

香港特別行政區政府  
保安局



The Government of  
The Hong Kong Special Administrative Region  
Security Bureau

香港添馬添美道 2 號

2 Tim Mei Avenue, Tamar, Hong Kong

本函檔號 Our Ref.: SB CR 1/3231/13

來函檔號 Your Ref.: LS/B/6/13-14

13 March 2014

Legal Service Division  
Legislative Council  
Legislative Council Complex  
1 Legislative Council Road  
Central  
Hong Kong  
(Attn: Mr Stephen Lam)

Dear Mr Lam,

### **Marriage (Amendment) Bill 2014**

Thank you for your letter dated 5 March 2014 regarding the legal and drafting aspects of the Marriage (Amendment) Bill 2014 (the Bill).

2. The objective of the Bill is to give effect to the Court of Final Appeal (CFA) Order handed down in the case of *W v Registrar of Marriages (FACV 4/2012)*, which concerns the right of a person who has received full sex re-assignment surgery (SRS) to be treated as being of the sex to which he or she is re-assigned after the surgery for the purpose of marriage registration under the Marriage Ordinance (MO) (Cap. 181). In this regard, we are glad to note your observation that our legislative proposals are compliant with points (b) and (c) of the CFA Order and also cover the situation where a person who has received full SRS from female-to-male (in addition to one from male-to-female as in W's situation).

3. As regards comments made by the CFA on problems facing transsexuals in other areas of law and treatment of persons who have not received any or full SRS in these areas, they involve complicated legal, medical and social issues, carrying wide-ranging policy implications. In this connection, the Government announced on 13 January 2014 the establishment of an inter-departmental working group on gender recognition (IWG) to consider legislation and incidental administrative measures that may be required to protect the rights of transsexual persons and to make such recommendations for reform as may be appropriate. The IWG, chaired by the Secretary for Justice, will conduct a comprehensive review of the legal issues concerning the rights of transsexual persons in Hong Kong, including a comparative study of the relevant legislation, case-law and relevant schemes in other jurisdictions, with a view to making recommendations to the Administration on possible legislation and incidental administrative measures that may be appropriate.

4. The IWG has already commenced work, and the possible legal impact of a married person receiving SRS (together with the need, if any, to implement legislative reform), as illustrated in the various scenarios in your **Question 1**, is an issue to be considered by the IWG.

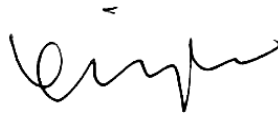
5. As regards your **Question 2** concerning the legal effect of gender change on the validity of an existing marriage, as mentioned in paras. 3 and 4 above, it will be looked into by the IWG. It is noted that pursuant to section 19 of the Matrimonial Causes Ordinance (MCO) (Cap. 179), a husband or wife may present a petition for a decree of nullity to the court on any of the grounds provided in section 20 of the MCO. A decree of nullity can be sought on the ground that the marriage is void or voidable. The grounds on which a marriage shall be void are set out in subsection (1) of section 20 while the grounds on which a marriage shall be voidable are set out in subsection (2) of section 20.

6. As explained at the Panel on Security meeting on 7 January 2014, according to the legal advice we have obtained so far, a marriage should not automatically become invalid solely on the ground that one of the parties to the marriage had subsequently (i.e. after celebration in accordance with all requirements under the MO) received full SRS. However, a married person who had subsequently undergone full SRS after marriage (or the other party to the marriage or on joint application by both parties) could apply for dissolving the marriage if he or she or they wished to do so.

7. As regards your **Question 3**, we are not aware of any existing legislation governing the position of a transsexual person in matters

concerning disclosure of his or her previous gender<sup>1</sup>.

Yours sincerely,



(Billy Woo)  
for Secretary for Security

c.c. Secretary for Justice

(Attn: Mr Alan Chong  
Ms Mary Ho  
Ms Michelle Ainsworth)

Secretary for Home Affairs

(Attn: Ms Aubrey Fung)

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<sup>1</sup> However, under regulation 18(1)(a) of the Registration of Persons Regulations Cap 177A, any person who has submitted particulars to a registration officer which, at any time, are or have become incorrect shall forthwith report the fact to the registration office. Under subregulation (2) and (3), where, in the opinion of the registration officer it is necessary to alter the identity card of a person making a report under subregulation (1), he shall order that person to surrender his identity card to a registration officer and where an identity card is surrendered under subregulation (2), such surrender shall be deemed to be an application for replacement of an identity card under regulation 14.