

For information
on 26 February 2004

Bills Committee for Adoption (Amendment) Bill 2003

**Changes Arising from the Adoption (Amendment) Bill 2003 –
Impact on the Current Arrangements on Intercountry Adoption**

Purpose

This paper sets out for Members' information the impact of the Adoption (Amendment) Bill 2003 (the Amendment Bill) on the current arrangements on intercountry adoption, including Convention adoptions and non-Convention adoptions.

Background

2. At the meetings on 7 and 19 January 2004, Members requested information on, among others, changes in :

- (a) the roles of the Social Welfare Department (SWD) and Non-Governmental Organizations (NGOs) in intercountry adoptions; and
- (b) the mechanism for intercountry adoptions (highlighting the differences between Convention adoptions and non-Convention adoptions),

as a result of the Amendment Bill.

Intercountry Adoptions

3. Intercountry adoptions refer to the adoption of a HKSAR child by an adopter from another country (called “overseas adopter” for the purpose of this paper) or the adoption of a child from another country by a HKSAR adopter. There are two types of intercountry adoptions: Convention adoptions and non-Convention adoptions (see paragraph 6 below).

4. One of the main purposes of the Amendment Bill is to give effect to the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (the Hague Convention) concluded in 1993 (see Annex A). As at 23 February 2004, 42 States (including the UK, Australia and Canada) have ratified, 15 States (including New Zealand) have acceded to, and 7 States (including the USA and the People’s Republic of China) have signed but not yet ratified the Hague Convention.

5. The Central People’s Government (CPG) signed the Hague Convention in November 2000 and is considering ratification. The CPG has consulted the HKSAR on the application of the Hague Convention to the HKSAR. We have indicated to the CPG our wish for the Hague Convention to be applied to the HKSAR in principle, subject to the Adoption Ordinance being updated to provide a framework for intercountry adoptions made pursuant to the Hague Convention.

6. The Amendment Bill will add new provisions to, inter alia, give legislative effect to the Hague Convention in the HKSAR. Intercountry adoptions made between the HKSAR and the Contracting States¹ pursuant to the Hague Convention are, for the purpose of this paper, called Convention adoptions. Intercountry adoptions between the HKSAR and other countries are called non-Convention adoptions.

¹ A State which has ratified or acceded to the Hague Convention is described as a Contracting State.

Present Arrangements

(please see paragraphs 11 and 12 of the paper on “Adoption : Current Arrangements” (Ref : LC Paper No. CB(2)1474/03-04(01)) for information relating to the adoption of DSW wards by overseas adopters)

7. The aim of the adoption service is to find a suitable and permanent home for a child whose parents are unable or unwilling to take care of him/her. Inter-country adoptions may have to be arranged, if local placements are not available².

8. At present, the adoption of DSW wards³ by overseas adopters is arranged by SWD with the assistance of two NGOs⁴ in six countries (i.e. the USA, Canada, the UK, Australia, New Zealand and Singapore) through their connections with overseas adoption agencies. There is a set of standard procedures involving SWD and the Court before a child leaves HK for adoption overseas.

9. Procedurally, home assessment on an overseas prospective adopter is conducted by the overseas adoption agencies while SWD assesses the adoptability of the local child. If any overseas prospective adopter(s) is/are matched with a DSW ward, application will be made to the High Court to make the child a ward of Court under section 26 of the High Court Ordinance (Cap. 4), seeking leave to send the child out of the HKSAR for adoption overseas. Subject to the satisfactory outcome of the adoption placement, the duration of which varies according to the receiving jurisdiction's requirements, adoption orders will be made in the receiving jurisdiction according to the laws of that jurisdiction.

10. As regards the roles of different parties, **SWD** is at present

² Under Article 21(b) of the UNCRC, State Parties shall recognize that intercountry adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin.

The Hague Convention recognizes that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his/her State of origin.

³ A DSW ward means a child or juvenile to whom DSW has been appointed his/her legal guardian under section 34(1)(a) of the Protection of Children and Juveniles Ordinance (Cap. 213).

⁴ The two NGOs are International Social Service – Hong Kong (ISS-HK) and Mother's Choice (MC). The adoption service of ISS-HK is governed by a Funding and Service Agreement with SWD and a Tripartite Agreement between SWD, ISS-HK and an overseas adoption agency, while that of MC by Tri-partite Arrangements between SWD, MC and the overseas adoption agencies in question.

primarily responsible for **taking legal steps and making major decisions**, including becoming the statutory guardian of the child, confirming adoptability of the child, approving home study reports conducted by the overseas adoption agencies on the overseas adopter(s)⁵, approving the matching proposal, commencing wardship proceedings in the High Court, and bringing the wardship to an end upon the granting of an adoption order in the receiving jurisdiction.

11. On the other hand, **NGOs facilitate the logistical arrangements** in support of SWD's work in the adoption process, including preparation of child study reports, screening home assessment reports on the overseas prospective adopter(s) prepared by the overseas adoption agencies, arranging placement of the child into the approved overseas adoptive home, escorting the child to join the overseas prospective adopter(s) when required, and monitoring the situation during the adoption placement until an adoption order is granted in the receiving jurisdiction.

12. Legally, there are no express legislative provisions in the Adoption Ordinance permitting a child to leave the jurisdiction to be adopted overseas and wardship was/is used to achieve this. The wardship jurisdiction may be invoked to protect minors against injuries of any kind. In the HKSAR, wardship jurisdiction lies in the **Court of First Instance**. The procedure for commencing wardship proceedings in the HKSAR is provided in section 26 of the High Court Ordinance (Cap. 4). An order will be sought for DSW to be appointed guardian with the liberty to give consent to the adoption of the child overseas, and DSW may thereafter send the child to that country and for the purposes of such adoption may delegate his rights of guardianship to the overseas Government or the overseas adoption agency to protect the welfare of the child during the adoption placement overseas, before an adoption order is granted by the Court of the receiving jurisdiction.⁶

⁵ One important aspect for assessment of suitability of overseas adoptive parents is on their capacity to handle inter-racial and inter-cultural aspects of intercountry adoptions.

