

**For Discussion on  
14 April 2003**

Paper No. CB(2)1739/02-03(03)

## **Legislative Council Panel Welfare Services**

### **ADOPTION (AMENDMENT) BILL 2003**

#### **PURPOSE**

This paper sets out a number of proposals to improve local adoption arrangements and to give effect to the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (the Convention) in Hong Kong.

#### **BACKGROUND**

##### **(A) General**

2. The number of adoption orders granted by the courts in Hong Kong and elsewhere known to the Social Welfare Department (SWD) has fallen from 225 in 1997-98 to 153 in 2001-02. In 2002-03 (up to end February 2003), there are 153 such orders. As at the end of February 2003, the Director of Social Welfare (DSW) was the legal guardian of 103 infants under the Protection of Children and Juveniles Ordinance (Cap. 213), who were available for adoption. Most of them (97) are children with special needs, such as those with hard background, ill health, disability or of older age.

##### **(B) Local Adoption**

3. The Adoption Ordinance (Cap. 290) (the AO) first came into force in 1956. Local adoption arrangements provided under the Ordinance were last substantially revised in 1987 and need to be brought up-to-date. The Panel was last consulted on proposals to improve local adoption arrangements in February 2001.

(C) **Intercountry Adoption**

4. The Convention, which was drawn up by the Hague Conference on Private International Law<sup>1</sup>, was concluded at the Hague on 29 May 1993. At present, 10 States have signed but not yet ratified the Convention (including the People's Republic of China), 39 States have ratified the Convention and 13 States have acceded to the Convention.

5. The Hague Convention contains 48 Articles which set out its objectives and scope, the requirements and procedures and the responsibilities of Contracting States in intercountry adoption, provides for the accreditation of adoption agencies and the recognition by Contracting States of intercountry adoptions made in accordance with its provisions. A copy of the Convention is at **Annex A**.

6. The Central People's Government (CPG) signed the Convention in November 2000. Under Article 45(1) of the Convention, if a State has two or more territorial units in which different systems of law are applicable, it may declare that the Convention shall extend to all its territorial units or only to one or more of them.

7. Under Article 153 of the Basic Law, the application to the HKSAR of international agreements to which the People's Republic of China is or becomes a party shall be decided by the CPG, in accordance with the circumstances and needs of the HKSAR and after seeking the views of the Government of the HKSAR. The CPG has asked the HKSAR Government whether it wishes to apply the Convention to the HKSAR.

## **RECOMMENDATION AND JUSTIFICATION**

(A) **Local Adoption**

8. The detailed proposals and justifications are set out in the following paragraphs.

(a) ***Private Arrangements for Adoption by Unrelated Persons***

9. At present, private arrangements for adoption by unrelated persons is not prohibited in Hong Kong. However, since SWD may not be involved in making the adoption arrangements, such arrangements may give rise to various problems such as lack of proper counseling and assessment, inability to verify consent given by birth parents, manipulation of adoption for pecuniary gain or the birth parents being

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<sup>1</sup> The Hague Conference on Private International Law is an intergovernmental organization working for the progressive unification of the rules of private international law. It was first convened in 1893 by the Netherlands Government.

compelled to make decisions on the basis of limited/incorrect information. Accordingly, there is a real risk that a child will not be placed with the most suitable prospective adopters nor in the best available adoptive home.

10. We therefore propose to amend the AO to prohibit a person or an organization, other than SWD or adoption agencies authorised by SWD, to make arrangements for the adoption of a child, with the exception of adoption of a child by his/her birth parent or relative, or save in pursuance of an order of the Court.

**(b) *Court Orders for the Removal of Children from HK***

11. Currently, there are no express legislative provisions for intercountry adoption. Although the High Court wardship proceedings may be invoked to make the child a Ward of the High Court before he/she is taken out of Hong Kong for adoption overseas, there is no guarantee that such an application will always be made. A non-governmental organisation (NGO) involved in matching local children (mostly healthy babies born to unmarried mothers) with unrelated overseas adoptive parents has made use of the jurisdiction of the Court under the Guardianship of Minors Ordinance (Cap. 13) for a birth mother to apply to the Court for a custody order in favour of the prospective adopter and leave for the child to be removed permanently. These arrangements are problematic in two ways.

12. Firstly, this leaves uncertain whether the protection for the child required under the AO has been met (e.g. a background case report from the guardian ad litem is not a mandatory requirement; lack of supervision by Hong Kong authorities of the child's well-being after his/her departure from Hong Kong). There is also a possibility that the receiving country would not accept that the informal (non-statutory) arrangements made in Hong Kong are sufficient to enable an adoption to be completed in the receiving country.

13. Secondly, both Article 21(b) of the United Nation Convention on the Rights of the Child (UNCRC) and the Convention recognize that where possible a child should be placed in suitable care in his country of origin as a priority, and intercountry adoption should only be explored as a last resort. In private adoption arrangements by unrelated persons, there is a risk that local adoption opportunities may not be given due consideration before the intercountry arrangements are made.

14. Furthermore, the existing framework does not prevent birth parents/guardians who have custody over the child from taking the child overseas for adoption by unrelated persons. We therefore propose that new provisions be added to make it unlawful for a child to be removed out of Hong Kong for the purpose of adoption by an unrelated person without an order given by the Court under the AO. The order would pass care and control of the child, rather than legal guardianship, to the authorized adoption agency with a view to adoption of the child by a person not residing in Hong Kong, before an adoption order is made.

**(c) *Mandatory Criminal Record Checks***

15. At present, applicants are invited to declare whether they have any past convictions. Without legislative back-up, criminal record checks to verify the authenticity of these declarations cannot be undertaken without the consent of the applicants. To help ensure the safe custody of children to be adopted, we recommend that criminal record checking should be made a compulsory requirement.

**(d) Step-parent Adoption**

16. Section 4(2) of the AO provides that an adoption order may be made on the application of 2 spouses authorizing them jointly to adopt an infant. Section 5(2) states that an adoption order may be made in respect of an infant on the joint application of 2 spouses if, inter alia, either of the applicants is the mother or father of the infant. It follows that a birth parent who re-marries has to apply to adopt his/her own child from a former marriage if his/her new spouse wishes to adopt the child, thereby “downgrading” the status of a birth parent to an adoptive parent. This practice has been criticized by birth parents.

17. We propose to amend the AO to enable a step-parent to apply as a sole applicant if his/her spouse is the birth parent of the child born within wedlock. The birth parent married to the step-parent will still retain all original parental rights after adoption. The non-custodial parent’s consent for the adoption will still be required.

**(e) Administrative Appeals Board**

18. At present, an adoption applicant, if aggrieved by an SWD decision, may lodge a complaint with the relevant District Social Welfare Officer or DSW or/and resort to judicial review. We consider it good practice to allow for an appeal to an independent third party, i.e. the Administrative Appeals Board (AAB) under the Administrative Appeals Board Ordinance (Cap. 442).

19. We propose that the scope of appeals to the AAB under the AO should be clearly set out and cover both local and intercountry adoptions. The full scope of appeals to AAB under the AO is set out in **Annex B** (see also para. 47).

**(f) Penalty**

20. The AO currently provides for penalties for contravention of certain provisions.<sup>2</sup> These penalties, made over 40 years ago, are outdated and long overdue for revision. The existing penalties (either \$1,000 or \$2,000) fail to reflect the seriousness of the offences and carry minimal retributive and deterrent effects. We

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<sup>2</sup>

(a) section 21 (concerning supervision of infants): refusing to allow DSW to visit and examine any infant is punishable by a fine of \$2,000;

(b) section 22 (prohibition of certain payments except legal fees): payment, remuneration or reward in connection with adoption (without the sanction of the Court) is punishable by a fine of \$2,000 or imprisonment for 6 months; and

(c) section 23 (restrictions and advertisements): publishing an adoption-related advertisement in contravention of this section is punishable by a fine of \$1,000.

therefore propose that the existing fines be replaced with fines at \$50,000 (Level 5) and \$100,000 (Level 6).

**(g) *Discriminatory Provision***

21. Section 5(3) of the AO provides that “an adoption order shall not be made in respect of an infant who is a female in favour of a sole applicant who is a male, unless the Court is satisfied that there are special circumstances which justify as an exceptional measure the making of an adoption order”.

22. We propose to remove this discriminatory provision against (i) male vis-à-vis female and (ii) sole vis-à-vis joint adopters. This will not compromise the need to protect the interests of the child as the Court needs to be satisfied before granting the adoption order that the adoption will be in the best interests of the child. It may, if appropriate, consider the eligibility of applicants having regard to their gender and sole or joint applicant(s) status, before making its decision.

**(h) *Religious Persuasion***

23. Section 6(3) of the AO and Form 4 and Form 4A of the First Schedule of the Adoption Rules (AR) currently allow the birth parents to specify, in consenting to the making of an adoption order, the religious persuasion in which the adopted child should be brought up.

24. At present, the SWD counsel and seek the birth parents’ voluntary agreement not to specify the religious persuasion of the child. But such an administrative arrangement cannot preclude birth parents from insisting on exercising this statutory right at the expense of the child and the adoptive parents. We therefore consider it appropriate to remove the birth parents’ right to specify the religious persuasion in which the adopted child should be brought up. This is also in line with Articles 14 and 20 of the UNCRC which provides, on the one hand, that due regard should be paid to the desirability of continuity in a child’s upbringing and his religious background, whilst on the other, that his freedom of religion should be respected<sup>3</sup>.

**(i) *Re-vesting of Parental Rights***

25. Section 5(5C) of the AO provides that a parent whose consent to an adoption order was given in the prescribed general form of consent may revoke his/her consent by giving written notice of revocation to DSW within three months from the day on which the form of consent was executed. Section 5(5D) states that a parent whose

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<sup>3</sup> Article 14 states that States Parties shall respect the right of the child to freedom of thought, conscience and religion, and the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his/her right in a manner consistent with the evolving capacities of the child.

Article 20 provides that States Parties shall in accordance with their national laws ensure alternative care for a child temporarily or permanently deprived of his or her family environment, and due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background.

In the case of adoption, the birth parent will not be able to monitor the evolving capacity of the child in accordance with Article 14 of the UNCRC. The adoptive parent(s) would assume the right and duty to provide direction to the child.

consent to an adoption order was given in the prescribed general form of consent may, at any time after the expiry of the period of three months and before the making of an adoption order, apply to the Court for an order revoking that consent on the ground that he/she wishes to resume the parental rights, duties, obligations and liabilities.

26. Section 5(5E) states that where the Court makes an order revoking a consent given in the prescribed general form of consent the parental rights, duties, obligations and liabilities relating to the child shall re-vest in the parent. However, the Ordinance does not explicitly provide for re-vesting of parental rights on revocation of consent within three months from the day on which the consent form was executed. We propose that the re-vesting of parental rights on revocation of consent within three months should be explicitly stipulated for the sake of clarification.

**(j) *Minimum Consent Period***

27. Under section 7(3)(a) of the AO and Form 4 of the AR, the consent of a birth mother to relinquish the child for adoption is not admissible, unless the child is at least six weeks old. To facilitate the early placement of a child for adoption, would be in his/her best interests, and to reduce the emotional disturbance and stress on those birth mothers who may be rape/incest victims, we propose to allow the birth mother to give consent for the child to be placed for adoption when he/she is four weeks old.

28. In this connection, Section 5(5)(a) of the AO states that an adoption order shall not be made in any case, except with the consent of every person who is a parent or guardian of the infant or who is liable by virtue of any order or agreement to contribute to the maintenance of the infant. For the sake of fairness and consistency, it is proposed that the reduced minimum statutory consent period (i.e. four weeks) should also apply to parent(s), guardian(s) or any other person(s) whose consent is required for adoption under section 5(5)(a). The proposed change will not exert pressure on these persons to make a quicker decision, as they can always take longer than the proposed minimum statutory period to make their decision.

