

For information

Information Note Only

Bills Committee on Adoption (Amendment) Bill 2003

Arrangements for Adoptions between the HKSAR and the Mainland

Purpose

As requested by Members at the meeting on 7 January 2004, this paper provides background information on the adoption arrangements between the HKSAR and the Mainland.

Intracountry Adoption outside the Scope of the Amendment Bill

2. The Adoption (Amendment) Bill 2003 (the Amendment Bill) seeks to give effect to the Hague Convention, amongst others. As the Hague Convention only handles intercountry adoptions, the arrangements between the HKSAR and the Mainland, which are intracountry adoptions, are **outside the scope of the Amendment Bill**. Nonetheless, we set out the information below for Members' reference.

Background

3. At present, our legislation does not have explicit provisions for adoption arrangements between the HKSAR and the Mainland. Section 5(6) of the Adoption Ordinance (Cap. 290) requires that "an adoption shall **not** be made in respect of any infant unless both the applicant and the infant **reside** in Hong Kong".

Adoption Requirements and Procedures

(a) Adoption in the Mainland of a Mainland child by a HKSAR resident

4. Adoption in the Mainland is governed by the Adoption Law of the People's Republic of China (PRC) (中華人民共和國收養法) at

Annex A¹. The information below is no more than our observation of the requirements as provided under the Mainland legislation to the best of our knowledge and understanding. The exact interpretation should however be left to the expert opinion of the competent Mainland authorities and lawyers qualified to do so.

5. Article 15 of the Adoption Law of the PRC provides that adoption shall be registered with the civil affairs department at or above the county level. If the parties involved in the adoptive relationship wish to enter into an agreement on adoption, they may conclude such an agreement. If the adopter and/or the person placing out the child for adoption (送養人) wish(es) that the adoption be notarized, it shall be done accordingly².

6. Chinese citizens residing in the HKSAR intending to adopt Mainland children should follow the adoption procedures set out in the Provisions on Jurisdiction over Registration of Adoption by Overseas Chinese and Chinese Citizens Residing in the Regions of Hong Kong, Macao and Taiwan and on the Credentials and Certifying Papers Needed to be Submitted (華僑以及居住在香港、澳門、臺灣地區的中國公民辦理收養登記的管轄以及所需要出具的證件和證明材料的規定) (Annex D) and directly contact the relevant civil affairs department of the place where the permanent residence of the adoptee is registered (Article 2 of the

¹ Please see also Measures for Registration of Adoption of Children by Chinese Citizens (中國公民收養子女登記辦法) at Annex B and Measures for Registration of Adoption of Children by Foreigners in the PRC (外國人在中華人民共和國收養子女登記辦法) at Annex C.

² Article 21 of the Adoption Law of the PRC provides that where a foreigner wishes to adopt a child in the PRC, the matter shall be subject to examination and approval of the competent authorities of the adopter's resident country in accordance with the law of that country. The adopter shall conclude a written agreement with the person who places out the child for adoption and register the adoption with the civil affairs department at the provincial level. If the adopter and/or the person placing out the child for adoption wish(es) that the adoption be notarized, it shall be done with a qualified/designated notary agency.

Provisions)³.

7. All these adoptions are made in the Mainland (with HKSAR residents approaching the relevant authorities in the Mainland direct for the completion of formalities), **not** made in the HKSAR. The Social Welfare Department (SWD) has no roles to play. Also, we do not have any statistics on such adoption cases.

(b) Adoption in the HKSAR of a HKSAR child by a Mainlander

8. It is uncommon for Mainland residents to be able to satisfy the ‘residence’ requirements of section 5(6) of the Adoption Ordinance. Decided cases show that ‘residence’ requires some degree of permanence of abode and so transient visitors to the HKSAR would not satisfy this requirement. A Mainland visitor who travels to the HKSAR intending to adopt a child could not be said to have satisfied the ‘residence’ requirement.

9. In the unlikely event that such cases are encountered in the HKSAR (a Mainlander able to satisfy the ‘residence’ requirement and stay in the HKSAR long enough to complete the formalities for the entire adoption process (say in related adoption)), they will have to go through the existing arrangements for local adoptions. So far, no such adoption cases have ever been known to SWD.

Members’ Concern

10. Members have raised a question on the possibility of a HKSAR child being taken by one parent without the consent of the other parent to the Mainland for adoption.

³ Annex D does not apply to non-Chinese-citizens residing in the HKSAR. There are separate requirements in the Adoption Law of the PRC and separate procedures in the Measures for Registration of Adoption of Children by Foreigners in the PRC (外國人在中華人民共和國收養登記辦法) at Annex C, governing the adoption of a Mainland child by a foreigner. In practice, prospective adopters should first approach the China Centre of Adoption Affairs (CCAA) (中國收養中心), a non-profit institution approved by the CPG as solely responsible for carrying out the service work in such adoptions.

11. We are given to understand that generally⁴, the adoptee has to have registered permanent residence (戶籍) in the Mainland, before the relevant authorities in the Mainland will process an application for adoption by a Mainlander. It is uncommon for HKSAR children to be able to satisfy this requirement of ‘registered permanent residence’, save under certain circumstances⁵. So far, no such adoption cases have ever been known to SWD.

