

ALLEN & OVERY

The Recognition and Treatment of Relationships under Hong Kong law

*A report by Allen & Overy commissioned by the
Equal Opportunities Commission*

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平等機會委員會
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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 May 2018, Allen & Overy was commissioned by the Equal Opportunities Commission (**EOC**) to identify and analyse Hong Kong legislation and certain Government policies in which a person's relationship status is a factor.¹

1.2 A summary of the results of our analysis is contained in this report.

EOC Discrimination Law Review

1.3 The EOC's March 2016 Discrimination Law Review reviewed all existing anti-discrimination laws in Hong Kong and recommended that the Government reform those laws.²

1.4 In particular, the EOC examined the anti-discrimination laws relating to marital status under the Sex Discrimination Ordinance³ and family status under the Family Status Discrimination Ordinance.⁴

1.5 The EOC's submissions highlighted that:

- (a) the protections against discrimination on the grounds of marital status and family status in these Ordinances only protect from discrimination persons who are married (ie opposite-sex spouses) and not couples in other forms of relationships;
- (b) there are many other areas of law and policy that discriminate on the grounds of marital status; and
- (c) there is no legal recognition of any other form of relationship other than opposite-sex marriage.

1.6 The EOC also made a number of recommendations relating to protections against discrimination on the basis of marital status and related issues under the Sex Discrimination Ordinance.⁵ In particular, the EOC recommended that the Government conduct comprehensive research and public consultation on the issues of discrimination and the related issue of possible legal recognition of heterosexual and homosexual cohabitation relationships in Hong Kong, including existing cohabitation relationships and same-sex marriages from overseas.

1.7 The EOC noted that any such consultation should:

- (a) consult on providing protection from discrimination for persons in cohabitation relationships in relation to the marital status protection under the Sex Discrimination Ordinance⁶, including the possible repeal, amendment, or addition of specific exceptions;
- (b) consider all other potentially discriminatory legislation and policies and whether it is appropriate to reform them; and
- (c) consider the possible different methods of recognising other forms of relationship, including coverage of heterosexual and homosexual relationships.⁷

1.8 The EOC also recommended that the Government conduct research and consult on the extension of protections under the Family Status Discrimination Ordinance⁸ to include persons caring for immediate family members in cohabitation relationships and caring for immediate family members of former spouses or former cohabitants.⁹

Changing attitudes regarding relationships

1.9 Attitudes in Hong Kong towards forms of relationships other than opposite-sex marriage have changed significantly over the past few decades.

1.10 Several studies have reported an increasing acceptance of cohabitation relationships.

1 This research has been conducted on a pro bono basis by Allen & Overy without any payment being made to Allen & Overy.

2 EOC Discrimination Law Review, Submissions to the Government, <http://www.eoc.org.hk/eoc/upload/DLR/2016330179502227490.pdf> (**EOC Submissions**).

3 Cap. 480.

4 Cap. 527.

5 Cap. 480.

6 Cap. 480.

7 See page 129 of the EOC Submissions.

8 Cap. 527.

9 See page 132 of the EOC Submissions.

- 1.11 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 at the time of the report 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”.¹⁰
- 1.12 Similarly, a survey carried out by the Family Council in 2017/18 found that fewer people opposed cohabitation over a period of seven years (2011 to 2017) and that young people “were more likely to accept” cohabitation with 49.1% of 15-34 year olds and 47% of 35-54 year olds accepting cohabitation without any intention of getting married.¹¹
- 1.13 At the same time, the numbers of persons in Hong Kong who have never been married has increased significantly over the last 25 years.¹²
- 1.14 In relation to same-sex relationships, a 2018 report by the Centre for Comparative and Public Law at HKU examined changes in public opinion by repeating a previous survey. It concluded that a growing number of people in Hong Kong support the protection of lesbian, gay, bisexual, transgender, and intersex rights, including rights for same-sex couples:
- (a) the majority (69%) of respondents were in favour of a law providing protection against discrimination on the grounds of sexual orientation (compared to 58% in 2013);
 - (b) nearly four-fifths (78%) of respondents agreed that same-sex couples should have at least some of the rights enjoyed by opposite-sex couples (compared to 73% in 2013); and
 - (c) more than half (50.4%) of respondents agreed with same-sex marriage (compared to 38% in 2013).¹³

Challenges before the Hong Kong Courts

- 1.15 There are several recent and ongoing cases before the Hong Kong Courts that have challenged or are challenging the lawfulness of various laws and policies as they apply to relationships other than opposite-sex marriage.
- 1.16 In July 2018, the Court of Final Appeal found the Director of Immigration had acted unlawfully in deciding that the same-sex civil partner of an eligible sponsor was not entitled to apply for a dependant visa.¹⁴ In a joint judgment, the Court rejected the Director’s argument that same-sex couples cannot be compared to opposite-sex spouses for the purposes of the Director’s immigration policy and found that the difference in treatment was not justified.
- 1.17 In June 2019, the Court of Final Appeal determined that (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 his husband.¹⁵ In a joint judgment, 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.¹⁶

10 Trends in family attitudes and values in Hong Kong, Professor Nelson Chow and Dr Terry Lum (August 2008), https://www.pico.gov.hk/doc/en/research_reports/20080822%20Trends%20in%20family%20attitudes%20and%20values%20in%20Hong%20Kong.pdf.

11 Family Survey 2017, Policy 21 Limited (March 2019), https://www.familycouncil.gov.hk/en/files/research/family_survey_2017.pdf.

12 Marriage and Divorce Trends in Hong Kong, 1991 to 2016, January 2018, Census and Statistics Department, <https://www.statistics.gov.hk/pub/B71801FB2018XXXXB0100.pdf>.

13 Support in Hong Kong for Same-sex Couples’ Rights Grew Over Four Years (2013-2017) Over Half of People in Hong Kong Now Support Same-Sex Marriage, Holning Lau, Charles Lau, Kelley Loper and Yiu-tung Suen (July 2018), [http://www.law.hku.hk/ccpl/wp-content/uploads/2018/07/Change%20Over%20Time%20Paper%20English%20\(3%20July%20Final%20for%20Distribution\).pdf](http://www.law.hku.hk/ccpl/wp-content/uploads/2018/07/Change%20Over%20Time%20Paper%20English%20(3%20July%20Final%20for%20Distribution).pdf).

14 QT v Director of Immigration [2018] HKCFA 28.

15 Leung Chun Kwong v Secretary for the Civil Service and Another [2019] HKCFA 19.

16 Section E.4 of Leung Chun Kwong v Secretary for the Civil Service and Another [2019] HKCFA 19.

1.18 In addition:

- (a) a judicial review application filed in November 2018 seeks, among other things, to set aside a decision by the Housing Authority that the petitioner was ineligible to apply for a public rental housing flat with his same-sex husband as an ordinary family.¹⁷ The Court of First Instance is scheduled to hear the application on 26 September 2019;¹⁸
- (b) in June 2018, a judicial review was launched by a woman challenging the fact that neither marriage nor civil partnerships are available for same-sex couples under Hong Kong law (**MK case**). The Court of First Instance heard the case on 28 May 2019;¹⁹ and
- (c) in November 2018, two men launched separate legal challenges in relation to the ability of same-sex couples to enter into marriage and the recognition of same-sex marriages entered into overseas under Hong Kong law.²⁰ These cases were stayed in January 2019 pending the decision of the Court of First Instance in the MK case.²¹

1.19 Our engagement takes place against this backdrop.

2. Summary and Observations

Opposite-sex marriage broadly recognised; limited recognition of alternative relationships

2.1 Opposite-sex marriage is recognised across Hong Kong legislation and Government policies.

2.2 Same-sex marriage is not recognised across the legislation and policies we reviewed, except in relation to dependant visas.²² As a result of a recent court judgment, same-sex marriages are expected to be recognised in relation to medical and dental benefits extended to the spouse of a civil servant and joint assessment for salaries tax.²³

2.3 Cohabitation relationships are recognised in certain areas, namely: anti-discrimination, companies, compensation, crime, death, immigration, medical, public service, public welfare, and regulatory and public offers. However, they are not recognised for every purpose or even for most purposes in these areas.

2.4 In some situations, the law does not distinguish between opposite – and same-sex cohabitation relationships. For example, both of these relationships are recognised in the context of domestic violence,²⁴ disability discrimination,²⁵ and “fair dealing” rules for directors.²⁶

2.5 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”.²⁷ Same-sex cohabitation relationships are not recognised in this context.

2.6 There is also inconsistency regarding the extent of recognition within the same area of law. For example, within the context of anti-discrimination, cohabitants are recognised and extended protection from discrimination on the grounds of disability. Similarly, a Bill is before the Legislative Council which, if passed, will recognise cohabitants and extend to them protection from discrimination on the grounds of race.²⁸ In contrast, cohabitants are not recognised for the purposes of the protections from discrimination on the grounds of marital status or family status.

17 *Infinger v The Hong Kong Housing Authority* HCAL 2647/2018.

18 Judiciary's e-Hearing Date Enquiry Services, 11 June 2019.

19 *MK v Government of HKSAR* HCAL 1077/2018.

20 *TF v Secretary for Justice* HCAL 2648/2018 and *STK v Secretary for Justice* HCAL 2682/2018.

21 Paragraph 15 of *TF v Secretary for Justice* [2019] HKCFI 55 and *STK v Secretary for Justice* [2019] HKCFI 55.

22 See section 15 of this report.

23 See sections 22 and 25 of this report.

24 See section 10 of this report.

25 See section 5 of this report.

26 See section 8 of this report.

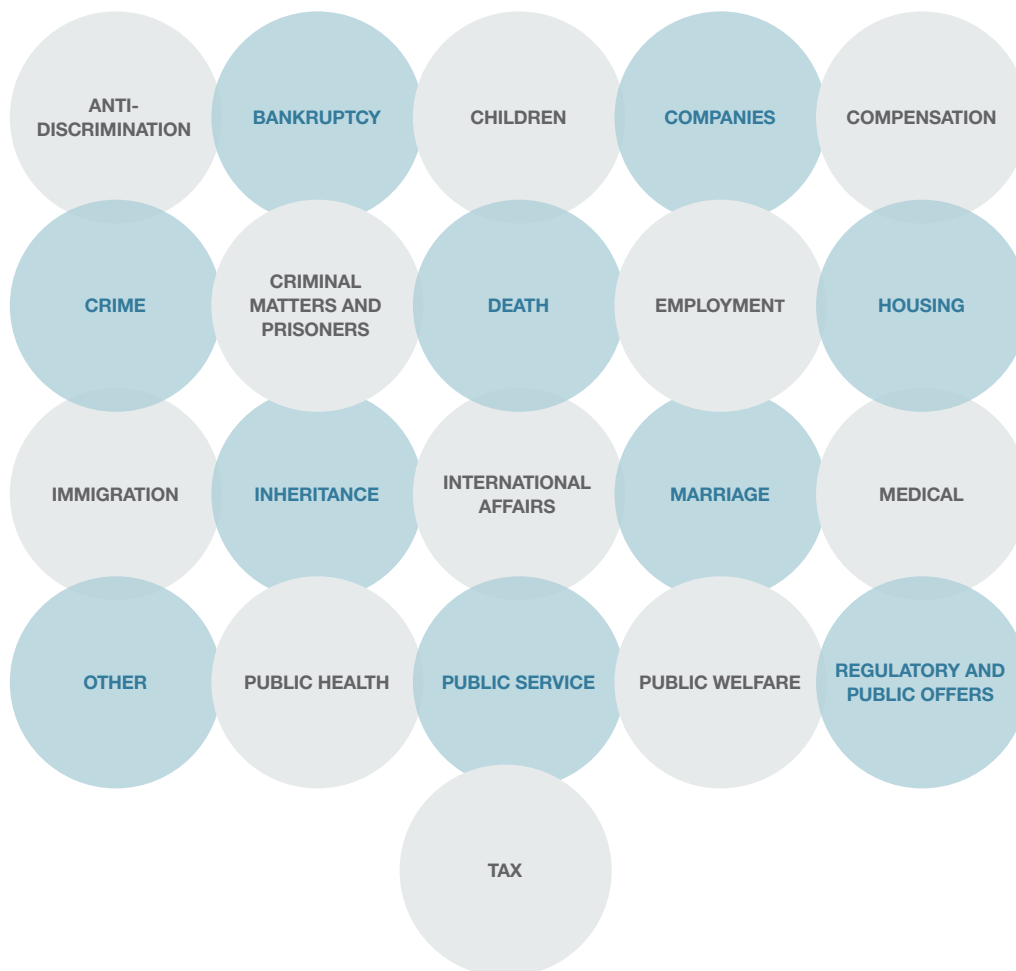
27 Section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485).

28 See the Discrimination Legislation (Miscellaneous Amendments) Bill 2018, <https://www.legco.gov.hk/yr18-19/english/bills/b201811302.pdf>.

- 2.7 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 cohabitantes in some circumstances but not in others.
- 2.8 This is the case even for legislation dealing with the same subject. For example, in the area 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.²⁹
- 2.9 A universal definition of a cohabitation relationship would eliminate these discrepancies.
- 2.10 No other forms of voluntary, personal relationships, including civil partnerships, are expressly recognised, except in relation to dependant visas.
- 2.11 Couples in relationships other than opposite-sex marriage (alternative relationships) are therefore not recognised unless they fall within the definition of a cohabitation relationship (however described) that applies in a particular context. This is notwithstanding the fact that couples in alternative relationships may have the same emotional, social, and financial connections as those in an opposite-sex marriage.
- 2.12 The tables at the beginnings of sections 5 to 25 of this report provide a summary of the extent to which opposite-sex marriage and alternative relationships are recognised in a particular area of law.³⁰

Differential treatment of relationships

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



²⁹ See section 9 of this report.

³⁰ For the purposes of the tables, "recognised" means the relationship is expressly recognised, and "not recognised" means the relationship is not expressly recognised or there is doubt as to whether it would be recognised (eg where the word "dependant" is used).

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

2.15 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 a serious and practical impact on people in alternative relationships.

2.16 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^{31,32}
- (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;³³
- (c) opposite-sex spouses can apply for, and live together in, public rental housing as an “ordinary family”;³⁴
- (d) opposite-sex spouses can jointly adopt children and access reproductive technology (eg artificial insemination);³⁵
- (e) opposite-sex spouses of employees of certain statutory bodies can enjoy retirement benefits, gratuities, and other allowances provided by those bodies;³⁶
- (f) opposite-sex spouses cannot be compelled in criminal proceedings to disclose their discussions with each other;³⁷
- (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;³⁸
- (h) the opposite-sex spouse of a prisoner must be immediately notified if the prisoner dies;³⁹
- (i) opposite-sex spouses are entitled to succeed to each other’s estate if one of them dies without a will;⁴⁰
- (j) 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;⁴¹
- (k) a person can attend the cremation of his/her opposite-sex spouse at a Government crematorium without the consent of the officer in charge;⁴² and
- (l) opposite-sex spouses are eligible to be buried together in certain cemeteries.⁴³

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

2.18 Differential treatment can also have substantial tax ramifications for couples. For example, for a couple (Z and Y) in an alternative relationship where (i) Z is not a Hong Kong permanent resident, (ii) Y is a Hong Kong permanent resident, (iii) only Z works, (iv) the couple has no other income, and (v) the couple live with and financially support: (A) Y’s parents who are both in their 80s; and (B) Y’s minor biological child from a previous relationship:

- (a) Z would pay up to an additional HKD76,840 in salaries tax per year (considering allowances but not deductions); and
- (b) Z and Y would pay HKD2.25 million more in stamp duty when buying a HKD10 million residential property together.⁴⁴

31 Cap. 181.

32 See section 18 of this report.

33 See section 5 of this report.

34 See section 14 of this report.

35 See section 7 of this report.

36 See section 22 of this report.

37 See section 11 of this report.

38 See section 19 of this report.

39 See section 11 of this report.

40 See section 16 of this report.

41 See section 19 of this report.

42 See section 12 of this report.

43 See section 12 of this report.

44 See section 25 of this report.

- 2.19 Non-recognition of alternative relationships also appears to impair the intended operation of certain laws. The Government, creditors, and the general public can all be negatively affected by the failure of Hong Kong law to recognise such relationships. For example:
- (a) non-recognition makes it more difficult for the Government to enforce a number of 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;⁴⁵
 - (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;⁴⁶ and
 - (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, 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.⁴⁷
- 2.20 In the limited cases where cohabitation relationships are recognised, cohabitees are sometimes treated the same as opposite-sex spouses. For example:
- (a) a person is protected from being less favourably treated because of the 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);⁴⁸
 - (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);⁴⁹ and
 - (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).⁵⁰
- 2.21 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.⁵¹

3. Methodology

Legislation review

- 3.1 We compiled and applied search terms to the laws of Hong Kong as they appear on the Hong Kong eLegislation website (**eLegislation**), the official database of Hong Kong legislation.⁵²
- 3.2 The search terms identified 1,762 provisions⁵³ across 537 Ordinances and subsidiary legislation as at 31 December 2018. The search terms and a link to the search results appear in Appendix 1 to this report.