**(k) *Notice to DSW***

29. In the legal proceedings for adoption, the child, who is a minor<sup>4</sup>, will be represented by a guardian ad litem (GAL). Pursuant to Rule 13 of the AR, the GAL will be responsible for investigating all circumstances relevant to a proposed adoption with a view to safeguarding the interests of the child before the Court and making a report to the Court for that purpose (e.g. background information of the infant and applicant(s) as well as assessment of the suitability of the applicant(s) to adopt the infant). Rule 16 provides that on a date being fixed for the hearing of the application, the GAL shall serve a notice on to DSW, unless DSW is the GAL. DSW may appear at the hearing to give his/her views on the application. However, since notice of the hearing is often given to DSW six months after the filing of the Notice of Intention to

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<sup>4</sup> Section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) states that "infant" and "minor" mean a person who has not attained the age of 18 years.

apply for an Adoption Order (Form 1), and only shortly before the hearing, this does not allow SWD sufficient time to look into the merits of the application nor to intervene at an early stage in order to protect the interests of the child.

30. As such, we propose that an applicant for an adoption order should serve his/her formal adoption application form (i.e. Form 2) on DSW, regardless of whether she is the GAL. This would normally be 2 months prior to the hearing in respect of the adoption of the infant; and would facilitate SWD's early intervention if necessary.

**(l) Continuous Custody Requirement**

31. Section 5(7) of the AO states that an adoption order shall not be made in respect of any infant unless the infant has been continuously in the actual custody of the applicant(s) for at least six consecutive months immediately preceding the date of the order; and where the applicant or either of the applicants is a natural parent of the infant, the infant has been continuously in the actual custody of the applicant (or both applicants, where there are joint applicants) for at least 13 weeks immediately preceding the date of the order. Section 5(8) states that for the purposes of sub-section (7), continuous actual custody shall not be regarded as broken during any period when the infant is an in-patient in a hospital or resides at a boarding school either in or outside Hong Kong.

32. However, SWD has encountered an application where the statutory continuous custody requirement cannot be fulfilled as the child was receiving full-time education outside HK but was not residing in a boarding school. We consider it desirable to expressly provide for this situation in section 5(8) so that children pursuing full-time education outside Hong Kong can still go through the adoption process without having their education interrupted.

**(m) Root-tracing System (RTS) and Veto Mechanism (VM)**

33. The AO does not provide for an adopted person to know that he is adopted and/or to know the identity of his/her own biological parents. The absence of a statutory right for an adopted person to be informed of the identity of his birth parents may raise concern under Articles 7 and 8 of the UNCRC<sup>5</sup>.

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<sup>5</sup> Article 7

- The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
- States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

- States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
- Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.

34. Article 17 of the International Covenant on Civil and Political Rights<sup>6</sup> protects the rights of the adopted person, the birth parents and the adoptive parents alike. In order to respect the rights of the adopted persons and the right of privacy of the birth parent(s) (who may be incest/rape victims or who may have subsequently got married), we propose to set up a RTS with a VM on an administrative basis.

35. Under the RTS, an adopted person can request SWD to disclose his/her birth and adoptive records, provided (a) in the case of an adopted child under the age of 18, the adoptive parents have given their consent and (b) in the case of all applications, the birth parents have not exercised a power of veto on the release of such information. Specifically, we propose that the veto on the release of the identifying information (i.e. the full name, identity card number, contact address and telephone number of the birth parent(s)) shall apply, until such time as the birth parent(s) either withdraws the veto or passes away. In this connection, SWD has worked out a proposal at Annex C, which sets out the detailed modus operandi of the RTS and VM.

*(n) Other Textual and Formatting Amendments*

36. We propose to take this opportunity to make various textual and formatting amendments to the AO and AR. For example, section 8(1)(b) of the AO provides that the Court shall be satisfied that an adoption order, if made, will be for the “welfare” of the infant. We propose to replace this with the term “best interest” throughout the entire adoption process in line with the terminology in the UNCRC and the Convention. The details of other textual and formatting changes are set out in Annex D.

**(B) Intercountry Adoption**

37. Local implementing legislation needs to be enacted to ensure that the relevant provisions of the Convention (including the criteria, requirements and procedures for intercountry adoption) can have legal effect and be enforceable under the laws of Hong Kong.

38. The justification for applying the Convention to Hong Kong is –

- (a) the Convention provides for the automatic recognition of adoptions made in accordance with its provisions. Thus, adoption of a Hong Kong child by a habitual resident of another Contracting State made in such a way, will be recognized in all Contracting States;
- (b) it will demonstrate Hong Kong’s commitment to facilitate the intercountry adoption of children in appropriate cases, supervise the intercountry adoption

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<sup>6</sup> Article 17 states that –

(1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.  
(2) Everyone has the right to the protection of the law against such interference or attacks.



process to safeguard the interests of these children who are subject to an intercountry adoption application, and help prevent profiteering, abduction or trafficking of children through such an adoption process;

- (c) it will facilitate our existing adoption work by extending the network of suitable adoptive parents overseas, and facilitate SWD in establishing formal working relationships with the relevant authorities of other Contracting States;
- (d) it will reinforce HK's position as a world city in the international community. There may be an expectation in the global community that with the CPG signing the Convention, implementation would be extended to Hong Kong given our already well-developed adoption system; and
- (e) at present, when the High Court considers an application to make a child the Ward of the High Court under the High Court Ordinance (Cap. 4) for the purpose of sending a child overseas for adoption, the factors taken into account by the Court in making a decision to a large degree already reflect the principles of the Convention (e.g. the rigorous assessment in establishing the suitability of overseas prospective adopters and the paramount importance placed on the interests of the child to be adopted, etc.).

39. The major provisions/principles of the Convention and the salient features of the proposed new intercountry adoption system in Hong Kong, which follow the Convention, are set out below.

**(a) Objectives**

40. The most important objective of the Convention is to establish safeguards to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights.

**(b) Principle of Priority**

41. Intercountry adoptions are only to be explored as a last resort after every possibility of local adoption has been exhausted.

**(c) Scope of Application**

42. Applying the Convention to the HKSAR will facilitate intercountry adoption between the HKSAR and other Contracting States. Nevertheless, the Convention, being an international treaty, does not apply to adoptions between different territorial units of the same State, e.g. adoptions between the HKSAR, Mainland and Macao SAR, i.e. intra-country adoptions.

**(d) Central Authority**

43. The Convention provides that a Contracting State shall designate a Central

Authority to discharge the set of prescribed duties under the Convention, such as to receive applications and take appropriate measures in the adoption process to safeguard the interests of children.

44. Most Contracting States designate their Department of Social Welfare/Family Services or Department of Justice equivalent as the Central Authority. We propose that the SWD be designated as the Central Authority for the HKSAR, in view of the administrative and operational nature of the various functions required of a Central Authority under the Convention.

***(e) Power to Grant Convention Orders***

45. We propose that the High Court should be empowered to hear Convention adoption applications and to grant Convention orders, whether Hong Kong is the State of origin (OS) (i.e. where the adoptee is habitually resident in Hong Kong) or the receiving State (RS) (i.e. where the adopter is habitually resident in Hong Kong). The Judiciary supports this approach as inter-country movement of children is a delicate matter and it would be desirable for expertise to be centralised in the High Court which is already hearing applications under the Child Abduction and Custody Ordinance (Cap. 512).

***(f) Role of Adoption Agencies***

46. We also propose that DSW should be allowed to delegate some of the functions of a Central Authority under the Convention to non-governmental adoption agencies accredited by DSW. The proposed accreditation system seeks to lay down the minimum service quality and professional standards of intercountry adoption practice in Hong Kong; and ensure effective and ethical intercountry adoption practices etc. The proposed guiding principles, accreditation criteria, operational requirements and monitoring mechanism of the proposed accreditation system administered by SWD are at **Annex E**.

47. In the spirit of good administration, we propose that DSW's decision to approve a new or renewal application for accreditation or to suspend or revoke accreditation of an NGO adoption agency be subject to appeal under the AAB. (Please refer to para. 19 and **Annex B** for the full scope of appeals to the AAB under the AO).

***(g) Intercountry Adoption Requirements and Procedures***

48. Articles 4-5 and 14-21 of the Hague Convention set out the basic requirements and procedures for intercountry adoption as a general framework.

49. To harmonise the local and Convention adoption systems, we propose that the existing local adoption requirements and procedures (as modified by the Bill) would, so long as they are consistent with the provisions of the Convention, apply to Convention adoptions (e.g. consent requirements, custody requirement and penalties).

New provisions are proposed where appropriate to cater for the specific requirements and procedures in Convention adoptions (e.g. “habitual residence” being one of the criteria which apply to Convention adoption).

***(h) Effects of Convention Adoptions***

50. The Hague Convention allows both full adoptions (i.e. adoptions which create a new and irrevocable legal relationship between the child and adoptive parents which severs all legal ties between the child and his/her birth parents) and simple adoptions (i.e. adoptions which do not have the effect of totally severing all ties with the birth parents)<sup>7</sup>.

51. In this regard, we propose to follow the UK approach in which all Convention adoptions will be recognised as full adoptions in Hong Kong, but the Court may, on application, direct that the child’s relationship with the birth parent(s), or such of the birth parent(s)’ rights, be recognised, if the adoption does not have the effect of terminating such relationship or rights in the place where it was made and relevant consents have not been given for the adoption to be converted into a full adoption etc.

***(i) Registration of Convention Orders***

52. For the sake of consistency and with a view to ensuring the completeness of all records of Hong Kong children, we propose that the intercountry adoption orders of Hong Kong children be recorded in the local Registers of Births and Adopted Children Register, regardless of whether the orders are granted in Hong Kong or overseas, similar to the existing registration arrangements for local adoption orders. SWD, based on the documentary proof provided by accredited bodies, will pass the required information to the Immigration Department for this purpose.

***(j) Subsidiary Legislation***

53. The Chief Justice will be empowered to make subsidiary legislation on the procedures and incidental matters in relation to Convention adoptions.

54. The Secretary for Health, Welfare and Food will have the power to specify by order in the Gazette the list of States which are parties to the Convention, and the respective dates of the coming into force of the Convention between the Hong Kong and those States.

**ADVICE SOUGHT**

55. Members are invited to express their views on the recommendations set out in paragraph 1.

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<sup>7</sup> See Article 26 of the Convention.

**Health, Welfare and Food Bureau**  
**Social Welfare Department**  
**April 2003**

**CONVENTION ON PROTECTION OF CHILDREN AND  
CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION**  
*(Concluded 29 May 1993)*

The States signatory to the present Convention,  
Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,  
Recalling that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin,  
Recognizing that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin,  
Convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children,  
Desiring to establish common provisions to this effect, taking into account the principles set forth in international instruments, in particular the United Nations Convention on the Rights of the Child, of 20 November 1989, and the United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (General Assembly Resolution 41/85, of 3 December 1986),  
Have agreed upon the following provisions –

**CHAPTER I – SCOPE OF THE CONVENTION**

*Article 1*

The objects of the present Convention are –

- a)* to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law;
- b)* to establish a system of co-operation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;
- c)* to secure the recognition in Contracting States of adoptions made in accordance with the Convention.

*Article 2*

(1) The Convention shall apply where a child habitually resident in one Contracting State ("the State of origin") has been, is being, or is to be moved to another Contracting State ("the receiving State") either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin.

(2) The Convention covers only adoptions which create a permanent parent-child relationship.

*Article 3*

The Convention ceases to apply if the agreements mentioned in Article 17, sub-paragraph *c*, have not been given before the child attains the age of eighteen years.

**CHAPTER II – REQUIREMENTS FOR INTERCOUNTRY ADOPTIONS**

*Article 4*

An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin –

*a*) have established that the child is adoptable;

*b*) have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child's best interests;

*c*) have ensured that

(1) the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin,

(2) such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing,

(3) the consents have not been induced by payment or compensation of any kind and have not been withdrawn, and

(4) the consent of the mother, where required, has been given only after the birth of the child; and

*d*) have ensured, having regard to the age and degree of maturity of the child, that

(1) he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required,

(2) consideration has been given to the child's wishes and opinions,

(3) the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and

(4) such consent has not been induced by payment or compensation of any kind.