12. Subject of course to paragraph 11 (i.e. depending on circumstances, such an application may not be processed by the relevant authorities in the Mainland anyway), the following are also relevant -

(a) **the Mainland:** According to Article 10 under Chapter 2 of the Adoption Law, the child’s birth parents are required to make the adoption arrangement **jointly** for the child, unless one of the parents is untraceable, and that the adoption should be subject to other requirements stated in Articles 4 to 9 of the Adoption Law.

(b) **the HKSAR:** Under clause 29 (section 23B) of the Amendment Bill, an order from the Court is required, before a HKSAR child can be taken outside the HKSAR (including to the Mainland) for adoption by an unrelated person. The Court will make an order, only if it is satisfied that –

(i) under section 5A(1) of the Adoption Ordinance, the child is free for adoption; or

(ii) the consent of birth parents/guardian(s) for the child to be adopted has been given; and

that the order will be in the best interests of the child.

13. In addition, the Report of the Law Reform Commission of Hong Kong on “International Parental Child Abduction”, containing

⁴ For abandoned children whose parents cannot be ascertained or found, it is a separate matter.

⁵ for example, a child born in the Mainland (with one parent being a Mainlander and one parent being a HKSAR permanent resident) who has yet to obtain a One-Way Permit to leave the Mainland for the HKSAR for settlement in the HKSAR might still have registered permanent residence

information on “preventing the removal of the child from Hong Kong – civil law” and “preventing the removal of the child from Hong Kong – criminal law”, is relevant. The parent may consider applying for an injunction order to prevent the other parent from taking away the child from the HKSAR without his/her consent to the Mainland for adoption. Where the child has already been taken out of the HKSAR to the Mainland, it is very difficult for the other parent to secure his return. The HKSAR Government can seek the co-operation of the relevant Mainland authorities to help find the child and encourage the other parent to return the child to the HKSAR.

Fulfilling Parental Responsibilities

14. Under section 13 of the Adoption Ordinance, once an adoption order recognized by the HKSAR is made, all rights, duties, obligations and liabilities of the parents or guardians of the infant in relation to the future custody, maintenance and education of the infant, including all rights to appoint a guardian to consent or give notice of dissent to marriage, shall be extinguished, and all such rights, duties, obligations and liabilities shall vest in the adopter. HKSAR residents who have adopted Mainland children are therefore expected to fulfil such parental responsibilities.

15. In this connection, Members have asked whether the Court’s ruling that Mainland children adopted by HKSAR residents are not regarded as these residents’ children by birth under Article 24 of the Basic Law has added difficulty to adoptive parents in fulfilling their responsibility in this regard.

16. Article 22(4) of the Basic Law provides that “for entry into the HKSAR, people from other parts of China must apply for approval. Among them, the number of persons who enter the Region for the purpose of settlement shall be determined by the competent authorities of the Central People’s Government after consulting the government of the Region”. According to the Interpretation of the Standing Committee of the National People’s Congress of Articles 22(4) and 24(2)(3) of the Basic Law adopted on 26 June 1999, the provisions of Article 22(4) mean that people from other parts of China including persons of Chinese

nationality born outside the HKSAR of HKSAR permanent residents who wish to enter the HKSAR for whatever reason must obtain approval from the Chinese authorities before they can enter the HKSAR.

17. At present, arrangements for the entry of Mainland residents for settlement in the HKSAR are regulated under the One-way Permit (OWP) mechanism on the basis of Article 22(4) of the Basic Law. Children of HKSAR residents residing in the Mainland, **irrespective of whether they are adopted children or not**, are required to apply for OWPs for settlement in the HKSAR. Whilst waiting their turn for OWPs, these children may apply for Two-way Permits to visit their parents in the HKSAR.

18. The Court of Final Appeal ruled in the Tam Nga Yin case of 20 July 2001 that persons adopted by HKSAR permanent residents within Article 24(2)(1) or 24(2)(2) of the Basic Law are not eligible for right of abode under Article 24(2)(3)⁶. Even though children adopted in the Mainland are not eligible for right of abode under Article 24(2)(3), they may apply for OWPs to come to the HKSAR to join their adoptive parents. Under the OWP Scheme, children under the age of 18 may apply to join their parents in Hong Kong. Those aged 18 or above may apply to take care of their parents aged 60 or above who have no other children in the HKSAR. The same criteria are applicable to adopted children and birth children.

19. Persons who wish to adopt children in the Mainland should be aware of the relevant procedures under the OWP Scheme and make suitable arrangements before they adopt a child in the Mainland.

⁶ It is stated under Article 24(2)(3) of the Basic Law that persons of Chinese nationality born outside the HKSAR of those residents listed in Articles 24(2)(1) and 24(2)(2) are permanent residents of HKSAR. The Court of Final Appeal ruled in 2000 (the case of Tam Nga Yin) that to qualify as a permanent resident under Article 24(2)(3) of the Basic Law, the person concerned must satisfy three requirements : (1) must be a Chinese citizen; (2) must have been born outside HKSAR; and (3) at least one of the parents must have been a permanent resident within Article 24(2)(1) or 24(2)(2) of the Basic Law at the time of birth of the person concerned; and that the relationship in the third requirement does not cover that arising from adoption.