45 See section 8 of this report.

46 See section 6 of this report.

47 See section 8 of this report.

48 See section 5 of this report.

49 See section 10 of this report.

50 See section 8 of this report.

51 See section 12 of this report.

52 <https://www.elegislation.gov.hk>.

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

- 3.3 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.⁵⁴
- 3.4 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 on the basis of 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**).
- 3.5 In some instances, search terms were contained in definitions which were then used in other provisions in the applicable Ordinance. Where this is the case, these other provisions have also been analysed in the manner described in paragraph 3.4 above. For example, the search terms “spouse” and “relative” appear in the definition of “associate” in section 51B of the Bankruptcy Ordinance.⁵⁵ That definition is used in sections 50, 51, and 51A of that Ordinance, and as a result those sections were also analysed.

Policy review

- 3.6 In December 2018 we accessed the websites of selected government departments and agencies responsible for administering certain government-provided benefits in order to obtain copies of public forms and related content. We applied the search terms across the contents of those documents. The documents identified by those search terms were analysed to understand how relationship status influences a person’s eligibility for the benefit(s) in question.

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 Appeal has stated 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.”⁵⁶
- 4.2 Our approach in reviewing Hong Kong legislation and Government policies has therefore been that, unless expressly defined:⁵⁷
- (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”, and “related person” are limited to persons related by biology or marriage or another legal arrangement (eg adoption) recognised under Hong Kong law.

⁵⁴ 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”).

⁵⁵ Cap. 6.

⁵⁶ Paragraph 74 of *Leung Chun Kwong v Secretary for the Civil Service and Another* [2018] HKCA 318. 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”, ie 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.

⁵⁷ 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.

4.3 A number of 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 that it is possible these terms may not extend the right, benefit, or obligation concerned to a civil partner, cohabitee, or same-sex spouse.

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

4.5 Where the term “marriage” is expressly defined to include a marriage that is legally recognised in the jurisdiction in which it was entered,⁵⁸ we have interpreted that definition to nevertheless exclude same-sex marriage, consistent with the interpretation adopted by the Courts.⁵⁹

Limitations

4.6 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.

4.7 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 eLegislation⁶⁰ and those websites. If eLegislation or those websites are incomplete or contain errors, this will be reflected in our analysis.

4.8 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.

4.9 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;⁶¹
- (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 this report;
- (c) agreements, arrangements, or memoranda of understanding between Hong Kong and Mainland China;⁶²
- (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;⁶³
- (e) laws of Mainland China that apply to Hong Kong;
- (f) Ordinances and subsidiary legislation not assigned a chapter number;⁶⁴
- (g) conflicts of laws;
- (h) Chinese customary law; or
- (i) Government policies, except those expressly referenced in this report.

58 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 Dependants) Ordinance (Cap. 481), section 2 of the Legitimacy Ordinance (Cap. 184), and section 2(1) of the Inland Revenue Ordinance (Cap. 112).

59 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).

60 See <https://www.elegislation.gov.hk/faq> for information on the limitations of eLegislation.

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

62 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.

63 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.

64 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 <https://www.elegislation.gov.hk/faq> for further information.

- 4.10 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.
- 4.11 We have analysed the effect of legislation and policies assuming that the Government will strictly adhere to their terms. For example, if a policy requires that a person provide evidence that he/she is another person's "spouse" in order 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.
- 4.12 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 Ordinance⁶⁵ provides that a man who induces a married woman to have sexual intercourse with him by impersonating her husband commits rape.⁶⁶ This provision does not apply to a man 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.
- 4.13 We have not considered the indirect effect of any legislation or government policies. For example, under Regulations 7 and 64 of the Miscellaneous Licences Regulations⁶⁷, 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 a number of 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.

5. Anti-Discrimination

5.1 This category concerns Hong Kong's four anti-discrimination Ordinances: the Sex Discrimination Ordinance⁶⁸, the Family Status Discrimination Ordinance⁶⁹, the Race Discrimination Ordinance⁷⁰, and the Disability Discrimination Ordinance⁷¹.

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 disability discrimination (in part), provided a couple lives together on a genuine domestic basis ⁷²
Same-sex cohabitation relationship	Recognised for disability discrimination (in part), provided a couple lives together on a genuine domestic basis ⁷³

65 Cap. 200.

66 See section 118(2) of the Crimes Ordinance (Cap. 200).

67 Cap. 114A.

68 Cap. 480.

69 Cap. 527.

70 Cap. 602.

71 Cap. 487.

72 A bill recognising cohabitation relationships for the protections against discrimination on the grounds of race is currently before the Legislative Council; see the Discrimination Legislation (Miscellaneous Amendments) Bill 2018, <https://www.legco.gov.hk/yr18-19/english/bills/b201811302.pdf>.

73 See footnote 72.

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.⁷⁴ 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.⁷⁵ "Marital status" means the state or condition of being single, married, married but living separately and apart from one's spouse, divorced, or widowed.⁷⁶ These prohibitions apply in relation to whether a person is or was in an opposite-sex marriage, but do not apply in relation to whether a person is or was 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.⁷⁷ Such 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.⁷⁸ "Family status" means the status of having responsibility for the care of an immediate family member.⁷⁹ An "immediate family member" includes a person related by marriage.⁸⁰ 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.

Race discrimination⁸¹

5.4 Direct discrimination and harassment on the grounds of the race of a person's near relative are prohibited.⁸² A "near relative" includes a spouse.⁸³ As a result, discrimination on the grounds of the race of a person's opposite-sex spouse is prohibited, but there is no prohibition against the same discrimination where a person's civil partner, cohabitee, or same-sex spouse is concerned.

Disability discrimination

5.5 Direct discrimination and harassment on the grounds of the disability of a person's associate are prohibited.⁸⁴ A person's "associate" includes his/her spouse, another person who is living with him/her on a genuine domestic basis, and his/her relative.⁸⁵ The protections from discrimination on the basis of disability therefore apply to persons in an opposite-sex marriage or opposite- or same-sex cohabitation relationship.

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

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

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

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

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

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

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

81 In its recommendations to the Government to reform Hong Kong's anti-discrimination laws in March 2016, the EOC included a recommendation that the protections from discrimination in the Race Discrimination Ordinance (Cap. 602) regarding "near relatives" be expanded and made consistent with the protections from discrimination on the grounds of disability by association under the Disability Discrimination Ordinance (Cap. 487). As such, the amendment will expand the protection from discrimination to cover discrimination on the grounds of the race of a person's associate. This will include "another person who is living with the person on a genuine domestic basis" and therefore will cover a person's cohabitee, both for opposite- and same-sex couples. The Government has agreed with this recommendation and a bill to implement the required amendments is currently before the Legislative Council: see <https://www.legco.gov.hk/yr18-19/english/bills/b201811302.pdf>.

82 Race Discrimination Ordinance (Cap. 602), generally.

83 Section 2(1) of the Race Discrimination Ordinance (Cap. 602).

84 Disability Discrimination Ordinance (Cap. 487), generally.

85 Section 2(1) of the Disability Discrimination Ordinance (Cap. 487).

Exemptions

- 5.6 There are some limited exceptions that allow a person to discriminate on the grounds of marital status, family status, race, or disability based in part on his/her relationship status.⁸⁶
- 5.7 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.⁸⁷ 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.⁸⁸ A “near relative” includes a spouse.⁸⁹ 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.

6. Bankruptcy

- 6.1 This category concerns 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.⁹⁰ 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 respecting 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.⁹¹ This exemption does not extend to the ordinary expenses of a bankrupt’s civil partner, cohabitee, or same-sex spouse. A bankrupt will 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.

86 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).

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

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

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

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

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

Unfair preferences

- 6.4 Where a debtor has given an unfair preference to an associate at a relevant time, the debtor is presumed to have been influenced by a desire to put his/her associate in a better position.⁹² This makes it easier for the debtor's trustee in bankruptcy to obtain an order restoring the bankrupt's estate⁹³ 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.⁹⁴ This presumption therefore only applies to an 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.⁹⁵ 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.⁹⁶ 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 property⁹⁷ and would have its reasonable domestic needs excluded from any income payments order that claimed the income of the bankrupt for the bankrupt's estate.⁹⁸ These protections apply to a bankrupt's opposite-sex spouse, but do not extend to those with whom a bankrupt is in an alternative relationship.
- 6.9 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.⁹⁹ 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.¹⁰⁰

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

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

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

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

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

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

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

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

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

7. Children¹⁰¹

7.1 This category concerns 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.¹⁰² 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.¹⁰³ 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.¹⁰⁴ 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.

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.¹⁰⁵ Civil partners, cohabitees, and same-sex spouses do not have this right.

Legitimacy

7.5 At common law, a child born out of wedlock (ie 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.

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**).

¹⁰¹ This section 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.

¹⁰² Section 5 of the Parent and Child Ordinance (Cap. 429).

¹⁰³ Section 10(2) of the Parent and Child Ordinance (Cap. 429).

¹⁰⁴ Section 10(3) of the Parent and Child Ordinance (Cap. 429).

¹⁰⁵ Section 12 of the Parent and Child Ordinance (Cap. 429).

- 7.7 In relation to parents' status, the illegitimate child of a couple who later enter into a marriage is legitimated.¹⁰⁶ 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.¹⁰⁷ This does not, however, include a same-sex marriage recognised by the law of another jurisdiction; see paragraph 4.5 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 that the rights and obligations of legitimated persons do not extend to the illegitimate children of persons who later enter into alternative relationships.
- 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 (eg his/her father or mother who dies without a will) dying after the date of legitimation; or (ii) under any disposition¹⁰⁸ coming into operation after the date of legitimation;¹⁰⁹
 - (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;¹¹⁰ and
 - (c) the provisions of any law relating to claims for damages, compensation, allowance, benefit, or otherwise by or in respect of a legitimate child apply in a like manner in the case of a legitimated person.¹¹¹
- 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 Ordinance¹¹² with respect to the taking of interests in property as if the illegitimate person had been legitimated;¹¹³ and
 - (b) a legitimated person's spouse enjoys the right described in paragraph 7.9(a) above.¹¹⁴
- 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.¹¹⁵ This does not apply to the child of parents whose civil partnership or same-sex marriage is annulled.

Guardianship

- 7.13 On the death of a married 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 or by the deceased parent. This only applies to parents with rights of custody.¹¹⁶ An unmarried father does not have such automatic rights of custody as an unmarried mother does, unless specifically granted such rights by the Court. There are a number of provisions concerning:
- (a) the appointment of guardians for a child upon the death of his/her parent;¹¹⁷ and
 - (b) orders for the custody and maintenance of a child.¹¹⁸

¹⁰⁶ Section 3(1) of the Legitimacy Ordinance (Cap. 184).

¹⁰⁷ Section 2 of the Legitimacy Ordinance (Cap. 184).

¹⁰⁸ 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).

¹⁰⁹ Section 4 of the Legitimacy Ordinance (Cap. 184).

¹¹⁰ Section 7 of the Legitimacy Ordinance (Cap. 184).

¹¹¹ Section 7 of the Legitimacy Ordinance (Cap. 184).

¹¹² Cap. 184.

¹¹³ Section 6 of the Legitimacy Ordinance (Cap. 184).

¹¹⁴ Section 4 of the Legitimacy Ordinance (Cap. 184).

¹¹⁵ Section 12 of the Legitimacy Ordinance (Cap. 184).

¹¹⁶ Section 5 of the Guardianship of Minors Ordinance (Cap. 13).

¹¹⁷ These include: (a) rights of surviving parent as to guardianship (section 5); (b) when guardianship takes effect automatically (section 7); (c) assumption of guardianship by application (section 8); (d) guardian appointed to act jointly with surviving parent or guardian (section 8A); (e) guardian may disclaim appointment (section 8C); (f) power of Court to appoint guardian of minor (section 8D); (g) guardian appointed by Court to act jointly with surviving parent or guardian (section 8F); (h) orders for custody and maintenance where person is guardian to exclusion of 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).

¹¹⁸ 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 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).

7.14 An agreement to give up rights or authority in relation to a child is unenforceable. 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.¹¹⁹ This exception does not apply to agreements between civil partners, cohabitees, or same-sex spouses.

Human reproductive technology

7.15 Subject to limited exceptions, a person is prohibited from providing a reproductive technology procedure¹²⁰ to persons who are not the parties to a marriage.¹²¹ Consequently, civil partners, cohabitees, and same-sex spouses are unable to obtain access to 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.¹²² Couples in alternative relationships cannot do so.
- 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.¹²³ 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.¹²⁴
- 7.18 For these purposes, a “relative” includes certain persons related by blood or affinity.¹²⁵ As such, a person related to an infant through a civil partnership, cohabitation relationship, or same-sex marriage is unable to rely on ground (b) in paragraph 7.17 above or be exempted from assessment. Additionally, a person in a civil partnership, cohabitation relationship, or same-sex marriage with the mother or father of a child, but who is not him/herself the mother or father of the child,¹²⁶ 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.¹²⁷ 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.¹²⁸ The order or agreement would not cease to have effect where the mother enters into a civil partnership, cohabitation relationship, or same-sex marriage.

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

120 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.

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

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

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

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

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

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

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

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

8. Companies¹²⁹

8.1 This category concerns 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)

Financial assistance

8.2 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.¹³⁰ 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.

8.3 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.¹³¹

8.4 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.¹³²

8.5 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, cohabitants, 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.

¹²⁹ In this section 8, “company” refers to a company incorporated in Hong Kong unless stated otherwise.

¹³⁰ Section 275 of the Companies Ordinance (Cap. 622).

¹³¹ Section 280 of the Companies Ordinance (Cap. 622).

¹³² Section 281 of the Companies Ordinance (Cap. 622).

Fair dealing

- 8.6 A public company¹³³ and any of its subsidiaries that is a private company¹³⁴ or a company limited by guarantee (**specified companies**) are subject to “fair dealing” rules.¹³⁵ 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-loan¹³⁶ to an entity connected with any of its directors,¹³⁷ or enter into a credit transaction as creditor for an entity connected with one of its directors, without the approval of the company’s shareholders.¹³⁸
- 8.7 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.¹³⁹ A director’s “family” includes his/her spouse.¹⁴⁰ “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 relationship.¹⁴¹ 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.¹⁴²
- 8.8 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.

Compulsory share acquisition

- 8.9 Special rules apply where a person offers to acquire all of the shares of a company (**takeover**) or a company seeks to buy back all of 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.¹⁴³ This and other control or voting thresholds generally exclude shares held by an associate of an offeror.¹⁴⁴
- 8.10 An offeror’s “associate” includes his/her spouse and a person who is in a cohabitation relationship with an offeror.¹⁴⁵ “Cohabitation relationship” has the same meaning as for the “fair dealing” rules.¹⁴⁶
- 8.11 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.

133 A company is a public company if it is not a private company or a company limited by guarantee; see section 11 of the Companies Ordinance (Cap. 622).

134 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).

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

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

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

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

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

140 Section 487(1) of the Companies Ordinance (Cap. 622).

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

142 “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).

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

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

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

146 Section 666(1) of the Companies Ordinance (Cap. 622).

Winding up

- 8.12 Two of the restrictions on company liquidators apply differently depending on a person's relationship status.
- 8.13 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.¹⁴⁷ 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.¹⁴⁸ "Immediate family member" includes a person's spouse.¹⁴⁹
- 8.14 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 the company.
- 8.15 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.¹⁵⁰ Certain provisional liquidators may dispose of a company's assets without permission if the assets are worth less than HKD100,000 and their value is likely to significantly diminish if they are not immediately disposed of (eg fresh fruit). Nevertheless, these assets cannot be disposed of to a relevant person.¹⁵¹
- 8.16 A "relevant person" includes an associate of a director of the company.¹⁵² "Associate" includes a person's spouse or cohabitant.¹⁵³ 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.¹⁵⁴
- 8.17 Consequently, provisional liquidators cannot dispose of these assets to the cohabitees 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.

Market misconduct

- 8.18 False trading and the disclosure of information about prohibited transactions in securities and futures contracts are prohibited.¹⁵⁵
- 8.19 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.¹⁵⁶
- 8.20 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;¹⁵⁷ or (b) he/she enters into or carries out a transaction in securities that does not involve a change in beneficial ownership.¹⁵⁸ 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.¹⁵⁹

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

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

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

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

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

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

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

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

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

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

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

158 Sections 245(3), 274(5)(a), 290(7) and 295(5)(a) of the Securities and Futures Ordinance (Cap. 571).

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

- 8.21 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: (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.¹⁶⁰
- 8.22 For both of these prohibitions, “associate” includes a person’s spouse or reputed spouse, and any person cohabiting with the person as a spouse.¹⁶¹
- 8.23 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,¹⁶² 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 concerning two people in a same-sex relationship.
- 8.24 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,¹⁶³ but on their face not the same conduct by a person with his/her same-sex spouse, civil partner, or cohabitee. As such, the Government may have greater difficulty prosecuting persons in same-sex relationships for this conduct.

