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MARRIAGE REFORM ORDINANCE 1970.

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HONG KONG

No. 68 OF 1970.

*Ordinance not disallowed -
see G.N. 164/70.*

I assent.

L.S.

D. C. C. TRENCH,
*Governor.**9th July, 1970.*

An Ordinance to make provision with regard to customary marriages, concubinage, modern marriages and the dissolution of marriages, to repeal the Chinese Marriage Preservation Ordinance and for connected purposes.

[10th July, 1970.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

PART I.**PRELIMINARY.**

1. This Ordinance may be cited as the Marriage Reform Ordinance 1970. Short title.
2. In this Ordinance, unless the context otherwise requires— Interpretation.
 - “appointed day” means the day appointed for the purpose of this Ordinance by the Governor under section 3;
 - “Chinese law and custom” means such of the laws and customs of China as would immediately prior to the 5th April 1843 have been applicable to Chinese inhabitants of the Colony;
 - “customary marriage” means a marriage celebrated in Hong Kong in accordance with section 7;
 - “designated public officer” means a public officer designated for the purposes of Part V by the Governor under section 22;
 - “modern marriage” means a marriage celebrated in Hong Kong before the appointed day by open ceremony as a modern marriage and in the presence of two or more witnesses;

“parties to a customary marriage” means the husband and the principal wife (*tsai*) whether such wife is a *kit fat* or a *tin fong* wife; and, for the avoidance of doubt, “party to a customary marriage” does not include a concubine (*tsip*);

“Registrar” means the Registrar of Marriages, and any deputy registrar of marriages, appointed under section 3 of the Marriage Ordinance;

(Cap. 181.)

[Appointed day = 7-10-71. — see L.N. 187/70] “validated marriage” means a modern marriage made valid by section 8.

Power to appoint day.

3. The Governor may by notice in the *Gazette* appoint a day to be the appointed day for the purposes of this Ordinance.

PART II.

MARRIAGES ON AND AFTER APPOINTED DAY.

Marriages on and after appointed day to be monogamous.
(Cap. 181.)

4. Marriages entered into in Hong Kong on and after the appointed day shall imply the voluntary union for life of one man with one woman to the exclusion of all others and may be contracted only in accordance with the Marriage Ordinance.

Status of concubinage not to be acquired on and after appointed day.

5. (1) On or after the appointed day, no man may take a concubine and no woman may acquire the status of a concubine.

(2) Subsection (1) shall not affect in any way—

(a) the status or rights of a concubine lawfully taken before the appointed day; or

(b) the status or rights of a child, whether born before, on or after the appointed day, of a concubine lawfully taken before the appointed day.

Kim tiu (兼祧) marriages not to be entered into.

6. (1) On or after the appointed day no person shall contract a *kim tiu* (兼祧) marriage.

(2) Subsection (1) shall not affect in any way—

(a) the status or rights of a party to a *kim tiu* (兼祧) marriage lawfully contracted before the appointed day;

(b) the status or rights of a child, whether born before, on or after the appointed day, of parties to a *kim tiu* (兼祧) marriage contracted before the appointed day.

PART III.

CUSTOMARY AND MODERN MARRIAGES.

7. (1) For the purposes of this Ordinance, a marriage shall constitute a customary marriage if it was or is celebrated in Hong Kong before the appointed day in accordance with Chinese law and custom.

Customary marriage.

(2) A marriage shall be deemed to accord with Chinese law and custom if it was celebrated or is celebrated before the appointed day in Hong Kong in accordance with the traditional Chinese customs accepted at the time of the marriage as appropriate for the celebration of marriage either—

- (a) in the part of Hong Kong where the marriage took place; or
- (b) in the place recognized by the family of either party to the marriage as their family place of origin.

(3) A customary marriage of persons who are subject to Chinese law and custom is hereby declared to be a valid marriage.

8. Subject to section 14, every marriage celebrated in Hong Kong before the appointed day as a modern marriage by a man and a woman each of whom, at the time of the marriage, was not less than sixteen years of age and was not married to any other person shall be a valid marriage, and shall be deemed to have been valid since the time of celebration, notwithstanding—

Validation of modern marriage.

