



The recognition and treatment of relationships under *Hong Kong law*—2026

A REPORT COMMISSIONED BY
THE GENDER STUDIES PROGRAMME OF THE CHINESE UNIVERSITY OF HONG KONG
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This report has been drafted in English and translated into Chinese. In the event of any inconsistency, the English version prevails.

1. BACKGROUND

- 1.1 In March 2025, Allen Overy Shearman Sterling (**A&O Shearman**) was commissioned by the Gender Studies Programme of the Chinese University of Hong Kong (**CUHK**) to identify and analyse Hong Kong legislation and certain Government policies in which a person's relationship status is a factor.¹
- 1.2 This report contains a summary of the results of our analysis.
- 1.3 We conducted a similar analysis for the Hong Kong Equal Opportunities Commission in 2019 which reviewed legislation and selected Government policies as at 31 December 2018.² A summary of the results of that analysis was published in June 2019 and is available online (the **2019 Report**).³
- 1.4 The 2019 Report has been used by legal practitioners and others to advance the recognition of intimate relationships between two people other than opposite-sex marriage (**alternative relationships**). For example, the 2019 Report was referenced by the Court of Final Appeal in *Sham Tsz Kit v Secretary for Justice*,⁴ which required the Government to establish a framework for the recognition of same-sex partnerships.

Changing attitudes regarding alternative relationships

- 1.5 Attitudes in Hong Kong toward alternative relationships have changed significantly over the past few decades.
- 1.6 Several studies have reported an increasing acceptance of cohabitation relationships.
- 1.7 A 2008 report by the Department of Social Work and Social Administration at the University of Hong Kong (**HKU**) noted that cohabitation was increasingly accepted compared to previous studies. For example, 51% of respondents to the survey accepted a long-term cohabitation relationship without the couple being legally married. The report suggested that "people in Hong Kong are ready to accept more diverse definitions of family".⁵
- 1.8 A similar trend is evident in the findings of the Family Survey 2021, which reveal a continued increase in acceptance of cohabitation among Hong Kong residents over the past decade.⁶ The survey reports that in 2021, 37.9% of respondents accepted "cohabitation without the intention of getting married", while 39.8% agreed that "cohabitation before marriage" is a good idea. Notably, younger age groups demonstrated even greater acceptance, with those aged 25-34 and 15-24 showing the most positive attitudes towards cohabitation. The mean score for attitudes towards cohabitation rose from 3.03 in 2011 to 3.22 in 2021, indicating a clear upward trend in acceptance.

¹ This research has been conducted on a pro bono basis by Allen Overy Shearman Sterling without any payment being made to Allen Overy Shearman Sterling for these services.

² This research was conducted on a pro bono basis by Allen & Overy (now Allen Overy Shearman Sterling) without any payment being made for these services.

³ The Recognition and Treatment of Relationships under Hong Kong Law—A report by Allen & Overy commissioned by the Equal Opportunities Commission (June 2019), eoc.org.hk/EOC/upload/ResearchReport/201962614292293384.PDF. [2023] HKCFA 28.

⁴ Trends in family attitudes and values in Hong Kong, Professor Nelson Chow and Dr Terry Lum (August 2008), researchgate.net/publication/237336770_Trends_in_Family_Attitudes_and_Values_in_Hong_Kong.

⁵ Family Survey 2021, Social Policy Research Limited (December 2022), familycouncil.gov.hk/en/files/research/Family_Survey_2021_General_Survey_Report.pdf.

1.9 At the same time:

- (a) the numbers of persons in Hong Kong who have never been married has increased significantly over the last 25 years;⁷ and
- (b) the number of marriages in Hong Kong peaked in 2012 and has generally been trending downward since then.⁸

1.10 In terms of same-sex relationships, the ability to enter a committed relationship remains an important milestone for many individuals who identify as lesbian, gay, bisexual, and queer (**LGBQ+**) in Hong Kong, and these individuals consider marriage to be a life goal. In 2023, the CUHK conducted a study where 908 individuals who identified as LGBQ+ were surveyed.⁹ It concluded there is a strong and widespread desire among LGBQ+ individuals and their families in Hong Kong for the legal recognition of same-sex relationships:

- (a) The majority (50%) of respondents reported being in a committed or legally recognised relationship with a same-sex partner. This demonstrates that LGBQ+ individuals, like their non-LGBQ+ counterparts, often choose to engage in committed relationships.
- (b) Among those in a committed same-sex relationship:
 - (i) 70% expressed a desire or strong desire to marry their partner, indicating that marriage continues to be an important institution for LGBQ+ individuals in Hong Kong;
 - (ii) 8% had taken active steps to formalise their same-sex relationships through marriage or civil partnership overseas; and
 - (iii) 4% had taken active steps to formalise their same-sex relationships by way of “fly-free” online marriage or civil partnerships.¹⁰

1.11 The same study also showed that among 455 respondents who were in a same-sex relationship in Hong Kong:

- (a) 94% worried hospitals in Hong Kong would not recognise the status of their same-sex partner in the event of a medical emergency; and
- (b) 18% reported they had been denied the right to be together in healthcare settings (e.g. to visit one another in the hospital) in the previous year.

⁷ Marriage and Divorce Trends in Hong Kong, 1991 to 2020, January 2022, Census and Statistics Department, censtatd.gov.hk/en/data/stat_report/product/FA100055/att/B72201FB2022XXXXB0100.pdf.

⁸ Table 115-01015: Number of marriages by type, 25 June 2025, Census and Statistics Department, censtatd.gov.hk/en/web_table.html?id=115-01015. We note the increase in the number of marriages from 2021 to 2022 and 2022 to 2023, which follow the decrease in marriages from 2019 to 2020 and 2020 to 2021; we assume these changes reflect the impact of the COVID-19 pandemic. We also note the number of marriages decreased from 2023 to 2024, with the number of marriages in 2024 being lower than the number of marriages in 2019, which would have been minimally affected by the COVID-19 pandemic.

⁹ Yiu-Tung Suen, Eliz M. Y. Wong, and Randolph C. H. Chan, Research Briefs entitled “Hong Kong LGBQ+ People’s Marital Intention and Plan” and “The Everyday Life Experiences of Same-Sex Couples in Hong Kong Society and Their Concerns”, CUHK (January 2025); see also CUHK’s Press Release, “Same-Sex Couples in Hong Kong Have Strong Marital Intention but Are Concerned About the Lack of Legal Recognition of Their Relationship”, gender.cuhk.edu.hk/news/same-sex-couples-in-hk-have-strong-marital-intention-but-are-concerned-about-the-lack-of-legal-recognition-of-their-relationship.

¹⁰ A “fly-free” wedding refers to an arrangement where the same-sex couple to be married is physically in Hong Kong while the wedding officiant is physically in a place that has no residency or citizenship requirements for marriage licences. The marriage ceremony typically takes place over a videoconferencing platform such as Zoom.

1.12 Social attitudes towards same-sex relationships in Hong Kong have also shifted significantly over the past decade. A study conducted by CUHK, HKU, and The University of North Carolina Chapel Hill, using representative telephone surveys with over 1,000 participants in each of the years 2013, 2017, and 2023, demonstrates evolving attitudes towards same-sex relationships in Hong Kong.¹¹ It concluded that a growing number of people in Hong Kong support the protection of rights for sexual and gender minorities, including rights for same-sex couples:

- (a) In 2023, 71% of participants stated that Hong Kong should have laws to protect individuals from discrimination based on sexual orientation. This figure was 69% in 2017 and 58% in 2013. By contrast, only 6% of participants in 2023 expressed disagreement with the introduction of such legislation.
- (b) In 2023, 85% of participants believed that same-sex couples should be entitled to at least some of the rights available to opposite-sex couples. This figure was 78% in 2017 and 73% in 2013.
- (c) In 2023, 60% of participants indicated support for same-sex marriage, compared with 50.4% in 2017 and 38% in 2013. At the same time, opposition to same-sex marriage has declined, with only 17% of participants expressing opposition in 2023, down from 33% in 2017 and 43% in 2013.
- (d) The 2023 data also revealed differences in support for same-sex marriage across age groups. Support was highest among those aged 18-34, at 82%. This was followed by 68% among those aged 35-49, 54% among those aged 50-59, and 46% among those aged 60 and above.

1.13 These findings indicate a steady and broad-based shift in public opinion in Hong Kong towards greater acceptance of cohabitation relationships and individuals who are in same-sex relationships.

1.14 Our engagement takes place against this backdrop.

¹¹ Support in Hong Kong for Same-sex Couples' Rights Grew Over Ten Years (2013-2023): 60 Percent Now Support Same-Sex Marriage (May 2025), ccpl.law.hku.hk/wp-content/uploads/2023/05/Change-Over-Time-Report-2023-FINAL-English.pdf.

2. SUMMARY AND OBSERVATIONS

Changes since 2019

2.1 Since the 2019 Report, the Courts have interpreted and applied the law, existing legislation has been amended, new legislation has been passed by the Legislative Council, and the Government has changed its policies. This has resulted in changes to the differential treatment of couples in alternative relationships.

2.2 Several cases before the Hong Kong Courts have challenged the lawfulness of various laws and policies as they apply to relationships other than opposite-sex marriage.

(a) ***Leung Chun Kwong v Secretary for the Civil Service and Another***¹²

(i) In June 2019, the Court of Final Appeal determined (a) the Secretary for the Civil Service had acted unlawfully in denying medical and dental benefits to the same-sex spouse of a civil servant and (b) the Commissioner of Inland Revenue had acted unlawfully in rejecting that civil servant's election for joint assessment (for tax purposes) with his¹³ husband. The Court rejected the Secretary's and Commissioner's argument that the differential treatment between the civil servant and persons in opposite-sex marriages was rationally connected to the Government's legitimate aim of protecting the institution of opposite-sex marriage in Hong Kong. The Court therefore:

- (A) declared the Secretary's and the Commissioner's decisions unlawful and quashed them;
- (B) confirmed that civil servants' same-sex spouses are entitled to the same benefits and allowances as their opposite-sex spouses; and
- (C) ordered a remedial interpretation of the relevant provisions of the Inland Revenue Ordinance.

(ii) Following the judgment:

- (A) The Civil Service Bureau has confirmed it has established a mechanism for civil servants to declare their same-sex marriages and claim the relevant spousal benefits.¹⁴
- (B) The Inland Revenue Department has also confirmed to the Law Society of Hong Kong that a same-sex marriage is regarded as a valid marriage for the purposes of the Stamp Duty Ordinance.¹⁵ This confirmation goes beyond what was required

¹² [2019] HKCFA 19 and [2019] HKCFA 34.

¹³ For ease of reference and drafting clarity, this report uses gendered pronouns, such as "he" and "she". These references are intended to be gender-neutral and inclusive of all persons, regardless of gender identity.

¹⁴ In a letter dated 23 September 2020, the Civil Service Bureau informed Legislative Council member Mr Raymond Chan that it has established a mechanism allowing civil servants to declare same-sex marriages contracted abroad and claim the same spousal benefits as opposite-sex spouses, see hk01.com/社會新聞/528770/同性婚姻-終極敗訴一年-政府改機制容許公務員申請同性配偶福利.

¹⁵ Law Society circular 20-136 (PA) dated 16 March 2020, which encloses/links to a letter from the Inland Revenue Department to the Law Society of Hong Kong dated 10 March 2020. The relevant part of the letter reads: "Following the judgment of the Court of Final Appeal in *Leung Chun Kwong v Secretary for the Civil Service* (2019) 22 HKCFAR 127, a same-sex marriage would now be regarded as a valid marriage for the purposes of the Stamp Duty Ordinance (Cap.117). Accordingly, for residential property transaction involving persons who are the spouses of any legally recognised same-sex marriage elsewhere, our office would allow them to claim exemption of Buyer's Stamp Duty, Special Stamp Duty and charging Ad Valorem Stamp Duty at lower rates (Scale 2)."

under the remedial interpretation of the Inland Revenue Ordinance referenced above.

(b) ***MK v Government of HKSAR***¹⁶

(i) In October 2019, the Court of First Instance dismissed a constitutional challenge brought by a Hong Kong permanent resident seeking recognition of same-sex marriage and an alternative legal framework for same-sex relationships. The Court held that the existing laws in Hong Kong only recognise marriage as a voluntary union for life between one man and one woman, and that the relevant constitutional protections safeguard only opposite-sex marriage.

(c) ***Li Yik Ho v Secretary for Justice and Director of Health***¹⁷

(i) In October 2021, the Court of First Instance considered a judicial review brought by a same-sex widower, who challenged the definitions of “spouse”, “husband”, “wife”, “family”, “relative”, and “next of kin” under various legislative provisions and alleged discrimination against same-sex couples in death-related procedures. The applicant ultimately withdrew his application and there was no decision by the Court on the substance of his claims. However, during a hearing on 7 October 2021, the Court summarised the Government’s position on issues relevant to the case:¹⁸

There is no policy for distinction between opposite-sex couples and same-sex couples for arranging an appointment with the public mortuary for body identification by the police...

The Forensic Pathology Service does not have a policy of refusing a person to act as an identifier of the deceased or denying that person any service or right on the ground of being the same-sex spouse of the deceased person.

There is no distinction between same-sex and opposite-sex spouses for the term “spouse” under schedule 2(1) of the Coroners Ordinance.

There is no policy of the Coroner’s Court which denies any rights or gives differential treatment to the same-sex spouse of the deceased person.

The policy of the Food and Environmental Hygiene Department in respect of services related to cemeteries and crematoria, including services relating to the scattering of a deceased’s ashes, does not exclude the right of the same-sex couple of the deceased to handle such arrangements.

There is no policy and internal guideline within the Food and Environmental Hygiene Department which prohibits or restricts in any manner the department from providing services on various after-death arrangements to the same-sex spouse of the deceased. In particular, there is no restriction that the spouse of the deceased making the application must be one of opposite sex.

¹⁶ [2019] HKCFI 2518.

¹⁷ HCAL 295/2021.

¹⁸ Retrieved from dalyassociates.net/wp-content/uploads/2021/12/Transcript-of-the-Hearing-on-7-October-2021-in-HCAL-295-of-2021.pdf.

Lastly, there is no policy of the Immigration Department which denies a person to apply for a certified copy of an entry in the death register (death certificate) on the ground of being the same-sex spouse of the deceased person.

(d) ***Sham Tsz Kit v Secretary for Justice.***¹⁹

- (i) In September 2023, the Court of Final Appeal re-affirmed there is no constitutional right to same-sex marriage in Hong Kong, nor a right to recognition of overseas same-sex marriages. However, the Court found that the absence of a framework providing for the recognition of same-sex partnerships constituted a violation of the right to privacy and declared the Government had a positive obligation to establish such a framework. The Court suspended the operation of its declaration for two years (from 27 October 2023) to give the Government time to comply with this obligation.
- (ii) On 16 July 2025, the Government introduced into the Legislative Council the Registration of Same-sex Partnerships Bill, which purported to establish such a framework.²⁰ The Bill would have enabled a same-sex couple who entered into a same-sex marriage, civil union, or civil partnership outside Hong Kong to register that relationship in Hong Kong, provided certain eligibility requirements are met. The effect of registration would have been to give a person in a registered same-sex partnership some of the same rights available to an opposite-sex spouse, namely:
 - (A) the right to apply for a cremation permit in respect of the remains of his/her deceased same-sex partner;²¹
 - (B) the right to object to the proposed removal of his/her deceased same-sex partner's body parts for therapeutic purposes or for purposes of medical education or research;²²
 - (C) the right to undergo a restricted organ removal and a restricted organ transplant with their same-sex partner without the need for the prior approval of the Human Organ Transplant Board, provided their relationship has been registered for not less than three years;²³ and
 - (D) easier access to information about the involvement of his/her same-sex partner in a life-threatening situation.²⁴
- (iii) In the brief accompanying the Bill, the Government mentioned plans to implement other rights for registered same-sex partnerships through existing legislation or policy/administrative measures:
 - (A) hospital visitation rights;

¹⁹ [2023] HKCFA 28 and [2023] HKCFA 31.

²⁰ Paragraph 5 of the Legislative Council Brief accompanying the introduction of the Registration of Same-sex Partnerships Bill to the Legislative Council at legco.gov.hk/yr2025/english/brief/cmab253002022p003_20250710-e.pdf.

²¹ Section 2 of Part 2 of Schedule 3 to the Registration of Same-sex Partnerships Bill.

²² Section 3 of Part 3 of Schedule 3 to the Registration of Same-sex Partnerships Bill.

²³ Section 4 of Part 4 of Schedule 3 to the Registration of Same-sex Partnerships Bill.

²⁴ Section 7 of Part 6 of Schedule 3 to the Registration of Same-sex Partnerships Bill.

- (B) enabling a person to consent to his/her same-sex partner to access his/her medical information and participate in his/her medical decisions;
- (C) enabling the same-sex partner of a mentally incapacitated patient to act as guardian to participate in his/her medical decisions; and
- (D) various rights around after-death arrangements.²⁵

(iv) On 10 September 2025, the Legislative Council voted 71 to 14 (with one abstention) against a motion for the second reading of the Bill.²⁶ As a result, the Legislative Council took no further action on the Bill and the Bill does not form part of the laws of Hong Kong.

(v) Following the vote, the Government issued a press release on the same day remarking “...As the Bill has been voted down, the Government will not apply to the court for an extension of the suspension period and will further discuss and study the issue with the Department of Justice”.²⁷ Additionally, on 16 September 2025, the Chief Executive of Hong Kong, Mr John Lee, at a media session commented regarding the Government’s obligations “...We will, of course, examine how we can offer protection to same-sex partners so that their rights will be protected. A lot of these relate to healthcare and also to estate properties [sic]. We will examine how we can do that administratively.”²⁸

(vi) It is therefore unclear at this time how the Government will discharge its positive obligation to establish a framework providing for the recognition of same-sex partnerships as required by the Court of Final Appeal.

(e) ***Nick Infinger v The Hong Kong Housing Authority and Li Yik Ho (in substitution for Ng Hon Lam Edgar, deceased) v The Hong Kong Housing Authority***²⁹

- (i) In November 2024, the Court of Final Appeal held that the Hong Kong Housing Authority had acted unlawfully in excluding same-sex married couples from applying for public rental housing and subsidised home ownership flats as a family unit. The Court rejected the Authority’s argument that opposite-sex spouses enjoyed exclusive constitutional rights to apply for such housing, and found that the differential treatment of same-sex married couples was not justified. As a result, the Court declared the relevant policies unlawful and unconstitutional and quashed the decisions made by the Authority under those policies.
- (ii) Although there has been no official announcement from the Authority, we understand it has opened applications for subsidised home ownership to same-sex couples. This is supported by the Authority having replaced “husband/wife” with “spouse” in the “relationship with applicant” section of the application forms.³⁰ The application form for

²⁵ Paragraphs 24 and 25 of the Legislative Council Brief accompanying the introduction of the Registration of Same-sex Partnerships Bill to the Legislative Council at legco.gov.hk/yr2025/english/brief/cmab253002022p003_20250710-e.pdf.

²⁶ Division 1 of the voting results of the Legislative Council meeting held on 10 September 2025, available at legco.gov.hk/yr2025/chinese/counmtg/voting/v20250910.pdf.

²⁷ See info.gov.hk/gia/general/202509/10/P2025091000834.htm.

²⁸ See info.gov.hk/gia/general/202509/16/P2025091600357.htm.

²⁹ [2024] HKCFA 29.

³⁰ Compare Annex C (Template) of the Application Guide to the White Form Secondary Market Scheme 2023 (available at hos.housingauthority.gov.hk/mini-site/wsm2023/common/pdf/application_guide_e.pdf) and Annex C (Template) of the Application Guide to the White Form Secondary Market Scheme 2024 (available at hos.housingauthority.gov.hk/mini-site/wsm2024/common/pdf/application_guide_e.pdf).

public rental housing provides a free space for the “relationship with the applicant”,³¹ so it does not need to be similarly modified to comply with the above decision.

(f) ***Li Yik Ho (in substitution for Ng Hon Lam Edgar, deceased) v Secretary for Justice***³²

(i) In November 2024, the Court of Final Appeal held that the exclusion of same-sex married couples from the inheritance and estate provisions of the Intestates’ Estates Ordinance and the Inheritance (Provision for Family and Dependents) Ordinance was unconstitutional. The Court rejected the Secretary for Justice’s arguments that same-sex marriages recognised abroad were not comparable to opposite-sex marriages for the purposes of these Ordinances and that maintaining legislative coherence justified the differential treatment. Consequently, the Court ordered a remedial interpretation of the relevant provisions of those Ordinances.

2.3 There is now less differential treatment (i.e. couples in some alternative relationships are treated like those in opposite-sex marriages, or at the very least, face smaller differences in treatment) in the cases of:

- (a) protections against race discrimination, which now recognise cohabittees;³³
- (b) ex gratia payments from the Travel Industry Compensation Fund are now available to the deceased’s opposite-sex cohabitee, provided they cohabited as husband and wife;³⁴
- (c) the Coroner’s Court, which now treats a surviving opposite- and same-sex spouse equally;³⁵
- (d) public rental housing and subsidised home ownership, which are now available to same-sex spouses;³⁶
- (e) intestacy, where a same-sex spouse will now inherit in the absence of a will;³⁷
- (f) surviving same-sex spouses now being able to apply to the Court for payments or property from the deceased’s estate on the ground that the disposition of the deceased’s estate is not such as to make reasonable financial provision for him/her;³⁸
- (g) medical and dental benefits for civil servants’ same-sex spouses;³⁹
- (h) how banks calculate their unsecured financial exposures to connected parties, which now include cohabittees;⁴⁰ and
- (i) taxation under the Inland Revenue Ordinance and Stamp Duty Ordinance, where same-sex spouses enjoy the same treatment as opposite-sex spouses.⁴¹

³¹ The Application Form for Public Rental Housing [HD300E] (Revised in May 2024) is available at housingauthority.gov.hk/en/common/pdf/global-elements/forms/flat-application/HD300.pdf.

³² [2024] HKCFA 30.

³³ See section 5 of this report.

³⁴ See section 9 of this report.

³⁵ See section 12 of this report.

³⁶ See section 14 of this report.

³⁷ See section 16 of this report.

³⁸ See section 16 of this report.

³⁹ See section 22 of this report.

⁴⁰ See section 24 of this report.

⁴¹ See section 25 of this report.

2.4 Items (a), (b), and (h) in paragraph 2.3 above are the result of legislative changes. All other items arose following judicial review proceedings brought against the Government by a person in an alternative relationship.

2.5 At the same time, differential treatment has been created or expanded in terms of:

- (a) protections against doxxing, which do not apply where the doxxing is intended to harm a person's civil partner, cohabitee, or same-sex spouse;⁴²
- (b) a requirement to notify the Registrar of Births and Deaths of certain deaths, where the obligation on an opposite-sex spouse is different from the obligation on a person in an alternative relationship;⁴³
- (c) protections that apply to a subdivided housing tenant, which will not pass to the tenant's civil partner, cohabitee, or same-sex spouse upon his/her death;⁴⁴
- (d) complaints to the Committee on Complaints Against Private Healthcare Facilities about private healthcare facilities, which can be made by a patient's opposite-sex spouse but may not be able to be made by a patient's civil partner, cohabitee, or same-sex spouse;⁴⁵
- (e) intellectual property, where an exemption for media shifting may not apply to those in alternative relationships;⁴⁶
- (f) limited partnership funds, whose registrability in an employment context depends on whether the participating persons in the fund include employees' civil partners, cohabitees, and same-sex spouses;⁴⁷ and
- (g) a requirement that applies to members of the Securities and Futures Commission (and others) to make a declaration where a matter involves the member's opposite-sex spouse, but not where the matter involves his/her civil partner, cohabitee, or same-sex spouse.⁴⁸

2.6 All items in paragraph 2.5 above came about solely through new or amended legislation.

Recognition of relationships

2.7 Opposite-sex marriages are broadly recognised across Hong Kong legislation and Government policies.

2.8 Same-sex marriages are recognised in certain areas, namely: death, housing, immigration, inheritance, public service, and tax. This recognition follows individuals in same-sex marriages or same-sex civil partnerships bringing claims for judicial review rather than legislative reform.

2.9 There is inconsistency in recognition of same-sex marriages within the same area of law. For example, in the context of inheritance, a surviving same-sex widow or widower has first priority to inherit the estate of their intestate spouse, but they may have the lowest (and in some cases, no) priority to administer that estate. In that same context, a same-sex marriage gives the survivor a right to apply for periodic payments

⁴² See section 10 of this report.

⁴³ See section 12 of this report.

⁴⁴ See section 14 of this report.

⁴⁵ See section 19 of this report.

⁴⁶ See section 20 of this report.

⁴⁷ See section 20 of this report.

⁴⁸ See section 22 of this report.

from their deceased spouse's estate, but a subsequent same-sex marriage may not cause those payments to stop (although a subsequent opposite-sex marriage would).⁴⁹

2.10 This inconsistency is caused by the scope of the judicial review claims brought against the Government, which target a decision based on a specific policy or legislation, but there may be other policies or legislation within that same area that are not challenged. Consequently, any remedy ordered by the Court is confined to the specific policy or legislation that was the subject of the judicial review.

2.11 Comprehensive legislative reform addressing the rights and obligations of same-sex spouses would eliminate this inconsistency.

2.12 Cohabitation relationships are recognised in certain areas, namely: anti-discrimination, companies, compensation, crime and domestic violence, death, immigration, medical, public service, public welfare, and regulatory and public offers.

2.13 In some situations, the law does not distinguish between opposite- and same-sex cohabitation relationships. For example, both are recognised in the context of domestic violence,⁵⁰ race and disability discrimination,⁵¹ and “fair dealing” rules for directors.⁵²

2.14 In other situations, only opposite-sex cohabitation relationships are recognised. For example, the Mandatory Provident Fund Schemes Authority may provide benefits to a person of the opposite sex with whom an employee of that Authority is cohabiting in a domestic relationship as “man and wife”.⁵³ Same-sex cohabitation relationships are not recognised in this context.⁵⁴

2.15 There is also inconsistency in recognition of cohabitation relationships within the same area of law. For example, in the context of anti-discrimination, cohabittees are recognised and extended protection from discrimination on the grounds of race and disability. In contrast, cohabittees are not recognised for the purposes of the protections from discrimination on the grounds of marital status or family status.

2.16 Where cohabitation relationships are recognised, there is no standardised definition that applies across all legislation. As such, recognition can be inconsistent because a couple that lives together may be recognised as cohabittees in some circumstances but not in others.

2.17 This is the case even for legislation dealing with the same subject. For example, in the context of compensation, the ability of a person who lived with a now deceased person to bring a claim or apply for compensation varies depending on how they lived together, their gender, and how long they lived together.⁵⁵

2.18 A universal definition of a cohabitation relationship would eliminate these discrepancies.

2.19 No other forms of intimate relationships between two people, including civil partnerships, are expressly recognised, except civil partnerships are recognised in relation to dependant visas.

2.20 Such limited recognition arises notwithstanding the fact that couples in alternative relationships can have the same emotional, social, and financial connections as those in an opposite-sex marriage.

⁴⁹ See section 16 of this report.

⁵⁰ See section 10 of this report.

⁵¹ See section 5 of this report.

⁵² See section 8 of this report.

⁵³ Section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485).

⁵⁴ See section 22 of this report.

⁵⁵ See section 9 of this report.

2.21 The following table provides a summary view of the recognition of different relationships across different areas of Hong Kong legislation and certain Government policies we analysed. In this table, OSM means opposite-sex marriage, SSM means same-sex marriage, OSCP means opposite-sex civil partnership, SSCP means same-sex civil partnership, OSCR means opposite-sex cohabitation relationship, and SSCR means same-sex cohabitation relationship.⁵⁶

CATEGORY/AREA	OSM	SSM	OSCP	SSCP	OSCR	SSCR
Anti-discrimination	R	NR	NR	NR	PR	PR
Bankruptcy	R	NR	NR	NR	NR	NR
Children	R	NR	NR	NR	NR	NR
Companies	R	NR	NR	NR	PR	PR
Compensation	R	NR	NR	NR	PR	PR
Crime and domestic violence	R	NR	NR	NR	PR	PR
Criminal matters and prisoners	R	NR	NR	NR	NR	NR
Death	R	PR	NR	NR	PR	PR
Employment	R	NR	NR	NR	NR	NR
Housing	R	PR	NR	NR	NR	NR
Immigration	R	PR	PR	PR	NR	NR
Inheritance	R	PR	NR	NR	NR	NR
International affairs	R	NR	NR	NR	NR	NR
Marriage	R	NR	NR	NR	NR	NR
Medical	R	NR	NR	NR	PR	PR
Other	R	NR	NR	NR	NR	NR
Public health	R	NR	NR	NR	NR	NR
Public service	R	PR	NR	NR	PR	NR
Public welfare	R	NR	NR	NR	PR	PR
Regulatory and public offers	R	NR	NR	NR	PR	PR
Tax	R	PR	NR	NR	NR	NR

2.22 The tables at the beginnings of sections 5 to 25 of this report provide a further summary view of the recognition of different relationships in a particular area.

⁵⁶ In this table and the tables referenced in paragraph 2.22, “R” or “recognised” means the relationship is expressly recognised, “PR” or “recognised...in part” means the relationship is expressly recognised in some but not all contexts of a particular area of law, and “NR” or “not recognised” means the relationship is not expressly recognised or there is doubt as to whether it would be recognised (e.g. where the word “dependant” or “household” is used).

Differential treatment of relationships

2.23 We identified 21 areas in which a person may be treated differently depending on his/her relationship status:

- ◆ Anti-discrimination
- ◆ Bankruptcy
- ◆ Children
- ◆ Companies
- ◆ Compensation
- ◆ Crime and domestic violence
- ◆ Criminal matters and prisoners
- ◆ Death
- ◆ Employment
- ◆ Housing
- ◆ Immigration
- ◆ Inheritance
- ◆ International affairs
- ◆ Marriage
- ◆ Medical
- ◆ Other
- ◆ Public health
- ◆ Public service
- ◆ Public welfare
- ◆ Regulatory and public offers
- ◆ Tax

2.24 Our analysis of each of these areas is set out in sections 5 to 25 of this report.

2.25 Couples in alternative relationships are generally treated differently from opposite-sex spouses, because their relationships are not recognised, or not recognised as broadly, as opposite-sex marriage. These differences can have serious and practical impacts on people in alternative relationships.

2.26 Examples of differential treatment are to be found in all aspects of daily life, from the moment a relationship is formed to the end of life. For example:

- (a) an opposite-sex couple can formalise their relationship by getting married under the Marriage Ordinance;⁵⁷
- (b) a person is protected from discrimination where he/she would be less favourably treated in employment because of having to care for his/her opposite-sex spouse;⁵⁸
- (c) a person may take the benefit of the protections that his/her deceased opposite-sex spouse had as a tenant in subdivided housing;⁵⁹
- (d) opposite-sex spouses can jointly adopt children and access reproductive technology (e.g. artificial insemination);⁶⁰
- (e) opposite-sex spouses of employees of certain statutory bodies can enjoy retirement benefits, gratuities, and other allowances provided by those bodies;⁶¹
- (f) opposite-sex spouses cannot be compelled in criminal proceedings to disclose their discussions with each other;⁶²
- (g) opposite-sex spouses who have been married for at least three years may donate organs to each other without the need for the approval of the Human Organ Transplant Board;⁶³
- (h) the opposite-sex spouse of a prisoner must be immediately notified if the prisoner dies;⁶⁴

⁵⁷ See section 18 of this report.

⁵⁸ See section 5 of this report.

⁵⁹ See section 14 of this report.

⁶⁰ See section 7 of this report.

⁶¹ See section 22 of this report.

⁶² See section 11 of this report.

⁶³ See section 19 of this report.

⁶⁴ See section 11 of this report.

- (i) a person has the right to object to the removal of his/her deceased opposite-sex spouse's body parts for use for purposes of medical education or research;⁶⁵
- (j) a person can attend the cremation of his/her opposite-sex spouse at a Government crematorium without the consent of the officer in charge;⁶⁶
- (k) opposite-sex spouses are eligible to be buried together in certain cemeteries;⁶⁷ and
- (l) opposite-sex spouses can formally end their relationships with the assistance of Courts in Hong Kong to resolve any issues (such as property distribution and the custody of children, if any).⁶⁸

2.27 Couples in alternative relationships, or couples seeking to formalise alternative relationships, have none of these rights or benefits.

2.28 Differential treatment can also have substantial tax ramifications for couples.⁶⁹ For example, compared to an opposite- or same-sex spouse, a civil partner or cohabitee would pay up to an additional HK\$61,540 in salaries tax per year (considering allowances but not deductions) where:

- (a) only the person is employed;
- (b) the couple has no other income; and
- (c) the couple live with and financially support:
 - (i) his/her civil partner's or cohabitee's parents who are both in their 80s; and
 - (ii) his/her civil partner's or cohabitee's minor biological child from a previous relationship.

At the same time, a civil partner or cohabitee may enjoy some deductions where an opposite- or same-sex spouse could not, or fall outside anti-avoidance provisions, such that he/she pays less tax than an opposite-or same-sex spouse.

2.29 Non-recognition of alternative relationships also appears to impair the intended operation of certain laws. The Government, creditors, investors, and the general public can all be negatively affected by non-recognition. For example:

- (a) Non-recognition makes it more difficult for the Government to enforce several criminal laws, including for market misconduct where a statutory presumption that arises in the context of false trading does not apply to a same-sex spouse, civil partner, or cohabitee.⁷⁰
- (b) The creditors of a bankrupt have less protection against unfair preferences where the debtor is in an alternative relationship because the statutory presumption that a gift to a spouse is presumed to be an unfair preference and the extension of the period ending in bankruptcy in which unfair preferences can be given do not apply.⁷¹
- (c) A chief executive must publicly disclose any interest in any shares of his/her corporation in which his/her opposite-sex spouse has an interest while the interests of a chief executive's civil partner,

⁶⁵ See section 19 of this report.

⁶⁶ See section 12 of this report.

⁶⁷ See section 12 of this report.

⁶⁸ See section 18 of this report.

⁶⁹ See section 25 of this report.

⁷⁰ See section 8 of this report.

⁷¹ See section 6 of this report.

cohabitee, or same-sex spouse would not need to be disclosed, meaning that the public would be less informed about the interests held by, or which may be influenced by, chief executives in alternative relationships.⁷²

2.30 Non-recognition of alternative relationships can also result in potential conflicts of interest arising from those relationships going unmanaged. For example:

- (a) A liquidator is not required to disclose the fact that a director of the company being liquidated, its holding company, or its subsidiary, is his/her civil partner, cohabitee, or same-sex spouse, but he/she must do so if a director is his/her opposite-sex spouse.⁷³ This could impact the creditors and shareholders of the company concerned.
- (b) An applicant seeking to be registered as a medical practitioner, midwife, or chiropractor, cannot provide a character reference from his/her opposite-sex spouse, but can provide a character reference from his/her civil partner, cohabitee, or same-sex spouse.⁷⁴ This could impact an unsuitable applicant's future patients.
- (c) Any member of the Securities and Futures Commission and any person performing any function under certain legislation commits a criminal offence if he/she does not inform the Commission where he/she is required to consider any matter relating to his/her opposite-sex spouse, but the offence does not apply where the matter relates to his/her civil partner, cohabitee, or same-sex spouse.⁷⁵ This could result in maladministration of matters relating to that civil partner, cohabitee, or same-sex spouse.

2.31 In the limited cases where cohabitation relationships are recognised, cohabitantes are sometimes treated the same as opposite-sex spouses. For example:

- (a) A person is protected from being less favourably treated because of the race or disability of his/her associate. This includes not just the person's opposite-sex spouse, but also any person with whom he/she cohabits (regardless of gender).⁷⁶
- (b) In the context of domestic violence, a person may apply for an injunction where he/she has been molested by his/her current or former opposite-sex spouse or the other party to an existing or past cohabitation relationship (regardless of gender).⁷⁷
- (c) The fair dealing rules for directors require that the informed, prior consent of shareholders is given before certain types of companies enter into certain transactions involving, among others, a director's opposite-sex spouse or a person with whom a director is in a cohabitation relationship (regardless of gender).⁷⁸

⁷² See section 8 of this report.

⁷³ See section 8 of this report.

⁷⁴ See section 20 of this report.

⁷⁵ See section 22 of this report.

⁷⁶ See section 5 of this report.

⁷⁷ See section 10 of this report.

⁷⁸ See section 8 of this report.

2.32 At other times, cohabitation relationships are recognised but couples in them are treated differently from opposite-sex spouses. For example, a deceased's opposite-sex spouse has equal priority with other relatives to a deceased's ashes, but a deceased's relatives have higher priority than a deceased's cohabitee.⁷⁹

⁷⁹ See section 12 of this report.

3. METHODOLOGY

3.1 The analysis in this report builds on the methodology and analysis set out in the 2019 Report.

Review of legislation for the 2019 Report

3.2 For the 2019 Report, we compiled and applied search terms to the laws of Hong Kong as they appeared on the Hong Kong eLegislation website (**eLegislation**), the official database of Hong Kong legislation.⁸⁰

3.3 The search terms identified 1,762 provisions⁸¹ across 537 Ordinances and subsidiary legislation as at 31 December 2018.⁸²

3.4 These provisions were reviewed to determine whether the search terms hit on words that were used in a context not relevant to this review (**false positive hits**). Ordinances and subsidiary legislation that contained only false positive hits were excluded.⁸³

3.5 The remaining provisions were analysed to understand whether the words hit by the search term were used in the context of relationships between individuals and how they may affect persons based on their relationship status, in particular depending upon whether a person:

- (a) is in an opposite-sex marriage;
- (b) is in a same-sex marriage recognised under a law other than Hong Kong law (**same-sex marriage**);
- (c) is in a civil partnership (regardless of gender) recognised under a law other than Hong Kong law (**civil partnership**); and
- (d) cohabits with another person (regardless of gender) (**cohabitation relationship**).

3.6 In some instances, search terms were contained in definitions which were then used in other provisions in the applicable Ordinance. In such cases, these other provisions were also analysed in the manner described in paragraph 3.5 above. For example, the search terms “spouse” and “relative” appear in the definition of “associate” in Section 51B of the Bankruptcy Ordinance. That definition is used in Sections 50, 51, and 51A of that Ordinance, and as a result those sections were also analysed.

Review of legislation for this report

3.7 We adopted a two-stage approach to identify changes to legislation between 1 January 2019 (the day following the cut-off date for the 2019 Report) and 28 February 2025 (the cut-off date for this report) (**relevant period**).

3.8 First, we compared each legislative provision referenced in the 2019 Report in effect at 28 February 2025 against that provision in effect at 31 December 2018. Where this identified that a provision had been repealed or had been amended in a manner that would impact this report, we have analysed the change accordingly.

⁸⁰ elegislation.gov.hk.

⁸¹ An entire section, an entire Schedule, or a heading of a Part of legislation is counted as a single provision in this report.

⁸² The search terms appear in Part 1 of Appendix 1 to this report.

⁸³ For example, the Legislative Council Ordinance (Cap. 542) was excluded because the search term “relative%” only hit the word “relative” in the context of describing how voting for a functional constituency is to be conducted (“simple or relative majority system of election”).

3.9 Second, we applied search terms to the laws of Hong Kong as they appeared on eLegislation as at 28 February 2025. We initially used the same search terms as for the 2019 Report. The search terms identified 1,900 provisions across 563 Ordinances and subsidiary legislation, of which 1,251 provisions across 475 Ordinances and subsidiary legislation had been amended during the relevant period (**initial results**).⁸⁴

3.10 To reduce the review population, we checked the version date(s) of each initial result between 1 January 2019 and 28 February 2025 against the Editorial Records available on eLegislation.⁸⁵ Where a provision's sole version date between 1 January 2019 and 28 February 2025 matched the date of an editorial change, we excluded that provision from the review population. This resulted in an initial review population of 305 provisions across 139 Ordinances and subsidiary legislation (**initial review population**).

3.11 We then took the approach set out in paragraphs 3.4 to 3.6 above.

3.12 We also determined that "next of kin" should be added as a search term. We applied this search term to the laws of Hong Kong as they appeared on eLegislation as at 28 February 2025. This identified 41 provisions across 33 Ordinances and subsidiary legislation.⁸⁶ Following deduplication against the initial review population, this additional search term added 39 provisions across 31 Ordinances and subsidiary legislation (**additional review population**). We adopted the approach set out in paragraphs 3.5 to 3.6 above for this additional review population.⁸⁷

3.13 The final review population, i.e., the initial review population plus the additional review population, comprised 344⁸⁸ provisions across 165⁸⁹ Ordinances and subsidiary legislation.

3.14 We have also reviewed and taken into account decisions of the Courts that are relevant to the provisions identified in the 2019 Report and this report. Decisions made since the 2019 Report was published are discussed in section 1 of this report.

Policy review

3.15 The policy review for the 2019 Report and this report were the same, namely:

- We accessed the websites of selected Government departments and agencies responsible for administering certain Government-provided benefits to obtain copies of public forms and related content in September 2025.
- We then applied the search terms across the contents of those documents.
- We then analysed the documents identified by those search terms to understand how relationship status influences a person's eligibility for the benefit(s) in question.

⁸⁴ A link to these results is in Part 1 of Appendix 1 to this report.

⁸⁵ The Editorial Records record instances where the Secretary for Justice has made limited editorial amendments to legislation. This power is subject to the overriding principle that the amendments must not change the legal effect of the legislation. See elegislation.gov.hk/editorialrecord for further information.

⁸⁶ A link to these results is in Part 2 of Appendix 1 to this report.

⁸⁷ Given the use of a single search term that was highly unlikely to result in a false positive, we did not conduct a false positive check on the additional review population.

⁸⁸ This is the sum of the 305 provisions in the initial review population and the 39 provisions in the additional review population.

⁸⁹ This is the sum of the 139 Ordinances and subsidiary legislation in the initial review population and the 31 Ordinances and subsidiary legislation in the additional review population, less the five Ordinances and subsidiary legislation that were common among both populations..

4. APPROACH AND LIMITATIONS

Approach

4.1 The Courts have commented in numerous cases that marriage in Hong Kong is limited to opposite-sex marriage. For example, the Court of Final Appeal has stated that “As a matter of domestic statute law, Hong Kong law has always defined marriage in terms of the voluntary union for life of one man and one woman, requiring the parties to a valid marriage to be respectively male and female. Similarly, under the common law of Hong Kong, marriage is the voluntary union for life of one man and one woman to the exclusion of all others”.⁹⁰

4.2 Our approach in reviewing Hong Kong legislation and Government policies has therefore been that, unless expressly defined or the Courts have applied a remedial interpretation to the specific legislative provision concerned:⁹¹

- (a) the terms “marriage”, “spouse”, “husband”, “wife”, “widow”, and “widower” relate only to opposite-sex marriage and the persons (currently or formerly) in an opposite-sex marriage; and
- (b) the terms “family”, “relative”, “related person”, and “next of kin” are limited to persons related by biology or marriage or another legal arrangement (e.g. adoption) recognised under Hong Kong law.