Presentation

20. Members may wish to note the above background information for reference.

Health, Welfare and Food Bureau
March 2004

Appendix:

Adoption Law of the People's Republic of China

(Adopted at the 23rd Meeting of the Standing Committee of the Seventh National People's Congress on December 29, 1991 and revised in accordance with the Decision on Revising the Adoption Law of the People's Republic of China adopted at the 5th Meeting of the Standing Committee of the Ninth National People's Congress on November 4, 1998)

Contents

<i>Chapter I</i>	General Provisions
<i>Chapter II</i>	Establishment of an Adoptive Relationship
<i>Chapter III</i>	Validity of Adoption
<i>Chapter IV</i>	Termination of an Adoptive Relationship
<i>Chapter V</i>	Legal Responsibility
<i>Chapter VI</i>	Supplementary Provisions

Chapter I

General Provisions

Article 1 This Law is enacted to protect the lawful adoptive relationship and to safeguard the rights of parties involved in the adoptive relationship.

Article 2 Adoption shall be in the interest of the upbringing and growth of adopted minors, with the lawful rights and interests of both adoptees and adopters safeguarded, in adherence to the principles of

equality and voluntariness, and not in contravention of social morality.

Article 3 Adoption shall not contravene laws and regulations on family planning.

Chapter II

Establishment of an Adoptive Relationship

Article 4 Minors under the age of 14, as enumerated below, may be adopted:

- (1) orphans bereaved of parents;
- (2) abandoned infants or children whose parents cannot be ascertained or found; or
- (3) children whose parents are unable to rear them due to unusual difficulties.

Article 5 The following citizens or institutions shall be entitled to place out children for adoption:

- (1) guardians of an orphan;
- (2) social welfare institutions; or
- (3) parents unable to rear their children due to unusual difficulties.

Article 6 Adopters shall meet simultaneously the following requirements:

- (1) childless;
- (2) capable of rearing and educating the adoptee;
- (3) suffering no such disease as is medically regarded as unfit for adopting a child; and
- (4) having reached the age of 30.

Article 7 A person may adopt a child belonging to a collateral relative by blood of the same generation and up to the third degree of kinship, irrespective of the restrictions specified in Item (3), Article 4; Item (3), Article 5 and Article 9 of this Law as well as the restriction that the adoptee shall be under the age of 14.

An overseas Chinese, in adopting a child belonging to a collateral relative by blood of the same generation and up to the third degree of kinship, may even be not subject to the adopter's childless status.

Article 8 The adopter may adopt one child only, male or female.

Orphans, disabled children, or abandoned infants and children whose parents cannot be ascertained or found and who are under the care of a

social welfare institution may be adopted irrespective of the restrictions that the adopter shall be childless and that he or she may adopt one child only.

Article 9 Where a male person without spouse adopts a female child, the age difference between the adopter and the adoptee shall be no less than 40 years.

Article 10 Where the parents intend to place out their child for adoption, they shall act in concert. If one parent cannot be ascertained or found, the other parent may place out the child for adoption alone.

Where a person with spouse adopts a child, the husband and wife shall adopt the child in concert.

Article 11 Adoption of a child and the placing out of the child for the adoption shall both take place on a voluntary basis. Where the adoption involves a minor aged 10 or more, the consent of the adoptee shall be obtained.

Article 12 If the parents of a minor are both persons without full civil capacity, the guardian(s) of the minor may not place out him (her) for adoption, except when the parents may do serious harm to the minor.

Article 13 Where a guardian intends to place out an orphaned minor for adoption, the guardian shall obtain the consent of the person who has obligations to support the orphan. Where the person who has obligations to support the orphan disagrees to place out the orphan for adoption, and the guardian is unwilling to continue the performance of his guardianship, it is necessary to change the guardian in accordance with the General Principles of the Civil Law of the People's Republic of China.

Article 14 A step-father or step-mother may, with the consent of the father or mother of a child, adopt the child as his or her step-son or step-daughter, and may be subject to no restrictions specified in Item (3), Article 4; Item (3), Article 5 and Article 6 of this Law, nor the restrictions that the adoptee shall be under the age of 14 and that only one child may be adopted.

Article 15 The adoption shall be registered with the civil affairs department of the people's government at or above the county level. The adoptive relationship shall be established as of the date of registration.

Where an abandoned infant or child whose biological parents cannot be ascertained or found is adopted, the civil affairs department in charge of registration shall make an announcement prior to the registration.

If the parties involved in the adoptive relationship wish to enter into an agreement on adoption, they may conclude such an agreement.

If the parties or one party involved in the adoptive relationship wishes that the adoption be notarized, it shall be done accordingly.

Article 16 After the adoptive relationship is established, the public security organ shall, in accordance with the relevant regulations of the State, carry out registration of residence for the adoptee.

Article 17 Orphans or children whose parents are unable to rear them may be supported by relatives or friends of their parents.

The adoptive relationship shall not apply to the relationship between the supporter and the supported.

Article 18 Where a spouse places out a minor child for adoption after the death of the other spouse, the parents of the deceased shall have the priority in rearing the child.

Article 19 Persons having placed out a child for adoption may not bear any more child, in violation of the regulations on family planning, on the ground of having placed out their child for adoption.

Article 20 It is strictly forbidden to buy or sell a child or to do so under the cloak of adoption.

Article 21 A foreigner may, in accordance with this Law, adopt a child (male or female) in the People's Republic of China.

Where a foreigner wishes to adopt a child in the People's Republic of China, the matter shall be subject to examination and approval of the competent authorities of the adopter's resident country in accordance with the law of that country. The adopter shall provide papers certifying such particulars of the adopter as age, marital status, profession, property, health and whether ever subjected to criminal punishment, which are issued by the competent agencies of the country to which the adopter belongs. Such certifying papers shall be authenticated by a foreign affairs institution of the country to which the adopter belongs or by an agency authorized by the said institution, and by the embassy or consulate of the People's Republic of China stationed in that country concerned. The adopter shall conclude a written agreement with the person who places out the child for adoption and register in person the adoption with a civil affairs department of the people's government at the provincial level.