⁶ During the adoption placement period before an adoption order is granted in the overseas jurisdiction, the parental rights are vested in the Court of the HKSAR; the overseas Government or the overseas agency undertakes to assume responsibility as may be necessary for the welfare of the child; and the overseas prospective adopter(s) is/are merely given care and control.

Proposed Arrangements

Convention adoptions

13. The Amendment Bill provides a framework for Convention adoptions. In particular, Clause 24 (sections 20A to 20I) and Clause 32 (schedule 3) specifically implement the Hague Convention in the HKSAR. Clause 31 (sections 26(2) and 27(2)) is also relevant. The details are set out in paragraphs 37 to 56 of the LegCo Brief.

14. The most important objective of the Hague Convention is to establish safeguards to ensure that intercountry adoptions are made in the best interests of the child. It contains 48 Articles which set out its objectives and scope, the requirements and procedures and the responsibilities of Contracting States for intercountry adoption⁷.

15. The Hague Convention does not make a distinction between related adoptions and unrelated adoptions. Both types of adoptions will be covered under the Convention adoption provisions under the Amendment Bill.

16. To harmonize the local and Convention adoption systems, we propose that the existing local adoption requirements and procedures (as modified by the Amendment Bill) will, so long as they are consistent with the provisions of the Hague Convention, apply to Convention adoptions. New provisions are proposed where appropriate to cater for the specific requirements and procedures in Convention adoptions (e.g. the concept of “habitual residence” applying to Convention adoptions).

17. Under the Hague Convention, Convention adoption arrangements should mainly be processed between the Central Authorities (CAs) of the State of origin⁸ and the receiving State⁹. The CA may delegate some of its functions under the Hague Convention to

⁷ Its Articles 4, 5 and 14 to 21 set out the basic requirements and procedures for intercountry adoption between Contracting States.

⁸ i.e. the Contracting State where the adoptee habitually resides

⁹ i.e. the Contracting State where the adopter habitually resides

bodies accredited by it (“accredited bodies” (ABs)). Please see Articles 6 to 22 of the Hague Convention for the functions and roles of the CAs and ABs.

18. We propose that SWD be designated as the CA for the HKSAR; an accreditation system be put in place to allow NGOs duly accredited by SWD (as the CA) to perform duties delegated by it in relation to Convention adoptions¹⁰ (ABs/HK); and the High Court be empowered to hear Convention adoption applications and to grant Convention orders, whether the HKSAR is the State of origin or the receiving State.

19. The proposed accreditation system seeks to lay down the minimum service quality and professional standards of intercountry adoption practice in the HKSAR and ensure effective and ethical intercountry adoption practices etc. Under this system, DSW will remain responsible for making decisions/determinations (and be held accountable for such decisions/determinations) as to the eligibility of the applicant(s) to adopt a child, the decision to match the child with overseas prospective adopters where the HKSAR acts as the State of origin, and the decision as to whether an adoption placement should proceed. In discharging such duties, DSW may authorize an AB/HK to take up any particular case and carry out the administrative steps in the key stages.

20. During the process, SWD and ABs/HK have to work very closely on the procedural tasks to facilitate the Convention adoption arrangements for the child -

- (a) Where the HKSAR acts as the State of origin, ABs/HK may be entrusted with procedural tasks, including preparation of child study reports, assessment on the suitability of the overseas prospective adopters (including home studies), liaison with the overseas CA or its delegates, arrangements for adoption placement and monitoring such placements, while SWD (as the CA) will make approval decisions on matching and placement, and make application to the Court for an Order under clause 29 (section 23B) of the Amendment Bill for the child to be taken out of the HKSAR in connection with a Convention adoption¹¹.

¹⁰ as well as non-Convention adoptions (to be covered in paragraphs 22 to 24 below).

¹¹ the above-mentioned duties of SWD are not applicable in the adoption of the child by a parent or a relative residing outside the HKSAR.

- (b) Where the HKSAR acts as the receiving State, ABs/HK may be entrusted with procedural tasks, including assessment on the suitability of adoption applicants (including home studies), screening the child study report prepared by the overseas CA or its delegates, liaison with the overseas CA or its delegates, arrangements for adoption placement and monitoring such placements, while SWD (as the CA) will liaise with the Police on criminal record check on the prospective adopters, approve the suitability of the prospective adopters (home approval), and liaise with the Immigration Department to confirm the permission for the child to enter and stay in the HKSAR for the purpose of adoption (the latter task may be shared with ABs/HK).

21. Of the six countries mentioned in paragraph 8 above, the Hague Convention has entered into force in the UK, Canada, Australia and New Zealand. As and when the Hague Convention applies to the HKSAR, intercountry adoption arrangements with these four countries will in future be conducted under the relevant provisions in the Amendment Bill and the relevant subsidiary legislation. It may also be possible for intercountry adoption arrangements to be made with other Contracting States.

Non-Convention Adoptions

22. The arrangements for non-Convention adoptions will be similar to the current arrangements for the adoption of a HKSAR child by an overseas adopter in other countries. The roles of SWD will largely remain unchanged, e.g. making approval decisions on matching and placement (see paragraph 10 and 20(a) above). ABs/HK may be allowed to handle non-Convention adoptions and to perform duties similar to those for Convention adoptions (see paragraphs 19 and 20(a) above). In handling non-Convention adoption cases, ABs/HK should apply the same service standard as for Convention adoptions.

23. The applications made by DSW to the Court for an order to enable the child to be taken out of the HKSAR for the purpose of adoption by unrelated person(s) residing outside the HKSAR will in future be made under the Adoption Ordinance (as amended) rather than the High Court Ordinance.

24. Of the six countries mentioned in paragraph 8 above, the USA has yet to ratify the Hague Convention and Singapore is not a party to the

Hague Convention. If this is still the case when the Hague Convention applies to the HKSAR, non-Convention adoption arrangements will apply to adoption with these countries. For non-Convention adoptions, before entering into partnership or cooperation with a new place, ABs/HK should obtain the prior approval of SWD.