*Article 5*

An adoption within the scope of the Convention shall take place only if the competent authorities of the receiving State –

*a*) have determined that the prospective adoptive parents are eligible and suited to adopt;

*b*) have ensured that the prospective adoptive parents have been counselled as

may be necessary; and  
c) have determined that the child is or will be authorized to enter and reside permanently in that State.

### CHAPTER III – CENTRAL AUTHORITIES AND ACCREDITED BODIES

#### *Article 6*

(1) A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

(2) Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

#### *Article 7*

(1) Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to protect children and to achieve the other objects of the Convention.

(2) They shall take directly all appropriate measures to –

- a) provide information as to the laws of their States concerning adoption and other general information, such as statistics and standard forms;
- b) keep one another informed about the operation of the Convention and, as far as possible, eliminate any obstacles to its application.

#### *Article 8*

Central Authorities shall take, directly or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention.

#### *Article 9*

Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to –  
a) collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption;

b) facilitate, follow and expedite proceedings with a view to obtaining the adoption;

c) promote the development of adoption counselling and post-adoption services in their States;

d) provide each other with general evaluation reports about experience with intercountry adoption;

e) reply, in so far as is permitted by the law of their State, to justified requests

from other Central Authorities or public authorities for information about a particular adoption situation.

*Article 10*

Accreditation shall only be granted to and maintained by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted.

*Article 11*

An accredited body shall –

- a) pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation;
- b) be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption; and
- c) be subject to supervision by competent authorities of that State as to its composition, operation and financial situation.

*Article 12*

A body accredited in one Contracting State may act in another Contracting State only if the competent authorities of both States have authorized it to do so.

*Article 13*

The designation of the Central Authorities and, where appropriate, the extent of their functions, as well as the names and addresses of the accredited bodies shall be communicated by each Contracting State to the Permanent Bureau of the Hague Conference on Private International Law.

#### CHAPTER IV – PROCEDURAL REQUIREMENTS IN INTERCOUNTRY ADOPTION

*Article 14*

Persons habitually resident in a Contracting State, who wish to adopt a child habitually resident in another Contracting State, shall apply to the Central Authority in the State of their habitual residence.

*Article 15*

(1) If the Central Authority of the receiving State is satisfied that the applicants are eligible and suited to adopt, it shall prepare a report including information about their identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, as well as the characteristics of the children for whom they would be qualified to care.

(2) It shall transmit the report to the Central Authority of the State of origin.



*Article 16*

(1) If the Central Authority of the State of origin is satisfied that the child is adoptable, it shall –

- a)* prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child;
- b)* give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background;
- c)* ensure that consents have been obtained in accordance with Article 4; and
- d)* determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child.

(2) It shall transmit to the Central Authority of the receiving State its report on the child, proof that the necessary consents have been obtained and the reasons for its determination on the placement, taking care not to reveal the identity of the mother and the father if, in the State of origin, these identities may not be disclosed.

*Article 17*

Any decision in the State of origin that a child should be entrusted to prospective adoptive parents may only be made if –

- a)* the Central Authority of that State has ensured that the prospective adoptive parents agree;
- b)* the Central Authority of the receiving State has approved such decision, where such approval is required by the law of that State or by the Central Authority of the State of origin;
- c)* the Central Authorities of both States have agreed that the adoption may proceed; and
- d)* it has been determined, in accordance with Article 5, that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorized to enter and reside permanently in the receiving State.

*Article 18*

The Central Authorities of both States shall take all necessary steps to obtain permission for the child to leave the State of origin and to enter and reside permanently in the receiving State.

*Article 19*

(1) The transfer of the child to the receiving State may only be carried out if the requirements of Article 17 have been satisfied.

(2) The Central Authorities of both States shall ensure that this transfer takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parents.

(3) If the transfer of the child does not take place, the reports referred to in Articles 15 and 16 are to be sent back to the authorities who forwarded them.

*Article 20*

The Central Authorities shall keep each other informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

*Article 21*

(1) Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in the child's best interests, such Central Authority shall take the measures necessary to protect the child, in particular –

*a)* to cause the child to be withdrawn from the prospective adoptive parents and to arrange temporary care;

*b)* in consultation with the Central Authority of the State of origin, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange alternative long-term care; an adoption shall not take place until the Central Authority of the State of origin has been duly informed concerning the new prospective adoptive parents;

*c)* as a last resort, to arrange the return of the child, if his or her interests so require.

(2) Having regard in particular to the age and degree of maturity of the child, he or she shall be consulted and, where appropriate, his or her consent obtained in relation to measures to be taken under this Article.

*Article 22*

(1) The functions of a Central Authority under this Chapter may be performed by public authorities or by bodies accredited under Chapter III, to the extent permitted by the law of its State.

(2) Any Contracting State may declare to the depositary of the Convention that the functions of the Central Authority under Articles 15 to 21 may be performed in that State, to the extent permitted by the law and subject to the supervision of the competent authorities of that State, also by bodies or persons who –

*a)* meet the requirements of integrity, professional competence, experience and accountability of that State; and

*b)* are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.

(3) A Contracting State which makes the declaration provided for in paragraph 2 shall keep the Permanent Bureau of the Hague Conference on Private International Law informed of the names and addresses of these bodies and persons.

(4) Any Contracting State may declare to the depositary of the Convention that adoptions of children habitually resident in its territory may only take place if the functions of the Central Authorities are performed in accordance with paragraph 1.

(5) Notwithstanding any declaration made under paragraph 2, the reports provided for in Articles 15 and 16 shall, in every case, be prepared under the responsibility of the Central Authority or other authorities or bodies in accordance with paragraph 1.

## CHAPTER V – RECOGNITION AND EFFECTS OF THE ADOPTION

### *Article 23*

(1) An adoption certified by the competent authority of the State of the adoption as having been made in accordance with the Convention shall be recognized by operation of law in the other Contracting States. The certificate shall specify when and by whom the agreements under Article 17, sub-paragraph *c*), were given.

(2) Each Contracting State shall, at the time of signature, ratification, acceptance, approval or accession, notify the depositary of the Convention of the identity and the functions of the authority or the authorities which, in that State, are competent to make the certification. It shall also notify the depositary of any modification in the designation of these authorities.

### *Article 24*

The recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.

### *Article 25*

Any Contracting State may declare to the depositary of the Convention that it will not be bound under this Convention to recognize adoptions made in accordance with an agreement concluded by application of Article 39, paragraph 2.

### *Article 26*

(1) The recognition of an adoption includes recognition of

*a*) the legal parent-child relationship between the child and his or her adoptive parents;

*b*) parental responsibility of the adoptive parents for the child;

*c*) the termination of a pre-existing legal relationship between the child and his or her mother and father, if the adoption has this effect in the Contracting State where it was made.

(2) In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, the child shall enjoy in the receiving State, and in any other Contracting State where the adoption is recognized, rights equivalent to those resulting from adoptions having this effect in each such State.

(3) The preceding paragraphs shall not prejudice the application of any provision more favourable for the child, in force in the Contracting State which

recognizes the adoption.

*Article 27*

(1) Where an adoption granted in the State of origin does not have the effect of terminating a pre-existing legal parent-child relationship, it may, in the receiving State which recognizes the adoption under the Convention, be converted into an adoption having such an effect –

*a)* if the law of the receiving State so permits; and

*b)* if the consents referred to in Article 4, sub-paragraphs *c* and *d*, have been or are given for the purpose of such an adoption.

(2) Article 23 applies to the decision converting the adoption.

CHAPTER VI – GENERAL PROVISIONS

*Article 28*

The Convention does not affect any law of a State of origin which requires that the adoption of a child habitually resident within that State take place in that State or which prohibits the child's placement in, or transfer to, the receiving State prior to adoption.

*Article 29*

There shall be no contact between the prospective adoptive parents and the child's parents or any other person who has care of the child until the requirements of Article 4, sub-paragraphs *a)* to *c)*, and Article 5, sub-paragraph *a)*, have been met, unless the adoption takes place within a family or unless the contact is in compliance with the conditions established by the competent authority of the State of origin.

*Article 30*

(1) The competent authorities of a Contracting State shall ensure that information held by them concerning the child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved.

(2) They shall ensure that the child or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State.

*Article 31*

Without prejudice to Article 30, personal data gathered or transmitted under the Convention, especially data referred to in Articles 15 and 16, shall be used only for the purposes for which they were gathered or transmitted.

*Article 32*

(1) No one shall derive improper financial or other gain from an activity related to an intercountry adoption.

(2) Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid.

(3) The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.

*Article 33*

A competent authority which finds that any provision of the Convention has not been respected or that there is a serious risk that it may not be respected, shall immediately inform the Central Authority of its State. This Central Authority shall be responsible for ensuring that appropriate measures are taken.

*Article 34*

If the competent authority of the State of destination of a document so requests, a translation certified as being in conformity with the original must be furnished. Unless otherwise provided, the costs of such translation are to be borne by the prospective adoptive parents.

*Article 35*

The competent authorities of the Contracting States shall act expeditiously in the process of adoption.

*Article 36*

In relation to a State which has two or more systems of law with regard to adoption applicable in different territorial units –

*a)* any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;

*b)* any reference to the law of that State shall be construed as referring to the law in force in the relevant territorial unit;

*c)* any reference to the competent authorities or to the public authorities of that State shall be construed as referring to those authorized to act in the relevant territorial unit;

*d)* any reference to the accredited bodies of that State shall be construed as referring to bodies accredited in the relevant territorial unit.

*Article 37*

In relation to a State which with regard to adoption has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

*Article 38*

A State within which different territorial units have their own rules of law in respect of adoption shall not be bound to apply the Convention where a State with a unified system of law would not be bound to do so.

*Article 39*

(1) The Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument.

(2) Any Contracting State may enter into agreements with one or more other Contracting States, with a view to improving the application of the Convention in their mutual relations. These agreements may derogate only from the provisions of Articles 14 to 16 and 18 to 21. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

*Article 40*

No reservation to the Convention shall be permitted.

*Article 41*

The Convention shall apply in every case where an application pursuant to Article 14 has been received after the Convention has entered into force in the receiving State and the State of origin.

*Article 42*

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convene a Special Commission in order to review the practical operation of the Convention.

## CHAPTER VII – FINAL CLAUSES

*Article 43*

(1) The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Seventeenth Session and by the other States which participated in that Session.

(2) It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

*Article 44*

(1) Any other State may accede to the Convention after it has entered into force in accordance with Article 46, paragraph 1.

(2) The instrument of accession shall be deposited with the depositary.

(3) Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph *b*) of Article 48. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

*Article 45*

(1) If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in the Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

(2) Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

(3) If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

*Article 46*

(1) The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 43.

(2) Thereafter the Convention shall enter into force –

*a)* for each State ratifying, accepting or approving it subsequently, or acceding to it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;

*b)* for a territorial unit to which the Convention has been extended in conformity with Article 45, on the first day of the month following the expiration of three months after the notification referred to in that Article.

*Article 47*

(1) A State Party to the Convention may denounce it by a notification in writing addressed to the depositary.

(2) The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

*Article 48*

The depositary shall notify the States Members of the Hague Conference on Private International Law, the other States which participated in the Seventeenth Session and the States which have acceded in accordance with Article 44, of the following –

*a)* the signatures, ratifications, acceptances and approvals referred to in Article 43;

*b)* the accessions and objections raised to accessions referred to in Article 44;

*c)* the date on which the Convention enters into force in accordance with Article 46;

*d)* the declarations and designations referred to in Articles 22, 23, 25 and 45;

*e)* the agreements referred to in Article 39;

*f)* the denunciations referred to in Article 47.