4.3 Several Ordinances use but do not expressly define the terms “dependant” and “dependent”. These terms may be broad enough to include a person’s civil partner, cohabitee, or same-sex spouse. However, it is possible that authorities assessing whether a person is a dependant would not consider the nature of the underlying relationship. For example, it is possible that a man who is financially reliant on his husband may not be considered his dependant. Accordingly, where not defined, we have noted these terms would not extend the right, benefit, or obligation concerned to a civil partner, cohabitee, or same-sex spouse unless they are recognised as a dependant.

4.4 We have taken the same approach in respect of the term “household”.

4.5 Where a provision refers to unmarried people who (a) live together as husband and wife, (b) cohabit as spouses, or (c) are reputed spouses, or uses similar phrases, we have interpreted these concepts as excluding civil partnership because:

- (a) they cover couples who are not married but appear to be married, whereas couples in civil partnerships are civil partners (regardless of appearance); and
- (b) we assume civil partners would, unlike couples who are not married but appear to be married, have gone through a registration or ceremony in order to establish their relationship under a law other than Hong Kong law.

⁹⁰ Paragraph 93 of *Sham Tsz Kit v Secretary for Justice* [2023] HKCFA 28. The Court of Appeal also stated in *Leung Chun Kwong v Secretary for the Civil Service and Another* [2018] HKCA 318 that “marriage” as understood at all levels of Hong Kong laws “means a heterosexual marriage between a husband and a wife, but not a same-sex marriage”. Similarly, the common ground of the parties in *W v Registrar of Marriages* (2013) 16 HKCFAR 112 before the Court of Final Appeal was that “marriage for constitutional as for common law purposes is the voluntary union for life of one man and one woman to the exclusion of all others”, i.e., opposite-sex marriage; see paragraph 63 of that judgment. This common ground has been cited in subsequent cases concerning the rights of same-sex couples; see for example *QT v Director of Immigration* [2018] HKCFA 28 at paragraph 25 and *Leung Chun Kwong v Secretary for the Civil Service and Another* [2019] HKCFA 19 at paragraph 27.

⁹¹ The Interpretation and General Clauses Ordinance (Cap. 1) defines terms and expressions used in laws and public documents in Hong Kong. It does not, however, provide a definition for any of “spouse”, “marriage”, “husband”, “wife”, “family”, “relative”, “household”, “widow”, “widower”, “dependant”, and “related person” and other forms of these words.

4.6 Where the term “marriage” is expressly defined to include a marriage that is legally recognised in the jurisdiction in which it was entered⁹² and:

- (a) the Courts have not ordered a remedial interpretation, we have construed that definition to nevertheless exclude same-sex marriages legally recognised in the jurisdictions in which they were entered, which is consistent with the interpretation adopted by the Courts;⁹³ or
- (b) the Courts have ordered a remedial interpretation, we have followed that interpretation.

4.7 “Partner”, although not a search term, appeared in some of the provisions reviewed. Unless this term was unambiguously used in the context of an intimate relationship, we have construed it as referring to a partner in the context of the business structure known as a partnership.

4.8 We have also taken this opportunity to (a) include additional analysis of provisions in which a person’s relationship status is a factor that were not included in the 2019 Report, (b) make minor changes to the organisation of the report, and (c) correct minor typographical errors identified in the 2019 Report following its publication.

Limitations

4.9 Our analysis is subject to the following limitations and is not a comprehensive analysis of all areas of Hong Kong law and Government policy in which a person may be treated differently depending on his/her relationship status.

4.10 Our analysis is based exclusively on the laws of Hong Kong as they appear in English on eLegislation, and Government policies as they appear in English on relevant Government websites. Our review is therefore subject to the limitations of eLegislation⁹⁴ and those websites. If eLegislation or those websites are incomplete or contain errors, this will be reflected in our analysis.

4.11 Since we have used search terms to identify potentially relevant legislation and policies, we may not have identified every provision of Hong Kong law or Government policy (in the areas reviewed) in which a person’s relationship status is a factor.

4.12 We have not considered:

- (a) constitutional instruments, such as the Constitution of the People’s Republic of China (**PRC**); the Basic Law of the Hong Kong Special Administrative Region of the PRC; decisions, interpretations, proclamations, orders, or replies of the National People’s Congress (including the Standing Committee), or the State Council;⁹⁵
- (b) the common law and rules of equity, including decisions of the Hong Kong Courts that may be relevant to the interpretation of the provisions reviewed, except those expressly referenced in section 1 of this report;

⁹² See Section 2(2) of the Married Persons Status Ordinance (Cap. 182), Section 3 of the Intestates’ Estates Ordinance (Cap. 73), Section 2(1) of the Inheritance (Provision for Family and Dependents) Ordinance (Cap. 481), Section 2 of the Legitimacy Ordinance (Cap. 184), and Section 2(1) of the Inland Revenue Ordinance (Cap. 112).

⁹³ Paragraphs 76 to 84 of *Leung Chun Kwong v Secretary for the Civil Service and Another* HCAL 124/2014. The Court of Appeal reached the same conclusion in *Leung Chun Kwong v Secretary for the Civil Service and Another* [2018] HKCA 318 in relation to Section 2(1) of the Inland Revenue Ordinance (Cap. 112).

⁹⁴ See elegislation.gov.hk/faq for information on the limitations of eLegislation.

⁹⁵ See Instruments A1 to A6, A101 to A116, A201 to A212, A214, and A701 to A703 on eLegislation.

- (c) agreements, arrangements, or memoranda of understanding between Hong Kong and the Chinese Mainland;⁹⁶
- (d) treaties concerning Hong Kong or that apply to Hong Kong (whether on its own or by virtue of it being part of the PRC) unless they have been incorporated into Hong Kong law by way of legislation;⁹⁷
- (e) laws of the Chinese Mainland that apply to Hong Kong;
- (f) legislation not assigned a chapter number;⁹⁸
- (g) legislation not yet in operation;⁹⁹
- (h) suspended legislation;¹⁰⁰
- (i) conflicts of laws;
- (j) Chinese customary law, including concubinage;
- (k) provisions relating to polygamy; or
- (l) Government policies, except those expressly referenced in this report.

4.13 We have analysed the effect of legislation and policies assuming that the persons in a marriage, civil partnership, or cohabitation relationship are both at least 18 years old, unless the legislation or policy expressly applies to a couple, one of whom is under 18 years old.

4.14 We have analysed the effect of legislation and policies assuming that the Government will strictly adhere to their terms, except where we have referenced in section 1 of this report publicly available objective evidence indicating that the Government takes a different approach in practice. For example, if a policy requires that a person provide evidence that he/she is another person's "spouse" to be granted a particular benefit, we have taken this to mean that the Government will not grant that benefit to a civil partner, cohabitee, or same-sex spouse because he/she cannot provide the required evidence. This may not reflect the Government's actual approach where the Government retains discretion in how it acts.

4.15 Reviewers were asked to analyse the effect of each individual provision or policy in isolation, without considering whether other legislative provisions or policies may apply to the conduct concerned. For example, the Crimes Ordinance provides that a man who induces a married woman to have sexual intercourse with him by impersonating her husband commits rape.¹⁰¹ This provision does not apply to a man

⁹⁶ For example, the Co-operation Arrangement between the Mainland and the Hong Kong Special Administrative Region on the Establishment of the Port at the West Kowloon Station of the Guangzhou-Shenzhen-Hong Kong Express Rail Link for Implementing Co-location Arrangement, identified as Instrument A213 on eLegislation.

⁹⁷ For example, the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong, identified as Instrument 301 on eLegislation.

⁹⁸ Ordinances not assigned a chapter number include: (a) certain Ordinances concerning the Hong Kong legal system generally or the application of Mainland law to Hong Kong, such as various Promulgation of National Laws Ordinances, the Hong Kong Reunification Ordinance, Ordinances concerning the flags and emblems of Hong Kong and the PRC, and the publication of laws—see Instruments A401 to A404, A501, and A601 to A604 on eLegislation; and (b) amending Ordinances and amending subsidiary legislation, although note that the amendments made by these instruments are incorporated into the text of existing Ordinances and subsidiary legislation, which means their effect is reflected in those Ordinances and the subsidiary legislation that we have reviewed—see question and answer A5 at elegislation.gov.hk/faq for further information.

⁹⁹ For example, the Family Procedure Ordinance (Cap. 646) was enacted on 30 June 2023 but, apart from the provisions specified in Section 1(3) of that Ordinance, has not yet come into operation.

¹⁰⁰ For example, the Kowloon-Canton Railway Corporation By-laws (Cap. 372B) and the North-west Railway By-laws (Cap. 372E) were suspended on 2 December 2007 by operation of L.N. 162 of 2007.

¹⁰¹ See Section 118(2) of the Crimes Ordinance (Cap. 200).

who induces a woman in a civil partnership to have sexual intercourse with him by impersonating her civil partner. However, other provisions or offences at common law could be used to prosecute a man in this position.

4.16 We have not considered the indirect effect of any legislation or Government policies. For example, under Regulations 7 and 64 of the Miscellaneous Licences Regulations, a person's licence to operate a public dance hall may be revoked if his/her civil partner, cohabitee, or same-sex spouse (but not his/her opposite-sex spouse) sleeps in the dance hall. This effect is captured in this report. However, there are several indirect effects that may flow from this, including the need for the person's civil partner, cohabitee, or same-sex spouse to rent or purchase separate premises to live in. That in turn may have the effect of incurring expenses in commuting between those premises and the dance hall. Such indirect effects are outside the scope of our analysis.

4.17 During the review of legislation for this report, if a provision was hit by a search term and the only change to that provision between 1 January 2019 and 28 February 2025 was an editorial change (such as a correction of a typographical error or formatting), we excluded that provision from the initial review population.¹⁰² However, if both a substantive change and an editorial change occurred on the same day, it is possible that the substantive change was not captured in this report, as the provision would have been excluded based on the editorial change date.

¹⁰²

See section 3 of this report.

THE RECOGNITION AND TREATMENT OF RELATIONSHIPS UNDER HONG KONG LAW—ANALYSIS

5. ANTI-DISCRIMINATION

5.1 This category discusses Hong Kong's four anti-discrimination Ordinances: the Sex Discrimination Ordinance, the Family Status Discrimination Ordinance, the Race Discrimination Ordinance, and the Disability Discrimination Ordinance.

RELATIONSHIP	RECOGNITION
Opposite-sex marriage	Recognised
Same-sex marriage	Not recognised, but see “Same-sex cohabitation relationship” below
Opposite-sex civil partnership	Not recognised, but see “Opposite-sex cohabitation relationship” below
Same-sex civil partnership	Not recognised, but see “Same-sex cohabitation relationship” below
Opposite-sex cohabitation relationship	Recognised for race and disability discrimination (in part), provided a couple lives together on a genuine domestic basis
Same-sex cohabitation relationship	Recognised for race and disability discrimination (in part), provided a couple lives together on a genuine domestic basis

Marital status discrimination

5.2 It is unlawful for a person to discriminate against another person in certain areas of public life because of that person's marital status.¹⁰³ These areas include employment; the Government; education; the provision of goods, facilities, and services; premises; and eligibility to vote and be elected to public advisory bodies.¹⁰⁴ “Marital status” means the state or condition of being single, married, married but living separately and apart from one's spouse, divorced, or widowed.¹⁰⁵ These prohibitions apply in relation to a person being or not being in an opposite-sex marriage, but do not apply in relation to a person being or not being in a civil partnership, cohabitation relationship, or same-sex marriage.

Family status discrimination

5.3 It is unlawful for a person to discriminate against another person in certain areas of public life because of that person's family status.¹⁰⁶ These areas are broadly similar to those mentioned above for marital status discrimination.¹⁰⁷ “Family status” means the status of having responsibility for the care of an immediate family member.¹⁰⁸ An “immediate family member” includes a person related by marriage.¹⁰⁹ These prohibitions apply where a person has the responsibility of caring for his/her opposite-sex spouse, but not where he/she has the responsibility of caring for his/her civil partner, cohabitee, or same-sex spouse.

¹⁰³ Section 7 and Parts 3 and 4 of the Sex Discrimination Ordinance (Cap. 480).

¹⁰⁴ Parts 3 and 4 of the Sex Discrimination Ordinance (Cap. 480).

¹⁰⁵ Section 2 of the Sex Discrimination Ordinance (Cap. 480).

¹⁰⁶ Section 5 and Parts III and IV of the Family Status Discrimination Ordinance (Cap. 527).

¹⁰⁷ Parts III and IV of the Family Status Discrimination Ordinance (Cap. 527).

¹⁰⁸ Section 2(1) of the Family Status Discrimination Ordinance (Cap. 527).

¹⁰⁹ Section 2(1) of the Family Status Discrimination Ordinance (Cap. 527).

Race and disability discrimination

5.4 Direct discrimination and harassment on the grounds of the race or disability of a person's associate are prohibited.¹¹⁰ A person's "associate" includes his/her spouse, a person living with him/her on a genuine domestic basis, and his/her relative.¹¹¹ As a result, the protections from discrimination on the grounds of the race or disability of an associate only apply to those in an opposite-sex marriage or an opposite- or same-sex cohabitation relationship. Civil partners and same-sex spouses who do not live together are not covered by these protections.

Exemptions

5.5 In limited circumstances, a person may discriminate on the grounds of marital status, family status, race, or disability based in part on his/her relationship status.¹¹²

5.6 For example, where the licence or consent of any person is required for the disposal of premises in Hong Kong comprised in a tenancy, it is unlawful for that person to discriminate against another person on the basis of marital status by withholding the required licence or consent.¹¹³ This prohibition does not apply where, among other requirements, the person withholding a licence or consent, or a near relative of his/hers, resides and intends to continue to reside on the premises.¹¹⁴ A "near relative" includes a spouse.¹¹⁵ This means a person can discriminate on the basis of marital status if his/her opposite-sex spouse resides, and intends to continue to reside, on the relevant premises, but a person cannot do so based on where his/her civil partner, cohabitee, or same-sex spouse resides.

¹¹⁰ The Race Discrimination Ordinance (Cap. 602) and the Disability Discrimination Ordinance (Cap. 487), generally.

¹¹¹ Section 2(1) of the Race Discrimination Ordinance (Cap. 602) and Section 2(1) of the Disability Discrimination Ordinance (Cap. 487).

¹¹² Sections 30 and 31 of the Sex Discrimination Ordinance (Cap. 480); Sections 19, 20, 21, and 22 of the Family Status Discrimination Ordinance (Cap. 527); Sections 27, 28, 29, and 30 of the Race Discrimination Ordinance (Cap. 602); and Sections 26, 28, 29, and 30 of the Disability Discrimination Ordinance (Cap. 487).

¹¹³ Section 30(1) of the Sex Discrimination Ordinance (Cap. 480).

¹¹⁴ Section 30(2) of the Sex Discrimination Ordinance (Cap. 480).

¹¹⁵ Section 2(1) of the Sex Discrimination Ordinance (Cap. 480).

6. BANKRUPTCY

6.1 This category discusses giving evidence in bankruptcy proceedings, disclosures by bankrupts, unfair preferences, a bankrupt's estate, the priority of creditors, and other matters relevant to bankruptcy.

RELATIONSHIP	RECOGNITION
Opposite-sex marriage	Recognised
Same-sex marriage	Not recognised
Opposite-sex civil partnership	Not recognised
Same-sex civil partnership	Not recognised
Opposite-sex cohabitation relationship	Not recognised
Same-sex cohabitation relationship	Not recognised

Giving evidence in bankruptcy proceedings

6.2 A person may be summoned by the Court and be required to produce any documents in his/her custody or power relating to his/her bankrupt spouse, or the dealings or property of his/her bankrupt spouse.¹¹⁶ This power does not extend to the civil partner, cohabitee, or same-sex spouse of a bankrupt by virtue of his/her relationship with the bankrupt. However, such a person could nevertheless be summoned if he/she is: (a) known or suspected to have in his/her possession any of the estate or effects belonging to the bankrupt or is supposed to be indebted to the bankrupt; or (b) deemed by the Court to be capable of giving information regarding the bankrupt, or his/her dealings or property. This may make it more difficult for a Court to obtain information about a bankrupt in an alternative relationship.

Disclosures by bankrupts

6.3 A bankrupt commits an offence if he/she does not fully disclose to his/her trustee in bankruptcy details of all his/her property except, among others, any property laid out in the ordinary expenses of his/her family.¹¹⁷ This exemption does not extend to the ordinary expenses of a bankrupt's civil partner, cohabitee, or same-sex spouse. A bankrupt will therefore commit an offence if he/she fails to disclose property laid out in the ordinary expenses of his/her civil partner, cohabitee, or same-sex spouse.

Unfair preferences

6.4 Where a debtor has given an unfair preference¹¹⁸ to an associate at a relevant time (discussed below at paragraph 6.6), the debtor is presumed to have been influenced by a desire to put his/her associate in a better position.¹¹⁹ This makes it easier for the debtor's trustee in bankruptcy to obtain an order restoring the bankrupt's estate¹²⁰ to a position as if the unfair preference had not been given (**unfair preference order**).

6.5 "Associate" includes a person's spouse, former spouse, and relative. "Relative", although defined, does not include a person in an alternative relationship with a debtor.¹²¹ This presumption therefore only applies to an

¹¹⁶ Section 29(1) of the Bankruptcy Ordinance (Cap. 6).

¹¹⁷ Section 129 of the Bankruptcy Ordinance (Cap. 6).

¹¹⁸ A debtor gives an unfair preference to a person where (a) that person is one of the debtor's creditors or a surety or guarantor for any of his/her debts or other liabilities; and (b) the debtor does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the debtor's bankruptcy, will be better than the position he/she would have been in if that thing had not been done; see Section 50(3) of the Bankruptcy Ordinance (Cap. 6).

¹¹⁹ Section 50 of the Bankruptcy Ordinance (Cap. 6).

¹²⁰ A bankrupt's estate is the property that can be used to satisfy creditors' claims.

¹²¹ Section 51B of the Bankruptcy Ordinance (Cap. 6).

unfair preference given to a debtor's opposite-sex spouse, not to his/her civil partner, cohabitee, or same-sex spouse.

6.6 The relevant time for an unfair preference given to an associate is two years from the day of the presentation of the bankruptcy petition; in any other case, the relevant time is six months.¹²² As such, while transactions with the bankrupt's opposite-sex spouse spanning over two years are subject to an unfair preference order, only transactions with the bankrupt's civil partner, cohabitee, or same-sex spouse spanning over six months could be subject to an unfair preference order. This means creditors may be less protected where a bankrupt is in an alternative relationship.

Bankrupt's estate

6.7 A bankrupt's estate excludes clothing, bedding, furniture, household equipment, and provisions as are necessary for satisfying the basic domestic needs of the bankrupt and his/her family.¹²³ This protects property used to satisfy the basic needs of, among others, a bankrupt's opposite-sex spouse. However, property used to satisfy the basic domestic needs of a bankrupt's civil partner, cohabitee, or same-sex spouse forms part of his/her estate in bankruptcy and would be available for distribution to creditors.

6.8 A bankrupt's family can be supported by an allowance made by the bankrupt's trustee out of the bankrupt's property¹²⁴ and would have their reasonable domestic needs excluded from any income payments order that claimed the income of the bankrupt for the bankrupt's estate.¹²⁵ These protections apply to a bankrupt's opposite-sex spouse, but do not extend to a bankrupt's civil partner, cohabitee, or same-sex spouse.

6.9 Compared to a couple in an opposite-sex marriage, these rules may expose a couple in an alternative relationship to greater hardship where one of them is a bankrupt.

Priority of creditors

6.10 A bankrupt's spouse is not entitled to claim any dividend as a creditor in respect of any money or other estate lent or entrusted to the bankrupt until all claims of other creditors have been satisfied.¹²⁶ A person in an alternative relationship with a bankrupt is not subject to this restriction and as such would be treated like any other creditor. As a result, creditors may be less protected where a bankrupt is in an alternative relationship.

Other matters

6.11 The Official Receiver may register a memorial of a bankruptcy petition and/or a bankruptcy order against a debtor in the Land Registry against any property registered in the name of, among others, the debtor's spouse. This allows for registration against the property of a debtor's opposite-sex spouse but excludes property in the name of the debtor's civil partner, cohabitee, or same-sex spouse.¹²⁷ This again may mean creditors are less protected where a bankrupt is in an alternative relationship.

¹²² Sections 51(1)(b) and (c) of the Bankruptcy Ordinance (Cap. 6).

¹²³ Section 43 of the Bankruptcy Ordinance (Cap. 6).

¹²⁴ Section 63 of the Bankruptcy Ordinance (Cap. 6).

¹²⁵ Section 43E(2) of the Bankruptcy Ordinance (Cap. 6).

¹²⁶ Section 41 of the Bankruptcy Ordinance (Cap. 6).

¹²⁷ Rules 53 and 73 of the Bankruptcy Rules (Cap. 6A).

7. CHILDREN¹²⁸

7.1 This category covers parent and child relationships, legitimacy, guardianship of minors, human reproductive technology, and adoption.

RELATIONSHIP	RECOGNITION
Opposite-sex marriage	Recognised
Same-sex marriage	Not recognised
Opposite-sex civil partnership	Not recognised
Same-sex civil partnership	Not recognised
Opposite-sex cohabitation relationship	Not recognised
Same-sex cohabitation relationship	Not recognised

Parent and child relationships

7.2 A man is presumed to be a child's father if, among other circumstances, both: (a) the man is married to the mother of the child at any time; and (b) there arises by virtue of that marriage a presumption of law that the child is his legitimate child.¹²⁹ This presumption does not arise for a man in an alternative relationship.

7.3 A man whose wife carries a child as a result of being artificially inseminated with the sperm of another man is regarded as the child's father unless it is shown he did not consent to the insemination.¹³⁰ This only applies to opposite-sex spouses. Otherwise, the male partner of a surrogate mother who carries a child as a result of being artificially inseminated with the sperm of another man will be regarded as the child's father if he and the surrogate mother obtained the treatment services together.¹³¹ It is not clear when a man and woman are considered to be each other's "partner" for these purposes, but this may include a person's opposite-sex civil partner or cohabitee. Neither of these provisions applies to couples in same-sex marriages, civil partnerships, or cohabitation relationships, which can complicate these couples' surrogacy arrangements.

7.4 If the gamete(s) of either party or both parties to a marriage is/are used to bring about the creation of an embryo that is carried by a woman other than the wife, the husband and wife may, subject to certain conditions, apply to the Court to be recognised as the child's parents.¹³² Civil partners, cohabitees, and same-sex spouses do not have this right, which again can complicate these couples' surrogacy arrangements.

Legitimacy

7.5 At common law, a child born out of wedlock (i.e. outside an opposite-sex marriage) is illegitimate and considered to have no ancestral or kinship relations. This results in the child suffering from certain legal disadvantages. Legislation has modified the common law position such that an illegitimate child can in certain circumstances be legitimised, which modifies these legal disadvantages.

¹²⁸ This section (and this report more broadly) does not address: (a) whether persons in a same-sex marriage, civil partnership, or cohabitation relationship can be recognised by law as parents to a child and any rights and responsibilities derived from such relationship; (b) the differences between the parental rights of married versus unmarried parents; or (c) the rights and relationships of a child born to a couple in a same-sex marriage, civil partnership, or cohabitation relationship.

¹²⁹ Section 5 of the Parent and Child Ordinance (Cap. 429).

¹³⁰ Section 10(2) of the Parent and Child Ordinance (Cap. 429).

¹³¹ Section 10(3) of the Parent and Child Ordinance (Cap. 429).

¹³² Section 12 of the Parent and Child Ordinance (Cap. 429).

7.6 Relationship status must be considered at two levels: (a) the relationship status of a person's parents (**parents' status**); and (b) the relationship status of an illegitimate or legitimated person (**own status**).

7.7 In relation to parents' status, the illegitimate child of a couple who later enter into a marriage is legitimated.¹³³ For these purposes, "marriage" includes a marriage celebrated or contracted outside Hong Kong in accordance with the law in force at the time and in the place where the marriage was performed.¹³⁴ This does not, however, include a same-sex marriage recognised by the law of another jurisdiction; see paragraph 4.6 above.

7.8 As such, a couple's illegitimate child is legitimated by their later opposite-sex marriage, but not by their later civil partnership, cohabitation relationship, or same-sex marriage. This means the rights and obligations of legitimated persons do not extend to the illegitimate children of a couple who later enter into an alternative relationship.

7.9 These rights and obligations are extensive and mean that:

- (a) a legitimated person can, as if he/she had been born legitimate, take any interest: (i) in the estate of an intestate (e.g. his/her father or mother who dies without a will) dying after the date of legitimization; or (ii) under any disposition¹³⁵ coming into operation after the date of legitimization;¹³⁶
- (b) a legitimated person has the same rights, and is under the same obligations, in respect of the maintenance and support of him/herself or of any other person as if he/she had been born legitimate;¹³⁷ and
- (c) any law relating to claims for damages, compensation, allowance, benefit, or otherwise by or in respect of a legitimate child applies in a like manner in the case of a legitimated person.¹³⁸

7.10 In relation to own status, an illegitimate or legitimated person's spouse enjoys certain rights and benefits, including:

- (a) if an illegitimate person: (i) dies before the marriage of his/her parents; and (ii) would have been legitimated by their marriage, his/her spouse enjoys the benefit of the provisions of the Legitimacy Ordinance with respect to the taking of interests in property as if the illegitimate person had been legitimated;¹³⁹ and
- (b) a legitimated person's spouse enjoys the right described in paragraph 7.9(a) above.¹⁴⁰

7.11 These rights and benefits do not apply to a person in an alternative relationship with an illegitimate or legitimated person.

7.12 Finally, a child whose parents' voidable marriage is annulled is treated as their legitimate child if the child would have been legitimate had the marriage instead been dissolved.¹⁴¹ This does not apply to the child of parents whose civil partnership or same-sex marriage is annulled; however, such a child (being born

¹³³ Section 3(1) of the Legitimacy Ordinance (Cap. 184).

¹³⁴ Section 2 of the Legitimacy Ordinance (Cap. 184).

¹³⁵ A disposition means an assurance of any interest in property by any instrument whether inter vivos or by will; see Section 2 of the Legitimacy Ordinance (Cap. 184).

¹³⁶ Section 4 of the Legitimacy Ordinance (Cap. 184).

¹³⁷ Section 7 of the Legitimacy Ordinance (Cap. 184).

¹³⁸ Section 7 of the Legitimacy Ordinance (Cap. 184).

¹³⁹ Section 6 of the Legitimacy Ordinance (Cap. 184).

¹⁴⁰ Section 4 of the Legitimacy Ordinance (Cap. 184).

¹⁴¹ Section 12 of the Legitimacy Ordinance (Cap. 184).

outside an opposite-sex marriage) would have been illegitimate from birth and, as such, should not be practically affected by this differential treatment.

Guardianship

7.13 On the death of a parent of a minor, the surviving parent (if any) is the guardian of the minor either alone or jointly with any guardian appointed by a Court.¹⁴² There are a number of provisions concerning: (a) the appointment of guardians for a child upon the death of his/her parent,¹⁴³ and (b) orders for the custody and maintenance of a child.¹⁴⁴ These rules appear to apply equally regardless of a parent's relationship status, but their specific effect may vary depending on the circumstances under which the child is conceived.

7.14 An agreement to give up rights or authority in relation to a child is unenforceable.¹⁴⁵ The only exception is if the agreement is made between a husband and wife, provided: (a) it operates only during their separation while still married; and (b) the Court is of the opinion it would be for the benefit of the child to give effect to the agreement.¹⁴⁶ This exception does not apply to agreements between civil partners, cohabitantes, or same-sex spouses, which may interfere with their ability to manage their children as they see fit.

Human reproductive technology

7.15 Subject to limited exceptions,¹⁴⁷ a person is prohibited from providing a reproductive technology procedure¹⁴⁸ to persons who are not the parties to a marriage.¹⁴⁹ Consequently, civil partners, cohabitantes, and same-sex spouses are unable to access most reproductive technology procedures in Hong Kong.

Adoption

7.16 A person and his/her spouse may jointly apply to adopt an infant if one of the applicants is the mother or father of the infant.¹⁵⁰ Couples in alternative relationships cannot do so, which may result in the non-mother/father being a child's parent in every way (e.g. emotional ties, financial support) except legally.

7.17 A person may apply solely to adopt an infant if he/she: (a) is the mother or father of the infant; (b) is a relative of the infant and has attained the age of 21 years; (c) is a person who is married to a parent of the infant; or (d) has attained the age of 25 years.¹⁵¹ Any person who intends to adopt an infant is required to apply for assessment for suitability to be an adoptive parent, unless he/she is a parent or relative of the infant or is married to the parent of the infant.¹⁵²

¹⁴² Section 5 of the Guardianship of Minors Ordinance (Cap. 13).

¹⁴³ These include: (a) rights of a surviving parent as to guardianship (Section 5); (b) when guardianship takes effect automatically (Section 7); (c) assumption of guardianship by application (Section 8); (d) a guardian appointed to act jointly with a surviving parent or guardian (Section 8A); (e) a guardian may disclaim appointment (Section 8C); (f) power of the Court to appoint a guardian of a minor (Section 8D); (g) a guardian appointed by the Court to act jointly with a surviving parent or guardian (Section 8F); (h) orders for custody and maintenance where person is a guardian to the exclusion of a surviving parent (Section 11); and (i) orders for custody and maintenance where joint guardians disagree (Section 12). In this footnote, a reference to a section is a reference to a section of the Guardianship of Minors Ordinance (Cap. 13).

¹⁴⁴ These include: (a) orders for custody and maintenance on application of either parent (Section 10); (b) orders for custody and maintenance where a person is a guardian to the exclusion of a surviving parent (Section 11); and (c) orders for custody and maintenance where joint guardians disagree (Section 12). In this footnote, a reference to a section is a reference to a section of the Guardianship of Minors Ordinance (Cap. 13).

¹⁴⁵ Section 4(1) of the Guardianship of Minors Ordinance (Cap. 13).

¹⁴⁶ Section 4(1) of the Guardianship of Minors Ordinance (Cap. 13).

¹⁴⁷ One exception is that gametes (i.e. ova or sperm) can be obtained from an unmarried person; see Section 15(8) of the Human Reproductive Technology Ordinance (Cap. 561).

¹⁴⁸ A reproductive technology procedure means a medical, surgical, obstetric or other procedure assisting human reproduction by artificial means and includes: (a) in vitro fertilisation; (b) artificial insemination; (c) the obtaining of gametes; and (d) manipulation of embryos or gametes outside the body.

¹⁴⁹ Section 15(5) of the Human Reproductive Technology Ordinance (Cap. 561) and Section 13 of the Human Reproductive Technology (Licensing) Regulations (Cap. 561A).

¹⁵⁰ Sections 4 and 5 of the Adoption Ordinance (Cap. 290).

¹⁵¹ Section 5(1) of the Adoption Ordinance (Cap. 290).

¹⁵² Section 27 of the Adoption Ordinance (Cap. 290).

7.18 For these purposes, a “relative” includes certain persons related by blood or affinity.¹⁵³ As such, a person related to an infant through an alternative relationship is unable to rely on ground (b) in paragraph 7.17 above or be exempted from assessment. Additionally, a person in an alternative relationship with the mother or father of a child, but who is not him/herself the mother or father of the child,¹⁵⁴ is unable to rely on ground (c) in paragraph 7.17 above or be exempted from assessment. If these relationships were instead opposite-sex marriages, these individuals would be able to rely on ground (b) or (c) in paragraph 7.17 above, as the case may be, and also be exempted from assessment.

7.19 Where one spouse applies solely to adopt a child, the other spouse must consent before an adoption order may be made.¹⁵⁵ This means that the consent of a person’s opposite-sex spouse, but not his/her civil partner, cohabitee, or same-sex spouse, is required.

7.20 Lastly, if a child is born out of wedlock and its father has agreed or been ordered to make payments for the child’s benefit, the order or agreement will cease to have effect if: (a) the child’s single mother later adopts the child; and (b) she subsequently marries.¹⁵⁶ The order or agreement would not cease to have effect where the mother enters into an alternative relationship.

¹⁵³ Section 2 of the Adoption Ordinance (Cap. 290).

¹⁵⁴ This may depend on the specific circumstances under which the child is conceived.

¹⁵⁵ Section 5(5)(b) of the Adoption Ordinance (Cap. 290).

¹⁵⁶ Sections 14(1) and (2) of the Adoption Ordinance (Cap. 290).

8. COMPANIES¹⁵⁷

8.1 This category covers directors' and company secretaries' particulars, financial assistance by companies, "fair dealing" by directors, compulsory share acquisition in takeovers, winding up, market misconduct, and the disclosure of interests.

RELATIONSHIP	RECOGNITION
Opposite-sex marriage	Recognised
Same-sex marriage	Not recognised, but see "Same-sex cohabitation relationship" below
Opposite-sex civil partnership	Not recognised, but see "Opposite-sex cohabitation relationship" below
Same-sex civil partnership	Not recognised, but see "Same-sex cohabitation relationship" below
Opposite-sex cohabitation relationship	Recognised for fair dealing, compulsory share acquisition, winding up (in part), and market misconduct; for market misconduct, a couple must be each other's "reputed spouse" or cohabiting as each other's spouse
Same-sex cohabitation relationship	Recognised for fair dealing, compulsory share acquisition, and winding up (in part)

Directors' and company secretaries' particulars

8.2 As part of the requirements to form a company under the Companies Ordinance, a person must deliver to the Registrar an incorporation form in the specified form.¹⁵⁸ Among other information, the incorporation form must contain the former forename or surname (if any) of any proposed director and any proposed company secretary of the company.¹⁵⁹ A former forename or surname does not include, in relation to a married woman, a name or surname by which she was known before her marriage.¹⁶⁰

8.3 This requirement means that a woman in an opposite-sex marriage is not required to publicly disclose her maiden name, but a woman in an alternative relationship must do so. The same exclusion of former forenames and surnames for married women applies to directors' information in: (a) the incorporation form of an intended open-ended fund company;¹⁶¹ (b) the re-domiciliation form for a non-Hong Kong fund corporation that intends to move to Hong Kong as an open-ended fund company;¹⁶² and (c) the register of directors for a private company.¹⁶³

¹⁵⁷ In this section 8, "company" refers to a company incorporated in Hong Kong unless stated otherwise.

¹⁵⁸ Section 67(1) of the Companies Ordinance (Cap. 622).

¹⁵⁹ Section 68(1) of, and Paragraphs 3(1) and 5(1) of Part 3 of Schedule 2 to, the Companies Ordinance (Cap. 622).

¹⁶⁰ Section 68(1) of, and Paragraph 6(2) of Part 3 of Schedule 2 to, the Companies Ordinance (Cap. 622).

¹⁶¹ Section 5 of, and Paragraph 5(2) of Part 2 of Schedule 1 to, the Securities and Futures (Open-ended Fund Companies) Rules (Cap. 571AQ).

¹⁶² Section 8C of, and Paragraph 5(2) of Part 2 of Schedule 2 to, the Securities and Futures (Open-ended Fund Companies) Rules (Cap. 571AQ).

¹⁶³ Section 643 of the Companies Ordinance (Cap. 622).

Financial assistance¹⁶⁴

8.4 A company is not allowed to give financial assistance to a person for the purpose of acquiring shares in the company or its parent company.¹⁶⁵ This prevents the resources of a company and its subsidiaries being used in a way that might prejudice the interests of creditors or shareholders not involved in the acquisition. Two exceptions to this prohibition apply differently depending on a person's relationship status.

8.5 First, a company can give financial assistance for the purposes of an employee share scheme or for otherwise enabling or facilitating employees and former employees within the same group and their spouses, widows, and widowers to acquire the shares of a company in the same group.¹⁶⁶

8.6 Second, a company can lend money to eligible employees for the purpose of enabling them to acquire fully paid shares in the company or its holding company. "Eligible employees" means persons employed in good faith by the company but excludes (among others) the spouse of a director of the company.¹⁶⁷

8.7 As such, a company can:

- (a) provide financial assistance for the purposes of an employee share scheme to its employees and their opposite-sex spouses, but not to their civil partners, cohabitantes, or same-sex spouses; and
- (b) lend money to an employee who is also the civil partner, cohabitee, or same-sex spouse of a director, but not to one who is also a director's opposite-sex spouse.

8.8 This confusingly makes it more difficult for those in alternative relationships to access a company's employee share schemes while enabling them to borrow from a company even where conflicts of interest may exist, potentially harming both those in alternative relationships and shareholders.

Fair dealing

8.9 A public company¹⁶⁸ and any of its subsidiaries that is a private company¹⁶⁹ or a company limited by guarantee (**specified companies**) are subject to "fair dealing" rules.¹⁷⁰ These rules are designed to ensure that shareholders provide their informed, prior consent to certain transactions that may present a conflict of interest between a company and any of its directors and/or an entity connected with a director. For example, a specified company cannot make a loan or a quasi-loan¹⁷¹ to an entity connected with any of its directors,¹⁷² or enter into a credit transaction as creditor for an entity connected with one of its directors,¹⁷³ without the approval of the company's shareholders.¹⁷³

8.10 An "entity connected with a director" includes a member of the director's family, a person who is in a cohabitation relationship with the director, and a body corporate with which the director is associated.¹⁷⁴ A director's "family" includes his/her spouse.¹⁷⁵ "Cohabitation relationship" means a relationship between two persons (whether of the same sex or opposite sex) who live together as a couple in an intimate

¹⁶⁴ See Section 274 of the Companies Ordinance (Cap. 622).

¹⁶⁵ Section 275 of the Companies Ordinance (Cap. 622).

¹⁶⁶ Section 280 of the Companies Ordinance (Cap. 622).

¹⁶⁷ Section 281 of the Companies Ordinance (Cap. 622).

¹⁶⁸ A company is a public company if it is not a private company or a company limited by guarantee; see Section 12 of the Companies Ordinance (Cap. 622).

¹⁶⁹ A company is a private company if: (a) its articles: (i) restrict a member's right to transfer shares; (ii) limit the number of members to 50; and (iii) prohibit any invitation to the public to subscribe for any shares or debentures of the company; and (b) it is not a company limited by guarantee; see Section 11 of the Companies Ordinance (Cap. 622).

¹⁷⁰ Part 11 of the Companies Ordinance (Cap. 622).

¹⁷¹ Section 493 of the Companies Ordinance (Cap. 622).

¹⁷² Section 502 of the Companies Ordinance (Cap. 622).

¹⁷³ Section 503 of the Companies Ordinance (Cap. 622).

¹⁷⁴ Section 486 of the Companies Ordinance (Cap. 622).

¹⁷⁵ Section 487 of the Companies Ordinance (Cap. 622).

relationship.¹⁷⁶ As such, an entity connected with a director includes: (a) his/her cohabitee or opposite-sex spouse; and (b) chains of body corporates in respect of which a director is associated, which includes body corporates over which a director or the director together with a person in (a) has influence.¹⁷⁷

8.11 The fair dealing rules recognise opposite- and same-sex cohabitation relationships and treat them the same as opposite-sex marriages. They do not recognise civil partnerships or same-sex marriages, but couples in these relationships will be subject to these rules where they cohabit. In the event a director does not cohabit with his/her civil partner or same-sex spouse, the fair dealing rules would not apply, leaving the company's shareholders less protected against a director's potential conflict of interest.

Compulsory share acquisition

8.12 Special rules apply where a person offers to acquire all the shares of a company (**takeover**) or a company seeks to buy back all its shares. For example, the offeror in a takeover can force minority shareholders to sell their shares (known as a *squeeze-out*) if the offeror already controls 90% of the company.¹⁷⁸ This and other control or voting thresholds generally exclude shares held by an associate of an offeror as being shares to which the takeover offer relates.¹⁷⁹

8.13 An offeror's "associate" includes his/her spouse and a person who is in a cohabitation relationship with an offeror.¹⁸⁰ "Cohabitation relationship" has the same meaning as for the "fair dealing" rules.¹⁸¹

8.14 The takeover rules recognise opposite- and same-sex cohabitation relationships and treat them the same as opposite-sex marriages. As such, the shares held by an offeror's cohabitee or opposite-sex spouse are not counted for the purposes of the various thresholds. They do not recognise civil partnerships or same-sex marriages, but couples in these relationships will be subject to the takeover rules where they cohabit. In the event an offeror does not cohabit with his/her civil partner or same-sex spouse, shares held by that civil partner or spouse would be counted for the various thresholds, leaving minority shareholders less protected.

Winding up

8.15 Two restrictions on company liquidators apply differently depending on a person's relationship status.

8.16 First, a person is required to make a disclosure statement before he/she may be appointed or nominated for appointment as a liquidator or provisional liquidator.¹⁸² The disclosure statement must disclose whether the person is an immediate family member of certain persons connected with the company being wound up, such as its directors, or those of its holding company or subsidiary, and explain why that relationship would not result in the proposed liquidator having a conflict of interest or duty.¹⁸³ "Immediate family member" includes a person's spouse.¹⁸⁴

8.17 This means a liquidator is not required to disclose the fact that a director of the company, its holding company, or its subsidiary is his/her civil partner, cohabitee, or same-sex spouse, despite the potential for the same conflicts of interest that would arise if the liquidator's opposite-sex spouse was a director of

¹⁷⁶ Section 484(1) of the Companies Ordinance (Cap. 622).

¹⁷⁷ "Influence" does not appear in the relevant sections of the law. It is used here to refer to those situations where a director is taken to be associated with a body corporate because, for example, the directors, or a majority of the directors, of a body corporate are accustomed to act in accordance with (among others) the directions or instructions of the director's opposite-sex spouse or cohabitee, as set out in Section 488 of the Companies Ordinance (Cap. 622).

¹⁷⁸ Sections 693 and 695 of the Companies Ordinance (Cap. 622).

¹⁷⁹ Sections 691(3) and 693 of the Companies Ordinance (Cap. 622).

¹⁸⁰ Section 667 of the Companies Ordinance (Cap. 622).

¹⁸¹ Section 666 of the Companies Ordinance (Cap. 622).

¹⁸² Section 262C(2) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

¹⁸³ Sections 262D(1)(b) and 262D(2)(b) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

¹⁸⁴ Section 262D(6) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

the company. This leaves a company's creditors less protected where the liquidator is in an alternative relationship.

8.18 Second, a provisional liquidator can generally only exercise his/her powers in relation to a company with the permission of the Court or the Official Receiver.¹⁸⁵ Certain provisional liquidators may dispose of a company's assets without permission if the assets are worth less than HK\$100,000 and their value is likely to significantly diminish if they are not immediately disposed of (e.g. fresh fruit). Nevertheless, these assets cannot be disposed of to a relevant person.¹⁸⁶

8.19 A "relevant person" includes an associate of a director of the company.¹⁸⁷ "Associate" includes a person's spouse or cohabitant.¹⁸⁸ For these purposes, a person is a "cohabitant" of another person if that person and the other person (whether they are of the same sex or opposite sex) live together as a couple in an intimate relationship.¹⁸⁹

8.20 Consequently, provisional liquidators cannot dispose of these assets to the cohabitants or opposite-sex spouses of the relevant company's directors. This means these individuals are prevented from benefiting from the failure of the company, but their counterparts in civil partnerships and same-sex marriages can do so if they live apart.