Court Order for a HKSAR child to be taken out of the HKSAR for adoption by unrelated persons residing outside the HKSAR

25. For both Convention adoptions and non-Convention adoptions, a Court order will in future be required under the Adoption Ordinance (as amended)¹² for a HKSAR child to be taken out of the HKSAR for adoption by unrelated persons residing outside the HKSAR. However, such order will not be required for adoption by related persons residing outside the HKSAR. Clause 29 (section 23C) of the Amendment Bill outlaws the removal of a child residing in the HKSAR to any place outside the HKSAR for adoption by an unrelated person (except under the authority of an order of the Court). Clause 29 (section 23B) of the Amendment Bill empowers the Court, upon an application by DSW, to make an order passing the care and control of a child to a person authorized by DSW, with a view to adoption of the child by a person not residing in the HKSAR. Read together, sections 23B and 23C do not apply to the removal of a child for adoption by a parent or a relative residing outside the HKSAR.

Conclusion

26. To further facilitate Members' understanding of the differences between Convention adoptions and Non-Convention adoptions in future, a comparison table is shown at Annex B. Members may wish to note that the principles, criteria and arrangements for these two types of intercountry adoptions are rather similar.

27. The proposed procedures for Convention adoptions with the HKSAR acting as the State of origin or the receiving State is at Annex C and those for non-Convention adoption of HKSAR children by unrelated persons is at Annex D. Besides, the roles of SWD and NGOs in intercountry adoptions before and after the legislative amendments are at Annex E.

¹² instead of invoking the wardship jurisdiction of the High Court under the High Court Ordinance currently

Presentation

28. Members may wish to take note of the information above to facilitate consideration of the Adoption (Amendment) Bill 2003.

Health, Welfare and Food Bureau
February 2004

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

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

CHAPTER I – SCOPE OF THE CONVENTION

Article 1

The objects of the present Convention are –

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

Article 2

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

in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin.

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

Article 3

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

CHAPTER II – REQUIREMENTS FOR INTERCOUNTRY ADOPTIONS

Article 4

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

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

c) have ensured that

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

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

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

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

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

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

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

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

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

Article 5

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

- a) have determined that the prospective adoptive parents are eligible and suited to adopt;
- b) have ensured that the prospective adoptive parents have been counselled as may be necessary; and
- c) have determined that the child is or will be authorized to enter and reside permanently in that State.

CHAPTER III – CENTRAL AUTHORITIES AND ACCREDITED BODIES

Article 6

- (1) A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.
- (2) Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

Article 7

- (1) Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to protect children and to achieve the other objects of the Convention.
- (2) They shall take directly all appropriate measures to –
 - a) provide information as to the laws of their States concerning adoption and other general information, such as statistics and standard forms;
 - b) keep one another informed about the operation of the Convention and, as far as possible, eliminate any obstacles to its application.

Article 8

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

Article 9

- Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to –
- a) collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption;
 - b) facilitate, follow and expedite proceedings with a view to obtaining the adoption;
 - c) promote the development of adoption counselling and post-adoption services

in their States;

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

e) reply, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation.

Article 10

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

Article 11

An accredited body shall –

a) pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation;

b) be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption; and

c) be subject to supervision by competent authorities of that State as to its composition, operation and financial situation.

Article 12

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

Article 13

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

CHAPTER IV – PROCEDURAL REQUIREMENTS IN INTERCOUNTRY ADOPTION

Article 14

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

Article 15

(1) If the Central Authority of the receiving State is satisfied that the applicants are eligible and suited to adopt, it shall prepare a report including information about their identity, eligibility and suitability to adopt, background, family and

medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, as well as the characteristics of the children for whom they would be qualified to care.

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

Article 16

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

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

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

Article 17

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

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

Article 18

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

Article 19

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

(2) The Central Authorities of both States shall ensure that this transfer takes

place in secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parents.

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

Article 20

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

Article 21

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

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

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

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

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

Article 22

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

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

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

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

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

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

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

CHAPTER V – RECOGNITION AND EFFECTS OF THE ADOPTION

Article 23

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

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

Article 24

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

Article 25

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

Article 26

(1) The recognition of an adoption includes recognition of

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

(2) In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, the child shall enjoy in the receiving State, and in any other Contracting State where the adoption is recognized, rights

equivalent to those resulting from adoptions having this effect in each such State.

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

Article 27

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

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

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

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

CHAPTER VI – GENERAL PROVISIONS

Article 28

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

Article 29

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

Article 30

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

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

Article 31

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

Article 32

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

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

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

Article 33

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

Article 34

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

Article 35

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

Article 36

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

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

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

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

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

Article 37

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

Article 38

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

Article 39

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

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

Article 40

No reservation to the Convention shall be permitted.

Article 41

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

Article 42

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

CHAPTER VII – FINAL CLAUSES

Article 43

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

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

Article 44

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

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

(3) Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection

to its accession in the six months after the receipt of the notification referred to in sub-paragraph *b*) of Article 48. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

Article 45

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

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

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

Article 46

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

(2) Thereafter the Convention shall enter into force –

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

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

Article 47

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

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

Article 48

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

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

- b)* the accessions and objections raised to accessions referred to in Article 44;
- c)* the date on which the Convention enters into force in accordance with Article 46;
- d)* the declarations and designations referred to in Articles 22, 23, 25 and 45;
- e)* the agreements referred to in Article 39;
- f)* the denunciations referred to in Article 47.

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

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

**Comparisons between Convention Adoptions and Non-Convention Adoptions
after Enactment of the Adoption (Amendment) Bill 2003
(using the example of HK acting as the State of origin i.e. adoption of a HK child by overseas adopters)**

	Convention Adoptions	Non-Convention Adoptions
Programs with overseas countries	<ul style="list-style-type: none"> • Social Welfare Department (SWD) as the Central Authority (CA) can, through the Accredited Bodies (ABs), continue to work with the Contracting States currently having intercountry adoption programmes with Hong Kong (i.e. Australia, Canada, New Zealand and the United Kingdom) under the framework of the Hague Convention. • SWD as CA through ABs can work with other Contracting States on intercountry adoption cases under the framework of the Hague Convention. Besides, ABs may, in consultation with SWD, initiate inquiries with the CAs of other Contracting States to explore the likelihood of the establishment of a working relationship in respect of intercountry adoptions. 	<ul style="list-style-type: none"> • ABs can continue to work with the non-Contracting States currently having intercountry adoption programmes with Hong Kong (i.e. Singapore and the United States) through specific arrangements with the ABs • ABs may establish intercountry adoption programme with a new place upon obtaining prior approval of SWD.