In witness whereof the undersigned, being duly authorized thereto, have signed this Convention.

Done at The Hague, on the 29th day of May 1993, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Seventeenth Session and to each of the other States which participated in that Session.



**Administrative Appeals Board (AAB)**

It is considered that the following decisions by DSW, where the rights of adoption applicants or adoption agencies are most affected, should be subject to the AAB, namely -

- (a) establishing suitability of applicants;
- (b) terminating placement arrangements; and
- (c) approving a new or renewal application for accreditation as well as suspending or revoking accreditation under the accreditation system for non-governmental adoption agencies.

2. For (a) and (b) in particular, the proposed scope of appeal is set out below -

- (a) For local adoption (i.e. a HK resident adopting a HK infant), the appeal mechanism should apply to adoptions by unrelated person (i.e. the adopter and child do not have any parent-child or relative relationship). In the case of adoptions by related person (i.e. an infant being adopted by his/her parent(s) or relative(s)), the duty to establish an applicant's suitability and to allow placement falls within the Court's jurisdiction under the AO; and
- (b) For intercountry adoption, the mechanism should apply to intercountry adoptions where HK is the receiving State (i.e. a HK person adopting an overseas child) only, but not where HK is the State of origin (i.e. an overseas person adopting a HK infant). This is because under the Convention the duty to establish an applicant's suitability rests primarily with the receiving State. Moreover, from an operational point of view, the receiving State is in a better position to oversee the placement arrangements.

## Root Tracing System in Adoption Service

### Purpose

This paper sets out the background, principles, scope and modus operandi of Root Tracing System (RTS), which aims at facilitating the adopted persons' access to their birth record, subject to a veto mechanism (VM).

### Background

2. The Adoption Ordinance (AO) does not provide for an adopted person the right to know that he is adopted and/or to know the identity of his/her own biological parents. Section 8(1A) only provides that the Court in making an adoption order shall consider whether it is in the interests of the infant that his/her true identity should be disclosed to him/her, having regard to the views of the prospective adopter(s), the opinions of the Director and also to the age and understanding of the infant. The Registrar of Births and Deaths is required to keep certain other books or registers in order to link the entries in the Adopted Children Registers of Births. These books however are not open to public inspection nor may any information contained in them be disclosed to any person except by order of the Court (section 18(4)). The absence of a statutory right for an adopted person to be informed of the identity of his/her birth parents may raise concern under Articles 7 and 8 of the United Nations Convention on the Rights of the Child. In balancing the adopted person's right of access to birth record and protecting the birth parents' privacy, the revamped Working Group on Review of the Adoption Ordinance recommended that provisions be included in the AO to allow an adopted person to trace his/her birth record, subject to a veto mechanism. It is considered that the Root Tracing System can be effected administratively along SWD's established practice and thus elaborate legislative provisions will not be required. Detailed arrangement of the existing root tracing services is at **Appendix 1**.

### Scope of Root Tracing Service

3. Under the existing root tracing practice, birth information about an adopted person, except identifying data of his/her birth parents, is provided by SWD to the adoptive parents as an operational procedure after an adoption order has been granted. The information provided includes the biological and medical history of the adopted person and the birth parents as well as the reasons for relinquishment, etc. A copy of the standard background information is at **Appendix 2**. Adoptive parents are encouraged to share the information with the adopted person. A copy of the information will also be given to the adopted person who approaches SWD for such

information<sup>8</sup>. This practice will continue upon the proposed root tracing system being put in place.

4. Developed from the existing root tracing service, the proposed Root Tracing System helps the adopted persons to obtain information about themselves and their birth parents, subject to a veto mechanism (*the operation of the VM will be elaborated in the following paragraphs*). If it is so requested, SWD will render tracing service to facilitate contact among the adopted person, the adoptive parents and the birth parent(s). To enable the adopted person to resolve his/her possible emotional difficulty arising from his/her identity and to have better understanding of his/her background and the reason behind his/her adoption, the adopted person who either seeks access to his/her birth records or contact with his/her birth parent(s) are required to receive counselling as appropriate before the release of information to him/her. Where the adopted person is under 18<sup>9</sup>, his/her adoptive parents will also be involved in the counselling process before the release of information to the adopted person.

#### **Operation of the Veto Mechanism (VM)**

5. The veto mechanism is to balance the adopted person's right to access to birth information and the privacy right of the birth parent(s) who may have been minors when the child is born, who may have been involved in extra marital affair leading to the child's birth, or where the mother may have been a rape/incest victim. The veto mechanism is to be put in place so that the birth parent(s) can choose to object to the disclosure of his/her identifying information to the adopted person. The scope of the VM is to cover all identifying information of the birth parent(s) who has/have exercised the veto as listed below:

- (a) full name,
- (b) identity card number,
- (c) contact address(es), and
- (d) telephone number(s).

6. The birth parent(s) should be informed of the existence of the VM at the time of his/her relinquishment of the child's custody for adoption and be explained of the following:

- (a) the veto, once imposed, will remain in place for the duration of his/her lifetime and become ineffective after his/her death;

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<sup>8</sup>The adopted person who has reached the age of majority may have access to information concerning his/her birth family. For an adopted person who is under 18, he/she shall obtain the written consent of the adoptive parents when making request for access to birth information and SWD will involve the adoptive parents during the counseling process before the disclosure of information to the adopted person.

<sup>9</sup> For an adopted person under 18 who fails to obtain the consent of the adoptive parents for root tracing request, his/her request will be considered at SWD's discretion on a case-by-case basis.

- (b) he/she can, at any time in future, request the veto to be lifted;
- (c) the detailed operation of the root tracing system in light of the VM and the implication and possible consequences of exercising or not exercising a veto;
- (d) the adopted child's right to know his/her birth information; and
- (e) the inadequacies of the VM in light of the following
  - (i) Under section 22 of Chapter 174, any person is entitled to require a search to be made of the index of the Births and Deaths Register and to have a certified copy of any entry in the Register of Births. The Register Form of Births contains some personal data of an adopted person and his/her birth parent(s) such as their full names and the residence of the informant. As long as an adopted person can provide the Registrar with some matching information (e.g. the birth name of the adopted person and the name(s) of his/her birth parent(s)) on his/her Register Form of Births, he/she may obtain the contact details of his/her birth parent(s) without first seeking the latter's consent and SWD's counseling in advance; and
  - (ii) In case the birth parents have different views on the disclosure of information (i.e. only one parent has exercised the veto), there may be a chance that the parent who has not exercised the veto may release the identifying information of the other parent to the adopted person.

### **Principles in Exercising the Veto**

7. In exercising the veto, the following principles are to be observed:
  - (a) the VM will be applied to all adoption cases irrespective of whether the child concerned is born in or outside wedlock;
  - (b) where the adopted person is an illegitimate child born outside lawful wedlock, information about the birth father is often lacking or only provided by the birth mother. Where the birth father is not involved in the relinquishment process and the child's paternity cannot be verified, no identifying information of the birth father would be released to the adopted person. Under this condition, only the birth mother is required to give consent to adoption, and the decision on whether or not to impose a veto rests with the birth mother. It is only when the birth father has registered his name on the child's birth registration form or is involved in the relinquishment process will he be informed of the root tracing mechanism and be given the right to exercise the veto. In case the birth parents have

different views on the disclosure of information, only the identifying information on the parent who has not exercised the veto will be released to the adopted person in future;

- (c) in case where the birth parent(s) of a child concerned is missing and he/she has not been informed of the existence of VM, only the non-identifying information will be released to the adoptive person;
- (d) the veto should also apply to the release of information to the adoptive parents; and
- (e) the proposed root tracing system cum veto mechanism should commence upon the enactment of the Adoption (Amendment) Bill and should not be given retrospective effect. An adopted person whose custody is relinquished by his/her birth parent(s) before the introduction of the new system should follow the existing procedures of root tracing service rendered by SWD as at Appendix 1.

8. The birth parent(s) who relinquishes the custody over a child for adoption should also be informed of the existence of a Contact Register kept in SWD to enable the adopted person to make contact with him/her in future. Birth parent(s) should be advised to update any change of their contact details in the Contact Register if it is his/her wish to be contacted by the adopted person in future.

#### Source of Request for Root Tracing Service

9. The root-tracing service is applicable for local adoption cases and intercountry adoption cases where HKSAR is the State of origin. SWD and agencies duly accredited by SWD (ABs) to provide intercountry adoption services will entertain the request only if the adopted person reaches 18 or has the written consent of the adoptive parents if the adopted person is under the age of 18. They may apply for the service in person or by correspondence to SWD or AB. For adopted person/adoptive parents residing outside Hong Kong, they should produce their document of identity which is to be attested by a notary public or a Commissioner for Oaths or certified true by an adoption agency accredited/approved in their place of residence when they request services by correspondence. They will also be required to approach an adoption agency in his/her own country for counseling service as appropriate.

#### Nature of Requests

10. A root tracing request may have the following purposes:

- (a) Request for birth information and non-identifying information on the birth parent(s); and/or

- (b) Request for birth information and identifying information on the birth parent(s); and/or
- (c) Request for establishing contact/meeting with birth parent(s).

**Request for birth information and non-identifying information on the birth parent(s)**

11. If an adopted person wishes to obtain his/her birth information, he/she may approach either SWD or an AB previously known to him/her as appropriate direct for root tracing services. The adopted person may also approach the Births and Deaths Registrar, who will in turn refer the case to SWD for processing. In general, SWD would entertain the request only if the adopted person reaches 18 or has the written consent of the adoptive parents if the adopted person is under the age of 18<sup>10</sup>. Where matching record for the adopted person is identified, he/she will be required to receive counseling by SWD/AB to help him/her deal with any emotional or adjustment problems that may arise and give advice on any further enquiries he/she may wish to make about his/her birth parent(s). If the adopted person is under 18, both the adopted person and his/her adoptive parents will be requested to receive counselling service as part of the root tracing service.

12. Upon receipt of such request, SWD/AB will provide birth information relating to the adopted person without disclosing any identifying information on the birth parent(s) basing on the file records possessed by SWD or AB.

**Request for birth information and identifying information on the birth parent(s)**

13. Where the adopted person would like to search for birth information and the identifying information on the birth parent(s), SWD will check against the file record to ascertain if a veto has been imposed by the birth parent(s) either at the time of relinquishment of the child's custody or any time after the relinquishment. If the adopted person approaches an AB direct to request identifying information on the birth parent(s), the AB shall refer the case to SWD to ascertain whether a veto is in place. In case **a veto has not been imposed**, all birth information including the identifying information on the birth parent(s) will be provided to the adopted person by SWD/AB. In case when **a veto is in place and has not been lifted**, SWD/AB will only release the birth information without birth parent(s)' identifying information. If so requested, SWD will attempt to trace the birth parents(s) to see if he/she agrees to lift the veto. In case the birth parents have different views on the disclosure of information, SWD will only release the identifying information of the parent who has not exercised the veto/ has lifted the veto to the adopted person. The adopted person is required to receive counseling by SWD/AB in handling the issue of not being able to obtain the required identifying information. On the other hand, advice will also be

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<sup>10</sup> For an adopted person under 18 who fails to obtain the consent of the adoptive parents for root tracing request, his/her request will be considered at SWD's discretion on a case-by-case basis.

given to the adopted person on other means of root tracing, e.g. application for a Court Order under section 18(4) of the Adoption to search information contained in the Adopted Children Register.