Market misconduct

8.21 False trading and the disclosure of information about prohibited transactions¹⁹⁰ in securities and futures contracts are prohibited.¹⁹¹

8.22 False trading occurs when a person purposely or recklessly does anything or causes anything to be done that has or is likely to have the effect of creating a false or misleading appearance of active trading in securities or futures contracts or with respect to the market for or the price of dealings in securities or futures contracts.¹⁹²

8.23 A person is presumed to have committed false trading if, for example: (a) he/she offers to buy or sell securities at a price that is substantially the same as the price at which he/she knows his/her associate has made or proposes to make an offer to sell or buy those securities;¹⁹³ or (b) he/she enters into or carries out a transaction in securities that does not involve a change in beneficial ownership.¹⁹⁴ In the latter case, the law provides that there is no change in beneficial ownership if a person or his/her associate has an interest in the securities both before and after the transaction.¹⁹⁵

8.24 Disclosure of information about prohibited transactions takes place when: (a) a person discloses information to the effect that the price of securities or futures contracts will be maintained, increased, reduced, or stabilised because of a prohibited transaction; and (b) either that person or his/her associate:

¹⁸⁵ Sections 199B(1) and (2) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

¹⁸⁶ Sections 199B(3) and (4) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

¹⁸⁷ Section 199B(8) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

¹⁸⁸ Section 265B of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

¹⁸⁹ Section 265B(5) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

¹⁹⁰ A prohibited transaction is any conduct or transaction that constitutes market misconduct or a contravention of any of the provisions of Divisions 2 to 4 of Part XIV of the Securities and Futures Ordinance (Cap. 571); see Section 276(3)(a) of the Securities and Futures Ordinance (Cap. 571).

¹⁹¹ Parts XIII and XIV of the Securities and Futures Ordinance (Cap. 571).

¹⁹² Sections 274(1) and (2) and 295(1) and (2) of the Securities and Futures Ordinance (Cap. 571).

¹⁹³ Sections 274(5)(b) and (c) and 295(5)(b) and (c) of the Securities and Futures Ordinance (Cap. 571).

¹⁹⁴ Sections 274(5)(a), 290(7) and 295(5)(a) of the Securities and Futures Ordinance (Cap. 571).

¹⁹⁵ Section 250(7) of the Securities and Futures Ordinance (Cap. 571).

(i) has entered into the prohibited transaction; or (ii) has received or expects to receive a benefit as a result of the disclosure of the information.¹⁹⁶

8.25 For both prohibitions, “associate” includes a person’s spouse or reputed spouse, and any person cohabiting with the person as a spouse.¹⁹⁷

8.26 The presumption in relation to false trading therefore applies to a person’s activities with his/her opposite-sex spouse and (possibly) opposite-sex civil partner or cohabitee,¹⁹⁸ but on its face not his/her same-sex spouse, civil partner, or cohabitee. The Government may therefore have greater difficulty in establishing a case of false trading involving two people in a same-sex relationship.

8.27 Similarly, the prohibitions against disclosure of information about prohibited transactions cover conduct by a person with his/her opposite-sex spouse and (possibly) opposite-sex civil partner, or cohabitee,¹⁹⁹ but on its face not the same conduct by a person with his/her same-sex spouse, civil partner, or cohabitee. As such, the Government may also have greater difficulty prosecuting persons in same-sex relationships for this conduct.

Disclosure of interests

8.28 Persons who have an interest in 5% of the voting shares of corporations listed in Hong Kong (**substantial shareholders**) are required to publicly disclose their interests and short positions in those voting shares.²⁰⁰ Under this regime, a substantial shareholder is taken to be interested in or to have a short position in any voting shares in which his/her spouse is interested.²⁰¹

8.29 Similar rules apply to the directors and chief executives of corporations listed in Hong Kong, except they must disclose their interests and short positions in any shares (not just voting shares) and debentures of their corporation.²⁰² A director or chief executive is likewise taken to be interested in or to have a short position in any shares or debentures in which his/her spouse is interested.²⁰³ In addition, the rules require that a director or chief executive treat him/herself as having been involved in any contract, assignment, or right of subscription involving his/her spouse.²⁰⁴

8.30 The disclosure regime therefore captures the interests and short positions of substantial shareholders’, directors’, and chief executives’ opposite-sex spouses, but not their civil partners, cohabittees, or same-sex spouses. On that basis, the public is likely to be less informed about the interests in listed corporations of persons in alternative relationships.

¹⁹⁶ Sections 276(1) and 297(1) of the Securities and Futures Ordinance (Cap. 571).

¹⁹⁷ Sections 245(1) and 285(1) of the Securities and Futures Ordinance (Cap. 571).

¹⁹⁸ To the extent that person qualifies as a “reputed spouse” or cohabits “as a spouse”.

¹⁹⁹ To the extent that person qualifies as a “reputed spouse” or cohabits “as a spouse”.

²⁰⁰ Divisions 2 to 4 of Part XV of the Securities and Futures Ordinance (Cap. 571).

²⁰¹ Section 316 of the Securities and Futures Ordinance (Cap. 571).

²⁰² Divisions 7 to 9 of Part XV of the Securities and Futures Ordinance (Cap. 571).

²⁰³ Section 344(1) of the Securities and Futures Ordinance (Cap. 571).

²⁰⁴ Section 344(2)(a) of the Securities and Futures Ordinance (Cap. 571).

9. COMPENSATION

9.1 This category covers compensation to persons impacted by injuries or deaths resulting from accidents, in the course of employment, as a result of asbestos, during outbound travel, during carriage by air, in preventing or resisting crime, and World War II.

RELATIONSHIP	RECOGNITION
Opposite-sex marriage	Recognised
Same-sex marriage	Not recognised, but see “Same-sex cohabitation relationship” below
Opposite-sex civil partnership	Not recognised, but see “Opposite-sex cohabitation relationship” below
Same-sex civil partnership	Not recognised, but see “Same-sex cohabitation relationship” below
Opposite-sex cohabitation relationship	Recognised for accidents (in part), employment (in part), and outbound travel, provided in some cases a couple lives together as husband and wife
Same-sex cohabitation relationship	Recognised for asbestos (in part), provided a couple is viewed as living in the same household

Accidents

9.2 If a death is caused by any wrongful act, neglect, or default, an action for damages may be brought for the benefit of the dependants of the deceased.²⁰⁵ A “dependant” includes a wife, husband, former wife, former husband, and any person living with the deceased in the same household as his/her “husband or wife” for at least two years immediately before the date of death.²⁰⁶

9.3 This right is therefore available to a deceased’s opposite-sex spouse and may be available to his/her opposite-sex cohabitee,²⁰⁷ but would not be available to his/her civil partner or same-sex spouse or cohabitee.

9.4 A claim for bereavement may also be made under a priority “waterfall”, provided the relevant person survives the deceased by not less than 30 days.²⁰⁸ The “waterfall” includes (a) the deceased’s wife or husband; (b) any person living with the deceased in the same household as his/her “husband or wife” for at least two years immediately before the date of death; and (c) where the deceased is a minor, any person who during any marriage treated the deceased as a son or daughter of the family in relation to that marriage.²⁰⁹

9.5 This claim is therefore available on the same basis as set out in paragraph 9.3 above, except that where the deceased is a minor, only opposite-sex spouses who had treated the deceased as his/her son or daughter would be entitled to claim.

²⁰⁵ Section 3 of the Fatal Accidents Ordinance (Cap. 22).

²⁰⁶ Section 2(1) of the Fatal Accidents Ordinance (Cap. 22).

²⁰⁷ In assessing damages where a claim is brought by an opposite-sex cohabitee (but not an opposite-sex spouse), the Court must take into account the fact that the cohabitee had no enforceable right to financial support by the deceased as a result of their living together; see Section 6(4) of the Fatal Accidents Ordinance (Cap. 22).

²⁰⁸ Section 4(2) of the Fatal Accidents Ordinance (Cap. 22).

²⁰⁹ Section 4(2) of the Fatal Accidents Ordinance (Cap. 22).

9.6 Where injury is caused to any person that entitles him/her to maintain an action and recover damages, and that injury causes certain classes of persons to be deprived of his/her society,²¹⁰ the person who is liable for such an action is also liable in damages for the loss of the injured person's society.²¹¹ The classes of persons include: (a) the injured person's husband or wife;²¹² and (b) any person living with the injured person in the same household as his/her "husband or wife" for at least two years immediately prior to the date on which the cause of action accrued.²¹³ This right is similarly available to an injured person's opposite-sex spouse and may be available to his/her opposite-sex cohabitee, but would not be available to his/her civil partner or same-sex spouse or cohabitee.²¹⁴

9.7 The Traffic Accident Victims Assistance Fund provides compensation to traffic accident victims and their dependants in accordance with the Traffic Accident Victims Assistance Scheme.²¹⁵ A victim's opposite-sex spouse can obtain compensation from the fund, but his/her civil partner, cohabitee, or same-sex spouse would not, unless considered to be his/her dependant.

Employment

9.8 A member of the family of an employee is entitled to compensation from the employee's employer if the employee is killed in the course of his/her employment²¹⁶ or is incapacitated or killed as a result of an occupational disease.²¹⁷ A "member of the family" of an employee includes his/her spouse or cohabitee.²¹⁸ A "cohabitee" means any person who at the time of the accident concerned was living with the employee as the employee's "husband or wife".²¹⁹

9.9 This compensation is therefore available to an employee's opposite-sex spouse and may be available to his/her opposite-sex cohabitee but would not be available to his/her civil partner or same-sex spouse or cohabitee. Additionally, when an employee dies as the result of an injury, his/her opposite-sex spouse is eligible to make an application for an interim payment of compensation, but there is no option for his/her opposite-sex cohabitee to do the same.²²⁰

9.10 The Employees Compensation Assistance Fund provides payments to injured employees or eligible persons of those employees who are unable to recover damages from employers.²²¹ An eligible person includes a "spouse or cohabitee".²²² "Spouse" as defined expressly excludes a person who, at the time of the death of the employee, has ceased to be the employee's spouse. A "cohabitee" means any person who at the time of death was living with the employee as the employee's "husband or wife".²²³

9.11 This compensation is therefore available to an employee's opposite-sex spouse and may be available to his/her opposite-sex cohabitee but would not be available to his/her civil partner, or same-sex spouse or cohabitee.

²¹⁰ This means being deprived of the injured person's company.

²¹¹ Section 20C of the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23).

²¹² Unless they had been living apart for a continuous period of at least two years immediately before the date on which the cause of action accrued; see Section 20C(1)(a) of the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23).

²¹³ Section 20C(1)(d) of the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23).

²¹⁴ See also the right of an injured person to bring a claim where an injury causes any of his/her "dependants" to be deprived of his/her gratuitous services in Section 20C(4) of the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23).

²¹⁵ Sections 3 and 4 of the Traffic Accident Victims (Assistance Fund) Ordinance (Cap. 229).

²¹⁶ Section 6 of the Employees' Compensation Ordinance (Cap. 282).

²¹⁷ Section 32 of the Employees' Compensation Ordinance (Cap. 282).

²¹⁸ Section 3(1) of the Employees' Compensation Ordinance (Cap. 282).

²¹⁹ Section 3(1) of the Employees' Compensation Ordinance (Cap. 282).

²²⁰ Section 6C of the Employees' Compensation Ordinance (Cap. 282).

²²¹ Section 20A(1) of the Employees Compensation Assistance Ordinance (Cap. 365).

²²² Section 2(1) of the Employees Compensation Assistance Ordinance (Cap. 365).

²²³ Section 2(1) of the Employees Compensation Assistance Ordinance (Cap. 365).

Asbestos

9.12 The Pneumoconiosis Compensation Fund provides compensation where a person dies as a result of pneumoconiosis²²⁴ or mesothelioma²²⁵ and is survived by any member of his/her other family.²²⁶ “Member of the family” includes a spouse, a cohabitee (i.e. any person living with a person as that person’s wife or husband at the date of death), and any other person living with a person “as a member of the same household” for at least two years immediately prior to the date of death.²²⁷ Compensation is therefore available to a deceased’s opposite-sex spouse and cohabitee (provided they live as husband and wife). Compensation may also be available to a deceased’s civil partner or same-sex spouse or cohabitee, provided they are viewed as being part of the same household and have been living together for at least two years prior to the date of death.

Outbound travel

9.13 Relatives and former spouses of outbound travellers²²⁸ injured or killed may apply for ex gratia payments from the Travel Industry Compensation Fund to recover certain expenses incurred in visiting the place outside Hong Kong in which the relevant accident occurred or in visiting Hong Kong for a purpose connected with the traveller’s death.²²⁹ “Relative” includes a traveller’s spouse and certain people connected through that spouse (e.g. that spouse’s parent); “spouse”, in relation to a person, includes a person with whom the person is cohabiting as husband or wife.²³⁰

9.14 As a result, a traveller’s current or former opposite-sex spouse or cohabitee (provided they cohabit as husband and wife), and certain relatives related to him/her through those relationships are eligible for ex gratia payments, but his/her civil partner or same-sex spouse or cohabitee (and people related to him/her through those relationships) are not.

Carriage by air

9.15 The liability imposed on a carrier in respect of the death of a passenger is enforceable for the benefit of the passenger’s family who sustained damage by reason of the passenger’s death.²³¹ A passenger’s “family” includes his/her spouse. A deceased passenger’s civil partner, cohabitee, or same-sex spouse is unable to enforce this liability against the carrier.

²²⁴ Either: (a) fibrosis of the lungs due to dust of free silica or dust containing free silica, whether or not such disease is accompanied by tuberculosis of the lungs, or any other disease of the pulmonary or respiratory organs caused by exposure to such dust; or (b) fibrosis of the lungs due to asbestos or dust containing asbestos, whether or not such disease is accompanied by tuberculosis of the lungs, or any other disease caused by exposure to such dust; see Section 2(1) of the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360).

²²⁵ A primary malignant neoplasm of the mesothelial tissue due to dust of asbestos or dust containing asbestos, whether or not such disease is accompanied by tuberculosis of the lungs or by any other disease caused by exposure to such dust; see Section 2(1) of the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360).

²²⁶ For example, see Section 4 of the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360).

²²⁷ Section 2(1) of the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360).

²²⁸ A person is an outbound traveller if the person has paid an outbound fare to a licensed travel agent, or an outbound fare has been paid for the person to a licensed travel agent, in connection with or in anticipation of the travel agent obtaining for the person an outbound travel service; see Section 138(2) of the Travel Industry Ordinance (Cap. 634).

²²⁹ Section 9 of the Travel Industry Compensation Fund (Amount of Ex Gratia Payments) Regulation (Cap. 634D).

²³⁰ Section 2 of the Travel Industry Compensation Fund (Amount of Ex Gratia Payments) Regulation (Cap. 634D).

²³¹ Sections 2B, 5 and 15 of the Carriage by Air Ordinance (Cap.500).

Preventing or resisting crime

9.16 The Legislative Council can award compensation to the dependants of any person who dies of injuries sustained while preventing or resisting the commission of a crime or offence.²³² A deceased's opposite-sex spouse is eligible to be awarded this compensation, but a deceased's civil partner, cohabitee, or same-sex spouse would not be eligible, unless considered to be his/her dependant.

World War II

9.17 The Hong Kong War Memorial Pensions Fund provides benefits to persons who contributed to the defence of Hong Kong during World War II and persons who suffered in that war and their spouses (including widows and widowers).²³³ A widow or widower remains eligible for benefits so long as he/she is unmarried.²³⁴ "Spouse" includes a person to whom another person is lawfully married.²³⁵

9.18 These benefits accordingly are available to individuals in (or formerly in) different relationships as follows:

- (a) An opposite-sex widow or widower is eligible for benefits, which would cease if he/she entered into another opposite-sex marriage. They would not cease if he/she entered into a civil partnership, cohabitation relationship, or same-sex marriage.
- (b) A surviving civil partner, cohabitee, or same-sex spouse would not be eligible for benefits.

²³² Section 18A of the Public Finance Ordinance (Cap. 2).

²³³ Long title to the Hong Kong War Memorial Pensions Ordinance (Cap. 386).

²³⁴ Sections 7(2)(e), (f), and (i) of the Hong Kong War Memorial Pensions Ordinance (Cap. 386).

²³⁵ Section 2 of the Hong Kong War Memorial Pensions Ordinance (Cap. 386).

10. CRIME AND DOMESTIC VIOLENCE

10.1 This category covers bigamy, conspiracy, domestic violence, doxxing, and sex-related offences.

RELATIONSHIP	RECOGNITION
Opposite-sex marriage	Recognised
Same-sex marriage	Not recognised, but see “Same-sex cohabitation relationship” below
Opposite-sex civil partnership	Not recognised, but see “Opposite-sex cohabitation relationship” below
Same-sex civil partnership	Not recognised, but see “Same-sex cohabitation relationship” below
Opposite-sex cohabitation relationship	Recognised for domestic violence
Same-sex cohabitation relationship	Recognised for domestic violence

Bigamy

10.2 A married person who marries another during the life of his wife or her husband commits the offence of bigamy.²³⁶ This offence does not apply to: (a) a person in an opposite-sex marriage who enters into a civil partnership, cohabitation relationship, or same-sex marriage; or (b) a person in a civil partnership, cohabitation relationship, or same-sex marriage who enters into another of those relationships or an opposite-sex marriage.

Conspiracy

10.3 A person is not guilty of conspiracy to commit an offence if the only person, apart from any persons under the age of criminal responsibility or any intended victim(s), with whom he/she agrees is his/her spouse.²³⁷ This does not apply where the agreement is with the person’s civil partner, cohabitee, or same-sex spouse. This may make it easier for the Government to prosecute individuals in alternative relationships for conspiracy.

Domestic violence²³⁸

10.4 A person may apply for an injunction where he/she, or a specified minor, has been molested by his/her current or former spouse²³⁹ or the other party to a “cohabitation relationship”,²⁴⁰ i.e., a relationship between two persons (whether of the same sex or of the opposite sex) who live together as a couple in an intimate relationship or such a relationship that has come to an end.²⁴¹

10.5 In determining whether a cohabitation relationship exists the Court must take into account certain factors including:

- whether the parties are living together in the same household;

²³⁶ Section 45 of the Offences against the Person Ordinance (Cap. 212).

²³⁷ Section 159B(2) of the Crimes Ordinance (Cap. 200).

²³⁸ See section 18 of this report on the mechanism under the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (Cap. 639) that supports the recognition and enforcement in the Chinese Mainland of the injunctions discussed under this heading.

²³⁹ Section 3 of the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189).

²⁴⁰ Section 3B of the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189).

²⁴¹ Section 2(1) of the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189).

- (b) whether the parties share the tasks and duties of their daily lives;
- (c) whether there is stability and permanence in the relationship;
- (d) the arrangement of sharing of expenses or financial support, and the degree of financial dependence or interdependence, between the parties;
- (e) whether there is a sexual relationship between the parties;
- (f) whether the parties share the care and support of a specified minor;
- (g) the parties' reasons for living together, and the degree of mutual commitment to a shared life; and
- (h) whether the parties conduct themselves towards friends, relatives or other persons as parties to a cohabitation relationship, and whether the parties are so treated by their friends and relatives or other persons.²⁴²

10.6 A person in a cohabitation relationship or an opposite-sex marriage would be able to apply for an injunction. A person in a civil partnership or same-sex marriage may also be able to do so where the Court finds, using the above criteria, that a cohabitation relationship exists.

10.7 Similarly, a person may apply for an injunction where he/she has been molested by certain relatives, including certain relatives of his/her spouse.²⁴³ However, a person cannot apply for an injunction against the relatives of his/her civil partner, cohabitee, or same-sex spouse.

10.8 A party to the above injunctions may apply under the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance for a certified copy of that judgment to facilitate its recognition and enforcement in the Chinese Mainland.²⁴⁴ However, it is unclear the extent to which a court in the Chinese Mainland would in practice recognise and enforce an injunction granted in respect of different types of relationships, which is a matter of the laws of the Chinese Mainland.

10.9 For completeness, if a person in the Chinese Mainland obtained a similar injunction/order in respect of their cohabitee, and that person later moved to Hong Kong, he/she would be able to register the order in Hong Kong such that it could be enforced as if it had been made by a court in Hong Kong.²⁴⁵

Doxxing

10.10 There are several protections against doxxing:

- (a) It is an offence for a person to disclose the personal data of a data subject without his/her consent:
 - (i) with an intent to cause certain types of harm²⁴⁶ to a data subject or his/her family member; or
 - (ii) being reckless as to whether that harm would be, or would likely be, caused to the data subject or his/her family member.²⁴⁷
- (b) An additional offence applies where such a disclosure causes actual harm.²⁴⁸

²⁴² Section 3B(2) of the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189).

²⁴³ Section 3A of the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189).

²⁴⁴ Part 4 of the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (Cap. 639).

²⁴⁵ Part 2 of the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (Cap. 639).

²⁴⁶ The types of harm for this and related offences are: (a) harassment, molestation, pestering, threat or intimidation; (b) bodily harm or psychological harm; (c) harm causing a person reasonably to be concerned for his/her safety or wellbeing; and (d) damage to a person's property. See Section 64(6) of the Personal Data (Privacy) Ordinance (Cap. 486).

²⁴⁷ Section 64(3A) of the Personal Data (Privacy) Ordinance (Cap. 486).

²⁴⁸ Section 64(3C) of the Personal Data (Privacy) Ordinance (Cap. 486).

(c) The Privacy Commissioner for Personal Data may require anyone in Hong Kong to take a “cessation action”, such as removing personal data from an electronic platform on which it has been published.²⁴⁹

(d) The Court of First Instance may, on application by the Commissioner, grant an injunction where it is satisfied that a person has engaged, is engaging, or is likely to engage in conduct that constitutes the above offences.²⁵⁰

10.11 For these protections, “family member” means another person who is related to the person by blood, marriage, adoption, or affinity.²⁵¹ A data subject’s opposite-sex spouse therefore benefits from these protections, but not his/her civil partner, cohabitee, or same-sex spouse. This may make it more difficult for the Government to prosecute or use the above powers where a person intends to harm a data subject’s civil partner, cohabitee, or same-sex spouse.

Sex-related offences

10.12 A man commits the offence of rape if he induces a married woman to have sexual intercourse with him by impersonating her husband.²⁵² This offence does not apply to a man who induces a woman in an alternative relationship to have sexual intercourse with him by impersonating her civil partner, cohabitee, or same-sex spouse. This may make it more difficult for the Government to prosecute men who do equally objectionable acts against women in alternative relationships.

10.13 A person who is married, or who believes on reasonable grounds that he/she is married, cannot be guilty of indecently assaulting his/her spouse.²⁵³ The same defence is not available where a person is accused of indecently assaulting his/her civil partner, cohabitee, or same-sex spouse.

10.14 A man in a marriage that is invalid by reason of his wife being under 16 is not guilty of the offence of intercourse with a girl under 16, if he reasonably believes her to be his wife.²⁵⁴ This defence is not available to a man who reasonably believes that the girl is his civil partner or cohabitee.

10.15 A person who is a Hong Kong permanent resident or who ordinarily resides in Hong Kong commits an offence if he/she does an act outside Hong Kong that: (a) is committed in relation to a person under the age of 16; and (b) would have constituted a specified sexual offence had it been committed in Hong Kong.²⁵⁵ A defendant has a defence, subject to certain conditions, if at the time of the sexual act the defendant and the other person were married and the marriage was recognised in the place: (i) where the marriage was solemnised; (ii) where the sexual act was done; or (iii) of the defendant’s residence or domicile.²⁵⁶ However, this defence would not include a same-sex marriage recognised in the place where the marriage was solemnised; see paragraph 4.6 above. Consequently, this defence is limited to defendants in opposite-sex marriages; defendants in alternative relationships cannot rely on this defence.

²⁴⁹ Section 66M of the Personal Data (Privacy) Ordinance (Cap. 486).

²⁵⁰ Section 66Q of the Personal Data (Privacy) Ordinance (Cap. 486).

²⁵¹ Section 2 of the Personal Data (Privacy) Ordinance (Cap. 486).

²⁵² Section 118 of the Crimes Ordinance (Cap. 200).

²⁵³ Section 122 of the Crimes Ordinance (Cap. 200).

²⁵⁴ Section 124 of the Crimes Ordinance (Cap. 200).

²⁵⁵ Section 153P(1) of the Crimes Ordinance (Cap. 200).

²⁵⁶ Section 153P(3) of the Crimes Ordinance (Cap. 200).

11. CRIMINAL MATTERS AND PRISONERS

11.1 This category covers investigations, the competency and compellability of spouses in criminal proceedings, privilege against incrimination of one's spouse outside criminal proceedings, fugitive offenders, other criminal procedural matters, and matters concerning prisoners.

RELATIONSHIP	RECOGNITION
Opposite-sex marriage	Recognised
Same-sex marriage	Not recognised
Opposite-sex civil partnership	Not recognised
Same-sex civil partnership	Not recognised
Opposite-sex cohabitation relationship	Not recognised
Same-sex cohabitation relationship	Not recognised

Investigations

11.2 The Secretary for Justice may for the purposes of an investigation into the support of terrorism or organised crime apply for an order requiring a person to provide information and material relevant to the investigation.²⁵⁷ The Court may only grant an order where, among other requirements, there are reasonable grounds for believing that the order is in the public interest.²⁵⁸ For these purposes, the Court must have regard to the circumstances under which the person may have acquired or may hold the information or material, including any family relationship between the person and another to whom the information or material relates.²⁵⁹

11.3 The Court is therefore required to have regard to a person's opposite-sex marriage, but not his/her civil partnership, cohabitation relationship, or same-sex marriage. This means individuals in alternative relationships may be required to provide information where their counterparts in an opposite-sex marriage would not.

Competency and compellability of spouses in criminal proceedings

11.4 As a general rule, all persons are competent and compellable to give evidence in court proceedings.²⁶⁰ However, special rules apply to husbands and wives in criminal proceedings:

(a) The husband or wife of an accused can only be required to give evidence against the accused for the prosecution of certain offences related to acts against the husband or wife (as the case may be) or their children.²⁶¹ This does not apply where the husband and wife are standing trial together.²⁶²

²⁵⁷ Section 12A(1) of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) and Section 3(1) of the Organised and Serious Crimes Ordinance (Cap. 455).

²⁵⁸ Section 12A(2) of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) and Section 3(2) of the Organised and Serious Crimes Ordinance (Cap. 455).

²⁵⁹ Section 12A(4)(d)(iv) of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) and Section 3(4)(d)(iv) of the Organised and Serious Crimes Ordinance (Cap. 455).

²⁶⁰ Section 5 of the Evidence Ordinance (Cap. 8).

²⁶¹ Section 57(3)(a) of the Criminal Procedure Ordinance (Cap. 221).

²⁶² Section 57(5) of the Criminal Procedure Ordinance (Cap. 221).

- (b) A husband is not compellable to disclose any communication made to him by his wife, and a wife is not compellable to disclose any communication made to her by her husband, during the marriage.²⁶³
- (c) A person's right to refuse to answer any question or produce any document or thing if to do so would tend to expose that person to proceedings for an offence includes the right to refuse to do these things if to do so would tend to expose that person's husband or wife to such proceedings.²⁶⁴

11.5 The Court of Appeal may order a witness who would have been a compellable witness to be examined before the Court of Appeal whether or not he/she was called in the proceedings below.²⁶⁵ The husband or wife of the appellant or respondent may apply for an exemption from the requirement to be so examined (other than where they are required to give evidence on behalf of their spouse as the appellant or respondent concerned).²⁶⁶

11.6 These rules only apply to opposite-sex spouses. This means an individual can be required to give evidence against his/her civil partner, cohabitee, or same-sex spouse in criminal proceedings, and cannot object on the grounds that the evidence may incriminate his/her civil partner, cohabitee, or same-sex spouse or that the information was obtained in confidence.

Privilege against incrimination of one's spouse outside criminal proceedings

11.7 In proceedings that are not criminal in nature, a person generally has the right to refuse to answer any question or to produce any document or item if doing so would be likely to expose him/her to proceedings for an offence or to a penalty. This right extends to situations where answering a question or producing a document or item would be likely to expose that person's husband or wife to criminal proceedings or to the risk of a penalty.²⁶⁷

11.8 This privilege is sometimes overridden by legislation for specific proceedings.²⁶⁸ Where this occurs, any statement or admission made by a person is generally not admissible in evidence against the person's husband, wife, or spouse in certain other proceedings. For example:²⁶⁹

- (a) no statement or admission made by a person in answering a question put to him/her in proceedings in the Legislative Council or a committee, or in complying with an order made in those proceedings, is admissible in evidence against the person's wife or husband in proceedings for any offence or for the recovery of any penalty;²⁷⁰ and
- (b) in the context of proceedings for the return of a child under the Convention on the Civil Aspects of International Child Abduction, a statement made by a person in compliance with a location order is

²⁶³ Section 7 of the Evidence Ordinance (Cap. 8).

²⁶⁴ Section 65A of the Evidence Ordinance (Cap. 8).

²⁶⁵ Section 83V(1)(b) of the Criminal Procedure Ordinance (Cap. 221).

²⁶⁶ Section 83V(6) of the Criminal Procedure Ordinance (Cap. 221).

²⁶⁷ Section 65(1)(b) of the Evidence Ordinance (Cap. 8).

²⁶⁸ For example, Section 16(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) and Section 15(8) of the Child Abduction and Custody Ordinance (Cap. 512).

²⁶⁹ Other examples include statements or admissions made in: (a) proceedings for the recovery or administration of any property, for the execution of any trust, or for an account of any property or dealings with property, or in complying with an order made in those proceedings, which are not admissible in proceedings for an offence under the Theft Ordinance (Cap. 210) or Part VIII of the Crimes Ordinance (Cap. 200); (b) a compulsory examination or deposition before the Court on the hearing of a matter in bankruptcy, which is not admissible for proceedings under the Theft Ordinance (Cap. 210); and (c) civil proceedings, or in complying with an order made in those proceedings, which are not admissible in proceedings for an offence under the Trade Descriptions Ordinance (Cap. 362). See Section 66 of the Crimes Ordinance (Cap. 200), Section 33 of the Theft Ordinance (Cap. 210), Section 141 of the Bankruptcy Ordinance (Cap. 6), and Section 17(5) of the Trade Descriptions Ordinance (Cap. 362).

²⁷⁰ Section 16(2) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382).

not admissible in evidence against the person's spouse in proceedings for an offence other than perjury.²⁷¹

11.9 A similar privilege arises in relation to inspections and investigations.

11.10 Where legislation made before 1 October 1969:

- (a) both: (i) confers powers of inspection or investigation; and (ii) confers on a person a right (other than in criminal proceedings) to refuse to answer any question or give evidence tending to incriminate that person, the person may also refuse on the basis that it would tend to expose his/her husband or wife to proceedings for an offence or for the recovery of a penalty;²⁷² or
- (b) both: (i) confers powers of inspection or investigation; and (ii) provides that any answer or evidence given by a person is not admissible in evidence against that person in any proceedings or class of proceedings, that answer or evidence is also not admissible in evidence against his/her husband or wife in those proceedings.²⁷³

11.11 For legislation made on or after 1 October 1969, the position depends on the specific legislation.

For example:

- (a) a person cannot refuse to answer the questions of an inspector or authorised officer for the purposes of investigation²⁷⁴ in a marine context on the basis that the answer may incriminate his/her husband or wife, but any answer given is not admissible in evidence against his/her husband or wife in any proceedings, except for certain proceedings relating to whether an answer was false or reckless;²⁷⁵ and
- (b) a person can refuse to give information to an authorised officer in the context of trade descriptions on the basis that doing so may incriminate his/her husband or wife.²⁷⁶

11.12 These privileges only apply to opposite-sex spouses. This means an individual can be required to provide information that may incriminate his/her civil partner, cohabitee, or same-sex spouse, and that information can then be used against that civil partner, cohabitee, or same-sex spouse.

Fugitive offenders

11.13 Hong Kong has entered into reciprocal agreements with several countries under which Hong Kong and each country have agreed to surrender to each other fugitives in their jurisdiction who are wanted in the other jurisdiction for prosecution or for the imposition or enforcement of a sentence.²⁷⁷ For example, if a person wanted in India for murder is found in Hong Kong, Hong Kong must surrender that person to India upon India's request, subject to the terms of the agreement.²⁷⁸

11.14 Many of these agreements give Hong Kong or the relevant country the right to refuse to surrender someone where they have substantial grounds for believing the alleged offence committed by the person

²⁷¹ Section 15(9) of the Child Abduction and Custody Ordinance (Cap. 512).

²⁷² Section 65(2) of the Evidence Ordinance (Cap. 8).

²⁷³ Section 65(4) of the Evidence Ordinance (Cap. 8).

²⁷⁴ For example, investigating whether a vessel is involved in a collision, a vessel sinks or becomes stranded or disabled, a person is killed or seriously injured on board a vessel as a result of an accident, an explosion or fire occurs on board a vessel, damage is caused by a vessel to a port facility or other property, or a person, cargo, or equipment is lost overboard from a vessel; see Section 67(1) of the Shipping and Port Control Ordinance (Cap. 313).

²⁷⁵ Section 60 of the Shipping and Port Control Ordinance (Cap. 313), Section 61 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548), and Section 115(7) of the Merchant Shipping (Safety) Ordinance (Cap. 369).

²⁷⁶ Section 17(4) of the Trade Descriptions Ordinance (Cap. 362).

²⁷⁷ The Fugitive Offenders Ordinance (Cap. 503) and its subsidiary legislation, generally.

²⁷⁸ Section 2(b) of, and Schedule to, the Fugitive Offenders (India) Order (Cap. 503P).

is a political offence or an offence connected with a political offence.²⁷⁹ In some cases, the agreements provide that the taking or attempted taking of the life of a member of the Head of State's immediate family is not to be considered a political offence,²⁸⁰ i.e., the surrender of a person accused of murdering a Head of State's immediate family member cannot be refused on the grounds that the murder is a political offence.

11.15 The effect of these agreements and the carve-out from political offences is:

- (a) Hong Kong and the relevant country cannot refuse to surrender a person accused of murdering a Head of State's opposite-sex spouse on the grounds that the offence is a political offence; and
- (b) Hong Kong and the relevant country can refuse to surrender a person accused of murdering a Head of State's civil partner, cohabitee, and same-sex spouse on the grounds that the offence is a political offence.

Other criminal procedural matters

11.16 The spouses of certain members of the Hong Kong judiciary, foreign officials (e.g. consuls), or members of the People's Liberation Army are exempted from jury service.²⁸¹ This exemption applies to those officials' and service members' opposite-sex spouses, but not their civil partners, cohabitees, or same-sex spouses, who may be called to serve.

11.17 A witness giving evidence has the right to apply to the Court to give evidence via a live television link on the basis that he/she is apprehensive as to his/her safety or the safety of any member of his/her family.²⁸² This right applies where evidence may jeopardise the safety of a witness's opposite-sex spouse, but not his/her civil partner, cohabitee, or same-sex spouse.

11.18 Except for the offence of murder or an offence endangering national security, the maximum penalty for which is life imprisonment, it is a good defence for a woman to prove that the offence was committed in the presence of and under the coercion of her husband.²⁸³ A woman in a civil partnership, cohabitation relationship, or same-sex marriage is not able to put forward the same defence.

Prisoners, release under supervision, and sentence review

11.19 If the child of a female prisoner received into prison is over nine months old or attains that age while in prison, the Commissioner of Correctional Services of Hong Kong may commit that child to the care of such relative of the child as may be willing and able to undertake the child's care and who may, in his opinion, be a fit and proper person to undertake such care.²⁸⁴ The Commissioner may also commit the child to any other person or institution approved by the Chief Executive if the Commissioner is unable to find an appropriate relative. This could allow the Commissioner to commit the child to the female prisoner's civil partner, cohabitee, or same-sex spouse (if approved by the Chief Executive), although this power is likely designed to allow the Commissioner to commit the child to institutions overseen by established charities.

²⁷⁹ For example, Article 6(1) of the Agreement between the Government of Hong Kong and the Government of the United States of America for the Surrender of Fugitive Offenders in Schedule 1 to the Fugitive Offenders (United States of America) Order (Cap. 503F).

²⁸⁰ For example, Article 6(2) of the Agreement between the Government of Hong Kong and the Government of Malaysia for the Surrender of Fugitive Offenders in Schedule 1 to the Fugitive Offenders (Malaysia) Order (Cap. 503D). Similar provisions appear in the agreements included in the Fugitive Offenders (United States of America) Order (Cap. 503F), the Fugitive Offenders (Indonesia) Order (Cap. 503O), the Fugitive Offenders (India) Order (Cap. 503P), and the Fugitive Offenders (Republic of Korea) Order (Cap. 503Y).

²⁸¹ Section 5 of the Jury Ordinance (Cap. 3).

²⁸² Section 79B(4) of the Criminal Procedure Ordinance (Cap. 221).

²⁸³ Section 100 of the Criminal Procedure Ordinance (Cap. 221).

²⁸⁴ Rule 21 of the Prison Rules (Cap. 234A).

11.20 The Superintendent of a prison is required to give immediate notice of a prisoner's death to his/her nearest relative.²⁸⁵ This means a prisoner's opposite-sex spouse would be informed of his/her death, but the Superintendent has no obligation to inform the prisoner's civil partner, cohabitee, or same-sex spouse.

11.21 The circumstances of a prisoner's family and/or dependants are relevant to his/her potential release from prison. In particular:

- (a) in determining whether to recommend that a prisoner should be released from imprisonment under supervision, the Release under Supervision Board is required to consider his/her family circumstances;²⁸⁶
- (b) the Long-term Prison Sentences Review Board may request the Director of Social Welfare to provide a report setting out, among other matters, a prisoner's family circumstances to facilitate a review of the sentence of a prisoner;²⁸⁷ and
- (c) if a prisoner is released from imprisonment under a supervision order, the order may be subject to a condition in relation to the prisoner's financial responsibilities to his/her dependants.²⁸⁸

11.22 The circumstances of a prisoner's opposite-sex spouse are required to be considered for all these matters. However, the circumstances of a prisoner's civil partner, cohabitee, or same-sex spouse may not be considered.

²⁸⁵ Rule 104 of the Prison Rules (Cap. 234A).

²⁸⁶ Section 6 of, and Paragraph 2(e) of the First Schedule to, the Prisoners (Release Under Supervision) Regulations (Cap. 325A).

²⁸⁷ Section 14 of the Long-Term Prison Sentences Review Ordinance (Cap. 524).

²⁸⁸ Section 7 of, and Second Schedule to, the Prisoners (Release Under Supervision) Regulations (Cap. 325A); and Section 3(2) of, and Schedule 2 to, the Long-Term Prison Sentences Review Regulation (Cap. 524A).

12. DEATH

12.1 This category covers the notification of a non-reportable death, death at sea, investigations and inquests into a death, cremation and burial, Chinese Permanent Cemeteries, and the disposal of ashes interred in private columbaria.

RELATIONSHIP	RECOGNITION
Opposite-sex marriage	Recognised
Same-sex marriage	Recognised for investigations and inquests into a death and cremation and burial (in part); see also “Same-sex cohabitation relationship” below
Opposite-sex civil partnership	Not recognised, but see “Opposite-sex cohabitation relationship” below
Same-sex civil partnership	Not recognised, but see “Same-sex cohabitation relationship” below
Opposite-sex cohabitation relationship	Recognised for the disposal of ashes interred in private columbaria, provided a couple lived together for at least two years
Same-sex cohabitation relationship	Recognised for the disposal of ashes interred in private columbaria, provided a couple lived together for at least two years

Notification of a non-reportable death²⁸⁹

12.2 A deceased's nearest relative present at the deceased's death or in attendance during the deceased's last illness must notify the Registrar of Births and Deaths of the death.²⁹⁰ If there is no such person, then the notification obligation falls to any person present at the deceased's death or in attendance during the deceased's last illness.²⁹¹ A failure to report is a criminal offence.²⁹²

12.3 “Relative” is not defined. The position of individuals in different relationships is therefore:

- A deceased's opposite-sex spouse present at the deceased's death or in attendance during the deceased's last illness must notify the Registrar of the death.
- The same notification obligation only applies to a deceased's civil partner, cohabitee, or same-sex spouse where he/she, but no relative of the deceased, was present at the deceased's death or in attendance during the deceased's last illness. The obligation applies because of their presence or attendance, not because of their alternative relationship with the deceased.

Investigations and inquests into a death

12.4 Coroners are responsible for looking into the causes and circumstances of certain deaths. They have investigatory powers to facilitate their work, including the ability to issue a warrant for premises to be

²⁸⁹ See Part 1 of Schedule 1 to the Coroners Ordinance (Cap. 504), as referenced in Section 4 of the Ordinance, for the list of “reportable deaths”. A non-reportable death is a death that does not appear in that list.

²⁹⁰ Sections 14(1) and (2)(a) of the Births and Deaths Registration Ordinance (Cap. 174).

²⁹¹ Sections 14(1) and (2)(b) of the Births and Deaths Registration Ordinance (Cap. 174).

²⁹² Section 28 of the Births and Deaths Registration Ordinance (Cap. 174).

searched. In considering whether it is appropriate to issue such a warrant, a coroner must first have regard to the degree of distress this may cause the family of the deceased person.²⁹³

12.5 In this context, “family” is not defined; however, based on the transcript in *Li Yik Ho v Secretary for Justice and Director of Health*,²⁹⁴ we understand there is no policy of the Coroner’s Court which denies any rights or gives differential treatment to the same-sex spouse of a deceased person.

12.6 Generally speaking, the absence of a policy that denies rights or provides for differential treatment is distinct from the presence of a policy that provides rights or ensures there is no differential treatment. However, we observe that the absence of a policy in this case (together with the other policies or absence of policies discussed in the transcript) was sufficient for Mr Li to withdraw his claim. We assume Mr Li, having taken the step of bringing a claim against the Government, would not have withdrawn his case if there was a denial of rights or differential treatment in the Coroner’s Court. Consequently, a coroner should in practice have regard to the distress a search may cause a deceased’s opposite- or same-sex spouse, but may not have the same regard in relation to the deceased’s civil partner or cohabitee.