If the parties or one party involved in the adoptive relationship wishes that the adoption be notarized, it shall be done with a notary agency that is qualified to handle foreign-related notarization and is designated by the administrative department of justice under the State Council.

Article 22 When the adopter and the person placing out the child for adoption wish to make a secret of the adoption, others shall respect their wish and shall not make a disclosure thereof.

Chapter III

Validity of Adoption

Article 23 As of the date of establishment of the adoptive relationship, the legal provisions governing the relationship between parents and children shall apply to the rights and duties in the relationship between adoptive parents and adopted children; the legal provisions governing the relationship between children and close relatives of their parents shall apply to the rights and duties in the relationship between adopted children and close relatives of the adoptive parents.

The rights and duties in the relationship between an adopted child and his or her parents and other close relatives shall terminate with the establishment of the adoptive relationship.

Article 24 An adopted child may adopt his or her adoptive father's or adoptive mother's surname, and may also retain his or her original surname, if so agreed through consultation between the parties concerned.

Article 25 Any act of adoption contravening the provisions of Article 55 of the General Principles of the Civil Law of the People's Republic of China and those of this Law shall be of no legal validity.

Any act of adoption ruled to be invalid by a people's court shall be of no legal validity from the very start of the act.

Chapter IV

Termination of an Adoptive Relationship

Article 26 No adopter may terminate the adoptive relationship before the adoptee comes of age, except when the adopter and the person having placed out the child for the adoption agree to terminate such relationship. If the adopted child involved reaches the age of 10 or more, his or her consent shall be obtained.

Where an adopter fails to perform the duty of rearing the adoptee or

commits maltreatment, abandonment, or other acts of encroachment upon the lawful rights of the minor adopted child, the person having placed out the child for adoption shall have the right to demand termination of the adoptive relationship. Where the adopter and the person having placed out the child for adoption fail to reach an agreement thereon, a suit may be brought in a People's Court.

Article 27 Where the relationship between the adoptive parents and an adult adopted child deteriorates to such a degree that their living together in a same household becomes impossible, they may terminate their adoptive relationship by agreement. In the absence of an agreement, they may bring a suit in a People's Court.

Article 28 Where the parties agree to terminate the adoptive relationship, they shall register the termination of the adoptive relationship with a civil affairs department.

Article 29 Upon termination of an adoptive relationship, the rights and duties in the relationship between an adopted child and his or her adoptive parents and their close relatives shall also terminate, and the rights and duties in the relationship between the child and his or her parents and their close relatives shall be restored automatically. However, with respect to the rights and duties in the relationship between an adult adopted child and his or her parents and their close relatives, it may be decided through consultation as to whether to restore them.

Article 30 Upon termination of an adoptive relationship, an adult adopted child who has been reared by the adoptive parents shall provide an amount of money to support the adoptive parents who have lost ability to work and are short of any source of income. If the adoptive relationship is terminated on account of the maltreatment or desertion of the adoptive parents by the grown-up adopted child, the adoptive parents may demand a compensation from the adopted child for the living and education expenses paid during the period of adoption.

If the parents of an adopted child request the termination of the adoptive relationship, the adoptive parents may demand an appropriate compensation from the parents for the living and education expenses paid during the period of adoption, except if the adoptive relationship is terminated on account of the maltreatment or desertion of the adopted child by the adoptive parents.

Chapter V

Legal Responsibility

Article 31 Whoever abducts and trafficks in a child under the cloak of adoption shall be investigated for criminal responsibility in accordance with law.

Whoever abandons an infant shall be fined by a public security organ; if the act constitutes a crime, the offender shall be investigated for criminal responsibility in accordance with law.

Whoever sells his or her own child, his or her illegal gains shall be confiscated by a public security organ and he or she shall also be fined; if the act constitutes a crime, the offender shall be investigated for criminal responsibility in accordance with law.

Chapter VI

Supplementary Provisions

Article 32 The people's congress and its standing committee in a national autonomous area may, on the basis of the principles of this Law and in the light of the local conditions, formulate adaptive or supplementary provisions. The relevant regulations of a national autonomous region shall be submitted to the Standing Committee of the National People's Congress for the record. The relevant regulations of an autonomous prefecture or autonomous county shall be submitted to the standing committee of the provincial or autonomous region's people's congress for approval before coming into effect, and shall also be submitted to the Standing Committee of the National People's Congress for the record.

Article 33 The State Council may, in accordance with this Law, formulate measures for its implementation.

Article 34 This Law shall go into effect as of April 1, 1992.

II-05-01-201

**Measures for Registration of Adoption of Children
by Chinese Citizens**

(Approved by the State Council on May 12, 1999, and
promulgated by Decree No. 14 of the Ministry of
Civil Affairs on May 25, 1999)

Article 1

These Measures are formulated in accordance with the Adoption Law of the People's Republic of China (hereinafter referred to as the Adoption Law) for the purpose of standardizing adoption registration practice.

Article 2

Where a Chinese citizen adopts a child or rescinds an adoptive relationship by agreement within the Chinese territory, registration shall be carried out in accordance with the provisions of these Measures.

