

## **LEGCO PANEL ON WELFARE SERVICES**

### **Proposed Amendments to the Subsidiary Legislation of the Adoption Ordinance**

#### **Purpose**

This note introduces the proposed amendments to the subsidiary legislation of the Adoption Ordinance (Cap. 290) (the Ordinance).

#### **Background**

2. We have been reviewing the Ordinance in the past few years. We consulted the Welfare Services Panel of the Legislative Council in February 2001 on the outcome of our public consultation exercise on the key proposed changes to the principal Ordinance. We then consulted the same Panel for the proposed legislative amendments in April 2003 before introducing the amendments to the Legislative Council in June 2003. A Bills Committee was formed in January 2004 to examine the draft provisions and the Adoption (Amendment) Ordinance 2004 (the Amendment Ordinance) was enacted in July 2004.

3. As we briefed the Legislative Council during the above legislative amendment exercise, one of the main purposes of the exercise is to implement the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption done (the Convention), signed by the Central People's Government in 2000, in Hong Kong. The other main purpose is to improve the local adoption arrangements.

4. The amendments to the principal Ordinance were made after taking into account the views of the Panel on Welfare Services, the Bills Committee and the relevant Non-Governmental Organizations (NGOs). The key amendments are :

- (a) outlawing private arrangements for adoptions between unrelated persons;
- (b) allowing the NGOs so accredited to be involved in local adoptions which have hitherto been handled by the Social Welfare Department

alone;

(c) enabling Hong Kong to implement the Convention and to handle other intercountry adoptions outside the Convention as our earlier legislation did not provide for intercountry adoptions; and

(d) regularizing the procedures on removing infants out of Hong Kong for the purpose of adoptions. Hitherto, we have had to invoke the wardship jurisdiction of the High Court for this purpose.

5. The above amendments to the principal Ordinance have yet to take effect, pending the completion of the amendments to the subsidiary legislation.

### **Latest Developments**

6. The Central People's Government ratified the Convention on 16 September 2005 and the Convention will take effect in Hong Kong on 1 January 2006.

7. With the amendments to the principal Ordinance in place, we would now need to make amendments to the subsidiary legislation of the Adoption Ordinance to provide for the details.

8. Section 12 of the Ordinance provides that the Chief Justice may make rules to prescribe and deal with matters of procedure and incidental matters arising out of the Ordinance. At present, such procedural and incidental matters are set out in the Adoption Rules (Cap. 290A, subsidiary legislation), which provides mainly for the court procedures of applying for adoption order in respect of local adoptions.

9. Arising from the amendments to the principal Ordinance in 2004, we would need to amend the existing Adoption Rules and to introduce a new set of Convention Adoption Rules to specify the court procedures of applying for the following :

- (a) removal orders to be applied by the Director of Social Welfare (DSW) for infants to leave Hong Kong for the purpose of adoption (section 23B of the Amendment Ordinance);
- (b) intercountry adoptions made under the Convention (i.e. Convention adoptions). Sections 20A to 20J as well as sections 27 to 29D of the Amendment Ordinance refer; and

- (c) intercountry adoptions made with countries other than the Contracting States of the Convention (i.e. non-Convention adoptions). Sections 27 to 29D of the Amendment Ordinance are relevant.

10. We would also need to prepare the following two orders to be made by the Secretary for Health, Welfare and Food :

- (a) an order to be made under section 20J of the Amendment Ordinance for Hong Kong not to recognize Convention adoptions made in accordance with an agreement concluded by application of Article 39(2) of the Convention which allows a Contracting State to enter into derogatory agreements with one or more other Contracting States, with a view to improving the application of the Convention in their mutual relations. Such non-recognition by other Contracting States is allowed under Article 25 of the Convention; and
- (b) an order to be made under section 20D of the Amendment Ordinance to list out the Contracting States of the Convention.

### **Draft Provisions**

11. The draft provisions for the court rules and procedures, namely, the Adoption (Amendment) Rules 2005 and the Convention Adoption Rules, are at Annexes A<sup>1</sup> and B respectively. The draft order for section 20J of the Amendment Ordinance on non-recognition of derogatory adoptions is at Annex C while that for section 20D on a list of contracting states is at Annex D.

12. Given the complexity, the major proposed changes to the court rules and procedures set out at Annexes A and B are briefly explained below.

### ***Adoption (Amendment) Rules 2005***

13. The present set of Adoption Rules provides for the procedural and incidental matters for local adoptions only. As the application for an adoption order in respect of non-Convention adoptions will be processed in a similar manner as local adoptions because both the infant and the applicant(s) for non-Convention adoptions will be required to reside in Hong Kong under section 5(6) of the Ordinance, we only need to make minor amendments to the Adoption Rules to allow for non-Convention adoptions as well. The changes are primarily to cater for the possibility that the birth parents or guardians for non-Convention adoptions are residing overseas.

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<sup>1</sup> To facilitate reference, the Adoption (Amendment) Rules 2005 at Annex A are shown in revision mode on the original Adoption Rules.

## ***Convention Adoption Rules***

14. We have also proposed to introduce a new set of Convention Adoption Rules to provide for the court rules and procedures for handling Convention adoptions. While we would try to harmonize the rules for local/non-Convention adoptions and Convention adoptions as far as possible for administrative simplicity, the Convention Adoption Rules would have to cater for the following differences :

- (a) the Central Authority<sup>2</sup>, Accredited Bodies and public authorities<sup>3</sup>, as required or permitted under the Convention, are involved;
- (b) under the Convention, a Contracting State may make adoptions when it acts as the State of Origin (when an infant of this State is to be adopted by a prospective adopter habitually residing elsewhere) or the Receiving State (when a prospective adopter of this State is applying to adopt an infant habitually resident outside this State)<sup>4</sup>. Hence, we have to provide for both scenarios in the court rules and procedures. In particular, some relevant parties (such as the infant, the prospective adoptive parent(s), the birth parent(s) and the guardian(s) (if any)) may live overseas and we may have to rely on the overseas Central Authority/Accredited Bodies/public authorities for assistance; and
- (c) the Court of First Instance would be involved in Convention adoptions, whereas the District Court or the Court of First Instance may be involved in local/non-Convention adoptions.

## ***Rules for Removal Orders***

15. Before enactment of the Amendment Ordinance, there is no express legislative provision in the Ordinance permitting a child to leave Hong Kong to

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<sup>2</sup> Each contracting state is required under Article 6 of the Convention to designate one or more Central Authorities to discharge the duties which are imposed by the Convention upon such authorities. They are mostly government departments overseeing adoption. For Hong Kong, the Director of Social Welfare will be designated as the Central Authority.

<sup>3</sup> Under Article 22(1) of the Convention, the functions of a Central Authority may be performed by public authorities or bodies accredited to the extent as permitted by the law of the State. For Hong Kong, welfare Non-Governmental Organizations may be accredited. We do not intend to appoint any public authorities.

<sup>4</sup> Article 2(1) of the Convention indicates that "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."

be adopted overseas and DSW has to invoke the wardship jurisdiction of the High Court, which is in fact for protection of minors against injuries of any kind, for this purpose. Section 23B of the Amendment Ordinance provides that the Court may make an order passing care and control of an infant to a person authorized by DSW for the adoption of the infant by an unrelated person not residing in Hong Kong. This is applicable to both Convention and non-Convention adoptions.

16. A new rule in both the Adoption (Amendment) Rules 2005 (Rule 31A) and the Convention Adoption Rules (Rule 17) has been proposed to provide for the detailed arrangements, by modelling on the existing wardship jurisdiction arrangements.

### **Consultation**

17. We have consulted the relevant NGOs<sup>5</sup>, the Law Society, the Hong Kong Bar Association and the Hong Kong Family Law Association on the draft court rules and procedures. We have taken into account their comments. We have also incorporated the comments of the Judiciary.

### **Way Forward**

18. Subject to any views that Members may have on the draft provisions, it is our intention to table the subsidiary legislation at the Legislative Council for negative vetting on 21 December 2005. To allow time for Members to examine the draft provisions in greater detail, we will commence the Amendment Ordinance and the subsidiary legislation above on 25 January 2006.

Health, Welfare and Food Bureau  
December 2005

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<sup>5</sup> They include the Mother's Choice, the International Social Service – Hong Kong Branch, Po Leung Kuk, Caritas Hong Kong and Hong Kong Family Welfare Society. The first two are providing some intercountry adoption services at the moment.

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## Annex A

### ADOPTION RULES

#### 1. Citation

These rules may be cited as the Adoption Rules.

#### 2. Interpretation

(1) In these rules, unless the context otherwise requires –

“adoption order” (領養令) means an adoption order other than a Convention adoption order;

“applicant” (申請人) includes either, as well as both, of 2 joint applicants;

“guardian ad litem” (訴訟監護人) means the guardian ad litem of an infant for the purposes of the application for an adoption order that relates to the infant;

“Ordinance” (本條例) means the Adoption Ordinance (Cap 290).

(2) A form referred to by number means the form so numbered in ~~the First~~ Schedule 1. (G.N.A. 76 of 1960)

(3) (Repealed 66 of 1999 s. 3)

#### 2A. Application

These Rules do not apply to or in relation to Convention adoption.

#### 3. Notice of intention

A notice of intention to apply for an adoption order shall be in accordance with Form 1.

### COMMENCEMENT OF PROCEEDINGS

#### 4. Proceedings to be disposed of in chambersprivate

All proceedings under the Ordinance ~~shall be disposed of in chambers.~~ are to be disposed of in private.

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## 5. Form of application

An application for an adoption order shall be made to the Court by originating summons in Form 2. The proposed adopter shall be the applicant and the infant shall be the respondent.

## 6. Identity of applicant may be kept confidential

If any person proposing to apply to the Court for an adoption order desires that his identity shall be kept confidential, he may, before taking out an originating summons, apply to the Court for a serial number to be assigned to him for the purposes of the proposed application and such a number shall be assigned to him accordingly.

## 7. Previous applications

If it appears that the applicant has previously made an application ~~for an adoption order in respect to any court in Hong Kong for the adoption~~ of the same infant, the application shall not be proceeded with unless the judge is satisfied that there has been a substantial-material change in the circumstances since the previous application.

## APPOINTMENT OF GUARDIAN AD LITEM

## 8. Director of Social Welfare to be guardian ad litem subject to rule 9

(1) Subject to the provisions of rule 9, the Director shall be the guardian ad litem of the infant for the purposes of the application and a copy of the summons shall be served on him.

(2) On the service of a copy of the summons in accordance with paragraph (1), the applicant shall pay to the Director a fee of \$2840 in payment of the proper costs of the Director for acting as guardian ad litem for the infant: (L.N. 228 of 1977; L.N. 55 of 1987; L.N. 60 of 1990; L.N. 309 of 1992; L.N. 74 of 1994; L.N. 27 of 1995; L.N. 161 of 1996; L.N. 157 of 1997)

Provided that the Director, if he should consider such action is necessary or desirable, may, ~~in his absolute discretion~~, waive payment of such fee or any part thereof.

(3) (Repealed L.N. 139 of 1986)

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## 9. Appointment of some other person as guardian ad litem

(1) Except where the Director has become guardian ad litem by virtue of section 5(5F) of the Ordinance, if the applicant desires that some person other than the Director should be appointed to act as guardian ad litem, then –

- (a) the originating summons must ask for the appointment of a guardian ad litem and must be supported by an affidavit by the applicant setting out the facts—grounds for asking for such appointment together with the consent to act in writing of the proposed guardian ad litem; and
- (b) a copy of the originating summons shall be served on the Director,

and the judge may appoint such person as he thinks fit to be the guardian ad litem.

(2) The court may at any time, where it considers it to be in the interests of the infant, appoint the Official Solicitor to be the guardian ad litem of the infant ~~in lieu of the Director~~ in place of any person.

## EVIDENCE IN SUPPORT OF APPLICATION

## 10. Form of statement and consent

(1) The evidence in support of the application for an adoption order shall be given by means of a statement in Form 3 and shall be verified by affidavit.

~~(2) Any document signifying the consent of any person to the making of an adoption order shall, in the case of the consent of—~~

- ~~(a) the parent of the infant, be in either Form 4, Form 4A or Form 4B as the case may be;~~
- ~~(b) every person who is a guardian of the infant or who is liable by virtue of any order or agreement to contribute to the maintenance of the infant, be in Form 4; and~~
- ~~(c) one of 2 spouses where the application for the adoption order is made by the other spouse, be in Form 4.~~

(2) Any document signifying the consent of any person to the making of the order shall be exhibited to the affidavit and the consent –

- (a) if given by a parent of the infant, shall be in either Form 4, Form 4A or Form 4B, as may be appropriate;
- (b) if given by –
  - (i) a guardian of the infant; or
  - (ii) a person who is liable to contribute to the maintenance of the infant by virtue of any order or agreement,shall be in Form 4; and
- (c) if given by a spouse of the applicant and –
  - (i) the spouse is a parent of the infant, shall be in either Form 4, Form 4A or Form 4B (as may be appropriate);



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- (ii) the spouse is not a parent of the infant, shall be in Form 4.
- ~~(3) The form of consent shall be exhibited to the verifying affidavit referred to in paragraph (1). (Repealed)~~

## 11. Time for filing evidence

The said evidence shall be filed within 14 days after the issue of the originating summons and a copy of the applicant's statement and of the documents attached thereto shall at the same time be served on the guardian ad litem.

