

For information
on 11 March 2004

Bills Committee on Adoption (Amendment) Bill 2003

Consultation conducted on the Proposals on Adoption

Purpose

This paper sets out for Members' information the consultation conducted on the proposals on adoption.

Background

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

- (a) a list of respondents (individuals/organizations) which had made submissions in the 1998-99 public consultation exercise;
- (b) information on the membership of the revamped Working Group formed after the 1998-99 public consultation exercise;
- (c) the proposals in the Bill on which consultation had been made and had not been made; and
- (d) the differences between the proposals in the 1998-99 public consultation exercise and those currently proposed in the Bill.

Development

3. In November 1998, the Administration published the Report of the Working Group on Review of the Adoption Ordinance for public consultation until 31 January 1999. A copy of the consultation document is at Annex A. On 5 January 1999, the Administration announced that the consultation period would be extended to the end of February 1999. A list of respondents (individuals/organizations) which had made submissions is at Annex B. The Administration consulted the

Social Welfare Advisory Committee (SWAC) in November 1998.

4. Following the public consultation exercise, the original Working Group was revamped to include non-officials (from organizations involved in adoption-related work and representing adoptive parents). The membership of the revamped Working Group is at Annex C. Between 1999 and 2000, the revamped Working Group met to discuss key issues raised during the public consultation exercise. Based on the feedback received from the public consultation exercise and the advice from members of the revamped Working Group, the Administration proposed to introduce amendments to the Adoption Ordinance, with a view to improving local adoption arrangements.

5. In November 2000, the Central People's Government (CPG) signed the Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (the Hague Convention), and asked the HKSAR Government whether the Hague Convention should be applied to the HKSAR.

6. The Administration consulted the Legislative Council Panel on Welfare Services in February 2001 and again in April 2003; the SWAC in February 2001 and April 2003; and the revamped Working Group in 2003 and 2004.

Major Differences

7. A table showing the differences between the proposals at the following three stages is at Annex D -

- (a) stage 1 (1998): proposals in the 1998-99 public consultation exercise (as set out in the consultation document);
- (b) stage 2 (2001): proposals with modifications, having regard to the feedback received in the 1998-99 public consultation and the deliberations of the revamped Working Group in 1999 and 2000. These were covered in the consultation with the Legislative Council Panel on Welfare Services and the SWAC in February 2001; and
- (c) stage 3 (2003): proposals fine-tuned and details included, in the course of the drafting of the Amendment Bill. These were covered in the consultation with the Legislative Council Panel on

Welfare Services and the SWAC in April 2003, and the revamped Working Group in 2003 and 2004. These were reflected in the Adoption (Amendment) Bill 2003.

8. As shown in the above chronology and the table at Annex D, one will notice that certain proposals have only been covered in subsequent consultation with the Legislative Council Panel on Welfare Services, the SWAC and the revamped Working Group, but not in the 1998-99 public consultation exercise because -

- (a) some are subsequent proposals drawn up in stage 2, having regard to the feedback received in the 1998-99 public consultation exercise or the deliberations of the revamped Working Group on such feedback and issues, e.g. on step-parent adoption;
- (b) the issue of Convention adoption has arisen, as a result of the CPG signing the Hague Convention in 2000; and
- (c) some stage 3 fine-tuning proposals arising in the course of the drafting of the Amendment Bill, e.g. –
 - (i) Re-vesting of Parental Rights - to expressly provide for the re-vesting of parental rights in the birth parent(s) upon revocation of general consent to adoption made within 3 months from the date the consent was executed, pursuant to section 5 of the Adoption Ordinance; and
 - (ii) Continuous Custody Requirement – to amend section 5(8) to the effect that the continuous custody requirement shall not be regarded as broken during any period when the child receives full-time education outside Hong Kong (i.e. whether or not residing at a boarding school).