The organs that handles adoption registration is the civil affairs department of the people's government at the county level.

Article 3

Where an abandoned infant, child or orphan who is reared by a social welfare institution and whose biological parents cannot be identified or found is adopted, registration shall be carried out with the adoption registration organ in the locality where the social welfare institution is located.

Where an abandoned infant or child who is not reared by a social welfare institution and whose biological parents cannot be identified or found is adopted, registration shall be carried out with the adoption registration organ in the locality where the abandoned infant or child is found.

Where a child whose biological parents are unable to rear it due to unusual difficulties or an orphan guarded by a guardian is adopted, registration shall be carried out with the adoption registration organs in the locality where the permanent residence of the adoptee's biological parents or guardians is registered (where an organization acts as guardian, then in the locality of such organization).

Where a child belonging to collateral relatives by blood of the same generation and up to the third degree of kinship is adopted, or where a stepchild is adopted by his or her stepfather or stepmother, registration shall be carried out with the adoption registration organ in the locality where the permanent residence of the adoptee's biological father or biological mother is registered.

Article 4

Parties involved in adoptive relationship shall appear in person before adoption registration organs to go through registration formalities to establish the adoptive relationship.

Where a husband and his wife adopt a child in concert, registration formalities shall be gone through with the adoption registration organ by them in concert; where one of them cannot appear there in person for some reasons, he or she shall entrust the other one in writing with the handling of registration formalities, and the power of attorney shall be certified by the villagers' committee or neighborhood committee or be notarized.

Article 5

An adopter shall submit to the adoption registration organ an adoption application and the following credentials and certifying papers:

- (1) the adopter's residence booklet and resident identity card;
- (2) an evidencing paper issued by the unit to which the adopter belongs to or the villagers' committee or neighborhood committee certifying his or her marital status, whether he or she has any children and his or her capability to raise and educate the adoptee;
- (3) a health examination certificate issued by a medical unit at or above the county level of not suffering such a disease as is medically regarded as unfit for adopting a child.

Where an abandoned infant or child whose biological parents cannot be ascertained or found is adopted, a certificate of child-bearing situation of the adopter issued by the family planning department in the locality where the habitual residence of the adopter is registered shall also be submitted; where an abandoned infant or child who is not reared by a social welfare institution and whose biological parents cannot be ascertained or found is adopted, the adopter shall additionally submit the following certifying papers:

- (1) a certificate of the adopter's childlessness issued by the family planning department in the locality where the habitual residence of the adopter is registered;
- (2) a certificate issued by the public security organ certifying the report of the pickup of the abandoned infant or child.

Where a stepchild is adopted, only the residence booklet, resident identity card and the certificate of marriage of the adopter with the adoptee's biological father or mother shall be submitted.

Article 6

The person placing out a child for adoption shall submit to the adoption registration organ the following credentials and certifying papers:

- (1) residence booklet and resident identity card of the person placing out a child for adoption (if the guardian is an organization, then the identity credential of the person in charge of such an organization);
- (2) where the Adoption Law stipulates that consent from other persons bearing rearing obligations shall be obtained when placing out a child

for adoption, a written consent of other persons bearing rearing obligations on the placing out for adoption shall also be submitted.

Where a social welfare institution acts as the person who places out a child for adoption, the original records regarding the placement of the abandoned infant or child into the social welfare institution, a certificate issued by the public security organ certifying the report of the pickup of the abandoned infant or child, or a certificate certifying the death or the declaration of death of the orphan's biological parents shall also be submitted.

Where a guardian is the person who places out a child for adoption, a certificate certifying his or her actual bearing of obligations of guardianship, a certificate certifying the death or the declaration of death of the orphan's biological parents, or a certificate certifying that the adoptee's biological parents have no full civil capacity and may do serious harm to the adoptee shall be submitted.

Where the biological parents are the persons who place out their child for adoption, the agreement not to violate the family planning provisions concluded with the local family planning department shall also be submitted; where they cannot rear the child due to unusual difficulties, an evidencing paper issued by the unit to which they belong or by the villagers' committee or neighborhood committee certifying their unusual difficulties shall be additionally submitted. Among those, where a single parent places out his or her child for adoption because the other spouse of the parent has died or has been missing, a certificate certifying that the other spouse of the parent has died or is missing shall be additionally submitted; where the child is adopted by a collateral relative by blood of the same generation and up to the third degree of kinship, a certificate either issued by the public security organ or notarized certifying the existence of kinship with the adopter shall be additionally submitted.

Where the adoptee is a disabled child, a certificate of disability of the child issued by a medical unit at or above the county level shall also be submitted.

Article 7

The adoption registration organ shall conduct an examination within 30 days from the day after the receipt of the application for adoption registration and the relevant materials. Where the requirements stipulated in the Adoption Law are met, adoption registration shall be handled for the parties involved, an adoption registration certificate issued, and the adoptive relationship is established as of the date of registration; where the requirements stipulated in the Adoption Law are not met, no registration shall be granted, and the reasons therefor shall be given to the parties involved.

Where an abandoned infant or a child whose biological parents cannot be ascertained or found is adopted, the adoption registration organ shall ascertain or look for his or her biological parents by issuing a public notice prior to registration; where the biological parents or other guardians of the abandoned infant or child do not come to claim him or her within 60 days of the date of the issuance of the public notice, such an abandoned infant or child shall be regarded as one whose biological parents cannot be identified or found. The

duration of the public notice shall not be counted as within the time period for carrying out registration.