## NOTICE OF APPLICATION

## 12. Form of notice

The guardian ad litem shall as soon as practicable serve a notice in Form 5 on any parent or guardian of the infant who has signified his consent to the making of an adoption order:

Provided that the notice shall not require to be served on any parent who has given consent to an adoption order by way of general consent in Form 4A unless, within the period of 3 months from the day on which that form was executed, a copy of the originating summons in Form 2 has been served on the Director in accordance with rule 8(1). (L.N. 228 of 1977)

## DUTIES OF GUARDIAN AD LITEM

## 13. Guardian ad litem to investigate all relevant circumstances

It shall be the duty of the guardian ad litem to investigate as fully as possible all circumstances relevant to the proposed adoption with a view to safeguarding the interests of the infant before the Court and to make a report to the Court for that purpose; and in particular it shall be his duty –

- (a) to make inquiries as to all matters alleged in the applicant's statement and as to the additional matters specified in ~~the Second~~ Schedule 2 and to report to the Court upon them;
- (b) to interview (either by himself or by an agent appointed by him for the purpose) every individual being an applicant for the order, or mentioned in the applicant's statement as a person to whom reference may be made, or a person on whom notice of the application is required to be served under rule 16, or, where notice is required to be served on a body of persons, the appropriate officer of such body.

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## 14. Information to be confidential

The guardian ad litem and any agent of his and, where a body of persons is appointed as guardian ad litem, every officer, employee and member of that body shall treat as confidential all information obtained in the course of the investigation, and shall not divulge any part of it to any other person except so far as may be necessary for the proper execution of his duty.

## APPLICATION UNDER SECTION 5(5D) OF THE ORDINANCE

### 14A. Mode of application

(1) An application by a parent under section 5(5D) of the Ordinance for an order revoking that parent's consent given in the prescribed general form of consent shall be made to the Court of First Instance in accordance with paragraph (2) and the proceedings shall thereupon be transferred to the Court of First Instance. (L.N. 337 of 1982)

(2) The application under paragraph (1) shall be made –

(aa) if an application for a Convention adoption order is pending, in accordance with rule [14] of the Convention Adoption Rules (L.N. \_\_\_\_\_ of 2005); or

(a) if an application for an adoption order is pending, by summons in those proceedings; or

(b) if no ~~such application~~ application referred to in paragraphs (aa) and (a) is pending, by originating summons.

(3) The Registrar of the High Court, after giving such directions (if any) as he thinks necessary, shall fix a date for the hearing of the application ~~in Chambers~~.

(4) When the date for the hearing has been fixed, the Registrar of the High Court shall serve a copy of the summons or originating summons –

(a) in the case of an application made in pending adoption proceedings (or where adoption proceedings have subsequently been commenced) on the applicant in those proceedings, on the guardian ad litem and on every other person on whom notice has been or will in due course be served under rule 16;

(b) in any other case, on the guardian ad litem and on any other person or body who in the Registrar's opinion ought to be served with notice of the hearing of the application.

(5) If in any application under this rule a serial number has been assigned to a person who proposes to apply for an adoption order –

(a) the documents to be served under paragraph (4) shall not disclose the identity of that person to any other person who is not already aware of that person's identity; and

(b) the proceedings on the application shall be conducted with a view to securing that that person is not seen by or made known to any other person concerned with the application who is not

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already aware of his identity, except with his consent.

(6) Where the application is determined, the Registrar of the High Court shall serve notice of the effect of the determination and any order on the applicant and on all the persons served under paragraph (4).

## HEARING OF APPLICATION

### 15. Appointment for hearing

The applicant shall obtain an appointment for the hearing of the application within 14 days after being notified by the guardian ad litem that he has made his report to the Court. If no appointment is obtained by the applicant, the guardian ad litem shall obtain an appointment as soon as practicable for the hearing of the application.

### 16. Notice of hearing

On a date being fixed for the hearing of the application, the guardian ad litem shall serve a notice in Form 6 on –

- (a) every person whose consent to the order is required under section 5(5) of the Ordinance; and
- (b) the Director ~~unless he is guardian ad litem~~(if he is not the guardian ad litem):

Provided that where the Court is satisfied that any person whose consent to the order is required by section 5(5) of the Ordinance cannot be found and that all reasonable steps have been taken to trace such person the Court may if it thinks fit dispense with service of the notice under this section on such person: (L.N. 54 of 1965)

Provided also that it shall not be necessary to serve the notice on –

- (i) the Director if he is a guardian of the infant by virtue of the Protection of Women and Juveniles Ordinance (Cap 213); or
- (ii) the parent of an infant who has given consent to an adoption order by way of general consent in Form 4A unless the hearing is to take place within 3 months from the day on which the form was executed. (L.N. 228 of 1977; G.N.A. 76 of 1960)

### 17. Appearance to show cause why order should not be made

(1) On the hearing of the application any person on whom notice is required to be served under rule 16 may appear before the District Judge to show cause why an adoption order should not be made. The Director may be represented by any public officer duly authorized in that behalf by the Director. (G.N.A. 76 of 1960; L.N. 337

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of 1982)

(2) If –

- (a) any person whose consent is required under section 5(5)(a) of the Ordinance fails to give consent; or
- (b) any person having a proper interest in the application objects to an adoption order being made,

the District Court shall transfer the application to the Court of First Instance. (L.N. 337 of 1982)

(3) Any application transferred to the Court of First Instance under paragraph (2) may be retransferred to the District Court at any stage if the Court of First Instance considers that the provisions of section 4A of the Ordinance do not or no longer require it to be continued in the Court of First Instance. (L.N. 337 of 1982)

## **18. Conduct of proceedings**

Unless the Court is satisfied that the applicant does not desire his identity to be kept confidential, the proceedings shall be conducted with a view to securing that he is not seen by or made known to any person (other than the spouse of the applicant) whose consent to the order is required.

## FORM AND TRANSMISSION OF ORDERS

## **19. Form of order**

Unless the Court otherwise orders, an adoption order shall be drawn up in Form 7, and an interim order in Form 8.

## **20. Copy of the order to be sent to Registrar of Births and Deaths and applicant**

On the making of an adoption order, the Registrar of the High Court or the District Court shall send a sealed copy of the order to the Registrar of Births and Deaths and to the applicant within 7 days after the order has been passed and entered.

## **21. Copy of order not to be given to other persons**

No duplicate or copy of an adoption order or interim order shall be given to or served upon any person other than the Registrar of Births and Deaths or the applicant except by order of the judge.

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### **22. Notification by guardian ad litem of making or refusal of order**

Where an adoption order is made or refused or an interim order made, the guardian ad litem shall notify all parties who were not present when the order was made or refused, without disclosing the identity of the applicant unless he does not desire his identity to be kept confidential.

#### **RESTORATION OF PROCEEDINGS AFTER INTERIM ORDER**

### **23. Application for further hearing by applicant**

Where the determination of an application is postponed and an interim order made the applicant shall, at least 2 months before the expiration of the period specified in the interim order, obtain an appointment for the further hearing of the application, and the guardian ad litem shall serve a notice in Form 9 on every person on whom notice is required to be served under rule 16.

### **24. Application for further hearing by guardian ad litem**

If no appointment is obtained by the applicant as required by rule 23, the guardian ad litem shall obtain an appointment as soon as practicable for the further hearing of the application.

#### **AMENDMENT OF ADOPTION ORDERS**

### **25. Amendment of adoption orders, and revocation of directions ex parte**

An application for an order under section 20(1) of the Ordinance for the amendment of an adoption order or the revocation of a direction for the marking of an entry in the registers of births or the Adopted Children Register may be made ex parte in the first instance in the Court, but the Court may require notice of that application to be served on such persons as it thinks fit.

### **26. Notice of amendment to be sent to Registrar of Births and Deaths**

Where an order for the amendment of an adoption order or the revocation of a direction for the marking of an entry in the registers of births or the Adopted Children

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Register is made under section 20(1) of the Ordinance, the Registrar of the High Court or the District Court shall send to the Registrar of Births and Deaths a notice specifying the date of the adoption order and the names of the adopter and of the adopted person (as described in the schedule to the adoption order) and stating what amendments are to be made in the particulars specified in that order.

## ~~DIRECTOR OF SOCIAL WELFARE ACTING AS GUARDIAN AD LITEM~~ ~~DELEGATION BY DIRECTOR OF SOCIAL WELFARE~~

### 27. Delegation of powers and duties

Where the Director is acting under these rules as guardian ad litem, anything required or authorized by these rules to be done by the guardian ad litem may be done by any public officer duly authorized in that behalf by the Director.

## SERVICE OF DOCUMENTS

### ~~28. Methods of service of documents~~

~~Any document under these rules may be served—~~

- ~~(a) on an individual, by delivering it to him personally, or by leaving it with some person for him at his last known or usual place of abode (whether in Hong Kong or elsewhere) or by sending it to him by registered post at that place; (66 of 1999 s. 3)~~
- ~~(b) on the Director or on a body of persons, by delivering it at or sending it by registered post to the principal office of that officer, or the registered or principal office of that body, as the case may be. (G.N.A. 76 of 1960)~~

### 28. Service of documents

(1) Subject to paragraph (2), a document required to be served under these rules may be served –

- (a) in the case of an individual –
  - (i) by delivering it to the individual personally; or
  - (ii) by leaving it with some person for the individual at the individual's last known address or usual place of abode; or
  - (iii) by sending it by registered post addressed to the individual at the individual's last known address or usual place of abode;
- (b) in the case of the Director –
  - (i) by delivering it to him at his principal office; or
  - (ii) by sending it to him by registered post addressed to him at his principal office;

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- (c) in the case of a body of persons –
  - (i) by delivering it to that body at the registered or principal office of that body;
  - (ii) by sending it to that body by registered post addressed to that body at that body’s registered or principal office.
- (2) Where a document is to be served on –
  - (a) an individual whose last known address or usual place of abode is in a place outside Hong Kong; or
  - (b) a body of persons whose registered or principal office is in a place outside Hong Kong,

the document must be served in accordance with the law of that place.

## ATTESTATION OF ~~CONSENTS, ETC.~~ DOCUMENTS

### 29. **Persons who may attest documents and declarations outside Hong Kong**

For the purposes of section 7(2) of the Ordinance, a document or declaration executed or made by any person outside Hong Kong shall be sufficiently attested if it is attested as follows – (66 of 1999 s. 3)

- (a) (Repealed)
- (b) (Repealed)
- (c) if the document or declaration is executed or made at ~~any other place~~ a place outside Hong Kong –
  - (i) (Repealed)
  - (ii) (Repealed)
  - (iii) by any person for the time being authorized by law in that place to administer an oath for any judicial or other legal purpose; (L.N. 45 of 1973)
- (d) if the person by whom the document or declaration is executed or made is serving in any of Her Majesty’s naval, military or air forces, by any officer holding a commission in any of those forces.

## APPLICATIONS UNDER SECTION 6(4) OF THE ORDINANCE

### 30. **Making and notice of application**

An application under section 6(4) of the Ordinance for leave to remove the infant from the care and possession of the applicant shall be made to the judge, and notice thereof shall be served on the guardian ad litem.

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## 31. Dismissal of application for adoption order

Where leave to remove the infant from the care and possession of the applicant is granted under section 6(4) of the Ordinance, the judge may, upon granting leave, dismiss the application for the adoption order.

### APPLICATIONS UNDER SECTION 23B OF THE ORDINANCE

#### 31A. Application for an order passing care and control of infant

(1) An application for an order under section 23B(1) of the Ordinance for passing the care and control of an infant to a person authorized by the Director may be made to the Court by the Director by an ex parte originating summons.

(2) The application shall be heard by a judge.

(3) The application must be supported by an affidavit by the Director that sets out –

- (a) information on the infant’s identity, adoptability, background, social environment, family history and medical history;
- (b) details of the person authorized by the Director for the purposes of section 23B(1) of the Ordinance; and
- (c) the grounds for the Director’s belief that the granting of the order will be in the best interests of the infant.

(4) The following documents shall be exhibited to the affidavit –

- (a) the infant’s birth certificate or any other proof of identity;
- (b) order by which the Director was appointed as the legal guardian of the infant (if applicable);
- (c) consent of every person whose consent is required under section 5(5)(a) of the Ordinance (if applicable);
- (d) order declaring that the infant is freed for adoption under section 5A of the Ordinance (if applicable);
- (e) copy of the infant study report;
- (f) statement of acceptance for adoption signed by the prospective adopter;
- (g) copy of the family study and assessment report of the prospective adopter; and
- (h) letter of assumption of responsibility signed by the person referred to in paragraph 3(b) stating that such person is responsible for the welfare of the infant while the infant is in the state to which the infant is intended to be sent and before the infant is adopted.

(5) In this rule, “court” ( ) means the Court of First Instance.



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## **APPLICATION OF PRACTICE OF THE DISTRICT COURT AND OF THE COURT OF FIRST INSTANCE**

(66 of 1999 s. 3)

### **32. Practice and procedure of District Court and of Court of First Instance to apply**

Subject to these rules, the practice and procedure of the District Court and of the Court of First Instance shall apply to proceedings under the Ordinance.

### **33. Court fees not charged**

No court fees shall be charged in adoption proceedings.

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~~FIRST~~-SCHEDULE 1

[rule 2]

FORM 1

[rule 3]

*Notice of Intention to apply for an Adoption Order*

ADOPTION ORDINANCE  
(Chapter 290)

Notice is hereby given, in accordance with the provisions of section 5(7) of the Adoption Ordinance that <sup>(1)</sup> .....  
(and ..... both) of .....  
.....  
.....  
intend to apply for an Order authorizing them to adopt a male/female infant known as <sup>(2)</sup> .....  
.....

Dated this ..... day of .....

<sup>(3)</sup> .....  
.....

*Notes:*

- (1) Enter the full names and addresses of the applicants.
- (2) Enter the full name in English and in Chinese characters, if any, of the infant.
- (3) This form must be signed either by the applicants or by their solicitors.  
(L.N. 526 of 1994)

ANNEX TO FORM 1

*Authorization for Criminal Record Check*

To: Commissioner of Police

In connection with my application for assessment of suitability to be an adoptive parent under Section 5AA\*/27\* of the Adoption Ordinance (Cap. 290), I

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hereby authorize you, or your designate, to conduct criminal record check on myself and to inform and release to the Director of Social Welfare \*/ .....  
| .....(name of accredited body\*)<sup>(21)</sup> of .....  
..... (address) the particulars of my previous conviction(s) (if any) in Hong Kong or elsewhere.