Disclosure of interests

- 8.25 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.¹⁶⁴ 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.¹⁶⁵
- 8.26 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.¹⁶⁶ 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.¹⁶⁷ 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.¹⁶⁸
- 8.27 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, cohabitees, or same-sex spouses. On that basis, the public is likely to be less informed about the interests of persons in alternative relationships in listed corporations.

¹⁶⁰ Sections 276(1) and 297(1) of the Securities and Futures Ordinance (Cap. 571).

¹⁶¹ Sections 245(1) and 285(1) of the Securities and Futures Ordinance (Cap. 571).

¹⁶² To the extent that person qualifies as a “reputed spouse” or cohabits “as a spouse”.

¹⁶³ To the extent that person qualifies as a “reputed spouse” or cohabits “as a spouse”.

¹⁶⁴ Divisions 2 to 4 of Part XV of the Securities and Futures Ordinance (Cap. 571).

¹⁶⁵ Section 316 of the Securities and Futures Ordinance (Cap. 571).

¹⁶⁶ Divisions 7 to 9 of Part XV of the Securities and Futures Ordinance (Cap. 571).

¹⁶⁷ Section 344(1) of the Securities and Futures Ordinance (Cap. 571).

¹⁶⁸ Section 344(2)(a) of the Securities and Futures Ordinance (Cap. 571).

9. Compensation

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

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) and employment (in part), provided in some cases a couple lives together as husband or wife; recognised for asbestos, provided a couple lived together for at least two years
Same-sex cohabitation relationship	Recognised for asbestos, provided a couple lived together for at least two years

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.¹⁶⁹ 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 prior to the date of death.¹⁷⁰
- 9.3 This right is therefore available to a deceased’s opposite-sex spouse and may be available to his/her opposite-sex civil partner or cohabitee,¹⁷¹ but would not be available to his/her same-sex spouse, civil partner, or cohabitee given that they would not live in the same household as husband and wife.
- 9.4 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,¹⁷² the person who is liable for such an action is also liable in damages for the loss of the injured person’s society.¹⁷³ The classes of persons include: (a) the injured person’s husband or wife;¹⁷⁴ 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.¹⁷⁵ This right is similarly available to an injured person’s opposite-sex spouse and may be available to his/her opposite-sex civil partner or cohabitee, but would not be available to his/her same-sex spouse, civil partner, or cohabitee.¹⁷⁶
- 9.5 The Traffic Accident Victims Assistance Fund provides compensation to traffic accident victims and their dependants in accordance with the Traffic Accident Victims Assistance Scheme.¹⁷⁷ A victim’s opposite-sex spouse can obtain compensation from the fund, but it is possible that his/her civil partner, cohabitee, or same-sex spouse could not.

¹⁶⁹ Section 3 of the Fatal Accidents Ordinance (Cap. 22).

¹⁷⁰ Section 2(1) of the Fatal Accidents Ordinance (Cap. 22).

¹⁷¹ Where a claim is brought by an opposite-sex cohabitee (but not an opposite-sex spouse): (a) in assessing damages, 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; and (b) the cohabitee has a lower priority for claiming for bereavement compared to an opposite-sex spouse; see sections 6(4) and 4(2), respectively, of the Fatal Accidents Ordinance (Cap. 22).

¹⁷² This means being deprived of the injured person’s company.

¹⁷³ Section 20C of the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23).

¹⁷⁴ 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).

¹⁷⁵ Section 20C(1)(d) of the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23).

¹⁷⁶ 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).

¹⁷⁷ Sections 3 and 4 of the Traffic Accident Victims (Assistance Fund) Ordinance (Cap. 229).

Employment

- 9.6 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 employment¹⁷⁸ or is incapacitated or killed as a result of an occupational disease.¹⁷⁹ A "member of the family" of an employee includes his/her spouse or cohabitee.¹⁸⁰ 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".¹⁸¹
- 9.7 This compensation is therefore available to an employee's opposite-sex spouse, and may be available to his/her opposite-sex civil partner or cohabitee, but would not be available to his/her same-sex spouse, civil partner, 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.¹⁸²
- 9.8 The Employees Compensation Assistance Fund provides payments to injured employees or eligible persons of those employees who are unable to recover damages from employers.¹⁸³ An eligible person includes a "spouse or cohabitee".¹⁸⁴ "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".¹⁸⁵
- 9.9 This compensation is therefore available to an employee's opposite-sex spouse, and may be available to his/her opposite-sex civil partner or cohabitee, but would not be available to his/her same-sex spouse, civil partner, or cohabitee.

Asbestos

- 9.10 The Pneumoconiosis Compensation Fund provides compensation where a person dies as a result of pneumoconiosis¹⁸⁶ or mesothelioma¹⁸⁷ and is survived by any member of his/her other family.¹⁸⁸ "Member of the family" includes a spouse, a cohabitee (ie 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.¹⁸⁹ In relation to the last category, this would mean it is likely compensation is available to a deceased's same-sex spouse, civil partner, or cohabitee, as long as they have been living together for at least two years prior to the date of death.

Outbound travel

- 9.11 Relatives and former spouses of outbound travellers¹⁹⁰ 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.¹⁹¹ "Relative" includes a spouse. As a result, an outbound traveller's opposite-sex spouse is eligible for ex gratia payments, but his/her civil partner, cohabitee, or same-sex spouse is not.

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

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

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

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

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

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

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

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

186 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).

187 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).

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

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

190 A person who has paid, in a single payment or separate payments, an outbound fare to a travel agent, in connection with or in anticipation of the travel agent obtaining for him/her an outbound travel service or a person on whose behalf such payment is made; see section 32A of the Travel Agents Ordinance (Cap. 218).

191 Section 5C of the Travel Industry Compensation Fund (Amount of Ex Gratia Payments and Financial Penalty) Rules (Cap. 218E).

Preventing or resisting crime

9.12 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.¹⁹² A deceased's opposite-sex spouse is eligible to be awarded this compensation, but it is possible that a deceased's civil partner, cohabitee, or same-sex spouse would not be eligible.

10. Crime

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

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 (in part)
Same-sex cohabitation relationship	Recognised for domestic violence (in part)

*Domestic violence*¹⁹³

10.2 A person may apply for an injunction where he/she, or a specified minor, has been molested by his/her former spouse¹⁹⁴ or the other party to a "cohabitation relationship",¹⁹⁵ ie 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.¹⁹⁶

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

- (a) whether the parties are living together in the same household;
- (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.¹⁹⁷

¹⁹² Section 18A of the Public Finance Ordinance (Cap. 2).

¹⁹³ In 2009, amendments were made to the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189), at the time known as the Domestic Violence Ordinance (**DVO**), in order to ensure that same-sex cohabiting couples would be protected from domestic violence. The Government stated in relation to the amendments: "Currently, heterosexual cohabitants are protected by the DVO. The amendments to the DVO are made in light of the fact that similar special power interface, dynamics and risk factors between heterosexual cohabitants might also exist between same-sex cohabitants in intimate relationships and render the victims reluctant to report to the police the abusers' acts of violence." Press Release, Domestic Violence (Amendment) Ordinance 2009 to take effect tomorrow, 31 December 2009, <https://www.lwb.gov.hk/eng/press/31122009.htm>.

¹⁹⁴ Section 3 of the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189).

¹⁹⁵ Section 3B of the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189).

¹⁹⁶ Section 2(1) of the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189).

¹⁹⁷ Section 3B(2) of the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189).

10.4 Similarly, a person may apply for an injunction where he/she has been molested by certain relatives, including certain relatives of his/her spouse.¹⁹⁸ However, a person cannot apply for an injunction against the relatives of his/her civil partner, cohabitee, or same-sex spouse.

Sex-related offences

10.5 A man commits the offence of rape if he induces a married woman to have sexual intercourse with him by impersonating her husband.¹⁹⁹ 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.

10.6 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.²⁰⁰ The same defence is not available where a person is accused of indecently assaulting his/her civil partner, cohabitee, or same-sex spouse.

10.7 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.²⁰¹ This defence is not available to a man who reasonably believes that the girl is his civil partner or cohabitee.

10.8 Where a person who is a Hong Kong permanent resident or who ordinarily resides in Hong Kong commits an act outside Hong Kong and that act: (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, that person commits that offence in Hong Kong.²⁰² 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: (a) where the marriage was solemnised; (b) where the sexual act was done; or (c) of the defendant's residence or domicile.²⁰³ This defence is limited to defendants in opposite-sex marriages; defendants in civil partnerships, cohabitation relationships, or same-sex marriages cannot rely on this defence.

Bigamy and conspiracy

10.9 A married person who marries another during the life of his wife or her husband commits the offence of bigamy.²⁰⁴ 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.

10.10 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.²⁰⁵ 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.

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

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

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

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

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

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

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

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

11. Criminal Matters and Prisoners

11.1 This category concerns investigations, the competency and compellability of spouses in criminal proceedings, privilege against incrimination of one's spouse, other criminal procedure 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.²⁰⁶ 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.²⁰⁷ 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.²⁰⁸

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 that 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.²⁰⁹ 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.²¹⁰ This does not apply where the husband or wife is standing trial with the accused.²¹¹
- (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.²¹²
- (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.²¹³

206 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).

207 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).

208 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).

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

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

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

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

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

- 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.²¹⁴ 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).²¹⁵
- 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, etc. or that the information was obtained in confidence.

Privilege against incrimination of one's spouse

- 11.7 Privilege against incrimination of one's spouse applies in two situations: (a) proceedings other than criminal proceedings; and (b) inspections and investigations.
- 11.8 In proceedings other than criminal proceedings, the general position is that 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 or for the recovery of a penalty 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.²¹⁶
- 11.9 This privilege is sometimes overridden by legislation for specific proceedings.²¹⁷ 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:²¹⁸
- (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;²¹⁹ 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 not admissible in evidence against the person's spouse in proceedings for an offence other than perjury.²²⁰
- 11.10 A similar privilege arises in relation to inspections and investigations.
- 11.11 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;²²¹ 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.²²²

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

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

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

217 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).

218 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. 8), and section 17(5) of the Trade Descriptions Ordinance (Cap. 362).

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

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

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

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

- 11.12 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 investigation²²³ 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;²²⁴ and
 - (b) a person can refuse to give information to an authorized officer in the context of trade descriptions on the basis that doing so may incriminate his/her husband or wife.²²⁵
- 11.13 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.

Other criminal procedure matters

- 11.14 The spouses of certain Hong Kong officials, foreign officials, or members of the People's Liberation Army are exempted from jury service.²²⁶ 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.
- 11.15 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.²²⁷ 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.
- 11.16 Except for the offences of treason or murder, 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.²²⁸ 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

- 11.17 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.²²⁹ 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 to be designed to allow the Commissioner to commit the child to institutions overseen by established charities.
- 11.18 The Superintendent of a prison is required to give immediate notice of a prisoner's death to his/her nearest relative.²³⁰ 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.
- 11.19 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 make a recommendation that a prisoner should be released from imprisonment under supervision, the Release under Supervision Board is required to consider his/her family circumstances;²³¹

223 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).

224 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).

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

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

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

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

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

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

231 Section 2(e) of Schedule 1 to the Prisoners (Release Under Supervision) Regulations (Cap. 325A).

- (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;²³² 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.²³³

11.20 The circumstances of a prisoner's opposite-sex spouse are required to be taken into account for all of these matters. It is possible that the circumstances of a prisoner's civil partner, cohabitee, or same-sex spouse would not be taken into account.

12. Death

12.1 This category concerns the registration of a death, coroners, cremation and burial, Chinese Permanent Cemeteries, and the disposal of ashes interred in private columbaria.

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 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

Registration of a death

12.2 A deceased's spouse generally bears the primary responsibility for notifying the Registrar of Births and Deaths or officer-in-charge of the nearest police station (as the case may be) of certain particulars regarding the death of his/her spouse.²³⁴ A deceased's civil partner, cohabitee, or same-sex spouse may in some cases bear this responsibility.²³⁵ However, this responsibility arises by virtue of, for example, the civil partner, etc. being present at the death or having knowledge of the particulars of the death, not because the person and the deceased were in an alternative relationship.

Coroners

12.3 In considering whether it is appropriate to issue a warrant for premises to be searched, a coroner must have regard to the degree of distress this may cause the family of the deceased person concerned.²³⁶ This means that a coroner is not required to have regard to the distress a search may cause a deceased's civil partner, cohabitee, or same-sex spouse.

²³² Section 14 of the Long-Term Prison Sentences Review Ordinance (Cap. 524).

²³³ Schedule 2 to the Prisoners (Release Under Supervision) Regulations (Cap. 325A) and Schedule 2 to the Long-Term Prison Sentences Review Regulation (Cap. 524A).

²³⁴ A failure to comply with that duty gives rise to criminal liability; see section 28 of the Births and Deaths Registration Ordinance (Cap. 174).

²³⁵ Section 14 of the Births and Deaths Registration Ordinance (Cap. 174).

²³⁶ Section 10 of the Coroners Ordinance (Cap. 504).

Cremation and burial

- 12.4 In the absence of an executor, a deceased's spouse, among others, may make an application for a cremation permit by virtue of being the nearest surviving relative.²³⁷ The deceased's civil partner, cohabitee, or same-sex spouse is not similarly entitled unless he/she falls within other discretionary categories.²³⁸
- 12.5 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.²³⁹ 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.
- 12.6 A person may be buried in the private lot of his/her spouse in Wo Hop Shek, Sandy Ridge, or Sandy Ridge (Urn) cemeteries.²⁴⁰ This right does not extend to a person in a civil partnership, cohabitation relationship, or same-sex marriage.

Chinese Permanent Cemeteries

- 12.7 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.²⁴¹ 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 (ie a person of Chinese race permanently resident in Hong Kong, his/her spouse or child).²⁴² For subscriber lots, only relatives of the subscriber can be nominated for burial.²⁴³
- 12.8 "Relative" is defined as including the relevant person's spouse and certain family members of a relevant person's spouse.²⁴⁴ "Spouse" is defined as including a concubine taken by a person before 7 October 1971. Neither of these terms expressly extends to alternative relationships.
- 12.9 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

- 12.10 Where ashes interred in a private columbarium²⁴⁵ 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.²⁴⁶
- 12.11 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".²⁴⁷
- 12.12 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 (including a civil partner or same-sex spouse who cohabited with the deceased). A non-cohabiting civil partner or same-sex spouse cannot make a claim and therefore has no priority.

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

238 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).

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

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

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

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

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

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

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

246 Section 9 of Schedule 5 to the Private Columbaria Ordinance (Cap. 630).

247 Section 6 of Schedule 5 to the Private Columbaria Ordinance (Cap. 630).

13. Employment

13.1 This category concerns general employment protections and entitlements, the protection of wages on insolvency, and contracts for employment outside Hong Kong. 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

General employment protections and entitlements

13.2 The Employment Ordinance²⁴⁸ 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.²⁴⁹ This means the protections and entitlements in the Employment Ordinance²⁵⁰ 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.

13.3 Where the Employment Ordinance²⁵¹ 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,²⁵² 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,²⁵³ 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,²⁵⁴ 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,²⁵⁵ but it is possible that an employer cannot lawfully do so for an employee's civil partner, cohabitee, or same-sex spouse.

²⁴⁸ Cap. 57.

²⁴⁹ Section 4 of the Employment Ordinance (Cap. 57).

²⁵⁰ Cap. 57.

²⁵¹ Cap. 57.

²⁵² Sections 31F and 31U of the Employment Ordinance (Cap. 57).

²⁵³ Section 31RA of the Employment Ordinance (Cap. 57).

²⁵⁴ Section 32(2)(d) of the Employment Ordinance (Cap. 57).

²⁵⁵ Section 32(2)(g) of the Employment Ordinance (Cap. 57).

Protection of wages on insolvency and contracts for employment outside Hong Kong

- 13.4 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.²⁵⁶ 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.
- 13.5 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.²⁵⁷ “Dependant” is defined to include a person’s spouse, but not his/her civil partner, cohabitee, or same-sex spouse.²⁵⁸ These benefits may therefore be unavailable to a person in an alternative relationship.

14. Housing

- 14.1 This category concerns domestic tenancies, estate agents, first-hand sales of residential property, and public rental housing

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

Domestic tenancies²⁵⁹

- 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.²⁶⁰ It is possible that this offence may not apply to acts against a tenant’s or sub-tenant’s civil partner, cohabitee, or same-sex spouse.
- 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 a number of rights, protections, and obligations, including:²⁶¹
- (a) the right to receive a rent receipt from the landlord;²⁶²
 - (b) protection against being unlawfully deprived of the occupation of any premises he/she has leased;²⁶³
 - (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 statute.²⁶⁴
- 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.

²⁵⁶ Section 2 of the Protection of Wages on Insolvency Ordinance (Cap. 380).

²⁵⁷ Section 5 of the Contracts for Employment Outside Hong Kong Ordinance (Cap. 78).

²⁵⁸ Section 2 of the Contracts for Employment Outside Hong Kong Ordinance (Cap. 78).