Presentation

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

Health, Welfare and Food Bureau
March 2004

**REPORT
ON REVIEW OF
THE ADOPTION ORDINANCE**

Working Group on
Review of the Adoption Ordinance

November 1998

CONTENTS

	<u>Paragraph</u>
Foreword	
Part I : <u>Introduction</u>	
Background	1-4
Provision of Adoption Services in Hong Kong	5-10
Summary of Issues Addressed in the Report	11
Part II : <u>Adoption Practices Reviewed</u>	
Assessment Guidelines	12-15
Minimum age requirements	
Maximum age requirements	
Marital status	
Family composition	
Education	
Criminal Record Check	
Religious beliefs	
Motivation and parenting capacity	
Other Requirements	
Appointment of Guardian Ad Litem in Private Adoption Arrangements	16-20
DSW as Guardian Ad Litem	
Qualification of a Guardian Ad Litem	

Paragraph

Measures to Speed Up Adoption Procedures 21-25

Streamlining of local and overseas adoption

Supervision period

Authorization of NGOs to handle adoption cases

Appeal Mechanism 26

Part III : **Proposed Legal Amendments**

Basic Principles and Selection of Adoptive Parents for DSW Wards 27-29

Best interests of the child

Criminal Record Check

Religious Upbringing

Removal of Discriminatory Provisions 30-34

Discrimination on the basis of sex and marital status

Access to Adoption Records 35-44

Existing provisions

Adopted person's right of access to information

Veto by birth parents

Paragraph

Relinquishment of parental rights and
revocation of consent for adoption

45-53

Minimum statutory period for
relinquishing a child

Specific Consent and General Consent

Revocation of consent

Control of Private Adoption by Unrelated
Persons

Local adoption

54-55

Overseas adoption

56-61

Appendices

Appendix 1 : Statistics on Adoption Cases Handled by
SWD Adoption Units

Appendix 2 : Time Frame for Local Adoption of DSW
Wards

Appendix 3 : Time Frame for Overseas Adoption of
DSW Wards

Foreword

In 1991, the then Health and Welfare Branch initiated a review on the Adoption Ordinance (Cap. 290) and the administrative practices relating to adoption. The objectives of the review were to assess the compatibility of the provisions of the Adoption Ordinance with the Hong Kong Bill of Rights Ordinance (Cap. 383) and to identify any discriminatory provisions, to streamline adoption procedures and to update the Ordinance to meet current circumstances.

The Working Group on the Review of the Adoption Ordinance was formed under the chairmanship of the then Health and Welfare Branch and comprised representatives from the then Attorney General's Chambers (now the Department of Justice - D of J) and the Social Welfare Department (SWD). Issues relating to the provisions of the Adoption Ordinance and the adoption practices of SWD and relevant non-governmental organizations (NGOs) were examined in detail. During the review, improvements to adoption practices requiring only administrative changes were implemented with immediate effect. In addition, a small number of minor legislative amendments were introduced to the Adoption Ordinance. The first effectively lowered the upper age limit of a person to be adopted to 18 thereby ensuring compatibility with the Age of Majority (Related Provisions) Ordinance (Cap. 410). And the second, ensured parity of treatment between male and female adoptees. Previously, the Director of Social Welfare could continue to supervise female adoptees until they reached the age of majority (21). These amendments were accomplished by virtue of the Law Reform (Miscellaneous Provisions and Minor Amendments) Ordinance passed in June 1997.

With the conclusion of the review, the following amendments to the Adoption Ordinance are proposed: -

1. to provide that the principle of the best interests of the child should be the first and paramount consideration (paragraph 27);
2. to provide that persons applying for an adoption order should be subject to criminal record checks to ensure safe custody of the adopted child (paragraphs 15(f) & 28);
3. to remove the provision for birth parents to state the choice of religious upbringing for the child relinquished for adoption (paragraphs 15(g) & 29);
4. to add a new part to section 5(3) on differential treatment of female and male applicants and to highlight the importance of protection of the child in the adoption process (paragraphs 30 to 34);
5. to provide for the adopted person's right of access to his¹ original birth records and information about his background (paragraphs 35 to 44);
6. to reduce the minimum age requirement for a child to be relinquished by his birth parent for adoption from six to four weeks (paragraphs 45 to 53);
7. to insert a provision making it unlawful for unrelated persons, or an organization other than the Social Welfare Department, to make arrangements for the adoption of a child, with the exception of the proposed adoption by a parent, or relative of the child, or those acting in pursuance of an order of the Court (paragraphs 54 to 55); and
8. to insert provisions making it unlawful for an unrelated person to remove a child for overseas adoption without the approval of the Court and to stipulate the legal steps in Hong Kong necessary to undertake an overseas adoption (paragraphs 56 to 61).