**Request for establishing contact/meeting with birth parent(s)**

14. No matter whether a veto has been imposed or not, where an adopted person requests to establish contact with his/her birth parent(s), SWD will discreetly trace the birth parent(s) in order to seek his/her consent. AB receiving such request shall refer the case to SWD for tracing service. Follow up service can be shared by SWD and AB as mutually agreed with the parties concerned. The following scenarios will be covered -

- (a) **Both birth parents are located and are ready to meet** the adopted person/adoptive parents. Contact arrangement will be made between the birth parents and the adopted person/adoptive parents. To protect both parties' interests and to offer support, initial contacts/meetings will be arranged by SWD/AB. The parties will be required to receive continuous counseling as appropriate and arrangement of subsequent contacts/meetings will depend on the wishes of the parties concerned;
- (b) **Both parents are located, but only one parent is ready to meet** the adopted person/adoptive parents. SWD/AB will only arrange contact between the willing birth parent and the adopted person/adoptive parents. Both parties will be required to receive counselling in order to have a better understanding of each party's expectation towards the other and prepare both parties before the meeting. Besides, SWD/AB will explore the reasons of the other party's refusal to meet and provide counseling to the adopted person (and the adoptive parents if the adopted person is under 18) as appropriate;
- (c) **Only one of the birth parents is located and is ready to meet** the adopted person/adoptive parents. While tracing is conducted by SWD, initial contacts/meetings between the birth parent and the adopted person will be arranged by SWD. AB may be involved in the arrangement as and when appropriate. Both parties will be required to receive counseling in order to have a better understanding of each party's expectation towards one another and prepare both parties before the meeting; and
- (d) **Both parents cannot be located or are unwilling to meet** the adopted person. SWD/AB will explain to the adopted person and he/she will be required to receive counseling in handling the issue of not being able to establish contact with the birth parent(s). The adopted person (and the adoptive parents if the adopted person is under 18) will also be required to

receive counselling to help him/her overcome his/her disappointment and feelings in the root tracing process. If the adopted person lives overseas, he/she is required to seek counseling service from an agency in his/her own country as appropriate.

*Social Welfare Department  
April 2003*



## Existing Root Tracing System in Adoption Service

### **Purpose**

This paper sets out the background, principles, scope and modus operandi of the existing Root Tracing System practised by the Adoption Unit, Social Welfare Department.

### **Scope of Root Tracing Service**

2. The root-tracing service aims to assist an adopted person<sup>11</sup> to trace information related to the birth parents and/or to contact them. The services include counseling, furnishing of information through record checking, arrangement of meeting or correspondence among adopted person, adoptive parents and birth parents. The direct contacts with the birth parent(s) may enable the adopted person resolve his/her feelings and to have greater understanding of his/her background and the reason behind his/her adoption.

### **Source of Request for Root Tracing Service**

3. The request for root-tracing can be made by an adult adopted person or if the adopted person is under 18, he/she shall obtain the written consent of his/her adoptive parents. He/she may apply in person or by correspondence to SWD. An overseas applicant for root tracing service should produce his/her document of identity which is to be attested by a notary public or a Commissioner for Oaths or certified true by an accredited adoption agency when he/she requests services by correspondence. He/she will also be advised to approach an adoption agency in his/her own country for counseling service.

### **Nature of Requests**

4. A root tracing request may having the following purposes:
- (a) Request for background information on birth parent(s) only; and/or
  - (b) Request for establishing contact/meeting with the birth parent(s).

### **Request for background information on birth parent(s) only**

5. If an adopted person wishes to obtain his/her background

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<sup>11</sup> The adopted person who has reached the age of majority may have access to information concerning his/her birth family, For an adopted person who is under 18, he/she shall obtain the written consent of the adoptive parents when making request for access to birth information and SWD will involve the adoptive parents during the counselling process before the disclosure of information to the adopted person.

information, he/she may approach SWD direct. SWD would entertain the request only if the adopted person reaches 18 or has the written consent of the adoptive parents if the adopted person is under the age of 18. Where matching record for the adopted person is identified, he/she will be invited for counseling by SWD to help him/her deal with any emotion or adjustment problems that may arise and give advice on any further enquiries he/she may wish to make about his/her birth parent(s).

6. Upon receipt of such request, SWD will provide birth information relating to the adopted person without disclosing any identifying information on the birth parent(s) basing on the file records possessed by SWD. If so requested, SWD will attempt to trace the birth parent(s) to see if he/she agrees to release the identifying information. In any case, without the consent of the birth parent(s), no identifying information will be released to the adopted person.

**Request for establishing contact/meeting with birth parent(s)**

7. Where the adopted person requests for establishing contact with his/her birth parent(s), SWD will discreetly trace the birth parent(s) in order to seek his/her/their consent. If the birth parent(s) is/are **located and is/are ready to meet** the adopted person/adoptive parents, counseling will be rendered to both parties in order to have a better understanding of each party's expectation towards one another and prepare both parties before the meeting. To protect both parties' interest and to offer support, initial contacts/meetings will be arranged by SWD. Continuous counseling will be rendered to the parties as appropriate and arrangement of subsequent contacts/meetings will depend on the wishes of the parties concerned.

8. If the birth parent(s) is/are **located but is/are unwilling to meet** the adopted person/adoptive parents, SWD should explore the reasons of the birth parent(s)' unwillingness to meet the adopted person/adoptive parents and provide counseling as appropriate. Counseling will also be rendered to help the adopted person comprehend the birth parent(s)' reason for refusal to meet him/her and help him/her accept the difficulties of his/her birth parent(s). If the adopted person lives overseas, SWD may advise him/her to seek counseling service from appropriate agency in his/her own country if he/she has difficulty in comprehending the birth parent(s)' reason for refusal.

9. If birth parent(s) **cannot be located**, SWD will explain to the adopted person and provide counseling to him/her in accepting the fact of not being able to establish contact with the birth parent(s).

Our Ref. :

Adoption Unit,  
4/F., Harbour Building,  
38 Pier Road, Central,  
Hong Kong.

Tel. No. :

**Background Information of \_\_\_\_\_**  
**originally known as \_\_\_\_\_**

**I. Information of the child**

1. Original name			
2. Length of pregnancy			
3. Date of birth			
4. Time of birth			
5. Place of birth			
6. Weight at birth			
7. Type of delivery			
8. Any complications at birth			
9. Health condition since birth (include record of hospitalization, if any)			
10. Place of residence since birth	Date :	From :	To :

**II. Information on child's birth parents**

	Birth Mother	Birth Father
1. Surname		
2. Age		
3. Place of birth		
4. Height		
5. Weight		
6. Colour of eye		
7. Colour of hair		
8. Ethnic origin		
9. Marital status		
10. Relationship of birth parents, e.g. cohabited, married, separated, etc		

**Annex C**  
**Appendix 2**

	Birth Mother			Birth Father		
	Relationship	Sex/Age	Occupation	Relationship	Sex/Age	Occupation
11. Family composition						
12. Education						
13. Employment						
14. Personality & characteristics						
15. Interests & hobbies						
16. Health condition (including history of serious/heredity illness & disability that required long-term medication and treatment)						
17. Family history of serious/heredity illness & disability						
18. Addiction to drug or alcohol						
19. Other children of birth parents (siblings or half-siblings)	Sex :	Age :		Sex :	Age :	
20. Date of above information completed						

**III. Course of acquaintance of child's birth parents (Please fill in information on when and how the child was found and other details available if the child was abandoned by unknown parents.)**

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**IV. Reasons for relinquishment (Before the disclosure of information to an adopted person upon his/her access request, counselling should be rendered to the adopted person as appropriate)**

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**V. Significant events during adoption process (e.g. change of adoptive placement, trips outside of Hong Kong)**

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**VI. Adoption procedures**

1. Date of child's birth parents signed on the Statutory Declaration	Birth Mother	Birth Father
2. Date of the child became the ward of the Director of Social Welfare		
3. Date & place of matching between the child and the adoptive applicants		
4. Name of adoptive parents		
5. Date of adoption placement		
6. Date of adoption order		
7. Place of adoption		

Other e.g.

- details of overseas CA/AB in case of Convention Adoption

**VII. Gifts/souvenirs from birth parents (If any)**

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\_\_\_\_\_  
Caseworker of Adoption Unit  
Social Welfare Department

Dated this                      day of                      200                      .

**Textual and Formatting Amendments**

Textual amendments to the AO and AR include -

- (a) using more positive and appropriate terms in the AO, such as –
  - (i) to replace “natural parent/father/mother” by “birth parent/father/ mother”;
  - (ii) to replace “wishes of the infant” to “wishes and opinions of the infants” to be consistent with Article 4(d)(2) of the Convention;
  - (iii) to replace “a child who is illegitimate” by “a child born outside of wedlock”;
  - (iv) to use “original identity” instead of “true identity” and
- (b) amending the various forms in the Adoption Rules by replacing references to the year from “19\_\_” to “20\_\_”.

2. Formatting-wise, the Immigration Department proposes to change the layout of the Form of Entry in Adopted Children Register in the Schedule to the AO, and of the Schedule to Form 7 in the First Schedule to the AR, from a “column” to “row” display to facilitate computerization of adoption registration and achieve consistency with other statutory certificates such as birth, death and marriage registers/certificates.

3. Furthermore, the Immigration Department proposes to replace all references to “name or surname” and “name(s) and surname” in the AO and the AR by “surname or name” and “surname and name(s)”, in order to make them consistent with the birth, death and marriage registers/certificates for administrative convenience.

## **Accreditation System in respect of Intercountry Adoption in Hong Kong Special Administrative Region**

### *General Statement*

This document sets out the principles, criteria, requirements and monitoring of an accreditation system in respect of intercountry adoption in the Hong Kong Special Administrative Region (HKSAR).

### **Part I - Background**

2. Adoption is a legal process whereby parental rights and responsibilities over a particular child, who is under 18 years old and unmarried, are transferred from the birth parents to the adoptive parents. An adoption in Hong Kong must be effected in accordance with the Adoption Ordinance, Cap 290. The best interests of the child are of paramount importance in the adoption process. In HKSAR, the Social Welfare Department (SWD) is responsible for administering local adoption arrangement, providing counselling and assistance to people considering adoption and children available for adoption, and monitoring the overseas adoption program through cooperation with designated non-governmental organizations.

3. Intercountry adoption is a general term referring to the adoption of a child resident in the HKSAR by adopters resident overseas. It may also refer to the adoption of a child resident abroad by adopters resident in the HKSAR. Under SWD's adoption program, priority is given to placing children to families of the same cultural or ethnic background so as to minimize the cultural changes and the child's adjustment problems. This order of priority is also recognized under the Convention on Protection of Children and Cooperation in respect of Intercountry Adoption done at the Hague on 29 May 1993 (the Hague Convention). Intercountry Adoption should only be arranged for children who are in need of a permanent adoption placement but where no suitable local homes are available for them. The majority of these children are wards of Director of Social Welfare (DSW) with special needs due to mental and physical disability, developmental and health problems, older age or unfavourable family background. The remaining children are mostly children to be adopted by their relatives living overseas.

4. With a view to ensuring that these adoptions are made in the best interests of the child, there is a need for greater cooperation of the HKSAR with other countries in the field of intercountry adoption. The Administration has decided to amend the Adoption Ordinance to, inter alia, implement the provisions of the Hague Convention.

## **Current Arrangement of Intercountry Adoption in HKSAR**

5. At present, the adoption of DSW wards by overseas applicants is arranged by the Adoption Unit of the SWD with the assistance of International Social Service (Hong Kong Branch) (ISS-HK) and Mother's Choice (MC) through their connections with overseas adoption agencies<sup>12</sup>. There is a set of rigorous assessment procedures involving SWD and the Court before the child is sent overseas for adoption.

6. In practice, SWD delegates part of its functions in respect of intercountry adoption to ISS-HK and MC, and monitors the work of these organizations through the Funding and Service Agreement with ISS-HK and Tri-partite Arrangements with MC and overseas adoption agencies. These functions include conducting child studies, furnishing child study reports to their overseas counterparts for the identification of suitable adoptive homes, transmitting the information of prospective adoptive parents from overseas adoption agencies to SWD, liaising with the overseas adoption agencies in child supervision during adoption placement, etc. SWD retains the responsibility for studying all the relevant papers regarding the child and the prospective adoptive home, giving approval for the matching proposal and performing all tasks relating to the necessary court proceedings. On average, the number of applications for intercountry adoption for DSW wards is around 20-30 cases each year.