For the purpose of criminal record check, I also agree to attend before a public officer authorized by you, who may take and record my fingerprints for checking against police records.

For the purpose of conducting the criminal record check, please note my particulars as follows –

Name in full (Block letters) .....

HKID Number .....

Travel Document Number .....

Chinese Character Code .....

Date of Birth (Day/month/year) .....

Place of Birth .....

Signature of Applicant .....

| Signature of Witness<sup>(+2)</sup> .....

Post title of Witness .....

Date .....

\* Delete as appropriate

---

## Note:

~~(1) The witness should be a solicitor practising in Hong Kong, a notary public, or a registered social worker working with the Social Welfare Department or an accredited body accredited under the Adoption Ordinance (Cap. 290).~~

~~(2) If the proposed adoption is processed by a body of persons accredited for local adoption under the Adoption Ordinance (Cap. 290), the applicant may insert the name of the accredited body as the recipient of the information.~~

(1) If the proposed adoption is processed by a body of persons accredited for local adoption under the Adoption Ordinance (Cap. 290), the applicant may insert the name of the accredited body as the recipient of the information.

(2) The witness should be a solicitor practicing in Hong Kong, a notary public, or a registered social worker working with the Social Welfare Department or an accredited body accredited under the Adoption Ordinance (Cap. 290).

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FORM 2

[rule 5]

*Originating summons on application for an Adoption Order*

20 , No.

IN THE DISTRICT COURT OF HONG KONG

His Honour Judge

IN THE MATTER OF *A.B.*<sup>(1)</sup> ..... an infant,

and

IN THE MATTER OF the Adoption Ordinance.

BETWEEN

*C.D.*

APPLICANT

AND

*A.B.*<sup>(1)</sup>

RESPONDENT

To *A.B.* of

By this summons, which is issued on the application of the applicant *C.D.* of , the applicant applies for an order –

- [1. That a guardian ad litem may be appointed for the purpose of safeguarding the interests of the said .....]<sup>(2)</sup> .
- 2. That the applicant be authorized to adopt the said .....
- 3. That the costs of this application be provided for.

Dated the      day of      .

This summons was taken out by  
of      , solicitors for the said  
applicant      whose address is as stated  
above.

*Notes:*

- (1) Enter the name(s) and surname which the infant is to bear after the adoption.
- (2) Delete this paragraph if the Director of Social Welfare is to act as guardian ad litem.

(L.N. 139 of 1986; L.N. 526 of 1994)

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FORM 3

[rule 10]

*Statement in support of application for an Adoption Order*<sup>(1)</sup>

[Heading as in Form 1]

1. I, the undersigned, *C.D.*/We, the undersigned, *C.D.* and *E.D.* desire to adopt  
*A.B.*<sup>(2)</sup> an infant, under the Adoption Ordinance.

2. I am/We are resident in Hong Kong.

3. I am unmarried/a widow/widower/I am married to *E.D.* of .....  
...../We are married to each other and are  
the persons to whom the attached marriage certificate (or other evidence of marriage)  
relates.

4. The infant is of the ..... sex and  
unmarried. He/She was born on the ..... and is  
the person to whom the attached birth certificate<sup>(3)</sup> relates/was born on or about  
the ....., in .....<sup>(4)</sup>

5. The infant is the child/adopted child of<sup>(3)</sup>  
*F.B.* of ...../whose last known address  
was ...../deceased [and  
*G.B.* of ...../whose last known address  
was ...../deceased]<sup>(5)</sup>.

[6. The guardian of the infant is *H.K.* of ...../The  
guardians of the infant are *H.K.* of .....  
and *J.B.* of .....]<sup>(6)</sup>

[7. *L.M.* of ..... is liable by  
virtue of an order or agreement to contribute to the maintenance of the infant]<sup>(7)</sup>.

8. I/We attach a document/documents signifying the consent of the said .....  
.....<sup>(8)</sup> to the making of an adoption order upon my/our application.

[9. I/We request the judge to dispense with the consent of the said .....  
.....<sup>(9)</sup> on the following grounds .....  
.....]

10. The infant was received into my/our actual custody on the .....,  
from ..... of .....  
and has been continuously in my/our actual custody since that date.

11. I/We lodged with the Director of Social Welfare on the .....  
day of ....., notice of my/our intention to apply for an  
Adoption Order in respect of the infant.

[12. A certificate as to physical and mental health of the infant, signed by a  
registered medical practitioner on the ..... is  
attached]<sup>(10)</sup>.

13. I/We have not received or agreed to receive, and no person has made or

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given or agreed to make or give to me/us, any payment or other reward in consideration of the adoption [except as follows:

.....]  
14. I have not made/Neither of us has made a previous application for ~~an Adoption Order in respect of the same or any other infant to any court [except an application made to the ..... court at the adoption of the same infant or any other infant in Hong Kong or elsewhere [except an application made to the ..... at .....~~

..... on the ....., which was dealt with as follows:

.....]  
[15. For the purposes of my/our application reference may be made to *N.O.* of .....]<sup>(11)</sup>

[16. I/We desire that my/our identity should be kept confidential, and the serial number of this application is .....]<sup>(12)</sup>, or [I/We do not desire that my/our identity should be kept confidential].

17. Further particulars of myself/ourselves are set out in the annex to this statement.

18. If an adoption order is made in pursuance of my/our application, it is proposed that the infant should be known as .....

Dated this ..... day of .....

.....  
.....  
(Usual signature of applicant/applicants).  
(L.N. 337 of 1982; L.N. 526 of 1994)

ANNEX TO FORM 3

*Further particulars of applicant or applicants*

Particulars of *C.D.*

Name in full (Block capitals) .....

Address .....

Occupation .....

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.....  
Date of Birth .....

Relationship (if any) to the infant .....

## Particulars of *E.D.*

Name in full (Block capitals) .....

Address .....

Occupation .....

Date of Birth .....

Relationship (if any) to the infant .....

---

### Notes:

(1) This statement must be verified by affidavit, to which the statement, marriage certificate and other documents referred to in the statement should be exhibited.

(2) Enter the first name(s) and surname as shown in the birth certificate referred to in paragraph 4, if available, otherwise enter name(s) and surname by which the infant was known at the time of the application.

~~(3) If the infant has previously been adopted, a certified copy of the entry in the Adopted Children Register should be attached, and not a certified copy of the original entry in the registers of births; and the particulars given in paragraph 5 should relate to the parents by adoption and not to the natural parent or parents.~~

(3) (a) If the infant has not been adopted, a birth certificate should be attached. If there is no such certificate, a certified copy of the document showing that the persons named in paragraphs 5, 6 and 7 have parental rights over the infant should be attached.

(b) If the infant has previously been adopted, do not attach the birth certificate. Instead, a certified copy of the entry in the Adopted Children Register should be attached. If there is no such entry, a certified copy of the document showing that the persons named in

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paragraphs 5, 6 and 7 have parental rights over the infant should be attached. In any case, the particulars given in paragraph 5 should relate to the parent(s) by adoption.

- (4) Where a birth certificate is not attached, enter the place (including country) of birth if known.
- (5) If the infant is born out of wedlock, the father’s name should not be given in this entry; but see paragraph 7.
- (6) This paragraph should be completed only if the infant has a legal guardian other than the father or mother of the infant.
- (7) If the infant is born out of wedlock, enter the name of any person known to the applicant who has been adjudged by an order to be the putative father of the infant or who has acknowledged himself to be the father of the infant and agreed to contribute to his or her maintenance.
- (8) The names to be entered here (or in the following paragraph) are those of the persons named in paragraphs 5, 6 and 7, and (where the application is made by one of two spouses alone) of the spouse of the applicant.
- (9) This paragraph should be completed with the name of any of the persons mentioned in the previous note who has not signified his or her consent. See subsections (1) and (2) of section 6 of the Adoption Ordinance.
- (10) This paragraph need not be completed if the applicant or either of the applicants is a “relative” of the infant as defined by section 2 of the Adoption Ordinance.
- (11) This paragraph need not be completed if the applicant or either of the applicants is a “relative” of the infant as defined by section 2 of the Adoption Ordinance. Where it is completed more than one referee may be named if desired.
- (12) If the applicant wishes his name to be kept confidential, insert serial number obtained in pursuance of rule 6 of the Adoption Rules.

(L.N 526 of 1994)

FORM 4

[rule 10]

*Specific consent to ~~an adoption order in respect the adoption~~ of an infant named A.B.<sup>(1)</sup>*

Whereas an application is to be made [by C.D./C.D. and E.D.]<sup>(2)</sup> or [under the serial number .....];

[Whereas the said A.B. (hereinafter called the infant) is not less than 4 weeks old, having been born in ..... on the .....  
....., and is the person to whom the birth certificate<sup>(3)</sup> now produced and shown to be marked “A” relates]<sup>(4)</sup> :



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I, the undersigned ..... of ..... being<sup>(5)</sup> –  
the mother<sup>(3)</sup> of the infant/  
the father<sup>(3)</sup> of the infant/  
a guardian of the infant/  
a person liable by virtue of any order or agreement to contribute to the  
maintenance of the infant/  
a person (acting on behalf of a body) having parental rights in respect of the  
infant/  
the spouse of the said *C.D.*

hereby state as follows: –

~~(1) I understand that the effect of an adoption order is that a parent or guardian will lose all his rights in respect of the maintenance and upbringing of the infant.~~

(1) I understand that once the infant is adopted (whether in Hong Kong or elsewhere), a permanent parent-child relationship between the adopter and the infant will be created.

~~(2) I understand that, when the application for an adoption order in respect of the said *A.B.* is heard by the judge, this document may be used as evidence of my consent to the making of the order unless I have notified the court that I no longer consent<sup>(6)</sup>.~~

(2) I understand that when the application for the adoption of the infant is made, this document may be used as evidence of my consent to the adoption.<sup>(6)</sup>

~~(3) I hereby consent to the making of an adoption order in pursuance of the said application.~~

(3) I hereby consent to the adoption of the infant by [*C.D./C.D. and E.D.*]

.....  
(Signature)

Signed at ..... on .....  
by the said ..... [who satisfied me that he/she\*  
fully understood the nature of the foregoing statement and agreed to the placement of  
the infant for adoption]<sup>(4)</sup>.

Before me (*Signature*) .....  
(*Address*) .....  
(*Description*)<sup>(6)</sup> .....

## Notes:

- (1) Insert name as known to the consenting party.
- (2) Where the name of applicant is not known to the consenting party, and a serial number has been obtained for the application under rule 6 of the Adoption Rules, complete the entry contained in the second square brackets.

~~(3) If the infant has previously been adopted, a certified copy of the entry in the~~

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~~Adopted Children Register should be attached, and not a certified copy of the original entry in the registers of births; and the description of the consenting party should include the words "by adoption" or "經領養" where appropriate.~~

(3) (a) If the infant has not been adopted, a birth certificate should be attached. If there is no such certificate, a certified copy of the document showing that the consenting party has parental rights over the infant should be attached.

(b) If the infant has previously been adopted, do not attach the birth certificate. Instead, a certified copy of the entry in the Adopted Children Register should be attached. If there is no such entry, a certified copy of the document showing that the consenting party has parental rights over the infant should be attached; and the description of the consenting party should include the words "by adoption" or "經領養" where appropriate.

(4) Delete the words in square brackets except where the consenting party is the mother of the infant.

(5) Delete all but one of the description which follow.

(6) The document will not be admissible as evidence unless the signature is attested by a commissioner for oaths (or, if executed outside Hong Kong, by any person for the time being authorized by law in that place to administer an oath for any judicial or other legal purpose, ~~as mentioned in rule 29 of the Adoption Rules (Cap. 290 sub. leg. A).~~ In all cases the document if so attested will be admissible without further proof of execution.  
(L.N. 228 of 1977; L.N. 337 of 1982; L.N. 526 of 1994; 47 of 1997 s. 10; 80 of 1997 s. 121; 23 of 1998 s. 2; 66 of 1999 s. 3)

FORM 4A

[rule 10]

*General consent of parent to ~~an adoption order~~ the adoption of an infant*

ADOPTION ORDINANCE

(Chapter 290)

I, the undersigned ..... [Hong Kong Identity Card No. ....] of .....  
..... being the married/unmarried/widowed<sup>(1)</sup>  
parent of<sup>(2)</sup> ..... a male/female<sup>(1)</sup>  
infant (hereinafter called the infant) who was born in .....  
..... on the ..... day of .....

# DRAFT

~~consent to the making of an adoption order under which the infant to whom the birth certificate No. ....<sup>(3)</sup> now produced and marked "A" relates, will be the adopted child of any person or persons approved and selected to adopt the infant in accordance with the law of Hong Kong or the country in which the adoption order will be made the infant to whom the birth certificate No. ....<sup>(3)</sup> now produced and marked "A" relates to be adopted by any person or persons approved and selected to adopt the infant in accordance with the law of Hong Kong or the country in which the application for adoption will be made~~ and I state as follows –

(1) I understand that upon execution of this form by me, I shall cease to have any parental rights, duties, obligations or liabilities in respect of the infant.

~~(2) I understand that when an application for an adoption order in respect of the infant is being heard by the Court, this document may be used as evidence of my consent to the making of the order unless I have notified the Director within 3 months from the day on which I execute this form that I no longer consent<sup>(4)</sup> :~~

(2) I understand that when the application for the adoption of the infant is made, this document may be used as evidence of my consent to the adoption.<sup>(4)</sup>

.....  
(Signature)

Signed at ..... on .....  
by the said .....  
who satisfied me that he/she<sup>(1)</sup> fully understood the foregoing statement and agree to the placement of the infant for adoption and relinquish all parental rights, duties, obligations and liabilities in respect of the infant.