	Convention Adoptions	Non-Convention Adoptions
Scope of services	<ul style="list-style-type: none"> Applicable to adoptions of HK children by overseas residents in the Contracting States that have intercountry adoption with HK; and vice versa. 	<ul style="list-style-type: none"> Applicable to adoptions of DSW wards by overseas residents in the non-Contracting States that have intercountry adoption programs with ABs/HK. The existing programme operated by NGOs for the adoption of children residing in non-Convention States by HK residents can also continue.
Application	<ul style="list-style-type: none"> Persons wishing to adopt a child in HK shall apply to the CA or ABs in their State of habitual residence. 	<ul style="list-style-type: none"> Overseas adoption applicants should approach their Government/adoption agencies having intercountry adoption programmes established with HK.
Home study	<ul style="list-style-type: none"> The applicants shall go through a home study process conducted by the CA/ABs of the receiving State. Applicants will be assessed on their capacities on adoptive parenthood as well as their ability to handle intercultural aspects of intercountry adoption. 	<ul style="list-style-type: none"> The applicants shall go through a home study process conducted by a local licensed adoption agency. Areas of assessment should basically be the same as those for Convention Adoption.

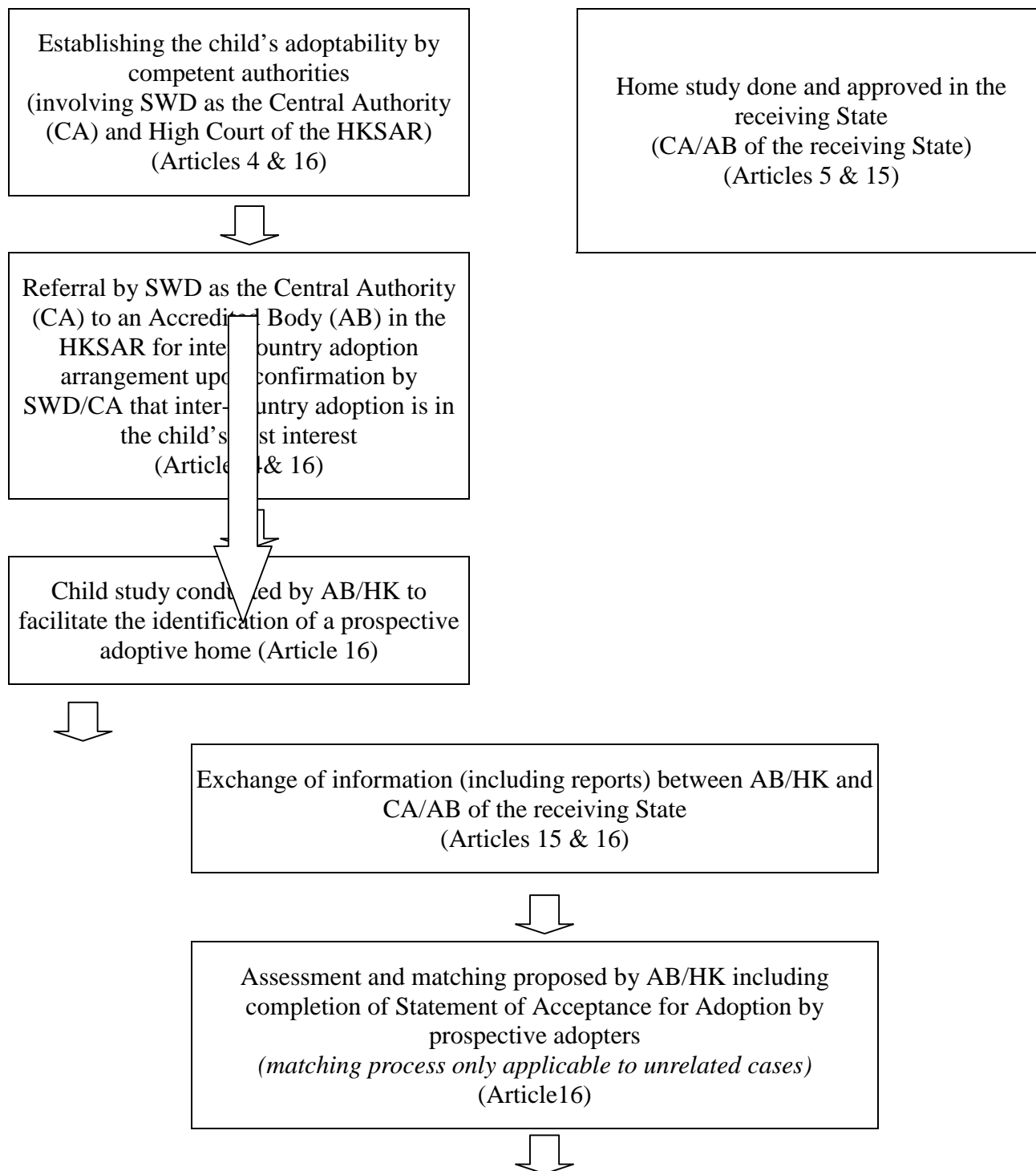
	Convention Adoptions	Non-Convention Adoptions
Home approval	<ul style="list-style-type: none"> The CA/ABs of the receiving State have to ensure the suitability of the prospective adopters, i.e. meeting the standard and requirements of the Convention. The overseas prospective homes should have been approved by the receiving State. 	<ul style="list-style-type: none"> The ABs have to screen the home study reports prepared by their overseas counterparts. The home study reports and the supporting documents will be passed to SWD for approval. SWD will assess the prospective adoptive homes by the same standards as those for Convention adoptions.