²⁵⁹ This analysis is limited to domestic tenancies to which Part IV of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) applies.

²⁶⁰ Section 119V(2) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7).

²⁶¹ Section 116(5A) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7).

²⁶² Section 119RA(1) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7).

²⁶³ Section 119V(1) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7).

²⁶⁴ 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 agreement²⁶⁵ whether or not 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.²⁶⁶ If the estate agent has such an interest, he/she must also disclose full particulars to his/her client.²⁶⁷
- 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.²⁶⁸ A person's "specified relative" includes his/her spouse.²⁶⁹ "Spouse" means a person to whom another person is, by reason of the form of marriage contracted, lawfully married.²⁷⁰
- 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.²⁷¹ "Spouse" is not defined. 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.²⁷²
- 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.²⁷³ For these purposes, a person's "immediate family member" includes his/her spouse.²⁷⁴ 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.

265 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).

266 This assumes that the agent is appointed under an agreement in the prescribed forms, ie 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.

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

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

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

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

271 This assumes that the agent is appointed under an agreement in the prescribed forms, ie 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.

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

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

274 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 person²⁷⁵ for the development, (b) the authorized 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.²⁷⁶ 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.²⁷⁷ 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.²⁷⁸ Among other information, entries in the register must state whether the relevant purchaser is the vendor's related party.²⁷⁹ 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.²⁸⁰ 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.

Public rental housing (PRH)

- 14.13 Applications for PRH fall within one of two types, a "General Application" or an application by a "Non-elderly One-person" applicant.²⁸¹ 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.
- 14.14 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:
- (a) subject to limited exceptions,²⁸² all married persons listed on an application form must apply with their spouses;²⁸³
 - (b) the applicant and his/her family members must not own (whether directly or indirectly), or have entered an agreement to purchase, 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,²⁸⁴ 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.²⁸⁵
- 14.15 In addition, a person making a General Application must satisfy certain specific conditions. The specific 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".²⁸⁶

275 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.

276 Paragraph 3(2) of Part 1 of Schedule 1 to the Residential Properties (First-hand Sales) Ordinance (Cap. 621).

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

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

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

280 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).

281 Paragraph 1.2 of the Application Guide for Public Rental Housing (Revised in February 2015).

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

283 Paragraph 2.1.3 of the Application Guide for Public Rental Housing (Revised in February 2015), and Section A, Chapter 1, page 3 of the Information Booklet on General Housing Policies.

284 Paragraph 2.1.5 of the Application Guide for Public Rental Housing (Revised in February 2015), and Section A, Chapter 1, page 3 of the Information Booklet on General Housing Policies. 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.

285 Paragraph 2.1.6 of the Application Guide for Public Rental Housing (Revised February 2015), and Section A, Chapter 1, page 3 of the Information Booklet on General Housing Policies. 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.

286 Paragraph 2.3.3 of the Application Guide for Public Rental Housing (Revised February 2015), and Section A, Chapter 1, page 3 of the Information Booklet on General Housing Policies.

- 14.16 As such, couples in opposite-sex marriages may apply for PRH as an Ordinary Family, whereas couples in alternative relationships must individually apply under the Non-elderly One-person category.²⁸⁷
- 14.17 It is the stated target of the Housing Authority (HA) to maintain the average waiting time for General Applications at around three years.²⁸⁸ There is no stated target for Non-elderly One-person applications. As such, individuals in an alternative relationship who apply for PRH may face a significantly longer waiting time for PRH when compared to those who are able to apply as an Ordinary Family.²⁸⁹
- 14.18 HA policy only allows certain people to be added to a PRH tenancy as additional household members.²⁹⁰ The categories of permitted persons expressly include a tenant's spouse and certain other family members, but not his/her civil partner or same-sex spouse. As such, opposite-sex spouses can live together in a PRH unit, but civil partners and same-sex spouses cannot.
- 14.19 HA policy provides that 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.²⁹¹ Where there is no surviving spouse, a person authorised to reside (and living in) the PRH unit may apply to become the new tenant of the PRH unit but would need to satisfy these tests.
- 14.20 As such, if a PRH tenant dies or moves out of the PRH unit, his/her opposite-sex spouse, but not his/her civil partner or same-sex spouse, may succeed to the tenancy.

15. Immigration

- 15.1 This category concerns residence in Hong Kong, the registration of persons and applications for identity cards, detainees, removal orders, 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

- 287 A judicial review application filed in November 2018 seeks, among other things, to set aside a decision by the Housing Authority that the applicant was ineligible to apply for a public rental housing flat with his same-sex husband as an ordinary family; see section 1 of this report. We have had regard to the applicant's Notice of Application for Leave to Apply for Judicial Review in preparing this section of the report.
- 288 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 (eg 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 Appendix A (ii), paragraph 2 and Appendix A (iii), paragraph 1 of the Application Guide for Public Rental Housing (Revised February 2015), and Section C, Chapter 2, page 1 of the Information Booklet on General Housing Policies.
- 289 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). Paragraph 2.7 and Appendix A (ii), paragraph 3 of the Application Guide for Public Rental Housing (Revised February 2015) and Section A, Chapter 1, pages 1 and 10 of the Information Booklet on General Housing Policies.
- 290 The eligibility criteria are set out in Part I of Form HD962E (Rev. 04/2018) and Section B, Chapter 6, pages 2 to 3 of the Information Booklet on General Housing Policies. 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" (<https://www.housingauthority.gov.hk/en/public-housing/tenancy-matters/changes-of-household-particulars/index.html#p2>).
- 291 See Form HD465E (Rev. 04/2018) and Section B, Chapter 7, page 1 of the Information Booklet on General Housing Policies. 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.

- 15.2 Our research did not extend to considering differential treatment in the context of dependant visas. However, we note that in July 2018 the Court of Final Appeal held that it was unlawful indirect discrimination on the grounds of sexual orientation to deny a dependant visa to a woman who had joined her same-sex civil partner (recognised under English law) in Hong Kong.²⁹²
- 15.3 The Immigration Department's revised policy now recognises marriages, civil partnerships, civil unions, and similar relationships (regardless of gender) that are legally and officially recognised where they were entered into. According to the policy, these relationships normally have the following features: (a) the entering into and dissolution of the relationship are governed by the legislation of the place where it is entered into; (b) the relationship requires registration by the competent authority specified by the legislation of the place where it is entered into; (c) the registration is evidenced in a written instrument issued by the competent authority; and (d) parties to the relationship have a mutual commitment to a shared life akin to spouses to the exclusion of others on a permanent basis. The policy does not cover "de facto spouse, partners in cohabitation, fiancé/fiancée" and therefore does not recognise opposite- or same-sex cohabitation relationships.²⁹³

Residence in Hong Kong

- 15.4 Whether a person is ordinarily resident in Hong Kong or not affects a number of rights and protections in an immigration context, including whether:
- (a) the person has become a Hong Kong permanent resident and therefore acquires the right of abode;²⁹⁴
 - (b) the person has ceased to be a Hong Kong permanent resident and therefore loses the right of abode but acquires the right to land;²⁹⁵ and
 - (c) a removal order can be made against the person.²⁹⁶
- 15.5 "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.²⁹⁷
- 15.6 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.²⁹⁸ That information may include whether the person's spouse is located in Hong Kong and whether he/she has a reasonable means of income to support his/her spouse.
- 15.7 It is possible that the Director may 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 cards

- 15.8 A person who applies for registration or an identity card 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.²⁹⁹ A person must therefore provide the details of his/her opposite-sex spouse, but not his/her civil partner, cohabitee, or same-sex spouse.
- 15.9 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).³⁰⁰ 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.

292 QT v Director of Immigration [2018] HKCFA 28.

293 Paragraph II(3)(a)(i) and Footnote 3 of the Guidebook for Entry for Residence as Dependants in Hong Kong, <https://www.immd.gov.hk/pdfforms/ID/E998.pdf>.

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

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

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

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

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

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

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

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. 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.³⁰¹

Detainees, removal orders, and deportation orders

- 15.11 A detainee in certain facilities may request that his/her close relative be notified of his/her whereabouts.³⁰² “Close relative” is not defined. However, the detainee may also name any other person for this purpose, and as such can request that notification be given to his/her spouse, civil partner, or cohabitee (regardless of gender).³⁰³
- 15.12 A detainee detained in certain facilities under the order of a magistrate has the right to post letters, and in some cases speak by telephone, to his/her relatives for the purposes of preparing his/her defence. “Relative” is not defined. However, the detainee also has this right in relation to his/her friends, and as such can communicate with his/her spouse, civil partner, or cohabitee (regardless of gender) for these purposes.³⁰⁴
- 15.13 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.³⁰⁵ This statutory power may not extend to a person’s civil partner, cohabitee, or same-sex spouse.

16. Inheritance³⁰⁶

16.1 This category concerns wills and probate, intestacy, maintenance for former spouses, and financial provision for dependants.

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

Wills and probate

16.2 A married person (who must be above the age of 16³⁰⁷) may make and validly revoke a will even though he/she has not attained full age (ie the age of 18).³⁰⁸ A person under 18 in a civil partnership, cohabitation relation, or same-sex marriage cannot make or revoke a will.

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

302 Section 1A(a) of Schedule 1 to the Immigration (Treatment of Detainees) Order (Cap. 115E) and section 3(a) of the Immigration Service (Treatment of Detained Persons) Ordinance (Cap. 331C).

303 Section 1A(a) of Schedule 1 to the Immigration (Treatment of Detainees) Order (Cap. 115E) and section 3(a) of the Immigration Service (Treatment of Detained Persons) Ordinance (Cap. 331C).

304 Section 1B(2) of Schedule 1 to the Immigration (Treatment of Detainees) Order (Cap. 115E), section 4(2) of the Immigration Service (Treatment of Detained Persons) Ordinance (Cap. 331C), and section 3B of Immigration (Places of Detention) Order (Cap. 115B).

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

306 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).

307 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.

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

- 16.3 As a general rule, a person's will is revoked upon his/her marriage.³⁰⁹ For these purposes, "marriage" includes a marriage under the Marriage Ordinance³¹⁰ 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.³¹¹ This does not, however, include a same-sex marriage recognised by the law of another jurisdiction; see paragraph 4.5 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.³¹² 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.³¹³ 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 individuals formerly in an alternative relationship at a disadvantage because they must make new wills in order to exclude their former civil partner, cohabitee, or same-sex spouse.
- 16.6 If a person to whom a grant of probate or administration would otherwise be made is a married woman above the age of 16 but under 21, administration for her use and benefit until she attains the age of 21 must be granted to, among others, her husband or next of kin, whichever she nominates. A woman in an alternative relationship is not able to nominate her civil partner, cohabitee, or same-sex spouse.³¹⁴

Intestacy

- 16.7 The estate of a person who dies intestate (ie 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.³¹⁵ Where the estate devolves to the Government, 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.³¹⁶
- 16.8 For these purposes, "husband" and "wife" mean a husband or wife of that person by a valid marriage.³¹⁷ A "valid marriage" includes a marriage under the Marriage Ordinance³¹⁸ 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.³¹⁹ This does not, however, include a same-sex marriage recognised by the law of another jurisdiction; see paragraph 4.5 above.
- 16.9 Consequently, in the absence of a will or other estate planning, a person in an alternative relationship cannot ensure that his/her surviving civil partner, cohabitee, or same-sex spouse will inherit his/her estate. A surviving civil partner, cohabitee, or same-sex spouse in those circumstances may be able to request support from the Government, but the Government is not required to consider granting the request if he/she is a 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.

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

310 Cap. 181.

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

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

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

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

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

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

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

318 Cap. 181.

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

16.10 A surviving civil partner, cohabitee, or same-sex spouse of a deceased person will also have neither of the following rights available to a surviving opposite-sex spouse:

- (a) being entitled to and having first priority ranking in obtaining a grant to administration with respect to the deceased's estate;³²⁰ and
- (b) being entitled to acquire the premises in which he/she resided with the deceased at the time of death.³²¹

Maintenance for former spouses and financial provision for dependants

- 16.11 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.³²² A deceased's "husband" or "wife" has the same meaning as for intestacy, discussed above.³²³
- 16.12 As such, a surviving opposite-sex spouse is entitled to apply regardless of whether he/she was maintained by the deceased, whereas a surviving civil partner, cohabitee, or same-sex spouse may only make an application if he/she was wholly or substantially maintained by the deceased.
- 16.13 The financial provision available to opposite-sex spouses and those in alternative relationships is also different. Where an application is made by the husband or wife 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 the husband's or wife's maintenance. However, where an application is made by a civil partner, cohabitee, or same-sex spouse who was maintained, the Court may only make an order for financial provision as is reasonable for his/her maintenance.³²⁴
- 16.14 In the event an order is made for the surviving husband or wife, the order, in so far as it provides for the making of periodic payments, ceases to have effect upon his/her remarriage.³²⁵ 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.
- 16.15 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.³²⁶ 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.

³²⁰ Rule 21 of the Non-Contentious Probate Rules (Cap. 10A).

³²¹ Section 7 of and Schedule 2 to the Intestates' Estates Ordinance (Cap. 73).

³²² Section 3(1)(i) of the Inheritance (Provision for Family and Dependants) Ordinance (Cap. 481).

³²³ Section 2(1) of the Inheritance (Provision for Family and Dependants) Ordinance (Cap. 481).

³²⁴ Section 3(2) of the Inheritance (Provision for Family and Dependants) Ordinance (Cap. 481).

³²⁵ Section 21 of the Inheritance (Provision for Family and Dependants) Ordinance (Cap. 481).

³²⁶ Part V of the Inheritance (Provision for Family and Dependants) Ordinance (Cap. 481).

17. International Affairs

17.1 This category concerns immunities and privileges granted to the representatives of foreign countries and international organisations in Hong Kong (**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 privileges

17.2 A wide range of immunities and privileges are extended to international representatives, their spouses, and other family members. 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 However, generally speaking, the spouse of an international representative may enjoy the following immunities and privileges:

- (a) immunity from arrest, detention, and criminal jurisdiction generally;³²⁷
- (b) immunity from civil and administrative jurisdiction;³²⁸
- (c) prohibition against coercive measures being applied if he/she does not give evidence before a Court;³²⁹
- (d) exemption from public service and military obligations;³³⁰
- (e) exemption from payment of customs, duties, and taxes generally or on particular items, such as tobacco, liquor, and petrol;³³¹
- (f) exemption from immigration restrictions (eg limits of stay, employment, and education);³³²
- (g) exemption from search and seizure of baggage;³³³ and
- (h) other immunities and privileges as are enjoyed by the international representative him/herself.³³⁴

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, cohabitants, 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.³³⁵

327 Schedule 2 to the Consular Relations (Additional Privileges and Immunities) (United Kingdom) Order (Cap. 557A).

328 Schedule to the Consular Relations (Additional Privileges and Immunities) (United States of America) Order (Cap. 557B).

329 Schedule to the Consular Relations (Additional Privileges and Immunities) (United States of America) Order (Cap. 557B).

330 Schedule to the Consular Relations (Additional Privileges and Immunities) (Cambodia) Order (Cap. 557H).

331 Schedule 1 to the International Organisations (Privileges and Immunities) (International Monetary Fund) Order (Cap. 558E).

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

333 Schedule 1 to the International Organisations (Privileges and Immunities) (Bank for International Settlements) Order (Cap. 558D).

334 Schedule to the Consular Relations (Additional Privileges and Immunities) (Russia) Order (Cap. 557F) and Schedule to the International Organisations (Privileges and Immunities) (Office of the Commission of the European Communities) Order (Cap. 558A).

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

17.5 As such, the civil partner, cohabitee, or same-sex spouse of an international representative may 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.

Attacks and threats of attack against senior officials of foreign governments

17.6 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.³³⁶

17.7 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).³³⁷ “Member of the same family” is not defined, and does not expressly include civil partners, cohabitees, or same-sex spouses. As such, an attack outside Hong Kong against a civil partner, cohabitee, or same-sex spouse of a foreign Head of State is not punishable in Hong Kong.

18. Marriage

18.1 This category concerns entering into a marriage, dissolving a marriage, 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 marry³³⁸ and (b) the appointment of persons as civil celebrants of marriages.³³⁹ 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.”³⁴⁰

18.3 There is no legislation that allows couples in alternative relationships to formalise their relationships.³⁴¹

³³⁶ Sections 3 and 5 of the Internationally Protected Persons and Taking of Hostages Ordinance (Cap. 468).

³³⁷ Section 2 of the Internationally Protected Persons and Taking of Hostages Ordinance (Cap. 468).

³³⁸ 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).

³³⁹ Section 5A of the Marriage Ordinance (Cap. 181).

³⁴⁰ See Section 40 of the Marriage Ordinance (Cap. 181).

³⁴¹ Judicial review applications have been made regarding the inability of couples to enter into civil partnerships and same-sex marriages and the non-recognition of same-sex marriages entered into overseas under Hong Kong law; see section 1 of this report.

