



## Legal Alert | Family Business Governance Practice

### A New Era for LGBTQ+ Rights: Thailand Enforces Same-Sex Marriage Registration

The Amendment to the Civil and Commercial Code Act No. 24 B.E. 2567 (2024) (the “**Marriage Equality Legislation**”) represents a transformative step in Thailand’s legal landscape, officially legalizing same-sex marriage. Endorsed by His Majesty the King of Thailand and subsequently published in the Royal Gazette, this groundbreaking legislation will take effect 120 days post-publication. Following our last legal alert on June 18, 2024, titled “**Thailand Paves the Way: Legalizing Same-Sex Marriage**,” the Office of the Judiciary has confirmed January 23, 2025, as the enforcement date, enabling same-sex couples to legally register their marriages from that day onward.

This historic amendment positions Thailand at the forefront of Southeast Asia’s progression toward greater equality and inclusivity. At its core, the legislation acknowledges cohabitation and familial bonds between individuals of all genders, affording them equal rights, obligations, and family status equivalent to those traditionally granted to heterosexual couples. By doing so, the Marriage Equality Legislation strengthens family structures, promoting social cohesion and reducing systemic discrimination.

In collaboration with Withers Worldwide, an international law firm, this article provides a comparative analysis of these developments in Thailand, Singapore, and Hong Kong, which will reveal the varying trajectories of LGBTQ+ rights across the region, underscoring both the groundbreaking progress achieved and the persistent legal challenges that remain.

### Overview of Thailand’s legal amendments or new legislation enabling same-sex marriage

The Marriage Equality Legislation revises the Civil and Commercial Code, replacing gender-specific terminology such as “man,” “woman,” “husband,” and “wife” with inclusive terms such as “individual” and “spouse.” This pivotal adjustment redefines marriage as a gender-neutral

January 2025

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institution, thereby extending a comprehensive array of marital rights and responsibilities to same-sex couples, such as the following:

- **Joint Property Rights:** ensuring equitable division and ownership of assets acquired during marriage between same-sex couples.
- **Spousal Support:** granting same-sex spouses the right to claim financial support in cases of separation or divorce.
- **Inheritance Benefits:** affording inheritance rights to same-sex spouses, reinforcing legal recognition of same-sex marriage.

## Addressing Remaining Legal Gaps

While the enactment of the Marriage Equality Legislation is a milestone achievement, further legislative amendments remain necessary to facilitate seamless implementation and to ensure that same-sex couples can fully exercise their rights and enjoy the same legal protections as their heterosexual counterparts. Such legislative amendments may include the following:

- **The Civil Registration Act B.E. 2534 (1991)** should be revised to allow for the change of gender information on national identification cards and household registration for individuals who have undergone gender transition.
- **Gender Equality Act B.E. 2558 (2015)** should be revised to provide specific protections for LGBTQ+ individuals to prevent discrimination in employment, healthcare, and education services.
- **The Immigration Act B.E. 2522 (1979)** should revise the visa categories and application procedures to align with the legal status of same-sex couples, such as allowing same-sex spouses to obtain dependent visas (dependent visa / NON-O visa) or permanent residency rights, similar to opposite-sex couples and introducing special visas designed to attract LGBTQ+ individuals with specialized skills or those interested in investing in Thailand.
- **The Working of Aliens Act B.E. 2551 (2008)** should be revised to allow LGBTQ+ foreign workers to work legally in Thailand without facing discriminatory practices or unfair requirements.
- **The Labour Protection Act B.E. 2541 (1998)** should be revised to prohibit discrimination in employment or labour practices based on gender identity or sexual orientation to offer more protection to the LGBTQ+ community in workplaces.
- **The National Health Act B.E. 2550 (2007)** should be revised to ensure that LGBTQ+ individuals can access medical and healthcare services in alignment with their gender identity, such as access to hormone therapy, gender reassignment surgery, or mental health care.
- **The National Education Act B.E. 2542 (1999)** should be revised to prohibit bullying and discrimination based on sexual orientation or



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gender identity in schools and educational institutions, creating a safe and inclusive learning environment for LGBTQ+ students.