12.7 Separately, the law gives several rights to a “properly interested person” in relation to the proceedings of a coroner around a death, such as:

- (a) where a coroner has decided to hold an inquest into the death, the right to: (i) be given reasonable notice of where and when the inquest will be held;²⁹⁵ (ii) be supplied with a witness statement or medical or technical report relating to the death and in the possession or control of the coroner;²⁹⁶ (iii) examine witnesses;²⁹⁷ and (iv) object to the admission of evidence;²⁹⁸
- (b) where an inquest concerns a sudden, accidental, violent, or suspicious death and the coroner is minded to hold the inquest without a jury: (i) the right to make representations to the coroner;²⁹⁹ and (ii) the right to be informed of that right;³⁰⁰ and
- (c) the right to apply to the Court of First Instance for an order that (i) an inquest be held or (ii) the findings of a coroner or jury at an inquest be quashed.³⁰¹

12.8 A “properly interested person” includes a spouse of the deceased and “any other person who, in the opinion of a coroner, should be regarded as a properly interested person by reason of any particular interest in the circumstances surrounding the death of the deceased”.³⁰² Based on the transcript in *Li Yik Ho v Secretary for Justice and Director of Health*,³⁰³ we understand the Government makes no distinction between opposite- and same-sex spouses for the word “spouse” in this context. Consequently, an opposite- or same-sex spouse of a deceased would have the rights referred to above, but a civil partner or cohabitee may not, unless the coroner took the view that the civil partner or cohabitee’s relationship with the deceased (or some other factor) gave him/her a particular interest in the circumstances surrounding the death.

²⁹³ Section 10 of the Coroners Ordinance (Cap. 504).

²⁹⁴ HCAL 295/2021; see section 1 of this report for further information on this case.

²⁹⁵ Section 28(1) of the Coroners Ordinance (Cap. 504).

²⁹⁶ Section 13(1)(c) of the Coroners Ordinance (Cap. 504).

²⁹⁷ Section 32 of the Coroners Ordinance (Cap. 504).

²⁹⁸ Section 40(1) of the Coroners Ordinance (Cap. 504).

²⁹⁹ Section 14(3)(a) of the Coroners Ordinance (Cap. 504).

³⁰⁰ Section 28(2) of the Coroners Ordinance (Cap. 504).

³⁰¹ Section 20(1) of the Coroners Ordinance (Cap. 504).

³⁰² Section 2 of, and Schedule 2 to, the Coroners Ordinance (Cap. 504).

³⁰³ HCAL 295/2021; see section 1 of this report for further information on this case.

Cremation and burial

12.9 In the absence of an executor, a deceased's surviving spouse, among others, may make an application for a cremation permit by virtue of being the nearest surviving relative.³⁰⁴ The deceased's surviving civil partner, cohabitee, or same-sex spouse is not similarly entitled unless he/she falls within other discretionary categories.³⁰⁵

12.10 A person other than a relative or personal legal representative of a deceased person must obtain the consent of the officer in charge before he/she may attend the insertion of the deceased's coffin or human remains into any furnace of a Government crematorium.³⁰⁶ Failure to obtain consent is an offence. This means a person is not required to obtain consent to attend the cremation of his/her opposite-sex spouse but would need consent to attend the cremation of his/her civil partner, cohabitee, or same-sex spouse.

12.11 A person may be buried in the private lot of his/her spouse in Wo Hop Shek, Sandy Ridge, or Sandy Ridge (Urn) cemeteries.³⁰⁷ This right does not extend to a person in a civil partnership, cohabitation relationship, or same-sex marriage.

12.12 The Director of Food and Environmental Hygiene may remove and dispose of an illegal grave covering, monument, headstone or tablet in a public cemetery.³⁰⁸ This power may only be exercised where the Director has given written notice to the person registered as the next of kin of the deceased person.³⁰⁹

12.13 In terms of different relationships:

- A deceased's opposite-sex spouse can be registered as next of kin and receive this notice.
- Based on the transcript in *Li Yik Ho v Secretary for Justice and Director of Health*,³¹⁰ a surviving same-sex spouse may also be able to be registered as next of kin and receive this notice.
- Although our general approach (as described in paragraph 4.2 above) is that "next of kin" is limited to persons related by biology or marriage or another legal arrangement (e.g. adoption) recognised under Hong Kong law, this provision refers to the person registered as next of kin, as opposed to the person who is next of kin. It is unclear whether a surviving civil partner or cohabitee is able to register as next of kin if they are not next of kin as a matter of law, and consequently it is unclear if they would receive this notice.

12.14 Without the permission of the Director, it is an offence to bury human remains, place an urn containing human remains, or scatter ashes of any human remains otherwise than in a cemetery.³¹¹ It is likewise an offence to, without the Director's permission, exhume human remains, remove articles interred with human remains, or remove an urn from any place.³¹² Permission may only be granted to (a) the deceased's

³⁰⁴ Section 4(1)(b) of the Cremation and Gardens of Remembrance Regulation (Cap. 132M).

³⁰⁵ Namely "any person who, in the opinion of the Director of Health, is a suitable and proper person to make the application". That category of persons can only make an application for a cremation permit after the expiration of 48 hours from the death of the deceased; see Section 4(1)(e) of the Cremation and Gardens of Remembrance Regulation (Cap. 132M).

³⁰⁶ Section 16(1) of the Cremation and Gardens of Remembrance Regulation (Cap. 132M).

³⁰⁷ Rule 3 of the Wo Hop Shek, Sandy Ridge and Sandy Ridge (Urn) Cemeteries, Private Lots, Rules (Cap. 132CH).

³⁰⁸ Section 8A(1) of the Public Cemeteries Regulation (Cap. 132BI).

³⁰⁹ Section 8A(3) of the Public Cemeteries Regulation (Cap. 132BI). The requirement for registration of a next of kin in this context is in Section 4(1) of, and Schedule 1 to, the Public Cemeteries Regulation (Cap. 132BI). There is a similar registration requirement for private cemeteries in the Schedule to the Private Cemeteries Regulation (Cap. 132BF), although we did not identify any potential differential treatment arising from that provision.

³¹⁰ HCAL 295/2021; see section 1 of this report for further information on this case.

³¹¹ Section 118(1) of the Public Health and Municipal Services Ordinance (Cap. 132).

³¹² Section 118(2) of the Public Health and Municipal Services Ordinance (Cap. 132). The Director may only grant permission in respect of the cemeteries specified in Parts 1, 2, and 4A of the Fifth Schedule to the Public Health and Municipal Services Ordinance (Cap. 132); see section 3 of, and the Third Schedule to, the Public Health and Municipal Services Ordinance (Cap. 132).

personal representative (e.g. executor or administrator); (b) next of kin; or (c) in the absence of (a) and (b), a person who in the opinion of the Director has a proper interest in the disposal of the relevant human remains.³¹³

12.15 A deceased's surviving opposite-sex spouse is entitled to apply for this permission. Based on the transcript in *Li Yik Ho v Secretary for Justice and Director of Health*,³¹⁴ a surviving same-sex spouse may also be entitled to apply for this permission. However, a surviving civil partner or cohabitee is only entitled to apply for this permission if he/she is also the deceased's personal representative or the Director considers that he/she has a proper interest in the disposal of the remains.

Chinese Permanent Cemeteries

12.16 A person married to a person of the Chinese race permanently resident in Hong Kong is eligible to be buried as the first burial in an allocated space in a Chinese Permanent Cemetery.³¹⁵ After a first burial, the Board of Management of the Chinese Permanent Cemeteries may permit subsequent burials where they involve a relative of an eligible deceased person (i.e. a person of Chinese race permanently resident in Hong Kong, his/her spouse or child).³¹⁶ For subscriber lots, only relatives of the subscriber can be nominated for burial.³¹⁷

12.17 "Relative" is defined as including the relevant person's spouse and certain family members of a relevant person's spouse.³¹⁸ As such, a person can be buried with his/her opposite-sex spouse in a Chinese Permanent Cemetery, but not with his/her civil partner, cohabitee, or same-sex spouse.

Disposal of ashes interred in private columbaria

12.18 Where ashes interred in a private columbarium³¹⁹ are to be disposed of, a priority "waterfall" must be followed if there is more than one claim for possession of those ashes. The claim of a relative, which includes the deceased's spouse, has higher priority than a claim by a related person.³²⁰

12.19 In this context, a "related person" is someone who "was living with the deceased person in the same household immediately before the date of the death of the deceased person" and "had been living with the deceased person in the same household for at least two years before that date".³²¹

12.20 As such, a deceased's opposite-sex spouse has equal priority with other relatives to the deceased's ashes, but a deceased's relatives have higher priority than a deceased's cohabitee, provided the cohabitee is viewed as living in the same household as the deceased. A non-cohabiting civil partner or same-sex spouse cannot make a claim and therefore has no priority.

³¹³ Section 118(3) of the Public Health and Municipal Services Ordinance (Cap. 132).

³¹⁴ HCAL 295/2021; see section 1 of this report for further information on this case.

³¹⁵ Rules, 7A(1), 18A(3), 20(5), and 21A(5) of the Chinese Permanent Cemeteries Rules (Cap. 1112A).

³¹⁶ Rules 7A(4)(a), 18A(5)(a), 20(7)(a), and 21A(6)(a) of the Chinese Permanent Cemeteries Rules (Cap. 1112A).

³¹⁷ Rule 10(1) of the Chinese Permanent Cemeteries Rules (Cap. 1112A).

³¹⁸ Rule 3(1) of the Chinese Permanent Cemeteries Rules (Cap. 1112A).

³¹⁹ A columbarium is a room or building with niches for funeral urns to be stored.

³²⁰ Section 78 of, and Paragraph 9 of Schedule 5 to, the Private Columbaria Ordinance (Cap. 630).

³²¹ Section 78 of, and Paragraph 6 of Schedule 5 to, the Private Columbaria Ordinance (Cap. 630).

13. EMPLOYMENT

13.1 This category covers contracts for employment outside Hong Kong, employer-provided housing, general employment protections and entitlements, and the protection of wages on insolvency. Matters specific to civil servants are addressed in section 22 of this report.

RELATIONSHIP	RECOGNITION
Opposite-sex marriage	Recognised
Same-sex marriage	Not recognised
Opposite-sex civil partnership	Not recognised
Same-sex civil partnership	Not recognised
Opposite-sex cohabitation relationship	Not recognised
Same-sex cohabitation relationship	Not recognised

Contracts for employment outside Hong Kong

13.2 The dependants of a permanent resident of Hong Kong employed to perform work outside Hong Kong are entitled to a number of benefits if they accompany the employee outside Hong Kong.³²² “Dependant” is defined to include a person’s spouse, but not his/her civil partner, cohabitee, or same-sex spouse.³²³ These benefits would therefore be unavailable to a person in an alternative relationship, unless considered to be the employee’s dependant.

Employer-provided housing

13.3 A bedspace apartment is any flat or two or more adjoining flats where the wall between them has been demolished, in which there are 12 or more bedspaces³²⁴ used or intended to be used as sleeping accommodation under rental agreements.³²⁵ Among other requirements, the Bedspace Apartments Ordinance requires that bedspace apartments: (a) be licensed;³²⁶ (b) comply with standards and requirements relating to building and fire safety and sanitation;³²⁷ and (c) follow any directions made by the Bedspace Apartment Authority.³²⁸

13.4 The Ordinance does not apply to any premises used for the provision of sleeping accommodation by any employer to his/her employees and their families.³²⁹ As a result, accommodation in the form of bedspace apartments provided to employees and their civil partners, cohabitees, and same-sex spouses must comply with the Ordinance, but not the same accommodation provided to employees and their opposite-sex spouses. This creates a burden on employers to provide accommodation to employees in alternative relationships and could result in them being less willing to provide such accommodation.

³²² Section 5 of the Contracts for Employment Outside Hong Kong Ordinance (Cap. 78).

³²³ Section 2 of the Contracts for Employment Outside Hong Kong Ordinance (Cap.78).

³²⁴ A bedspace means any floor space, bed, bunk, or sleeping facility of any other type, or any part thereof, used or intended to be used as sleeping accommodation for one person. See Section 2 of the Bedspace Apartments Ordinance (Cap. 447).

³²⁵ Section 2 of the Bedspace Apartments Ordinance (Cap. 447).

³²⁶ Section 5 of the Bedspace Apartments Ordinance (Cap. 447).

³²⁷ Section 18(1) of the Bedspace Apartments Ordinance (Cap. 447).

³²⁸ Section 19(1) of the Bedspace Apartments Ordinance (Cap. 447).

³²⁹ Section 3(1)(d) of the Bedspace Apartments Ordinance (Cap. 447).

General employment protections and entitlements

13.5 The Employment Ordinance does not apply to a person who: (a) is a member of the family of the proprietor of the business in which the person is employed; and (b) dwells in the same dwelling as the proprietor.³³⁰ This means the protections and entitlements in the Ordinance do not apply to a proprietor's opposite-sex spouse (provided they live together), but would apply to the proprietor's civil partner, cohabitee, or same-sex spouse.

13.6 Where the Ordinance does apply, some of its requirements and exemptions apply differently, depending on whether an employer or employee (as the case may be) is in an opposite-sex marriage or an alternative relationship:

- (a) an employer is not required to make severance payments or long service payments to an employee who is his/her husband or wife,³³¹ but these payments must be made to his/her civil partner, cohabitee or same-sex spouse;
- (b) an employer must pay a long service payment to the spouse of a deceased employee if the employee had been employed under a continuous contract for not less than five years at the date of death,³³² but no payment is owed to a person with whom the deceased was in an alternative relationship;
- (c) an employer who provides accommodation for an employee or an employee's family can lawfully deduct the rental value of the accommodation from the wages of the employee,³³³ but cannot do so where the accommodation is solely for the employee's civil partner, cohabitee, or same-sex spouse; and
- (d) at the written request of an employee, an employer can lawfully deduct from his/her wages amounts for the purpose of a medical benefit, superannuation, retirement or thrift scheme established for the benefit of the employee or his/her dependants,³³⁴ but an employer cannot lawfully do so for an employee's civil partner, cohabitee, or same-sex spouse, unless he/she is considered to be the employee's dependant.

Protection of wages on insolvency

13.7 An employee of a business owned by a family member with whom the employee lives cannot seek payment from the Protection of Wages on Insolvency Fund in the event the business becomes insolvent and employment entitlements are owing.³³⁵ This exclusion only applies to persons in or connected by opposite-sex marriages; persons in or connected by alternative relationships are unaffected and can seek payment from the fund.

³³⁰ Section 4 of the Employment Ordinance (Cap. 57).

³³¹ Sections 31F and 31U of the Employment Ordinance (Cap. 57).

³³² Section 31RA of the Employment Ordinance (Cap. 57).

³³³ Section 32(2)(d) of the Employment Ordinance (Cap. 57).

³³⁴ Section 32(2)(g) of the Employment Ordinance (Cap. 57).

³³⁵ Section 2 of the Protection of Wages on Insolvency Ordinance (Cap. 380).

14. HOUSING

14.1 This category covers domestic tenancies, estate agents, first-hand sales of residential property, the Home Ownership Scheme, public rental housing, and subdivided housing.

RELATIONSHIP	RECOGNITION
Opposite-sex marriage	Recognised
Same-sex marriage	Recognised for the Home Ownership Scheme and public rental housing
Opposite-sex civil partnership	Not recognised
Same-sex civil partnership	Not recognised
Opposite-sex cohabitation relationship	Not recognised
Same-sex cohabitation relationship	Not recognised

Domestic tenancies³³⁶

14.2 It is an offence for a person to do any act calculated to interfere with the peace or comfort of a tenant or sub-tenant or members of his/her household, if the person knows, or has reasonable cause to believe, that the conduct is likely to cause the tenant or sub-tenant to give up occupation of any premises or to refrain from exercising any right or pursuing any remedy in respect of any premises.³³⁷ This offence will not apply to acts against a tenant's or sub-tenant's civil partner, cohabitee, or same-sex spouse where he/she is not viewed as part of the tenant's or sub-tenant's household.

14.3 In addition, the widow or widower of a tenant who was residing with the tenant at the time of death is, following the tenant's death, regarded as the tenant for several rights, protections, and obligations, including:³³⁸

- (a) the right to receive a rent receipt from the landlord;³³⁹
- (b) protection against being unlawfully deprived of the occupation of any premises he/she has leased;³⁴⁰
- (c) the protection afforded by the offence discussed in paragraph 14.2 above; and
- (d) being bound by certain covenants implied into the tenancy by legislation.³⁴¹

14.4 The civil partner, cohabitee, or same-sex spouse of a deceased tenant would not be regarded as the widow or widower of the tenant, and therefore would not enjoy the same rights and protections and would not be subject to the same obligations as a deceased tenant's opposite-sex spouse.

³³⁶ This analysis is limited to domestic tenancies to which Part IV of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) applies.

³³⁷ Section 119V(2) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7).

³³⁸ Section 116(5) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7).

³³⁹ Section 119RA(1) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7).

³⁴⁰ Section 119V(1) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7).

³⁴¹ Section 117 of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7).

Estate agents

14.5 An estate agent is required to state in an estate agency agreement³⁴² whether he/she, or any salesperson employed or appointed to act in relation to a property by him/her, has a pecuniary or other beneficial interest in the property.³⁴³ If the estate agent has such an interest, he/she must also disclose full particulars to his/her client.³⁴⁴

14.6 A person is regarded as having a beneficial interest in a property if, among other things, the person has a specified relative who is: (a) a member of a company or other body that has a beneficial interest; (b) in partnership with or in the employment of a person that has a beneficial interest; or (c) a party to any arrangement or agreement concerning the property.³⁴⁵ A person's "specified relative" includes his/her spouse.³⁴⁶ "Spouse" means a person to whom another person is lawfully married.³⁴⁷

14.7 As such, an agent can have and be required to disclose a beneficial interest through his/her opposite-sex spouse, but any beneficial interest through his/her civil partner, cohabitee, or same-sex spouse is not required to be disclosed. This means a potential purchaser or tenant may be less informed of potential conflicts of interest where his/her agent is in an alternative relationship.

14.8 Where a person appoints an agent to act in respect of his/her purchase or lease of a property, the person is liable to pay commission to the agent where, among other conditions, his/her spouse enters into a binding agreement for sale and purchase of that property with the vendor or a binding lease with a landlord for that property during the agency period, whether through the agent or otherwise.³⁴⁸ A potential purchaser or tenant is therefore not liable to pay commission where his/her civil partner, cohabitee, or same-sex spouse enters into such an agreement. This means agents are less protected where they act on behalf of a potential purchaser or tenant in an alternative relationship.

First-hand sales of residential property

14.9 Detailed requirements apply to sales brochures, price lists, show flats, the disclosure of transaction information, advertisements, sales arrangements, preliminary agreements for sale and purchase, and agreements for sale and purchase for first-hand residential property in Hong Kong generally.³⁴⁹

14.10 First-hand residential property is exempt from these requirements so long as the property is only ever: (a) offered to be sold; (b) sold; or (c) assigned, between immediate family members.³⁵⁰ A person's "immediate family member" includes his/her spouse.³⁵¹ As such, sales and assignments of first-hand residential property between civil partners, cohabitees, and same-sex spouses must follow these requirements, whereas sales or assignments between opposite-sex spouses do not.

³⁴² An estate agency agreement is one or more written documents embodying the terms agreed for the time being between an estate agent and a client of the agent, being terms on and subject to which estate agency work is to be done by the agent for the client; see Section 2(1) of the Estate Agents Ordinance (Cap. 511).

³⁴³ This assumes that the agent is appointed under an agreement in the prescribed forms, i.e., Form 3, 4, 5, or 6, as required under the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (Cap. 511C). The Forms appear in the Schedule to that Regulation.

³⁴⁴ Section 36(1)(a)(vi) of the Estate Agents Ordinance (Cap. 511).

³⁴⁵ Section 46(5)(a) of the Estate Agents Ordinance (Cap. 511); and Section 2(1) of the Schedule to the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (Cap. 511C).

³⁴⁶ Section 46(5)(b) of the Estate Agents Ordinance (Cap. 511); and Section 2(1) of the Schedule to the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (Cap. 511C).

³⁴⁷ Section 46(5)(b) of the Estate Agents Ordinance (Cap. 511).

³⁴⁸ This assumes that the agent is appointed under an agreement in the prescribed forms, i.e., Form 4 or 6, as required under the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (Cap. 511C). The Forms appear in the Schedule to that Regulation.

³⁴⁹ The Residential Properties (First-hand Sales) Ordinance (Cap. 621), generally.

³⁵⁰ Sections 11 and 64 of the Residential Properties (First-hand Sales) Ordinance (Cap. 621).

³⁵¹ Section 2(1) of the Residential Properties (First-hand Sales) Ordinance (Cap. 621).

14.11 Where these requirements apply, the sales brochure for a development must include information on the relationship between the parties involved in the development. Specifically, if: (a) the authorised person³⁵² for the development; (b) the authorised person's associate; or (c) a proprietor of a firm of solicitors acting for the owner in relation to the sale, is an immediate family member of: (i) the vendor or building contractor; (ii) a partner of the vendor or building contractor; or (iii) a director or secretary of the vendor, the vendor's holding company, or the building contractor, this fact must be disclosed in the sales brochure.³⁵³ There is no requirement to disclose connections that arise because of civil partnerships, cohabitation relationships, or same-sex marriages.

14.12 In addition, the vendor of a development of first-hand residential property is required to keep a Register of Transactions for the development.³⁵⁴ The purpose of the register is to provide members of the public with transaction information for understanding the residential property market conditions in Hong Kong.³⁵⁵ Among other information, entries in the register must state whether the relevant purchaser is the vendor's related party.³⁵⁶ Where the vendor is an individual, the vendor's "related party" includes his/her spouse and a private company of which his/her spouse is a director or shareholder.³⁵⁷ These registers are not required to record and disclose connections that arise because of civil partnerships, cohabitation relationships, or same-sex marriages. This may cause the public to be misinformed of the state of the first-hand residential property market.

Home Ownership Scheme (HOS)

14.13 Our research did not extend to considering differential treatment in the context of the HOS. However, following the decision of the Court of Final Appeal in *Nick Infinger v The Hong Kong Housing Authority and Li Yik Ho (in substitution for Ng Hon Lam Edgar, deceased) v The Hong Kong Housing Authority*,³⁵⁸ both opposite- and same-sex spouses should now be able to apply together under the HOS, but civil partners and cohabitantes cannot.

Public rental housing (PRH)

14.14 Applications for PRH fall within one of two types, a "General Application" or an application by a "Non-elderly One-person" applicant.³⁵⁹ The "General Application" category consists of four sub-categories, namely: (a) Ordinary Families; (b) the Single Elderly Persons Priority Scheme; (c) the Elderly Persons Priority Scheme; and (d) the Harmonious Families Priority Scheme.

14.15 When a person submits an Ordinary Family application or a Non-elderly One-person application, he/she must meet certain general eligibility criteria. These criteria include that:

³⁵² Authorised person means: (a) in relation to a development for which a certificate of exemption has been issued under Section 5(a) of the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121) in respect of building works for every building in the development, a person who is appointed by the owner of the land to supervise the construction of the development; and (b) in relation to any other development or a phase of any other development, an authorised person who is appointed under Section 4(1)(a) or (2) of the Buildings Ordinance (Cap. 123) as a co-ordinator of building works for the development or the phase.

³⁵³ Section 19(2)(c) of, and Paragraph 3(2) of Part 1 of Schedule 1 to, the Residential Properties (First-hand Sales) Ordinance (Cap. 621).

³⁵⁴ Section 58(1) of the Residential Properties (First-hand Sales) Ordinance (Cap. 621).

³⁵⁵ Section 61 of the Residential Properties (First-hand Sales) Ordinance (Cap. 621).

³⁵⁶ Sections 59(1)(i), (2)(a)(vi), and (3)(f) of the Residential Properties (First-hand Sales) Ordinance (Cap. 621).

³⁵⁷ The definition of a "related party" also captures spouses of persons connected with vendors that are partnerships or corporations; see Section 59(7) of the Residential Properties (First-hand Sales) Ordinance (Cap. 621).

³⁵⁸ [2024] HKCFA 29; see section 1 of this report for further information on this case.

³⁵⁹ Paragraph 1.2 of the Application Guide for Public Rental Housing (Revised in November 2022), housingauthority.gov.hk/en/common/pdf/global-elements/forms/flat-application/HD273.pdf.

- (a) subject to limited exceptions,³⁶⁰ all married persons listed on an application form must apply with their spouses;³⁶¹
- (b) the applicant and his/her family members must not own (whether directly or indirectly), have entered an agreement to purchase, or hold more than 50% of the shares in a company which directly or indirectly owns, any domestic property in Hong Kong between the date of completing the application form to the date of signing the tenancy agreement for any PRH unit subsequently allocated to them;³⁶² and
- (c) the total monthly income and total net asset value of the applicant and his/her family members must not exceed the relevant limits.³⁶³

14.16 A person making a General Application must satisfy certain conditions. The conditions applicable to the Ordinary Family sub-category include that “(t)he relationship between the Applicant and family members, and between family members must be either husband and wife, parent and child, grandparent, and grandchild”.³⁶⁴

14.17 Additional policies apply once a person has obtained PRH:

- (a) Only certain people may be added to a PRH tenancy as additional household members.³⁶⁵ The categories of permitted persons expressly include a tenant's spouse, but not his/her civil partner.
- (b) A surviving spouse may succeed to the tenancy of a PRH unit on the death or moving out of their spouse without the need to pass the comprehensive means test or domestic property test.³⁶⁶ Where there is no surviving spouse, a person authorised to reside in (and living in) the PRH unit may apply to become the new tenant of the PRH unit but would need to satisfy these tests.

³⁶⁰ For example, where the applicant is a person undergoing divorce proceedings.

³⁶¹ Paragraph 2.1.3 of the Application Guide for Public Rental Housing (Revised in November 2022), housingauthority.gov.hk/en/common/pdf/global-elements/forms/flat-application/HD273.pdf; and Section A, Chapter 1, page 4 of the Information Booklet on General Housing Policies (Revised in March 2024), housingauthority.gov.hk/en/common/pdf/about-us/policy-focus/policies-on-public-housing/A01/A01.pdf.

³⁶² Paragraph 2.1.5 of the Application Guide for Public Rental Housing (Revised in November 2022), housingauthority.gov.hk/en/common/pdf/global-elements/forms/flat-application/HD273.pdf; and Section A, Chapter 1, pages 4-5 of the Information Booklet on General Housing Policies (Revised in March 2024), housingauthority.gov.hk/en/common/pdf/about-us/policy-focus/policies-on-public-housing/A01/A01.pdf. While unclear, it appears that this test is intended to apply to those members of the applicant's family listed on the application form only.

³⁶³ Paragraph 2.1.6 of the Application Guide for Public Rental Housing (Revised in November 2022), housingauthority.gov.hk/en/common/pdf/global-elements/forms/flat-application/HD273.pdf; and Section A, Chapter 1, page 5 of the Information Booklet on General Housing Policies (Revised in March 2024), housingauthority.gov.hk/en/common/pdf/about-us/policy-focus/policies-on-public-housing/A01/A01.pdf. While unclear, it appears that this test is intended to apply to those members of the applicant's family listed on the application form only.

³⁶⁴ Paragraph 2.3.3 of the Application Guide for Public Rental Housing (Revised in November 2022), housingauthority.gov.hk/en/common/pdf/global-elements/forms/flat-application/HD273.pdf; and Section A, Chapter 1, page 7 of the Information Booklet on General Housing Policies (Revised in March 2024), housingauthority.gov.hk/en/common/pdf/about-us/policy-focus/policies-on-public-housing/A01/A01.pdf.

³⁶⁵ The eligibility criteria are set out in Part I of Form HD10-1E (Rev. 05/2024), housingauthority.gov.hk/en/common/pdf/global-elements/forms/flat-application/HD10-1.pdf; and Section B, Chapter 6, pages 2 to 4 of the Information Booklet on General Housing Policies, housingauthority.gov.hk/en/common/pdf/about-us/policy-focus/policies-on-public-housing/B06/B06.pdf. As the HA points out on its website, “A PRH flat should be occupied by the tenant and his/her family members listed on the tenancy agreement only” (housingauthority.gov.hk/en/public-housing/tenancy-matters/changes-of-household-particulars/index.html#p2).

³⁶⁶ See Section B, Chapter 7, page 1 of the Information Booklet on General Housing Policies, housingauthority.gov.hk/en/common/pdf/about-us/policy-focus/policies-on-public-housing/B07/B07.pdf. The surviving spouse in question must have been approved as a tenant and be residing in the flat to be eligible to succeed to the tenancy in question.

14.18 Updated policies following the decision of the Court of Final Appeal in *Nick Infinger v The Hong Kong Housing Authority and Li Yik Ho (in substitution for Ng Hon Lam Edgar, deceased) v The Hong Kong Housing Authority*³⁶⁷ have not yet been published by the Housing Authority. However, on the assumption the policies will be updated to conform to that decision:

- (a) Both opposite- and same-sex spouses may apply for PRH as an Ordinary Family,³⁶⁸ whereas civil partners and cohabittees must apply individually under the Non-elderly One-person category.
- (b) Where a person applies individually under the Non-elderly One-person category, the interests of their civil partner or cohabittee in domestic property in Hong Kong is disregarded, as are those persons' monthly income and total net asset value, despite the possibility their finances may be connected.
- (c) Opposite- and same-sex spouses can live together in a PRH unit, but civil partners cannot.
- (d) If a PRH tenant dies or moves out of the PRH unit, his/her opposite- or same-sex spouse, but not his/her civil partner, may succeed to the tenancy.

14.19 Lastly, we note it is the stated target of the HA to maintain the average waiting time for General Applications at around three years.³⁶⁹ There is no stated target for Non-elderly One-person applications. As such, individuals in civil partnerships or cohabitation relationships who apply for PRH may face a significantly longer waiting time for PRH when compared to opposite- and same-sex spouses.³⁷⁰

Subdivided housing

14.20 Those living in subdivided housing, many of whom are low-income individuals and families, have historically been disadvantaged when it comes to their living arrangements.³⁷¹ To address this issue, special protections apply to the tenant of a domestic tenancy of a subdivided unit³⁷² that is for the purpose of the tenant's own dwelling.³⁷³ These protections include, regardless of the contents of the tenancy agreement:

³⁶⁷ [2024] HKCFA 29; see section 1 of this report for further information on this case.

³⁶⁸ The Housing Authority responded to an enquiry from the South China Morning Post on 5 July 2025, stating: "Upon receiving [public rental home] applications involving same-sex married spouses, we will handle the case in accordance with the practice adopted for the 'ordinary families' applicant category.", see scmp.com/news/hong-kong/society/article/3317102/hong-kong-housing-authorities-quietly-open-door-same-sex-couples.

³⁶⁹ The Application Guide provides in part: "Waiting time refers to the time taken between registration for PRH and first flat offer, excluding any frozen period during the application period (e.g. when the applicant has not yet fulfilled the residence requirements; ... etc)." The HA's performance pledge calls for applicants to be notified of whether they have successfully registered for PRH within three months of having confirmed receipt of an application form. See Paragraph 3.1.7(a) of the Application Guide for Public Rental Housing (Revised in November 2022), housingauthority.gov.hk/en/common/pdf/global-elements/forms/flat-application/HD273.pdf; and Section C, Chapter 2, page 1 of the Information Booklet on General Housing Policies, housingauthority.gov.hk/en/common/pdf/about-us/policy-focus/policies-on-public-housing/C02/C02.pdf.

³⁷⁰ The relative priority of Non-elderly One-person applicants for vetting of their applications is determined according to the points scored under the HA's Quota and Points System (**QPS**), while that of flat allocation is determined according to both points scored and the quota available. The QPS allocates points to an applicant based on the applicant's age at the time of registration of their application for PRH, with additional points added for each month passing from the time of registration. Points are deducted if the applicant is living in PRH (including housing operated by the Hong Kong Housing Society). Paragraphs 2.7 and 3.1.7(c) of the Application Guide for Public Rental Housing (Revised in November 2022), housingauthority.gov.hk/en/common/pdf/global-elements/forms/flat-application/HD273.pdf; and Section A, Chapter 1, pages 10 to 14 of the Information Booklet on General Housing Policies (Revised in March 2024), housingauthority.gov.hk/en/common/pdf/about-us/policy-focus/policies-on-public-housing/A01/A01.pdf.

³⁷¹ Paragraph 4 of the Legislative Council Brief accompanying the introduction of the Landlord and Tenant (Consolidation) (Amendment) Bill 2021 to the Legislative Council at legco.gov.hk/yr20-21/english/brief/thb20210706_20210706-e.pdf.

³⁷² This means premises that form part of a unit of a building; see Section 120AA(1) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7).

³⁷³ See Section 120AAB(1) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7), which applies Part IVA of that Ordinance to this type of tenancy.

- (a) a minimum term of two years,³⁷⁴ during which rent cannot be increased, and the right of the tenant to be offered a further term of two years;³⁷⁵
- (b) the right of the tenant to terminate the tenancy after one year by giving one month's notice;³⁷⁶
- (c) compared to the first term, a maximum increase in rent for the second term of 10% and in some cases a mandatory reduction in rent;³⁷⁷
- (d) where an oral tenancy exists, the right of the tenant to demand a written tenancy agreement and a further right to withhold rent and in some cases terminate the tenancy where the landlord does not comply;³⁷⁸
- (e) a maximum rental deposit of two months' rent;³⁷⁹
- (f) implied terms in the tenancy agreement requiring the landlord to pay stamp duty and to maintain and repair the unit;³⁸⁰ and
- (g) offences by a landlord where he/she: (i) requires the tenant to pay money other than certain types; (ii) does not provide a rent receipt; or (iii) unlawfully deprives a tenant of a protected tenancy.³⁸¹

14.21 If a tenant dies during a protected tenancy, these protections are available to a family member residing with the tenant in the subdivided unit at the time of death.³⁸² “Family member” expressly includes a tenant’s spouse.³⁸³ This means the surviving opposite-sex spouse of a deceased tenant would enjoy these protections (assuming they lived together before death), but the survivor of an alternative relationship would not.

14.22 It is an offence for a person, in relation to a subdivided unit, to do any act calculated to interfere with the peace or comfort of a tenant or members of his/her household, if the person knows, or has reasonable cause to believe, that the conduct is likely to cause the tenant to give up occupation of the subdivided unit or to refrain from exercising any right or pursuing any remedy in respect of the subdivided unit.³⁸⁴ This offence may not apply to acts against a tenant’s or sub-tenant’s civil partner, cohabitee, or same-sex spouse where he/she is not viewed as part of the tenant’s or sub-tenant’s household.

³⁷⁴ Section 120AAO(2) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7).

³⁷⁵ Sections 120AAS(1) and 120AAZD(1) and (2) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7).

³⁷⁶ Sections 120AAZH(1), (2), and (3) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7).

³⁷⁷ Sections 120AAZE(2) and (4) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7).

³⁷⁸ Sections 120AAZ(2) and (3) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7).

³⁷⁹ Section 120AAZC(2) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7).

³⁸⁰ Section 120AAZF(1) of, and Schedule 7 to, the Landlord and Tenant (Consolidation) Ordinance (Cap. 7).

³⁸¹ Sections 120AAZL(1), 120AAZN, and 120AAZO(1) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7).

³⁸² Sections 120AAZB(1) and (2) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7).

³⁸³ Section 120AA(1) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7).

³⁸⁴ Section 120AAZO(3) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7).

15. IMMIGRATION

15.1 This category covers residence in Hong Kong, the registration of persons and applications for identity cards, and deportation orders.

RELATIONSHIP	RECOGNITION
Opposite-sex marriage	Recognised
Same-sex marriage	Recognised for dependant visas only
Opposite-sex civil partnership	Recognised for dependant visas only
Same-sex civil partnership	Recognised for dependant visas only
Opposite-sex cohabitation relationship	Not recognised
Same-sex cohabitation relationship	Not recognised

15.2 Our research did not extend to considering differential treatment in the context of dependant visas. However, following the decision of the Court of Final Appeal in *QT v Director of Immigration*³⁸⁵ and the Director of Immigration's updated policy following that decision, opposite- and same-sex spouses and civil partners may apply for dependant visas based on those relationships. Since the policy expressly excludes "de facto spouse, partners in cohabitation, fiancé/fiancée", cohabitantes are unable to apply for dependent visas.³⁸⁶

Residence in Hong Kong

15.3 Whether a person is ordinarily resident in Hong Kong or not affects several rights and protections in an immigration context, including whether:

- the person has become a Hong Kong permanent resident and therefore acquires the right of abode;³⁸⁷
- the person has ceased to be a Hong Kong permanent resident and therefore loses the right of abode but acquires the right to land;³⁸⁸ and
- a removal order can be made against the person.³⁸⁹

15.4 "Ordinarily resident" is not exhaustively defined, but the circumstances relevant in determining whether a person has ceased to be ordinarily resident include the whereabouts of his/her spouse.³⁹⁰

15.5 Similarly, certain persons who claim to be Hong Kong permanent residents must furnish information to the Director of Immigration that reasonably satisfies the Director that they have taken Hong Kong as their place of permanent residence.³⁹¹ That information may include whether the person's spouse is in Hong Kong and whether he/she has a reasonable means of income to support his/her spouse.

³⁸⁵ [2018] HKCFA 28.

³⁸⁶ See Paragraph II(3)(a)(ii) and Footnote 3 of the Guidebook for Entry for Residence as Dependents in Hong Kong (Revised in February 2025), [immd.gov.hk/pdforms/ID\(E\)998.pdf](http://immd.gov.hk/pdforms/ID(E)998.pdf).

³⁸⁷ Section 2A(1) of, and Paragraphs 2(b) and 2(d) of Schedule 1 to, the Immigration Ordinance (Cap. 115).

³⁸⁸ Section 2AAA(1) of, and Paragraph 7 of Schedule 1 to, the Immigration Ordinance (Cap. 115).

³⁸⁹ Section 19(1)(a) of the Immigration Ordinance (Cap. 115).

³⁹⁰ Section 2(6) of the Immigration Ordinance (Cap. 115).

³⁹¹ Section 2(1) of, and Paragraphs 2(d) and 3(1)(a) of Schedule 1 to, the Immigration Ordinance (Cap. 115).

15.6 The Director may therefore not take into account the circumstances of a person's civil partner, cohabitee, or same-sex spouse when determining whether the person is ordinarily resident in Hong Kong or has taken Hong Kong as his/her place of permanent residence.

Registration of persons and applications for identity cards³⁹²

15.7 Subject to limited exceptions, every person who has been granted permission to remain in Hong Kong for 180 days or more must apply for registration or an identity card within 30 days of entering Hong Kong.³⁹³ An applicant is required to inform the registration officer as to whether he/she is married, and if so furnish the name and identity card number (if any) of his/her spouse.³⁹⁴ A person must therefore provide the details of his/her opposite-sex spouse, but not his/her civil partner, cohabitee, or same-sex spouse.

15.8 The limited exceptions referenced above apply to, among others: (a) persons serving in the Chinese People's Liberation Army in possession of the official identity card or document of identity normally issued to them; (b) persons employed by the Hong Kong Government in the United Kingdom;³⁹⁵ and (c) the wives of persons in (a) or (b).³⁹⁶ These exceptions only apply to the opposite-sex wives of those in (a) or (b); individuals in alternative relationships with those in (a) or (b) must apply for registration or an identity card.

15.9 A woman formerly registered under a different name may apply for her identity card to be renewed in her married name (upon production of her marriage certificate) or in her maiden name (upon production of decree absolute or decree of nullity).³⁹⁷ This only applies to a woman in relation to an opposite-sex marriage. A woman has no right to make such an application based on her entering into or ceasing to be in a civil partnership, cohabitation relationship, or same-sex marriage.

15.10 A person who finds an identity card that does not belong to him/her or a member of his/her family commits an offence if he/she does not cause it to be delivered to a registration office or police station.³⁹⁸ As such, a person who finds an identity card belonging to his/her civil partner, cohabitee, or same-sex spouse commits an offence if he/she returns the card to his/her civil partner, etc. instead of causing it to be delivered to a registration office or police station.

Deportation orders

15.11 Where a person is subject to a removal order or a deportation order, until that person's departure, the Chief Secretary for Administration may apply any money belonging to that person towards payment of the expenses or maintenance of that person's dependants.³⁹⁹ This statutory power does not extend to a person's civil partner, cohabitee, or same-sex spouse if not considered to be the person's dependant.

³⁹² See section 17 of this report for discussion of these requirements as they apply to certain international representatives.

³⁹³ Regulation 3(1) of the Registration of Persons Regulations (Cap. 177A).

³⁹⁴ Regulation 4(1)(b)(viii) of the Registration of Persons Regulations (Cap. 177A).

³⁹⁵ The exception is framed as applying to those employed by "Her Majesty's Government in the United Kingdom". In line with Section 2A(3) of, and Paragraph 2 of Schedule 8 to, the Interpretation and General Clauses Ordinance (Cap. 1), this reference in this context should be construed as a reference to the Hong Kong Government. There is no similar provision in the Interpretation and General Clauses Ordinance (Cap. 1) on how references to the United Kingdom should be read.

³⁹⁶ Regulations 25(b)(i) and (ii) of the Registration of Persons Regulations (Cap. 177A).

³⁹⁷ Regulation 4(1B)(a) of the Registration of Persons Regulations (Cap. 177A).

³⁹⁸ Regulations 15 and 19 of the Registration of Persons Regulations (Cap. 177A).

³⁹⁹ Section 25(5) of the Immigration Ordinance (Cap. 115).

16. INHERITANCE⁴⁰⁰

16.1 This category covers wills and probate, intestacy, maintenance for former and surviving spouses and financial provision for dependants, the powers of the Official Administrator, suitors' funds, and financial assistance for Legislative Council and District Council candidates.

RELATIONSHIP	RECOGNITION
Opposite-sex marriage	Recognised
Same-sex marriage	Recognised for intestacy (in part) and maintenance for former and surviving spouses and financial provision for dependants (in part)
Opposite-sex civil partnership	Not recognised
Same-sex civil partnership	Not recognised
Opposite-sex cohabitation relationship	Not recognised
Same-sex cohabitation relationship	Not recognised

Wills and probate

16.2 A married person (who must be above the age of 16)⁴⁰¹ may make and validly revoke a will even though he/she has not attained full age (i.e. the age of 18).⁴⁰² A person under 18 in a civil partnership, cohabitation relation, or same-sex marriage cannot make or revoke a will.

16.3 As a general rule, a person's will is revoked upon his/her marriage.⁴⁰³ For these purposes, "marriage" includes a marriage under the Marriage Ordinance and a marriage contracted outside Hong Kong in accordance with the law in force at the time and in the place where the marriage was performed.⁴⁰⁴ This does not, however, include a same-sex marriage recognised by the law of another jurisdiction; see paragraph 4.6 above. This means a person's will is not revoked by virtue of him/her entering into a civil partnership, cohabitation relationship, or same-sex marriage.

16.4 A disposition of certain property made under a will to the spouse of a witness to the will is void.⁴⁰⁵ In contrast, a disposition to a witness's civil partner, cohabitee, or same-sex spouse is not void.