Dissolving a marriage

18.4 The High Court and District Court have jurisdiction to dissolve marriages in certain circumstances. However, the Court does not have jurisdiction unless, among other conditions, the marriage was celebrated or contracted in accordance with the provisions of the Marriage Ordinance³⁴² 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.³⁴³ 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 dissolved in Hong Kong.

Other matters

18.5 Evidence of reputation or family tradition may be adduced for the purpose of proving or disproving pedigree or the existence of a marriage.³⁴⁴ 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.

19. Medical

19.1 This category concerns human organ transplants and medical research, mental health, and electronic health records.

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 removal³⁴⁵ and/or a restricted organ transplant³⁴⁶ between two specific 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.³⁴⁷ Civil partners, cohabitees, 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.³⁴⁸ This right is not available to a deceased’s civil partner, cohabitee, or same-sex spouse.

342 Cap. 181.

343 See Sections 3 to 6 of the Matrimonial Causes Ordinance (Cap. 179).

344 Section 52(3) of the Evidence Ordinance (Cap. 8).

345 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).

346 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).

347 Sections 5A(1)(a)(iii) and 5C(1) of the Human Organ Transplant Ordinance (Cap. 465).

348 Section 3 of the Medical (Therapy, Education and Research) Ordinance (Cap. 278).

Mental health

19.4 In context of mental health, 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.³⁴⁹ The latter therefore includes cohabitees, and civil partners and same-sex spouses who live or have lived with the mentally incapacitated person. This definition affects a number of statutory rights to make applications in relation to a mentally incapacitated person and to be informed where others make these applications:

- (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.³⁵⁰
- (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.³⁵¹ A relative of that person may apply for the committee’s powers to be varied or for the committee to be replaced.³⁵²
- (c) Subject to certain grounds and requirements, a relative of a person suffering or appearing to suffer from mental disorder (a **patient**) may make an application for the detention of the patient for observation.³⁵³ 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.³⁵⁴
- (d) The relative of a mentally incapacitated person, among others, may make a guardianship application.³⁵⁵
- (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.³⁵⁶
- (f) The relative or friend of a patient may make an application to the medical superintendent for the discharge of such patient.³⁵⁷ 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 relationships 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 revocation or variation of that order.³⁵⁸
- (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.³⁵⁹

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 (f)).

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 person might be expected to provide if he/she were not mentally incapacitated.³⁶⁰ This provision allows a Court to make provision for a mentally incapacitated person’s spouse, civil partner, or cohabitee, regardless of gender.

349 Section 2(1) of the Mental Health Ordinance (Cap. 136).

350 Section 7(1) of the Mental Health Ordinance (Cap. 136).

351 Section 11(1) of the Mental Health Ordinance (Cap. 136).

352 Section 26B of the Mental Health Ordinance (Cap. 136).

353 Sections 31(1) and 35A of the Mental Health Ordinance (Cap. 136).

354 Section 35A(2) of the Mental Health Ordinance (Cap. 136).

355 Section 59N(1) of the Mental Health Ordinance (Cap. 136).

356 Section 59N(3)(b) of the Mental Health Ordinance (Cap. 136).

357 Section 42(1) of the Mental Health Ordinance (Cap. 136).

358 Section 44I of the Mental Health Ordinance (Cap. 136).

359 Section 59B of the Mental Health Ordinance (Cap. 136).

360 Section 10A of the Mental Health Ordinance (Cap. 136).

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.³⁶¹

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 matters³⁶² for and on behalf of the individual.

19.9 A person's substitute decision maker includes: (a) his/her family member or; (b) a person residing with him/her, provided in both cases that the substitute decision maker accompanies the healthcare recipient at the relevant time.³⁶³ 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.

20. Other

20.1 This category concerns matters outside the scope of the other categories. It covers agriculture and fishing industry-specific benefits, carriage by air, complaints to the Ombudsman and the Independent Police Complaints Council, dwelling vessels, enduring powers of attorney, indigenous village elections, intellectual property, legal aid, passenger ships, professions, road traffic and motor vehicles, trade unions, and trusts.

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.³⁶⁴ 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.³⁶⁵ 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 may not be able to do so.

361 Regulation 3 of the Mental Health (Guardianship) Regulations (Cap. 136D).

362 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).

363 Section 3 of the Electronic Health Record Sharing System Ordinance (Cap. 625).

364 Section 9B of the Agricultural Products (Marketing) Ordinance (Cap. 277) and section 20 of the Marine Fish (Marketing) Ordinance (Cap. 291).

365 Section 10 of the Agricultural Products (Marketing) Ordinance (Cap. 277) and section 11 of the Marine Fish (Marketing) Ordinance (Cap. 291).

Carriage by air

20.3 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.³⁶⁶ 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.

Complaints to the Ombudsman and the Independent Police Complaints Council

20.4 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 himself, by his/her personal representative or by a member of his/her family or other individual suitable to represent him/her.³⁶⁷ As such, the Ombudsman is unable to act on a complaint from an individual's civil partner, cohabitee, or same-sex spouse, unless the civil partner, etc. is the individual's personal representative or the Ombudsman takes the view that the individual's civil partner, etc. is an individual suitable to represent him/her.

20.5 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 illness.³⁶⁸ "Relative" includes a spouse.³⁶⁹ 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.

Dwelling vessels

20.6 A licence for a dwelling vessel³⁷⁰ 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.³⁷¹ A licensee's surviving civil partner, cohabitee, or same-sex spouse is unable to apply for the licence to be transferred on the basis of their alternative relationship.

Enduring powers of attorney

20.7 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.³⁷² 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.³⁷³ These restrictions do not extend to these persons' civil partners, cohabitees, or same-sex spouses.

20.8 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.³⁷⁴ 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.

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

367 Section 10 of the Ombudsman Ordinance (Cap. 397).

368 Section 15(1) of the Independent Police Complaints Council Ordinance (Cap. 604).

369 Section 15(2) of the Independent Police Complaints Council Ordinance (Cap. 604).

370 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).

371 Section 7 of the Merchant Shipping (Local Vessels) (Dwelling Vessels) Regulation (Cap. 548A).

372 Section 5(2)(aa) of the Enduring Powers of Attorney Ordinance (Cap. 501).

373 Section 5(2)(b) of the Enduring Powers of Attorney Ordinance (Cap. 501).

374 Section 8(3)(c)(i) of the Enduring Powers of Attorney Ordinance (Cap. 501).

Indigenous village elections

20.9 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.³⁷⁵ “Spouse” includes a concubine.³⁷⁶ This means the civil partner, cohabitee, or same-sex spouse of an indigenous inhabitant is not eligible to be an elector.

Intellectual property

20.10 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.³⁷⁷ 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.³⁷⁸ The term “relative” includes a person’s spouse.³⁷⁹ 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.

Legal aid

20.11 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.³⁸⁰

20.12 The family of a deceased person may seek legal aid with regard to inquests into deaths.³⁸¹ This right does not extend to a deceased’s civil partner, cohabitee, or same-sex spouse.

20.13 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.³⁸² 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.³⁸³ It is possible that this deferment may not apply to property used as a home solely for the aided person’s civil partner or same-sex spouse.

20.14 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 HKD4,800 each month.³⁸⁴ This protection does not apply to maintenance paid to a person’s former or current civil partner or same-sex spouse.³⁸⁵

375 Section 15(5) of the Rural Representative Election Ordinance (Cap. 576).

376 Section 2(1) of the Rural Representative Election Ordinance (Cap. 576).

377 Section 59 of the Patents Ordinance (Cap. 514).

378 Section 61(8) of the Patents Ordinance (Cap. 514).

379 Section 61(8) of the Patents Ordinance (Cap. 514).

380 Regulation 7 of the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91B).

381 Regulation 15A of the Legal Aid Regulations (Cap. 91A).

382 Section 18A(1) of the Legal Aid Ordinance (Cap. 91).

383 Section 18A(3B) of the Legal Aid Ordinance (Cap. 91).

384 Section 18A(5) of the Legal Aid Ordinance (Cap. 91).

385 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.

Passenger ships

20.15 The fitting of facilities, lighting and amenities (such as washbasins, bed sizes, book cases, etc.) on passenger ships is regulated by law.³⁸⁶ “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.³⁸⁷ 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

20.16 Where an applicant seeking to be registered as a medical practitioner, midwife, or chiropractor provides character references in support of his/her application, the character references cannot be from his/her relatives.³⁸⁸ As such, an applicant is free to submit character references from his/her civil partner, cohabitee, or same-sex spouse.

20.17 In the case of solicitors and notaries public, relationship status influences, among other things, the operation of the professional conduct rules and with whom profits can be shared. For example, 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.³⁸⁹ Two or more individuals are “associated parties” where they are related by blood, adoption, or marriage.³⁹⁰ As a result, a solicitor can act for a buyer and seller who are opposite-sex spouses, but cannot act for both if they are civil partners, cohabitees, or same-sex spouses.

20.18 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.³⁹¹ 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.³⁹² It is possible that a notary public could not make these payments to a deceased principal or deceased predecessor’s civil partner, cohabitee, or same-sex spouse.

Road traffic and motor vehicles

20.19 The Motor Vehicles (First Registration Tax) Ordinance³⁹³ 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.³⁹⁴
- (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.³⁹⁵
- (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.³⁹⁶

386 Merchant Shipping (Seafarers) (Crew Accommodation) Regulation (Cap. 478), generally.

387 Section 2 of the Merchant Shipping (Seafarers) (Crew Accommodation) Regulation (Cap. 478), including the definition of “passenger” and “passenger ship”.

388 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).

389 Rules 5C(1) and 5C(6)(a) of the Solicitors’ Practice Rules (Cap. 159H).

390 Rule 1A of the Solicitors’ Practice Rules (Cap. 159H).

391 Section 6(1) of the Notaries Public (Practice) Rules (Cap. 159AI).

392 Section 6(3) of the Notaries Public (Practice) Rules (Cap. 159AI).

393 Cap. 330.

394 Section 2 of the Motor Vehicles (First Registration Tax) Ordinance (Cap. 330).

395 Section 3B of the Motor Vehicles (First Registration Tax) Ordinance (Cap. 330).

396 Section 4D of the Motor Vehicles (First Registration Tax) Ordinance (Cap. 330).

(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.³⁹⁷

20.20 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. “Relative” is not defined. This definition does not include a person’s civil partner, cohabitee, or same-sex spouse. As such, the above provisions apply differently to people in opposite-sex marriages versus alternative relationships.

20.21 In relation to driving licences, a wife may have her husband’s name included in the particulars concerning the driver in an international driving permit.³⁹⁸ A woman in an alternative relationship cannot have her civil partner’s, cohabitee’s, or same-sex spouse’s name included.

20.22 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.³⁹⁹ A disabled person in an alternative relationship is unable to obtain this parking permit on the same basis.

Trade unions

20.23 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.⁴⁰⁰ It is not however an offence that extends violence or intimidation to a person’s civil partner, cohabitee, or same-sex spouse.

20.24 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.⁴⁰¹ Trade unions are not required to have rules that provide these benefits to their members’ civil partners, cohabitees, or same-sex spouses.

Trusts

20.25 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).⁴⁰² 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.

20.26 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.⁴⁰³

397 Section 4FA of the Motor Vehicles (First Registration Tax) Ordinance (Cap. 330).

398 Ninth Schedule to the Road Traffic (Driving Licences) Regulations (Cap. 374B).

399 Section 27A of the Road Traffic (Parking) Regulations (Cap. 374C).

400 Section 47 of the Trade Unions Ordinance (Cap. 332).

401 Section 2 and Schedule 2 of the Trade Unions Ordinance (Cap. 332).

402 Section 33 of the Trustee Ordinance (Cap. 29).

403 Section 35 of the Trustee Ordinance (Cap. 29).

21. Public Health

21.1 This category concerns 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 certain designated projects⁴⁰⁴ in Hong Kong.⁴⁰⁵ 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.⁴⁰⁶

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.⁴⁰⁷ 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.⁴⁰⁸ 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.⁴⁰⁹ It is possible that these premises would not include those owned, leased, or occupied by a livestock keeper's civil partner, cohabitee, or same-sex spouse. This affects, for example, the ability of the Director of Environmental Protection to regulate these premises, etc.⁴¹⁰

404 Designated projects fall under 17 major headings: roads, railways, and depots; airports and port facilities; reclamation, hydraulic and marine facilities, dredging and dumping; energy supply; water extraction and water supply; sewage collection, treatment, disposal, and reuse; waste storage, transfer, and disposal facilities; utility pipelines, transmission pipelines, and substations; waterways and drainage works; mineral extraction; industrial activities; storage, transfer, and trans-shipment of fuels; agriculture and fisheries activities; communities facilities; tourist and recreational developments; residential and other developments; and miscellaneous.

405 Section 10 of the Environmental Impact Assessment Ordinance (Cap. 499).

406 Section 4(4) of the Environmental Impact Assessment Ordinance (Cap. 499).

407 Schedule 1 to the Environmental Impact Assessment Ordinance (Cap. 499).

408 See Note to the Fourth Schedule to the Waste Disposal Ordinance (Cap. 354).

409 Section 2(1) of the Waste Disposal Ordinance (Cap. 354).

410 For example, see sections 15G and 33 of the Waste Disposal Ordinance (Cap. 354).

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.⁴¹¹ An occupier is not liable if litter or waste is deposited by his/her civil partner, cohabitee, or same-sex spouse.⁴¹²
- 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.⁴¹³ 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.⁴¹⁴ The owner of a dog is therefore not liable if his/her civil partner, cohabitee, or same-sex spouse was in charge of the dog.⁴¹⁵

22. Public Service

22.1 This category concerns pension schemes for government officers, welfare funds for members of the disciplined services, and benefits for the staff of statutory bodies.

Relationship	Recognition
Opposite-sex marriage	Recognised
Same-sex marriage	Not recognised, subject to paragraph 22.2 below
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
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 and other regulations that apply to civil servants. However, in this context the Court of Final Appeal held in June 2019 that the Secretary for the Civil Service had acted unlawfully in denying medical and dental benefits to the same-sex spouse of a civil servant.⁴¹⁶ As at the date of this report, the Court of Final Appeal has not ordered the specific relief to be granted. Consequently, the extent to which civil servants’ alternative relationships will be recognised, and how persons in those relationships will be treated, under the Civil Service Regulations following this decision is unsettled.

411 Section 4(2) of the Public Cleansing and Prevention of Nuisances Regulation (Cap. 132BK).

412 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).

413 Sections 13(1) and 23 of the Public Cleansing and Prevention of Nuisances Regulation (Cap. 132BK).

414 Section 13(2) of the Public Cleansing and Prevention of Nuisances Regulation (Cap. 132BK).

415 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).

416 *Leung Chun Kwong v Secretary for the Civil Service and Another* [2019] HKCFA 19.

*Pension schemes for government officers*⁴¹⁷

- 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.⁴¹⁸ 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.⁴¹⁹ This benefit is therefore available to an officer’s opposite-sex spouse and may be available to his/her opposite-sex cohabiting civil partner or cohabitee (provided they cohabit as each other’s spouse), but is not available to his/her same-sex spouse, civil partner, 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.⁴²⁰ 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.⁴²¹ A “spouse” includes the person to whom the officer is lawfully married.⁴²² 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.⁴²³ 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.⁴²⁴ A “spouse” includes the person to whom the officer is lawfully married.⁴²⁵ It is possible that these payments cannot be made to an officer’s civil partner, cohabitee, or same-sex spouse.
- 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.⁴²⁶ These alternative schemes would pay death gratuities to an officer’s opposite-sex spouse, but it is possible that they would not make similar payments to an officer’s civil partner, cohabitee, or same-sex spouse.

Welfare funds for members of the disciplined services

- 22.7 Each of Hong Kong’s disciplined services – the Police Force,⁴²⁷ the Fire Services Department,⁴²⁸ the Correctional Services Department,⁴²⁹ the Customs and Excise Department,⁴³⁰ the Immigration Department,⁴³¹ and the Government Flying Service⁴³² – has a separate welfare fund, whose administration is governed by legislation.
- 22.8 The funds can be used for a variety of specified purposes, including:
- (a) making loans to dependants of deceased members or former members of the relevant service;⁴³³
 - (b) granting financial assistance to dependants of deceased members or former members of the relevant service in order to meet the funeral expenses of those deceased persons;⁴³⁴ and

417 This section addresses the two 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 <https://www.csb.gov.hk/english/admin/retirement/184.html>.

418 Section 18(1) of the Pensions Ordinance (Cap. 89) and section 19(1) of the Pension Benefits Ordinance (Cap. 99).

419 Section 18(3)(b) of the Pensions Ordinance (Cap. 89) and section 19(7)(aa) of the Pension Benefits Ordinance (Cap. 99).

420 Section 17 of the Pensions Ordinance (Cap. 89) and section 20 of the Pension Benefits Ordinance (Cap. 99).

421 Section 17(7A) of the Pensions Ordinance (Cap. 89) and section 20(10A) of the Pension Benefits Ordinance (Cap. 99).

422 Section 2(1) of the Pensions Ordinance (Cap. 89) and the Pensions Benefits Ordinance (Cap. 99). Under the Pensions Ordinance (Cap. 89), “spouse” also includes: (a) where the officer contracts a marriage and by reason of the form of the marriage he/she is or becomes lawfully married to more than one person at the same time, the person whom the officer first married, and; (b) where the officer contracts a lawful Chinese customary marriage, the kit fat or tin fong wife.