- (a) that the proper personal law and religion of the parties, or one of them, was Chinese law and custom, and the marriage was prohibited by or failed to comply with the requirements of Chinese law and custom; or
- (b) that the marriage was not under and in accordance with the Marriage Ordinance.

(Cap. 181.)

PART IV.

POST-REGISTRATION OF CUSTOMARY MARRIAGES
AND VALIDATED MARRIAGES.

9. (1) The Registrar shall maintain separate registers for the registration of customary marriages and validated marriages.

(2) The parties to a customary marriage or a validated marriage celebrated in Hong Kong before the appointed day may apply

Registration of customary marriages and validated marriages.

to the Registrar in the prescribed manner at any time for the registration of their marriage.

(3) Where one of the parties to a customary marriage or a validated marriage disputes the existence of the marriage or is unwilling to join in any application for the registration of the marriage under this section, the other party to the marriage may apply to the District Court for a declaration that a customary marriage or a validated marriage, as the case may be, subsists between the parties, and the District Court shall have jurisdiction to hear and determine any such application.

(4) One party to a customary marriage or a validated marriage celebrated in Hong Kong before the appointed day may—

- (a) with the consent in writing of the other party to the marriage; or
- (b) where the District Court has under subsection (3) declared the marriage to subsist,

apply to the Registrar in the prescribed manner at any time for the registration of the marriage.

(5) Where the Registrar is satisfied that—

- (a) the particulars contained in any application under this section are true; and
- (b) a form of marriage did take place between the parties named at the time and place and before the witnesses specified in the application; and
- (c) the marriage constitutes either a valid customary marriage or a validated marriage,

he shall prepare a certificate of marriage in the prescribed form and the Registrar, and the applicants, or applicant as the case may be, and two witnesses to the marriage, shall thereupon sign duplicate certificates; but a certificate shall not be invalidated by the absence of signature by one or both witnesses if the Registrar is satisfied that one or both is or are not available, and cannot reasonably be made available, to sign and he records that he is so satisfied on the certificate.

(6) When a certificate is signed in accordance with subsection (5), the Registrar shall deliver one certificate to the applicants or applicant and the other certificate shall form part of the register which the Registrar is required to maintain under subsection (1).

(7) Where, on an application to the Registrar under this section, the Registrar is not satisfied with respect to the matters specified in paragraphs (a), (b) and (c) of subsection (5), a party to the marriage may apply to the District Court for a declaration

that a customary marriage or a validated marriage, as the case may be, subsists between the parties, and the District Court shall have jurisdiction to hear and determine any such application.

10. (1) Upon receipt of an application under section 9 for the registration of a customary marriage or a validated marriage, the Registrar may—

(a) summon before him any applicant, any alleged party to the marriage and any person alleged to have been present at the marriage, and may require any person so summoned to answer such questions as the Registrar may ask for the purpose of determining the application before him;

(b) require any applicant to furnish such further information either by statutory declaration or otherwise as he may reasonably require.

(2) Any person who, without lawful excuse, fails to comply with a summons or requirement issued or made under subsection (1) shall be guilty of an offence and shall be liable to a fine of one thousand dollars and to imprisonment for six months.

11. A certificate of marriage registered under this Part, or a copy of such a certificate, shall if it purports to be signed and certified as a true copy by the Registrar and to be sealed or stamped with his official seal be admissible as evidence of the marriage to which it relates in any court and before any person having by law or by consent of parties authority to hear, receive, and examine evidence.

12. The Registrar may correct any clerical error in any certificate of marriage registered under this Part on production to him of the certificate delivered to the parties, and shall authenticate every such correction by his signature, or by marking the same with his initials, and the date of making the correction.

13. The Registrar may allow searches to be made amongst all certificates, registers and indices in his possession for the purposes of this Part and may give a certified copy of any entry therein, and issue a certificate that there is no record of a marriage between certain named persons having been registered under this Part.

PART V.

DISSOLUTION OF VALIDATED MARRIAGES AND CUSTOMARY MARRIAGES.

14. The dissolution, at any time before the appointed day, of a validated marriage by the mutual consent of the parties to the marriage signified by the signature of each of the parties in

Power of
Registrar.

Effect of
certificate
of marriage
registered
under this
Part.

Correction
of error in
certificate of
marriage.

