Generally speaking, essential validity involves the capacity of each party to enter into a matrimonial union and to acquire a matrimonial status in accordance with the law of the party's place of antenuptial domicile. The fact that each spouse has capacity to marry under that spouse's ante-nuptial domicile is traditionally regarded as a requirement of a valid marriage. Formal validity involves the formalities required by the law of the place where the union is entered into. It is necessary and sufficient

that the formalities prescribed by law of the place where the marriage is celebrated is satisfied. However, the above principles are subject to exceptions and the residual possibility that a capacity or incapacity according to foreign law may be contrary to Hong Kong public policy.

3. Therefore, the question of whether a marriage performed in a foreign consulate in Hong Kong would be recognised as valid under Hong Kong law is a matter which depends on the circumstances and the application of conflict of laws rules on a case-by-case basis.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'D.C. Cheung', written over a long, thin horizontal line that extends across the page.

(D. C. CHEUNG)

for Secretary for Constitutional and Mainland Affairs

cc Secretary for Security (Attn: Mr Billy WOO)
Secretary for Justice (Attn: Michelle FUNG)