423 Section 13(1) of the Pensions Ordinance (Cap. 89) and section 28(1) of the Pension Benefits Ordinance (Cap. 99).

424 Section 13(3) of the Pensions Ordinance (Cap. 89) and section 28(3) of the Pension Benefits Ordinance (Cap. 99).

425 Section 2(1) of the Pensions Ordinance (Cap. 89) and the Pensions Benefits Ordinance (Cap. 99). Under the Pensions Ordinance (Cap. 89), “spouse” also includes: (a) where the officer contracts a marriage and by reason of the form of the marriage he/she is or becomes lawfully married to more than one person at the same time, the person whom the officer first married; and (b) where the officer contracts a lawful Chinese customary marriage, the kit fat or tin fong wife.

426 Section 6A of the Pensions Ordinance (Cap. 89); section 13 of the Pension Benefits Ordinance (Cap. 99).

427 Part IV of the Police Force Ordinance (Cap. 232), which governs the Police Force Welfare Fund.

428 Part IV of the Fire Services Ordinance (Cap. 95), which governs the Fire Services Welfare Fund.

429 Part III of the Prisons Ordinance (Cap. 234), which governs the Correctional Services Department Welfare Fund.

430 Part IV of the Customs and Excise Service Ordinance (Cap. 342), which governs the Customs and Excise Service Welfare Fund.

431 Part IV of the Immigration Service Ordinance (Cap. 331), which governs the Immigration Service Welfare Fund.

432 Part IV of the Government Flying Service Ordinance (Cap. 322), which governs the Government Flying Service Welfare Fund.

433 For example, section 39E(1)(f) of the Police Force Ordinance (Cap. 232).

434 For example, section 19D(1)(f) of the Fire Services Ordinance (Cap. 95).

- (c) making grants, allowances, and gifts to dependants of deceased members or former members of the relevant service for purposes other than funeral expenses.⁴³⁵

22.9 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,⁴³⁶ he/she is or was (at the time of the member’s death) wholly or partially dependent on the member or former member.⁴³⁷ For the Government Flying Service Welfare Fund, benefits are to be procured for “eligible persons”, including: (a) a dependant (undefined) of 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.⁴³⁸

22.10 It is therefore possible that a member’s civil partner, cohabitee, or same-sex spouse would not be able to enjoy the benefits of the relevant fund.

22.11 Separate from the welfare funds, the Medical Officer appointed by the Chief Executive under the Prisons Ordinance⁴³⁹ has a general duty to give medical advice and assistance, including medicines, to the officers of the Correctional Services Department and their families.⁴⁴⁰ This duty extends to advice and assistance to officers’ opposite-sex spouses, but not to their civil partners, cohabitees, or same-sex spouses.

Benefits for the staff of statutory bodies

22.12 There are a number of 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,⁴⁴¹ the Construction Industry Council,⁴⁴² the Insurance Authority,⁴⁴³ the Mandatory Provident Fund Schemes Authority (MPFA),⁴⁴⁴ the Privacy Commissioner for Personal Data,⁴⁴⁵ and the Securities and Futures Commission,⁴⁴⁶
- (b) educational, medical, and charitable organisations and their boards, such as Caritas,⁴⁴⁷ the Chinese University of Hong Kong,⁴⁴⁸ the Hong Kong Society for the Protection of Children,⁴⁴⁹ the Hong Kong Tuberculosis, Chest and Heart Diseases Association,⁴⁵⁰ the board of the Matilda and War Memorial Hospital,⁴⁵¹ Po Leung Kuk,⁴⁵² the board of the Prince Philip Dental Hospital,⁴⁵³ the Society of Boys’ Centres,⁴⁵⁴ and the Tung Wah Group of Hospitals;⁴⁵⁵ and
- (c) other bodies that serve a public purpose, such as the Clothing Industry Training Authority,⁴⁵⁶ the Fish Marketing Organisation,⁴⁵⁷ the Hong Kong Arts Centre,⁴⁵⁸ the Ocean Park Corporation,⁴⁵⁹ and the Urban Renewal Authority.⁴⁶⁰

435 For example, section 19D(1)(h) of the Customs and Excise Service Ordinance (Cap. 342).

436 For example, the Commissioner of Police of Hong Kong for the Police Force.

437 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).

438 Sections 16(a)(iv) and (v) of the Government Flying Service Ordinance (Cap. 332).

439 Cap. 234.

440 Rule 143 of the Prison Rules (Cap. 234A).

441 Schedule 5 to the Competition Ordinance (Cap. 619).

442 Section 18(1) of the Construction Industry Council Ordinance (Cap. 587).

443 Section 4E(2) of the Insurance Ordinance (Cap. 41).

444 Section 6G(3) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485).

445 Section 9(3)(b) of the Personal Data (Privacy) Ordinance (Cap. 486).

446 Section 9(2) of the Securities and Futures Ordinance (Cap. 571).

447 Section 4 of the Caritas-Hong Kong Incorporation Ordinance (Cap. 1092).

448 Statute 11(8)(1)(k) in Schedule 1 to The Chinese University of Hong Kong Ordinance (Cap. 1109).

449 Section 4 of the Hong Kong Society for the Protection of Children Incorporation Ordinance (Cap. 1058).

450 Section 5 of the Hong Kong Tuberculosis, Chest and Heart Diseases Association Incorporation Ordinance (Cap. 1024).

451 Article 6(a) of the Schedule to the Matilda and War Memorial Hospital Ordinance (Cap. 1035).

452 Paragraph 2(1) of the Schedule to the Po Leung Kuk Ordinance (Cap. 1040).

453 Section 13 of The Prince Philip Dental Hospital Ordinance (Cap. 1081).

454 Section 4 of the Society of Boys’ Centres Incorporation Ordinance (Cap. 1008).

455 Paragraph 2(1)(n) of the Schedule to the Tung Wah Group of Hospitals Ordinance (Cap. 1051).

456 Section 13 of the Industrial Training (Clothing Industry) Ordinance (Cap. 318).

457 Section 13 of the Marine Fish (Marketing) Ordinance (Cap. 291).

458 Section 7 of the Hong Kong Arts Centre Ordinance (Cap. 304).

459 Section 21 of the Ocean Park Corporation Ordinance (Cap. 388).

460 Schedule to the Urban Renewal Authority Ordinance (Cap. 563).

- 22.13 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 varies from body to body, but can include: (a) pension, retirement, and similar schemes; (b) allowances, bonuses, and gratuities; and (c) living accommodation.⁴⁶¹
- 22.14 These bodies are clearly empowered to provide benefits to their employees' opposite-sex spouses. However, with the exception of the MPFA, it is possible their powers would not extend to providing benefits to their employees' civil partners, cohabitants, or same-sex spouses.
- 22.15 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.⁴⁶² Consequently, the opposite-sex civil partner or cohabitee of an MPFA employee may be able to obtain the same retirement benefits available to opposite-sex spouses.

23. Public Welfare

- 23.1 This category concerns the Government's Working Family Allowance scheme, Comprehensive Social Security Assistance scheme, and 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*⁴⁶³

- 23.2 Households that meet a monthly working hours requirement⁴⁶⁴ and do not have monthly income and assets that exceed the prescribed limits⁴⁶⁵ are eligible to be paid an allowance at various rates under the Working Family Allowance scheme.
- 23.3 Applications for this scheme are made on a household basis,⁴⁶⁶ and applicants are required to include details of all household members⁴⁶⁷ on the application form.⁴⁶⁸ 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."⁴⁶⁹

461 See the footnote to each body listed above for the legislative provision that provides the relevant power.

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

463 Previously called the Low-income Working Family Allowance (**LIFA**) Scheme. As from 1 April 2018, the scheme was extended to cover single-person households (ie individuals living on their own).

464 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 (4/2018)).

465 The relevant limits are set out in the Working Family Allowance Scheme Additional Information for Guidance Notes (document WFA102B (4/2018)). 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.

466 Paragraph 3.1 of the Guidance Notes for Applications under the Working Family Allowance Scheme. Since 1 April 2018, single-person households, ie individuals living on their own, may also be eligible to be paid WFA.

467 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.

468 Note 2 to Working Family Allowance Scheme Application Form (document WFA001B (4/2018)).

469 Paragraph 3.1.2 of the Guidance Notes for Applications under the Working Family Allowance Scheme.

23.4 It therefore appears that an applicant's spouse, civil partner, or cohabitee (regardless of gender) is considered part of the applicant's household for the purposes of assessing eligibility for this scheme.⁴⁷⁰ This means:

- (a) an applicant may (but is not required to) include hours worked by his/her spouse, civil partner, or 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, civil partner, or cohabitee will be taken into account when calculating whether the household's monthly income and assets fall within the prescribed limits.⁴⁷¹

Comprehensive Social Security Assistance (CSSA) scheme

23.5 Applicants that meet the CSSA scheme's residence requirement⁴⁷² and do not have income and assets that exceed the prescribed limits⁴⁷³ are eligible to be paid various standard rates of allowance, along with certain supplements and/or special grants depending upon their personal circumstances.⁴⁷⁴

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.⁴⁷⁵

23.7 Applicable guidance does not define "family members". As such, (unlike opposite-sex spouses) civil partners, cohabitees, and same-sex spouses could apply for CSSA otherwise than on a household basis and thereby exclude the assets of an applicant's civil partner, cohabitee, or same-sex spouse from the assessment as to whether the applicant is eligible. Depending on the circumstances, this may result in a person in an alternative relationship being eligible for CSSA where he/she otherwise would not be.

*Social Security Allowance (SSA) scheme*⁴⁷⁶

23.8 Applicants that: (a) have reached the qualifying age⁴⁷⁷ or satisfied the disability certification requirement;⁴⁷⁸ (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.⁴⁷⁹

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 in respect of the Normal and Higher Old Age Living Allowance (together, **OALA**) and the Fujian and Guangdong Schemes is different in that each is means-tested.

470 The WFA application form requires an applicant to list all household members by category, broken down for present purposes to "spouse" or "other".

471 Paragraphs 3.2 to 3.4 of the Guidance Notes for Applications under the Working Family Allowance Scheme.

472 Paragraph 3.A of A Guide to Comprehensive Social Security Assistance.

473 Paragraph 3.B of A Guide to Comprehensive Social Security Assistance.

474 One of a number of 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 HKD2,190 per month or working less than 120 hours per month. See paragraph 3.C A Guide to Comprehensive Social Security Assistance.

475 Paragraph 3.B(b) of A Guide to Comprehensive Social Security Assistance.

476 The SSA scheme includes Old Age Allowance, Normal Disability Allowance, Higher Disability Allowance, Normal Old Age Living Allowance, Higher Old Age Living Allowance, and the Fujian and Guangdong Schemes (for the payment of Old Age Allowance to eligible recipients who choose to reside in Guangdong or Fujian province): https://www.swd.gov.hk/en/index/site_pubsvc/page_socsecu/sub_ssallowance/.

477 In the case of applicants for: (a) Normal or Higher Old Age Living Allowance – age 65 or above; (b) the Fujian or Guangdong Schemes – age 65 or above; and (c) Old Age Allowance – age 70 or above: see Application for Social Security Allowance Guidance Notes, pages 4, 9, Application for Fujian Scheme Guidance Notes, page 4, Application for Guangdong Scheme Guidance Notes, page 4.

478 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, page 6.

479 Disability Allowance recipients aged 12 to 64 are also paid a monthly transport supplement. See Social Security Allowance Scheme – provides a monthly allowance to Hong Kong residents who are 65 years of age or above or who are severely disabled, page 6.

- 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.⁴⁸⁰ It appears that the monthly income and assets of an applicant's cohabitee will also be taken into account under the OALA means test.⁴⁸¹ As such, it appears that the monthly income and assets of an applicant's cohabitee or opposite-sex spouse, or cohabiting civil partner or same-sex spouse, will be taken into account for the purposes of assessing the applicant's eligibility. The monthly income and assets of non-cohabiting civil partners and same-sex spouses 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.⁴⁸² "Spouse" is not defined. As such, the monthly income and assets of an applicant's civil partner, cohabitee, or same-sex spouse should 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.

24. Regulatory 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
Opposite-sex cohabitation relationship	Recognised for banks (in part), provided a couple lives as each other's spouse; recognised for mandatory provident fund schemes and occupational retirement schemes (in part), provided a couple cohabits in a bona fide domestic relationship as man and wife
Same-sex cohabitation relationship	Not recognised

- 24.1 This category concerns the special rules that apply to the individuals and companies who conduct activities for which a licence or registration from the Government or a statutory body is required (**regulated persons**), personal data, and public offers.

Money lenders and pawnbrokers

- 24.2 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.⁴⁸³
- 24.3 A Court can reopen the terms of certain transactions in order 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.⁴⁸⁴
- 24.4 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.⁴⁸⁵

480 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 (https://www.swd.gov.hk/oala/index_e.html#s8): "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 Normal OALA/Higher OALA?"

481 See Part 2 of the Simplified Application Form for OALA ("Spouse's personal data (for applicant who is married or cohabited only)") and SWD OALA FAQ (https://www.swd.gov.hk/oala/index_e.html#s8): "Under what circumstances are recipients/appointees required to provide information on the personal particulars, income and assets of the recipient's spouse?". Similar provision is not made in the general SSA scheme application form. 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 "When a recipient's marital status is married or cohabiting, the recipient/appointee is required to provide the personal particulars as well as information on the income and assets of his/her/the recipient's spouse, regardless of whether the recipient's spouse is receiving Normal OALA/Higher OALA".

482 See Application for Fujian Scheme Guidance Notes, pages 8 to 9 and Application for Guangdong Scheme Guidance Notes, page 7.

483 Regulation 12 of the Money Lenders Regulations (Cap. 163A) and section 21 of the Pawnbrokers Ordinance (Cap. 166).

484 Section 25 of the Money Lenders Ordinance (Cap. 163).

485 Section 15 of the Money Lenders Ordinance (Cap. 163).

24.5 None of the above protections and rights apply to a person in an alternative relationship with a borrower, debtor, or money lender, respectively.

Insurers

24.6 Insurers are required to be authorised if they carry on business in one or more classes of insurance business in or from Hong Kong.⁴⁸⁶ The classes of insurance business include contracts of insurance, expressed to be in effect for a period of more than one year, to provide a sum upon a marriage.⁴⁸⁷

24.7 “Marriage” is not defined for these purposes. 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.⁴⁸⁸

24.8 The classes of insurance business also include contracts to pay annuities on human life.⁴⁸⁹ 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.⁴⁹⁰ These contracts will not be regulated if the relevant fund is limited to, among others, a person’s opposite-sex spouse, but it is possible that they would be regulated if the fund also provides for the relief and maintenance of a person’s civil partner, cohabitee, and same-sex spouse.

Banks

24.9 Regulated banks in Hong Kong are subject to limitations on their unsecured financial exposures to specified persons connected to them.⁴⁹¹ For example, a bank cannot grant an unsecured loan of more than HKD1,000,000 to a specified person. A specified person includes a relative of: (a) a director of the bank; (b) an employee of the bank who is responsible for approving loan applications; and (c) a controller of the bank.⁴⁹² “Relative” includes a person’s spouse or former spouse, and the spouse or former spouse of a person’s immediate ascendants and descendants.⁴⁹³ “Spouse” is defined to include anyone living as such.⁴⁹⁴

24.10 These limits therefore apply to persons connected to a bank through opposite-sex marriages, and would also apply to persons connected by opposite-sex civil partnerships or cohabitation relationships if they are considered as “living as a spouse”, but would not apply to a person connected through a same-sex relationship. On that basis, banks are able to provide unsecured facilities above the statutory limit to persons connected by same-sex relationships but not opposite-sex relationships.

24.11 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 (not defined).⁴⁹⁵ This offence 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.

486 Section 6 of the Insurance Ordinance (Cap. 41).

487 Part 2 of Schedule 1 to the Insurance Ordinance (Cap. 41).

488 Practically, it would seem unusual for an insurer to exclude opposite-sex marriages while including alternative relationships.