¹ In this Report, each gender includes the other where the context requires.

Part I

INTRODUCTION

Background to the Review

Adoption in Hong Kong is governed by the Adoption Ordinance which came into force in 1956. The Ordinance was last reviewed and amended in 1987.

2. In arranging adoption placements for children-in-need, it is in their best interests if they are placed in an adoptive home at as early an age as possible. To facilitate early placement of children and to avoid a backlog of cases, adoption procedures must be critically examined and streamlined where possible, on a regular basis.

3. Following the extension of the International Covenant on Civil and Political Rights (ICCPR) to Hong Kong in 1976 and enactment of the Hong Kong Bill of Rights Ordinance in July 1991, the Government has examined the Adoption Ordinance, for the purpose of assessing compatibility with the relevant provisions of the ICCPR and the Hong Kong Bill of Rights Ordinance. Amendments to the Adoption Ordinance or inclusion of new provisions are proposed where necessary.

4. Against this background, a review of the individual provisions of the Adoption Ordinance and the adoption practices of the Social Welfare Department has been conducted. During the process, due consideration was given to the United Nations Convention on the Rights of the Child which was extended to Hong Kong in 1994.

Provision of Adoption Service in Hong Kong

5. Following amendment of the Adoption Ordinance in 1972, adoptions in Hong Kong may be effected only in accordance with the Adoption Ordinance.

6. The aim of the Social Welfare Department's adoption service is to find permanent and stable homes for children whose parents are unable or unwilling to take care of them so that they can experience a normal and healthy childhood before reaching independence. The best interests of the child should always be the paramount consideration in the adoption process.

7. Adoption is a radical change in status which has a significant impact on the future of a child who has lost its parents through death or desertion, or whose parents are unable or unwilling to maintain them. Every possible precaution should be taken to ensure that adoption is in the best interests of the child before an adoption order is considered by the Court.

Services provided by the Adoption Units

8. The Adoption Units (AUs) of the Social Welfare Department are authorized to handle adoption in Hong Kong (see para. 9 below). Services provided by the AUs include: -

- (a) Proposed adoption of wards of the Director of Social Welfare (DSW)²

Applicants interested in adopting DSW wards may apply to the AUs. They are first invited to attend a Group Briefing Session to help

² Wards of Director of Social Welfare - A child or juvenile to whom the Director of Social Welfare has been appointed his legal guardian under Section 34(1)(a) of the Protection of Children and Juveniles (Cap. 213).

them understand the objectives, general requirements, meaning and commitment of adoption, to fill in a questionnaire for initial assessment and an application form for full assessment. Thorough home studies are then conducted with a view to evaluating the applicants' capabilities to become suitable adoptive parents. All applicants who meet the requirements, laid down in the Adoption Ordinance, are given equal opportunity for a full assessment on their suitability to be adoptive parents. The home study process is usually completed in 2 - 3 months. Consequently, over 90% of DSW wards are placed in local adoptive homes within 3 months after they become available for adoption.

Matching panels are conducted within the Adoption Unit twice a month to match prospective adopters (the successful applicants) to the children. The children's needs and the strengths and preferences of prospective adopters are taken into consideration. The children are then placed in prospective adopters' homes and adoption caseworkers supervise the placements and assist the prospective adopters to apply to Court for the formal adoption order.

Overseas adoptive placements are also arranged for DSW wards. Since 1992, overseas adoption has only been arranged for DSW wards when local placements are not available. These children tend to have special needs and are either older, with handicaps, health problems or unfavourable family background. At present, AUs work with the International Social Service - Hong Kong Branch, and the Holt

International Children's Services Inc. in the USA, through the Mother's Choice in Hong Kong, to arrange overseas adoption for these children.

(b) Adoption by Private Arrangement

In Hong Kong, adoption can be arranged through a private arrangement. In most cases, either one of the applicants is a parent, or a relative. If the legal parents of the child are willing to surrender their parental rights, custody and obligations to the prospective adoptive parents, who are interested and willing to adopt the child, they can approach the AUs for assistance. Adoption caseworkers investigate as fully as possible all circumstances relevant to the adoption with a view to safeguarding the interests of the child. They also assist prospective adoptive parents to apply to Court for an adoption order.