Searches may
be made and
certified
copies granted.

Dissolution
of validated
marriages.

the presence of two other persons who have also signed as attesting witnesses, to an agreement or memorandum in writing which sets forth unequivocally the final and complete dissolution of the marriage shall be valid for all purposes and shall be deemed to have been so valid since the execution of the agreement or memorandum.

Dissolution of certain marriages on and after appointed day.

15. (1) A customary marriage subsisting on the appointed day and registered in accordance with Part IV may where at least one party to the marriage has a substantial connexion with Hong Kong be dissolved on or after that day in accordance with this Part.

(2) A validated marriage subsisting on the appointed day and registered in accordance with Part IV may where at least one party to the marriage has a substantial connexion with Hong Kong be dissolved on or after that day—

(Cap. 179.)

- (a) in accordance with the Matrimonial Causes Ordinance; or
- (b) in accordance with this Part.

Notice of intention to dissolve marriage.

16. (1) The parties to a marriage, of a kind which may be dissolved under this Part, may give notice of their intention to dissolve the marriage in the prescribed form to a designated public officer, signed by both parties to the marriage and published or otherwise given in such manner as may be prescribed.

(2) A person who has given notice in accordance with subsection (1) may, by publication or otherwise as may be prescribed, cancel such notice.

Parties may appear before designated public officer.

17. (1) Not less than one month after the giving of notice under subsection (1) of section 16, the parties to the marriage may, if neither of them has cancelled the notice under subsection (2) of section 16, appear personally before the designated public officer to whom notice was given for the purpose of satisfying him that each of them wishes voluntarily and freely to dissolve his or her marriage to the other.

(2) If a designated public officer is satisfied that the parties appearing before him—

- (a) have given notice of intention to dissolve their marriage under subsection (1) of section 16 and notice of changed intention under subsection (2) of that section has not been given; and
- (b) understand that the effect of dissolution is to put an end to the marriage so as to permit the parties to marry again should either of them so wish; and

(c) freely and voluntarily desire to dissolve the marriage, he shall sign the prescribed form in duplicate and deliver one copy to each of the parties.

18. For the purposes of section 17, a designated public officer—

- (a) shall interview each of the parties to a marriage appearing before him in the presence of each other and also in the absence of each other, and no other person, except an interpreter (should one be necessary), shall be present at any such interview;
- (b) may require the parties or either of them to appear before him again on some specified occasion or occasions;
- (c) may require the parties or either of them to furnish such further information as he may reasonably require.

Functions of designated public officer.

19. (1) The parties to a marriage may, within one month of the delivery to them under section 17 of the prescribed forms by a designated public officer, sign, in Hong Kong in the presence of each other and in the presence of two other adult persons who shall also sign as attesting witnesses, an agreement or memorandum in writing for the dissolution of the marriage unequivocally with effect from registration under section 20.

Memorandum of dissolution of marriage.

(2) An agreement or memorandum for the dissolution of a marriage, signed and witnessed in the manner required by subsection (1), shall have the effect, as from registration under section 20 of dissolving the marriage.

20. The parties to an agreement or memorandum for the dissolution of a marriage signed under and in accordance with section 19 shall, within fourteen days from the date of signature or such longer period as the designated public officer before whom the parties appeared under section 17 may for special reasons in any particular case permit, register, either personally or through their duly authorized agent, particulars of the agreement or memorandum for dissolution of marriage with the designated public officer before whom the parties appeared under section 17; and that officer shall endorse on the agreement or memorandum a record of registration under this section.

Registration of memorandum for dissolution of marriage.

21. (1) The Secretary for Home Affairs shall maintain a register for the registration of dissolutions of marriage effected under section 19.

Register of dissolutions of marriage.

(2) A designated public officer with whom a dissolution of marriage is registered under section 20 shall send to the Secretary for Home Affairs once in each month, or more often if so directed by the Secretary for Home Affairs, particulars of all such dissolutions registered by him and the Secretary for Home Affairs shall cause such particulars to be entered in the register and preserved for record at his office.

Governor may designate public officers.

22. The Governor by notice in the *Gazette* may designate public officers for the purposes of this Part.

PART VI.

MISCELLANEOUS.