489 Part 2 of Schedule 1 of the Insurance Ordinance (Cap. 41).

490 Section 2(1) of the Insurance Ordinance (Cap. 41).

491 Section 83 of the Banking Ordinance (Cap. 155).

492 Section 83(4) of the Banking Ordinance (Cap. 155).

493 Section 79(1) of the Banking Ordinance (Cap. 155).

494 Section 79(1) of the Banking Ordinance (Cap. 155).

495 Section 124 of the Banking Ordinance (Cap. 155).

Securities and Futures Commission-regulated financial services

- 24.12 A number of 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,⁴⁹⁶ does not need to renew PIs' standing authorities for client securities and client money every 12 months,⁴⁹⁷ and can opt out from providing contract notes, statements of account, and/or receipts to PIs.⁴⁹⁸
- 24.13 PIs include individuals who have a portfolio of not less than HKD8 million.⁴⁹⁹ 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.⁵⁰⁰
- 24.14 In this context, "associate" means an individual's spouse or child.⁵⁰¹ As a result, for the purposes of meeting the HKD8 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 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.
- 24.15 As a separate matter, a corporation licensed for certain types of regulated activity under the Securities and Futures Ordinance⁵⁰² must maintain liquid capital exceeding its ranking liabilities.⁵⁰³ 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.⁵⁰⁴ This means that 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.
- 24.16 Lastly, the Securities and Futures Ordinance⁵⁰⁵ regulates collective investment schemes (eg unit trusts, mutual funds, and exchange-traded funds (ie 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;⁵⁰⁶ 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.⁵⁰⁷
- 24.17 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, cohabitees, or same-sex spouses hold these products.

496 Section 174(2)(a) of the Securities and Futures Ordinance (Cap. 571).

497 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).

498 Section 3(2) of the Securities and Futures (Contract Notes, Statements of Account, and Receipts) Rules (Cap. 571Q).

499 Section 5(1) of the Securities and Futures (Professional Investor) Rules (Cap. 571D).

500 Section 5(2) of the Securities and Futures (Professional Investor) Rules (Cap. 571D).

501 Section 2 of the Securities and Futures (Professional Investor) Rules (Cap. 571D).

502 Cap. 571.

503 Securities and Futures (Financial Resources) Rules (Cap. 571N), generally.

504 Section 42 of the Securities and Futures (Financial Resources) Rules (Cap. 571N).

505 Cap. 571.

506 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).

507 Section 1A(2) of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571).

24.18 The terms “collective investment scheme”, “structured product”, “securities” (included because “securities” includes interests in collective investment schemes and structured products)⁵⁰⁸, and “financial product” (included because “financial product” includes collective investment schemes, structured products, and securities)⁵⁰⁹ appear in 150 provisions of the Securities and Futures Ordinance⁵¹⁰. 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”.⁵¹¹ 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 collective investment scheme whose participants include employees’ civil partners, cohabitants, 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”.⁵¹² 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.⁵¹³ 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, cohabitants, 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

24.19 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.⁵¹⁴ At least one of the two must be an independent trustee.⁵¹⁵ A person is not an independent trustee if he/she is a close relative of the employer or an associate of the employer.⁵¹⁶

24.20 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.⁵¹⁷ A director is not an independent director if he/she is a close relative of any associate of the company.⁵¹⁸

24.21 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.⁵¹⁹ 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.⁵²⁰ An “associate” of a company includes an officer of the company and his/her close relatives.⁵²¹

24.22 These provisions therefore disqualify a person from being an independent director or independent trustee on the basis of his/her or others’ opposite-sex marriage (and potentially opposite-sex cohabitation relationships and civil partnerships); however, same-sex marriages, civil partnerships, and cohabitations 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.

24.23 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),⁵²² and

508 Section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571).

509 Section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571).

510 Cap. 571.

511 Section 114 of, and Parts 1 and 2 of Schedule 5 to, the Securities and Futures Ordinance (Cap. 571).

512 Section 107 of the Securities and Futures Ordinance (Cap. 571).

513 Section 108 of the Securities and Futures Ordinance (Cap. 571).

514 Section 21(1)(b) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485).

515 Section 21(1)(b) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485).

516 Section 23(5) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485A).

517 Section 20(2) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485).

518 Section 9(e) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485A).

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

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

521 Section 2 of Part 1 of Schedule 8 to the Mandatory Provident Fund Schemes Ordinance (Cap. 485).

522 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 Ordinance⁵²³ by an auditor, actuary, or solicitor, must be done by such a person who is not an “associate” of the relevant employer.⁵²⁴

24.24 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.⁵²⁵ “Spouse” is not defined.

24.25 These provisions therefore disqualify a person from a particular role on the basis of his/her opposite-sex marriage. Alternative relationships are not addressed in the legislation, permitting persons in these relationships to act in roles requiring independence and an absence of conflicts of interest without the checks required if they were instead in an opposite-sex marriage.

Public dance halls and dancing schools

24.26 Dancing schools and public dance halls in Hong Kong require a licence.⁵²⁶ The Secretary for Home Affairs can refuse to renew a licence or can revoke a licence if certain requirements are not complied with.⁵²⁷

24.27 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.⁵²⁸ 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.⁵²⁹

Controllers of regulated persons

24.28 In many areas, the law⁵³⁰ requires the controllers⁵³¹ 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.⁵³²

24.29 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; and (d) licensed corporations under the Securities and Futures Ordinance⁵³³, define an “associate” as including a person’s spouse,⁵³⁴ wife,⁵³⁵ and/or husband.⁵³⁶ “Spouse”, “wife”, and “husband” are not defined for these regimes.

24.30 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.

523 Cap. 426.

524 See sections 68(3)(c) and 69(1)(b) of the Occupational Retirement Schemes Ordinance (Cap. 426).

525 Section 2(1) of the Occupational Retirement Schemes Ordinance (Cap. 426).

526 Section 4 of the Miscellaneous Licences Ordinance (Cap. 114).

527 Regulation 7 of the Miscellaneous Licences Regulations (Cap. 114A).

528 Regulations 64 and 114 of the Miscellaneous Licences Regulations (Cap. 114A).

529 Regulations 7 and 64 of the Miscellaneous Licences Regulations (Cap. 114A).

530 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).

531 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).

532 For example, see paragraph 4 of Part 2 of Schedule 1 to the Broadcasting Ordinance (Cap. 562).

533 Cap. 571.

534 Section 1(1) of Part 1 of Schedule 1 to the Broadcasting Ordinance (Cap. 562) and Section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571).

535 Section 6B(1) of the Betting Duty Ordinance (Cap. 108) and section 9(4)(a) of the Insurance Ordinance (Cap. 41).

536 Section 6B(1) of the Betting Duty Ordinance (Cap. 108) and section 9(4)(a) of the Insurance Ordinance (Cap. 41).

24.31 Exceptionally, the controller regime for approved trustees for MPF schemes look at a person's voting power, alone or with a close relative.⁵³⁷ 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 or civil partner (if they live as man and wife).

Anti-money laundering

24.32 Financial institutions⁵³⁸ and designated non-financial businesses and professions⁵³⁹ in Hong Kong are required to conduct customer due diligence when establishing business relationships with their customers and at certain points throughout these relationships.⁵⁴⁰ Special requirements apply where these service providers deal with politically exposed persons.⁵⁴¹

24.33 Politically exposed persons include (a) individuals who are or have been entrusted with a prominent public function in a place outside the People's Republic of China (**public official**); (b) a spouse or partner of a public official, and (c) a spouse or partner of a child of a public official.⁵⁴² "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.⁵⁴³

24.34 As such, Hong Kong's anti-money laundering framework is less stringent in monitoring the activities of public officials' civil partners, cohabitees, and or same-sex spouses.

Personal data

24.35 The Personal Data (Privacy) Ordinance⁵⁴⁴ (**PDPO**) is meant to protect the privacy of individuals in relation to their personal data.⁵⁴⁵ Among other protections, the PDPO 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.⁵⁴⁶

24.36 These protections are subject to exemptions, two of which are relevant for this analysis.

24.37 First, personal data held by an individual and concerned only with the management of his personal, family, or household affairs is exempt from certain parts of the PDPO.⁵⁴⁷ 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 PDPO.

24.38 Second, the use of personal data for informing an individual's immediate family members of the individual's involvement in a life-threatening situation is exempt from certain parts of the PDPO.⁵⁴⁸ "Immediate family member" means another person who is related to the concerned person by blood, marriage, adoption, or affinity.⁵⁴⁹ 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.

537 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).

538 In this context, financial institutions means: (a) authorised institutions, (b) licensed corporations, (c) authorised insurers, (d) appointed insurance agents, (e) authorised insurance brokers, (f) licensed money service operators; (g) the Postmaster General; and (h) the holder of a stored value facility licence; see section 1 of Part 2 of the Schedule 1 to the Anti-money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615).

539 The designated non-financial businesses and professions are: (a) accounting professionals; (b) estate agents; (c) legal professionals; and (d) licensed trust or company service providers; see section 1 of Part 2 of Schedule 1 to the Anti-money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615).

540 Section 3 of Part 2 of Schedule 2 to the Anti-money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615).

541 Sections 5(3) and 10 of Part 2 of Schedule 2 to the Anti-money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615).

542 Section 1(1) of Part 1 of Schedule 2 to the Anti-money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615).

543 Section 1(2) of Part 1 of Schedule 2 to the Anti-money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615).

544 Cap. 486.

545 Long title to the Personal Data (Privacy) Ordinance (Cap. 486).

546 Data Protection Principles 1(3)(b)(i)(A) and 3(1) in Schedule 1 to the Personal Data (Privacy) Ordinance (Cap. 486).

547 Section 52 of the Personal Data (Privacy) Ordinance (Cap. 486).

548 Section 63C(1)(b) of the Personal Data (Privacy) Ordinance (Cap. 486).

549 Section 63C(2) of the Personal Data (Privacy) Ordinance (Cap. 486).

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;⁵⁵⁰ 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.⁵⁵¹

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.⁵⁵² "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, cohabitee, or same-sex spouse;⁵⁵³
- (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;⁵⁵⁴ 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.⁵⁵⁵

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, cohabitees, 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 that employers are unable or unwilling to do so, these schemes cannot be made available to their employees' civil partners, cohabitees, or same-sex spouses.

25. Tax⁵⁵⁶

25.1 This category concerns the levying of tax in Hong Kong, including salaries tax, profits tax, and stamp duty.

Relationship	Recognition
Opposite-sex marriage	Recognised
Same-sex marriage	Not recognised, subject to "Joint assessment of salaries tax" below
Opposite-sex civil partnership	Not recognised
Same-sex civil partnership	Not recognised
Opposite-sex cohabitation relationship	Not recognised
Same-sex cohabitation relationship	Not recognised

550 Parts II and XII of the Companies (Winding up and Miscellaneous Provisions) Ordinance (Cap. 32).

551 Section 103 of the Securities and Futures Ordinance (Cap. 571).

552 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).

553 Part 4 of the Seventeenth Schedule to the Companies (Winding up and Miscellaneous Provisions) Ordinance (Cap. 32).

554 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).

555 Section 1A(2) of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571).

556 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 specific provisions of the Estate Duty Ordinance (Cap. 111).

25.2 In the primary tax legislation in Hong Kong:

- (a) “marriage” means any marriage recognised by the law of Hong Kong, or any marriage 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. Guidance from the Inland Revenue Department expressly states that a same-sex marriage is not regarded as a valid marriage for these purposes.⁵⁵⁷ However, this guidance is likely to change following a recent decision of the Court of Final Appeal; see “Joint assessment of salaries tax” below;
- (b) “spouse” means a husband or wife; and
- (c) “husband” and “wife” mean a married man and a married woman, respectively, whose marriage falls within the above definition.⁵⁵⁸

25.3 These definitions are relevant to tax and the information-gathering powers of the Commissioner of Inland Revenue. They are not relevant to stamp duty.

Personal assessment⁵⁵⁹

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.⁵⁶⁰

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.⁵⁶¹ Joint election for personal assessment is therefore only available to opposite-sex spouses; persons in alternative relationships 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.⁵⁶² This limitation applies to opposite-sex spouses, but not persons in alternative relationships.

Joint assessment of salaries tax

25.7 A husband and wife can elect to be jointly assessed to salaries tax where they meet certain requirements.⁵⁶³ 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-sex spouses.

25.8 In June 2019, the Court of Final Appeal held that the rejection by the Commissioner of Inland Revenue of a taxpayer’s election for joint assessment with his husband constituted unlawful discrimination against him on the grounds of sexual orientation.⁵⁶⁴ As at the date of this report, the Court of Final Appeal has not ordered the specific relief to be granted. Consequently, the extent to which taxpayers’ alternative relationships will be recognised, and how persons in those relationships will be treated, by the Commissioner following this decision is unsettled.

⁵⁵⁷ Paragraph 5 of the IRD’s Departmental Interpretation and Practice Notes No. 18 (Revised).

⁵⁵⁸ Section 2(1) of the Inland Revenue Ordinance (Cap. 112).

⁵⁵⁹ This analysis applies to all years of assessment commencing on or after 1 April 2018. Different rules, which are not considered in this report, apply to earlier years of assessment.

⁵⁶⁰ Section 41(1) of the Inland Revenue Ordinance (Cap. 112).

⁵⁶¹ Section 41(1A) of the Inland Revenue Ordinance (Cap. 112).

⁵⁶² Section 41(1B) of the Inland Revenue Ordinance (Cap. 112).

⁵⁶³ Section 10(2) of the Inland Revenue Ordinance (Cap. 112).

⁵⁶⁴ *Leung Chun Kwong v Secretary for the Civil Service and Another* [2019] HKCFA 19.

*Allowances for salaries tax and personal assessment*⁵⁶⁵

25.9 If a person is assessed to salaries tax or has elected for personal assessment, he/she is entitled to a basic allowance⁵⁶⁶ and may be eligible for alternative or other allowances that would reduce his/her total assessable income, provided certain conditions are satisfied.⁵⁶⁷ In particular:

- (a) A person who is married can be granted a married person's allowance (HKD264,000) rather than the basic allowance (HKD132,000).⁵⁶⁸ This is only available to opposite-sex spouses; a person in a civil partnership, cohabitation relationship, or same-sex marriage can only be granted a basic allowance.
- (b) A person can be granted the allowance in column A in the amount(s) in column B in respect of the people in column C (among others):

Column A	Column B ⁵⁶⁹	Column C
Dependent parent ⁵⁷⁰	HKD25,000 to HKD100,000	Spouse's dependent parents
Dependent grandparent ⁵⁷¹	HKD25,000 to HKD100,000	Spouse's dependent grandparents
Dependent brother ⁵⁷²	HKD37,500	Spouse's unmarried dependent brothers
Dependent sister ⁵⁷³	HKD37,500	Spouse's unmarried dependent sisters
Disabled dependant ⁵⁷⁴	HKD75,000	Spouse and the people in the four rows above, if eligible to claim an allowance under the Disability Allowance Scheme
Child ⁵⁷⁵	HKD120,000 or HKD240,000	Spouse's unmarried dependent child

The above can only be granted to persons in an opposite-sex marriage; civil partners, cohabitees, and same-sex spouses are not eligible for these allowances in respect of each other's relatives.

- (c) A person can be granted a single parent allowance 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.⁵⁷⁶ This allowance is not available to opposite-sex spouses (unless they live apart), but can be granted to a person in a civil partnership, cohabitation relationship, or same-sex marriage.

25.10 As such, couples in alternative relationships are generally eligible for fewer allowances than opposite-sex spouses, and as a result are 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 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-sex spouses, Z can claim allowances totalling up to HKD584,000.⁵⁷⁷
- (ii) If Z and Y are civil partners, cohabitees, or same-sex spouses, Z can only claim an allowance of HKD132,000.⁵⁷⁸
- (iii) The difference of HKD452,000, if taxed at the highest progressive salaries tax bracket (17%), means Z would pay HKD76,840 more in tax where he/she is in an alternative relationship.

565 The amounts of allowances shown apply to the year of assessment commencing on 1 April 2018.

566 Section 28 of the Inland Revenue Ordinance (Cap. 112).

567 Part 5 of the Inland Revenue Ordinance (Cap. 112).

568 Section 29 of the Inland Revenue Ordinance (Cap. 112).

569 Schedule 4 to the Inland Revenue Ordinance (Cap. 112).

570 Section 30 of the Inland Revenue Ordinance (Cap. 112).

571 Section 30A of the Inland Revenue Ordinance (Cap. 112).

572 Section 30B of the Inland Revenue Ordinance (Cap. 112).

573 Section 30B of the Inland Revenue Ordinance (Cap. 112).

574 Section 31A of the Inland Revenue Ordinance (Cap. 112).

575 Section 31 of the Inland Revenue Ordinance (Cap. 112).

576 Section 32 of the Inland Revenue Ordinance (Cap. 112).

577 This comprises: (a) the married person's allowance (HKD264,000); (b) two dependent parent allowances (HKD100,000 each); and (c) one child allowance (HKD120,000) for a total of HKD584,000.

578 This is the basic allowance (HKD132,000).

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 his/her spouse makes;⁵⁷⁹ and
 - (b) up to HKD100,000 in residential care expenses paid by him/her or his/her spouse for each of his/her or his/her cohabiting spouse's eligible parent(s) or grandparent(s).⁵⁸⁰
- 25.12 These allow a person to deduct donations made by his/her opposite-sex spouse and residential care expenses paid: (a) by the person in relation to his/her opposite-sex spouse's eligible parents or grandparents or; (b) by his/her opposite-sex spouse in relation to his/her or his/her opposite-sex spouse's eligible parents or grandparents. A person cannot deduct the same payments made by a person's civil partner, cohabitee, or same-sex spouse, or in relation to the parents or grandparents of those persons.
- 25.13 Separately, a person may claim a deduction of up to HKD100,000 for home loan interest paid during a year of assessment.⁵⁸¹ 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.⁵⁸² The ability to nominate is limited to a person's opposite-sex spouse; couples in civil partnerships, cohabitation relationships, and same-sex marriages are unable to nominate each other.
- 25.14 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.⁵⁸³ 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 residential care expenses over a certain amount.⁵⁸⁴ This provides a valid ground in relation to payments by or payments likely to be made by a person's opposite-sex spouse, but not his/her civil partner, cohabitee, or same-sex spouse.