16.5 Where a person's marriage is validly dissolved, annulled, or declared void after he/she has made a will: (a) the will has effect as if any appointment of his/her former spouse as an executor or as the executor and trustee of the will is omitted; and (b) any devise or bequest to the former spouse lapses, except in so far as a contrary intention appears from the will.⁴⁰⁶ The same appointment of, and the same devise or bequest to, a former civil partner, cohabitee, or same-sex spouse is not affected by the valid dissolution, annulment or voidance of the person's civil partnership, cohabitation relationship, or same-sex marriage. This places

⁴⁰⁰ Estate duty was abolished in Hong Kong on 11 February 2006 pursuant to the Revenue (Abolition of Estate Duty) Ordinance 2005 (21 of 2005). The Estate Duty Ordinance (Cap. 111) remains effective but is only applicable to and imposes estate duty on the estate of persons who passed away before 14 July 2005. Therefore, we have not conducted an analysis on the specific provisions in the Estate Duty Ordinance (Cap. 111).

⁴⁰¹ The minimum age for marriage in Hong Kong is 16. However, if either party is over 16, but still under 21, and is not a widow or widower, written consent to the marriage is required. The written consent is usually provided by a parent or guardian.

⁴⁰² Section 4 of the Wills Ordinance (Cap. 30).

⁴⁰³ Section 14 of the Wills Ordinance (Cap. 30).

⁴⁰⁴ Section 2(2) of the Married Persons Status Ordinance (Cap. 182).

⁴⁰⁵ Section 10(1) of the Wills Ordinance (Cap. 30).

⁴⁰⁶ Section 15(1) of the Wills Ordinance (Cap. 30).

individuals formerly in an alternative relationship at a disadvantage because they must make new wills to exclude their former civil partner, cohabitee, or same-sex spouse.

16.6 If a person to whom a grant of probate or letters of administration would otherwise be made is above the age of 16 but under 21, administration for his/her use and benefit until he/she attains the age of 21 must be granted to, among others, his/her next of kin or (if the person is a woman) her husband, whichever he/she nominates. A person in an alternative relationship is not able to nominate her civil partner, cohabitee, or same-sex spouse.⁴⁰⁷

16.7 Unless prohibited in the will (if any), a person entitled to apply for grant of probate or letters of administration of a deceased's estate may authorise a trust company to apply to court for a grant of administration.⁴⁰⁸ Once authorised, that trust company is entitled equally with any other person or class of persons to apply for and obtain a grant, except that trust company shall not be preferred to the widower, widow, or next of kin of any intestate solely because it is so entitled.⁴⁰⁹ This means that, if both a trust company and the deceased's surviving spouse (widower or widow) apply for a grant, the trust company's application will not be given preference solely because it is entitled to apply. However, if the competing applicant is a civil partner, cohabitee, or same-sex spouse of the deceased, the trust company's application may be preferred for that reason.

Intestacy

16.8 The estate of a person who dies intestate (i.e. without a will) is distributed in accordance with a priority "waterfall". The waterfall includes the deceased's surviving husband or wife (unless judicially separated), children, other relatives, and finally the Government.⁴¹⁰ Where the estate devolves to the Government as bona vacantia, it may use the property of the estate to provide for the deceased's dependants, whether kindred or not, and other persons for whom the deceased might have reasonably been expected to make provision.⁴¹¹

16.9 On the face of the legislation, "husband" and "wife" mean a husband or wife of that person by a valid marriage.⁴¹² A "valid marriage" includes a marriage under the Marriage Ordinance and a marriage celebrated or contracted outside Hong Kong in accordance with the law in force at the time and in the place where the marriage was performed.⁴¹³ However, following the decision of the Court of Final Appeal in *Li Yik Ho (in substitution for Ng Hon Lam Edgar, deceased) v Secretary for Justice*,⁴¹⁴ in this context:

- (a) a "valid marriage" now includes "a marriage celebrated or contracted outside Hong Kong in accordance with the law in force at the time and in the place where the marriage was performed, including any marriage where the persons are of the same sex and such marriage between them would have been a valid marriage under [the Intestates' Estates Ordinance/the Inheritance (Provision for Family and Dependants) Ordinance] but for the fact only that they are persons of the same sex";
- (b) "husband and wife" must be read as "a married person and his or her spouse";
- (c) "husband or wife" must be read as "a married person or his or her spouse"; and

⁴⁰⁷ Rule 31 of the Non-Contentious Probate Rules (Cap. 10A).

⁴⁰⁸ Sections 83(1), (2), and (3) of the Trustee Ordinance (Cap. 29).

⁴⁰⁹ Section 83(4) of the Trustee Ordinance (Cap. 29).

⁴¹⁰ Sections 4 and 4A of the Intestates' Estates Ordinance (Cap. 73).

⁴¹¹ Section 4(9) of the Intestates' Estates Ordinance (Cap. 73).

⁴¹² Section 2(1) of the Intestates' Estates Ordinance (Cap. 73).

⁴¹³ Section 3 of the Intestates' Estates Ordinance (Cap. 73).

⁴¹⁴ [2024] HKCFA 30; see section 1 of this report for further information on this case.

(d) “husband” and “wife”, in relation to a person, must be read as “a spouse of that person by a valid marriage.”⁴¹⁵

16.10 Consequently, in the absence of a will or other estate planning, a deceased’s surviving opposite- or same-sex spouse can be assured that he/she will inherit the deceased’s estate. A surviving civil partner or cohabitee is not entitled to inherit the estate. However, if the deceased dies intestate and there are no surviving relatives entitled under the priority “waterfall” (so that the estate devolves to the Government as bona vacantia), the civil partner or cohabitee may request that the Government exercise its discretion to provide for them out of the estate. The Government is not required to consider granting the request if he/she is not: (a) a dependant; or (b) a person for whom the deceased might reasonably have been expected to make provision in the view of the Government.

16.11 A surviving civil partner or cohabitee will also, unlike a surviving opposite- or same-sex spouse, not be entitled to acquire the premises in which he/she resided with the deceased at the time of death.⁴¹⁶

16.12 A similar priority waterfall applies to those entitled to a grant of administration with respect to a deceased’s estate. A surviving opposite-sex spouse has first priority ranking.⁴¹⁷ However, the survivor of any alternative relationship, including a same-sex marriage, may obtain this grant only after the waterfall is exhausted and only if the survivor is entitled to apply to the Court for payments or property from the deceased’s estate under the Inheritance (Provision for Family and Dependents) Ordinance,⁴¹⁸ which is discussed in paragraphs 16.13 to 16.18 below.⁴¹⁹

Maintenance for former and surviving spouses and financial provision for dependants

16.13 Among others: (a) a deceased’s surviving husband or wife; and (b) any person who was wholly or substantially maintained by the deceased immediately before his/her death, can apply to the Court for payments or property from the deceased’s estate on the ground that the disposition of the deceased’s estate is not such as to make reasonable financial provision for the applicant.⁴²⁰

16.14 On the face of the legislation, “husband” and “wife” mean a husband or wife of that person by a valid marriage.⁴²¹ A “valid marriage” includes a marriage under the Marriage Ordinance and a marriage celebrated or contracted outside Hong Kong in accordance with the law in force at the time and in the place where the marriage was performed.⁴²² However, the decision of the Court of Final Appeal in *Li Yik Ho (in substitution for Ng Hon Lam Edgar, deceased) v Secretary for Justice*⁴²³ applies in this context, so these words and phrases have the same meaning as for intestacy, discussed at paragraph 16.9 above.

16.15 As such, a surviving opposite- and same-sex spouse is entitled to apply regardless of whether he/she was maintained by the deceased, whereas a surviving civil partner or cohabitee may only make an application if he/she was wholly or substantially maintained by the deceased.

⁴¹⁵ *Li Yik Ho (in substitution for Ng Hon Lam Edgar, deceased) v Secretary for Justice* [2024] HKCFA 30 at 129.

⁴¹⁶ Section 7 of, and Schedule 2 to, the Intestates’ Estates Ordinance (Cap. 73).

⁴¹⁷ Rule 21 of the Non-Contentious Probate Rules (Cap. 10A).

⁴¹⁸ Rule 21 of the Non-Contentious Probate Rules (Cap. 10A).

⁴¹⁹ This quirk in the treatment of surviving same-sex spouses, i.e., they will inherit the property of the deceased but cannot readily apply for the grant of letters of administration that allows them to do so, is caused by the limited scope of the provisions challenged in *Li Yik Ho (in substitution for Ng Hon Lam Edgar, deceased) v Secretary for Justice* [2024] HKCFA 30. Any remedial interpretation ordered by the Court is confined to the provisions that were the subject of the judicial review. That case challenged, among others, the Intestates’ Estates Ordinance (Cap. 73) (which contains the intestacy priority waterfall) but not the Non-Contentious Probate Rules (Cap. 10A) (which contains the grant priority waterfall).

⁴²⁰ Section 3(1)(i) of the Inheritance (Provision for Family and Dependants) Ordinance (Cap. 481).

⁴²¹ Section 2(1) of the Inheritance (Provision for Family and Dependants) Ordinance (Cap. 481).

⁴²² Section 2(1) of the Inheritance (Provision for Family and Dependants) Ordinance (Cap. 481).

⁴²³ [2024] HKCFA 30; see section 1 of this report for further information on this case.

16.16 The financial provision available to opposite- and same-sex spouses is also different from those in civil partnerships or cohabitation relationships. Where an application is made by the opposite or same-sex spouse of the deceased, the Court may make an order for financial provision as would be reasonable in all of the circumstances, regardless of whether the provision is required for their maintenance. However, where an application is made by a civil partner or cohabitee who was maintained, the Court may only make an order for financial provision as is reasonable for his/her maintenance.⁴²⁴

16.17 An order made for a surviving husband or wife, in so far as it provides for the making of periodic payments, ceases to have effect upon his/her remarriage.⁴²⁵ As such, payments are no longer required where he/she enters another opposite-sex marriage, but payments would continue where he/she instead enters into an alternative relationship.

16.18 Lastly, special rules apply to applications for financial provision by a deceased's current or former husband or wife in the case of divorce, annulment, or judicial separation. These include the availability of an order for financial provision, and changes to payment orders and maintenance agreements.⁴²⁶ These apply only to current or former opposite-sex spouses, because Hong Kong law does not allow persons in alternative relationships to divorce, annul their relationship, or be judicially separated; see section 18 of this report.

Powers of the Official Administrator

16.19 The Official Administrator may obtain administration of a deceased's estate in Hong Kong where:

- (a) there are no next of kin of the deceased resident in Hong Kong;
- (b) the deceased's next of kin is resident in Hong Kong and he/she has requested or consented to the Official Administrator being granted administration;
- (c) the deceased's next of kin is resident in Hong Kong and is a minor; or
- (d) no person has obtained administration within 12 months of the deceased's death.⁴²⁷

16.20 If the only person resident in Hong Kong is the deceased's opposite- or same-sex spouse, civil partner, or cohabitee (and there are no other relatives), then:

- (a) the Official Administrator would not be able to obtain administration of the deceased's estate within 12 months of the deceased's death unless the deceased's spouse requests or consents to it; and
- (b) if the deceased was in a civil partnership or cohabiting relationship, the Official Administrator may obtain administration immediately upon the deceased's death.

Suitors' funds

16.21 Suitors are parties to civil claims. They may need to pay or transfer funds into court (including a tribunal) for various purposes, such as security against possible default on legal costs. Depending on the outcome of a claim, the funds may be paid out of court to the persons entitled to payment as ordered by the court or

⁴²⁴ Section 3(2) of the Inheritance (Provision for Family and Dependents) Ordinance (Cap. 481).

⁴²⁵ Section 21 of the Inheritance (Provision for Family and Dependents) Ordinance (Cap. 481). Although this provision forms part of the Inheritance (Provision for Family and Dependents) Ordinance (Cap. 481), it refers to "remarriage", which is out of scope of the remedial interpretations ordered in the *Li Yik Ho (in substitution for Ng Hon Lam Edgar, deceased) v Secretary for Justice [2024]* HKCFA 30.

⁴²⁶ Part V of the Inheritance (Provision for Family and Dependents) Ordinance (Cap. 481).

⁴²⁷ Section 16 of the Probate and Administration Ordinance (Cap. 10).

tribunal.⁴²⁸ Funds can include money, securities, and/or movable property, depending on the court or tribunal.⁴²⁹

16.22 The suitors' funds for the High Court,⁴³⁰ District Court,⁴³¹ Small Claims Tribunal,⁴³² Lands Tribunal,⁴³³ Labour Tribunal,⁴³⁴ and Competition Tribunal⁴³⁵ all provide that where a payment has been ordered to be made to a person who has died, the payment may be made to the deceased's personal representative (i.e. executor or administrator) or the personal representative's survivors (where the personal representative has also died).

16.23 Alternatively, where (a) the payment is to be made to a deceased who died intestate with assets not exceeding HK\$5,000 and (b) administration has not been granted in respect of his/her estate, the funds may instead be paid to the person who would have the highest priority to a grant of administration of the estate. That person must have been the deceased's spouse, child, father, mother, brother, or sister.⁴³⁶

16.24 As a result:

- (a) where a deceased's personal representative has died, the payment may be made to that personal representative's surviving opposite-sex spouse, but not his/her surviving civil partner, cohabitee, or same-sex spouse; and
- (b) in the circumstances described in paragraph 16.23 above, the deceased's surviving opposite-sex spouse, but not his/her surviving civil partner, cohabitee, or same-sex spouse, would be eligible to apply for payment of the funds owed to the deceased.

Financial assistance for Legislative Council and District Council candidates

16.25 Where a Legislative Council or District Council candidate dies and he/she was eligible for financial assistance in relation to his/her election expenses, his/her next of kin may make a claim for that assistance if the deceased does not have a personal representative (i.e. executor or administrator) or the personal representative is unwilling to act.⁴³⁷ This means a deceased candidate's opposite-sex spouse, but not his/her civil partner, cohabitee, or same-sex spouse, may make a claim.

⁴²⁸ See paragraph 2 of the Legislative Council Panel on Administration of Justice and Legal Services paper on Proposed Legislative Amendments relating to Suitors' Funds Rules (LC Paper No. CB(4)832/14-15(01)), available at legco.gov.hk/yr14-15/english/panels/ajls/papers/ajls20150427cb4-832-1-e.pdf.

⁴²⁹ For example, the High Court can accept money, securities, and movable property, but the Labour Tribunal may only accept money or movable property; see Rule 11 of the High Court Suitors' Funds Rules (Cap. 4B) and Rule 7 of the Labour Tribunal (Suitors' Funds) Rules (Cap. 25D).

⁴³⁰ Rule 11 of, and Schedule to, the High Court Suitors' Funds Rules (Cap. 4B).

⁴³¹ Rule 11 of, and Schedule to, the District Court Suitors' Funds Rules (Cap. 336E).

⁴³² Rule 7 of, and Schedule to, the Small Claims Tribunal (Suitors' Funds) Rules (Cap. 338D).

⁴³³ Rule 12 of, and Schedule to, the Lands Tribunal (Suitors' Funds) Rules (Cap. 17C).

⁴³⁴ Rule 7 of, and Schedule to, the Labour Tribunal (Suitors' Funds) Rules (Cap. 25D).

⁴³⁵ Rule 12 of, and Schedule to, the Competition Tribunal Suitors' Funds Rules (Cap. 619F).

⁴³⁶ In each case, the relevant declaration is only capable of being given by the deceased's next of kin.

⁴³⁷ Section 13 of the Electoral Affairs Commission (Financial Assistance for Legislative Council Elections and District Council Elections) (Application and Payment Procedure) Regulation (Cap. 541N).

17. INTERNATIONAL AFFAIRS

17.1 This category covers immunities and privileges granted to the representatives of foreign countries and international organisations⁴³⁸ in Hong Kong (**international representatives**), the registration of international representatives, and attacks and threats of attack against senior officials of foreign governments.

RELATIONSHIP	RECOGNITION
Opposite-sex marriage	Recognised
Same-sex marriage	Not recognised
Opposite-sex civil partnership	Not recognised
Same-sex civil partnership	Not recognised
Opposite-sex cohabitation relationship	Not recognised
Same-sex cohabitation relationship	Not recognised

Immunities and privileges⁴³⁹

17.2 A wide range of immunities and privileges are extended to international representatives, their spouses, and other family members.⁴⁴⁰ The specific immunities and privileges available to a spouse generally depend on: (a) the country or organisation the international representative represents; and (b) the position of the international representative within the consular post or organisation. For example, the spouse of a consular officer from the Republic of India is granted different immunities and privileges from the spouse of service staff representing the Russian Federation.

17.3 Generally speaking, the spouse of an international representative may enjoy the following immunities and privileges:

- (a) immunity from arrest, detention, and criminal jurisdiction generally;⁴⁴¹
- (b) immunity from civil and administrative jurisdiction;⁴⁴²
- (c) prohibition against coercive measures being applied if he/she does not give evidence before a Court;⁴⁴³
- (d) exemption from public service and military obligations;⁴⁴⁴

⁴³⁸ These organisations include the Office of the European Communities, the World Trade Organisation, the United Nations, the Bank for International Settlements, the International Monetary Fund, and the Asian Infrastructure Bank.

⁴³⁹ See section 25 of this report for discussion of an exemption to the air passenger departure tax that applies to certain international representatives.

⁴⁴⁰ The Consular Relations Ordinance (Cap. 557), the International Organizations (Privileges and Immunities) Ordinance (Cap. 558), and subsidiary legislation made under both Ordinances, generally.

⁴⁴¹ Section 3(b) of, and Schedule 2 to, the Consular Relations (Additional Privileges and Immunities) (United Kingdom) Order (Cap. 557A).

⁴⁴² Section 3(1) of, and Schedule to, the Consular Relations (Additional Privileges and Immunities) (United States of America) Order (Cap. 557B).

⁴⁴³ Section 3(1) of, and Schedule to, the Consular Relations (Additional Privileges and Immunities) (United States of America) Order (Cap. 557B).

⁴⁴⁴ Section 3(1) of, and Schedule to, the Consular Relations (Additional Privileges and Immunities) (Cambodia) Order (Cap. 557H).

- (e) exemption from payment of customs, duties, and taxes generally or on particular items, such as tobacco, liquor, and petrol;⁴⁴⁵
- (f) exemption from immigration restrictions (e.g. limits of stay, employment, and education);⁴⁴⁶
- (g) exemption from search and seizure of baggage;⁴⁴⁷ and
- (h) other immunities and privileges as are enjoyed by the international representative him/herself.⁴⁴⁸

17.4 “Spouse” is not defined across the relevant legislation. The meaning of “family members” differs across the legislation, but in no case expressly includes civil partners, cohabitantes, or same-sex spouses. For example, in the context of India, “family members” means the spouse, children, and parents who are dependent on an international representative and who form part of the same household.⁴⁴⁹

17.5 As such, the civil partner, cohabitee, or same-sex spouse of an international representative does not enjoy any of the immunities and privileges he/she would enjoy if he/she was instead in an opposite-sex marriage with an international representative.

Registration of international representatives

17.6 Subject to limited exceptions, every person who has been granted permission to remain in Hong Kong for 180 days or more must apply for registration or an identity card within 30 days of entering Hong Kong.⁴⁵⁰ An application typically involves allowing the authorities to take a photo of the person and record their fingerprints.⁴⁵¹

17.7 This requirement is modified where (a) a consul applies on behalf of his/her spouse or the spouses of his/her consular staff or (b) the Head of the Office of the European Communities applies on behalf of his/her spouse or the spouses of members of that office, such that fingerprinting is not required and passport size photos can be accepted.⁴⁵² This modification does not apply to applications on behalf of a person’s civil partner, cohabitee, or same-sex spouse. These individuals are therefore subject to the ordinary application process and requirements.

Attacks and threats of attack against senior officials of foreign governments

17.8 Certain provisions of Hong Kong criminal law extend to violent acts committed outside Hong Kong against protected persons. For example, it is an offence to murder, rape, kidnap, or falsely imprison, or threaten or attempt to do any of these things to, a protected person outside Hong Kong.⁴⁵³

⁴⁴⁵ Section 3(1) of, and Schedule 1 to, the International Organisations (Privileges and Immunities) (International Monetary Fund) Order (Cap. 558E).

⁴⁴⁶ Section 3(1) of, and Schedule 1 to, the International Organisations (Privileges and Immunities) (Asia Pacific Regional Office of the Hague Conference on Private International Law) Order (Cap. 558H).

⁴⁴⁷ Section 3(1) of, and Schedule 1 to, the International Organisations (Privileges and Immunities) (Bank for International Settlements) Order (Cap. 558D).

⁴⁴⁸ Section 3 of, and Schedule 2 to, the Consular Relations (Additional Privileges and Immunities) (Russia) Order (Cap. 557F); and Section 3(1) of, and Schedule 2 to, the International Organisations (Privileges and Immunities) (Office of the Commission of the European Communities) Order (Cap. 558A).

⁴⁴⁹ See the Consular Relations (Additional Privileges and Immunities) (India) Order (Cap. 557D).

⁴⁵⁰ Regulation 3(1) of the Registration of Persons Regulations (Cap. 177A).

⁴⁵¹ See Regulation 4(1) of the Registration of Persons Regulations (Cap. 177A) for the full list of requirements.

⁴⁵² Regulation 4(4) of the Registration of Persons Regulations (Cap. 177A).

⁴⁵³ Sections 3 and 5 of the Internationally Protected Persons and Taking of Hostages Ordinance (Cap. 468).

17.9 A “protected person” includes: (a) foreign Heads of State, Heads of Government, and foreign Ministers for Foreign Affairs; (b) other persons who because of their connection with a foreign state or territory or an international organisation are entitled under international law to special protection from attack; and (c) subject to certain requirements, a member of the same family as a person in (a) or (b).⁴⁵⁴ An attack outside Hong Kong against a civil partner, cohabitee, or same-sex spouse of a foreign Head of State therefore cannot be prosecuted in Hong Kong.

⁴⁵⁴ Section 2 of the Internationally Protected Persons and Taking of Hostages Ordinance (Cap. 468).

18. MARRIAGE

18.1 This category covers entering into a marriage, judicial separation and ending a marriage, the reciprocal recognition and enforcement of judgments in matrimonial and family cases between Hong Kong and the Chinese Mainland, and other related matters.

RELATIONSHIP	RECOGNITION
Opposite-sex marriage	Recognised
Same-sex marriage	Not recognised
Opposite-sex civil partnership	Not recognised
Same-sex civil partnership	Not recognised
Opposite-sex cohabitation relationship	Not recognised
Same-sex cohabitation relationship	Not recognised

Entering into a marriage

18.2 Legislation provides for (a) various procedural requirements that must be met before a couple can marry⁴⁵⁵ and (b) the appointment of persons as civil celebrants of marriages.⁴⁵⁶ However, a marriage must be a Christian marriage or the civil equivalent of a Christian marriage, an expression that “implies a formal ceremony recognised by the law as involving the voluntary union for life of one man and one woman to the exclusion of all others.”⁴⁵⁷

18.3 At present, there is no legislation that allows couples in alternative relationships to formalise their relationships under Hong Kong law. The Government’s proposal to the Legislative Council in response to the Court of Final Appeal’s judgment in *Sham Tsz Kit v Secretary for Justice*⁴⁵⁸ is briefly discussed in section 1 of this report.

Judicial separation and ending a marriage

18.4 The High Court and District Court have jurisdiction to judicially separate spouses and end marriages (e.g. by way of granting a divorce) in certain circumstances. However, the Court does not have jurisdiction unless, among other conditions, the marriage was celebrated or contracted in accordance with the Marriage Ordinance or, if it took place outside Hong Kong, celebrated or contracted in accordance with the law in force at the time and in the place where the marriage was performed and recognised by such law as involving the voluntary union for life of one man and one woman to the exclusion of all others.⁴⁵⁹ This does not extend to civil partnerships, cohabitation relationships, or same-sex marriages, even if they are validly entered into and recognised under an overseas law. As a result, these relationships cannot be formally separated or ended in Hong Kong.

Reciprocal recognition and enforcement of judgments in matrimonial and family cases between Hong Kong and the Chinese Mainland

18.5 The Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance enables:

⁴⁵⁵ For example, where persons intend to marry, one of them must give a signed notice of intended marriage in the required form to the Registrar of Marriages, either directly or through a civil celebrant; see Sections 6 and 6A of the Marriage Ordinance (Cap. 181).

⁴⁵⁶ Section 5A of the Marriage Ordinance (Cap. 181).

⁴⁵⁷ See Section 40 of the Marriage Ordinance (Cap. 181).

⁴⁵⁸ [2023] HKCFA 28.

⁴⁵⁹ See Sections 3 to 6 of the Matrimonial Causes Ordinance (Cap. 179).

- (a) the holder of a specified order⁴⁶⁰ in a judgment given in a matrimonial or family case in the Chinese Mainland to register that order such that it may be enforced in Hong Kong as if it had been made by a court in Hong Kong,⁴⁶¹
- (b) divorce certificates issued in the Chinese Mainland to be recognised in Hong Kong,⁴⁶² and
- (c) a party to a judgment in a matrimonial or family case in Hong Kong to apply for a certified copy of that judgment to facilitate its recognition and enforcement in the Chinese Mainland.⁴⁶³

18.6 These mechanisms are available to current or former opposite-sex spouses. They are not available to civil partners or same-sex spouses. The extent to which these mechanisms are available to cohabitantes is discussed in section 10 of this report.

Other related matters

18.7 Evidence of reputation or family tradition may be adduced for the purpose of proving or disproving pedigree or the existence of a marriage.⁴⁶⁴ This statutory right is not available to those seeking to prove or disprove the pedigree or the existence of a same-sex marriage, civil partnership, or cohabitation relationship.

⁴⁶⁰ A specified order is an order set out in Schedule 2 to the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (Cap. 639) and includes, for example, an order granting a divorce and an order in relation to spousal maintenance; see Section 2 of the Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (Cap. 639).

⁴⁶¹ Part 2 of the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (Cap. 639).
⁴⁶² Part 3 of the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (Cap. 639). Prior to the introduction of this Ordinance, the recognition of a divorce under the laws of the Chinese Mainland would have been determined in accordance with Part IX of the Matrimonial Causes Ordinance (Cap. 179).

⁴⁶³ Part 4 of the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (Cap. 639).
⁴⁶⁴ Section 52(3) of the Evidence Ordinance (Cap. 8).

19. MEDICAL

19.1 This category covers human organ transplants and medical research, mental health, electronic health records, and complaints about private healthcare facilities.

RELATIONSHIP	RECOGNITION
Opposite-sex marriage	Recognised
Same-sex marriage	Not recognised, but see “Same-sex cohabitation relationship” below
Opposite-sex civil partnership	Not recognised, but see “Opposite-sex cohabitation relationship” below
Same-sex civil partnership	Not recognised, but see “Same-sex cohabitation relationship” below
Opposite-sex cohabitation relationship	Recognised for mental health (in part) and electronic health records
Same-sex cohabitation relationship	Recognised for mental health (in part) and electronic health records

Human organ transplants and medical research

19.2 A restricted organ removal⁴⁶⁵ and/or a restricted organ transplant⁴⁶⁶ between two people requires the prior approval of the Human Organ Transplant Board unless, at the time of the transplant, the donor and recipient are, among others, each other’s spouse and their marriage has subsisted for not less than three years.⁴⁶⁷ Civil partners, cohabitantes, and same-sex spouses, unlike opposite-sex spouses, are unable to donate their organs to each other without approval. This complicates the ability of persons in alternative relationships to donate their organs to each other and could delay life-saving treatment in some cases.

19.3 Unless a deceased has requested that his/her body be used for therapeutic purposes or for purposes of medical education or research, his/her surviving spouse may object to the proposed removal of the deceased’s body parts for use for these purposes.⁴⁶⁸ This right is not available to a deceased’s civil partner, cohabitante, or same-sex spouse.

Mental health

19.4 The “relative” of a mentally incapacitated person includes the person’s spouse and any person with whom the mentally incapacitated person resides or has resided.⁴⁶⁹ The latter therefore includes cohabitantes, and civil partners and same-sex spouses who live or have lived with the mentally incapacitated person. This definition affects several statutory rights to make applications in relation to a mentally incapacitated person and to be informed where others make these applications:

⁴⁶⁵ A restricted organ removal means the act of removing from a living person an organ for the purpose of transplanting it into another person; see Section 2 of the Human Organ Transplant Ordinance (Cap. 465).

⁴⁶⁶ A restricted organ transplant means the act of transplanting into a person an organ removed from another person who was living at the time of the removal, see Section 2 of the Human Organ Transplant Ordinance (Cap. 465).

⁴⁶⁷ Sections 5A(1)(a)(ii) and 5C(1) of the Human Organ Transplant Ordinance (Cap. 465).

⁴⁶⁸ Section 3 of the Medical (Therapy, Education and Research) Ordinance (Cap. 278).

⁴⁶⁹ Section 2(1) of the Mental Health Ordinance (Cap. 136).

- (a) A relative of a person may apply to the Court for an order directing an inquiry into whether the person is incapable, by reason of mental incapacity, of managing and administering his/her property and affairs.⁴⁷⁰
- (b) If the Court is satisfied that the person is incapable of managing and administering his/her property and affairs, the Court may appoint a committee of the estate.⁴⁷¹ A relative of that person may apply for the committee's powers to be varied or for the committee to be replaced.⁴⁷²
- (c) Subject to certain grounds and requirements, a relative of a patient suffering or appearing to suffer from mental disorder may make an application for the detention of the patient for observation.⁴⁷³ Where this application is instead made by a registered medical practitioner or a public officer in the Social Welfare Department, he/she is required to take such steps as are reasonably practicable to inform a person in Hong Kong appearing to him or her to be a relative of the patient that the application is to be made.⁴⁷⁴
- (d) The relative of a mentally incapacitated person, among others, may make a guardianship application.⁴⁷⁵
- (e) On receipt of a guardianship application from a person other than a relative of the mentally incapacitated person, the Guardianship Board is required to send copies of the application to, among others, a relative.⁴⁷⁶
- (f) The relative or friend of a patient may make an application to the medical superintendent for the discharge of such patient.⁴⁷⁷ Unlike the other rights listed, the same-sex spouse or civil partner of a patient who does not reside and has not resided with the patient is able to make this application as a friend, even though their relationship as spouses or civil partners is not recognised.
- (g) The relative of a person subject to a supervision and treatment order may make an application for the revocation or variation of that order.⁴⁷⁸
- (h) The relative of a patient may make an application to the Mental Health Review Tribunal for the review of the case of: (i) a patient liable to be detained in a mental hospital or the Correctional Services Department Psychiatric Centre; (ii) a patient permitted to be absent on trial; (iii) a conditionally discharged patient; (iv) a person admitted to guardianship; and (v) a supervised person.⁴⁷⁹

19.5 Civil partners and same-sex spouses who have never lived together have none of these rights (except for the ability to make an application under paragraph 19.4(f) of this report).

19.6 The Court may, with respect to the property and affairs of a mentally incapacitated person, do or secure the doing of all such things as appear necessary or expedient: (a) for the maintenance or other benefit of that person's family; and (b) for making provision for any other person for whom the mentally incapacitated

⁴⁷⁰ Section 7(1) of the Mental Health Ordinance (Cap. 136).

⁴⁷¹ Section 11(1) of the Mental Health Ordinance (Cap. 136).

⁴⁷² Section 26B of the Mental Health Ordinance (Cap. 136).

⁴⁷³ Sections 31(1) and 35A of the Mental Health Ordinance (Cap. 136).

⁴⁷⁴ Section 35A(2) of the Mental Health Ordinance (Cap. 136).

⁴⁷⁵ Section 59N(1) of the Mental Health Ordinance (Cap. 136).

⁴⁷⁶ Section 59N(3)(b) of the Mental Health Ordinance (Cap. 136).

⁴⁷⁷ Section 42(1) of the Mental Health Ordinance (Cap. 136).

⁴⁷⁸ Section 44I of the Mental Health Ordinance (Cap. 136).

⁴⁷⁹ Section 59B of the Mental Health Ordinance (Cap. 136).

person might be expected to provide if he/she were not mentally incapacitated.⁴⁸⁰ This provision allows a Court to make provision for a mentally incapacitated person's opposite-sex spouse, and depending on the specific facts of a particular case, his/her civil partner, cohabitee, or same-sex spouse.

19.7 The private guardian of a mentally incapacitated person is required to notify the Director of Social Welfare where it comes to his/her knowledge that the mentally incapacitated person has entered or intends to enter into a marriage. This requirement does not apply where a mentally incapacitated person enters into or intends to enter into a civil partnership, cohabitation relationship, or same-sex marriage.⁴⁸¹

Electronic health records

19.8 The Electronic Health Record Sharing System (**eHRSS**) allows for the sharing of healthcare recipients' health-related data between healthcare providers by electronic means on an opt-in basis. If an individual is a minor, mentally incapacitated, incapable of managing his/her own affairs, or otherwise incapable of giving the required consent, a substitute decision maker may handle eHRSS-related matters⁴⁸² for and on behalf of the individual.

19.9 A person's "substitute decision maker" includes: (a) his/her family member; and (b) a person residing with him/her, provided in both cases that the substitute decision maker accompanies the healthcare recipient at the relevant time.⁴⁸³ This allows a person's cohabitee and opposite-sex spouse, and civil partner and same-sex spouse (if they live together) to act as his/her substitute decision maker. Civil partners and same-sex spouses that do not live together cannot act as each other's substitute decision maker.

Complaints about private healthcare facilities

19.10 A patient of a licensed private healthcare facility that is a hospital or a day procedure centre⁴⁸⁴ may make a complaint about that facility to the Committee on Complaints Against Private Healthcare Facilities.⁴⁸⁵ A patient's next of kin may also make a complaint.⁴⁸⁶ If a patient is under 16, mentally incapacitated, or incapable of managing his/her own affairs, his/her substitute decision maker may also complain.⁴⁸⁷ A person authorised by the patient in writing may also make a complaint, and where the patient is deceased, the personal representative who acts officially for the deceased patient may complain.⁴⁸⁸

19.11 "Next of kin" is not defined. A patient's "substitute decision maker" includes: (a) his/her family member; and (b) a person residing with him/her in the same household.⁴⁸⁹ This means a patient's:

- (a) opposite-sex spouse may complain in any event; and
- (b) cohabitee, civil partner, or same-sex spouse may be able to complain where the patient is under some incapacity and they are considered as residing in the same household.

⁴⁸⁰ Section 10A of the Mental Health Ordinance (Cap. 136).

⁴⁸¹ Regulation 3 of the Mental Health (Guardianship) Regulations (Cap. 136D).

⁴⁸² For example, giving joining consent under Section 7, requesting withdrawal under Section 9, and giving, renewing, and revoking sharing consent under Sections 12, 14, and 15 of the Electronic Health Record Sharing System Ordinance (Cap. 625).

⁴⁸³ Section 3 of the Electronic Health Record Sharing System Ordinance (Cap. 625).

⁴⁸⁴ The definition of a "private healthcare facility" in Section 3 of the Private Healthcare Facilities Ordinance (Cap. 633) includes other facilities, such as clinics and health services establishments; however, the right to make a complaint to the Committee on Complaints against Private Healthcare Facilities in Section 82 of that Ordinance is only in operation insofar as it relates to a hospital and a day procedure centre. See the Editorial Note to Section 82 of that Ordinance.

⁴⁸⁵ Section 82(1)(a) of the Private Healthcare Facilities Ordinance (Cap. 633).

⁴⁸⁶ Section 82(1)(b) of the Private Healthcare Facilities Ordinance (Cap. 633).

⁴⁸⁷ Section 82(1)(c) of the Private Healthcare Facilities Ordinance (Cap. 633).

⁴⁸⁸ Sections 82(1)(d) and 82(1)(e) of the Private Healthcare Facilities Ordinance (Cap. 633).

⁴⁸⁹ Sections 8A(2)(c) and 8A(4)(f) of the Private Healthcare Facilities Ordinance (Cap. 633).

20. OTHER

20.1 This category covers matters outside the scope of the other categories. It covers agriculture and fishing industry-specific benefits, complaints to the Ombudsman and the Independent Police Complaints Council, enduring powers of attorney, exemptions from restrictions on the use of personal data, indigenous village elections, insurance policies, intellectual property, legal aid, limited partnership funds, passenger ships, professions, receipts, road traffic and motor vehicles, seafarers, trade unions, trusts, and veterinary surgery and services.

RELATIONSHIP	RECOGNITION
Opposite-sex marriage	Recognised
Same-sex marriage	Not recognised
Opposite-sex civil partnership	Not recognised
Same-sex civil partnership	Not recognised
Opposite-sex cohabitation relationship	Not recognised
Same-sex cohabitation relationship	Not recognised

Agriculture and fishing industry-specific benefits

20.2 The Marine Fish Scholarship Fund and Agricultural Products Scholarship Fund provide scholarships, grants, and loans for the education and training of persons employed in the marine fisheries and fish marketing industries and the agriculture and agricultural product marketing industries, respectively, and their families and dependants.⁴⁹⁰ The Fish Marketing Organisation and the Director of Marketing for agricultural products are also empowered to make provision for the education, health, and welfare of persons employed in these industries and their families and dependants.⁴⁹¹ The opposite-sex spouses of persons employed in these industries are able to benefit from these funds and any provisions made. Persons in alternative relationships with these employees would not be able to do so if they are not considered to be dependants.

Complaints to the Ombudsman and the Independent Police Complaints Council

20.3 The Office of the Ombudsman is the city's independent watchdog of public administration. The Ombudsman cannot undertake or continue an investigation into a complaint if the complaint was not made by the individual aggrieved or, where the individual by whom the complaint might have been made has died or is for any reason unable to act for him/herself, by his/her personal representative or by a member of his/her family or other individual suitable to represent him/her.⁴⁹² As such, the Ombudsman is unable to act on a complaint from an individual's civil partner, cohabitee, or same-sex spouse, unless he/she is the individual's personal representative or the Ombudsman takes the view that he/she is an individual suitable to represent the individual aggrieved.

20.4 A third party may make a complaint or a request for review on behalf of a complainant to the Independent Police Complaints Council only if, among other exceptions, the third party is a relative of the complainant and either the complainant is mentally incapacitated or is unable to make a complaint due to death or

⁴⁹⁰ Section 9B of the Agricultural Products (Marketing) Ordinance (Cap. 277); and Section 20 of the Marine Fish (Marketing) Ordinance (Cap. 291).

⁴⁹¹ Section 10 of the Agricultural Products (Marketing) Ordinance (Cap. 277); and Section 11 of the Marine Fish (Marketing) Ordinance (Cap. 291).

⁴⁹² Section 10 of the Ombudsman Ordinance (Cap. 397).

illness.⁴⁹³ “Relative” includes a spouse.⁴⁹⁴ A complainant’s civil partner, cohabitee, or same-sex spouse is therefore unable to make a complaint or request for review on his/her behalf.

Enduring powers of attorney

20.5 A person who is a registered medical practitioner or solicitor cannot witness the signing of an enduring power of attorney under which his/her spouse is the donor or the attorney.⁴⁹⁵ In addition, a person cannot sign an enduring power of attorney on behalf of a donor who is physically incapable of signing if, among other things, the person’s spouse is the donor’s attorney, registered medical practitioner, or solicitor before whom the instrument is signed.⁴⁹⁶ These restrictions do not extend to these persons’ civil partners, cohabitees, or same-sex spouses, despite the potential for the same conflicts of interest to arise.

20.6 An attorney may dispose of the property of the donor by making gifts at (among other circumstances) a time of marriage or an anniversary of a marriage to persons (including the attorney) who are related to or connected with the donor.⁴⁹⁷ An attorney has no statutory power to make gifts where a person related to or connected with the donor enters into a civil partnership, cohabitation relationship, or same-sex marriage or celebrates the anniversary of any of these relationships.

Exemptions from restrictions on the use of personal data

20.7 The Personal Data (Privacy) Ordinance is meant to protect the privacy of individuals in relation to their personal data.⁴⁹⁸ Among other protections, the Ordinance prohibits a data user from using an individual’s personal data for a particular purpose unless: (a) the individual is informed of that purpose at the time the data was collected; or (b) the individual subsequently voluntarily and expressly consents to that purpose.⁴⁹⁹

20.8 These protections are subject to exemptions, two of which are relevant for this analysis.

20.9 First, personal data held by an individual solely for the management of his personal, family, or household affairs is exempt from certain parts of the Ordinance.⁵⁰⁰ This means a person who holds personal data about his/her civil partner, cohabitee, or same-sex spouse may need to comply with those parts of the Ordinance.

20.10 Second, the use of personal data for informing an individual’s family members of the individual’s involvement in a life-threatening situation is exempt from certain parts of the Ordinance.⁵⁰¹ “Family member” means another person who is related to the person by blood, marriage, adoption, or affinity.⁵⁰² As such, for example, the Police or a hospital can disclose information about a person’s life-threatening situation to his/her opposite-sex spouse, but not to his/her civil partner, cohabitee, or same-sex spouse without consent.

Indigenous village elections

20.11 A person is not eligible to be an elector for an Indigenous Village or a Composite Indigenous Village unless that person is an indigenous inhabitant of the village, or a spouse or surviving spouse of an indigenous inhabitant of the village.⁵⁰³ “Surviving spouse” means a person who survives an indigenous inhabitant as

⁴⁹³ Section 15(1) of the Independent Police Complaints Council Ordinance (Cap. 604).

⁴⁹⁴ Section 15(2) of the Independent Police Complaints Council Ordinance (Cap. 604).

⁴⁹⁵ Section 5(2)(aa) of the Enduring Powers of Attorney Ordinance (Cap. 501).

⁴⁹⁶ Section 5(2)(b) of the Enduring Powers of Attorney Ordinance (Cap. 501).

⁴⁹⁷ Section 8(3)(c)(i) of the Enduring Powers of Attorney Ordinance (Cap. 501).

⁴⁹⁸ Long title to the Personal Data (Privacy) Ordinance (Cap. 486).

⁴⁹⁹ Section 4 of, and Data Protection Principles 1(3)(b)(i)(A) and 3(1) in Schedule 1 to, the Personal Data (Privacy) Ordinance (Cap. 486).

⁵⁰⁰ Section 52 of the Personal Data (Privacy) Ordinance (Cap. 486).

⁵⁰¹ Section 63C(1)(b) of the Personal Data (Privacy) Ordinance (Cap. 486).

⁵⁰² Section 2 of the Personal Data (Privacy) Ordinance (Cap. 486).

⁵⁰³ Section 15(5) of the Rural Representative Election Ordinance (Cap. 576).

his/her spouse at the time of his/her death and has not since his/her death entered into: (a) a marriage celebrated or contracted in accordance with the Marriage Ordinance; or (b) a marriage celebrated or contracted outside Hong Kong in accordance with the law in force at the time and in the place where the marriage was performed.⁵⁰⁴ Notably, (b) does not include a same-sex marriage recognised by the law of another jurisdiction; see paragraph 4.6 above. The effect of these provisions is (i) the civil partner, cohabitee, or same-sex spouse of an indigenous inhabitant is not eligible to be an elector; and (ii) a surviving spouse of a deceased indigenous inhabitant continues to be eligible to be an elector where he/she enters into an alternative relationship.