	Convention Adoptions	Non-Convention Adoptions
Matching approval	<ul style="list-style-type: none"> According to the Hague Convention, any decision in the State of origin that a child should be entrusted to the prospective adoptive parents may only be made if the CA of both States have agreed that the adoption may proceed. Once an approved overseas prospective adoptive home has been identified for the child, the ABs/HK will prepare a matching proposal for approval by SWD, and agreement by the CA of the receiving State. 	<ul style="list-style-type: none"> Once an approved overseas prospective adoptive home has been identified for the child, the ABs/HK has to prepare a matching proposal to SWD for approval of matching. Approval from the receiving State may be required, depending on the requirement of that State
Court proceedings for the child's departure from HK for the purpose of adoption by unrelated persons	<ul style="list-style-type: none"> SWD will proceed with the application to the Court for an order under the proposed new Section 23B of the Adoption (Amendment) Bill 2003¹. The application shall be made, with DSW being the applicant and the overseas adoption agency/ authority being the respondent. The Order will pass care and control of the child to a person authorized by DSW (usually the overseas AB) with a view to adoption of the child by a person not residing in HK. 	<ul style="list-style-type: none"> Same as for Convention adoptions

¹ Under the Adoption (Amendment) Bill 2003, an order under section 23B is not required for the adoption of a child by a related person (a parent or a relative) residing outside HK.

	Convention Adoptions	Non-Convention Adoptions
Adoption placement	<ul style="list-style-type: none"> The duration of adoptive placement varies, subject to the legislative requirements of the receiving State concerned and the agreement between the State of origin (HK in this case) and the receiving State. 	<ul style="list-style-type: none"> Same as for Convention adoptions
Legal proceedings for application for an adoption order	<ul style="list-style-type: none"> The Hague Convention does not prescribe that an adoption order must be made in the receiving State or in the State of origin, although Article 28 recognizes the right of a State of origin to require that the adoption order be granted in that State. Where the Convention order is to be granted in HK, the court procedures for application for an adoption order will follow those of local adoption and the role of GAL is also retained. CA/ABs of HK may perform the role of GAL. Where the Convention order is to be granted overseas, the adoption procedures will follow those of the overseas jurisdiction. 	<ul style="list-style-type: none"> Legal proceedings for adoption will take place in the receiving State in accordance with the legal requirements of that State.

**Proposed Arrangements on Convention Adoptions of
HK Children by Overseas Applicants
(i.e. HKSAR Acting as the State of origin)**



Approval of matching by CA/HK and agreed by CA/AB of the receiving State. Arrangements by the CA/AB of the receiving State for child to be allowed to enter and stay in the receiving State.
(Articles 17 & 18)



Court proceedings in the HKSAR for the child's departure from the HKSAR for the purpose of overseas placement and/or adoption
(only applicable to unrelated cases)
(Section 23(B) of Adoption (Amendment) Bill)



Departure arrangement with the assistance of AB/HK
(Articles 17 & 19)



Adoption placement supervised by the CA/AB of the receiving State and submission of post-placement reports to AB and CA in the HKSAR
(Duration of placement may vary from 6-12 months, depending on the requirement of the receiving State)
(Articles 20 & 21)



[For orders granted in Receiving State]

Application for Convention adoption order in accordance with the legal requirements of the receiving State
(Articles 4 & 5)

[For orders granted in the HKSAR]

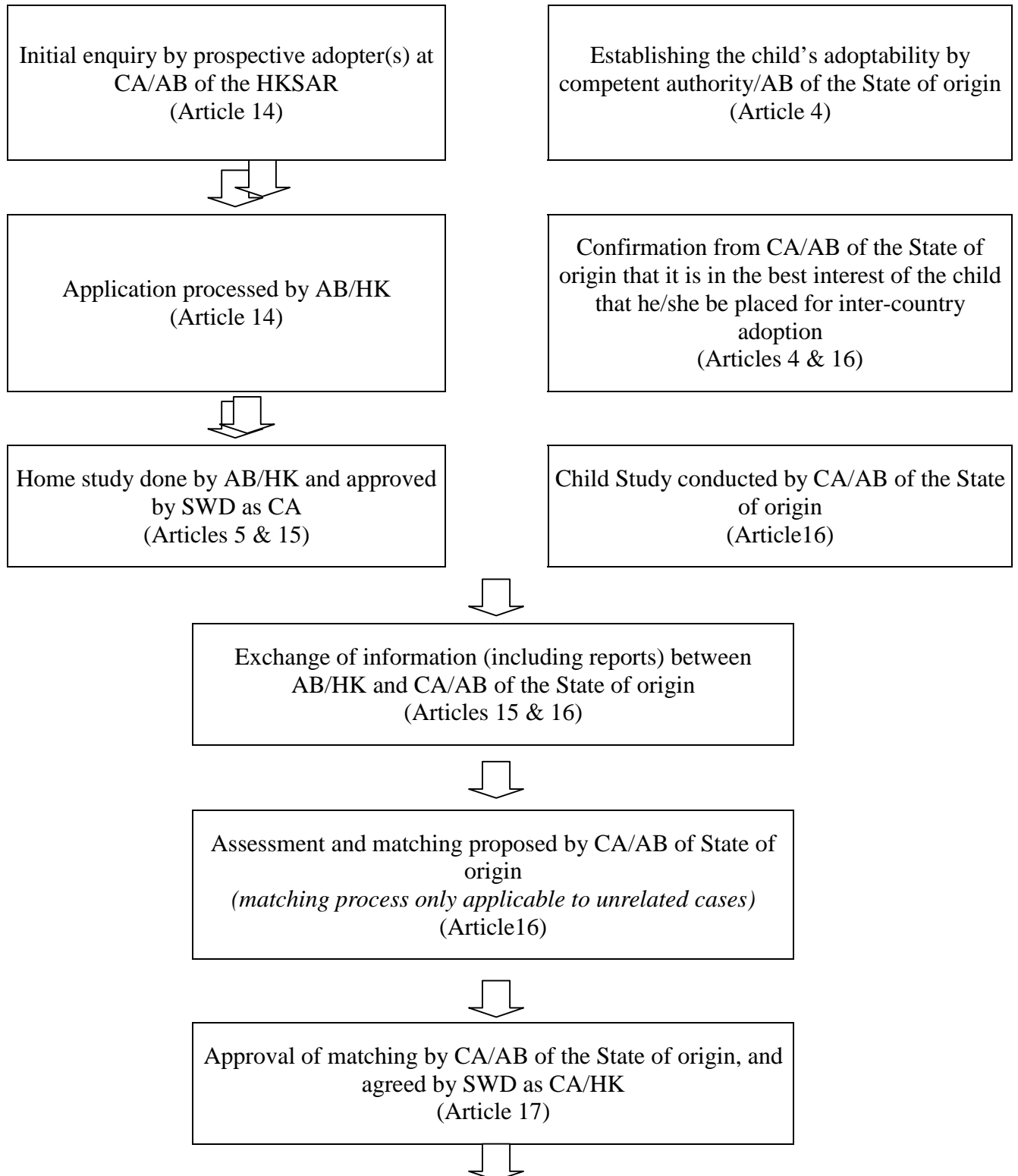
Application for Convention adoption order : the legal procedures will follow the adoption proceedings of the HKSAR – Preparation of legal documents in the HKSAR for consideration by the High Court for purpose of granting a Convention adoption order
(Articles 4 & 5)