7. As for the adoption of children from places outside the HKSAR by unrelated persons, ISS-HK has initiated a program to assist local families, mostly expatriate families, to adopt children from places outside HKSAR on a self-financing basis<sup>13</sup>. Local residents, including expatriates who wish to adopt children from these countries shall meet the adoption requirements of Hong Kong as well as those of the place where the child resides. On average, ISS-HK receives and processes 3-4 such applications each year.

8. Regarding intercountry adoption between related persons, i.e. adoption by a relative of the child, ISS-HK is involved in processing such applications. The adoption is made according to the legal requirements and adoption procedures of the place where the prospective adoptive parent resides and those of the place where the child resides. On average, ISS receives and processes 3-4 intercountry related adoption cases each year.

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<sup>12</sup> In the intercountry adoption programme for DSW wards, ISS-HK has overseas connection with six countries, namely United States of America, Canada, Australia, New Zealand, United Kingdom and Singapore. Meanwhile, MC has only established connection with the licensed adoption agencies in the United States.

<sup>13</sup> Presently, ISS-HK has programmes with Mainland China (for expatriates only), India, Philippines and Thailand. Each country has different criteria and requirements for documents and procedures.



## Part II - The Hague Convention

9. The Hague Conference on Private International Law (the Hague Conference) is an intergovernmental organization working for the progressive unification of the rules of private international law. The Hague Convention, which was drawn up by the Hague Conference, was adopted in the Hague on 29 May 1993. As at February 2003, it had 52 Contracting States, and had been signed (but not yet ratified) by another 10 States, including China and the USA.

10. The objectives of the Hague Convention are to establish safeguards to ensure that intercountry adoption is made in the best interests of the child and with respect for his or her fundamental rights; to establish a system of cooperation amongst Contracting States to ensure that those safeguards are respected and thereby preventing the abduction of, sale of, or traffic in children; and to secure the recognition in Contracting States of adoptions made in accordance with its provisions.

### Terminology

11. The Hague Convention (Appendix 1<sup>14</sup>) contains 48 Articles which set out its objectives and scope, the requirements and procedures and the responsibilities of Contracting States for intercountry adoption, provide for the accreditation of adoption agencies and the recognition by Contracting States of intercountry adoptions made in accordance with its provisions. A State which has ratified or acceded to the Convention is described as a “**Contracting State**”. A State that allows children habitually resident in that State to be adopted by families of other Contracting States according to the Convention is known as a “**State of origin**”. A State that permits a child from another Contracting State to enter its country and live permanently with the adoptive parents habitually resident in that State is a “**receiving State**”. Where a country (e.g. China) has different territorial units with different legal systems (e.g. HKSAR), the term “State” also refers to such territorial unit to which the Hague Convention applies. However, according to international law principles and as stated in Article 38 of Hague Convention, a State, including one within which different territorial units have their own rules of law in respect of adoption, shall not be bound to apply the Convention to adoptions within that State.

12. The Hague Convention requires each Contracting State to designate a **Central Authority** (CA) which is the key authority for discharging the duties that are imposed by the Convention. SWD will assume the role of CA in the HKSAR. The Hague Convention permits certain functions of the CA to be delegated to public authorities or other bodies duly accredited by the CA. Besides, the Hague Convention also imposes certain requirements on other “**competent authorities**” which may be involved in the adoption process.

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<sup>14</sup> See Annex A.

## **The Framework**

13. Under the Hague Convention, a person is required to apply to the CA in the Contracting State of his/her habitual residence if he/she wishes to adopt a child habitually resident in another Contracting State. For easy reference, the intercountry adoptions processed by Contracting States in accordance with the provisions of the Hague Convention are referred to as “Convention adoptions” in this document. On the other hand, intercountry adoptions processed with countries which have not yet become party to the Hague Convention, such as the USA, are referred to as “non-Convention adoptions”.

14. The CAs are required to take all appropriate measures to protect children placed or to be placed for such intercountry adoption. They are required to co-operate with authorities in other Contracting States to facilitate and expedite adoptions and generally to achieve the objectives of the Hague Convention. The CA of a receiving State will receive application from, and prepare reports on the suitability of, prospective adoptive parents. The reports will be transmitted to the CA of the State of origin. Intercountry adoption may take place only if the competent authorities of both Contracting States have ensured, as a minimum, that the conditions specified in Article 5 of the Hague Convention are satisfied, including that the prospective adoptive parent(s) is/are suitable to adopt children, the child is adoptable and is or will be authorized to enter the receiving State to live with the adoptive parent(s).

15. The CAs should also ensure that the transfer of children between countries takes place in secure and appropriate circumstances. Where the child is to be subject to a period of placement before the adoption order is made, the CA of the receiving State should monitor the placement process and remove the child from the adoptive applicant in case of a placement breakdown, and, in consultation with the CA of the State of origin, arrange for an alternative placement in the receiving State or, as a last resort, return the child to the State of origin. Besides, CAs should also, directly or through other bodies, promote adoption counseling, provide information to authorities in other Contracting States and take measures to prevent improper financial gain in connection with adoptions. The Hague Convention permits some of the functions of CAs to be carried out by other public authorities or by non-public bodies as may be accredited/authorised by the CAs. The non-public bodies duly accredited to work on intercountry adoption under the Hague Convention are known as “accredited bodies” (AB).

## **The Situation in HKSAR**

16. In the HKSAR, the functions of CA as described in Article 9 and Articles 15-21 are, at present, performed by SWD and the two designated NGOs, i.e. through Funding and Service Agreement signed between SWD and ISS-HK;

and Tri-partie Arrangements signed among SWD, MC and overseas adoption agencies. Such arrangement aims at facilitating the identification of suitable overseas adoptive parents for children with special needs in the HKSAR by making good use of the international network of the two agencies.

17. Upon application of the Hague Convention to the HKSAR, SWD will be designated as the CA. Besides, SWD also needs to put in place an accreditation system if the current practice of cooperation and delegation of duties to ISS-HK and MC in handling intercountry adoption cases is to be maintained. In this respect, there will be a provision in the revised Adoption Ordinance empowering DSW to delegate such functions to bodies duly accredited by him/her. The criteria for accreditation, the scope of work of the ABs, and the minimum standards of accreditation under the Hague Convention are set forth below.

### **Part III –Accreditation**

18. In view of the small number of intercountry adoption cases in the HKSAR each year, an agency accredited by DSW under the proposed accreditation system will be allowed to work on both Convention and non-Convention intercountry adoption cases<sup>15</sup>. The accreditation system aims at:

- (a) safeguarding the service quality and professional standard of intercountry adoption practice in HKSAR, including Convention and non-Convention intercountry adoption cases;
- (b) ensuring effective and ethical international adoption practice;
- (c) promoting the adoption chances of special needs children by making use of the expertise and overseas network of the accredited bodies;
- (d) enabling competent NGOs to perform the procedural functions stipulated in the Hague Convention on behalf of the CA; and
- (e) ensuring that intercountry adoptions, including Convention and non-Convention adoptions, are only arranged according to the provisions of the Hague Convention and/or the Adoption Ordinance.

### **Criteria for Accreditation**

19. An agency seeking accreditation by DSW in HKSAR shall meet the following objectives/requirements, which apply to both Convention and

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<sup>15</sup> The term “intercountry adoption” does not include adoption between HKSAR and other parts of China. Hence, the adoption cases handled by AB under the accreditation system will not cover those made between HKSAR, Macau and other parts of China.

non-Convention adoption:

- (a) the agency pursues only non-profit-making objectives and has sound financial condition to enable it to take on intercountry adoption work;
- (b) it has specialized experience in providing child welfare services;
- (c) it has a clearly-delineated organization structure, resources to make adoption arrangement for children, and a written policy and working procedures governing the work of the agency;
- (d) there is a designated section in the agency directed by persons with appropriate qualifications and staffed by registered social workers<sup>16</sup> to undertake home assessment and placement tasks for the purpose of intercountry adoption;
- (e) there is a committee/board set up by the management of the agency to monitor the adoption work of the agency;
- (f) there is a good track record of the agency in providing the services and clear documentation on such services, e.g. for agencies currently providing adoption services, reference will be made to the number of children adopted through the agency's program, types of special needs children placed for adoption and length of adoption processing time by the agency in HK;
- (g) there is no record of conviction against the agency for offences against children;
- (h) the agency places the child's interests as the paramount consideration in its intercountry adoption work;
- (i) it complies with the law of HKSAR and follows the principles laid down in the Hague Convention in respect of intercountry adoption work carried out by the agency;
- (j) for non-Convention adoption cases it has an established overseas network (or has a concrete plan to develop such a network) of government bodies and/or licensed/accredited adoption bodies in the arrangement of adoption;
- (k) there is a mechanism in place to handle complaints arising from the adoption service provided by the agency.

Scope of Work of the Accredited Body in HKSAR

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<sup>16</sup> A registered social worker refers to a social worker who has registered in the Social Workers Registration Board, Hong Kong under the Social Workers Registration Ordinance (Cap. 505)

20. The agency applying for accreditation may work with specific countries currently having intercountry adoption programs with HKSAR<sup>17</sup>. These countries include both Contracting States, such as Australia, Canada, New Zealand and the UK; and non-Contracting States, such as the UK and the USA. After the Hague Convention is applied to the HKSAR, it may also be possible for an intercountry adoption arrangement to be made with other Contracting States. ABs may, in consultation with SWD, initiate inquiries with or receive inquiries from the CA of a Contracting State to explore the likelihood of an intercountry adoption arrangement between a Contracting State and the HKSAR, and decide whether intercountry adoption arrangement will take place having examined whether the requirements of the Hague Convention and the Adoption Ordinance are satisfied. Regarding non-Convention adoption, the agency, before entering into partnership or cooperation with a new State, should obtain the prior approval of SWD which may impose additional requirements or supervisory control on the agency for working on intercountry adoption cases between Hong Kong and these countries.

21. An agency duly accredited in the HKSAR will be delegated with procedural duties relating to Convention and non-Convention adoption, including the arrangement of overseas adoptive homes for children who cannot be placed locally, and providing services to local families<sup>18</sup> who wish to adopt children from places outside the HKSAR. ABs will be involved in the following duties in Convention adoption cases:

Where HKSAR is either the State of origin or the receiving State

- (a) ensuring all essential aspects on the child as well as the prospective adoptive families have been duly assessed;
- (b) ensuring all essential documents have been forwarded for consideration by SWD and the overseas CA/AB on the adoption arrangement;
- (c) arranging for the preparation and submission of progress reports on a child placed for intercountry adoption; and
- (d) making alternative temporary placement arrangements for the child in case the proposed adoption placement fails and as a last resort arrange for the child's return to the State of origin.

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<sup>17</sup> Countries having intercountry adoption programmes with HKSAR children (i.e. HKSAR as the State of origin) include Contracting States (Australia, Canada, New Zealand) and non-Contracting States (Singapore, United Kingdom and United States). As for the intercountry adoption programmes where HKSAR is the receiving State, those countries include Philippines which is a Contracting State, and India and Thailand which are non-Contracting States.

<sup>18</sup> To safeguard the best interests of children, all local prospective adoptive homes, no matter whether they apply for local adoption or adoption of children abroad, should go through a home study approved by the Adoption Unit of Social Welfare Department.

Where HKSAR is the State of origin

- (a) preparation of child study report for the purpose of overseas adoption;
- (b) forwarding the child study report to overseas CA/AB;
- (c) screening the home assessment report on the prospective adoptive parents prepared by the overseas CA/AB; and
- (d) escorting the child to the overseas country of the prospective adoptive parents when required.

Where HKSAR is the receiving State

- (a) preparation of home study report for the purpose of overseas adoption;
- (b) forwarding the home study report to overseas CA/AB; and
- (c) screening the child study report prepared by the overseas CA/AB.