Insurance policies

20.12 A policy of assurance or endowment expressed to be for the benefit of, or by its express terms purporting to confer a benefit upon, the wife or husband of the insured creates a trust in favour of that wife or husband.⁵⁰⁵ The effect of the trust is that moneys payable under the policy do not form part of the estate of the insured and are not subject to the insured's debts.⁵⁰⁶

20.13 The relevant Ordinance only applies to persons who are parties to a marriage, which is defined as (a) a marriage celebrated or contracted in accordance with the Marriage Ordinance; (b) a modern marriage validated by the Marriage Reform Ordinance; (c) a customary marriage declared to be valid by the Marriage Reform Ordinance; or (d) a marriage celebrated or contracted outside Hong Kong in accordance with the law in force at the time and in the place where the marriage was performed.⁵⁰⁷ (d) does not include a same-sex marriage recognised by the law of another jurisdiction; see paragraph 4.6 above.

20.14 This protection therefore only applies to the opposite-sex spouse of an insured; those in an alternative relationship with an insured are not protected.

Intellectual property

20.15 An award of compensation to an employee in relation to a patent for an invention must take into account the benefit which his/her employer has derived, or may reasonably be expected to derive, from the patent or the assignment or grant of the property or any right therein to a person connected with the employer.⁵⁰⁸ A "person connected with" an employer includes: (a) where the employer is a natural person, his/her relative; (b) where the employer is a corporation, any relative of a person who controls the corporation; and (c) where the employer is a partnership, any relative of a partner.⁵⁰⁹ The term "relative" includes a person's spouse.⁵¹⁰ An award of compensation therefore need not take into account the benefit the employer has derived, or may reasonably be expected to derive, from the assignment or grant to a civil partner, cohabitee, or same-sex spouse of various persons.

20.16 The owner of the copyright in a work has the exclusive right to do certain acts in Hong Kong, including copying the work.⁵¹¹ However, copyright in a sound recording or in any literary, dramatic, or musical work included in a sound recording is not infringed by the making of a copy of a sound recording (i.e. media shifting) if, among other requirements, the copy is made solely for the private and domestic use of the owner (of a non-infringing copy) or a member of the household in which the owner lives.⁵¹² This exemption would allow, for example, a person to copy a compact disc to MP3 format for his/her opposite-sex

⁵⁰⁴ Section 2(1) of the Rural Representative Election Ordinance (Cap. 576).

⁵⁰⁵ Sections 13(1) and (2) of the Married Persons Status Ordinance (Cap. 182).

⁵⁰⁶ Section 13(3) of the Married Persons Status Ordinance (Cap. 182).

⁵⁰⁷ Section 2 of the Married Persons Status Ordinance (Cap. 182).

⁵⁰⁸ Section 59 of the Patents Ordinance (Cap. 514).

⁵⁰⁹ Section 61(8) of the Patents Ordinance (Cap. 514).

⁵¹⁰ Section 61(8) of the Patents Ordinance (Cap. 514).

⁵¹¹ Section 22 of the Copyright Ordinance (Cap. 528).

⁵¹² Section 76A of the Copyright Ordinance (Cap. 528).

spouse's enjoyment, but would not apply to a person that does so for his/her civil partner, cohabitee, or same-sex spouse if not considered to be part of his/her household.

Legal aid

20.17 When applying for legal aid, the financial resources of an applicant's spouse are treated as those of the applicant. The financial resources of an applicant's civil partner, cohabitee, or same-sex spouse are not, thereby decreasing the applicant's financial resources when assessing eligibility for legal aid.⁵¹³ This may make it easier for a person in an alternative relationship to qualify for legal aid.

20.18 The family of a deceased person may seek legal aid regarding inquests into deaths.⁵¹⁴ This right does not extend to a deceased's civil partner, cohabitee, or same-sex spouse.

20.19 The Director of Legal Aid has a first charge on any property that is recovered or preserved for an aided person in the proceedings in respect of which the person was aided.⁵¹⁵ The Director may defer enforcement of that charge against the aided person's property where the property is, by order of the Court or under the terms of any agreement reached, to be used as a home for the aided person or his/her dependants.⁵¹⁶ This deferment would not apply to property used as a home solely for the aided person's civil partner, cohabitee, or same-sex spouse where not considered to be his/her dependant.

20.20 Where an aided person is paying maintenance to his/her spouse or former spouse, the Director's charge does not apply to that maintenance, unless the maintenance payments exceed HK\$9,730 each month.⁵¹⁷ This protection does not apply to maintenance paid to a person's former or current civil partner or same-sex spouse.⁵¹⁸

Limited partnership funds (LPFs)

20.21 A fund structured as a limited partnership may be registered under the Limited Partnership Fund Ordinance.⁵¹⁹ Registration is only available to an arrangement that is a fund.⁵²⁰ However, an arrangement is not a fund if each of the participating persons is a bona fide employee or former employee of a corporation in the same group of companies as the person operating the arrangements, or (among others) a spouse of the employee or former employee.⁵²¹

20.22 Consequently:

- an LPF limited to the employees of a corporate group and their opposite-sex spouses cannot be registered; but
- an LPF that includes also employees' civil partners, cohabitees, or same-sex spouses is eligible to be registered.

⁵¹³ Regulation 7 of the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91B).

⁵¹⁴ Regulation 15A of the Legal Aid Regulations (Cap. 91A).

⁵¹⁵ Section 18A(1) of the Legal Aid Ordinance (Cap. 91).

⁵¹⁶ Section 18A(3B) of the Legal Aid Ordinance (Cap. 91).

⁵¹⁷ Section 18A(5) of the Legal Aid Ordinance (Cap. 91).

⁵¹⁸ As noted in section 18, the legislation relevant to the dissolution of marriages in Hong Kong does not apply to the dissolution or relationships other than opposite-sex marriages. Consequently, any maintenance paid by a person to his/her current or former civil partner or same-sex spouse would need to be ordered by a Court outside Hong Kong.

⁵¹⁹ The Limited Partnership Fund Ordinance (Cap. 637), generally.

⁵²⁰ Section 7(1) of the Limited Partnership Fund Ordinance (Cap. 637).

⁵²¹ Section 3(2) of the Limited Partnership Fund Ordinance (Cap. 637).

Passenger ships

20.23 The fitting of facilities, lighting, and amenities (such as washbasins, bed sizes, book cases, etc.) on passenger ships is regulated by law.⁵²² “Passenger ship” means a ship with more than 12 passengers, excluding the spouse or child of a member of the crew travelling with that member.⁵²³ A crew member’s opposite-sex spouse is therefore not a passenger, but his/her civil partner, cohabitee, or same-sex spouse is. This means the fitting requirements for a ship may depend on the relationship status of its crew.

Professions

20.24 An applicant seeking to be registered as a medical practitioner, midwife, or chiropractor cannot provide character references from his/her relatives in support of his/her application.⁵²⁴ As such, an applicant is free to submit character references from his/her civil partner, cohabitee, or same-sex spouse, despite the potential for the same conflicts of interest to arise.

20.25 Separately, in the case of solicitors and notaries public, relationship status influences, among other things, the operation of the professional conduct rules, the application of compulsory professional indemnity coverage, and with whom profits can be shared. For example:

- (a) Professional conduct rules prohibit a solicitor (or firm or association of solicitors) from acting on behalf of both the seller and buyer of land except where, among other circumstances, the seller and buyer are associated parties.⁵²⁵ Two or more individuals are “associated parties” where they are related by blood, adoption, or marriage.⁵²⁶ As a result, a solicitor can act for a buyer and seller who are opposite-sex spouses, but cannot do so if they are civil partners, cohabitantes, or same-sex spouses.
- (b) The Hong Kong Solicitors Professional Indemnity Scheme provides indemnity of up to HK\$20 million per claim to solicitors, registered foreign lawyers, and employees of Hong Kong law firms (each an **indemnified person**) in respect of civil liability incurred in connection with their legal practice.⁵²⁷ The primary purpose of the scheme is to protect the public by ensuring that any valid claims against an indemnified person can be paid, regardless of the financial state of the indemnified person.⁵²⁸ The scheme does not cover a claim in respect of any undertaking given by an indemnified person in connection with the provision of finance, property, assistance, or other advantage whatsoever to or for the benefit of, among others, the indemnified person, his/her spouse, another indemnified person, or that other indemnified person’s spouse.⁵²⁹ This exclusion means the scheme will not cover claims where an indemnified person could have a conflict of interest due to the involvement of his/her opposite-sex spouse. However, since alternative relationships (and the potential conflicts that could arise from them) are not recognised, the scheme will cover claims where an indemnified person’s civil partner, cohabitee, or same-sex spouse is involved, unless those claims are otherwise excluded.

⁵²² Merchant Shipping (Seafarers) (Crew Accommodation) Regulation (Cap. 478I), generally.

⁵²³ Section 2 of the Merchant Shipping (Seafarers) (Crew Accommodation) Regulation (Cap. 478I), including the definition of “passenger” and “passenger ship”.

⁵²⁴ Sections 3 and 4 of Medical Practitioners (Registration and Disciplinary Procedure) Regulation (Cap. 161E), Section 6 of the Midwives (Registration and Disciplinary Procedure) Regulation (Cap. 162C), and Section 4 of the Chiropractors (Registration and Disciplinary Procedure) Rules (Cap. 428B).

⁵²⁵ Rules 5C(1) and 5C(6)(a) of the Solicitors’ Practice Rules (Cap. 159H).

⁵²⁶ Rule 1A of the Solicitors’ Practice Rules (Cap. 159H).

⁵²⁷ The Solicitors (Professional Indemnity) Rules (Cap. 159M), generally.

⁵²⁸ See the Hong Kong Solicitors Professional Indemnity Scheme, available at: hklawsoc.org.hk/en/Serve-the-Public/Professional-Indemnity-Scheme.

⁵²⁹ Rule 10(1) of, and Paragraph 1(2)(c)(ix) of Schedule 3 to, the Solicitors (Professional Indemnity) Rules (Cap. 159M).

- (c) A notary public is prohibited from sharing or agreeing to share any profit costs arising from his/her practice as a notary public with any person.⁵³⁰ However, this prohibition does not prevent a notary public who is a principal of a firm from paying or agreeing to pay an annuity or other sum of money to, among others, the dependants of a deceased principal or deceased predecessor in business of the firm.⁵³¹ A notary public cannot make these payments to a deceased principal or deceased predecessor's civil partner, cohabitee, or same-sex spouse if not considered to be a dependant of the deceased.

Receipts

20.26 A married infant has the power to give valid receipts for all income to which the infant may be entitled in like manner as if he/she were an adult.⁵³²

20.27 The relevant Ordinance only applies to persons who are parties to a marriage, which is defined as (a) a marriage celebrated or contracted in accordance with the Marriage Ordinance; (b) a modern marriage validated by the Marriage Reform Ordinance; (c) a customary marriage declared to be valid by the Marriage Reform Ordinance; or (d) a marriage contracted outside Hong Kong in accordance with the law in force at the time and in the place where the marriage was performed.⁵³³ (d) does not include a same-sex marriage recognised by the law of another jurisdiction; see paragraph 4.6 above.

20.28 This means an infant in an opposite-sex marriage may give a valid receipt, but a receipt issued by an infant in an alternative relationship may not be valid under Hong Kong law.

Road traffic and motor vehicles

20.29 A wife may have her husband's name included in the particulars concerning the driver in an international driving permit.⁵³⁴ A woman in an alternative relationship cannot have her civil partner's, cohabitee's, or same-sex spouse's name included.

20.30 A disabled person may be issued a disabled person's parking permit by the Commissioner for Transport where, among other circumstances, his/her spouse is also disabled and is the registered owner of the relevant vehicle.⁵³⁵ A disabled person in an alternative relationship is unable to obtain this parking permit on the same basis.

Seafarers⁵³⁶

20.31 Several regulations made under the Merchant Shipping (Seafarers) Ordinance concern the "next of kin" of a person or seafarer⁵³⁷ on a ship registered in Hong Kong. These include:

- (a) The master of a ship must make and maintain a list of the crew containing for each seafarer, among other items, the name and relationship of his/her next of kin and the address of his/her next of kin, if different from that of the seafarer.⁵³⁸

⁵³⁰ Section 6(1) of the Notaries Public (Practice) Rules (Cap. 159AI).

⁵³¹ Section 6(3) of the Notaries Public (Practice) Rules (Cap. 159AI).

⁵³² Section 15 of the Married Persons Status Ordinance (Cap. 182).

⁵³³ Section 2 of the Married Persons Status Ordinance (Cap. 182).

⁵³⁴ Section 2 of, and Ninth Schedule to, the Road Traffic (Driving Licences) Regulations (Cap. 374B).

⁵³⁵ Section 27A of the Road Traffic (Parking) Regulations (Cap. 374C).

⁵³⁶ The provisions that apply to a specific situation depend on, for example, the type of ship and the reason for the seafarer's employment. For example, see Section 3 of the Merchant Shipping (Seafarers) (Crew Agreements, Lists of Crew and Discharge of Seafarers) Regulation (Cap. 478L), which disappplies certain requirements relating to crew agreements in certain circumstances. Consequently, not every provision discussed under this heading applies to every seafarer.

⁵³⁷ Subject to certain exclusions, a seafarer is a person who works on board a ship in any capacity on the business of the ship; see Section 2A of, and Schedule 1A to, the Merchant Shipping (Seafarers) Ordinance (Cap. 478).

⁵³⁸ Section 12 of the Merchant Shipping (Seafarers) (Crew Agreements, Lists of Crew and Discharge of Seafarers) Regulation (Cap. 478L).

- (b) Where a seafarer has left a ship for the purpose of repatriation, the seafarer's employer must inform the Superintendent of the Mercantile Marine Office of certain information, including the name and address of the seafarer's next of kin as stated in the list of crew.⁵³⁹
- (c) Where wages cannot be paid to a seafarer (other than because he/she is known to be dead), the employer must pay the wages and accounts of those wages to his/her next of kin as named in the list of crew.⁵⁴⁰
- (d) Where (i) an employer of a seafarer has incurred an expense that is authorised to be deducted from the seafarer's wages and (ii) the seafarer's wages are payable to his/her next of kin, the employer must render an account of those expenses to that next of kin.⁵⁴¹
- (e) A seafarer's employment agreement must provide that if the seafarer leaves any property on board a ship following his/her sickness, injury, or death, the employer must take measures for safeguarding and for returning the property to, among others, the seafarer's next of kin.⁵⁴²
- (f) Where certain seafarers⁵⁴³ leave any property on a ship, the seafarer's employer must notify his/her next of kin that the property is available for collection and will be delivered to an address specified by the employer (or can be delivered to the next of kin at the next of kin's expense) and must account for how the seafarer's property has been handled.⁵⁴⁴
- (g) In the absence of an agreement between a seafarer and a shipowner, if the seafarer dies aboard the ship or ashore in the course of employment, the shipowner must arrange for the body or ashes of the seafarer to be delivered to or as agreed with the seafarer's next of kin.⁵⁴⁵
- (h) The fact of a seafarer's next of kin being notified of the seafarer's death, together with the name and address of the next of kin, must be recorded in the relevant ship's official log book.⁵⁴⁶
- (i) If the Superintendent of the Mercantile Marine Office holds an inquiry into the cause of the death of a seafarer employed on a ship, the Superintendent must make a report of his/her findings and make that report available to the seafarer's next of kin as named in the crew agreement or list of crew.⁵⁴⁷
- (j) If any person dies on a ship or any person employed in a Hong Kong ship dies outside Hong Kong, the master of the ship must notify the death to such person, if any, as the deceased has named as next of kin.⁵⁴⁸

20.32 Although our general approach (as described in paragraph 4.2 above) is that "next of kin" is limited to persons related by biology or marriage or another legal arrangement (e.g. adoption) recognised under Hong Kong law, several of the above provisions refer to a next of kin as stated in the list of crew, as stated in the crew agreement or as named by the person/seafarer. A person in an alternative relationship could

⁵³⁹ Section 5 of the Merchant Shipping (Seafarers) (Repatriation) Regulation (Cap. 478Q).

⁵⁴⁰ Section 13 of the Merchant Shipping (Seafarers) (Repatriation) Regulation (Cap. 478Q).

⁵⁴¹ Section 14 of the Merchant Shipping (Seafarers) (Repatriation) Regulation (Cap. 478Q).

⁵⁴² Sections 13 and 18 of, and Schedule 1 to, the Merchant Shipping (Seafarers) (Working and Living Conditions) Regulation (Cap. 478AF).

⁵⁴³ These are (a) a sick or injured seafarer who has been repatriated, and (b) a seafarer who was to be repatriated but has died before the repatriation; see section 15(1) of the Merchant Shipping (Seafarers) (Repatriation) Regulation (Cap. 478Q).

⁵⁴⁴ Section 15 of the Merchant Shipping (Seafarers) (Repatriation) Regulation (Cap. 478Q).

⁵⁴⁵ Section 46A of the Merchant Shipping (Seafarers) (Working and Living Conditions) Regulation (Cap. 478AF).

⁵⁴⁶ Section 4 of, and Schedule 2 to, the Merchant Shipping (Seafarers) (Official Log Books) Regulation (Cap. 478P).

⁵⁴⁷ Section 122 of the Merchant Shipping (Seafarers) Ordinance (Cap. 478).

⁵⁴⁸ Section 121 of the Merchant Shipping (Seafarers) Ordinance (Cap. 478) and Section 4 of the Merchant Shipping (Seafarers) (Returns of Births, Deaths and Missing Persons) Regulation (Cap. 478F).

name his/her civil partner, cohabitee, or same-sex spouse as next of kin, even if they are not next of kin as a matter of law. It is therefore unclear whether there is any differential treatment based on relationship status arising from the above provisions.

20.33 There are also various record-keeping and reporting requirements under the regulations made under the Merchant Shipping (Seafarers) Ordinance, such as (a) the particulars to be recorded in and contents of employment registration books,⁵⁴⁹ (b) the entries required to be made in the official log book kept in every ship,⁵⁵⁰ and (c) the need for the master of a ship to make a return of a birth, death, or missing person to the Superintendent of the Mercantile Marine Office.⁵⁵¹ Where these items concern a woman who has been married, they must include her maiden surname.⁵⁵² This means a record or return concerning a woman in an opposite-sex marriage must include her maiden name, but a return concerning a woman in an alternative relationship does not need to include this information.

Trade unions

20.34 It is an offence for a person, with a view to compelling another person to do or abstain from doing any act that the other person has a legal right to do or abstain from doing, to wrongfully and without legal authority use violence to or intimidate another person or that other person's wife.⁵⁵³ It is not however an offence that extends violence or intimidation to a person's civil partner, cohabitee, or same-sex spouse.

20.35 Every registered trade union must have rules that provide for the conditions under which a member of the trade union, or the family of a member, may become entitled to any benefit assured by the trade union's welfare fund.⁵⁵⁴ Trade unions are not required to have rules that provide these benefits to their members' civil partners, cohabitees, or same-sex spouses.

Trusts

20.36 An infant who is a beneficiary of a trust is entitled to the beneficial interest of all amounts held under trust for him/her when he/she marries or he/she attains full age (whichever is earlier).⁵⁵⁵ As such, an infant is entitled to his/her beneficial interest when he/she enters into an opposite-sex marriage, but not when he/she cohabits or enters into a civil partnership or same-sex marriage. An infant in an alternative relationship is only entitled to his/her beneficial interest when he/she attains full age.

20.37 Separately, the highest priority to trust income upon the failure or determination of a protective trust extends to the beneficiary, and his/her beneficiary's wife or husband and children. This priority applies to a beneficiary's opposite-sex spouse, but not his/her civil partner, cohabitee, or same-sex spouse.⁵⁵⁶

⁵⁴⁹ Section 5 of, and Schedule to, the Merchant Shipping (Seafarers) (Employment Registration Books) Regulation (Cap. 478U).

⁵⁵⁰ Section 4 of, and Schedule to, the Merchant Shipping (Seafarers) (Official Log Books) Regulation (Cap. 478P).

⁵⁵¹ Sections 3, 4, and 5 of the Merchant Shipping (Seafarers) (Returns of Births, Deaths and Missing Persons) Regulation (Cap. 478F).

⁵⁵² Section 8(1)(c) of, and Schedules 1, 2, and 3 to, the Merchant Shipping (Seafarers) (Returns of Births, Deaths and Missing Persons) Regulation (Cap. 478F).

⁵⁵³ Section 47 of the Trade Unions Ordinance (Cap. 332).

⁵⁵⁴ Section 2 of, and Schedule 2 to, the Trade Unions Ordinance (Cap. 332).

⁵⁵⁵ Section 33 of the Trustee Ordinance (Cap. 29).

⁵⁵⁶ Section 35 of the Trustee Ordinance (Cap. 29).

Veterinary surgery and services

20.38 It is a criminal offence for a person to practise veterinary surgery⁵⁵⁷ or provide a veterinary service⁵⁵⁸ in Hong Kong unless he/she (a) is appropriately registered and holds an in-force practising certificate; or (b) is qualified to practice veterinary surgery in a place outside Hong Kong and has been issued a temporary permit.⁵⁵⁹

20.39 This prohibition does not apply to certain acts done to an animal or fish by its owner or a member of the owner's household for remedy or prevention of injury or illness, such as:

- (a) applying medication topically or administering medication orally to an animal;
- (b) performing on an animal a non-invasive act of veterinary surgery or veterinary service under the direction of a registered veterinary surgeon; and
- (c) administering a vaccine or medication to a fish.⁵⁶⁰

20.40 A similar exemption applies to certain acts done to livestock (e.g. trimming the beak of poultry at 10 days of age or less) by a licensee under various Ordinances⁵⁶¹ or a member of the licensee's household.⁵⁶²

20.41 The opposite-sex spouse of an owner or a licensee would have the benefit of these exemptions; those in an alternative relationship with an owner or licensee may be able to do so, but only where they are considered to be part of the owner's or licensee's household.

⁵⁵⁷ Veterinary surgery means the art and science of veterinary surgery and medicine and includes: (a) the diagnosis of disease in, and injuries to, animals including tests performed for diagnostic purposes; (b) the giving of advice based on such diagnosis; and (c) the medical or surgical treatment of animals including the performance of surgical operations thereon; see Section 2 of the Veterinary Surgeons Registration Ordinance (Cap. 529).

⁵⁵⁸ Veterinary services mean doing or performing any act or attending to any matter the doing or performing of which or the attending to which forms part of the generally accepted practice of veterinary surgery; see Section 2 of the Veterinary Surgeons Registration Ordinance (Cap. 529).

⁵⁵⁹ Sections 16 and 25 of the Veterinary Surgeons Registration Ordinance (Cap. 529).

⁵⁶⁰ Section 29 of, and Paragraphs 4 and 4A of Schedule 2 to, the Veterinary Surgeons Registration Ordinance (Cap. 529).

⁵⁶¹ The Public Health (Animals and Birds) (Keeping of Cattle, Sheep and Goats) Regulations (Cap. 139C), the Dairies Regulations (Cap. 139D), and the Public Health (Animals and Birds) (Licensing of Livestock Keeping) Regulation (Cap. 139L).

⁵⁶² Section 29 of, and Paragraph 4B of Schedule 2 to, the Veterinary Surgeons Registration Ordinance (Cap. 529).

21. PUBLIC HEALTH

21.1 This category covers environmental protection, livestock, public littering, and dog fouling.

RELATIONSHIP	RECOGNITION
Opposite-sex marriage	Recognised
Same-sex marriage	Not recognised
Opposite-sex civil partnership	Not recognised
Same-sex civil partnership	Not recognised
Opposite-sex cohabitation relationship	Not recognised
Same-sex cohabitation relationship	Not recognised

Environmental protection

21.2 Environmental permits and/or environmental impact assessment reports are required for designated projects⁵⁶³ in Hong Kong.⁵⁶⁴ Where the Secretary for the Environment is satisfied that continuous projects (that are not individually designated projects) proposed by the same person or associated persons have been separated for the purpose of avoiding the need for these permits or reports, the Secretary may specify those projects as designated projects, such that these requirements nevertheless apply.⁵⁶⁵

21.3 A person's "associated person" includes his/her spouse, the trustee of a trust of which his/her spouse is a beneficiary or a discretionary object, and a corporation of which he/she (alone or with his/her spouse) is directly or indirectly entitled to exercise or control the exercise of 35% or more of the voting power.⁵⁶⁶ This definition does not extend to a person's civil partner, cohabitee, same-sex spouse, or related trusts or corporations. Accordingly, separate, contiguous projects proposed by opposite-sex spouses and their related trusts and corporations can be made subject to the need for an environmental permit and/or environmental assessment report, but the same projects proposed by civil partners, cohabitees, same-sex spouses, and their related trusts and corporations cannot. This may make it easier for persons in alternative relationships to avoid these requirements.

Livestock

21.4 For the purposes of determining whether a person is exempt from the prohibitions on keeping livestock in certain areas, a person is deemed to own or keep any livestock owned or kept by his/her spouse or "nominee residing with" him/her.⁵⁶⁷ This captures livestock owned or kept by a person's opposite-sex spouse, but only captures livestock owned or kept by: (a) a person's cohabitee if the cohabitee is his/her nominee; or (b) a person's civil partner or same-sex spouse if they live together and the civil partner or same-sex spouse is his/her nominee.

21.5 Livestock premises include any premises, buildings, land, or land covered by water owned, leased or occupied by a livestock keeper or his/her dependants for the purpose of keeping livestock.⁵⁶⁸ These premises would not include those owned, leased, or occupied by a livestock keeper's civil partner,

⁵⁶³ See Schedule 2 of the Environmental Impact Assessment Ordinance (Cap. 499), as referenced in Section 4 of the Ordinance, for the list of designated projects.

⁵⁶⁴ Section 10 of the Environmental Impact Assessment Ordinance (Cap. 499).

⁵⁶⁵ Section 4(4) of the Environmental Impact Assessment Ordinance (Cap. 499).

⁵⁶⁶ Section 2 of, and Schedule 1 to, the Environmental Impact Assessment Ordinance (Cap. 499).

⁵⁶⁷ See Section 2(1) of, and Note to the Fourth Schedule, to the Waste Disposal Ordinance (Cap. 354).

⁵⁶⁸ Section 2(1) of the Waste Disposal Ordinance (Cap. 354).

cohabitee, or same-sex spouse if he/she is not considered the livestock keeper's dependant. This affects, for example, the ability of the Director of Environmental Protection to regulate these premises.⁵⁶⁹

Public littering and dog fouling

21.6 The occupier of any premises from which litter or waste is deposited on or in a public place commits an offence unless he/she proves the litter or waste was deposited by a person other than a member of his/her family or a person employed by him/her.⁵⁷⁰ An occupier is not liable if litter or waste is deposited by his/her civil partner, cohabitee, or same-sex spouse.⁵⁷¹

21.7 A person in charge of a dog commits an offence if he/she allows the dog to deposit faeces in the common parts of a building or in any street or public place, or urine in the common parts of a building, except in an area set aside for such purposes.⁵⁷² The owner of a dog is presumed to be the person in charge of it unless he/she proves the dog was in the charge of a person other than a member of his/her family or a person employed by him/her.⁵⁷³ The owner of a dog is therefore not liable if his/her civil partner, cohabitee, or same-sex spouse is in charge of the dog.⁵⁷⁴

⁵⁶⁹ For example, see Sections 15G and 33 of the Waste Disposal Ordinance (Cap. 354).

⁵⁷⁰ Section 4(2) of the Public Cleansing and Prevention of Nuisances Regulation (Cap. 132BK).

⁵⁷¹ His/her civil partner, cohabitee, or same-sex spouse would however be liable under Section 4(1) of the Public Cleansing and Prevention of Nuisances Regulation (Cap. 132BK).

⁵⁷² Sections 13(1) and 23 of the Public Cleansing and Prevention of Nuisances Regulation (Cap. 132BK).

⁵⁷³ Section 13(2) of the Public Cleansing and Prevention of Nuisances Regulation (Cap. 132BK).

⁵⁷⁴ His/her civil partner, cohabitee, or same-sex spouse would however be liable under Section 13(1) of the Public Cleansing and Prevention of Nuisances Regulation (Cap. 132BK).

22. PUBLIC SERVICE⁵⁷⁵

22.1 This category covers pension schemes for government officers, welfare funds for members of the disciplined services, benefits for the staff of statutory bodies, conflicts of interest, and veterans of World War II.

RELATIONSHIP	RECOGNITION
Opposite-sex marriage	Recognised
Same-sex marriage	Recognised for the Civil Service Regulations only
Opposite-sex civil partnership	Not recognised, but see “Opposite-sex cohabitation relationship” below
Same-sex civil partnership	Not recognised
Opposite-sex cohabitation relationship	Recognised for benefits for the staff of statutory bodies (in part), provided a couple cohabits in a domestic relationship as man and wife; recognised for pension schemes for government officers—non-contributory (in part), provided a couple cohabits as spouses
Same-sex cohabitation relationship	Not recognised

22.2 Our research did not extend to considering differential treatment that may arise in the Civil Service Regulations, which are not legislation, and other policies that apply to civil servants. However, following the decision of the Court of Final Appeal in *Leung Chun Kwong v Secretary for the Civil Service and Another*,⁵⁷⁶ civil servants may now declare their same-sex marriages and claim the relevant spousal benefits. These benefits would be available to opposite- and same-sex spouses, but not civil partners and cohabitantes.

Pension schemes for government officers—non-contributory⁵⁷⁷

22.3 The surviving spouse of an officer who dies as a result of injuries received while in the service of the Government is entitled to a dependant pension where certain criteria are met.⁵⁷⁸ For the purposes of this benefit, a “spouse” includes any person who can prove to the satisfaction of the Secretary for the Civil Service that he/she cohabits with the officer as the officer’s spouse.⁵⁷⁹ This benefit is therefore available to an officer’s opposite-sex spouse and may be available to his/her opposite-sex cohabitante.

⁵⁷⁵ To avoid doubt, since (a) *Leung Chun Kwong v Secretary for the Civil Service and Another* [2019] HKCFA 19 and [2019] HKCFA 34 was, in the context of civil service, limited to the Civil Service Regulations (which is a policy); (b) the post-judgment clarification from the Civil Service Bureau is not clear on whether the mechanism it has established for civil servants to declare their same-sex marriages extends to benefits provided for outside the Civil Service Regulations; and (c) some of the benefits provided for outside the Civil Service Regulations are not managed by the Civil Service Bureau, we have analysed relevant legislation without any modification. [2019] HKCFA 19 and [2019] HKCFA 34.

⁵⁷⁶ This section addresses the three statutory, non-contributory pension schemes operated by the Government for civil servants who are serving on pensionable terms. The Old Pension Scheme, which is governed by the Pensions Ordinance (Cap. 89), applies to pensionable civil servants who were appointed before 1 July 1987. The New Pension Scheme, governed by the Pension Benefits Ordinance (Cap. 99) introduced in 1987, is applicable to pensionable civil servants who were appointed between 1 July 1987 and 31 May 2000, and those who were appointed before 1 July 1987 but had exercised their option to join the scheme before 31 December 1995 or the specified option deadline. See csb.gov.hk/english/admin/retirement/184.html for details of these two schemes. The third scheme, which is governed by the Pension Benefits (Judicial Officers) Ordinance (Cap. 401), applies to pensionable civil servants holding a judicial office.

⁵⁷⁷ Section 18(1) of the Pensions Ordinance (Cap. 89), Section 19(1) of the Pension Benefits Ordinance (Cap. 99), and Section 20(1) of the Pension Benefits (Judicial Officers) Ordinance (Cap. 401).

⁵⁷⁸ Section 18(3)(b) of the Pensions Ordinance (Cap. 89), Section 19(7)(aa) of the Pension Benefits Ordinance (Cap. 99), and Section 20(7)(aa) of the Pension Benefits (Judicial Officers) Ordinance (Cap. 401).

(provided they cohabit as each other's spouse), but is not available to his/her civil partner or same-sex spouse or cohabitee.

22.4 The Government is required to pay a death gratuity or ex gratia payment where an officer dies in government service or a pensioner dies after retirement from government service.⁵⁸⁰ An officer may only nominate his/her spouse to be the recipient of this payment, failing which it will form part of his/her estate.⁵⁸¹ A "spouse" includes the person to whom the officer is lawfully married.⁵⁸² These payments cannot be made to an officer's civil partner, cohabitee, or same-sex spouse.

22.5 An officer's pension or allowance ceases if he/she is adjudicated bankrupt or is declared insolvent.⁵⁸³ In these circumstances, the Chief Executive may direct the payments to which the officer would otherwise have been entitled to the maintenance of the officer's spouse or dependants as the Chief Executive may determine.⁵⁸⁴ A "spouse" includes the person to whom the officer is lawfully married.⁵⁸⁵ An officer's opposite-sex spouse would therefore be eligible for these payments, but not his/her civil partner, cohabitee, or same-sex spouse, unless that person is his/her dependant.

22.6 The Chief Executive in Council has a statutory power to approve compensation schemes that may provide for, among other things, the payment of death gratuities to dependants of officers.⁵⁸⁶ These alternative schemes would pay death gratuities to an officer's opposite-sex spouse, but they may not make similar payments to an officer's civil partner, cohabitee, or same-sex spouse unless he/she is the officer's dependant.

22.7 Overall, a civil servant in an alternative relationship, unlike one in an opposite-sex marriage, cannot be assured that his/her surviving civil partner, cohabitee, or same-sex spouse would receive any benefits under these schemes. He/she may therefore need to make alternative arrangements, such as private insurance.

⁵⁸⁰ Section 17 of the Pensions Ordinance (Cap. 89), Section 20 of the Pension Benefits Ordinance (Cap. 99), and Section 21 of the Pension Benefits (Judicial Officers) Ordinance (Cap. 401).

⁵⁸¹ Section 17(7A) of the Pensions Ordinance (Cap. 89), Section 20(10A) of the Pension Benefits Ordinance (Cap. 99), and Section 21(10) of the Pension Benefits (Judicial Officers) Ordinance (Cap. 401).

⁵⁸² Section 2(1) of the Pensions Ordinance (Cap. 89), the Pensions Benefits Ordinance (Cap. 99), and the Pension Benefits (Judicial Officers) Ordinance (Cap. 401).

⁵⁸³ Section 13(1) of the Pensions Ordinance (Cap. 89), Section 28(1) of the Pension Benefits Ordinance (Cap. 99), and Section 30(1) of the Pension Benefits (Judicial Officers) Ordinance (Cap. 401).

⁵⁸⁴ Section 13(3) of the Pensions Ordinance (Cap. 89), Section 28(3) of the Pension Benefits Ordinance (Cap. 99), and Section 30(3) of the Pension Benefits (Judicial Officers) Ordinance (Cap. 401).

⁵⁸⁵ Section 2(1) of the Pensions Ordinance (Cap. 89), the Pensions Benefits Ordinance (Cap. 99), and the Pension Benefits (Judicial Officers) Ordinance (Cap. 401).

⁵⁸⁶ Section 6A of the Pensions Ordinance (Cap. 89), Section 13 of the Pension Benefits Ordinance (Cap. 99), and Section 13 of the Pension Benefits (Judicial Officers) Ordinance (Cap. 401).

Pension schemes for government officers—contributory⁵⁸⁷

22.8 A civil servant may voluntarily contribute to the Widows and Orphans Pension Scheme or the Surviving Spouses' and Children's Pensions Scheme such that, following the civil servant's death, a pension is payable to his/her eligible survivors.⁵⁸⁸

22.9 Both schemes have features that are tied to a person's relationship status. For example:

- (a) a pension is payable to, among others, the widow or spouse (as the case may be) of a deceased contributor;⁵⁸⁹
- (b) a person who does not elect to contribute to the Surviving Spouses' and Children's Pensions Scheme when he/she joins the civil service may elect to do so within six months of his/her marriage;⁵⁹⁰
- (c) the female child of a deceased contributor to the Surviving Spouses' and Children's Pensions Scheme is eligible for a children's pension if (i) she is married and under 18 years old; or (ii) she is unmarried and under 21 years old;⁵⁹¹
- (d) a pension payable to a widow or a spouse (as the case may be) under either scheme ceases if the recipient remarries;⁵⁹² and
- (e) a contributor to either scheme who marries or ceases to be married must provide relevant details to the Director of Accounting Services.⁵⁹³

22.10 For the purposes of the Widows and Orphans Pension Scheme, a "wife" includes the lawful wife of any officer married to him by a Christian marriage or its civil equivalent and "widow" must be construed accordingly.⁵⁹⁴ The directors of the scheme are also empowered to determine that a person who (a) cohabits with a contributor or a former contributor as his wife; and (b) is financially dependent on the contributor, is to be treated as the contributor's wife for the purposes of the scheme.⁵⁹⁵

22.11 For the purposes of the Surviving Spouses' and Children's Pensions Scheme, "spouse", in relation to a person, means the person to whom the first mentioned person is lawfully married, and a "surviving spouse", in relation to a person, means a person who was the spouse of the person immediately prior to his death.⁵⁹⁶ The directors of the scheme have a similar power as mentioned above for the Widows and Orphans

⁵⁸⁷ This section addresses the two statutory, contributory pension schemes operated by the Government for civil servants who are serving on pensionable terms. The Widows and Orphans Pension Scheme, which is governed by the Widows and Orphans Pension Ordinance (Cap. 94), closed to new members on 1 January 1978. The Surviving Spouses' and Children's Pensions Scheme, which is governed by the Surviving Spouses' and Children's Pensions Ordinance (Cap. 79), has been open to all pensionable civil servants since 1 February 1993. See csb.gov.hk/english/admin/retirement/133.html.

⁵⁸⁸ The Widows and Orphans Pension Ordinance (Cap. 94) and the Surviving Spouses' and Children's Pensions Ordinance (Cap. 79), generally.

⁵⁸⁹ Section 22(4) of the Widows and Orphans Pension Ordinance (Cap. 94) and Section 5(a) of the Surviving Spouses' and Children's Pensions Ordinance (Cap. 79).

⁵⁹⁰ Section 3(1)(c) of the Surviving Spouses' and Children's Pensions Ordinance (Cap. 79).

⁵⁹¹ Section 2(5)(a)(ii) of the Surviving Spouses' and Children's Pensions Ordinance (Cap. 79).

⁵⁹² Section 22(1) of the Widows and Orphans Pension Ordinance (Cap. 94) and Section 8(1) of the Surviving Spouses' and Children's Pensions Ordinance (Cap. 79).

⁵⁹³ Section 16 of the Widows and Orphans Pension Ordinance (Cap. 94) and Section 15 of the Surviving Spouses' and Children's Pensions Ordinance (Cap. 79).

⁵⁹⁴ Section 2(1) of the Widows and Orphans Pension Ordinance (Cap. 94).

⁵⁹⁵ Section 7A of the Widows and Orphans Pension Ordinance (Cap. 94).

⁵⁹⁶ Section 2(1) of the Surviving Spouses' and Children's Pensions Ordinance (Cap. 79).

Pension Scheme.⁵⁹⁷ “Marriage” is defined as excluding a marriage which takes place after a person has left the civil service unless the directors of the scheme decide otherwise.⁵⁹⁸

22.12 Consequently, the various benefits and obligations under the schemes depend on whether a person is or was in an opposite-sex marriage and in some cases, where recognised by the directors of the relevant scheme, an opposite-sex cohabitation relationship. Civil partnerships and same-sex marriages and cohabitation relationships are disregarded. This means, for example:

- (a) unlike a civil servant in an opposite-sex marriage or cohabitation relationship recognised by the directors, a civil servant cannot be assured that the schemes will provide financial support for his/her civil partner or same-sex spouse or cohabitee after his/her death;
- (b) the eligibility of a contributor’s female child to a children’s pension under the Surviving Spouses’ and Children’s Pensions Scheme is unaffected by her entering into an alternative relationship; and
- (c) a pension payable to a widow or a spouse under either scheme is unaffected by him/her entering into an alternative relationship.

Welfare funds for members of the disciplined services

22.13 Each of Hong Kong’s disciplined services—the Police Force,⁵⁹⁹ the Fire Services Department,⁶⁰⁰ the Correctional Services Department,⁶⁰¹ the Customs and Excise Department,⁶⁰² the Immigration Department,⁶⁰³ and the Government Flying Service⁶⁰⁴—has a separate welfare fund.

22.14 The funds can be used for specified purposes, including:

- (a) making loans to dependants of deceased members or former members of the relevant service;⁶⁰⁵
- (b) granting financial assistance to dependants of deceased members or former members of the relevant service to meet the funeral expenses of those deceased persons;⁶⁰⁶ and
- (c) making grants, allowances, and gifts to dependants of deceased members or former members of the relevant service for purposes other than funeral expenses.⁶⁰⁷

22.15 Except for the Government Flying Service Welfare Fund, a person is a “dependant” of a member or former member if, in the opinion of the head of the disciplined service,⁶⁰⁸ he/she is or was (at the time of the member’s death) wholly or partially dependent on the member or former member.⁶⁰⁹ For the Government Flying Service Welfare Fund, benefits are to be procured for “eligible persons”, including: (a) a dependant of

⁵⁹⁷ Section 2(7) of the Surviving Spouses’ and Children’s Pensions Ordinance (Cap. 79).

⁵⁹⁸ Section 2(3A) of the Surviving Spouses’ and Children’s Pensions Ordinance (Cap. 79).

⁵⁹⁹ Part IV of the Police Force Ordinance (Cap. 232), which governs the Police Force Welfare Fund.

⁶⁰⁰ Part IV of the Fire Services Ordinance (Cap. 95), which governs the Fire Services Welfare Fund.

⁶⁰¹ Part III of the Prisons Ordinance (Cap. 234), which governs the Correctional Services Department Welfare Fund.

⁶⁰² Part IV of the Customs and Excise Service Ordinance (Cap. 342), which governs the Customs and Excise Service Welfare Fund

⁶⁰³ Part IV of the Immigration Service Ordinance (Cap. 331), which governs the Immigration Service Welfare Fund.

⁶⁰⁴ Part IV of the Government Flying Service Ordinance (Cap. 322), which governs the Government Flying Service Welfare Fund.

⁶⁰⁵ For example, Section 39E(1)(f) of the Police Force Ordinance (Cap. 232).

⁶⁰⁶ For example, Section 19D(1)(f) of the Fire Services Ordinance (Cap. 95).

⁶⁰⁷ For example, Section 19D(1)(h) of the Customs and Excise Service Ordinance (Cap. 342).

⁶⁰⁸ For example, the Commissioner of Police of Hong Kong for the Police Force.