Anti-avoidance of salaries tax

- 25.15 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.⁵⁸⁵ As a result of this change, 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.⁵⁸⁶
- 25.16 An individual's "associates" include his/her relatives.⁵⁸⁷ "Relative" includes a person's spouse, but is not defined in a way that includes a person's civil partner, cohabitee, or same-sex spouse.⁵⁸⁸
- 25.17 This means these anti-avoidance provisions apply to, and make subject to salaries tax, payments to a service company controlled by a person's opposite-sex spouse or a trust under which a person's opposite-sex spouse is a beneficiary. However, if a person's civil partner, cohabitee, or same-sex spouse is connected with a service company or trust in the same way, these provisions would not apply.

579 Section 26C of the Inland Revenue Ordinance (Cap. 112).

580 Section 26D of the Inland Revenue Ordinance (Cap. 112).

581 Section 26E of and Schedule 3D to the Inland Revenue Ordinance (Cap. 112).

582 Section 26F of the Inland Revenue Ordinance (Cap. 112).

583 Section 63E(1) of the Inland Revenue Ordinance (Cap. 112).

584 Section 63E(2)(bc) of the Inland Revenue Ordinance (Cap. 112).

585 Paragraph 2 of the Inland Revenue Department's Departmental Interpretation and Practice Notes No. 25 (Revised), available here: https://www.ird.gov.hk/eng/pdf/e_dipn25.pdf.

586 Sections 8 and 9A of the Inland Revenue Ordinance (Cap. 112).

587 Section 9A(8) of the Inland Revenue Ordinance (Cap. 112).

588 Section 9A(8) of the Inland Revenue Ordinance (Cap. 112).

*Profits tax*⁵⁸⁹

- 25.18 Generally speaking, a taxpayer may deduct all outgoings and expenses (including salaries, interest,⁵⁹⁰ and certain contributions to retirement schemes⁵⁹¹) incurred in the production of chargeable profits, subject to certain prohibitions and limitations.⁵⁹² However, a taxpayer cannot deduct salaries or other remuneration of his/her spouse, interest on capital or loans provided by his/her spouse, or a contribution made to a mandatory provident fund scheme in respect of his/her spouse.⁵⁹³ This prevents a person from deducting these outgoings and expenses in respect of his/her opposite-sex spouse, but not his/her civil partner, cohabitee, or same-sex spouse. A person in an alternative relationship could, as a result, pay less profits tax.
- 25.19 A person's relationship status is also relevant to the profits tax treatment of, among other things, debt instruments,⁵⁹⁴ aircraft leasing,⁵⁹⁵ intellectual property,⁵⁹⁶ regulatory capital security,⁵⁹⁷ non-resident persons,⁵⁹⁸ agents of non-resident persons,⁵⁹⁹ special purpose vehicles (SPVs),⁶⁰⁰ open-ended fund companies,⁶⁰¹ the exhibition or use of video and sound recordings,⁶⁰² and capital expenditure on leased machinery and plant.⁶⁰³

Double taxation arrangements

- 25.20 The Hong Kong Government may enter into double taxation arrangements with the government of a territory outside Hong Kong with a view to according 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.⁶⁰⁴ These rules have effect despite any conflicting legislation in Hong Kong.⁶⁰⁵
- 25.21 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).⁶⁰⁶ “Relative” is defined, but not in a way that includes a person's civil partner, cohabitee, or same-sex spouse.⁶⁰⁷
- 25.22 This means that the framework for implementing double taxation arrangements supports relief for persons in opposite-sex marriages, but not those in alternative relationships. Couples in alternative relationships may therefore be treated differently from opposite-sex spouses where double taxation arrangements are concerned.

589 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.

590 Section 16(1)(a) of the Inland Revenue Ordinance (Cap. 112).

591 Sections 16A, 16AA, and 17(1)(h) of the Inland Revenue Ordinance (Cap. 112).

592 Section 16(1) of the Inland Revenue Ordinance (Cap. 112).

593 Section 17(2) of the Inland Revenue Ordinance (Cap. 112).

594 Sections 14A and 26A of the Inland Revenue Ordinance (Cap. 112).

595 Section 14G of the Inland Revenue Ordinance (Cap. 112).

596 Section 15F of the Inland Revenue Ordinance (Cap. 112).

597 Section 17E of the Inland Revenue Ordinance (Cap. 112).

598 Sections 20AC and 20AE of the Inland Revenue Ordinance (Cap. 112).

599 Section 20AA of the Inland Revenue Ordinance (Cap. 112).

600 Section 20AF of the Inland Revenue Ordinance (Cap. 112).

601 Sections 20AI and 20AK of the Inland Revenue Ordinance (Cap. 112).

602 Section 21A of the Inland Revenue Ordinance (Cap. 112).

603 Section 39E of the Inland Revenue Ordinance (Cap. 112).

604 Section 49(1C) of the Inland Revenue Ordinance (Cap. 112).

605 Section 49(1C) of the Inland Revenue Ordinance (Cap. 112).

606 Section 49(1E) of the Inland Revenue Ordinance (Cap. 112).

607 Section 49(1F) of the Inland Revenue Ordinance (Cap. 112).

Information-gathering powers of the Commissioner of Inland Revenue

25.23 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 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.⁶⁰⁸ 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.⁶⁰⁹

25.24 These powers can only be exercised against the opposite-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, cohabitee, or same-sex spouse 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 alternative relationships.

Stamp duty on immovable property and Hong Kong stock

25.25 Stamp duty is payable on the sale or transfer of immovable property (eg land, buildings, and flats) in Hong Kong and Hong Kong stock⁶¹⁰ (eg 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.⁶¹¹ This exemption is limited to opposite-sex marriages. Immovable property or Hong Kong stock transferred in consideration of an alternative relationship is subject to stamp duty.

Ad valorem stamp duty and buyer's stamp duty on residential property⁶¹²

25.26 Ad valorem stamp duty is generally payable on the sale or transfer of immovable property in Hong Kong.⁶¹³ Ad valorem stamp duty is charged on two scales, Scale 1 (15%) and Scale 2 (from HKD100 to 4.25%).⁶¹⁴ The lower Scale 2 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;⁶¹⁵ or
- (b) buy/sell or transfer a residential property between each other, provided the buyer/transferee acts on his/her own behalf.⁶¹⁶

25.27 In addition to ad valorem stamp duty, buyer's stamp duty (15%)⁶¹⁷ is generally payable on the sale or transfer of residential property in Hong Kong.⁶¹⁸ Exemptions from buyer's stamp duty include 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 and each acts on his/her own behalf;⁶¹⁹ or
- (b) buy/sell or transfer a residential property between each other, provided the buyer/transferee acts on his/her own behalf.⁶²⁰

608 Section 51A of the Inland Revenue Ordinance (Cap. 112).

609 Section 51B of the Inland Revenue Ordinance (Cap. 112).

610 See section 2(1) of the Stamp Duty Ordinance (Cap. 117) for the definition of "Hong Kong stock" and "stock".

611 Sections 27(4) and 29F(3) of the Stamp Duty Ordinance (Cap. 117).

612 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.

613 Sections 29AJ and 29BA of the Stamp Duty Ordinance (Cap. 117).

614 Heads 1(1) and (1A) of the First Schedule to the Stamp Duty Ordinance (Cap. 117).

615 Sections 29AJ and 29BB of the Stamp Duty Ordinance (Cap. 117).

616 Sections 29AL and 29BD of the Stamp Duty Ordinance (Cap. 117).

617 Heads 1(AAB) and (1C) of the First Schedule to the Stamp Duty Ordinance (Cap. 117).

618 Sections 29CB(1) and 29DB(1) of the Stamp Duty Ordinance (Cap. 117).

619 Sections 29CB(2)(b) and 29DB(2)(b) of the Stamp Duty Ordinance (Cap. 117).

620 Sections 29CB(2)(c) and 29DB(2)(c) of the Stamp Duty Ordinance (Cap. 117).

25.28 For the purposes of these stamp duties, two persons are “closely related” if, among other circumstances, they are each other’s spouse.⁶²¹

25.29 As such, opposite-sex spouses are charged lower Scale 2 rates of ad valorem stamp duty and are exempted from ad valorem or buyer’s stamp duty, but couples in alternative relationships must pay buyer’s stamp duty⁶²² and the higher Scale 1 rates of ad valorem stamp duty.

25.30 As an example, where a couple involving one person who is a Hong Kong permanent resident and one person who is not buys a residential property in Hong Kong for HKD10m:

- (a) if the couple is in an opposite-sex marriage, they would pay ad valorem stamp duty of HKD750,000 (7.5% of the purchase price) and be exempt from buyer’s stamp duty; and
- (b) if the couple is in an alternative relationship, they would pay ad valorem stamp duty of HKD1.5m and buyer’s stamp duty of HKD1.5m, for a total of HKD3m (30% of the purchase price), four times the amount paid by opposite-sex spouses.⁶²³

Special stamp duty on residential property

25.31 Special stamp duty (between 5% and 20%)⁶²⁴ 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.⁶²⁵ However, special stamp duty does not need to be paid where property is transferred from the vendor to, among others, his/her spouse.⁶²⁶ This exemption only applies to transactions between opposite-sex spouses. Transactions between civil partners, cohabittees, or same-sex spouses are subject to special stamp duty.

621 Section 29AD of the Stamp Duty Ordinance (Cap. 117).

622 Unless both persons are Hong Kong permanent residents.

623 This example (a) assumes the transaction is not at an undervalue, and (b) disregards the HKD100 payable under section 29D(2)(b) of the Stamp Duty Ordinance (Cap. 117).

624 Heads 1(1AA) and (1B) of the First Schedule to the Stamp Duty Ordinance (Cap. 117).

625 Sections 29CA(1) and (2) and 29DA(1) and (2) of the Stamp Duty Ordinance (Cap. 117).

626 Sections 29CA(10) and 29DA(10) of the Stamp Duty Ordinance (Cap. 117).

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Marcus Dearle, Partner and Head of Family Asset Protection, Private Client

Marcus Dearle is a partner and Head of Family Asset Protection at international law firm Bryan Cave Leighton Paisner LLP. He is Asia Leader of Private Client and is on the firm's LGBTQ Advisory Board. He advises on all aspects of family law and is qualified in Hong Kong, England and Wales, and the British Virgin Islands. He is Vice Chair of the International Bar Association Family Law Committee and a Fellow of the International Academy of Family Lawyers.

He is one of the leading lawyers in Hong Kong advising on Assisted Reproductive Technology (including surrogacy) issues in a family law context and was one of the first lawyers in the UK to develop expertise in surrogacy law with an international element, having advised on complex international surrogacy issues since 1999. He spent the first 26 years of his career at Withers in London and Hong Kong where he was a partner, and for a number of years managing partner of Withers' Hong Kong and Singapore offices. He also spearheaded the formation of Withers' Hong Kong family team in 2009.

In 2016 Marcus moved his practice to BLP (now BCLP after its 2018 merger with Bryan Cave) to form a brand new Family Asset Protection team at the firm. He was named as one of the "top 10" family lawyers in 2015 in Hong Kong in Spears Asia Magazine and was shortlisted for the LexisNexis Family Law International Family Lawyer of the Year Award 2018.

Chow Ruskin Brown

Winnie Chow, Partner

Winnie helps her clients resolve their family conflicts with tailored solutions that draw from a variety of dispute resolution options. Her practice covers a wide range of international family law matters, both mainstream as well as complex and atypical.

Winnie is a founding member of the Hong Kong Collaborative Practice Group and has been Vice Chair since 2012. She is also a member of the International Academy of Collaborative Professionals. She is a Fellow of the International Academy of Family Lawyers and was appointed to the executive committee of IAFL as Parliamentarian in 2013, and as Vice-President between 2014 and 2018. She is an executive committee member of the Hong Kong Family Law Association and a member of the Hong Kong Law Society's Family Law Committee.

Winnie has been ranked as one of the top ten Hong Kong family lawyers by Spear's Magazine (Asia), as a notable practitioner by Chambers and Partners Asia Practice Guide, a leading lawyer by the Doyles Guide and recognised on various occasions by The Law Society of Hong Kong for her pro bono and community services.

Hugill & Ip

Alfred Ip MCLArb, TEP, Partner

A qualified solicitor in Hong Kong since 2000, Alfred's speciality is dispute resolution, an area in which he is ranked by Chambers & Partners Asia Pacific as a "Leading Individual". Alfred is skilled in helping individuals and their families manage personal and wealth-related matters, including trust and probate (both contentious and non-contentious), family office, and mental capacity issues. Alfred is a member of the Society of Trust and Estate Practitioners and the Chartered Institute of Arbitrators. He is a CEDR-accredited Mediator and a Notary Public.

In 2012, he won the Law Society of Hong Kong's Gold Award for services to the community for his pro bono initiative, "FreeWill", and he has received pro bono service awards every year since. In addition to his Private Client practice, Alfred has 20 years of experience in commercial litigation and dispute resolution. In March 2017, Alfred was appointed to sit as a Deputy District Judge.

Alfred is Chairman of Pink Alliance.

Seyfarth Shaw

Seyfarth Shaw LLP provides thoughtful, strategic, practical legal counsel to client companies and legal teams of all sizes. With more than 850 attorneys in the U.S., London, Shanghai, Hong Kong, Melbourne and Sydney, Seyfarth offer a national platform and an international gateway to serve clients' changing business and legal needs in international employment law, labour and employment, litigation, corporate, real estate, immigration and employee benefits.

Seyfarth Shaw Hong Kong is in association with Wong, Wan & Partners.

Simon Reid-Kay & Associates

Simon Reid-Kay, Partner

Simon leads Simon Reid-Kay & Associates and has practised in Hong Kong since 1985. He deals with all types of real estate transactions and regularly advises on the real estate aspects of IPOs, funds (including REITs), securitisations, sale and leaseback and portfolio management for substantial Hong Kong-based international investment banks and conglomerates. He regularly advises private funds and investment banks on their own and their clients' real estate requirements, including investments, financing, and property management. Simon has advised on the planning and construction aspects of many major developments and infrastructure projects in Hong Kong and the region. He also has extensive experience in government land administration and heavyweight commercial leasing work. Simon has been ranked as a Tier 1 real estate lawyer in Chambers Global.

Deseré Attard, Registered Foreign Lawyer (England and Wales)

Deseré is a Registered Foreign Lawyer (England and Wales). She is an attorney, notary, and conveyancer in South Africa and a solicitor in England and Wales. She focuses on commercial property, infrastructure, mining, and natural resources transactions, acting predominantly for financial institutions and project and mining companies. Her areas of expertise include banking and finance (with an emphasis on security arrangements), commercial property, mining, minerals, natural resources, and energy.

PwC

Robert Keys, Partner

Robert Keys is a partner based in PwC's Hong Kong office. He has over 30 years of experience as a tax professional. He advises high net worth private clients, senior executives, entrepreneurs, and their companies on complex US and Hong Kong tax issues.

He also regularly advises on the tax implications of cross-border movement of people, employee stock ownership schemes, and deferred compensation arrangements. He has significant experience in helping clients manage their expatriate tax and mobility programmes. He works closely with his clients to help them develop creative solutions to manage their overall tax exposure.

Rob is a graduate of the University of California at Berkeley and a member of the California Society of Certified Public Accountants and the American Chambers of Commerce in Hong Kong and China.

Lawrence Lui, Senior Manager

Lawrence Lui is a Senior Manager at PwC International Assignment Services (Hong Kong) Limited with more than 17 years of professional service experience specialising in Hong Kong/US cross-border individual tax consulting and compliance.

He has extensive experience in providing both Hong Kong and US individual income tax compliance and consulting services to companies from different industries with a focus on international assignment management, implementation of tax-efficient schemes/policies, remuneration package structuring, tax equalisation, equity compensation, and international mobility.

Lawrence is a Certified Tax Adviser and a member of the American Institute of Certified Public Accountants.

Appendix 1

Search terms

bachelor%	familial	matrimon%	spous%
bachelour%	families	relative%	surviv%
“civil partner”	family	“related person”	widow%
“civil partners”	household%	“related persons”	wife%
cohabit%	husband%	“substitute decision maker”	wive%
dependant%	marr%	spinster%	
divorce%	marital		

Combined search string

marr% OR spous% OR husband% OR family OR families OR familial OR wife% OR wive% 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”

Search results

QR Code



Shortened URL

<https://tinyurl.com/EOCallenoverly>

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