(c) Pre-adoption Service

Unmarried mothers intending to give up their children for adoption before birth may also be referred to the AUs for assistance. Counselling services are given to unmarried mothers to help them formulate future plans for themselves and for their soon-to-be-born babies. If the mother decides to give up the baby for adoption, intensive counselling is provided to help her to cope with the emotional stress arising from signing off her child.

9. A guardian ad litem is required in all adoption proceedings to safeguard and promote the interests of the prospective adopted child during the Court process. The

Director of Social Welfare (DSW) is normally the guardian ad litem³ in all adoption proceedings. In this regard, the AUs present to the Court all relevant information in respect of adoption applications. In addition, in accordance with sections 5(7)(b) and 21 of the Adoption Ordinance, DSW must be notified, in writing, of any intention to apply for an adoption order, and public officers authorised by DSW (i.e. adoption caseworkers in the AUs) visit and examine the child in respect of whom notification has been given to DSW.

10. Statistics on adoption cases handled by the AUs are at Appendix 1. The general timeframes for processing local and overseas adoption of DSW wards are at Appendices 2 and 3 respectively .

Summary of Issues Addressed in the Report

11. The Working Group has reviewed a number of issues relating to the principles of adoption, adoption practices and legal provisions, including: -

Issues requiring administrative change

- (a) assessment guidelines on adoption applicants [implemented since August 1996];
- (b) appointing a guardian ad litem other than DSW in private adoption cases [measures implemented since August 1996];
- (c) measures to speed up adoption procedures - [streamlining of adoption procedures introduced since 1989/90]; and
- (d) appeal mechanism;

³ Guardian ad litem - A person appointed to safeguard and promote the interests of the child during Court proceedings. In adoption applications, it is the duty of the guardian ad litem to investigate as fully as possible all circumstances relating to the proposed adoption with a view to safeguarding the interests of the child before the Court and to make a report to Court for that purpose.

Issues requiring legal amendment

- (e) basic principles and selection of adoptive parents for DSW wards;
- (f) removal of discriminatory provisions in the Adoption Ordinance;
- (g) access to adoption records;
- (h) relinquishment of parental rights and revocation of consent for adoption;
and
- (i) legal control on private adoption arrangements by unrelated persons.

Details of the Review are given in Parts II - III of this Report.

Part II

ADOPTION PRACTICES REVIEWED

Assessment Guidelines Applying to Adoption Applicants

12. The primary 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 so that he can enjoy family life and grow up in a caring and nurturing environment. Section 8(1)(b) of the Adoption Ordinance provides that the Court shall be satisfied that an adoption order, if made, shall be for the welfare of the child. To protect the best interests of the child, thorough assessment as to the suitability of the adoption applicants is essential.

13. Prior to the start of this Review, in addition to the minimum age requirement laid down in the Adoption Ordinance, the AUs of the Social Welfare Department adopted a set of basic assessment guidelines for adoption applicants. These included age, marital status, income, education level, etc. (see para. 15) to facilitate initial screening of the suitability of prospective adoptive parents. Those meeting the assessment guidelines were invited to make an application for an adoption order. Applications from sole applicants were normally not accepted before August 1996.

14. Having examined the compatibility of the assessment guidelines with the Bill of Rights Ordinance, the Working Group considers that whilst the assessment guidelines can be justified as being in the best interests of the child, they should be applied in a flexible manner. Indeed, all persons who meet the requirements laid down in the Adoption Ordinance should be given an equal opportunity for a full assessment on their suitability to become adoptive parents. Requirements laid down in the Adoption

Ordinance include a minimum age requirement and residential qualification. Applicants are not rejected at the initial screening due to their failure to meet one or several of the assessment guidelines. Each adoption placement decision is based on an objective assessment on the needs of the child and the strength of the prospective adoptive family in meeting those needs.