⁶⁰⁹ Section 39(1) of the Police Force Ordinance (Cap. 232), Section 18 of the Fire Services Ordinance (Cap. 95), Section 24C of the Prisons Ordinance (Cap. 234), Section 18 of the Customs and Excise Service Ordinance (Cap. 342), and Section 15 of the Immigration Service Ordinance (Cap. 331).

a living member or former member; and (b) any person who was wholly or partially dependent on a member or former member at the time of his/her death.⁶¹⁰

22.16 A member's civil partner, cohabitee, or same-sex spouse would not be able to enjoy the benefits of the relevant fund, unless he/she is considered to be the member's dependant.

22.17 Separate from the welfare funds, the Medical Officer appointed by the Chief Executive under the Prisons Ordinance has a general duty to give medical advice and assistance, including medicines, to the officers of the Correctional Services Department and their families.⁶¹¹ This duty extends to advice and assistance to officers' opposite-sex spouses, but not to their civil partners, cohabitees, or same-sex spouses.

22.18 Overall, members of the disciplined services and civil servants in alternative relationships are similarly situated when it comes to the (lack of) support for their surviving civil partners, cohabitees, and same-sex spouses after their death.

Benefits for the staff of statutory bodies

22.19 There are several associations, authorities, corporations, societies, and other legal persons of a public nature created and governed by legislation. These include:

(a) regulatory bodies, such as the Competition Commission,⁶¹² the Construction Industry Council,⁶¹³ the Insurance Authority,⁶¹⁴ the Mandatory Provident Fund Schemes Authority (MPFA),⁶¹⁵ the Privacy Commissioner for Personal Data,⁶¹⁶ the Securities and Futures Commission,⁶¹⁷ and the Travel Industry Authority;⁶¹⁸

(b) educational, medical, and charitable organisations and their boards, such as Caritas,⁶¹⁹ the Chinese University of Hong Kong,⁶²⁰ the Hong Kong Society for the Protection of Children,⁶²¹ the Hong Kong Tuberculosis, Chest and Heart Diseases Association,⁶²² the Hospital Authority,⁶²³ the board of the Matilda and War Memorial Hospital,⁶²⁴ Po Leung Kuk,⁶²⁵ the board of the Prince Philip Dental Hospital,⁶²⁶ the Society of Boys' Centres,⁶²⁷ and the Tung Wah Group of Hospitals;⁶²⁸ and

⁶¹⁰ Sections 16(a)(iv) and (v) of the Government Flying Service Ordinance (Cap. 322).
⁶¹¹ Rule 143 of the Prison Rules (Cap. 234A).

⁶¹² Section 129 of, and Schedule 5 to, the Competition Ordinance (Cap. 619).

⁶¹³ Section 18(1) of the Construction Industry Council Ordinance (Cap. 587).

⁶¹⁴ Section 4E(2) of the Insurance Ordinance (Cap. 41).

⁶¹⁵ Section 6G(3) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485).

⁶¹⁶ Section 9(3)(b) of the Personal Data (Privacy) Ordinance (Cap. 486).

⁶¹⁷ Section 9(2) of the Securities and Futures Ordinance (Cap. 571).

⁶¹⁸ Section 150 of, and Paragraph 7(4) of Part 2 of Schedule 9 to, the Travel Industry Ordinance (Cap. 634).

⁶¹⁹ Section 4 of the Caritas-Hong Kong Incorporation Ordinance (Cap. 1092).

⁶²⁰ Section 13 of, and Statute 11(8)(1)(k) in Schedule 1 to The Chinese University of Hong Kong Ordinance (Cap. 1109).

⁶²¹ Section 4 of the Hong Kong Society for the Protection of Children Incorporation Ordinance (Cap. 1058).

⁶²² Section 5 of the Hong Kong Tuberculosis, Chest and Heart Diseases Association Incorporation Ordinance (Cap. 1024).

⁶²³ Section 3(5) of, and Paragraph 10(3) of Schedule 3 to, the Hospital Authority Ordinance (Cap. 113).

⁶²⁴ Section 4 of, and Article 6(a) of the Schedule to, the Matilda and War Memorial Hospital Ordinance (Cap. 1035).

⁶²⁵ Section 4 of, and Paragraph 2(l) of the Schedule to, the Po Leung Kuk Ordinance (Cap. 1040).

⁶²⁶ Section 13 of The Prince Philip Dental Hospital Ordinance (Cap. 1081).

⁶²⁷ Section 4 of the Society of Boys' Centres Incorporation Ordinance (Cap. 1008).

⁶²⁸ Section 4 of, and Paragraph 2(1)(n) of the Schedule to, the Tung Wah Group of Hospitals Ordinance (Cap. 1051).

(c) other bodies that serve a public purpose, such as the Clothing Industry Training Authority,⁶²⁹ the Fish Marketing Organisation,⁶³⁰ the Hong Kong Arts Centre,⁶³¹ the Kowloon-Canton Railway Corporation,⁶³² the Ocean Park Corporation,⁶³³ and the Urban Renewal Authority.⁶³⁴

22.20 The above bodies all have express powers to provide benefits to their employees and, depending on the particular body, their employees' spouses, wives, widows, dependants, or families. The benefits that can be provided vary from body to body, but can include: (a) pension, retirement, and similar schemes; (b) allowances, bonuses, and gratuities; and (c) living accommodation.⁶³⁵

22.21 These bodies are clearly empowered to provide benefits to their employees' opposite-sex spouses. However, except for the MPFA, their powers do not extend to providing benefits to their employees' civil partners, cohabittees, or same-sex spouses, unless they are viewed as dependants.

22.22 For the MPFA, a "spouse" is defined to include a person of the opposite sex with whom another person is cohabiting in a domestic relationship as man and wife.⁶³⁶ Consequently, the opposite-sex civil partner or cohabittee of an MPFA employee may be able to obtain the same retirement benefits available to opposite-sex spouses.

Conflicts of interest

22.23 To prevent conflicts of interest from arising in relation to the regulation of investments and virtual assets,⁶³⁷ any member of the Securities and Futures Commission and any person performing any function under the Securities and Futures Ordinance and selected provisions under the Companies (Winding Up and Miscellaneous Provisions) Ordinance, Companies Ordinance, and the Anti-Money Laundering and Counter-Terrorist Financing Ordinance commits a criminal offence if he/she does not inform the Commission where he/she is required to consider any matter relating to another person who (a) is or was his/her associate; or (b) he/she knows is or was a client of a person who is or was his/her associate.⁶³⁸ A person's "associate" includes his/her spouse and the trustee of a trust of which his/her spouse is a beneficiary or discretionary object.⁶³⁹

22.24 This means an official is not required to make a disclosure to the Commission where a matter involves his/her civil partner, cohabittee, or same-sex spouse, or the trustee of a trust in which his/her civil partner, cohabittee, or same-sex spouse is interested. This is despite the potential for the same conflict of interest that would arise if the official's opposite-sex spouse was similarly involved or interested.

Veterans of World War II

22.25 A surviving spouse of an officer or volunteer of the Hong Kong Volunteer Defence Corps or member of the Hong Kong Naval Volunteer Force injured or killed during World War II (**qualified person**) is eligible for certain payments after the death of the qualified person.⁶⁴⁰ These payments cease to be payable where the

⁶²⁹ Section 13 of the Industrial Training (Clothing Industry) Ordinance (Cap. 318).

⁶³⁰ Section 13 of the Marine Fish (Marketing) Ordinance (Cap. 291).

⁶³¹ Section 7 of the Hong Kong Arts Centre Ordinance (Cap. 304).

⁶³² Section 4 of the Kowloon-Canton Railway Corporation Ordinance (Cap. 372).

⁶³³ Section 21 of the Ocean Park Corporation Ordinance (Cap. 388).

⁶³⁴ Section 4(6) of, and Schedule to, the Urban Renewal Authority Ordinance (Cap. 563).

⁶³⁵ See the footnote to each body listed above for the legislative provision that provides the relevant power.

⁶³⁶ Section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485).

⁶³⁷ This policy intention is stated at Paragraph 20(k) of the Explanatory Memorandum accompanying the Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Bill 2022.

⁶³⁸ Section 53ZTW(3) of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615); and Section 379(3) of the Securities and Futures Ordinance (Cap. 571).

⁶³⁹ Section 53ZTW(5) of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615); and Section 2(1) of, and Paragraph 1 of Part 1 of Schedule 1 to, the Securities and Futures Ordinance (Cap. 571).

⁶⁴⁰ The Volunteer and Naval Volunteer Pensions Ordinance (Cap. 202), generally.

surviving spouse marries another person or lives together with another person as husband and wife.⁶⁴¹ A “spouse” includes (a) the lawful spouse of a qualified person married to him by a Christian marriage or its civil equivalent, and (b) the spouse of the qualified person recognised as such under the law applicable to the qualified person.⁶⁴² “Surviving spouse” means a person who survives a qualified person as his spouse at the time of death.⁶⁴³

22.26 These payments accordingly are available to individuals in (or formerly in) different relationships as follows:

- (a) The opposite-sex widow of a qualified person is eligible for payments, which would cease if she entered into another opposite-sex marriage or cohabited with someone of the opposite sex as husband and wife.⁶⁴⁴ They would not cease if she entered into a civil partnership or same-sex marriage or cohabitation relationship.
- (b) The civil partner, cohabitee, or same-sex spouse of a qualified person would not be eligible for payments.

⁶⁴¹ Section 19(1) of the Volunteer and Naval Volunteer Pensions Ordinance (Cap. 202).

⁶⁴² Section 2(1) of the Volunteer and Naval Volunteer Pensions Ordinance (Cap. 202).

⁶⁴³ Section 2(1) of the Volunteer and Naval Volunteer Pensions Ordinance (Cap. 202).

⁶⁴⁴ Section 7(2)(f) of the Hong Kong War Memorial Pensions Ordinance (Cap. 386).

23. PUBLIC WELFARE

23.1 This category covers the Government's Working Family Allowance scheme, the Comprehensive Social Security Assistance scheme, and the Social Security Allowance scheme.

RELATIONSHIP	RECOGNITION
Opposite-sex marriage	Recognised
Same-sex marriage	Not recognised, but see "Same-sex cohabitation relationship" below
Opposite-sex civil partnership	Not recognised, but see "Opposite-sex cohabitation relationship" below
Same-sex civil partnership	Not recognised, but see "Same-sex cohabitation relationship" below
Opposite-sex cohabitation relationship	Recognised for the Working Family Allowance scheme and Social Security Allowance scheme (in part)
Same-sex cohabitation relationship	Recognised for the Working Family Allowance scheme and Social Security Allowance scheme (in part)

Working Family Allowance (WFA) scheme

23.2 Households that meet a monthly working hours requirement⁶⁴⁵ and do not have monthly income and assets that exceed the prescribed limits⁶⁴⁶ are eligible to be paid an allowance at various rates under the WFA scheme.

23.3 Applications for this scheme are made on a household basis,⁶⁴⁷ and applicants are required to include details of all household members⁶⁴⁸ on the application form.⁶⁴⁹ For these purposes, "a household generally refers to a unit with persons having close economic ties (but excluding economic ties arising from employment relationships) and living on the same premises (in Hong Kong). This normally includes household members and those who share or are obliged to share the provisions for a living."⁶⁵⁰

23.4 It therefore appears that an applicant's spouse or civil partner who lives with the applicant, or an applicant's cohabitee, is considered part of the applicant's household for the purposes of assessing eligibility for this scheme.⁶⁵¹ However, the recognition of an applicant's spouse or civil partner is based on their economic ties and their cohabitation, not their relationship as spouses or civil partners. This means:

⁶⁴⁵ The required monthly working hours vary for single parent and non-single parent households, with different ranges applicable to Basic, Medium, and Higher Allowance. See Paragraph 1.2 of the Guidance Notes for Applications under the Working Family Allowance Scheme (document WFA100B (4/2025)), wfsfaa.gov.hk/wfao/pdf/WFA100B.pdf.

⁶⁴⁶ The relevant limits are set out in the Working Family Allowance Scheme Additional Information for Guidance Notes (document WFA102B (4/2025)), wfsfaa.gov.hk/wfao/pdf/WFA102B.pdf. Monthly income limits for full, three-quarter, and half-rate allowances are set at between 50% and 70% of the Median Monthly Domestic Household Income of economically active households. The income and asset limits are adjusted each year on 1 April.

⁶⁴⁷ Paragraph 3.1.1 of the Guidance Notes for Applications under the Working Family Allowance Scheme (document WFA100B (4/2025)), wfsfaa.gov.hk/wfao/pdf/WFA100B.pdf. The Working Family Allowance Scheme accepts application from households of one person or more.

⁶⁴⁸ A household member does not include non-permanent residents who have entered Hong Kong to work, study or receive training, or the dependants of those non-permanent residents; see Paragraph 3.1.4 of the Guidance Notes for Applications under the Working Family Allowance Scheme (document WFA100B (4/2025)), wfsfaa.gov.hk/wfao/pdf/WFA100B.pdf.

⁶⁴⁹ Note to Part 1 of Working Family Allowance Scheme Application Form (document WFA100B (4/2025)), wfsfaa.gov.hk/wfao/pdf/WFA100B.pdf.

⁶⁵⁰ Paragraph 3.1.1 of the Guidance Notes for Applications under the Working Family Allowance Scheme (document WFA100B (4/2025)), wfsfaa.gov.hk/wfao/pdf/WFA100B.pdf.

⁶⁵¹ The WFA application form requires an applicant to list all household members by category, broken down for present purposes to "spouse" or "others".

- (a) an applicant may (but is not required to) include hours worked by his/her spouse or civil partner who lives with him/her, or his/her cohabitee when aggregating the hours worked by all household members for the purposes of assessing the monthly working hours limit; and
- (b) all monthly income earned and assets held by an applicant's spouse or civil partner who lives with him/her, or his/her cohabitee will be taken into account when calculating whether the household's monthly income and assets fall within the prescribed limits.⁶⁵²

Comprehensive Social Security Assistance (CSSA) scheme

23.5 Applicants that meet the CSSA scheme's residence requirement⁶⁵³ and do not have income and assets that exceed the prescribed limits⁶⁵⁴ are eligible to be paid various standard rates of allowance, along with certain supplements and/or special grants depending upon their personal circumstances.⁶⁵⁵

23.6 Applications for CSSA must be made on a household basis where "the applicant is living with any other family members". Where an application is made on this basis, the income and assets of all family members will be taken into account when assessing whether the applicant has income insufficient to meet their total monthly needs, or assets that exceed the prescribed limits.⁶⁵⁶

23.7 "Family members" is not defined. As such, (unlike opposite-sex spouses) civil partners, cohabitantes, and same-sex spouses can apply for CSSA otherwise than on a household basis and exclude the income and assets of an applicant's civil partner, cohabitee, or same-sex spouse. This may result in a person in an alternative relationship being eligible for CSSA where he/she would not be if instead in an opposite-sex marriage. This may have a negative impact on public finances.

Social Security Allowance (SSA) scheme⁶⁵⁷

23.8 Applicants that: (a) have reached the qualifying age⁶⁵⁸ or satisfied the disability certification requirement;⁶⁵⁹ (b) satisfy the residence requirement; (c) do not receive any other allowances under the SSA scheme or assistance under the CSSA scheme; and (d) are not detained in legal custody or admitted to a penal institution, are eligible to be paid one of a number of flat-rate monthly allowances.⁶⁶⁰

⁶⁵² Paragraphs 3.2 to 3.4 of the Guidance Notes for Applications under the Working Family Allowance Scheme (document WFA100B (4/2025)), wfsfaa.gov.hk/wfao/pdf/WFA100B.pdf.

⁶⁵³ Paragraph 3.A of A Guide to Comprehensive Social Security Assistance (Revised in April 2025), [swd.gov.hk/storage/asset/section/246/en/CSSAG042025\(Eng\).pdf](http://swd.gov.hk/storage/asset/section/246/en/CSSAG042025(Eng).pdf).

⁶⁵⁴ Paragraph 3.B of A Guide to Comprehensive Social Security Assistance (Revised in April 2025) [swd.gov.hk/storage/asset/section/246/en/CSSAG042025\(Eng\).pdf](http://swd.gov.hk/storage/asset/section/246/en/CSSAG042025(Eng).pdf).

⁶⁵⁵ One of several additional conditions must be satisfied by able-bodied applicants aged 15 to 59 so as to be eligible to receive CSSA, such as actively seeking work and participating in the SWD's Support for Self-reliance Scheme where the applicant in question is unemployed or earning less than HK\$2,665 per month or working less than 120 hours per month. See Paragraph 3.C of A Guide to Comprehensive Social Security Assistance (Revised in April 2025), [swd.gov.hk/storage/asset/section/246/en/CSSAG042025\(Eng\).pdf](http://swd.gov.hk/storage/asset/section/246/en/CSSAG042025(Eng).pdf).

⁶⁵⁶ Paragraph 3.B(b) of A Guide to Comprehensive Social Security Assistance (Revised in April 2025), [swd.gov.hk/storage/asset/section/246/en/CSSAG042025\(Eng\).pdf](http://swd.gov.hk/storage/asset/section/246/en/CSSAG042025(Eng).pdf).

⁶⁵⁷ The SSA scheme includes Normal Disability Allowance, Higher Disability Allowance, Old Age Allowance, Old Age Living Allowance, Guangdong Scheme and Fujian Scheme (for the payment of Old Age Allowance and Old Age Living Allowance to eligible recipients who choose to reside in Guangdong or Fujian province). See Pamphlet on Social Security Allowance Scheme (Revised in February 2025), swd.gov.hk/storage/asset/section/105/en/SSA_pamphlet_eng_022025.pdf.

⁶⁵⁸ In the case of applicants for: (a) Old Age Living Allowance—aged 65 or above; (b) Old Age Allowance—aged 70 or above; and (c) the Fujian or Guangdong Schemes—aged 65 or above for those claiming Old Age Living Allowance, and aged 70 or above for those claiming Old Age Allowance: see Application for Social Security Allowance Guidance Notes (SWD675 (2/2025)), pages 4, 9, Application for Guangdong Scheme and Fujian Scheme Guidance Notes (SWD675 GD/FJ (1/2025)), page 4.

⁶⁵⁹ In the case of applicants for Disability Allowance, that the applicant "is certified by the Director of Health or the Chief Executive, Hospital Authority (or under exceptional circumstances by a registered medical practitioner of a private hospital) to be severely disabled (...) and his/her disabling condition will persist for at least six months." See Application for Social Security Allowance Guidance Notes (SWD675 (2/2025)), page 6.

⁶⁶⁰ For example, Disability Allowance recipients aged 12 to 64 are also paid a monthly transport supplement, see swd.gov.hk/en/pubsvc/socseco/ssallowance/ssa_amt/. Also, a monthly allowance is provided to Hong Kong residents who are 65

23.9 Applications under the SSA scheme for Old Age Allowance and Disability Allowance are not (subject to certain exceptions; see below) means-tested. Accordingly, a person's relationship status appears to have no effect on his/her eligibility for those allowances.

23.10 The position for the Old Age Living Allowance (**OALA**) and the Fujian and Guangdong Schemes is different because they are means-tested.

23.11 An applicant for the OALA must provide the personal particulars and details of monthly income and assets of his/her spouse for the purposes of assessing the applicant's eligibility.⁶⁶¹ An applicant may also optionally provide those same details for his/her "cohabiting partner", which would be taken into account under the OALA means test.⁶⁶² As such, it appears that the monthly income and assets of an applicant's opposite-sex spouse will be taken into account, and the monthly income and assets of an applicant's cohabitee may at his/her option be taken into account, for the purposes of assessing the applicant's eligibility. The monthly income and assets of civil partners and same-sex spouses who do not live together will not.

23.12 The monthly income and assets of the spouse of an applicant aged 65 to 69 for the Fujian and Guangdong Schemes will be taken into account under the means test for those schemes.⁶⁶³ As such, the monthly income and assets of an applicant's civil partner, cohabitee, or same-sex spouse will not be taken into account. This may result in a person in an alternative relationship being eligible for these schemes where a person in an opposite-sex marriage would not be.

years of age or above (those claiming Old Age Living Allowance), 70 years of age or above (those claiming Old Age Allowance), or who are severely disabled: see swd.gov.hk/en/pubserv/socsecur/ssallowance/ssa_amt/ssa_amt_all/index.html.

⁶⁶¹ While the monthly income and assets of an applicant's spouse must be provided for the purposes of the assessment (where the married couple share the same financial resources), the assessment does not take place on a household basis: see SWD OALA FAQs (swd.gov.hk/oala/index_e.html#faq_p3): "If a husband is over 70 years old and has personal assets, while his wife has not reached the age for application, should he declare his personal assets only?" and "My mother has been an OAA recipient who does not have any income or assets. She lives with us (her sons) but we have assets. Will she be eligible for OALA?"

⁶⁶² See Part 2 and Part 4 of the Simplified Application Form for OALA ("Spouse's personal data (for applicant who is married or cohabited only)" and "Income and asset value of the applicant and his/her spouse/cohabiting partner (only applicable to an applicant whose marital status is "Married" or "Cohabiting"))" and SWD OALA FAQ (swd.gov.hk/oala/index_e.html#faq_p1): "Under what circumstances are applicants required to provide information on their spouse's/cohabiting partner's personal particulars, income and assets?". In the context of a series of questions concerning case reviews of OALA recipients to determine their continued eligibility to receive an allowance, an FAQ states that "If an applicant's marital status is "Married" or "Cohabiting" (See Note of Q&A 2), the applicant is required to provide his/her spouse's/cohabiting partner's personal particulars as well as information on his/her spouse's/cohabiting partner's income and assets, regardless of whether his/her spouse/cohabiting partner is receiving OALA/other allowance". The Note of Q&A 2 says: "Only applicable to cases where the applicant (i) is currently living with a cohabiting partner in the same household; (ii) is living on shared resources with the cohabiting partner; and (iii) agrees to provide the personal and financial information of the cohabiting partner to the SWD, regardless of whether the applicant's cohabiting partner is/ is not currently receiving the OALA/other allowance. Such application will be subject to the means test assessment based on the "Financial Resource Limits for Married Couples". Similar provision is not made in the general SSA scheme application form.

⁶⁶³ See Application for Guangdong Scheme and Fujian Scheme Guidance Notes (SWD675 GD/FJ (1/2025)), page 7.

24. REGULATORY AND PUBLIC OFFERS

24.1 This category covers the special rules that apply to those who conduct activities for which a licence or registration from the Government or a statutory body is required (**regulated persons**) and public offers.

RELATIONSHIP	RECOGNITION
Opposite-sex marriage	Recognised
Same-sex marriage	Not recognised
Opposite-sex civil partnership	Not recognised, but see "Opposite-sex cohabitation relationship" below
Same-sex civil partnership	Not recognised, but see "Same-sex cohabitation relationship" below
Opposite-sex cohabitation relationship	Recognised for banks (in part); recognised for mandatory provident fund schemes (in part) and controllers of regulated persons (in part), provided a couple cohabit in a bona fide domestic relationship as man and wife
Same-sex cohabitation relationship	Recognised for banks (in part)

Dwelling vessels

24.2 A licence for a dwelling vessel⁶⁶⁴ may only be transferred in certain circumstances, including where the licensee dies. Where this occurs, the licensee's surviving spouse can apply for the licence to be transferred to him/her if he/she was dwelling on the vessel when the licence was first issued.⁶⁶⁵ A licensee's surviving civil partner, cohabitee, or same-sex spouse is unable to apply for the licence to be transferred based on their alternative relationship.

Money lenders and pawnbrokers

24.3 Both money lenders and pawnbrokers are prohibited from demanding or accepting as security for a loan a photograph of any member of the family of the borrower.⁶⁶⁶

24.4 A Court can reopen the terms of certain transactions to do justice between the parties if the transaction is extortionate, including transactions that require grossly exorbitant payments by a debtor or his/her relative.⁶⁶⁷

24.5 The widow, widower, or any member of the family of a deceased money lender may have the money lender's licence transferred to him/her.⁶⁶⁸

24.6 None of the above protections and rights apply to a person in (or previously in) an alternative relationship with a borrower, debtor, or money lender, respectively.

Insurance

24.7 Insurers are required to be authorised by the Insurance Authority if they carry on business in one or more classes of insurance business in or from Hong Kong.⁶⁶⁹ The classes of insurance business include

⁶⁶⁴ A dwelling vessel is a local vessel which: (a) is used, constructed or adapted principally for dwelling purposes; and (b) tends to remain stationary in any area of the waters of Hong Kong; see Section 2 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548).

⁶⁶⁵ Section 7 of the Merchant Shipping (Local Vessels) (Dwelling Vessels) Regulation (Cap. 548A).

⁶⁶⁶ Regulation 12 of the Money Lenders Regulations (Cap. 163A) and Section 21 of the Pawnbrokers Ordinance (Cap. 166).

⁶⁶⁷ Section 25 of the Money Lenders Ordinance (Cap. 163).

⁶⁶⁸ Section 15 of the Money Lenders Ordinance (Cap. 163).

⁶⁶⁹ Section 6 of the Insurance Ordinance (Cap. 41).

contracts of insurance, expressed to be in effect for a period of more than one year, to provide a sum upon a marriage.⁶⁷⁰

24.8 As a result, contracts of insurance expressed to be in effect for a period of more than one year to provide a sum upon an opposite-sex marriage will be regulated, whereas similar contracts that provide a sum only upon any alternative relationship will not be.⁶⁷¹ This allows persons who have not been authorised by the Insurance Authority to sell policies related to alternative relationships in Hong Kong, and in the event of any issue (e.g. fraud), the purchasers or beneficiaries of the policies would—unlike the purchasers or beneficiaries of policies related to an opposite-sex marriage—not have the benefit of the protections available under the Insurance Ordinance, such as the planned Policy Holders’ Protection Scheme.⁶⁷²

24.9 The classes of insurance business also include contracts to pay annuities on human life.⁶⁷³ However, contracts of insurance to pay superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged in any particular profession, trade or employment, or of their dependants, are excluded.⁶⁷⁴ Where the fund restricts benefits to, among others, a person’s opposite-sex spouse, the exemption applies and the contract is not regulated. If, however, the fund also extends benefits to a civil partner, a cohabitee, or a same-sex spouse (who may not be viewed as a dependant), the exemption may cease to apply, and the contract would fall within the scope of insurance regulation.

Banks

24.10 Regulated banks in Hong Kong are subject to limits on their unsecured financial exposures to their connected parties.⁶⁷⁵ These limits are designed to reduce the risk of improper and excessive lending to connected parties that may jeopardise a bank’s interests or be detrimental to its financial position.⁶⁷⁶ For example, a bank cannot have an unsecured exposure of more than HK\$10,000,000 to a connected party.⁶⁷⁷ A bank must also ensure that its total unsecured exposures to connected parties do not exceed 15% of its Tier 1 capital.⁶⁷⁸ Additionally, for connected parties who are natural persons, these exposures must not exceed 5% of its Tier 1 capital.⁶⁷⁹

24.11 A connected party of a bank includes:

- (a) a relative of:
 - (i) a director of the bank;
 - (ii) an employee of the bank who is responsible for approving applications for financial facilities; and
 - (iii) a controller of the bank;

⁶⁷⁰ Section 3 of, and Part 2 of Schedule 1 to, the Insurance Ordinance (Cap. 41).

⁶⁷¹ Practically, it would seem unusual for a legitimate insurer to exclude opposite-sex marriages while including alternative relationships.

⁶⁷² See fstb.gov.hk/fsb/en/publication/consult/doc/Consultation_Conclusions_PPS_Dec_2023_e.pdf for the latest consultation conclusions issued by the Financial Services Branch of the Financial Services and the Treasury Bureau on establishing a policy holders’ protection scheme.

⁶⁷³ Section 3 of, and Part 2 of Schedule 1 to, the Insurance Ordinance (Cap. 41).

⁶⁷⁴ Section 2(1) of the Insurance Ordinance (Cap. 41).

⁶⁷⁵ Section 81A of the Banking Ordinance (Cap. 155) and the Banking (Exposure Limits) Rules (Cap. 155S) generally.

⁶⁷⁶ Paragraph 1.1.3 of module CR-G-9 (Exposures to Connected Parties) of the HKMA’s Supervisory Policy Module (13 December 2024), see brdr.hkma.gov.hk/eng/doc-ldg/docId/getPdf/20241227-6-EN/CR-G-9.pdf.

⁶⁷⁷ Rule 87(c) of the Banking (Exposure Limits) Rules (Cap. 155S).

⁶⁷⁸ Rule 87(a) of the Banking (Exposure Limits) Rules (Cap. 155S).

⁶⁷⁹ Rule 87(b) of the Banking (Exposure Limits) Rules (Cap. 155S).

- (b) a firm, partnership, or non-listed company in which a relative of a director or controller of the bank is interested as a director, partner, manager, or agent; and
- (c) a natural person, firm, partnership, or non-listed company to whom the bank has provided a financial facility where a relative of a director or controller of the bank is a guarantor of the facility.⁶⁸⁰

24.12 “Relative” includes a person’s spouse; a parent, step-parent, adoptive parent, brother, or sister of person’s spouse, and a cohabitee.⁶⁸¹ “Spouse” is not defined. “Cohabitee” means a natural person who is in a cohabitation relationship with another natural person, and “cohabitation relationship” means a relationship between two natural persons (regardless of their gender) who live together as a couple in an intimate relationship.⁶⁸²

24.13 These limits therefore apply to a wide array of individuals linked to a bank through opposite-sex marriages, but only to the cohabitee in a cohabitation relationship. They do not extend to a civil partner or same-sex spouse if they do not reside together.

24.14 Directors and employees of banks are also subject to special rules by virtue of their directorship or employment. In particular, these individuals commit a criminal offence if they procure or endeavour to procure that their bank incurs an obligation or liability in exchange for a benefit or advantage for themselves or their relatives.⁶⁸³ This offence therefore covers benefits or advantages for a bank director’s or employee’s opposite-sex spouse, but benefits or advantages for a bank director’s or employee’s civil partner, cohabitee, or same-sex spouses are not affected. This may make it more difficult for the Government to prosecute individuals in alternative relationships for this conduct.

Professional investors

24.15 Several statutory protections for investors do not apply, or apply differently, where a firm regulated by the Securities and Futures Commission deals with a professional investor (**PI**). For example, a firm can make unsolicited calls to a PI,⁶⁸⁴ does not need to renew PIs’ standing authorities for client securities and client money every 12 months,⁶⁸⁵ and can opt out of providing contract notes, statements of account, and/or receipts to PIs.⁶⁸⁶

24.16 PIs include individuals who have a portfolio of not less than HK\$8 million.⁶⁸⁷ In determining whether an individual meets this threshold, a firm can look at, among other things, a portfolio on a joint account with the individual’s associate and the individual’s share of a portfolio on a joint account with one or more persons other than the individual’s associate.⁶⁸⁸

24.17 In this context, “associate” means an individual’s spouse or child.⁶⁸⁹ As a result, for the purposes of meeting the HK\$8 million threshold, a regulated firm can assess the entirety of a portfolio a person jointly holds with his/her opposite-sex spouse, but can only look at a person’s own share of a portfolio jointly held with

⁶⁸⁰ Rule 85(1) of the Banking (Exposure Limits) Rules (Cap. 155S).

⁶⁸¹ Rule 85(1) of the Banking (Exposure Limits) Rules (Cap. 155S).

⁶⁸² Rule 85(4) of the Banking (Exposure Limits) Rules (Cap. 155S).

⁶⁸³ Section 124 of the Banking Ordinance (Cap. 155).

⁶⁸⁴ Section 174(2)(a) of the Securities and Futures Ordinance (Cap. 571).

⁶⁸⁵ Section 4(2) of the Securities and Futures (Client Securities) Rules (Cap. 571H); and Section 8(2) of the Securities and Futures (Client Money) Rules (Cap. 571I).

⁶⁸⁶ Section 3(2) of the Securities and Futures (Contract Notes, Statements of Account, and Receipts) Rules (Cap. 571Q).

⁶⁸⁷ Section 5(1) of the Securities and Futures (Professional Investor) Rules (Cap. 571D).

⁶⁸⁸ Section 5(2) of the Securities and Futures (Professional Investor) Rules (Cap. 571D).

⁶⁸⁹ Section 2 of the Securities and Futures (Professional Investor) Rules (Cap. 571D).

his/her civil partner, cohabitee, or same-sex spouse. On that basis, persons in an opposite-sex marriage are favoured when assessing whether the PI threshold has been met.

Licensed corporations' financial resources

24.18 A corporation licensed for certain types of regulated activity under the Securities and Futures Ordinance must maintain liquid capital exceeding its ranking liabilities.⁶⁹⁰ When assessing its ranking liabilities, a corporation licensed for Type 1 or Type 8 regulated activity must add together and include the amounts receivable from: (a) a margin client; (b) that client's spouse (if he/she is a margin client); and (c) a corporation (if it is a margin client) in which the margin client (with or without his/her spouse) controls 35% or more of the voting rights, or exceeds 10% of the aggregate amount receivable from all margin clients by that licensed corporation.⁶⁹¹ This means licensed corporations are required to aggregate amounts receivable from a margin client and his/her opposite-sex spouse (and their related corporations), but not his/her civil partner, cohabitee, or same-sex spouse (or their related corporations), who is also a margin client.

Investor protections

24.19 The Securities and Futures Ordinance regulates collective investment schemes (e.g. unit trusts, mutual funds, and exchange-traded funds (i.e. ETFs)) and structured products, among other products. The definitions of these products provide exceptions based on relationship status:

- (a) a "collective investment scheme" does not include such a scheme under which each of the participating persons is a bona fide employee or former employee of a corporation in the same group of companies as the person operating the arrangements, or (among others) a spouse of the employee or former employee,⁶⁹² and
- (b) a "structured product" does not include a derivative: (i) linked to the securities of a corporation or a related corporation; and (ii) issued by the corporation only to a bona fide employee or former employee of the corporation or a related corporation, or (among others) a spouse of the employee or former employee.⁶⁹³

24.20 In essence, these products are not regulated where they are for the benefit of the employees of a corporate group and their opposite-sex spouses, but will be regulated if extended to employees and their civil partners, cohabitantes, or same-sex spouses who hold these products.

24.21 The terms "collective investment scheme", "structured product", "securities" (included because "securities" includes interests in collective investment schemes and structured products),⁶⁹⁴ and "financial product" (included because "financial product" includes collective investment schemes, structured products, and securities)⁶⁹⁵ appear in approximately 150 provisions of the Securities and Futures Ordinance. Where these terms are used in the context of rights and obligations, the relevant provisions apply differently, depending on a person's relationship status. As examples:

- (a) A licence is required to carry on business in a regulated activity, which includes dealing in "securities".⁶⁹⁶ No licence is required to deal in interests in a collective investment scheme that falls within either of the above exceptions, but a licence is required to deal in interests in a

⁶⁹⁰ Securities and Futures (Financial Resources) Rules (Cap. 571N), generally.

⁶⁹¹ Section 42 of the Securities and Futures (Financial Resources) Rules (Cap. 571N).

⁶⁹² Paragraph (iii) of the definition of "collective investment scheme" in Section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571).

⁶⁹³ Section 2(1) of, and Paragraph 1A(2) of Part 1 of Schedule 1 to, the Securities and Futures Ordinance (Cap. 571).

⁶⁹⁴ Section 2(1) of, and Paragraph 1 of Part 1 of Schedule 1 to, the Securities and Futures Ordinance (Cap. 571).

⁶⁹⁵ Section 2(1) of, and Paragraph 1 of Part 1 of Schedule 1 to, the Securities and Futures Ordinance (Cap. 571).

⁶⁹⁶ Section 114 of, and Parts 1 and 2 of Schedule 5 to, the Securities and Futures Ordinance (Cap. 571).

collective investment scheme whose participants include employees' civil partners, cohabittees, or same-sex spouses.

(b) It is an offence to make a fraudulent or reckless misrepresentation for the purpose of inducing another person to enter into or offer to enter into an agreement to acquire, dispose of, subscribe for, or underwrite "securities" or a "structured product".⁶⁹⁷ A person who relies on such a misrepresentation can also bring a claim for any pecuniary loss suffered as a result of his/her reliance.⁶⁹⁸ This offence and the ability to bring a claim do not apply to products that fall within either of the above exceptions. This, somewhat surprisingly, means that employees' civil partners, cohabittees, or same-sex spouses may enjoy a greater level of investor protection when compared to their counterparts in opposite-sex marriages.

Mandatory provident fund (MPF) schemes and occupational retirement (ORSO) schemes

24.22 An application for the registration of a provident fund scheme as an employer-sponsored scheme can only be made by, among others, two or more natural persons who are approved trustees or have applied for approval.⁶⁹⁹ At least one of the two must be an independent trustee.⁷⁰⁰ A person is not an independent trustee if he/she is a close relative of the employer or an associate of the employer.⁷⁰¹

24.23 Related to this, a company may only apply for approval as a trustee in relation to MPF schemes if at least one of its directors is an independent director.⁷⁰² A director is not an independent director if he/she is a close relative of any associate of the company.⁷⁰³

24.24 Both requirements concern a person's "close relative". That term includes his/her spouse or a former spouse and certain relatives of his/her spouse or former spouse.⁷⁰⁴ A person's "spouse" includes a person of the opposite sex with whom the person is cohabiting in a bona fide domestic relationship as man and wife.⁷⁰⁵ An "associate" of a company includes an officer of the company and his/her close relatives.⁷⁰⁶

24.25 These provisions therefore disqualify a person from being an independent director or independent trustee based on his/her or others' opposite-sex marriage (and potentially opposite-sex cohabitation relationships); however, civil partnerships and same-sex marriages and cohabitation relationships are disregarded. By disregarding these other forms of relationships, the law permits persons connected by those relationships to take up these roles, notwithstanding that their independence may equally be questioned.

24.26 Similar provisions apply in relation to occupational retirement schemes:

(a) a registered ORSO scheme governed by a trust must have at least one trustee that is not an associate of the relevant employer (unless the trustee is a registered trust company);⁷⁰⁷

⁶⁹⁷ Section 107 of the Securities and Futures Ordinance (Cap. 571).

⁶⁹⁸ Section 108 of the Securities and Futures Ordinance (Cap. 571).

⁶⁹⁹ Section 21(1)(b) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485).

⁷⁰⁰ Section 21(1)(b) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485).

⁷⁰¹ Section 23(5) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485A).

⁷⁰² Section 20(2) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485).

⁷⁰³ Section 9(e) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485A).

⁷⁰⁴ Section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485).

⁷⁰⁵ Section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485).

⁷⁰⁶ Section 2(1) of, and Paragraph 2 of Part 1 of Schedule 8 to, the Mandatory Provident Fund Schemes Ordinance (Cap. 485).

⁷⁰⁷ Sections 25(1)(b) and (2) of the Occupational Retirement Schemes Ordinance (Cap. 426).

- (b) anything required to be done in respect of an ORSO scheme under the Occupational Retirement Schemes Ordinance by an auditor, actuary, or solicitor, must be done by such a person who is not an associate of the relevant employer;⁷⁰⁸ and
- (c) a registered ORSO scheme is prohibited from lending money to an associate of the relevant employer.⁷⁰⁹

24.27 An “associate” of an employer includes his/her spouse, or if the employer is a body corporate, the spouse of any director of the body corporate and the spouse of any director of a group company of that body corporate.⁷¹⁰ “Spouse” is not defined.

24.28 These provisions therefore disqualify a person from performing a particular role for, or borrowing money from, an ORSO scheme based on his/her opposite-sex marriage. Alternative relationships are not addressed in the legislation, permitting persons in these relationships to (a) act in roles that require independence and an absence of conflicts of interest (when they may not be independent and may be conflicted due to their relationship), and (b) potentially obtain scheme assets in the form of a loan.

Public dance halls and dancing schools

24.29 Dancing schools and public dance halls in Hong Kong require a licence.⁷¹¹ The Secretary for Home Affairs can refuse to renew a licence or can revoke a licence if certain requirements are not complied with.⁷¹²

24.30 Among other requirements, no persons other than the relevant licensee, members of his family, his agent, or watchman are permitted to sleep at a dancing school or public dance hall.⁷¹³ This means a person’s licence to operate a dancing school or public dance hall may be revoked if his/her same-sex spouse, civil partner, or cohabitee (but not his/her opposite-sex spouse) sleeps in the school or dance hall.⁷¹⁴

Controllers of regulated persons

24.31 In many areas, the law⁷¹⁵ requires the controllers⁷¹⁶ of a person applying to be a regulated person to be fit and proper before the licence or registration is granted. The controllers must remain fit and proper, and new controllers are usually required to be approved by the Government or the statutory body that regulates the relevant sector. Failure to comply with these requirements can lead to action against the controller and/or the relevant regulated person, such as its licence or registration being suspended or revoked. In some cases, there are also restrictions on who can be a controller of a regulated person.⁷¹⁷

24.32 A controller is typically defined by reference to the amount of voting power a person, either alone or with an associate, exercises in relation to a regulated person. The greater the voting power collectively held, the more likely it is that a person is a controller. The controller regimes for: (a) holders of horse betting, football betting, and lotteries licences; (b) holders of various broadcasting licences; (c) authorised insurers; (d) designated insurance holding companies; and (e) licensed corporations under the Securities and

⁷⁰⁸ See Sections 68(3)(c) and 69(1)(b) of the Occupational Retirement Schemes Ordinance (Cap. 426).

⁷⁰⁹ Section 27(2)(b) of the Occupational Retirement Schemes Ordinance (Cap. 426).

⁷¹⁰ Section 2(1) of the Occupational Retirement Schemes Ordinance (Cap. 426).

⁷¹¹ Section 4 of the Miscellaneous Licences Ordinance (Cap. 114).

⁷¹² Regulation 7 of the Miscellaneous Licences Regulations (Cap. 114A).

⁷¹³ Regulations 64 and 114 of the Miscellaneous Licences Regulations (Cap. 114A).

⁷¹⁴ Regulations 7 and 64 of the Miscellaneous Licences Regulations (Cap. 114A).

⁷¹⁵ For example, the Betting Duty Ordinance (Cap. 108), the Broadcasting Ordinance (Cap. 562), the Insurance Ordinance (Cap. 41), and the Securities and Futures Ordinance (Cap. 571).

⁷¹⁶ Sometimes referred to as a “substantial shareholder”, particularly in the Securities and Futures Ordinance (Cap. 571) and the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485A).

⁷¹⁷ For example, see Section 2(1) of, and Paragraph 4 of Part 2 of Schedule 1 to, the Broadcasting Ordinance (Cap. 562).

Futures Ordinance, define an “associate” as including a person’s spouse,⁷¹⁸ wife,⁷¹⁹ and/or husband.⁷²⁰ “Spouse”, “wife”, and “husband” are not defined for these regimes.

24.33 These regimes therefore capture the combined voting power of a person and his/her opposite-sex spouse but disregard the voting power exercised by a person’s civil partner, cohabitee, or same-sex spouse. This may allow individuals in alternative relationships to avoid being controllers (and the requirements that follow) where their counterparts in opposite-sex marriages would be controllers.