Before me (Signature) .....  
(Address) .....  
(Description)<sup>(4)</sup> .....  
.....

## Notes:

- (1) Delete as appropriate.
- (2) Insert name of infant as known to the consenting party.
- ~~(3) If the infant has previously been adopted, a certified copy of the entry in the Adopted Children Register should be attached, and not a certified copy of the original entry in the registers of births; the description of the consenting party should include the words "by adoption" or "經領養" where appropriate.~~
- (3) (a) If the infant has not been adopted, a birth certificate should be attached. If there is no such certificate, a certified copy of the

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document showing that the consenting party has parental rights over the infant should be attached.

(b) If the infant has previously been adopted, do not attach the birth certificate. Instead, a certified copy of the entry in the Adopted Children Register should be attached. If there is no such entry, a certified copy of the document showing that the consenting party has parental rights over the infant should be attached; and the description of the consenting party should include the words “by adoption” or “經領養” where appropriate.

(4) The document will not be admissible as evidence unless the signature is attested by a commissioner for oaths (or, if executed outside Hong Kong, by any person for the time being authorized by law in that place to administer an oath for any judicial or other legal purpose, ~~as mentioned in rule 29 of the Adoption Rules (Cap. 290 sub. leg. A).~~ In all cases the document so attested will be admissible without further proof of execution.

(6) If the consenting party wishes to revoke this form of consent after the expiry of 3 months from the date on which he executes this form, he may apply to the Court in accordance with rule 14A of the Adoption Rules if the application for the adoption order is made in Hong Kong.

(L.N. 228 of 1977; L.N. 526 of 1994; 47 of 1997 s. 10; 80 of 1997 s. 121; 23 of 1998 s. 2; 66 of 1999 s. 3)

FORM 4B

[rule 10]

~~*Specific consent to an adoption order on the application of a step-parent (as sole applicant) in respect of an infant named A.B.<sup>(4)</sup>*~~  
*Specific consent to the adoption of an infant named A.B.<sup>(1)</sup> by a step-parent (as sole applicant)*

Whereas an application (by a sole applicant) is to be made [by ..... being the step-parent of the said infant .....] or [<sup>(2)</sup>under the serial number .....];

[Whereas the said ..... (hereinafter called the infant) is not less than 4 weeks old, having been born in ..... on the .....; and is the person to whom the birth certificate<sup>(3)</sup> now produced and shown to be marked "A" relates]<sup>(4)</sup>:

I, the undersigned .....

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of .....  
..... being the father/mother\* of the infant  
[as well as the spouse of the said.....]<sup>(5)</sup>  
hereby state as follows: –

~~(1) I understand that the effect of an adoption order<sup>(6)</sup> is that I will/will not\* lose all my rights as a parent in respect of the maintenance and upbringing of the infant.~~

(1) I understand that once the infant is adopted (whether in Hong Kong or elsewhere), a permanent parent-child relationship between the adopter and the infant will be created.

~~(2) I understand that, when the application for an adoption order in respect of the said ..... is heard by the judge, this document may be used as evidence of my consent to the making of the order unless I have notified the court that I no longer consent<sup>(7)</sup>.~~

(2) I understand that when the application for the adoption of the infant is made, this document may be used as evidence of my consent to the adoption<sup>(7)</sup>.

~~(3) I hereby consent to the making of an adoption order in pursuance of the said application.~~

(3) I hereby consent to the adoption of the infant by .....  
.....

.....  
(Signature)

Signed at ..... on .....  
..... by the said ..... who satisfied  
me that he/she\* fully understood the nature of the ~~foregoing statement and the effect of an adoption order~~ foregoing statement and the effect of the infant being adopted by  
......

Before me (Signature) .....

(Address) .....

(Description)<sup>(7)</sup> .....

\* Delete as appropriate

Notes:

- (1) Insert name as known to the consenting party.

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(2) Where a serial number has been obtained for the application under rule 6 of the Adoption Rules (Cap. 290 sub. leg. A), complete the entry contained in the second square brackets.

~~(3) If the infant has previously been adopted, a certified copy of the entry in the Adopted Children Register should be attached, and not a certified copy of the original entry in the registers of births; and the description of the consenting party should include the words "by adoption" or "經領養" where appropriate.~~

(3) (a) If the infant has not been adopted, a birth certificate should be attached. If there is no such certificate, a certified copy of the document showing that the consenting party has parental rights over the infant should be attached.

(b) If the infant has previously been adopted, do not attach the birth certificate. Instead, a certified copy of the entry in the Adopted Children Register should be attached. If there is no such entry, a certified copy of the document showing that the consenting party has parental rights over the infant should be attached; and the description of the consenting party should include the words "by adoption" or "經領養" where appropriate.

(4) Delete the words in square bracket except where the consenting party is the mother of the infant.

(5) Delete the words in square bracket except where the consenting party is the spouse of the applicant.

~~(6) Except where the consenting party is the spouse of the applicant AND the parent (as defined in the Adoption Ordinance (Cap. 290)) of the infant, the effect of an adoption order is that a parent will lose all his rights in respect of the maintenance and upbringing of the infant. (Repealed)~~

(7) The document will not be admissible as evidence unless the signature is attested by a Commissioner for Oaths [or, if executed outside Hong Kong, by any person for the time being authorized by law in that place to administer an oath for any judicial or other legal purpose, ~~as mentioned in rule 29 of the Adoption Rules (Cap. 290 sub. leg. A)~~]. In all cases the document if so attested will be admissible without further proof of execution.

FORM 5

[rule 12]

*Notice of application for an adoption order in respect  
of an infant named A.B.*<sup>(1)</sup>

To ..... of .....<sup>(2)</sup>

Whereas an application has been made [by C.D./C.D. and E.D.]<sup>(3)</sup> or [under the serial number .....];

And whereas I, ..... of .....

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am the guardian ad litem of the said infant;

Take notice that while the said application is pending, you must not, except with the leave of the judge, remove the infant from the care and possession of the applicant. Application for such leave may be made to the judge, District Court, Hong Kong.

Dated the ..... day of .....

*(Signature of guardian ad litem)* .....

*Notes:*

- (1) Enter the name(s) and surname as known to the person to whom the notice is given and also any other name(s) by which the infant is known.
- (2) Enter the name and address of any parent or guardian of the infant who has signified his consent to the making of an adoption order.
- (3) The name of the applicant must not be given where a serial number is specified in Form 3 (paragraph 16). In that case complete the second entry in square bracket.

(L.N. 337 of 1982; L.N. 526 of 1994)

FORM 6

[rule 16]

*Notice of hearing of application for an adoption order  
in respect of an infant named A.B.<sup>(1)</sup>*

To ..... of ..... (1A)

Whereas an application has been made [by *C.D./C.D.* and *E.D.*]<sup>(2)</sup> or [under the serial number .....];

And whereas I, ..... of ..... am the guardian ad litem of the said infant;

Take notice:

A.<sup>(3)</sup> [That the said application will be heard at the District Court, Hong Kong on the ....., at the hour of ..... in the ..... noon, and that you may appear to show cause why the adoption order should not be made.]

B.<sup>(3)</sup> [That if you do not consent to the making of the order, you should notify me on or before ....., in order that a date and time may be fixed for you to attend and show cause why the adoption order should not be made. The form below may be detached and used for this purpose.]

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Dated the ..... day of .....

(Signature of guardian ad litem) .....

*Notes:*

- (1) Enter the name(s) and surname as known to the person to whom the notice is given and also any other name(s) by which the infant is known.
- (1A) It is not necessary to serve this notice on the parent of an infant who has given consent in Form 4A unless the hearing is to take place within 3 months from the day on which the form was executed.
- (2) The name of the applicant must not be given where the notice is addressed to an individual and a serial number is specified in Form 3 (paragraph 16). In that case complete the second entry in square brackets.
- (3) ~~Form A-Section A~~ should be completed and ~~Form B-Section B~~ struck out where the applicant does not desire his identity to be kept confidential (see Form 3, paragraph 16). Where a serial number is specified in that paragraph, ~~Form A-Section A~~ must be struck out and ~~Form B-Section B~~ completed.

----- Perforation -----

To: The Director of Social Welfare, Hong Kong.  
(If the Director of Social Welfare is not the guardian ad litem, the appropriate address should be substituted).

I have received notice of the hearing of the application for an adoption order in respect of *A.B.* an infant.

(a) I consent to the making of this order.

or

Delete (a) or (b) (b) I do not consent to the making of this order and I wish a date and time to be fixed for my attendance when I may state my case.

.....  
(Signature)

.....  
(Date)

.....  
(Address)  
(L.N. 337 of 1982; L.N. 526 of 1994)



**DRAFT**

*Adoption order in respect of an infant*

[Heading as in Form 1]

Application having been made by *C.D.*, by occupation .....  
and resident at ..... [and *E.D.* his wife] (hereinafter  
called the applicant/applicants) for an order under the Adoption Ordinance,  
authorizing him/her/them to adopt *A.B.*, an infant, the child/adopted child of *F.B./F.B.*  
and *G.B.*;

And the said *A.B.* (hereinafter called the infant) being of the .....  
sex, and never having been married;

And the applicant/one of the applicants

~~being the mother/father of the infant/~~

~~being the mother/father of the infant/~~

~~being the step-parent of the infant/~~

being a relative of the infant within the meaning of the said Ordinance and  
[both applicants] having attained the age of 21 years/

having attained the age of 25 years and the other applicant having attained  
the age of 21 years;

[And the names by which the infant is to be known being *P.D.*]<sup>(1)</sup>.

[And it having been proved to the satisfaction of the judge that the infant is  
identical with *A.B.*, to whom the entry numbered .....  
and made on the ....., in the registers of births in the  
registration office at ..... relates.]<sup>(2)</sup>

And the [probable]<sup>(3)</sup> date of the birth of the infant ~~appearing to be is~~  
the .....

[And the infant having been previously the subject of an adoption order dated  
the ....., of which particulars are entered in the Adopted  
Children Register]<sup>(4)</sup>;

And all the consents required by the said Ordinance being obtained or dispensed  
with;

It is ordered that the applicant/applicants be authorized to adopt the infant;

[And the following payment or reward is sanctioned:

.....]

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[And as regards costs it is ordered that:

.....]

And it is directed that the Registrar of Births and Deaths shall make in the Adopted Children Register an entry recording the adoption in accordance with the particulars set out in the Schedule to this order.

[And it is further directed that the Registrar of Births and Deaths shall cause the said entry in the registers of births to be marked with the word “adopted” or the words “受領養”<sup>(2)</sup>.

[And it is further directed that the Registrar of Births and Deaths shall cause the previous entry in the Adopted Children Register relating to the infant to be marked with the word “re-adopted” or the words “再受領養”<sup>(4)</sup>.

Dated the ..... day of .....

.....  
*Registrar, ~~District~~  
~~Court~~District Court/Court of First  
Instance*  
(80 of 1997 s. 121)

## ~~SCHEDULE TO FORM 7~~ SCHEDULE

1.	Date <sup>(5)</sup> and country of birth of child	
2.	Surname and name of child <sup>(6)</sup>	
3.	Sex of child	
4.	Surname and name, address and occupation of adopter(s)	
5.	Date of adoption order	

Notes :

- (1) Delete where there is no change of name.
- (2) Delete this entry –
  - (a) if the infant is not identified with a person whose birth is registered in

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- the registers of births; or
- (b) if ~~the infant has previously been adopted.~~ an entry in respect of the infant has been made in the Adopted Children Register.
- (3) Delete “probable” where the precise date of the infant's birth is proved.
- (4) Delete except where ~~the infant has previously been adopted.~~ an entry in respect of the infant has been made in the Adopted Children Register.
- (5) Where a probable date of birth is specified in the body of the order, enter that date without qualification. If the infant is one of twins, include, if possible, the hour as well as the date of birth.
- (6) Where there is a change, enter only the name by which the infant is to be known.

FORM 8

[rule 19]

*Interim order in respect of an infant*

[Heading as in Form 1]

Application having been made by *C.D.*, by occupation ..... and resident at ..... [and *E.D.* his wife] (hereinafter called the applicant/applicants) for an order under the Adoption Ordinance, authorizing him/her/them to adopt *A.B.*, an infant, the child/adopted child of *F.B./F.B.* and *G.B.*;

And the said *A.B.* (hereinafter called the infant) being of the ..... sex, and never having been married;

And the applicant/one of the applicants

~~being the mother/father of the infant/  
 being the mother/father of the infant/  
 being the step-parent of the infant/~~

being a relative of the infant within the meaning of the said Ordinance and [both applicants] having attained the age of 21 years/

having attained the age of 25 and the other applicant having attained the age of 21 years;

And all the consents required by the said Ordinance being obtained or dispensed with;

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It is ordered that the determination of the application be postponed, and the custody of the infant be given to the applicant/applicants for a period ending on the ..... by way of a probationary period upon the following terms, namely ..... and that the applicant/applicants shall at least 2 months before that date apply for the final determination of the application;

[And as regards costs it is ordered that .....]

Dated the ..... day of .....

.....  
Registrar, ~~District Court~~ District Court  
/Court of First Instance  
(L.N. 337 of 1982)

FORM 9

[rule 23]

*Notice of further hearing of application for an adoption order  
in respect of an infant named A.B. <sup>(1)</sup>*

To ..... of ..... <sup>(2)</sup>

Whereas an application has been made [by *C.D./C.D. and E.D.*] <sup>(3)</sup> or [under the serial number .....];

And whereas I, ..... of ..... am the guardian ad litem of the said infant;

And whereas the determination of the said application was postponed and an interim order was made by His Honour Judge/the Hon. Mr. Justice ..... on the .....