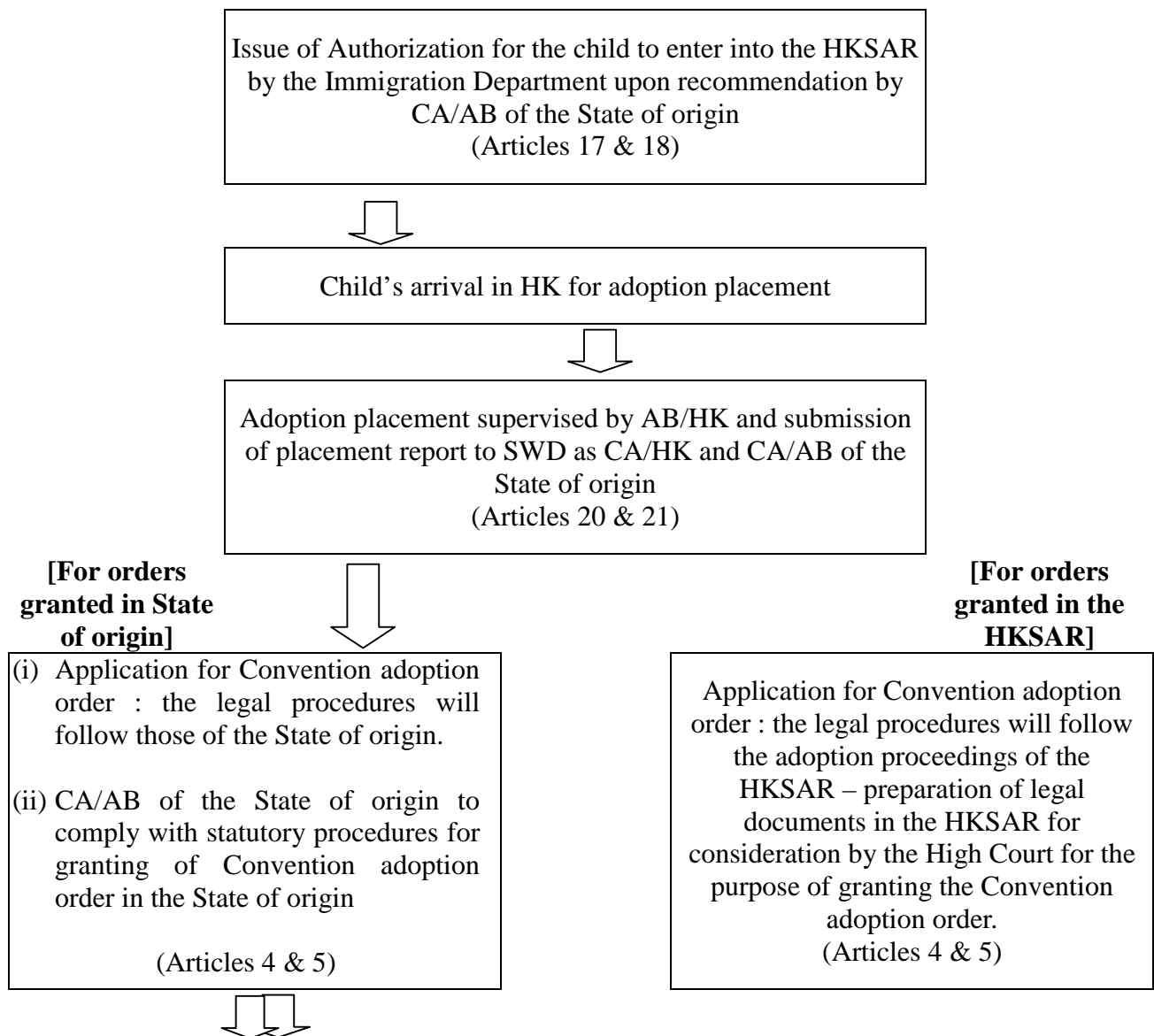


- (i) AB/HK, upon receipt of Convention adoption order and Convention adoption certificate from receiving State, will pass the documents to SWD as CA
- (ii) SWD, based on the documentary proof provided by accredited bodies, will pass the required information to the Immigration Department for registration of the child's adoption record in the Adopted Children Register (Schedule 1 of the Adoption (Amendment) Bill)

- (i) Granting of Convention adoption order and issue of the Convention adoption certificate by the High Court (Article 23)
- (ii) The Court will give instruction to the Immigration Department for an entry of the adoption record in the Adopted Children Register (Section 19 of the Adoption Ordinance)
- (iii) A copy of the Convention adoption order and Convention adoption certificate will be sent to the receiving State

**Proposed Arrangement on Convention Adoptions
of Overseas Children by HK Applicants
(i.e. HKSAR Acting as the Receiving state)**