22. While a number of the procedural functions will be delegated to the AB, SWD continues to take up the responsibility of liaising with the police for administering the requirement of criminal record check on prospective adoptive parents, and SWD/ABs may initiate contact with Immigration Department to confirm the child's permission to enter and stay in HKSAR, where the HKSAR is the receiving State. As the CA of the state of Origin, SWD will also apply to the Court for an Order for a DSW ward's removal from the HKSAR for placement/adoption outside Hong Kong and provide necessary information to Immigration Department to facilitate the registration of the child's adoption order granted overseas onto the Adopted Children Register in HKSAR. A detailed description of duties and procedural requirements to be delegated to ABs in the HKSAR under the Hague Convention is at Appendix 2.

23. To safeguard the service quality and professional practice of intercountry adoption in HKSAR, the same service standard will be applied to non-Convention adoption as well. For non-Convention adoption cases, ABs also need to fulfill the same duties mentioned in paragraph 21.

Root-tracing

24. The ABs will also be involved in root tracing service for those shared cases handled by both SWD and the AB. In handling such requests, the AB concerned may release the birth information to the adopted person (subject to a veto-mechanism) and render counselling to the adopted person as appropriate. The detailed procedures in providing the root tracing service and the division of work between SWD and AB in handling root-tracing requests are laid down in

Annex C. .

**Part IV – Application and Approval Procedures**

**Application for Accreditation**

25. Application for an accreditation certificate or application for its renewal must be made to DSW in a prescribed form and accompanied by such information as DSW may require. These include information about the agency's organization, background, services provided, experience in intercountry adoption, overseas network and connections, financial status, past track record, etc. A copy of the Application Form for Accreditation is at Appendix 3. Applicants wishing to provide intercountry adoption service (including both Convention and non-Convention adoptions) should spell out clearly the reasons, their established overseas network and the details of the proposed program for DSW's consideration.

**Accreditation Assessment**

26. Upon receiving the Application Form and relevant documents/records from the applicant, accreditation assessment will be conducted by SWD based on the criteria set out in paragraph 19. DSW may require an applicant to provide such further information in connection with the application as DSW thinks necessary.

27. The assessment may include the following activities:

- (a) review of program records and case records;
- (b) review of administrative records;
- (c) program implementation site visit; and
- (d) actual observation on the operation of the program.

**Notification of Assessment Result**

28. Subject to satisfactory result of assessment on the agency's capabilities, ethics and performance in intercountry adoption work, DSW may accredit an agency for intercountry adoption.

29. The successful applicant will be issued an accreditation certificate in the prescribed format which will specify the functions and duties that have been delegated to the applicant in relation to Convention and non-Convention intercountry adoptions. DSW may also impose such conditions of accreditation as she considers appropriate. The accreditation certificate must be displayed in a conspicuous place in the applicant's office where the intercountry adoption

services program is operated. Unsuccessful applicants will not be allowed to provide intercountry adoption service.

### **Validity Period**

30. An accreditation certificate will be valid for 4 years. The accreditation may be suspended or revoked by DSW at any time if the agency is found to have acted against or has failed to protect the interests of the child in the arrangement of intercountry adoption, or in the following circumstances:

- (i) the agency has failed to meet the accreditation criteria as specified in paragraph 19 and / or the conditions of accreditation imposed by DSW;
- (ii) the agency has failed to fulfill any of the duties set out in paragraphs 21 and 22 above in processing intercountry adoption cases;
- (iii) the agency has failed to comply with any of the relevant Articles of the Hague Convention in processing Convention adoption cases;
- (iv) the agency has failed to comply with the code of conduct for accredited bodies or guidelines on intercountry adoption service issued by SWD;
- (v) the agency has encountered financial problem, which may adversely affect its normal operation; or
- (vi) the agency has ceased to provide intercountry adoption service.

31. For applicants not providing intercountry adoption service at the time of application but wishing to commence such service in the near future, DSW reserves the right, where she decides to give accreditation, to shorten the accreditation period to 24 months. During the period, DSW will assess the performance of the applicant concerned to see if accreditation certificate is to be renewed. The applicant, within the 24-month accreditation period, should demonstrate its ability to handle both incoming and outgoing cases, and complete successful intercountry adoption cases<sup>19</sup> of which at least 2 should be on wards of DSW. The period of accreditation can be extended by DSW up to 36 months where it is considered appropriate.

### **Application for Renewal of Accreditation**

32. An application for renewal of accreditation shall be made to DSW not more than 6 months and not less than 4 months prior to the expiration of the

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<sup>19</sup> Successful intercountry adoption case refers to the completion of adoption cases where a ward of DSW has been placed with an overseas adoptive home with an adoption order granted; and where an overseas child has joined the adoptive home in HKSAR with an adoption order granted.



accreditation or within such period of time DSW may in writing permits. Procedures for accreditation application in paragraph 25 to paragraph 29 will be followed. Normally, the renewal accreditation certificate, if granted, shall have effect on the day following the day upon which the original accreditation expires. The period of accreditation can be extended by DSW on a temporary basis if DSW needs to take longer time to consider the renewal in case there is unexpected change to the agency's intercountry adoption program.

### **Accreditation Register**

33. DSW shall keep a register of accredited adoption agencies containing the name and address of the adoption agency, the name and address of the persons registered in respect of the adoption agency and other particulars as DSW thinks fit. This register shall be available for public inspection at such reasonable and place as DSW may determine.

34. The register will be updated biennially, or at an earlier interval as and when required.

## **Part V – Monitoring of Accredited Bodies**

### **Obligations of Accredited Bodies in Providing Services**

35. The AB shall have a clearly defined adoption procedure and a systematic plan for the services it renders throughout the adoption process. It should continuously monitor and evaluate its services and their quality to ensure compliance with the requirements regarding its accreditation. Besides, the AB is required to comply with the following regulations:

- (a) it shall comply with the code of conduct in handling intercountry adoption cases, including Convention and non-Convention adoption (Appendix 4);
- (b) it shall keep client records in a secure manner and maintain information necessary to plan, manage and evaluate its adoption program properly;
- (c) it shall provide monthly statistical returns to DSW which include the profile of users, services rendered, programs conducted and other information as may be required, such as number of applications received, child study completed, etc.;
- (d) it shall undertake self-assessment at least annually and submit the self-assessment report to DSW to confirm if the essential system, services, records and resources are in place to ensure compliance with the requirements regarding its accreditation;

- (e) it shall submit annual audited financial reports to DSW to ensure that there is in place an effective system of financial management and control operating within the agency;
- (f) it shall report to DSW annually the information on those organizations and individuals with whom the agency has worked in that year; and
- (g) it shall submit an annual report on the formal complaints made against the agency in that year.

#### Records and Information to be Provided by the Accredited Body

36. The AB shall maintain the following records which shall be made available at all reasonable times for inspection by DSW:

- (a) records relating to adoption service, including case records<sup>20</sup> with home assessment reports, child study records and placement records;
- (b) records of staff handling adoption matters;
- (c) records on service statistics as DSW may from time to time require;
- (d) records of complaints and legal proceedings involving the AB; and
- (e) financial records of the AB.

#### **New Information Relevant to Accredited Status**

37. DSW reserves the right to review the accredited status of an AB in the light of any new information which may be relevant. An AB must inform DSW in writing immediately of any factor which may affect its accredited status.

#### **Fees**

38. The AB shall operate on a self-financing basis, except for such activities as may be agreed with DSW under separate agreement. While the accredited body shall pursue only non-profit-making objectives, it may charge prospective adoptive parents fees to cover the administrative costs for providing the adoption service, but the level of such fees has to be reasonable. Besides, in accordance with Article 32 of the Hague Convention, the level of salaries of directors, administrators and employees of the accredited agencies should not be unreasonably high in relation to the services rendered. For any changes in staff structure and level of fees, SWD shall be informed in advance. As for the intercountry adoption program arranged for the wards of DSW, the level of fees

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<sup>20</sup> Except for cases where applications are withdrawn or hard-to-place cases which are returned to SWD, all adoption case records shall be kept for permanent retention. Besides, all adoption case records should be kept confidential.

charged shall be approved by DSW.

### **Non-compliance by an Accredited Body**

39. Where it is found that an AB has not complied with any of the criteria for accreditation stated in paragraph 19, the conditions for accreditation stated in the accreditation certificate or any of the duties, requirements or conditions set out in this document or otherwise imposed by DSW from time to time, SWD will bring the matter to the attention of the agency concerned at the earliest opportunity and request the agency to investigate the matter and provide a report to SWD within a given time scale with proposals for complying with the Hague Convention, as appropriate. If necessary, SWD may prescribe certain conditions (e.g. improving certain practices) that have to be met before the agency is allowed to continue operating as an AB.

40. If AB is found to have acted against the interest of the child or has failed to comply with the conditions as stated in paragraph 30, SWD may suspend the accreditation of the AB, depending on the seriousness and type of violation. The agency is required to investigate into the matter and provide a report to SWD within a given time frame and recommend remedial actions to be taken to the satisfaction of DSW. In case of serious or repeated non-compliance and on the failure of AB to improve the identified deficiencies, SWD may /revoke the accreditation of the AB. Prior to suspension or revocation, SWD will bring the matter to the attention of the AB and provide the agency with the opportunity to make representation to SWD before a final decision is made.

41. In the case where accreditation is to be suspended or revoked, the agency shall immediately cease to provide adoption service in all Convention or non-Convention cases. SWD will take over or arrange another AB to take over the ongoing adoption applications/cases of the agency. SWD reserves the rights to request the AB to bear the cost incurred in connection with the take over.

### **Complaints against an Accredited Body on Intercountry Adoption Services**

42. SWD may undertake an investigation, upon receipt of information from a third party which indicates that an accredited body may not be in compliance with any of the criteria for accreditation stated in paragraph 19, the conditions for accreditation stated in the accreditation certificate or any of the duties, requirements or conditions set out in this document or otherwise imposed by DSW from time to time. The complaint will be handled according to the complaint procedures prescribed by SWD.

43. If SWD determines that the complaint falls within the scope of intercountry adoption services/procedures (including Convention and non-Convention adoptions), it shall collect the necessary information to make a preliminary determination, and shall conduct such site-visits and/or other investigative activities as may be necessary to determine whether the AB remains

in compliance with conditions and requirements of accreditation.

44. If the AB is found not to have complied with any of the criteria for accreditation stated in paragraph 19, the conditions for accreditation stated in the accreditation certificate or any of the duties, requirements or conditions set out in this document or otherwise imposed by DSW from time to time, paragraph 39 to paragraph 41 will apply.

Appeal

45. Agency aggrieved by the following decision of DSW under the accreditation system may lodge an appeal to the Administrative Appeals Board.

- (i) DSW's decision to approve a new or renewal application for accreditation
- (ii) DSW's decision to suspend or revoke an accreditation.

The Administrative Appeal Board will hear and determine appeals against a decision in accordance with the Administrative Appeals Board Ordinance (Cap. 442).