Take notice:

A. <sup>(3)</sup> [That the said application will be further heard before the judge at the District Court/Court of First Instance, Hong Kong, on the ..... at the hour of ..... in the ..... noon and that you may appear to show cause why the adoption order should not be made].

B. <sup>(3)</sup> [That if you do not consent to the making of the order, you should notify me on or before ....., in order that a date and time may be

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fixed for you to attend and show cause why the adoption order should not be made. The form below may be detached and used for this purpose].

Dated the ..... day of .....

*(Signature of guardian ad litem)* .....

*Notes:*

- (1) Enter name(s) and surname as known to the person to whom the notice is given and also any other name(s) by which the infant is known.
- (2) The name of the applicant must not be given where the notice is addressed to an individual and a serial number is specified in Form 3 (paragraph 16). In that case complete the second entry in square brackets.
- (3) ~~Form A~~Section A should be completed and ~~Form B~~Section B struck out where the applicant does not desire his identity to be kept confidential (see Form 3, paragraph 16). Where a serial number is specified in that paragraph ~~Form A~~Section A must be struck out and ~~Form B~~Section B completed.

----- *Perforation* -----

To: The Director of Social Welfare, Hong Kong.  
(If the Director of Social Welfare is not the guardian ad litem, the appropriate address should be substituted).

I have received notice of the further hearing of the application for an adoption order in respect of *A.B.* an infant.

- Delete (a) or (b)
- (a) I consent to the making of this order.
  - (b) I do not consent to the making of this order and I wish a date and time to be fixed for my attendance when I may state my case.

*(Signature)* .....  
.....

*(Address)* .....  
.....

.....  
*(Date)*

(L.N. 337 of 1982; L.N. 526 of 1994)  
(First Schedule replaced G.N.A. 76 of 1960)

# DRAFT

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## ~~SECOND~~ SCHEDULE 2

[rule  
~~12~~3]

### ADDITIONAL MATTERS SUBJECT TO INVESTIGATION AND REPORT BY GUARDIAN AD LITEM

#### PART I

##### THE APPLICANT

1. In the case of a joint application, how long the applicants have been married.
2. In the case of an application by one only of 2 spouses –
  - (a) whether the other spouse consents to the application; and
  - (b) why he or she does not join in the application.
3. What other children (including adopted children) the applicant has.
4. What is the age and sex of all children living in the home of the applicant, and what is their relationship to the applicant.
5. What number of living rooms and bedrooms are contained in the home of the applicant, and what is the condition of the home.
6. What are the means of the applicant.
7. Whether the applicant suffers or has suffered from any serious illness, and whether there is any history of tuberculosis, epilepsy or mental illness in his or her family.
8. Whether any person specified in the applicant's statement as a person to whom reference may be made is a responsible person and recommends the applicant without reservation.
9. Whether the applicant understands that an adoption order is irrevocable and that the order if made will render him or her responsible for the maintenance and upbringing of the infant.

#### PART II

##### THE INFANT

## **DRAFT**

10. Whether the infant has any right to or interest in any property.
11. Whether the infant (if of an age to understand the effect of an adoption order) wishes the order to be made.

### **PART III**

#### **THE PARENTS**

12. Whether the mother consents to the adoption and identifies the birth certificate (if any) attached to the applicant's statement as the birth certificate of the infant.
13. Whether the father consents to the adoption.
14. If the infant is born out of wedlock, whether an order has been made adjudging any person to be the putative father of the infant, or an agreement to contribute to the maintenance of the infant has been made by a person acknowledging himself to be the father of the infant, and in either case whether that person consents to the adoption. (L.N. 162 of 1993)
15. When did the parent or parents part with the infant, and to whom.
16. What are the reasons of the parent or parents for consenting to the adoption, and whether his or their consent is given without pressure from other persons.
17. Whether the parent, or each of the parents, understands that an adoption order is irrevocable, and that the order if made will deprive him or her of all rights in respect of the maintenance and upbringing of the infant.
18. Where the applicant's statement requests the judge to dispense with the consent of the parent, or either of the parents, on the ground that he or she cannot be found, what steps have been taken to trace him or her.

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## Annex B

### CONVENTION ADOPTION RULES

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## CONVENTION ADOPTION RULES

(Made by the Chief Justice under section 12(1) of the  
Adoption Ordinance (Cap. 290))

### 1. Commencement

These Rules shall come into operation on \_\_\_\_\_ 2006.

### PRELIMINARY

### 2. Interpretation r. 2 of Cap. 290A

(1) In these Rules, unless the context otherwise requires –  
“adoption application” ( ) means an application for a Convention  
adoption order;

“adoption certificate” ( ) means a Convention adoption certificate;

“adoption order” ( ) means a Convention adoption order;

“applicant” ( ) includes either, as well as both, of 2 joint applicants;

“Court” ( ) means the Court of First Instance;

“guardian ad litem” ( ) means a guardian ad litem of an infant for the  
purposes of the adoption application that relates to the infant.

(2) Expressions used in these Rules that are defined in Part 5 of the  
Ordinance shall have the respective meanings assigned to them in that Part.

(3) A reference to a form described by a combination of an alphabet  
and a number shall, unless otherwise stated, be construed as a reference to a  
form so described and set out in Schedule 1.

### 3. Application

These Rules apply only to and in relation to Convention adoption.

### 4. Notice of intention r. 3

A notice of intention to apply for an adoption order shall be given in Form  
C1.

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## COMMENCEMENT OF PROCEEDINGS

### 5. **Proceedings to be disposed of in private**

**r. 4**

All proceedings under the Ordinance relating to Convention adoption are to be disposed of in private.

### 6. **Form of application** **r. 5**

(1) An adoption application shall be made to the Court by originating summons in Form C2.

(2) The proposed adopter shall be the applicant, and the infant shall be the respondent.

(3) A copy of the originating summons shall be served on –

(a) the guardian ad litem and the Director (if he is not the guardian ad litem); or

(b) where rule [11(3)] applies, the Director.

### 7. **Identity of applicant may be kept confidential** **r. 6**

(1) If the proposed adopter desires that his identity shall be kept confidential, he may apply to the Court for a serial number to be assigned to him for the purposes of the adoption application and that number shall be assigned to him accordingly.

(2) An application under subsection (1) shall be made before the proposed adopter issues an originating summons in Form C2.

### 8. **Previous applications** **r. 7**

If it appears that the applicant has previously made an application in any court in Hong Kong for the adoption of the same infant (“the previous application”), the adoption application may not proceed unless –

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- (a) the judge is satisfied that there has been a material change in the circumstances since the previous application; or
- (b) the previous application is made in respect of an adoption that is not a Convention adoption and has been withdrawn or disposed of.

## EVIDENCE IN SUPPORT OF APPLICATION

### **9. Form of statement and consent** r. 10

- (1) The evidence in support of an adoption application shall be –
  - (a) given by means of a statement by the applicant in Form C3; and
  - (b) verified by affidavit.
- (2) Any document signifying the consent of any person to the making of the adoption order shall be exhibited to the affidavit.
- (3) Where the proposed adoption is one in respect of which Hong Kong acts as the State of origin, the consent -
  - (a) if given by a parent of the infant, shall be in either Form C4 or Form C5, or in Form 4A in Schedule 1 to the Adoption Rules (Cap. 290 sub. leg. A) (as may be appropriate);
  - (b) if given by –
    - (i) a guardian of the infant; or
    - (ii) a person who is liable to contribute to the maintenance of the infant by virtue of any order or agreement,  
shall be in Form C4; and
  - (c) if given by a spouse of the applicant and –
    - (i) the spouse is a parent of the infant, shall be in either Form C4 or Form C5, or in Form 4A in

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Schedule 1 to the Adoption Rules (Cap. 290 sub. leg. A) (as may be appropriate);

- (ii) the spouse is not a parent of the infant, shall be in Form C4.

(4) Where the proposed adoption is one in respect of which Hong Kong acts as the receiving State, any document signifying the consent of the spouse of the applicant shall be in Form C4.

## **10. Time for filing evidence** r. 11

(1) The statement referred to in rule [9(1)] shall be filed within 28 days after the issue of the originating summons in Form C2.

(2) A copy of the applicant's statement shall be served, at the same time when it is so filed, on –

- (a) the guardian ad litem; and
- (b) the Director (if he is not the guardian ad litem).

## APPOINTMENT AND DUTIES OF GUARDIAN AD LITEM

### **11. Appointment of guardian ad litem**

r. 8 and r. 9

(1) Where –

- (a) the proposed adoption is one in respect of which Hong Kong acts as the State of origin; and
- (b) the Director has become the guardian ad litem of the infant by virtue of section 5(5F) of the Ordinance,

the Director shall be the guardian ad litem.

(2) Where subrule (1) is not applicable, subject to subrule (3), the accredited body in Hong Kong who makes arrangements for the adoption of the infant by the applicant shall be the guardian ad litem.

(3) If the applicant desires that the Director should be appointed to act as the guardian ad litem, then, the originating summons in Form C2 –

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- (a) must ask for such appointment; and
  - (b) must be supported by an affidavit by the applicant setting out the grounds for asking for such appointment.
- (4) The applicant shall, subject to subrule (5), pay to the Director a fee of \$2,840 in payment of the proper costs of the Director for acting as the guardian ad litem –
- (a) (where subrule (1) applies) on the service of Form C2 on the Director under rule [6]; or
  - (b) (where subrule (3) applies) on the Director being appointed by the Court to act as the guardian ad litem.
- (5) The Director may, if he considers it necessary or desirable, waive payment of the fee or any part of it.
- (6) The Court may at any time, where it considers it to be in the interests of the infant, appoint the Official Solicitor to be the guardian ad litem of the infant in place of the Director or the accredited body (as the case may be).

## **12. Guardian ad litem to investigate all relevant circumstances r. 13**

- (1) The guardian ad litem shall –
- (a) investigate as fully as possible all circumstances relevant to the proposed adoption with a view to safeguarding the interests of the infant before the Court; and
  - (b) make a report to the Court for that purpose.
- (2) Without prejudice to the generality of subrule (1), the guardian ad litem shall –
- (a) make inquiries as to –
    - (i) all matters alleged in the applicant’s statement; and
    - (ii) the additional matters specified in Schedule 2, and shall report to the Court on them; and

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- (b) interview (either by himself or by an agent appointed by him for the purpose) –
  - (i) every applicant;
  - (ii) every individual mentioned in the applicant’s statement in Form C3 as a person to whom reference may be made;
  - (iii) every person on whom notice of the adoption application is required to be served under rule [19];  
and
  - (iv) (where such notice is required to be served on a body of persons) the appropriate officer of such body.

## **13. Information to be confidential** r. 14

The guardian ad litem and any agent of his and, where a body of persons is appointed as guardian ad litem, every officer, employee and member of that body –

- (a) shall treat as confidential all information obtained in the course of the investigation; and
- (b) shall not divulge any of the information to any other person except so far as may be necessary for the proper execution of his duty.

## APPLICATIONS UNDER SECTION 5(5D) OF THE ORDINANCE

## **14. Mode of application** r. 14A

(1) Where the proposed adoption is one in respect of which Hong Kong acts as the State of origin, an application by a parent under section 5(5D) of the Ordinance for an order revoking that parent’s consent (“revocation application”) shall be made to the Court.

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- (2) The revocation application shall be made –
  - (a) where an adoption application is pending, by summons in the adoption proceedings concerned; or
  - (b) where paragraph (a) is not applicable, in accordance with rule 14A of the Adoption Rules (Cap. 290 sub. leg. A).
- (3) The Registrar of the High Court shall, after giving such directions (if any) as he thinks necessary, fix a date for the hearing of the revocation application.
- (4) When the date for the hearing has been fixed, the Registrar of the High Court shall serve a copy of the summons on –
  - (a) the proposed adopter in the adoption proceedings concerned;
  - (b) the guardian ad litem; and
  - (c) every other person on whom notice has been or will in due course be served under rule [19].
- (5) If a serial number has been assigned to the proposed adopter in the adoption proceedings concerned, then in the revocation application –
  - (a) the summons to be served under subrule (4) shall not disclose the identity of that proposed adopter to any other person who is not already aware of that proposed adopter's identity; and
  - (b) the proceedings on the revocation application shall be conducted with a view to securing that that proposed adopter is not seen by or made known to any other person concerned with the application who is not already aware of his identity, except with his consent.
- (6) Where the revocation application is determined, the Registrar of the High Court shall serve notice of the effect of the determination and any order on the applicant of the revocation application and on all the persons served under subrule (4).



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## APPLICATIONS UNDER SECTION 6(4) OF THE ORDINANCE

### **15. Making and notice of application** r. 30

(1) Where the proposed adoption is one in respect of which Hong Kong acts as the State of origin, an application under section 6(4) of the Ordinance for leave to remove the infant from the care and possession of the applicant shall be made to the judge.

- (2) A notice of the application shall be served on –
- (a) the guardian ad litem; and
  - (b) the Director (if he is not the guardian ad litem).

### **16. Dismissal of application for adoption order**

r. 31

Where –

- (a) the proposed adoption is one in respect of which Hong Kong acts as the State of origin; and
  - (b) leave to remove the infant from the care and possession of the applicant is granted under section 6(4) of the Ordinance,
- the judge may, on granting leave, dismiss the adoption application.

## APPLICATIONS UNDER SECTION 23B OF THE ORDINANCE

### **17. Application for an order passing care and control of infant** r. 31A

(1) An application for an order under section 23B(1) of the Ordinance for passing the care and control of an infant to a person authorized by the Director may be made to the Court by the Director by an ex parte originating summons.

- (2) The application shall be heard by a judge.