Penalty for removing, etc. records.

23. Any person who wilfully removes, defaces, alters or destroys any notice, certificate, index, or other document kept or filed by the Secretary for Home Affairs or the Registrar pursuant to or for the purposes of this Ordinance shall be guilty of an offence and shall be liable to a fine of one thousand dollars and to imprisonment for six months.

Power to make regulations.

24. The Governor may make regulations for the better carrying out of the purposes and provisions of this Ordinance and in particular may make regulations—

- (a) as to all matters of procedure under this Ordinance; and
- (b) prescribing the forms to be used under this Ordinance.

Repeal of Cap. 178.

25. The Chinese Marriage Preservation Ordinance is repealed.

Amendment of Matrimonial Causes Ordinance (Cap. 179.) and Marriage Ordinance. (Cap. 181.)

26. (1) The Matrimonial Causes Ordinance is amended—
(a) in section 2, by deleting paragraph (a) of the definition of "monogamous marriage" and substituting the following—

“(a) if it took place in Hong Kong—

- (i) celebrated or contracted in accordance with the provisions of the Marriage Ordinance. (Cap. 181.)
- (ii) a modern marriage validated by section 8 of the Marriage Reform Ordinance 1970 and registered under Part IV of that Ordinance; or

(b) in section 3—

- (i) by deleting “or” at the end of paragraph (a); and

- (ii) by deleting the full stop at the end of paragraph (b), substituting “; or” and adding the following—
- “(c) either of the parties to the marriage had a substantial connexion with Hong Kong at the date of the petition.”;
- (c) in section 4, by inserting after the words “domiciled in” in paragraph (a) the following—
- “or had a substantial connexion with”;
- (d) in section 5—
- (i) by deleting “or” at the end of paragraph (b); and
- (ii) by deleting the full stop at the end of paragraph (c), substituting “; or” and adding the following—
- “(d) either of the parties to the marriage had a substantial connexion with Hong Kong at the date of the petition.”;
- (e) in section 6, by inserting after the words “domiciled in” in paragraph (a) the following—
- “or had a substantial connexion with”;
- (f) in section 7—
- (i) by deleting “or” at the end of paragraph (c); and
- (ii) by deleting the full stop at the end of paragraph (d), substituting “; or” and adding the following—
- “(e) either of the parties to the marriage had a substantial connexion with Hong Kong at the date of the petition.”;
- (g) by adding the following new section after section 7—

“Effect of
dissolution
under
Marriage
Reform
Ordinance
1970.

7A. (1) Subject to subsection (2), the dissolution in accordance with Part V of the Marriage Reform Ordinance 1970 of a modern marriage validated by section 8 of the Marriage Reform Ordinance 1970 and subsisting on the day appointed under section 3 of that Ordinance or a customary marriage subsisting on the day appointed under section 3 of that Ordinance shall, for the purposes of Part VI and Part VII, be deemed to be a final decree of divorce granted by the court, and accordingly, the court, and in the case of section 36 a magistrates’ court, shall have the same

jurisdiction and powers in respect of ancillary relief and the protection of children as it would have had under Parts VI and VII if the court had pronounced a final decree of divorce.

(2) Where the parties to a marriage which is dissolved in accordance with Part V of the Marriage Reform Ordinance 1970 have agreed as to the amount of alimony to be payable after the dissolution by the former husband to the former wife for her maintenance and have recorded the terms of that agreement as part of the agreement or memorandum dissolving the marriage, subsection (1) shall not have effect to confer jurisdiction at any time on any court in respect of alimony for the maintenance of that former wife.”.

(2) Section 38 of the Marriage Ordinance is repealed and replaced with effect from the appointed day by the following—

“Marriage under Ordinance of persons customarily married.

38. The parties to any non-Christian customary marriage duly celebrated according to the personal law and religion of the parties before the appointed day under the Marriage Reform Ordinance 1970 may, unless the husband has any other wife, contract with each other a marriage under this Ordinance; and such a marriage shall not invalidate the previous customary marriage.”.

Passed by the Hong Kong Legislative Council this 8th day of July, 1970.

R. J. FRAMPTON,
Deputy Clerk of Councils.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.

R. J. FRAMPTON,
Deputy Clerk of Councils.