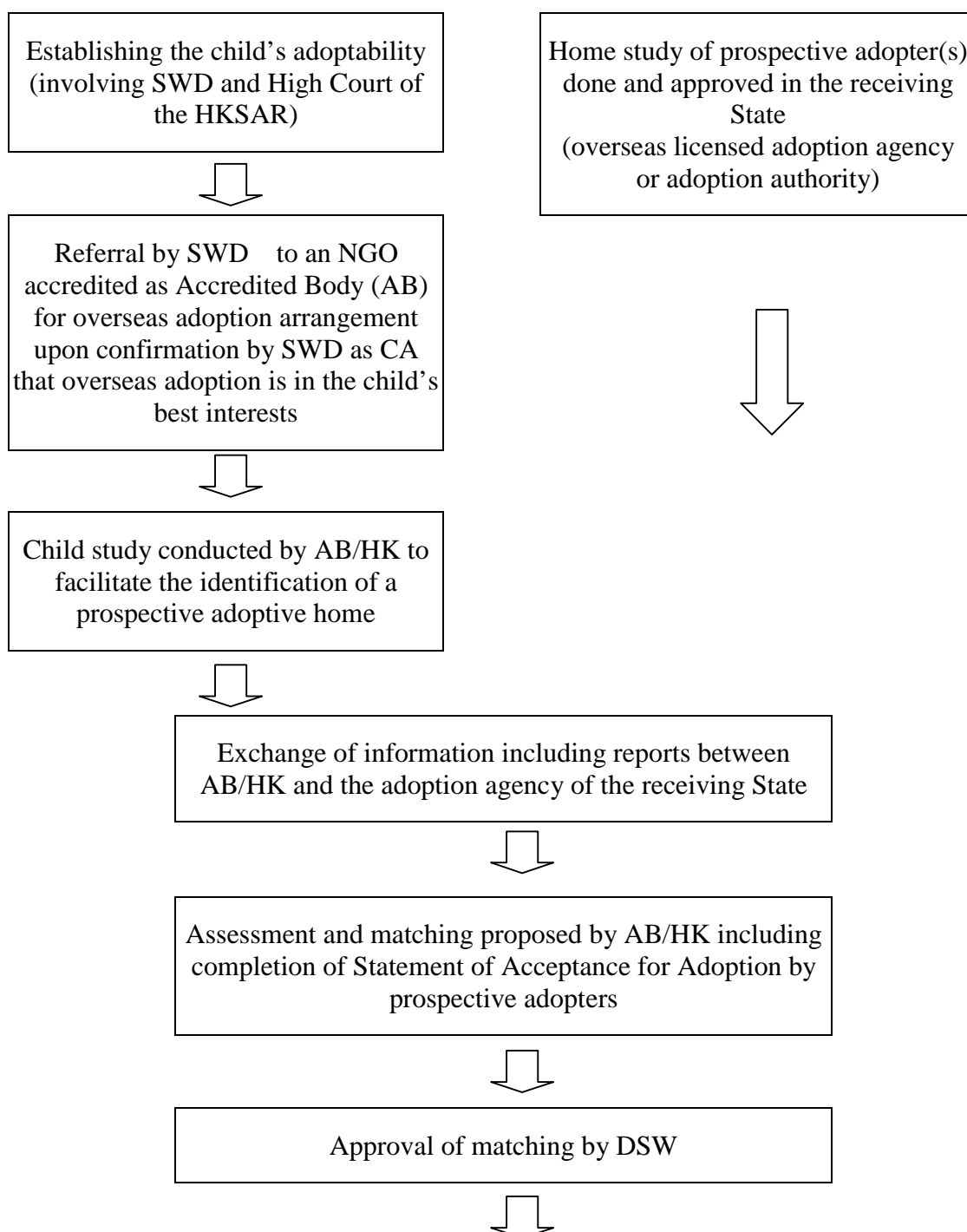




AB/HK, upon receipt of the Convention adoption order and Convention adoption certificate from State of origin, will pass the documents to SWD as CA

- (i) Granting of Convention adoption order and Convention adoption certificate
- (ii) The Court will give instruction to the Immigration Department for an entry of the adoption record in the Adopted Children Register (Section 19 of the Adoption Ordinance)
- (iii) A copy of the Convention adoption order and Convention adoption certificate will be sent to the State of origin

**Proposed Arrangements on Non-Convention Adoptions of
Hong Kong Children (including DSW wards)
by Overseas Unrelated Applicants**



Court proceedings for the child's departure from the HKSAR for the purpose of overseas placement and adoption
(Section 23B of the Adoption (Amendment) Bill)



Departure arrangements with the assistance of AB/HK



Adoption placement supervised by the overseas adoption agencies and submission of post-placement reports to AB/HK and SWD
(Duration of placement may vary from 6 to 12 months, depending on the requirement of the receiving State)



Application for adoption order in accordance with the legal requirements of the receiving State



The overseas licensed adoption agencies/adoption authorities in the receiving State will notify HKSAR of the granting of an adoption order in receiving State



- (i) Receipt of adoption order
- (ii) where appropriate, SWD passes the documents to the Immigration Department for registration of the child's adoption record in the Adopted Children Register

**Changes in Roles of Social Welfare Department and Non-Governmental Organizations
in Intercountry Adoptions as a result of the Adoption (Amendment) Bill 2003**

Types of Adoptions	Present Roles		Future Changes in Roles, if any	
	SWD	NGOs	SWD	NGOs
Unrelated Adoption (HK as the State of origin)	<ul style="list-style-type: none"> The adoption of DSW wards by overseas applicants is arranged by SWD with the assistance of NGOs through their connections with overseas adoption agencies. 	<ul style="list-style-type: none"> NGOs assist in conducting child studies, furnishing child study reports to their overseas counterparts to facilitate identification of suitable adoptive homes, transmitting the information on prospective adoptive parents from overseas adoption agencies to SWD, escorting the child to the receiving State, liaising with the overseas adoption agencies in child supervision during adoption placement, and arranging for alternative placement or return of the child to Hong Kong if an adoption placement fails. 	<ul style="list-style-type: none"> SWD will be the Central Authority (CA) for Convention adoptions; and will continue to co-operate with NGOs duly accredited as Accredited Bodies (ABs) to arrange intercountry adoption for the wards of DSW for both Convention and non-Convention countries 	<ul style="list-style-type: none"> NGOs accredited as ABs can continue to handle intercountry adoption cases for Convention and non-Convention adoptions

Types of Adoptions	Present Roles		Future Changes in Roles, if any	
	SWD	NGOs	SWD	NGOs
	<ul style="list-style-type: none"> SWD retains the responsibility for studying all the relevant papers regarding DSW wards and the prospective adoptive home, giving approval for the matching proposal and performing all tasks relating to the necessary court proceedings under the High Court Ordinance for removing the child out of HK for placement and adoption overseas. 		<ul style="list-style-type: none"> For Convention adoptions, approval/agreement for the matching proposal from SWD as the CA will be required for all unrelated adoptions, regardless of whether HKSAR is the State of origin or the receiving State 	

Types of Adoptions	Present Roles		Future Changes in Roles, if any	
	SWD	NGOs	SWD	NGOs
	<ul style="list-style-type: none"> SWD also monitors the performance of the NGOs pursuant to arrangements with the NGOs 		<ul style="list-style-type: none"> A new provision will be added to make it unlawful for a child to be removed out of HK for the purpose of adoption by an unrelated person overseas without an order given by the Court under the Adoption Ordinance, (instead of under the High Court Ordinance). SWD will apply to the Court for an Order for the removal DSW wards from HK for placement /adoption outside HK under the Adoption Ordinance (instead of under the High Court Ordinance). 	