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- (3) The application must be supported by an affidavit by the Director that –
- (a) sets out information on the infant’s identity, adoptability, background, social environment, family history and medical history;
  - (b) sets out details of the person authorized by the Director for the purposes of section 23B(1) of the Ordinance;
  - (c) sets out the grounds for the Director’s belief that the granting of the order will be in the best interests of the infant; and
  - (d) states that the infant is or will be authorized to enter and reside permanently in the Contracting State to which the infant is intended to be sent.
- (4) The following documents shall be exhibited to the affidavit –
- (a) the infant’s birth certificate or any other proof of identity;
  - (b) order by which the Director was appointed as the legal guardian of the infant (if applicable);
  - (c) consent of every person whose consent is required under section 5(5)(a) of the Ordinance (if applicable);
  - (d) order declaring that the infant is freed for adoption under section 5A of the Ordinance (if applicable);
  - (e) copy of the infant study report;
  - (f) statement of acceptance for adoption signed by the prospective adopter;
  - (g) copy of the family study and assessment report of the prospective adopter; and
  - (h) letter of assumption of responsibility signed by the person referred to in subrule 3(b) stating that such person is responsible for the welfare of the infant while the infant is

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in the Contracting State referred to in subrule 3(d) and before the infant is adopted.

## HEARING OF APPLICATIONS

### **18. Appointment for hearing** r. 15

(1) The applicant for an adoption order shall obtain an appointment for the hearing of the adoption application within 14 days after being notified by the guardian ad litem that he has made his report to the Court.

(2) If no appointment is obtained by the applicant, the guardian ad litem shall obtain an appointment as soon as practicable for the hearing of the adoption application.

### **19. Notice of hearing** r. 16

(1) Subject to subrules (2) and (3), on a date being fixed for the hearing of the adoption application, the guardian ad litem shall serve a notice in Form C6 on –

- (a) (where the proposed adoption is one in respect of which Hong Kong acts as the State of origin) every person whose consent to the making of the adoption order is required under section 5(5) of the Ordinance;
- (b) (where the proposed adoption is one in respect of which Hong Kong acts as the receiving State) the spouse of the applicant whose consent to the making of the adoption order is required under section 5(5)(b) of the Ordinance; and
- (c) the Director (if he is not the guardian ad litem).

(2) Where the Court is satisfied that –

- (a) any person whose consent to the making of the adoption order is required by section 5(5)(a) or (b) (as the case may be) of the Ordinance cannot be found; and

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(b) all reasonable steps have been taken to trace that person, the Court may, if it thinks fit, dispense with service of the notice under this rule on that person.

(3) Where the proposed adoption is one in respect of which Hong Kong acts as the State of origin, then, subject to subrule (4), it is not necessary to serve the notice on the parent of an infant who has given consent to an adoption order by way of general consent in Form 4A in Schedule 1 to the Adoption Rules (Cap. 290 sub. leg. A).

(4) Subrule (3) shall not apply if the hearing of the adoption application is to take place within 3 months from the day on which the form was executed.

## **20. Appearance to show cause why order should not be made** r. 17

(1) On the hearing of the adoption application, any person on whom notice is required to be served under rule [19] may appear before the judge to show cause why an adoption order should not be made.

(2) The Director may be represented by a public officer duly authorized in that behalf by the Director.

## **21. Conduct of proceedings** r. 18

(1) Unless the Court is satisfied that the applicant does not desire his identity to be kept confidential, the proceedings shall be conducted with a view to securing that he is not seen by or made known to any other person whose consent to the order is required, other than the spouse of the applicant.

(2) Where the proposed adoption is one in respect of which Hong Kong acts as the State of origin, the Court may, if satisfied that there are special circumstances, direct that it is not necessary for either or both of the following persons to attend the hearing of the adoption application –

- (a) the infant; and
- (b) the applicant.

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(3) Except as provided for in subrule (2), the Court shall not issue an adoption order unless the applicant and the infant attend the hearing in person.

(4) The Court may direct any person who is not a party to the application to attend the hearing of the application.

## FORMS AND TRANSMISSION OF ORDERS AND CERTIFICATES

### **22. Forms of order and certificate** r. 19

(1) Unless the Court otherwise orders, an adoption order shall be drawn up in Form C7.

(2) The Court shall, on the issuance of an adoption order, issue an adoption certificate in Form C8.

### **23. Copy of order and certificate to be sent to various parties** r. 20

(1) In this rule and rule [24] –

(a) an adoption order includes an order for the amendment of an adoption order referred to in rule [27(1)(a)] ; and

(b) an adoption certificate includes an adoption certificate that is amended under rule [27(3)].

(2) On the making of an adoption order, the Registrar of the High Court shall, within 7 days after the order has been passed and entered –

(a) send a sealed copy of the order to –

(i) the Registrar of Births and Deaths;

(ii) the applicant;

(iii) the guardian ad litem; and

(iv) the Director (if he is not the guardian ad litem);  
and

(b) send –

(i) to the applicant the adoption certificate issued in respect of the order; and

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- (ii) to the Director a copy of the certificate.

## **24. Copy of order and certificate to be given to certain persons only** r. 21

(1) Subject to subrule (2), no duplicate or copy of an adoption order or of an adoption certificate shall be given to or served on any person except by order of the judge.

- (2) The Director may give a copy of the certificate –
  - (a) to the Central Authority of a Contracting State;
  - (b) to the accredited body in Hong Kong that makes arrangements for the adoption to which the adoption order relates; and
  - (c) to –
    - (i) the accredited body of a Contracting State; or
    - (ii) the public authority of a Contracting State, that makes arrangements for the adoption to which the adoption order relates.

## **25. Notification by guardian ad litem of making or refusal of order** r. 22

(1) If a party was not present when an adoption order was made or refused, the guardian ad litem shall notify the party that the order was made or refused (as the case may be).

(2) In complying with subrule (1), the guardian ad litem shall not disclose the identity of the applicant unless the applicant does not desire his identity to be kept confidential.

### AMENDMENT OF ADOPTION ORDERS

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## **26. Amendment of adoption orders, and revocation of directions ex parte r. 25**

(1) An application for an order under section 20(1) of the Ordinance for –

- (a) the amendment of an adoption order, or
- (b) the revocation of a direction for the marking of an entry in the registers of births or the Adopted Children Register,

may be made ex parte in the Court.

(2) Notice of the application must be served on –

- (a) the Director; and
- (b) such other persons as the Court may think fit.

## **27. Notice of amendment to be sent to Registrar of Births and Deaths r. 26**

(1) Where an order is made under section 20(1) of the Ordinance for

- (a) the amendment of an adoption order, or
- (b) the revocation of a direction for the marking of an entry in the registers of births or the Adopted Children Register,

the Registrar of the High Court shall send to the Registrar of Births and Deaths a notice that complies with subrule (2).

(2) The notice must –

- (a) specify –
  - (i) the date of the adoption order; and
  - (ii) the names of the adopter and of the adopted person, as described in the schedule to the adoption order; and
- (b) state the amendments that are to be made to the particulars specified in the order made under section 20(1) of the Ordinance.

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(3) On the issue of an order for the amendment of an adoption order, the Court shall accordingly amend the adoption certificate issued in respect of the adoption order.

## APPLICATIONS UNDER SECTION 20G AND 20H OF THE ORDINANCE

### **28. Application for a direction where a Convention adoption is not a full adoption**

(1) An application for a direction under section 20G(1) of the Ordinance in respect of a Convention adoption may be made to the Court by originating summons by –

- (a) the adopted child to whom the adoption relates; or
- (b) the adopter to whom the adoption relates; or
- (c) a parent of the adopted child; or
- (d) any other person.

(2) Each of the following persons that is not the applicant shall be a respondent to the application –

- (a) the adopter to whom the adoption relates; and
- (b) each parent of the adopted child.

(3) For the avoidance of doubt, it is declared that if the adopted child is adopted by 2 persons jointly, “the adopter” in subrules (1)(b) and (2)(a) refers to both of the persons.

(4) If the adopted child is not the applicant and –

- (a) the child has evidence to give to the Court that has not been given by any other party; or
- (b) there are other special circumstances,

the Court may at any time direct that the child be made a respondent to the application.

(5) The Court may at any time direct that –



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- (a) a person who does not fall within the description of subrule (2) be made a respondent to the application; or
  - (b) a respondent to the application be removed.
- (6) If –
- (a) a direction is given on an application under subrule (1); and
  - (b) the adoption is a registrable adoption made outside Hong Kong (as defined in section 1(4) of Schedule 1 to the Ordinance),

the Director shall notify the Registrar of the giving of the direction.

## **29. Application for non-recognition of Convention adoption on public policy ground**

(1) An application for a declaration under section 20H(1) of the Ordinance in respect of a Convention adoption may be made to the Court by originating summons by –

- (a) the adopted child to whom the adoption relates; or
- (b) the adopter to whom the adoption relates; or
- (c) a parent of the adopted child; or
- (d) the Director; or
- (e) the accredited body in Hong Kong who made arrangements for the adoption (if applicable); or
- (f) any other person.

(2) Each of the following persons that is not the applicant shall be a respondent to the application –

- (a) the adopter to whom the adoption relates; and
- (b) each parent of the adopted child.

(3) For the avoidance of doubt, it is declared that if the adopted child is adopted by 2 persons jointly, “the adopter” in subrules (1)(b) and (2)(a) refers to both of the persons.

# DRAFT

- (4) If the adopted child is not the applicant and –
  - (a) the child has evidence to give to the Court that has not been given by any other party; or
  - (b) there are other special circumstances,

the Court may at any time direct that the child be made a respondent to the application.

- (5) The Court may at any time direct that –
  - (a) a person who does not fall within the description of subrule (2) be made a respondent to the application; or
  - (b) a respondent to the application be removed.
- (6) Where a declaration is made on an application under subrule (1) –
  - (a) in the case where the adoption is a registrable adoption made outside Hong Kong (as defined in section 1(4) of Schedule 1 to the Ordinance) the Director shall notify the Registrar of the making of the declaration; and
  - (b) in all cases, the Director may give a copy of the declaration to –
    - (i) the Central Authority of a Contracting State; and
    - (ii) either the accredited body or the public body of a Contracting State that made arrangements for the adoption.

## DELEGATION BY DIRECTOR OF SOCIAL WELFARE

### **30. Delegation of powers and duties** r. 27

Where the Director is acting under these Rules as guardian ad litem, anything required or authorized by these Rules to be done by the guardian ad litem may be done by a public officer who is duly authorized in that behalf by the Director.

# DRAFT

## SERVICE OF DOCUMENTS

### **31. Service of documents** r. 28

(1) Subject to paragraph (2), a document required to be served under these rules may be served –

- (a) in the case of an individual –
  - (i) by delivering it to the individual personally; or
  - (ii) by leaving it with some person for the individual at the individual's last known address or usual place of abode; or
  - (iii) by sending it by registered post addressed to the individual at the individual's last known address or usual place of abode;
- (b) in the case of the Director –
  - (i) by delivering it to him at his principal office; or
  - (ii) by sending it to him by registered post addressed to him at his principal office;
- (c) in the case of a body of persons –
  - (i) by delivering it to that body at the registered or principal office of that body;
  - (ii) by sending it to that body by registered post addressed to that body at that body's registered or principal office.

(2) Where a document is to be served on –

- (a) an individual whose last known address or usual place of abode is in a place outside Hong Kong; or
- (b) a body of persons whose registered or principal office is in a place outside Hong Kong,

the document must be served in accordance with the law of that place.

## ATTESTATION OF DOCUMENTS

# DRAFT

**32. Persons who may attest documents and declarations outside Hong Kong** r. 29

For the purposes of section 7(2) of the Ordinance, a document or declaration executed or made by any person at a place outside Hong Kong is sufficiently attested if it is attested by any person for the time being authorized by law in that place to administer an oath for any judicial or other legal purpose.

## APPLICATION OF PRACTICE OF COURT OF FIRST INSTANCE

**33. Practice and procedure of Court to apply** r. 32

Subject to these Rules, the practice and procedure of the Court shall apply to proceedings relating to Convention adoption.

**34. Court fees** r. 33

No Court fees shall be charged in adoption proceedings that relate to Convention adoption.

**DRAFT**

SCHEDULE 1 [rules 4, 6, 9, 19 & 22]

FORMS

FORM C1 Form 1 [rule [4]]

*Notice of Intention to apply for a Convention adoption order*

ADOPTION ORDINANCE

(Chapter 290)

Notice is hereby given, in accordance with the provisions of section 5(7) of the Adoption Ordinance that <sup>(1)</sup> .....  
.....[and ..... both] of .....  
.....  
.....  
intend to apply for an Order authorizing them to adopt a male/female infant known as <sup>(2)</sup> .....  
.....  
.....

Dated the ..... day of .....

<sup>(3)</sup> .....  
.....

*Notes:*

- (1) Enter the full names and addresses (including country of habitual residence) of the applicants.
- (2) Enter the full name in English and in Chinese characters, if any, of the infant.
- (3) This Form must be signed either by the applicants or by their solicitors.

ANNEX TO FORM C1

*Authorization for Criminal Record Check*

To: Commissioner of Police

In connection with my application for assessment of suitability to be an

# DRAFT

adoptive parent under Section 5AA\*/27\* of the Adoption Ordinance (Cap. 290), I hereby authorize you, or your designate, to conduct criminal record check on myself and to inform and release to the Director of Social Welfare\*/ ..... (name of accredited body\*)<sup>(1)</sup> of ..... (address) the particulars of my previous conviction(s) (if any) in Hong Kong or elsewhere.

For the purpose of criminal record check, I also agree to attend before a public officer authorized by you, who may take and record my fingerprints for checking against police records.

For the purpose of conducting the criminal record check, please note my particulars as follows –

Name in full (Block letters) .....  
HKID Number .....  
Travel Document Number .....  
Chinese Character Code .....  
Date of Birth (Day/month/year) .....  
Place of Birth .....  
Signature of Applicant .....  
Signature of Witness<sup>(2)</sup> .....  
Post title of Witness .....  
Date .....