Article 8

Where it becomes necessary to go through residence registration or relocation formalities for the adoptee after the adoptive relationship is established, the adopter shall, on the basis of the adoption registration certificate, go through the formalities with the residence registration organ in accordance with the relevant provisions of the State.

Article 9

Where the adoptive relationship is rescinded through agreement, the parties involved in shall, on the basis of the residence booklets, the resident identity cards, the adoption registration certificate and the written agreement to rescind the adoptive relationship, register together the termination of the adoptive relationship with the adoption registration organ in the locality where the permanent residence of the adoptee is registered.

Article 10

The adoption registration organ shall conduct examination within 30 days from the next date of the receipt of the application for termination of the adoptive relationship and the relevant materials. Where the requirements stipulated in the Adoption Law are met, registration of the termination of the adoptive relationship shall be handled for the parties involved, the adoption registration certificate shall be recalled, and a certificate certifying the termination of the adoptive relationship be issued.

Article 11

The organization that provides certifying papers to the parties involved in the adoptive relationship shall truthfully provide the relevant certifying papers. Where any false certifying paper is provided, the adoption registration organ shall confiscate such false certifying papers, and make proposals to the organization concerned to criticize and educate the persons bearing direct responsibility or give them administrative or disciplinary sanctions according to law.

Article 12

Where the parties involved in the adoptive relationship register the adoption in a fraudulent and deceptive way, the adoptive relationship shall be invalid, the registration shall be canceled and the adoption registration certificate be withdrawn by the adoption registration organ.

Article 13

Forms for adoption registration certificates and certificates certifying the termination of adoptive relationship stipulated in these Measures shall be formulated by the civil affairs department of the State Council.

Art 15

Registration of Adoption of Children by Chinese Citizens

Article 14

Where an overseas Chinese or a Chinese citizen domiciled in the region of Hong Kong, Macao or Taiwan adopts a child on the mainland, the jurisdiction over the application for adoption registration and the credentials as well as certifying papers necessary to be provided shall comply with the provisions of the civil affairs department of the State Council.

Article 13

These Measures shall take effect as of the date of promulgation.

II-05-01-202

**Measures for Registration of Adoption of Children by
Foreigners in the People's Republic of China**

(Approved by the State Council on May 12, 1999, and
promulgated by Decree No. 15 of the Ministry
of Civil Affairs on May 25, 1999)

Article 1

These Measures are formulated in accordance with the Adoption Law of the People's Republic of China for the purpose of standardizing foreign-related adoption registration practice.

Article 2

The adoption of children within the territory of the People's Republic of China by foreigners (hereinafter referred to as adoption of children in China by foreigners) shall be registered in accordance with these Measures.

Where one party of a couple as adopter is a foreigner, the adoption of a child in China by them shall also be registered in accordance with these Measures.

Article 3

The adoption of children in China by foreigners shall comply with the provisions of the relevant Chinese laws on adoption, as well as the provisions of the relevant laws on adoption of the countries where adopters reside; problems arising from discrepancy between the provisions of the laws of the countries where adopters reside and those of the Chinese laws shall be resolved through consultation by relevant departments of the governments of the two countries.

Article 4

A foreigner who is to adopt a child in China shall, through the government of the country where he or she resides or an adoption organization authorized by the government of the said country (hereafter referred to as the foreign adoption organization), convey an application for adoption and submit the adopter's family situation report and a certificate to an adoption organization authorized by the Chinese government (hereinafter referred to as the Chinese adoption organization).

The adopter's application for adoption, the family situation report and the certificate stipulated in the preceding paragraph refer to the following documents that are issued by the competent agencies of the country where the adopter resides and authenticated by a diplomatic department of the country where the

adopter resides or by an agency authorized by the said diplomatic department, and authenticated by the embassy or consulate of the People's Republic of China stationed in that country.

- (1) an application for inter-country adoption;
- (2) a birth certificate;
- (3) a certificate of marital status;
- (4) a certificate of profession, income and assets;
- (5) a certificate of health examination;
- (6) a certificate indicating whether the adopter has ever been subject to criminal punishment;
- (7) a certificate certifying the approval of the inter-country adoption by the competent authority of the country where the adopter resides;
- (8) a family situation report, including the status of the adopter, the suitability and appropriateness of the adoption, family background, medical history, adoption motive and features suitable for caring for children.

Foreigners who have continuously lived in China for more than one year for work or study and are to adopt children in China shall submit the documents stipulated in the preceding paragraph except for the certificate of health examination, and shall also submit certificates indicating such particulars of the adopter as marital status, profession, income or assets and whether they have ever been subject to criminal punishment, which are issued by the Chinese units to which they belong, and certificates of health examination issued by medical units at or above the county level.