The Marriage Equality Legislation marks a defining moment in Thailand's legal and social progression. By embracing gender-neutral marriage, Thailand not only strengthens its domestic legal framework but also sets a precedent for the broader region. As the nation takes this crucial step toward inclusivity, the focus must now shift to harmonizing supplementary laws to secure a future of true equality for all.

## A Singapore perspective

In Singapore, the legislation governing marriage, divorce and financial issues such as maintenance and division of the matrimonial assets is known as the Women's Charter. Section 12 of the Women's Charter (**WC**) states that a marriage solemnised in Singapore or elsewhere between persons who are not at the date of marriage a man and a woman respectively is void. This means a same-sex couple of any nationality who get married in Thailand would not have their marriage recognised as being valid in Singapore. As the marriage is regarded as void, there is no question of parties being able to file for a divorce in Singapore.

While there is case law which states that the Singapore court may proceed to make orders on a division of matrimonial assets even in the case of a void marriage, these cases have always involved different factual matrixes such as where the marriage was rendered void due to the wilful refusal to consummate the marriage by one of the parties and not one which involves a same-sex marriage. It may be possible in a situation where parties in a same-sex marriage were legally married in a jurisdiction like Thailand apply to have their marriage rendered null on the basis that it is void in Singapore but yet ask the Singapore court to order a division of the matrimonial assets.

## Developments in Singapore

Practically, while such developments are heartening, they have no impact on any potential development of the law in Singapore. It should be noted that whilst Section 377A of the Penal Code which essentially criminalised all kinds of sexual activities between men and was viewed as an outdated, discriminatory law that targeted gay men was repealed on 3 January 2023, the Singapore Constitution was also amended with the introduction of Article 156 which states that Parliament will have the power to define, regulate, protect and promote the institution of marriage. This bill was passed along with the repeal of Section 377A. Essentially the bill grants Parliament the sole power to define what marriage is and to protect the current definition of marriage as well as executive actions taken by the

Government in accordance with this definition from any constitutional challenge.

Article 156 of the Constitution which was introduced concurrently with the repeal of S377A arguably impedes the progress towards greater equality for LGBTQ+ and their families by making it crystal clear that the Government and the executive have the power to promote and protect the institution of marriage and to advance policies in support of the current definition of marriage as between a man and woman. The approved family unit is defined as mother, father and children within a marriage. Until the law is changed by Parliament, it is clear that any amendments to the definition of marriage in Singapore between a man and woman to encompass same-sex marriages will only be through legislative action and cannot be challenged in the Court.

### **A Hong Kong Perspective: Formal recognition awaits with an array of rights secured**

Contrary to the development in Thailand, while marrying and divorcing a same-sex partner remains impossible in Hong Kong, a series of judicial challenges was raised over the past decade in different legislations where only opposite sex couple's rights were addressed. Despite the lack of an overarching policy, efforts have been made to level the rights and benefits enjoyed by same-sex and heterosexual couples in the city.

### **Dependent Visa eligibility in Hong Kong**

To begin is the landmark case of *QT v Director of Immigration* [2018] HKCFA 28, which opened the door for the application of dependent visas for civil partners and same-sex spouses in Hong Kong.

In this case, the Immigration Department provided a list of features relationships should possess in order for dependent visas to be granted: (a) the entering into and dissolution of the relationship are governed by 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.

In view of the new development in Thailand, the same-sex relationships registered and recognized under the Marriage Equality Legislation likely satisfies this list of features provided by the Immigration Department, meaning that same-sex couples legally married and registered in Thailand can probably benefit from the dependent visa policy in Hong Kong.

## **Social benefits in Hong Kong – Joint tax assessment and subsidized housing**

In October 2023, the Hong Kong Court of Final Appeal upheld the Court of Appeal's ruling that the Hong Kong Housing Authority's policy of excluding same-sex couples from access to public rental housing (PRH) units and the Home Ownership Scheme (HOS) is in breach of right to equality and non-discrimination in Article 25 of the Basic Law and Article 22 of the Bill of Rights.