\* Delete as appropriate

---

*Notes:*

- (1) If the proposed adoption is processed by a body of persons accredited for Convention adoption under the Adoption Ordinance (Cap. 290), the applicant may insert the name of the accredited body as the recipient of the information.
- (2) The witness should be a solicitor practising in Hong Kong, a notary public, or a registered social worker working with the Social Welfare Department or an accredited body accredited under the Adoption Ordinance (Cap. 290). Where the proposed adoption is one in respect of which Hong Kong acts as the State of origin, the witness could also be a social worker recognized by the receiving State.

**DRAFT**

FORM C2

Form 2

[rule [6]]

*Originating summons on application for a Convention adoption order*

20 , No.

IN THE HIGH COURT OF HONG KONG  
COURT OF FIRST INSTANCE

The Hon. Mr. Justice

IN THE MATTER OF *A.B.*<sup>(1)</sup> ..... an infant,

and

IN THE MATTER OF the Adoption Ordinance.

BETWEEN

*C.D.*

APPLICANT

AND

*A.B.*<sup>(1)</sup>

RESPONDENT

To *A.B.* of

By this summons, which is issued on the application of the applicant *C.D.* of ..... , the applicant applies for an order –

- [1. That the Director of Social Welfare be appointed the guardian ad litem for the purpose of safeguarding the interests of *A.B.* .....]<sup>(2)</sup> .
- 2. That the applicant be authorized to adopt *A.B.* .....
- 3. That the costs of this application be provided for.

Dated the ..... day of .....

This summons was taken out by ..... of ..... , solicitors for *C.D.* whose address is as stated above.

*Notes:*

- (1) Enter the name(s) and surname which the infant is to bear after the adoption.
- (2) Retain this paragraph if the appointment of a guardian ad litem is asked for under Rule [11(3)].

**DRAFT**

FORM C3

**Form 3**

[rule [9]]

*Statement in support of application for a Convention adoption order*<sup>(1)</sup>

[Heading as in Form C1]

1. I, the undersigned, *C.D.*/We, the undersigned, *C.D.* and *E.D.* desire to adopt *A.B.*<sup>(2)</sup> an infant, under the Adoption Ordinance.

2. I am/We are habitually resident in Hong Kong/.....  
(name of foreign country).

3. I am unmarried/a widow/widower/I am married to *E.D.* of ...../We are married to each other and are the persons to whom the attached marriage certificate (or other evidence of marriage) relates.

4. The infant is of the ..... sex and unmarried. He/She was born on the ..... and is the person to whom the attached birth certificate<sup>(3)</sup> relates/was born on or about the ....., in .....<sup>(4)</sup>

5. The infant is the child/adopted child of<sup>(3)</sup> *F.B.* of ..... /whose last known address was ..... /deceased [and *G.B.* of ..... /whose last known address was ..... /deceased]<sup>(5)</sup>.

[6. The guardian of the infant is *H.K.* of ..... /The guardians of the infant are *H.K.* of ..... and *J.B.* of ..... ]<sup>(6)</sup>

[7. *L.M.* (name of putative father if he is required to make payment for the maintenance of the infant) of ..... is liable by virtue of an order or agreement to contribute to the maintenance of the infant]<sup>(7)</sup>.

8. I/We attach a document/documents signifying the consent of *F.B./G.B./H.K./L.M.* .....<sup>(8)</sup> to the making of a Convention adoption order on my/our application.



# DRAFT

[9. I/We request the judge to dispense with the consent of *F.B./G.B./H.K./L.M.* .....<sup>(9)</sup> on the following grounds .....].

10. The infant was received into my/our actual custody on the ..... , from ..... of ..... and has been continuously in my/our actual custody since that date.

11. I/We lodged with the Director of Social Welfare on the ..... day of ..... , notice of my/our intention to apply for a Convention adoption order in respect of the infant.

[12. A certificate as to physical and mental health of the infant, signed by a registered medical practitioner on the ..... is attached]<sup>(10)</sup>.

13. I/We have not received or agreed to receive, and no person has made or given or agreed to make or give to me/us, any payment or other reward in consideration of the adoption [except as follows – .....].

14. I have not made/Neither of us has made a previous application for the adoption of the same or any other infant in Hong Kong or elsewhere [except an application made to the ..... at ..... on the ..... , which was dealt with as follows – .....].

[15. For the purposes of my/our application reference may be made to N.O. of .....]<sup>(11)</sup>.

[16. I/We desire that my/our identity should be kept confidential, and the serial number of this application is .....]<sup>(12)</sup>, or [I/We do not desire that my/our identity should be kept confidential].

17. Further particulars of myself/ourselves are set out in the annex to this statement.

18. If a Convention adoption order is made in pursuance of my/our application, it is proposed that the infant should be known as .....

Dated the ..... day of .....

# DRAFT

.....

.....  
(Usual signature of applicant/applicants)

## ANNEX TO FORM C3

### *Further particulars of applicant or applicants*

#### Particulars of *C.D.*

Name in full (Block capitals) .....  
.....

Address .....  
.....

Occupation .....  
.....

Date of Birth .....  
.....

Relationship (if any) to the infant .....  
.....

#### Particulars of *E.D.*

Name in full (Block capitals) .....  
.....

Address .....  
.....

Occupation .....  
.....

Date of Birth .....  
.....

Relationship (if any) to the infant .....  
.....

---

# DRAFT

## *Notes:*

- (1) This statement must be verified by affidavit, to which the statement, marriage certificate and other documents referred to in the statement should be exhibited.
- (2) Enter the first name(s) and surname as shown in the birth certificate referred to in paragraph 4, if available, otherwise enter name(s) and surname by which the infant was known at the time of the application.
- (3)
  - (a) If the infant has not been adopted, a birth certificate should be attached. If there is no such certificate, a certified copy of the document showing that the persons named in paragraphs 5, 6 and 7 have parental rights over the infant should be attached.
  - (b) If the infant has previously been adopted, do not attach the birth certificate. Instead, a certified copy of the entry in the Adopted Children Register should be attached. If there is no such entry, a certified copy of the document showing that the persons named in paragraphs 5, 6 and 7 have parental rights over the infant should be attached. In any case, the particulars given in paragraph 5 should relate to the parent(s) by adoption.
- (4) Where a birth certificate is not attached, enter the place (including country) of birth if known.
- (5) If the infant is born out of wedlock, the father's name should not be given in this entry; but see paragraph 7.
- (6) This paragraph should be completed only if the infant has a legal guardian other than the father or mother of the infant.
- (7) If the infant is born out of wedlock, enter the name of any person known to the applicant who has been adjudged by an order to be the putative father of the infant or who has acknowledged himself to be the father of the infant and agreed to contribute to his or her maintenance.
- (8) The names to be entered here (or in the following paragraph) are those of the persons named in paragraphs 5, 6 and 7, and (where the application is made by one of two spouses alone) of the spouse of the applicant.
- (9) This paragraph should be completed with the name of any of the persons mentioned in the previous note who has not signified his or her consent. See sections 6 and 20C(4) of the Adoption Ordinance.
- (10) This paragraph needs not be completed if the applicant or either of the applicants is a "relative" of the infant as defined by section 2 of the Adoption Ordinance.
- (11) This paragraph needs not be completed if the applicant or either of the applicants is a "relative" of the infant as defined by section 2 of the Adoption Ordinance. Where it is completed more than one referee may be named if desired.

# DRAFT

- (12) If the applicant wishes his name to be kept confidential, insert serial number obtained in pursuance of rule [7] of the Convention Adoption Rules (L.N. of 2005).

**DRAFT**

FORM C4

Form 4

[rule [9]]

*Specific consent to the adoption of  
an infant named A.B.<sup>(1)</sup>*

Whereas an application is to be made [by *C.D./C.D.* and *E.D.*]<sup>(2)</sup> or [under the serial number .....];

[Whereas *A.B.* (hereinafter called the infant) is not less than 4 weeks old, having been born in ..... on the .....  
....., and is the person to whom the birth certificate<sup>(3)</sup> now produced and shown to be marked “A” relates]<sup>(4)</sup> –

I, the undersigned .....  
.....,  
of ..... being<sup>(5)</sup> –

the mother<sup>(3)</sup> of the infant/  
the father<sup>(3)</sup> of the infant/  
a guardian of the infant/  
a person liable by virtue of any order or agreement to contribute to the maintenance of the infant/  
a person (acting on behalf of a body) having parental rights in respect of the infant/  
the spouse of *C.D.*

hereby state as follows –

(1) I understand that once the infant is adopted, a permanent parent-child relationship between the adopter and the infant will be created.

(2) I understand that, when the application for a Convention adoption in respect of *A.B.* is made, this document may be used as evidence of my consent to the adoption<sup>(6)</sup>.

(3) I hereby consent to the adoption of the infant by [*C.D./C.D.* and *E.D.*].

.....  
(Signature)

Signed at ..... on .....  
..... by .....  
[who satisfied me that he/she fully understood the nature of the foregoing

# DRAFT

statement and agreed to the placement of the infant for adoption]<sup>(4)</sup>.

Before me (*Signature*) .....

(*Address*) .....

.....  
(*Description*)<sup>(6)</sup> .....

---

*Notes:*

- (1) Insert name as known to the consenting party.
- (2) Where the name of applicant is not known to the consenting party, and a serial number has been obtained for the application under rule [7] of the Convention Adoption Rules (L.N. of 2005), complete the entry contained in the second square brackets.
- (3) (a) If the infant has not been adopted, a birth certificate should be attached. If there is no such certificate, a certified copy of the document showing that the consenting party has parental rights over the infant should be attached.  
(b) If the infant has previously been adopted, do not attach the birth certificate. Instead, a certified copy of the entry in the Adopted Children Register should be attached. If there is no such entry, a certified copy of the document showing that the consenting party has parental rights over the infant should be attached; and the description of the consenting party should include the words “by adoption” or “經領養” where appropriate.
- (4) Delete the words in square brackets except where the consenting party is the mother of the infant.
- (5) Delete all but one of the description which follow.
- (6) The document will not be admissible as evidence unless the signature is attested by a commissioner for oaths (or, if executed at a place outside Hong Kong, by any person for the time being authorized by law in that place to administer an oath for any judicial or other legal purpose). In all cases the document if so attested will be admissible without further proof of execution.

**DRAFT**

FORM C5

Form 4B

[rule [9]]

*Specific consent to the adoption of an infant  
named A.B.<sup>(1)</sup> by a step-parent  
(as sole applicant)*

Whereas an application (by a sole applicant) is to be made [by ..... being the step-parent of the infant .....] or [ <sup>(2)</sup>under the serial number .....];

[Whereas the infant is not less than 4 weeks old, having been born in ..... on the ..... , and is the person to whom the birth certificate<sup>(3)</sup> now produced and shown to be marked "A" relates]<sup>(4)</sup> –

I, the undersigned ..... ,  
of ..... being the father/mother\* of the infant [as well as the spouse of the applicant .....]<sup>(5)</sup> hereby state as follows –

(1) I understand that once the infant is adopted, a permanent parent-child relationship between the adopter and the infant will be created.

(2) I understand that, when the application for a Convention adoption in respect of the infant is made, this document may be used as evidence of my consent to the adoption<sup>(6)</sup>.

(3) I hereby consent to the adoption of the infant by .....

.....  
(Signature)

Signed at .....on .....  
..... by .....  
who satisfied me that he/she\* fully understood the nature of the foregoing statement and the effect of the infant being adopted by .....

Before me (Signature) .....

# DRAFT

(Address) .....

.....  
(Description)<sup>(6)</sup> .....

\* Delete as appropriate

---

*Notes:*

- (1) Insert name as known to the consenting party.
- (2) Where a serial number has been obtained for the application under rule [7] of the Convention Adoption Rules (L.N. of 2005), complete the entry contained in the second square brackets.
- (3) (a) If the infant has not been adopted, a birth certificate should be attached. If there is no such certificate, a certified copy of the document showing that the consenting party has parental rights over the infant should be attached.  
(b) If the infant has previously been adopted, do not attach the birth certificate. Instead, a certified copy of the entry in the Adopted Children Register should be attached. If there is no such entry, a certified copy of the document showing that the consenting party has parental rights over the infant should be attached; and the description of the consenting party should include the words “by adoption” or “經領養” where appropriate.
- (4) Delete the words in square brackets except where the consenting party is the mother of the infant.
- (5) Delete the words in square brackets except where the consenting party is the spouse of the applicant.
- (6) The document will not be admissible as evidence unless the signature is attested by a commissioner for oaths (or, if executed at a place outside Hong Kong, by any person for the time being authorized by law in that place to administer an oath for any judicial or other legal purpose). In all cases the document if so attested will be admissible without further proof of execution.



# DRAFT

FORM C6

Form 6

[rule [19]]

*Notice of hearing of application for a Convention adoption order  
in respect of an infant named A.B.* <sup>(1)</sup>

To ..... of ..... <sup>(2)</sup>.

Whereas an application has been made [by *C.D./C.D.* and *E.D.*] <sup>(3)</sup> or [under the serial number .....];

And whereas I, ..... of ..... am the guardian ad litem of the infant;

Take notice –

A. <sup>(4)</sup> [That the application will be heard at the Court of First Instance, High Court, Hong Kong on the ....., at the hour of ..... in the ..... noon, and that you may appear to show cause why the Convention adoption order should not be made.]

B. <sup>(4)</sup> [That if you do not consent to the making of the order, you should notify me on or before ....., in order that a date and time may be fixed for you to attend and show cause why the Convention adoption order should not be made. The form below may be detached and used for this purpose.]

Dated the ..... day of .....

*(Signature of guardian ad litem)* .....