*Social Welfare Department  
April 2003*

**Duties and Procedural Requirements that may be delegated to the Accredited Bodies under the Convention in HKSAR**

	<u>Article*</u>	<u>Job Description</u>
1.	9(a)	collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption
2.	9(c)	promote the development of adoption counselling and post-adoption services in their States
3.	9(d)	provide each other with general evaluation reports about experience with intercountry adoption
4.	15(1)	prepare a report including information about the prospective adoptive parents' identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, as well as the characteristics of the children for whom they would be qualified to care
5.	15(2)	transmit the report to the Central Authority of the State of origin
6.	16(1)(a)	prepare a report including information about the child's identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child
7.	16(1)(b)	give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background
8.	16(1)(c)	ensure that consents have been obtained in accordance with Article 4
9.	16(1)(d)	determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child
10.	16(2)	transmit to the Central Authority of the receiving State its report on the child, proof that the necessary consents have been obtained and the reasons for its determination on the placement, taking care not to reveal the identity of the mother and the father if, in the State of origin, these identities may not be disclosed
11.	17(a)	has ensured that the prospective adoptive parents agree to adoption
12.	17(b)	has approved such decision, where such approval is required by the law of that State or by the Central Authority of the State of origin
13.	17(c)	The Central Authorities of both States have agreed that the adoption may proceed
14.	17(d)	it has been determined, in accordance with Article 5, that the

**Annex E**  
**Appendix 2**

		prospective adoptive parents are eligible and suited to adopt
15.	18	take all necessary steps to obtain permission for the child to leave the State of origin and to enter and reside permanently in the receiving State
16.	19(2)	ensure that this transfer takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parents
17.	19(3)	if the transfer of the child does not take place, the reports referred to in Articles 15 and 16 are to be sent back to the authorities who forwarded them
18.	20	keep each other informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required
19	21(1)	Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in the child's best interests, such Central Authority shall take the measures necessary to protect the child, in particular to the measures stated in Art. 21(1)(a) & 21(1)(b)
20.	21(1)(a)	cause the child to be withdrawn from the prospective adoptive parents and to arrange temporary care
21.	21(1)(b)	(where HKSAR is the receiving State) in consultation with the Central Authority of the State of origin, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange alternative long-term care; an adoption shall not take place until the Central Authority of the State of origin has been duly informed concerning the new prospective adoptive parents
22.	21(1)(c)	as a last resort, to arrange the return of the child to the State of origin, if his or her interests so require
23.	21(2)	having regard in particular to the age and degree of maturity of the child, consult the child and, where appropriate, obtain his or her consent in relation to measures to be taken

*\* It refers to the Articles contained under the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption. As far as the present Accreditation System is concerned, only the Articles relating to transmission of information and the procedural requirement in intercountry adoption under the Hague Convention will be applicable.*

**Accreditation Application / Renewal under the Hague Convention**  
**on Protection of Children and Cooperation in respect of Intercountry Adoption**

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**Section I**     *Please tick in the appropriate box*

[ ] Application is hereby made for a Certificate of Accreditation for Intercountry Adoption.

[ ] Application is hereby made for a renewal of Certificate of Accreditation for Intercountry Adoption.

Existing Certificate Number: \_\_\_\_\_<sup>21</sup>

The following documents should be attached to this document for the purpose of accreditation:

- (1) Certificate of Incorporation and Memorandum and Articles of the Association, specifying that the applicant is authorized to operate child welfare services on a non-profit-making basis.**
- (2) Letter of approval to operate service as an approved charitable organization registered under Section 88 of the Inland Revenue Ordinance**
- (3) Audited Accounts of the organization in the last 3 years**

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**Section II**     *Particulars of the Applicant Organization*

(a) Name of the Organization in English:

\_\_\_\_\_

(b) Name of the Organization in Chinese:

\_\_\_\_\_

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<sup>21</sup> This item is only applicable to applicants who apply for a renewal of certificate

(c) Address of the Organization:

\_\_\_\_\_

\_\_\_\_\_  
Number and Name of Street/Estate    District

Hong Kong/Kowloon/New Territories \*

(d) Telephone Number : \_\_\_\_\_

(e) Name of Responsible Person of the Organization:

Mr/Mrs/Miss/Ms \* \_\_\_\_\_  
(English, surname first)

\_\_\_\_\_  
(Chinese)

Position held in the Organization :

\_\_\_\_\_

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**Section III** *Particulars of the designated section providing intercountry adoption service.*

(a) Name of the designated section:

\_\_\_\_\_

(b) Name and job title of the Supervisor of the designated section:

\_\_\_\_\_

(c) Address of the designated section:

\_\_\_\_\_

\_\_\_\_\_

(d) Telephone number: \_\_\_\_\_



(e) Number of registered social workers working in the designated section :

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(f) Year of experience of the Organization in providing intercountry adoption service and related services (such as intercountry child welfare services if applicable. Please specify) :

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(g) Nature of the designated section (please tick as appropriate) :

Subvented

Self-financing and non-profit-making

(h) Is there a committee or board of directors set up by the organization to monitor the adoption work of the organization? (Please tick as appropriate)

Yes                       No

Name of the monitoring body:

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(i) Are there written policy and working procedures governing the operation of the agency's intercountry adoption service? (Please tick as appropriate and attach to this application if available)

Yes                       No

(j) Is there a mechanism in place to handle complaints arising from the adoption service provided by the organization? (Please tick as appropriate and attach to this application if available)

Yes                       No

(k) Has there been any lawsuit against the organization or its personnel in providing the intercountry adoption arrangement including conviction of offences against children? (Please tick as appropriate)

Yes                       No

Dates, details and outcome of the lawsuits :

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- (l) Does the organization have any established overseas network of government bodies and/or licensed/accredited bodies in the arrangement of both Convention and non-Convention intercountry adoption? (Please tick as appropriate)

[ ] Yes (please state the countries involved and provide information on the intercountry adoption program run by the organization, if available)

[ ] No

- (m) For organizations not providing intercountry adoption service at the time of application but wishing to commence such service, please state the organization's plan to establish overseas network of government bodies and/or licensed/accredited bodies in the arrangements of intercountry adoption.

Reasons of application for accreditation and the applicant's records of intercountry adoption services

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**Section IV** *Proposed schedule of fees for providing intercountry adoption services*

- (a) For organizations currently operating intercountry adoption, please provide detailed information on the programs under your operation and list out the breakdown of fees on the services provided (e.g. initial registration/administration fees, home assessment, escort service, placement supervision and courier fees, etc) in each country.

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- (b) For organizations which are not operating intercountry adoption service, please state your proposed schedule of fees in each planned intercountry adoption program. A breakdown of fees charged on the services provided for each program is required to be submitted.

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**Section V**    *Declaration by duly authorized officer of the applicant*

I declare that :

- (a) the information in this application (including information contained in documents submitted in support of this application) is to the best of my knowledge and belief true and correct and not misleading as at the date of this application; and
- (b) the operation, keeping, management or other control of the designated intercountry adoption section referred to Section II above is under my continuous and personal supervision.

Date: \_\_\_\_\_ Organization : \_\_\_\_\_

Name of Organization : \_\_\_\_\_

Signature of duly Authorized Officer : \_\_\_\_\_

Name of Officer : \_\_\_\_\_

Rank and Designation : \_\_\_\_\_

Organization chop<sup>22</sup>: \_\_\_\_\_

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<sup>22</sup> The Application Form must be stamped with an official chop of the organization

**Note:** The applicant should provide information listed in the Appendix to the Application Form and forward the required documents to the Adoption Unit, Social Welfare Department at:

4/F Harbour Building  
38 Pier Road  
Central  
Hong Kong

*\* Delete as appropriate*

Draft

**Information to be contained in an application for granting/renewal of accreditation to operate intercountry adoption services**

<b>Documents/records/information</b>
<b>I. Background Information</b>
<ul style="list-style-type: none"><li>• Brief history of agency</li></ul>
<ul style="list-style-type: none"><li>• Policy/goal/mission statement</li></ul>
<ul style="list-style-type: none"><li>• Board of Directors, organization chart, staffing structure</li></ul>
<ul style="list-style-type: none"><li>• Roles and responsibilities of the adoption committee or sub-committee of the organization overseeing the delivery of adoption service</li></ul>
<ul style="list-style-type: none"><li>• Annual report/Year Book/Newsletter/Publication/Brochure</li></ul>
<b>II. Services</b>
<ul style="list-style-type: none"><li>• Plans of the adoption service to be delivered, including service types, eligibility criteria of service recipients, guidelines on delivery of service</li></ul>
<ul style="list-style-type: none"><li>• Experience of the organization in adoption or related family and child welfare services</li></ul>
<ul style="list-style-type: none"><li>• Qualifications, experience and duties of the designated officer-in-charge and staff of the adoption service section of the organization</li></ul>
<ul style="list-style-type: none"><li>• Office facilities including the availability of interview rooms to ensure confidentiality</li></ul>
<ul style="list-style-type: none"><li>• Service statistics on adoption services, e.g. number of children adopted through the agency's adoption program, types of special needs children placed for overseas adoption, length of adoption processing time by the agency in Hong Kong, etc, if applicable (latest 3 years)</li></ul>
<ul style="list-style-type: none"><li>• Assessment reports on service performance monitoring system (latest 3 years) endorsed by SPMS Unit of SWD</li></ul>
<ul style="list-style-type: none"><li>• Mechanism in place to handle complaints</li></ul>
<b>III. Financial Status</b>
<ul style="list-style-type: none"><li>• Status (subvented or self-financing service)</li></ul>

<b>Documents/records/information</b>
<ul style="list-style-type: none"><li>• Source of funding</li></ul>
<ul style="list-style-type: none"><li>• Schedules of fee charging for adoption service</li></ul>
<ul style="list-style-type: none"><li>• Audited financial reports (latest 3 years)</li></ul>
<b>IV. Overseas Network &amp; Commendation</b>
<ul style="list-style-type: none"><li>• Branches in other states (with indication on the map)</li></ul>
<ul style="list-style-type: none"><li>• List of overseas network of government bodies or accredited adoption bodies in arrangement of intercountry adoption with proof</li></ul>
<ul style="list-style-type: none"><li>• Three letters of commendation from professionals, local leaders and other social welfare organizations etc.</li></ul>
<b>V. Case reports</b>
<ul style="list-style-type: none"><li>• Samples of completed child study report</li></ul>
<ul style="list-style-type: none"><li>• Samples of completed home study report</li></ul>
<b>VI. Past Track Record</b>
<ul style="list-style-type: none"><li>• Any previous law suits of the organization in relation to its service</li></ul>
<ul style="list-style-type: none"><li>• Conviction of offences against the Adoption Ordinance (either of staff or of agency)</li></ul>
<ul style="list-style-type: none"><li>• Disruption of adoption placement (if any) for latest 3 years</li></ul>
<b>VII. Others</b>
<ul style="list-style-type: none"><li>• Separate accounts of the intercountry adoption unit</li></ul>
<ul style="list-style-type: none"><li>• Salaries of employees and directors/administrators</li></ul>
<ul style="list-style-type: none"><li>• Evaluation reports from the overseas counterparts on the agency's adoption program in Hong Kong, if applicable.</li></ul>

## CODE OF CONDUCT FOR ACCREDITED BODIES

### *Conflict of interest*

1. An accredited body must not hold any financial or other interest, and must not give an undertaking, that could directly or indirectly compromise the performance of its functions. An accredited body must notify the Central Authority/ HKSAR if a potential or actual conflict of interests arises.

### *Acceptance of gifts or benefits*

2. An accredited body must not accept a gift, donation or benefit if it could be seen as intended or likely to cause the accredited body to undertake its responsibilities in a particular way, or to deviate from the proper course of action.

### *Personal and professional behaviour*

3. An accredited body must perform any duties diligently, impartially and conscientiously, to the best of its ability.
4. In the performance of duties, an accredited body must--
  - (a) keep up to date with any changes in practice or procedure relating to intercountry adoption;
  - (b) maintain and preserve record information systems in accordance with the requirements of the Central Authority;
  - (c) treat all applicants for adoption with courtesy, sensitivity and in confidence;
  - (d) not take any improper advantage of any information gained in the carrying out of its duties;
  - (e) report to the Central Authority any unethical behaviour or wrongdoing by other members of staff or which he or she is aware.

### *Fairness and equity*

5. The manner in which an accredited body deals with issues or applicants for adoption must be consistent, prompt and fair. This includes--
  - (a) dealing with matters in accordance with accepted procedures;
  - (b) dealing with matters without discrimination on any grounds;
  - (c) providing appropriate review and appeal mechanisms.

6. If an accredited body proposes to exercise a discretionary power in relation to a particular case, the body must ensure that all relevant considerations are taken into account in regard to the particular merits of the case.

***Public comment and the use of information***

7. An accredited body must not disclose official information or documents acquired in the course of carrying out its functions as an accredited body or staff member unless approved by the Central Authority.