The case of *Housing Authority v Infinger & Li* [2024] HKCFA 29 demonstrated that it is now firmly established that in the Final Appeal Court in Hong Kong, married same-sex couples and married heterosexual couples are analogous and comparable to one-another in many contexts, and this was true in the context of social housing provision. This follows *Leung Chun Kwong v Secretary for the Civil Service* (2019) 22 HKCFAR 127, another CFA case concerning the same-sex couple's eligibility to opt for joint tax assessment, which the Court found the appellant had been unlawfully discriminated against on the basis of sexual orientation and same-sex marriage should be regarded as a valid marriage for the purposes of the Inland Revenue Ordinance.

While the absence of a local mechanism for registering and divorcing same-sex relationships remains, the Court's affirmation that same-sex couples should be treated in the same standard as opposite sex couple in other aspects of social welfare across different legislation laid a solid foundation for an across-the-board recognition of the legal status of same-sex couples who have been lawfully recognized in other jurisdictions.

The fact that the couples relied on civil partnership / same-sex marriages celebrated in different jurisdictions in different cases showed that as long as there is legal recognition of the same sex relationship in another jurisdiction, it is likely that the Hong Kong Court would acknowledge its validity without a preference on which jurisdiction the relationship was registered in.

## **Hong Kong Court of Final Appeal (HKCFA): Same-sex partnerships have to be recognized**

Calling for the final stride of arriving at a full recognition of same-sex relationships, the Court of Final Appeal ruled on 5 September 2023 in *Sham Tsz Kit v Secretary for Justice* [2023] HKCFA 28 that the absence of alternative means of legal recognition of same-sex relationships in Hong Kong amounts to a violation of the constitutional right to privacy enshrined in the Hong Kong Bill of Rights. The declaration was suspended for two

years to allow time for the Government to come up with an alternative legal framework to recognise same-sex relationships.

It is anticipated that the Hong Kong Government shall unfold its blueprint of such legal framework any time now as the deadline approaches in the third quarter this year.

## **Conclusion**

In conclusion, the landmark legal reform in Thailand not only elevates the nation as a trailblazer for LGBTQ+ rights in Southeast Asia but also serves as an inspiration for neighboring jurisdictions. While Singapore remains steadfast in its traditional definition of marriage, and Hong Kong grapples with incremental recognition through judicial rulings, the collective efforts across these countries highlight the region's gradual embrace of inclusivity. True equality, however, requires more than isolated legislative or judicial victories. A comprehensive, collaborative approach that addresses persistent legal gaps and societal attitudes will be essential for Asia to fully uphold the rights and dignity of LGBTQ+ individuals.

For further information on this groundbreaking legislation, please contact the authors.

## **About Kudun and Partners' Family Business Governance Practice Group**

The Family Business Governance practice at Kudun and Partners offers tailored legal services to family-owned businesses in Thailand, focusing on long-term success and sustainability. This practice provides strategic guidance on corporate structuring, family wealth management, succession planning, and governance strategies. It supports the drafting of essential documents like family constitutions and shareholders' agreements, and facilitates the establishment of family councils to ensure effective governance. The firm's approach helps family businesses effectively distinguish between family matters and business operations, craft critical documents, and establish robust governance frameworks, ensuring strong and effective management of both family and business issues.

## **About Withersworldwide**

Withersworldwide is an international law firm dedicated to entrepreneurs, successful people and their businesses. With 17 offices across Asia-Pacific, Europe, the US and the Caribbean, we provide the full range of legal services seamlessly for our clients globally. Our global family practice is widely regarded as one of the largest, longest established teams in the world. Located across the US, Europe and Asia, our global reach enables us to deliver swift and effective advice on all manner of family related issues and disputes across multiple jurisdictions. We work seamlessly across borders so that you can receive advice whenever and wherever you need

it. We are uniquely able to draw on the firm's other leading practices to provide holistic advice on various multi-faceted aspects that arise in family matters, whether that be tax, estate planning, trusts, enforcement, tech, privacy, immigration, real estate, commercial or employment issues.

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