---

*Notes:*

- (1) Enter the name(s) and surname as known to the person to whom the notice is given and also any other name(s) by which the infant is known.
- (2) It is not necessary to serve this notice on –
  - (a) (where the adoption is one in respect of which Hong Kong acts as the receiving State) the parent of the infant; or
  - (b) (where the adoption is one in respect of which Hong Kong acts as the State of origin) the parent of the infant who has given



**DRAFT**

FORM C7

Form 7

[rule [22]]

*Convention adoption order in respect of an infant*

[Heading as in Form C1]

Application having been made by *C.D.*, by occupation ..... and habitually resident at ..... [and *E.D.* his wife] for a Convention adoption order under the Adoption Ordinance, authorizing him/her/them to adopt *A.B.*, an infant, the child/adopted child of *F.B./F.B.* and *G.B.*;

And *A.B.* being of the ..... sex, and never having been married;

And the applicant/one of the applicants  
being the mother/father of the infant/  
being the step-parent of the infant/  
being a relative of the infant within the meaning of the Ordinance and  
[both applicants] having attained the age of 21 years/  
having attained the age of 25 years and the other applicant having  
attained the age of 21 years;

[And the names by which the infant is to be known being *P.D.*;]<sup>(1)</sup>

[And it having been proved to the satisfaction of the judge that the infant is identical with *A.B.*, to whom the entry numbered ..... and made on the ....., in the registers of births in the registration office at ..... relates;]<sup>(2)</sup>

And the [probable]<sup>(3)</sup> date of the birth of the infant is the .....

[And the infant having been previously the subject of an adoption order dated the ....., of which particulars are entered in the Adopted Children Register]<sup>(4)</sup>;

And all the consents required by the Ordinance being obtained or dispensed with;

**DRAFT**

It is ordered that the applicant/applicants be authorized to adopt the infant;

[And the following payment or reward is sanctioned –

.....;]

[And as regards costs it is ordered that –

.....;]

And it is directed that the Registrar of Births and Deaths shall make in the Adopted Children Register an entry recording the Convention adoption in accordance with the particulars set out in the Schedule to this order;

[And it is further directed that the Registrar of Births and Deaths shall cause the entry in the registers of births to be marked with the word “adopted” or the words “受領養”<sup>(2)</sup> ;

[And it is further directed that the Registrar of Births and Deaths shall cause the previous entry in the Adopted Children Register relating to the infant to be marked with the word “re-adopted” or the words “再受領養”<sup>(4)</sup> .

Dated the ..... day of .....

.....  
*Registrar, Court of First Instance*

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## SCHEDULE

1.	Date <sup>(5)</sup> and country of birth of child	
2.	Surname and name of child <sup>(6)</sup>	
3.	Sex of child	
4.	Surname and name, address and occupation of adopter(s)	
5.	Date of the Convention adoption order	

*Notes:*

- (1) Delete where there is no change of name.
- (2) Delete this entry –
  - (a) if the infant is not identified with a person whose birth is registered in the registers of births; or
  - (b) if an entry in respect of the infant has been made in the Adopted Children Register.
- (3) Delete “probable” where the precise date of the infant’s birth is proved.
- (4) Delete except where an entry in respect of the infant has been made in the Adopted Children Register.
- (5) Where a probable date of birth is specified in the body of the order, enter that date without qualification. If the infant is one of twins, include, if possible, the hour as well as the date of birth.
- (6) Where there is a change, enter only the name by which the infant is to be known.

**DRAFT**

FORM C8

[rule [22]]

**CERTIFICATE OF CONFORMITY OF INTERCOUNTRY  
ADOPTION**

*Article 23 of the Hague Convention of 29 May 1993  
on Protection of Children and Co-operation  
in Respect of Intercountry Adoption*

1. The undersigned authority:  
(Name and address of the competent authority of the State of adoption)

.....  
.....  
.....  
.....  
.....

2. Hereby certifies that the child:

Family name: .....  
First name(s): .....  
Sex: Male [  ] Female [  ]  
Date of birth: day ..... month ..... year .....  
Place of birth: .....  
Habitual residence: .....

3. Was adopted according to the decision of the following authority:

.....  
Date of the decision: .....  
Date at which the decision became final: .....

**DRAFT**

4. By the following person(s):

- (a) Family name of the adoptive father: .....  
First name(s): .....  
Date of birth: day ..... month ..... year .....  
Place of birth: .....  
Habitual residence at the time of the adoption: .....  
.....
- (b) Family name of the adoptive mother: .....  
First name(s): .....  
Date of birth: day ..... month ..... year .....  
Place of birth: .....  
Habitual residence at the time of the adoption: .....  
.....

5. The undersigned authority certifies that the adoption was made in accordance with the Convention and that the agreements under Article 17, sub-paragraph *c*, were given by:

- (a) Name and address of the Central Authority<sup>(1)</sup> of the State of origin: .....  
.....  
.....  
Date of the agreement: .....
- (b) Name and address of the Central Authority<sup>(1)</sup> of the receiving State: .....  
.....  
.....  
Date of the agreement: .....

6.  The adoption had the effect of terminating the pre-existing legal parent-child relationship.
- The adoption did not have the effect of terminating the pre-existing legal parent-child relationship.

Done at ....., on .....

.....  
Signature / Seal

# DRAFT

*Note:*

- (1) Or the public authority or accredited body referred to in Article 22(1) of the Convention.



# DRAFT

## SCHEDULE 2

[rule [12]]

### ADDITIONAL MATTERS SUBJECT TO INVESTIGATION AND REPORT BY GUARDIAN AD LITEM

#### PART 1

##### THE APPLICANT

1. In the case of a joint application, how long the applicants have been married.
2. In the case of an application by one only of 2 spouses –
  - (a) whether the other spouse consents to the application; and
  - (b) why he or she does not join in the application.
3. What other children (including adopted children) the applicant has.
4. What is the age and sex of all children living in the home of the applicant, and what is their relationship to the applicant.
5. What number of living rooms and bedrooms are contained in the home of the applicant, and what is the condition of the home.
6. What are the means of the applicant.
7. Whether the applicant suffers or has suffered from any serious illness, and whether there is any history of tuberculosis, epilepsy or mental illness in his or her family.
8. Whether any person specified in the applicant's statement as a person to whom reference may be made is a responsible person and recommends the applicant without reservation.
9. Whether the applicant understands that a Convention adoption order is irrevocable and that the order if made will render him or her responsible for the maintenance and upbringing of the infant.

#### PART 2

##### THE INFANT

10. Whether the infant has any right to or interest in any property.

# DRAFT

11. Whether the infant (if of an age to understand the effect of a Convention adoption order) wishes the order to be made.

## PART 3

### THE PARENTS

12. Whether the mother consents to the adoption and identifies the birth certificate (if any) attached to the applicant's statement as the birth certificate of the infant.

13. Whether the father consents to the adoption.

14. If the infant is born out of wedlock, whether an order has been made adjudging any person to be the putative father of the infant, or an agreement to contribute to the maintenance of the infant has been made by a person acknowledging himself to be the father of the infant, and in either case whether that person consents to the adoption.

15. When did the parent or parents part with the infant, and to whom.

16. What are the reasons of the parent or parents for consenting to the adoption, and whether his or their consent is given without pressure from other persons.

17. Whether the parent, or each of the parents, understands that a Convention adoption order is irrevocable, and that the order if made will deprive him or her of all rights in respect of the maintenance and upbringing of the infant.

18. Where the applicant's statement requests the judge to dispense with the consent of the parent, or either of the parents, on the ground that he or she cannot be found, what steps have been taken to trace him or her.

# DRAFT

Chief Justice

2005

## **Explanatory Note**

These Rules are made to provide for the court rules and procedures for handling adoptions to be made –

- (a) under the Adoption Ordinance (Cap. 290) (“Ordinance”) and
  - (b) in accordance with the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption done at the Hague on 29 May 1993 (“Convention”).
2. Rule 3 makes it clear that these Rules apply only to an adoption to which the Convention applies.
3. Rules 4 and 6 provide for the procedures to be followed for making an adoption application.
4. Rules 9 and 10 set out the documents that must be submitted to the court in support of an adoption application and the timing for filing such documents.
5. Rules 11 and 12 deal with the appointment of a guardian ad litem and the duties of such guardian, which includes investigating all circumstances relevant to the proposed adoption.
6. Rule 17 sets out the procedures for making an application under section 23B of the Ordinance for an order for passing the care and control of an infant with a view to the infant being adopted.

7. Rules 18, 19, 20 and 21 deal with the hearing of the adoption application and the conduct of the adoption proceedings.
8. Rules 22, 23 and 24 provide for the respective forms of the Convention adoption order and Convention adoption certificate and the parties to whom copies of such order and certificate could be given.
9. Rule 28 provides for the procedure for an application for a direction under section 20G of the Ordinance where an adoption is not a full adoption.
10. Rule 29 provides for the procedure for making an application for a declaration under section 20H of the Ordinance for non-recognition of an adoption on public policy ground.
11. Schedule 1 provides for the forms to be used in relation to an adoption application and the forms for the adoption order and the adoption certificate. Schedule 2 provides for the additional matters that are subject to investigation by the guardian ad litem.

# DRAFT

## Annex C

### CONVENTION ADOPTION (EXCLUSION) ORDER

(Made by the Secretary for Health, Welfare and Food under section 20J of the Adoption Ordinance (Cap. 290))

**1. Commencement**

This Order shall come into operation on .

**2. Adoptions that are excluded from the meaning of “Convention adoption”**

It is hereby declared that adoptions made in accordance with an agreement concluded by application of paragraph 2 of Article 39 of the Convention shall be excluded from the meaning of “Convention adoption” for the purposes of the Ordinance.

Secretary for Health, Welfare and Food

2005

#### Explanatory Note

Under paragraph 2 of Article 39 of the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption done at the Hague on 29 May 1993 (“Convention”), a Contracting State may enter into an agreement that derogate from certain provisions of the Convention. This Order declares that adoptions made in accordance with such an agreement shall be excluded from the meaning of “Convention adoption” as defined in section

# **DRAFT**

20A(1) of the Adoption Ordinance (Cap. 290) as added by section 25 of the Adoption (Amendment) Ordinance 2004 (28 of 2004).

**INTERCOUNTRY ADOPTION (CONTRACTING STATES)  
ORDER**

(Made by the Secretary for Health, Welfare and Food under  
section 20D of the Adoption Ordinance (Cap. 290))

**1. Commencement**

This Order shall come into operation on .

**2. Contracting States**

(1) It is hereby declared that –

(a) a State specified in column 1 of Part 1 of the Schedule is a Contracting State; and

(b) a State specified in column 1 of Part 2 of the Schedule is a Contracting State in respect of the corresponding territorial unit or units specified in column 2 of Part 2 of the Schedule.

(2) The date of the coming into effect of the Convention between Hong Kong and a State specified in column 1 of the Schedule is the date set out opposite to that State in column 2 of Part 1 or column 3 of Part 2 (as the case may be) of the Schedule.

SCHEDULE

[s. 2]

LIST OF CONTRACTING STATES

PART 1

Column 1

Column 2

Contracting States

Date of coming into effect of  
the Convention

The Republic of Albania  
The Principality of Andorra  
The Republic of Austria  
The Azerbaijani Republic  
The Republic of Belarus  
The Kingdom of Belgium  
The Republic of Bolivia  
The Federative Republic of Brazil  
The Republic of Bulgaria  
The Burkina Faso  
The Republic of Burundi  
The Republic of Chile  
The Republic of Colombia  
The Republic of Costa Rica  
The Republic of Cyprus  
The Czech Republic  
The Kingdom of Denmark  
The Republic of Ecuador  
The Republic of El Salvador



The Republic of Estonia  
The Republic of Finland  
Georgia  
The Federal Republic of Germany  
The Republic of Guatemala  
The Republic of Guinea  
The Republic of Hungary  
The Republic of Iceland  
The Republic of India  
The State of Israel  
The Republic of Italy  
The Republic of Latvia  
The Republic of Lithuania  
The Grand Duchy of Luxembourg  
The Republic of Madagascar  
The Republic of Malta  
The Republic of Mauritius  
The United States of Mexico  
The Republic of Moldova  
The Principality of Monaco  
Mongolia  
The Kingdom of the Netherlands  
New Zealand  
The Kingdom of Norway  
The Republic of Panama  
The Republic of Paraguay  
The Republic of Peru  
The Republic of the Philippines  
The Republic of Poland

The Portuguese Republic  
 Romania  
 The Republic of San Marino  
 The Slovak Republic  
 The Republic of Slovenia  
 The Republic of South Africa  
 The Kingdom of Spain  
 The Democratic Socialist Republic  
     of Sri Lanka  
 The Kingdom of Sweden  
 The Swiss Confederation  
 The Kingdom of Thailand  
 The Republic of Turkey  
 The Oriental Republic of Uruguay  
 The Republic of Venezuela

PART 2

Column 1	Column 2	Column 3
Contracting States	Territorial unit or units in respect of which a declaration has been made under Article 45 of the Convention	Date of coming into effect of the Convention
The Commonwealth of Australia Canada	All the territorial units of Australia Alberta	

	British Columbia
	Manitoba
	New Brunswick
	Newfoundland and Labrador
	Northwest Territories
	Nova Scotia
	Nunavut
	Ontario
	Prince Edward Island
	Quebec
	Saskatchewan
	Yukon Territory
The French Republic	The whole of the territory of the French Republic, with the exception of its overseas territories
The United Kingdom of Great Britain and Northern Ireland	England Wales Scotland Northern Ireland Isle of Man

Secretary for Health, Welfare and Food

2005

**Explanatory Note**

This Order declares that each of the States specified in the Order is a Contracting State so that the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption done at the Hague on 29 May 1993 (“Convention”) shall apply to an adoption between Hong Kong and a Contracting State in relation to an application made under the Convention.