Types of Adoptions	Present Roles		Future Changes in Roles, if any	
	SWD	NGOs	SWD	NGOs
			<ul style="list-style-type: none"> If the adoption order is to be granted in HK, legal documents for court proceedings will be prepared in HK, either by SWD or by ABs. Where the adoption order is granted outside HK, where appropriate, SWD will provide the necessary information to the Immigration Department to facilitate the registration of the adoption order granted overseas onto the Adopted Children Register in HK. 	<ul style="list-style-type: none"> If the adoption order is to be granted in HK, legal documents for court proceedings will be prepared in HK, either by SWD or by ABs.
Unrelated Adoption (HK as receiving State)	<ul style="list-style-type: none"> No involvement 	<ul style="list-style-type: none"> An NGO has initiated a self-financing program to assist local families, mainly expatriate families, to adopt children from certain places outside HK 	<ul style="list-style-type: none"> SWD will be the Central Authority for Convention adoptions, and will monitor the work and performance of ABs for both Convention and non-Convention adoptions 	<ul style="list-style-type: none"> NGOs accredited as ABs can handle intercountry adoption cases for Convention and non-Convention adoptions

Types of Adoptions	Present Roles		Future Changes in Roles, if any	
	SWD	NGOs	SWD	NGOs
			<ul style="list-style-type: none"> SWD will be responsible for home approval, liaising with the police for administering the requirement of criminal record check on prospective adopters and initiating contact with the Immigration Department to confirm the child's permission to enter and stay in HK. 	<ul style="list-style-type: none"> ABs assist in preparing the home study report for the purpose of intercountry adoption; forwarding the home study report to the overseas counterpart; screening the child study report prepared by the overseas counterpart and providing placement supervision for the child. ABs may also contact the Immigration Department in arranging the child's entry into HK for the purpose of adoption

Types of Adoptions	Present Roles		Future Changes in Roles, if any	
	SWD	NGOs	SWD	NGOs
			<ul style="list-style-type: none"> If the adoption order is to be granted in HK, legal documents for court proceedings will be prepared in HK either by SWD or by ABs. 	<ul style="list-style-type: none"> If the adoption order is to be granted in HK, legal documents for court proceedings will be prepared in HK, either by SWD or by ABs.
Related Adoptions (i.e. parents, uncles, aunts or other relatives as defined in the Adoption Ordinance) (HK as the State of origin)	<ul style="list-style-type: none"> No involvement 	<ul style="list-style-type: none"> An NGO is involved in the adoption of children from HK by their overseas relatives. The NGO assesses the children's needs and conditions, screens the home assessment report prepared by their overseas adoption counterparts, arranges for the child's departure, and monitors the placement progress until the adoption order is granted in the receiving jurisdiction (subject to its laws and adoption procedures), etc. 	<ul style="list-style-type: none"> SWD will be involved as the Central Authority (CA) for Convention adoptions and will agree with the CA of the receiving State to proceed with the adoption. 	<ul style="list-style-type: none"> NGOs accredited as ABs can handle intercountry adoption cases for Convention and non-Convention adoptions.

Types of Adoptions	Present Roles		Future Changes in Roles, if any	
	SWD	NGOs	SWD	NGOs
			<ul style="list-style-type: none"> • SWD will also monitor the work and performance of ABs for both Convention and non-Convention adoptions. • If the adoption order is to be granted in HK, legal documents for court proceedings will be prepared in HK either by SWD or by ABs. 	<ul style="list-style-type: none"> • If the adoption order is to be granted in HK, legal documents for court proceedings will be prepared in the HKSAR, either by SWD or by ABs.

Types of Adoptions	Present Roles		Future Changes in Roles, if any	
	SWD	NGOs	SWD	NGOs
			<ul style="list-style-type: none"> Where adoption order is granted outside HK, where appropriate, SWD will also provide the necessary information to the Immigration Department to facilitate the registration of the adoption order granted overseas onto the Adopted Children Register in HKSAR 	
Related adoption (HK as the receiving State)	<ul style="list-style-type: none"> No involvement 	<ul style="list-style-type: none"> An NGO has initiated a self-financing program to assist local families to adopt children who are related persons from certain places outside HK. 	<ul style="list-style-type: none"> SWD will be involved as the CA for Convention adoptions and will agree with the CA of the State of origin to proceed with the adoption 	<ul style="list-style-type: none"> NGOs accredited as ABs can handle intercountry adoption cases for Convention and non-Convention adoptions.

Types of Adoptions	Present Roles		Future Changes in Roles, if any	
	SWD	NGOs	SWD	NGOs
			<ul style="list-style-type: none"> SWD will also monitor the work and performance of ABs for both Convention and non-Convention adoptions 	<ul style="list-style-type: none"> ABs assist in preparing the home study report for the purpose of intercountry adoption; forwarding the home study report to the overseas counterpart; screening the child study report prepared by the overseas counterpart and providing placement supervision for the child. ABs may also contact the Immigration Department in arranging the child's entry into HK for the purpose of adoption

Types of Adoptions	Present Roles		Future Changes in Roles, if any	
	SWD	NGOs	SWD	NGOs
			<ul style="list-style-type: none"> • If the adoption order is to be granted in tHK, legal documents for court proceedings will be prepared in HK either by SWD or by ABs. • 	<ul style="list-style-type: none"> • If the adoption order is to be granted in HK, legal documents for court proceedings will be prepared in HK, either by SWD or by ABs.