24.34 Exceptionally, the controller regime for approved trustees for MPF schemes looks at a person’s voting power, alone or with a close relative.⁷²¹ The definition of a “close relative” is discussed above in relation to MPF schemes. This difference means the controller regime for approved trustees is slightly broader than others in that it may capture the combined voting power of a person and his/her opposite-sex cohabitee (if they live as man and wife).

Anti-money laundering

24.35 Financial institutions⁷²² and designated non-financial businesses and professions⁷²³ in Hong Kong are required to conduct customer due diligence when establishing business relationships with their customers and at certain points throughout these relationships.⁷²⁴ Special requirements apply where these service providers deal with politically exposed persons and former politically exposed persons.⁷²⁵

24.36 A politically exposed person includes (a) an individual who is or has been entrusted with a prominent public function in a place outside of Hong Kong (**public official**); (b) a spouse or partner of a public official; and (c) a spouse or partner of a child of a public official.⁷²⁶ “Spouse” is not defined. A person is a “partner” of an individual if the person is considered by the law of the place where the person and the individual live together as equivalent to a spouse of the individual.⁷²⁷

⁷¹⁸ Section 2(1) of, and Paragraph 1(1) of Part 1 of Schedule 1 to, the Broadcasting Ordinance (Cap. 562) and Section 2(1) of, and Paragraph 1 of Part 1 of Schedule 1 to, the Securities and Futures Ordinance (Cap. 571).

⁷¹⁹ Section 6B(1) of the Betting Duty Ordinance (Cap. 108); and Sections 9(4)(a) and 95A(1)(a) of the Insurance Ordinance (Cap. 41).

⁷²⁰ Section 6B(1) of the Betting Duty Ordinance (Cap. 108); and Sections 9(4)(a) and 95A(1)(a) of the Insurance Ordinance (Cap. 41).

⁷²¹ Sections 42D(1) and 42A(2) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485A), and Section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485).

⁷²² In this context, financial institutions means: (a) authorised institutions, (b) licensed corporations, (c) authorised insurers, (d) licensed individual insurance agents, (e) licensed insurance agencies (f) licensed insurance broker companies, (g) licensed money service operators; (h) the Postmaster General; (i) the holders of a stored value facility licence and (j) licensed virtual asset service providers; see Section 2(1) of, and Paragraph 1 of Part 2 of Schedule 1 to, the Anti-money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615).

⁷²³ The designated non-financial businesses and professions are: (a) accounting professionals; (b) estate agents; (c) legal professionals; (d) licensed trust or company service providers; and (e) a registered Category B dealer in precious metals and stones; see Section 2(1) of, and Paragraph 1 of Part 2 of Schedule 1 to, the Anti-money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615).

⁷²⁴ Sections 5 and 5A of, and Paragraph 3 of Part 2 of Schedule 2 to, the Anti-money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615).

⁷²⁵ Sections 5 and 5A of, and Paragraphs 5(3) and 10 of Part 2 of Schedule 2 to, the Anti-money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615).

⁷²⁶ Sections 5 and 5A of, and Paragraph 1(1) of Part 1 of Schedule 2 to, the Anti-money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615).

⁷²⁷ Sections 5 and 5A of, and Paragraph 1(2) of Part 1 of Schedule 2 to, the Anti-money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615).

24.37 A former politically exposed person includes (a) an individual who, being a politically exposed person, has been but is not currently entrusted with a prominent public function in a place outside Hong Kong; (b) a spouse or partner of such a person; and (c) a spouse or partner of a child of such a person.⁷²⁸ “Spouse” and “partner” are not defined.⁷²⁹

24.38 As such, Hong Kong’s anti-money laundering framework is less stringent in monitoring the activities of public officials’ civil partners, cohabittees, and same-sex spouses. This means the Hong Kong financial system is potentially exposed to greater risk of financial crime than would otherwise be the case if these relationships were recognised.

Public offers

24.39 Public offers of shares, debentures, and other securities are restricted under Hong Kong law. In particular:

- (a) any document containing an offer of shares or debentures must contain certain prescribed information and be registered with the Registrar of Companies;⁷³⁰ and
- (b) any advertisement, invitation, or document containing an invitation to the public to enter into or offer to enter into an agreement to acquire, dispose of, subscribe for, or underwrite securities must be authorised by the Securities and Futures Commission.⁷³¹

24.40 These requirements do not apply to, among others, an offer of:

- (a) shares or debentures by a company that is limited to its or its group members’ qualifying persons.⁷³² “Qualifying persons” means a current or former director, employee, officer, and consultant, and their dependants. “Dependants” expressly includes a person’s wife or husband, but not his/her civil partner, cohabittee, or same-sex spouse;⁷³³
- (b) interests in a collective investment scheme under which each of the participating persons is a bona fide employee or former employee of a corporation in the same group of companies as the person operating the arrangements, or (among others) a spouse of the employee or former employee;⁷³⁴ or
- (c) a derivative: (i) linked to the securities of a corporation or a related corporation; and (ii) issued by the corporation only to a bona fide employee or former employee of the corporation or a related corporation, or (among others) a spouse of the employee or former employee.⁷³⁵

⁷²⁸ Sections 5 and 5A of, and Paragraph 1(1) of Part 1 of Schedule 2 to, the Anti-money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615).

⁷²⁹ The definition of “partner” in Paragraph 1(2) of Part 1 of Schedule 2 to the Anti-money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) is limited to “paragraph (b) of the definition of politically exposed person in subsection (1)” and therefore should not apply to the definition of “former politically exposed person”. No other provision in that Schedule clarifies the meaning of “partner” for a “former politically exposed person”.

⁷³⁰ Parts II and XII of the Companies (Winding up and Miscellaneous Provisions) Ordinance (Cap. 32).

⁷³¹ Section 103 of the Securities and Futures Ordinance (Cap. 571).

⁷³² Paragraph (b)(ii) of the definition of “prospectus” in Section 2(1) of the Companies (Winding up and Miscellaneous Provisions) Ordinance (Cap. 32) and Section 103(2)(ga) of the Securities and Futures Ordinance (Cap. 571).

⁷³³ Section 2(1) of, and Part 4 of the Seventeenth Schedule to, the Companies (Winding up and Miscellaneous Provisions) Ordinance (Cap. 32).

⁷³⁴ Paragraph (b)(iii) of the definition of “collective investment scheme” in Section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571), as referenced in Section 2(1) of the Ordinance.

⁷³⁵ Section 2(1) of, and Paragraph 1A(2) of Part 1 of Schedule 1 to, the Securities and Futures Ordinance (Cap. 571).

24.41 These exemptions therefore apply to offers of these products to employees' opposite-sex spouses. However, employers wishing to extend their employee benefit schemes or employee share schemes to benefit the civil partners, cohabitantes, and same-sex spouses of their employees cannot rely on these exemptions and must comply with the above statutory requirements unless another exemption is available. In the event employers are unable or unwilling to do so, these schemes cannot be made available to their employees' civil partners, cohabitantes, or same-sex spouses.

25. TAX^{736 737}

25.1 This category covers the levying of tax in Hong Kong, including salaries tax, profits tax, stamp duty, motor vehicle first registration tax, and air passenger departure tax.

RELATIONSHIP	RECOGNITION
Opposite-sex marriage	Recognised
Same-sex marriage	Recognised for tax governed by the Inland Revenue Ordinance and Stamp Duty Ordinance (e.g. salaries tax, profits tax, double taxation arrangements, and stamp duty)
Opposite-sex civil partnership	Not recognised
Same-sex civil partnership	Not recognised
Opposite-sex cohabitation relationship	Not recognised
Same-sex cohabitation relationship	Not recognised

25.2 On its face, the primary tax legislation in Hong Kong, the Inland Revenue Ordinance, provides that:

- (a) “marriage” means:
 - (i) any marriage recognised by the law of Hong Kong; or
 - (ii) any marriage, whether or not so recognised, entered into outside Hong Kong according to the law of the place where it was entered into and between persons having the capacity to do so;
- (b) “married” is to be construed accordingly;
- (c) “spouse” means a husband or a wife; and
- (d) “husband” and “wife” mean a married man and a married woman, respectively, whose marriage falls within the above definitions.⁷³⁸

25.3 However, following the decision of the Court of Final Appeal in *Leung Chun Kwong v Secretary for the Civil Service and Another*⁷³⁹ and the confirmation provided by the Inland Revenue Department to the Law Society of Hong Kong with respect to same-sex marriages under the Stamp Duty Ordinance:⁷⁴⁰

- (a) the second limb of the definition of “marriage” is to be read as “any marriage, whether or not so recognised, entered into outside Hong Kong according to the law of the place where it was entered into and between persons having the capacity to do so, provided where the persons are of the same sex and such a marriage between them would have been a marriage under the [Inland

⁷³⁶ Estate duty was abolished in Hong Kong on 11 February 2006 pursuant to the Revenue (Abolition of Estate Duty) Ordinance 2005. The Estate Duty Ordinance (Cap. 111) remains effective but is only applicable to and imposes estate duty on the estate of persons who passed away before 14 July 2005. We have therefore not conducted an analysis on the provisions of the Estate Duty Ordinance (Cap. 111).

⁷³⁷ Our analysis of the Inland Revenue Ordinance (Cap. 112) in this section is limited to all years of assessment commencing on or after 1 April 2024, subject to any future amendments. Different rules, which are not considered in this report, apply to earlier years of assessment.

⁷³⁸ Section 2(1) of the Inland Revenue Ordinance (Cap. 112).

⁷³⁹ [2019] HKCFA 19 and [2019] HKCFA 34.

⁷⁴⁰ See section 1 of this report.

Revenue Ordinance] but for the fact only that they are persons of the same sex, they shall be deemed for the purposes of such a marriage to have the capacity to do so”;

- (b) for the purposes of the Inland Revenue Ordinance more broadly:
 - (i) “husband and wife” must be read as “a married person and his or her spouse”;
 - (ii) “not being a wife living apart from her husband” shall be read as “not being a spouse living apart from the married person”; and
 - (iii) “either the husband or wife” shall be read as “either the married person or his or her spouse”; and
- (c) a same-sex marriage is a valid marriage for the purposes of the Stamp Duty Ordinance.

Joint election of personal assessment

25.4 Individual taxpayers subject to salaries tax, profits tax, and/or property tax may elect for personal assessment for the purposes of reducing overall tax payable.⁷⁴¹

25.5 An individual and his/her spouse may jointly elect for personal assessment if: (a) they are married and not living apart; (b) they both have assessable income; and (c) either or both of them is/are individually eligible to elect for personal assessment.⁷⁴² Joint election for personal assessment is therefore only available to opposite- or same-sex spouses; civil partners and cohabittees can only elect for personal assessment on an individual basis.

25.6 Additionally, if an individual or his/her spouse is chargeable to salaries tax, the individual cannot elect for personal assessment on an individual basis; he/she can only jointly elect for personal assessment with his/her spouse.⁷⁴³ This limitation applies to opposite-sex or same-sex spouses but not civil partners or cohabittees.

Salaries tax scope

25.7 Salaries tax is charged in respect of a person’s income arising in or derived from Hong Kong from (a) any office or employment of profit and (b) any pension.⁷⁴⁴ In computing a person’s income, any amount received by way of periodical payments in the nature of alimony or maintenance by a person from his/her spouse or former spouse is excluded.⁷⁴⁵ This excludes alimony and maintenance, etc. from an opposite- or same-sex spouse, but not similar payments from a civil partner or cohabittee.

Joint assessment of salaries tax

25.8 Spouses can elect to be jointly assessed to salaries tax where they meet certain requirements.⁷⁴⁶ Where this election is made, their income, allowances, and deductions are aggregated, which may result in a reduction of tax liability in some cases. This election is only available to opposite- or same-sex spouses; civil partners and cohabittees must be assessed individually.

⁷⁴¹ Section 41(1) of the Inland Revenue Ordinance (Cap. 112).

⁷⁴² Section 41(1A) of the Inland Revenue Ordinance (Cap. 112).

⁷⁴³ Section 41(1B) of the Inland Revenue Ordinance (Cap. 112).

⁷⁴⁴ Section 8(1) of the Inland Revenue Ordinance (Cap. 112).

⁷⁴⁵ Section 8(2)(i) of the Inland Revenue Ordinance (Cap. 112).

⁷⁴⁶ Section 10(2) of the Inland Revenue Ordinance (Cap. 112).

Allowances for salaries tax and personal assessment

25.9 If a person is assessed to salaries tax or has elected for personal assessment, he/she is entitled to a basic allowance⁷⁴⁷ and may be eligible for alternative or other allowances that would reduce his/her total assessable income, provided certain conditions are satisfied.⁷⁴⁸ In particular:

- (a) A person who is married can be granted a married person's allowance (HK\$264,000) rather than the basic allowance (HK\$132,000).⁷⁴⁹ This is only available to opposite- and same-sex spouses; civil partners and cohabittees can each only be granted a basic allowance.
- (b) A person can be granted the allowance in column A up to the amount(s) in column B in respect of each person in column C (among others):

COLUMN A	COLUMN B	COLUMN C
Dependent parent ⁷⁵¹	HK\$50,000	Spouse's dependent parents
Dependent grandparent ⁷⁵²	HK\$50,000	Spouse's dependent grandparents
Dependent brother ⁷⁵³	HK\$37,500	Spouse's unmarried dependent brothers
Dependent sister ⁷⁵⁴	HK\$37,500	Spouse's unmarried dependent sisters
Disabled dependant ⁷⁵⁵	HK\$75,000	Spouse and the people in the four rows above, if eligible to claim an allowance under the Disability Allowance Scheme
Child ⁷⁵⁶	HK\$130,000 An additional one-off child allowance of HK\$130,000 will be granted in the year of assessment in which the child is born.	Spouse's unmarried dependent children

The above can only be granted to opposite- or same-sex spouses; civil partners, and cohabittees are not eligible for these allowances in respect of each other's relatives.

- (c) A person can be granted a single parent allowance (HK\$132,000) if he/she: (i) has taken sole or predominant care of his/her child; and (ii) is entitled to be granted a child allowance, unless he/she at any time during the year of assessment was married and not living apart from his/her spouse.⁷⁵⁷ This allowance is not available to an opposite- or same-sex spouse (unless they live apart) but can be granted to a civil partner or cohabitee.

25.10 As such, couples in civil partnerships or cohabitee relationships are generally eligible for fewer allowances than opposite- or same-sex spouses, and as a result may be liable to pay more in salaries tax. For example, for a couple (Z and Y) where only Z works, the couple has no other income, and the couple live with and

⁷⁴⁷ Section 28 of the Inland Revenue Ordinance (Cap. 112).

⁷⁴⁸ Part 5 of the Inland Revenue Ordinance (Cap. 112).

⁷⁴⁹ Section 29 of, and Schedule 4 to, the Inland Revenue Ordinance (Cap. 112).

⁷⁵⁰ Section 27 of, and Schedule 4 to, the Inland Revenue Ordinance (Cap. 112).

⁷⁵¹ Section 30 of the Inland Revenue Ordinance (Cap. 112).

⁷⁵² Section 30A of the Inland Revenue Ordinance (Cap. 112).

⁷⁵³ Section 30B of the Inland Revenue Ordinance (Cap. 112).

⁷⁵⁴ Section 30B of the Inland Revenue Ordinance (Cap. 112).

⁷⁵⁵ Section 31A of the Inland Revenue Ordinance (Cap. 112).

⁷⁵⁶ Section 31 of the Inland Revenue Ordinance (Cap. 112).

⁷⁵⁷ Section 32 of, and Schedule 4 to, the Inland Revenue Ordinance (Cap. 112).

financially support: (a) Y's parents who are both in their 80s; and (b) Y's minor biological child from a previous relationship:

- (i) If Z and Y are opposite- or same-sex spouses, Z can claim allowances totalling up to HK\$494,000.⁷⁵⁸
- (ii) If Z and Y are civil partners, or cohabittees, Z can only claim the basic allowance of HK\$132,000.⁷⁵⁹
- (iii) The difference of HK\$362,000, if taxed at the highest progressive salaries tax bracket (17%), means Z would pay HK\$61,540 more in tax where Z and Y are civil partners or cohabittees.

Deductions for salaries tax and personal assessment

25.11 A person assessed to salaries tax or who has elected for personal assessment may, unless he/she lives apart from his/her spouse, claim deductions for, among other things:

- (a) approved charitable donations by his/her spouse;⁷⁶⁰
- (b) up to HK\$100,000 in elderly residential care expenses paid by him/her or his/her spouse for each of his/her or his/her spouse's eligible parent(s) or grandparent(s);⁷⁶¹
- (c) up to HK\$8,000 in qualifying premiums paid by him/her or his/her spouse under a Voluntary Health Insurance Scheme policy, provided the person insured is, among others, the person, his/her spouse, or his/her spouse's child, sibling, or eligible parent or grandparent;⁷⁶² and
- (d) up to HK\$60,000 in qualifying annuity premiums paid by him/her, his/her spouse, or both of them, provided he/she, his/her spouse, or both of them are the policy holder and the annuitant.^{763 764}

25.12 These allow a person to deduct the above items paid by:

- (a) the person in relation to his/her opposite- or same-sex spouse and in some cases certain members of that spouse's family; or
- (b) his/her opposite- or same-sex spouse in relation to the person and in some cases certain members of the person's family.

25.13 A person cannot deduct the same payments made by the person's civil partner or cohabitee, or in relation to members of the civil partner's or cohabitee's family.

25.14 A person may also claim a deduction of up to HK\$100,000 for rents paid by him/her, his/her spouse, or both of them under a qualifying tenancy of any domestic premises, provided the premises are used as the person's place of residence.⁷⁶⁵ A person is able to claim this deduction in respect of rents paid by his/her opposite- or same-sex spouse, but not his/her civil partner or cohabitee.

⁷⁵⁸ This comprises: (a) the married person's allowance (HK\$264,000); (b) two dependent parent allowances (HK\$50,000 each); and (c) one child allowance (HK\$130,000) for a total of HK\$494,000.

⁷⁵⁹ This is the basic allowance (HK\$132,000).

⁷⁶⁰ Section 26C of the Inland Revenue Ordinance (Cap. 112).

⁷⁶¹ Section 26D of, and Schedule 3C to, the Inland Revenue Ordinance (Cap. 112).

⁷⁶² Section 26J of, and Schedule 3E to, the Inland Revenue Ordinance (Cap. 112).

⁷⁶³ An annuitant is an individual who is designated by the policy holder as being entitled to receive a regular payment during an annuity period under a policy; see Section 26N of the Inland Revenue Ordinance (Cap. 112).

⁷⁶⁴ Section 26O of, and Schedule 3F to, the Inland Revenue Ordinance (Cap. 112).

⁷⁶⁵ Section 26X of, and Schedule 3G to, the Inland Revenue Ordinance (Cap. 112).

25.15 This deduction is not available in certain circumstances, such as those in Column A, which results in the differential treatment in Column B:

COLUMN A	COLUMN B
The person's spouse has received housing benefits ⁷⁶⁶ (such as rent-free housing or rent reimbursement) from his/her employer. ⁷⁶⁷	A person may deduct rent paid where his/her civil partner or cohabitee has received housing benefits, but not where his opposite- or same-sex spouse has.
The rent is paid to an associate (including, among others, (a) a relative, ⁷⁶⁸ (b) a relative of a partner, ⁷⁶⁹ or (c) a corporation controlled by a relative) of the person or his/her spouse. ⁷⁷⁰	A person may deduct rent paid to (a) his/her civil partner or cohabitee, (b) the civil partner or cohabitee of his/her partner, or (c) a corporation controlled by his/her civil partner or cohabitee, but cannot do so where these relationships are instead opposite- or same-sex marriages.
The person's spouse is a legal and beneficial owner of any domestic premises. ⁷⁷¹	A person may deduct rent where his/her civil partner or cohabitee owns any domestic premises, but not where his/her opposite- or same-sex spouse owns such property.
The person's spouse is (a) a tenant under a tenancy held from the Hong Kong Housing Authority or the Hong Kong Housing Society, of a flat of the kind commonly known as public rental housing, or (b) authorised under such a tenancy to reside at that flat. ⁷⁷²	A person may deduct rent where his/her civil partner or cohabitee is (a) a tenant of public rental housing, or (b) authorised to live in public rental housing, but not where his/her opposite- or same-sex spouse has these statuses.
Under the tenancy, an option or a right to purchase the premises, or a right of pre-emption in respect of the premises, is conferred on the person's spouse. ⁷⁷³	A person may deduct rent where his/her civil partner or cohabitee has a right to purchase the premises or has a right of pre-emption in respect of the premises, but not where his/her opposite- or same-sex spouse has these rights.

25.16 Overall, these exceptions allow civil partners and cohabittees (and persons connected through these relationships) to enjoy a deduction for rent in circumstances where opposite- and same-sex spouses (and persons connected through these relationships) cannot.

25.17 A person may also claim a deduction of up to HK\$100,000 for expenses paid (a) by the person, his/her spouse (unless living apart), or both of them; and (b) for qualifying assisted reproductive services⁷⁷⁴ received by the person, his/her spouse, or both of them.⁷⁷⁵

⁷⁶⁶ The housing benefits do not need to be in respect of the same premises for which the deduction would be claimed; see Section 26ZA(1)(c) of the Inland Revenue Ordinance (Cap. 112).

⁷⁶⁷ Section 26ZA(1)(c) of the Inland Revenue Ordinance (Cap. 112).

⁷⁶⁸ This includes a spouse; see Section 26ZA(2) of the Inland Revenue Ordinance (Cap. 112).

⁷⁶⁹ This appears to be a reference to a partner in the context of the business structure known as a partnership.

⁷⁷⁰ Section 26ZA(1)(d) of the Inland Revenue Ordinance (Cap. 112).

⁷⁷¹ Section 26ZA(1)(e) of the Inland Revenue Ordinance (Cap. 112).

⁷⁷² Section 26ZA(1)(f) of the Inland Revenue Ordinance (Cap. 112).

⁷⁷³ Section 26ZA(1)(h) of the Inland Revenue Ordinance (Cap. 112).

⁷⁷⁴ These are services that are: (a) a reproductive technology procedure (other than obtaining gametes); (b) a gametes obtaining procedure; and (c) the handling, storing, or disposing of gametes or an embryo used or intended to be used in connection with a reproductive technology procedure. Deductions for (b) and (c) are only permitted where certain additional conditions are met; see Section 26ZF of the Inland Revenue Ordinance (Cap. 112).

⁷⁷⁵ Section 26ZG of, and Schedule 3H to, the Inland Revenue Ordinance (Cap. 112).

25.18 Since obtaining gametes (i.e. ova or sperm) is the only reproductive technology procedure permitted to be provided to persons who are not opposite-sex spouses:⁷⁷⁶

- (a) an opposite-sex spouse may claim this deduction in respect of expenses paid (i) by him/her, his/her spouse, or both of them; and (ii) for any qualifying assisted reproductive services received by him/her, his/her spouse, or both of them;
- (b) a same-sex spouse may only claim this deduction in respect of expenses paid (i) by him/her, his/her spouse, or both of them; and (ii) for obtaining gametes from him/her, his/her spouse, or both of them; and
- (c) a civil partner or cohabitee may only claim this deduction in respect of expenses he/she pays for obtaining gametes from him/herself.

25.19 A person may additionally claim a deduction of up to HK\$100,000 or HK\$120,000⁷⁷⁷ for home loan interest paid during a year of assessment.⁷⁷⁸ If a person has paid home loan interest, but has no income, property, or profits chargeable to tax, he/she may nominate his/her spouse to claim the deduction, provided they do not live apart.⁷⁷⁹ The ability to nominate is limited to a person's opposite- or same-sex spouse; civil partners and cohabittees are unable to nominate each other.

25.20 The above limitations on deductions are reflected in the rules allowing individuals to apply for holding over of payment of provisional salaries tax on specified grounds.⁷⁸⁰ For example, a person can apply for holding over on the ground that he/she or his/her spouse has paid or is likely to pay elderly residential care expenses over a certain amount.⁷⁸¹ This provides a valid ground in relation to payments by or payments likely to be made by a person's opposite- or same-sex spouse but not his/her civil partner or cohabitee.

Anti-avoidance of salaries tax

25.21 In 1995, Hong Kong's tax legislation was amended to counteract arrangements made to avoid salaries tax through the use of service companies and trusts.⁷⁸² As a result, remuneration for services provided by an individual that is paid or credited to, among others, (a) a corporation controlled by the individual and/or his/her associates; or (b) a trustee of a trust estate under which the individual or his/her associates is a beneficiary, is treated as being income derived from an employment of profit and therefore subject to salaries tax.⁷⁸³

25.22 An individual's "associates" include his/her relatives.⁷⁸⁴ "Relative" includes a person's spouse.⁷⁸⁵

25.23 These anti-avoidance provisions therefore apply to, and make subject to salaries tax, payments to a service company controlled by a person's opposite- or same-sex spouse or a trust under which a person's opposite- or same-sex spouse is a beneficiary. However, if a person's civil partner or cohabitee is connected with a service company or trust in the same way, these provisions would not apply.

⁷⁷⁶ See section 7 of this report.

⁷⁷⁷ The maximum basic deduction is HK\$100,000; an additional deduction of HK\$20,000 is available where, among other conditions, a person resides in Hong Kong with their child (born on or after 25 October 2023) for at least six continuous months during the year of assessment; see Section 26E of, and Schedule 3D to, the Inland Revenue Ordinance (Cap. 112).

⁷⁷⁸ Section 26E of, and Schedule 3D to, the Inland Revenue Ordinance (Cap. 112).

⁷⁷⁹ Section 26F of the Inland Revenue Ordinance (Cap. 112).

⁷⁸⁰ Section 63E(1) of the Inland Revenue Ordinance (Cap. 112).

⁷⁸¹ Section 63E(2)(bc) of the Inland Revenue Ordinance (Cap. 112).

⁷⁸² Paragraph 2 of the Inland Revenue Department's Departmental Interpretation and Practice Notes No. 25 (Revised in November 2011), ird.gov.hk/eng/pdf/dipn25.pdf.

⁷⁸³ Sections 8 and 9A of the Inland Revenue Ordinance (Cap. 112).

⁷⁸⁴ Section 9A(8) of the Inland Revenue Ordinance (Cap. 112).

⁷⁸⁵ Section 9A(8) of the Inland Revenue Ordinance (Cap. 112).

Profits tax⁷⁸⁶

25.24 Generally speaking, a taxpayer may deduct all outgoings and expenses (including salaries, interest,⁷⁸⁷ and certain contributions to retirement schemes)⁷⁸⁸ incurred in the production of chargeable profits, subject to certain prohibitions and limitations.⁷⁸⁹ However, a taxpayer cannot deduct:

- (a) salaries or other remuneration of his/her spouse, interest on capital or loans provided by his/her spouse, or a contribution made to a MPF scheme in respect of his/her spouse;⁷⁹⁰ or
- (b) rent paid to his/her spouse exceeding the assessable value of the rented property.⁷⁹¹

25.25 This prevents or limits a person from deducting these outgoings and expenses in respect of his/her opposite- or same-sex spouse but not his/her civil partner or cohabitee. A person in civil partnership or cohabitation relationship could, as a result, pay less profits tax.

25.26 A person's relationship status is also relevant to the profits tax treatment of, among other things, debt instruments,⁷⁹² aircraft leasing,⁷⁹³ ship leasing,⁷⁹⁴ ship agency,⁷⁹⁵ ship management,⁷⁹⁶ ship broking,⁷⁹⁷ intellectual property,⁷⁹⁸ regulatory capital security,⁷⁹⁹ non-resident persons,⁸⁰⁰ agents of non-resident persons,⁸⁰¹ special purpose vehicles (SPVs),⁸⁰² funds,⁸⁰³ the exhibition or use of video and sound recordings,⁸⁰⁴ life insurance business,⁸⁰⁵ capital expenditure on leased machinery and plant,⁸⁰⁶ and family offices.⁸⁰⁷ In these areas, opposite- and same-sex marriages are recognised but not civil partners or cohabitees.

Double taxation arrangements

25.27 The Hong Kong Government may enter into double taxation arrangements with the government of a territory outside Hong Kong with a view to providing relief from double taxation in relation to income and similar taxes. These arrangements can provide for distinct rules around, among other issues, how to determine income, profits, or gains to be attributed to Hong Kong-resident persons who have special relationships with persons resident in the territory outside Hong Kong.⁸⁰⁸ These rules have effect despite any conflicting legislation in Hong Kong.⁸⁰⁹

⁷⁸⁶ Profits tax is levied on "assessable profits" of corporations, partnerships, trustees, and bodies of persons carrying on any trade, profession, or business in Hong Kong. "Assessable profits" is not defined but is generally determined in accordance with generally accepted accounting principles, taking into account deductions such as outgoings and expenses incurred in the production of chargeable profits.

⁷⁸⁷ Section 16(1)(a) of the Inland Revenue Ordinance (Cap. 112).

⁷⁸⁸ Sections 16A, 16AA, and 17(1)(h) of the Inland Revenue Ordinance (Cap. 112).

⁷⁸⁹ Section 16(1) of the Inland Revenue Ordinance (Cap. 112).

⁷⁹⁰ Section 17(2) of the Inland Revenue Ordinance (Cap. 112).

⁷⁹¹ Section 16(1)(b) of the Inland Revenue Ordinance (Cap. 112).

⁷⁹² Sections 14A and 26A of the Inland Revenue Ordinance (Cap. 112).

⁷⁹³ Subdivision 4 of Division 2 of Part 4 of, the Inland Revenue Ordinance (Cap. 112).

⁷⁹⁴ Subdivision 5 of Division 2 of Part 4 of, and Schedule 17FA to, the Inland Revenue Ordinance (Cap. 112).

⁷⁹⁵ Subdivision 6 of Division 2 of Part 4 of, and Schedule 17FB to, the Inland Revenue Ordinance (Cap. 112).

⁷⁹⁶ Subdivision 7 of Division 2 of Part 4 of, and Schedule 17FC to, the Inland Revenue Ordinance (Cap. 112).

⁷⁹⁷ Subdivision 8 of Division 2 of Part 4 of, and Schedule 17FB to, the Inland Revenue Ordinance (Cap. 112).

⁷⁹⁸ Section 15F of the Inland Revenue Ordinance (Cap. 112).

⁷⁹⁹ Division 5 of Part 4 of the Inland Revenue Ordinance (Cap. 112).

⁸⁰⁰ Sections 20AC and 20AE of the Inland Revenue Ordinance (Cap. 112).

⁸⁰¹ Section 20AA of the Inland Revenue Ordinance (Cap. 112).

⁸⁰² Section 20AF of the Inland Revenue Ordinance (Cap. 112).

⁸⁰³ Sections 20AM and 20AN of the Inland Revenue Ordinance (Cap. 112).

⁸⁰⁴ Section 21A of the Inland Revenue Ordinance (Cap. 112).

⁸⁰⁵ Sections 22D and 23 of the Inland Revenue Ordinance (Cap. 112).

⁸⁰⁶ Section 39E of the Inland Revenue Ordinance (Cap. 112).

⁸⁰⁷ Section 40AV of, and Schedule 16E to, the Inland Revenue Ordinance (Cap. 112).

⁸⁰⁸ Section 49(1C) of the Inland Revenue Ordinance (Cap. 112).

⁸⁰⁹ Section 49(1C) of the Inland Revenue Ordinance (Cap. 112).

25.28 A person has a “special relationship” with another person if one of them is: (a) the other person’s spouse; (b) a relative of the other person; (c) a relative of the other person’s spouse; or (d) the spouse of a person in (b) or (c).⁸¹⁰ “Relative” is defined, but not in a way that includes a person’s civil partner or cohabitee.⁸¹¹

25.29 This framework therefore supports relief for persons in opposite- or same-sex marriages but not those in civil partnerships or cohabitation relationships. Civil partners and cohabitees may therefore be treated differently from opposite- and same-sex spouses where double taxation arrangements are concerned.

Information-gathering powers of the Commissioner of Inland Revenue

25.30 Where the Commissioner of Inland Revenue is of the opinion that a person has made an incorrect return or supplied false information having the effect of understating his/her income or profits chargeable to tax without reasonable excuse and not through an innocent oversight or omission, the Commissioner may require that person to furnish a statement containing particulars of his/her and his/her spouse’s assets, liabilities, expenditures/disbursements, and sums received.⁸¹² Similarly, a magistrate who is satisfied of the same facts may issue a warrant authorising the Commissioner to take possession and make copies of any documents of a person or his/her spouse.⁸¹³

25.31 These powers can only be exercised against the opposite- or same-sex spouse of a person who has made an incorrect return or supplied false information. Information and documents about or belonging to that person’s civil partner or cohabitee are not subject to these powers, which may make it more difficult for the Commissioner to investigate and prosecute, for example, tax evasion involving couples in civil partnerships or cohabitation relationships.

Stamp duty on immovable property and Hong Kong stock

25.32 Stamp duty is payable on the sale or transfer of immovable property (e.g. land, buildings, and flats) in Hong Kong and Hong Kong stock⁸¹⁴ (e.g. shares and bonds of Hong Kong companies denominated in Hong Kong dollars). Exceptionally, stamp duty is not payable on a transfer of immovable property or Hong Kong stock made in consideration of a marriage.⁸¹⁵ This exemption is limited to opposite- and same-sex marriages. Immovable property or Hong Kong stock transferred in consideration of a civil partnership or cohabitation relationship is subject to stamp duty.

Ad valorem stamp duty and buyer’s stamp duty on residential property⁸¹⁶

25.33 Ad valorem stamp duty is generally payable on the sale or transfer of immovable property in Hong Kong.⁸¹⁷ Ad valorem stamp duty is charged on two scales, Scale 1 and Scale 2, which are currently identical (HK\$100 to 4.25%).⁸¹⁸ The Scale 2 rates, which were previously lower than the Scale 1 rates, apply where, among other circumstances, two closely related people:

- (a) buy or have transferred to them a residential property, provided at least one of them is a Hong Kong permanent resident, each acts on his/her own behalf, and neither is a beneficial owner of any other residential property in Hong Kong;⁸¹⁹ or

⁸¹⁰ Section 49(1E) of the Inland Revenue Ordinance (Cap. 112).

⁸¹¹ Section 49(1F) of the Inland Revenue Ordinance (Cap. 112).

⁸¹² Section 51A of the Inland Revenue Ordinance (Cap. 112).

⁸¹³ Section 51B of the Inland Revenue Ordinance (Cap. 112).

⁸¹⁴ See Section 2(1) of the Stamp Duty Ordinance (Cap. 117) for the definition of “Hong Kong stock” and “stock”.

⁸¹⁵ Sections 27(4) and 29F(3) of the Stamp Duty Ordinance (Cap. 117).

⁸¹⁶ For simplicity, we have not considered the treatment of (a) exchanges of property, (b) situations where multiple agreements for sale are entered into before a conveyance on sale is executed, and (c) situations where the parties to an agreement for sale of a property differ from the parties to a conveyance of that property.

⁸¹⁷ Sections 29AI and 29BA of the Stamp Duty Ordinance (Cap. 117).

⁸¹⁸ Section 4(1) of, and Heads 1(1) and (1A) of the First Schedule to, the Stamp Duty Ordinance (Cap. 117).

⁸¹⁹ Sections 29AJ and 29BB of the Stamp Duty Ordinance (Cap. 117).

(b) buy/sell or transfer a residential property between each other, provided the buyer/transferee acts on his/her own behalf.⁸²⁰

25.34 In addition to ad valorem stamp duty, buyer's stamp duty is generally payable on the sale or transfer of residential property in Hong Kong.⁸²¹ The rate of buyer's stamp duty is currently 0%.⁸²²

25.35 Exemptions from buyer's stamp duty include where two closely related people:

- (a) buy or have transferred to them a residential property, provided at least one of them is a Hong Kong permanent resident and each acts on his/her own behalf;⁸²³ or
- (b) buy/sell or transfer a residential property between each other, provided the buyer/transferee acts on his/her own behalf.⁸²⁴

25.36 For the purposes of these stamp duties, two persons are "closely related" if, among others, they are each other's spouse.⁸²⁵

25.37 As such, in the event Scale 1 and Scale 2 diverge or the rate of buyer's stamp duty is increased above 0%, opposite- and same-sex spouses would be taxed differently from civil partners and cohabittees.

Special stamp duty on residential property

25.38 Special stamp duty is generally payable on the sale or transfer of residential property if it was acquired by the vendor on or after 20 November 2010 and is disposed of by the vendor within 24 or 36 months of his/her acquisition of the property.⁸²⁶ The rate of special stamp duty for residential property disposed of on or after 28 February 2024 is currently 0%; higher rates apply to disposals before that date.⁸²⁷

25.39 Special stamp duty does not need to be paid where property is transferred from the vendor to, among others, his/her spouse.⁸²⁸ This exemption only applies to transactions between opposite- or same-sex spouses. Transactions between civil partners or cohabittees are subject to special stamp duty.

Motor vehicles first registration tax

25.40 The Motor Vehicles (First Registration Tax) Ordinance imposes a tax to be paid on the first registration of certain motor vehicles. Under this Ordinance:

- (a) A warranty under which a person undertakes to check the condition of a vehicle, maintain parts or components, or repair or replace defective parts or components is a taxable benefit where provided by a registered distributor or an associated person of the registered person.⁸²⁹
- (b) When determining the cost element of the landed value of the motor vehicle upon which tax will be calculated, the importer of a motor vehicle must give the highest of: (i) the cost of purchase by him or her; (ii) the cost of purchase by an associated person within the six months prior to importation; or (iii) the cost to the importer who is the manufacturer or an associated person.⁸³⁰

⁸²⁰ Sections 29AL and 29BD of the Stamp Duty Ordinance (Cap. 117).

⁸²¹ Sections 29CB(1) and 29DB(1) of the Stamp Duty Ordinance (Cap. 117).

⁸²² Section 4(1) of, and Heads 1(1AAB) and (1C) of the First Schedule to, the Stamp Duty Ordinance (Cap. 117).

⁸²³ Sections 29CB(2)(b) and 29DB(2)(b) of the Stamp Duty Ordinance (Cap. 117).

⁸²⁴ Sections 29CB(2)(c) and 29DB(2)(c) of the Stamp Duty Ordinance (Cap. 117).

⁸²⁵ Section 29AD of the Stamp Duty Ordinance (Cap. 117).

⁸²⁶ Sections 29CA(1) and (2) and 29DA(1) and (2) of the Stamp Duty Ordinance (Cap. 117).

⁸²⁷ Section 4(1) of, and Heads 1(1AA) and (1B) of the First Schedule to, the Stamp Duty Ordinance (Cap. 117).

⁸²⁸ Sections 29CA(10) and 29DA(10) of the Stamp Duty Ordinance (Cap. 117).

⁸²⁹ Section 2(1) of the Motor Vehicles (First Registration Tax) Ordinance (Cap. 330).

⁸³⁰ Section 3B of the Motor Vehicles (First Registration Tax) Ordinance (Cap. 330).

- (c) A registered distributor must sign a declaration stating the published retail price of the motor vehicle and any optional accessory fitted or to be fitted to the vehicle within six months by the registered distributor or an associated person.⁸³¹
- (d) The registered distributor and an associated person must keep proper records of his/her distribution or sale of motor vehicles and the fitting of any accessory or provision of any taxable warranty within six months of the first registration.⁸³²

25.41 An “associated person” includes, where the person registered as an importer or distributor under the Ordinance is a natural person, a relative of the registered person, and a “relative” includes a spouse.⁸³³ As such, the above provisions apply differently to people in opposite-sex marriages compared to alternative relationships.

Air passenger departure tax

25.42 Subject to exemptions, every passenger intending to depart from Hong Kong by aircraft from Hong Kong International Airport or the heliport at the Hong Kong-Macau Ferry Terminal must pay an air passenger departure tax of HK\$120.⁸³⁴ The exemptions include:

- (a) passengers departing from Hong Kong by civilian aircraft who are (i) members of the Chinese People’s Liberation Army or are civilians sponsored by the Ministry of National Defence in the Central People’s Government and are present in Hong Kong with or in connection with the Hong Kong Garrison; and (ii) members of their families forming part of their households;⁸³⁵ and
- (b) passengers who are (i) consuls or consular staff (other than Chinese citizens or permanent residents of the Hong Kong Special Administrative Region), and (ii) members of their families forming part of their households.⁸³⁶

25.43 Only opposite-sex spouses may enjoy these exemptions, while civil partners, cohabitantes, and same-sex spouses are required to pay the departure tax.

⁸³¹ Section 4D of the Motor Vehicles (First Registration Tax) Ordinance (Cap. 330).

⁸³² Section 4FA of the Motor Vehicles (First Registration Tax) Ordinance (Cap. 330).

⁸³³ Section 2(1) of the Motor Vehicles (First Registration Tax) Ordinance (Cap. 330).

⁸³⁴ Sections 2 and 3 of, and Schedule 3 to, the Air Passenger Departure Tax Ordinance (Cap. 140).

⁸³⁵ Section 12(1) of, and Paragraph 5 of the Second Schedule to, the Air Passenger Departure Tax Ordinance (Cap. 140).

⁸³⁶ Section 12(1) of, and Paragraph 8(a) of the Second Schedule to, the Air Passenger Departure Tax Ordinance (Cap. 140).

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Appendix 1

SEARCH TERMS AND RESULTS

PART 1

INITIAL REVIEW POPULATION

SEARCH TERMS

bachelor% ⁸³⁷	marital
bachelour%	matrimon%
“civil partner”	relative%
“civil partners”	“related person”
cohabit%	“related persons”
dependant%	“substitute decision maker”
divorce%	spinster%
familial	spous%
families	surviv%
family	widow%
household%	wife%
husband%	wive%
marr%	

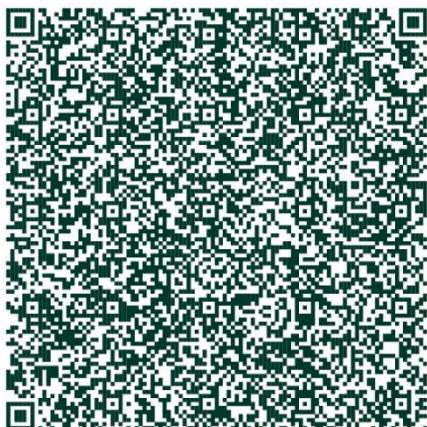
SEARCH STRING

marr% OR spous% OR husband% OR family OR families OR familial OR wife% OR wife% OR relative% OR surviv% OR household% OR matrimon% OR divorce% OR marital OR widow% OR spinster% OR bachelor% OR bachelour% OR cohabit% OR dependant% OR “substitute decision maker” OR “related person” OR “related persons” OR “civil partner” OR “civil partners”

⁸³⁷ % is a wildcard.

SEARCH RESULTS

QR code



Shortened URL <https://bit.ly/46AM3jx>

PART 2

ADDITIONAL REVIEW POPULATION

SEARCH TERMS

“next of kin”

SEARCH STRING

“next of kin”

SEARCH RESULTS

QR code



Shortened URL <https://bit.ly/46RomEE>

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