Article 5

The person placing out a child for adoption shall submit to the civil affairs department of the people's government of a province, an autonomous region or a municipality directly under the Central Government his or her residence booklet, resident identity card (where a social welfare institution places out a child for adoption, then the identity credential of the person in charge of such an institution shall be submitted), and residence certificate of the adoptee, etc., and shall submit the following certifying papers according to the respective situations:

- (1) Where the biological parents (including divorced ones) are the persons who place out the adoptee for adoption, a certificate certifying that the biological parents cannot rear the adoptee due to unusual difficulties and written consent of both of the biological parents for the placing out for adoption shall be submitted; among those, where the adoptee is placed out for adoption by a single parent because the spouse of the biological father or mother has died or is missing, a certificate certifying that the other spouse has died or has been missing as well as a written declaration of the parents of the dead spouse or the spouse who is missing giving up priority in rearing the child shall also be submitted;
- (2) Where a guardian is the person who places out the adoptee for adoption because the adoptee's parents do not have full civil capacity, a certificate certifying that the adoptee's parents have no full civil capacity and may

do serious harm to the adoptee and a certificate certifying that the guardian has the right of guardianship shall be submitted;

- (3) Where a guardian is the person who places out the adoptee for adoption because both of the adoptee's parents have died, a certificate certifying the death of the adoptee's biological parents, a certificate certifying the guardian's actual bearing of obligations of guardianship as well as a written consent of other persons bearing rearing obligations on the placing out for adoption shall be submitted;
- (4) Where a social welfare institution acts as the person who places out a child for adoption, a certificate of the situation concerning the abandonment and discovery of the abandoned infant or child, and a certificate of the process of the search of his or her parents or other guardians shall be submitted; where the adoptee is an orphan, a certificate certifying the death or the declaration of death of the orphan's parents as well as a written consent of other persons bearing the obligations of rearing the orphan on the placement for adoption shall be submitted.

Where a disabled child is placed out for adoption, a certificate of disability of the child issued by a medical unit at or above the county level shall also be submitted.

Article 6

The civil affairs department of the people's government of a province, autonomous region or municipality directly under the Central Government shall examine the credentials and certifying papers submitted by those who place out children for adoption, and issue public notices to identify or look for the biological parents for those abandoned infants or children whose biological parents cannot be identified or found; where the adoptee and those who place out children for adoption are believed to meet the requirements stipulated in the Adoption Law, a list of their names shall be notified to the Chinese adoption organization, and the following credentials and certifying papers shall be conveyed simultaneously:

- (1) duplicate copies of residence booklets and resident identity cards of those who place out the child for adoption (if a social welfare institution places out a child for adoption, then the identity credential of the person-in-charge of such an institution);
- (2) duplicate copies of certificates certifying that the adoptee is an abandoned infant or orphan, his or her residence certificate, growth report and health examination certificate as well as photo of the adoptee.

The public notice issued by the civil affairs department of the people's government of a province, autonomous region or municipality directly under the Central Government for identifying or looking for the biological parents of the abandoned infant or child shall be published in a local newspaper at the provincial level. Where the biological parents or other guardians of the abandoned infant or child do not come to claim him or her within 60 days of the date of the publication of the public notice, such abandoned infant or child shall be regarded as one whose biological parents cannot be identified or found.

Article 7

The Chinese adoption organization shall, after having examined the application for adoption and the relevant certificates submitted by the foreign adopter and by referring to the desire of the foreign adopter, select a suitable adoptee from among the adoptees who are recommended by the civil affairs department of the people's government of a province, autonomous region or municipality directly under the Central Government and who meet the requirements stipulated in the Adoption Law, and shall, through the foreign government or foreign adoption organization, send to the foreign adopter the information about the adoptee and the person placing out the child for adoption. Where the adoption is agreed to by the foreign adopter, the Chinese adoption organization shall send him or her a notice to come to China for adoption of a child, and simultaneously inform the relevant civil affairs department of the people's government of the province, autonomous region or municipality directly under the Central Government to send the person placing out the child for adoption a notice that consent has already been given to the adoption of the adoptee.

Article 8

Where foreigners come to China to adopt a child, they shall come to China in person to go through the registration formalities. Where a foreign couple adopts a child in concert, they shall come in concert to China to go through the adoption formalities; where one party of them cannot come to China for some reason, the other party shall be authorized in writing, and the power of attorney shall be notarized and authenticated by the country where they reside.

Article 9

A foreigner who comes to China to adopt a child shall conclude a written adoption agreement with the person placing out the child for adoption. The agreement shall be in three copies, the adopter and the person placing out the child for adoption shall keep one copy each, and the adoption registration organ shall keep one copy when handling the adoption registration formalities.

After the written agreement is concluded, the parties involved in the adoptive relationship shall register the adoption together with the civil affairs department of the people's government of the province, autonomous region or municipality directly under the Central Government in the locality where the adoptee's permanent residence is registered.

Article 10

The parties involved in the adoptive relationship shall, when registering adoption, fill out a registration application for adoption of a child by foreigners in China and submit the adoption agreement, and shall respectively submit the relevant documents.

The adopters shall submit the following documents:

- (1) the notice to come to China for adoption of a child issued by the Chinese adoption organization;

Art 14 *Registration of Adoption of Children by Foreigners in China*

(2) the identity credentials and photos of the adopters.

The person placing out a child for adoption shall submit the following documents:

- (1) the notice that consent has already been given to the adoption of the adoptee issued by the civil affairs department of the people's government of the province, autonomous region or municipality directly under the Central Government;
- (2) the residence booklet and resident identity card of the person placing out the child for adoption (if a social welfare institution places out the child for adoption, then the identity credential of the persons-in-charge of such an institution) and photos of the adoptee.

Article 11

The adoption registration organ shall conduct examination within 7 days from the day after the receipt of the registration application for adoption of a child in China by foreigners and the relevant documents related to the adopter, the adoptee and the person placing out the child for adoption; where the requirements stipulated in Article 10 of these Measures are met, the adoption shall be registered for the parties, and an adoption registration certificate be issued. The adoptive relationship shall be established as of the date of registration.

The adoption registration organ shall inform the Chinese adoption organization of the result of the registration.

Article 12

Where, after the adoption has been registered, adoption notarization is required by all parties or any one party involved in the adoptive relationship, the adoption shall be notarized by a notary organ with the qualification of foreign-related notarization in the locality where the adoption is registered.

Article 13

Before the adoptee leaves China, the adopter shall, on the basis of the adoption registration certificate, undertake exit formalities for the adoptee with the public security organ in the locality where the adoption is registered.

Article 14

Foreigners who adopt a child in China shall pay a registration fee to the registration organs. The standard for the registration fee shall be implemented in accordance with the relevant provisions of the State.

Chinese adoption organizations are non-profit public welfare institutions which provide service to foreign adopters and may charge service fees. The standard for charging service fees shall be implemented in accordance with the relevant provisions of the State.

For the purpose of rearing abandoned infants and children living in social welfare institutions, the State encourages foreign adopters and foreign adoption organizations to make donations to social welfare institutions. The social welfare institutions receiving donations must use all the donations to improve the nurturing conditions for the abandoned infants and children reared and may

not misappropriate the donations for other purposes, and shall inform the donors of the use of the donations. The social welfare institutions receiving donations shall also subject themselves to the supervision of the relevant departments and make the use of the donations known to the public.

Article 15

The activities of Chinese adoption organizations shall be subject to the supervision of the civil affairs department of the State Council.

Article 16

These Measures shall take effect as of the date of promulgation. The Implementation Measures on the Adoption of Children by Foreigners in the People's Republic of China, approved by the State Council on November 3, 1993 and promulgated by the Ministry of Justice and the Ministry of Civil Affairs on November 10, 1993, shall be repealed simultaneously.

II-05-01-301

Provisions on Jurisdiction over Registration of Adoption
by Overseas Chinese and Chinese
Citizens Residing in the Regions of Hong
Kong, Macao and Taiwan and on the
Credentials and Certifying Papers
Needed to be Submitted

(Promulgated by Decree No. 16 of the Ministry of
Civil Affairs on May 25, 1999)

Article 1

These Provisions are formulated in accordance with the Measures for Registration of Adoption of Children by Chinese Citizens.

Article 2

Where overseas Chinese and Chinese citizens residing in the regions of Hong Kong, Macao and Taiwan adopt children on the mainland of China, they shall apply for adoptive registration to the civil affairs departments of the people's governments of the municipalities directly under the Central Government, the cities with districts or the autonomous prefectures or the civil affairs departments of the prefecture (Meng) administrative offices where the permanent residence of adoptees is registered.

Article 3

Where overseas Chinese residing in the countries which have established diplomatic relations with China apply for registration to establish adoptive relationship, they shall submit applications for adoption and the following credentials and certifying materials:

- (1) passports;
- (2) certifying papers issued by competent authorities of the country where the adopters reside certifying the age, marital status of the adopters, whether they have children, profession, assets, health of the adopters and whether they have any criminal penalty record, such certifying papers shall be authenticated by the foreign affairs department of the country where the adopters reside or by its authorized agency and authenticated by the Chinese Embassy or Chinese consulate stationed in that country.

Article 4

Where overseas Chinese residing in countries which have not established diplomatic relations with China apply for registration to establish adoptive relationship, they shall submit applications for adoption and the following credentials and certifying papers :

- (1) passports;
- (2) certifying papers issued by the competent authorities of the country where the adopters reside certifying the age, marital status of the adopters, whether they have children, profession, assets, health of the adopters and whether they have any criminal penalty record such certifying papers shall be authenticated by the foreign affairs department of the country where the adopters reside or its authorized agency and authenticated by the embassy or consulate there of a third country which has established diplomatic relations with China.

Article 5

Where Chinese citizens among the Hong Kong residents apply for registration to establish adoptive relationship, they shall submit applications for adoption and the following credentials and certifying papers:

- (1) Hong Kong resident's certificate of identity, Hong Kong resident two-way trip pass to the mainland or Hong Kong compatriot home return permit;
- (2) certifying papers certifying the age, marital status of the adopters, whether they have children, profession, assets, health of the adopters and whether they have any criminal penalty record certified by the Hong Kong notaries entrusted by the Chinese competent authority.

Article 6

Where Chinese citizens among the Macao residents apply for registration to establish adoptive relationship, they shall submit applications for adoption and the following credentials and certifying papers:

- (1) Macao resident's certificate of identity, Macao resident two-way trip pass to the mainland, or Macao compatriot home return permit;
- (2) certifying papers issued by the competent authorities of the Macao region, certifying the age, marital status of the adopters, whether they have children, profession, assets, health of the adopters and whether they have any criminal penalty record.

Article 7

Where Taiwan residents apply for registration to establish adoptive relationship, they shall submit applications for adoption and the following credentials and certifying papers:

- (1) valid credentials of residence in the Taiwan region;
- (2) valid travel certificate issued or endorsed by the competent authorities of the People's Republic of China;
- (3) certifying papers certifying the age, marital status of the adopters, whether

*Provisions on Jurisdiction over Registration of
Adoption by Overseas Chinese*

Art 8

they have children, profession, assets, health of the adopters and whether they have any criminal penalty record notarized by a notary office of the Taiwan region.

Article 8

These Provisions shall come into force as of the date of promulgation.