15. The practice of giving equal opportunity for full assessment and the revised assessment guidelines have been implemented since August 1996. Salient features of the revised guidelines are set out below: -

(a) Minimum age requirement

The minimum age requirement of applicants is laid down in section 5(1)&(2) of the Adoption Ordinance. Section 5(1) of the Adoption Ordinance specifies the minimum age of a sole applicant while section 5(2) specifies that relating to a joint application by two spouses. They are:

For Sole Applicants

- (i) no age requirement if the applicant is the father or mother of the child;
- (ii) if the applicant is a relative of the child, he should be at least 21 years old; or
- (iii) applicants not falling within (i) or (ii) should be 25 years.

For a Joint Application by Two Spouses

- (i) No age requirement if either applicant is the father or mother of the child;
- (ii) both applicants should be at least 21 years if one of the applicants is a relative of the child; and
- (iii) for joint application of unrelated applicants, one of them should be at

least 25 years old and the other, 21 years old.

The minimum age requirement of 25 for non-related applicants is considered appropriate taking account of the following: -

- (i) applicants should be sufficiently mature to make a decision on a life-long commitment to adopt another person's child;
- (ii) some of the children may come from broken families and have emotional problems. Adoptive parents should have the maturity and life experience to cope with these problems and to handle the new relationship; and
- (iii) the average age of mothers delivering their first babies.⁴

(b) Maximum age qualification

The practice of not accepting applications from applicants aged over 45 has been abandoned. The age of the adoptive applicant should be assessed in the context of whether they are physically capable of taking care of the child and providing for the child's developmental needs until he reaches the age of independence. However, in order to protect the interests of the child, the age difference between the adoptive parent and the adoptive child needs to be taken into consideration.

(c) Marital status

Under the Adoption Ordinance, applications for an adoption order can be made by married couples jointly or by sole applicants who may be single persons, or single parents. Where the applicants are a married couple, the duration of and number of marriages can serve as an indicator as to the marital stability of the couple. Single persons or single parents

⁴ According to the Demographic Trend In Hong Kong 1981-1996 by Census and Statistics Department (December 1997), the median childbearing age of women at their first live birth was 28.8 years in 1996.

demonstrating an ability to provide an adopted child with a suitable home are given an equal opportunity to adopt a child. The marital status of successful adoption applicants since August 1996 is as follows:

<u>Year</u>	<u>Married Couples</u>	<u>Single Persons</u>	<u>Single Parents</u>	<u>Total</u>
Aug '96 - Mar '97	177	5	4	186
Apr '97 - Mar '98	254	3	6	263

(d) Family composition

Family composition is an important factor to be considered in the assessment of applicants since some adoptive parents may have difficulties in finding sufficient time to bond with the adopted child, if they already have a large number of children. This is one of the areas to be reported to the Court.

(e) Education

Education standard is also an important consideration in assessing the suitability of the applicant. This helps to ensure that the adoptive parents have the ability to provide educational guidance to the adopted child. Adoptive parents should normally have completed at least Primary Six.

(f) Criminal record

Applicants are required to declare any criminal convictions. Despite the provisions of the Rehabilitation of Offenders Ordinance (Cap. 297) which provides for protection of rehabilitated individuals (i.e. individuals whose convictions have become spent), section 3(2)(a) of that

Ordinance expressly recognises an exception in any proceedings relating to the interests of an infant. The current practice in requiring every adoptive applicant to declare their conviction(s), is considered consistent with the Rehabilitation of Offenders Ordinance. This practice is also consistent with the Bill of Rights Ordinance and helps to ensure that applicants are fit and proper persons to take custody of an adopted child.

(g) Religious belief

Section 6(3) of the Adoption Ordinance, Form 4 and Form 4A of the Adoption Rules, provide birth parents with a right to state the choice of religious upbringing for a child relinquished for adoption. Article 14 of the UN Convention on the Rights of the Child, however, states that the rights of the child to freedom of thought, conscience and religion shall be respected. As most children available for local adoption are babies, the Working Group supports the argument that they should be given the right to choose their own religious beliefs when they grow up.

(h) Motivation and parenting capacity

Applicants are also subject to assessment on their motivation to adopt, parenting capacity, stability of relationship and capacity to cope with stresses in life.

(i) Other requirements

The other requirements in respect of financial and health conditions of applicants and the accommodation available for the child are also matters that DSW as guardian ad litem is required to investigate and report to the Court.

Appointing Guardian Ad Litem other than the Director of Social Welfare in Private Adoption Arrangements

Reports and information required

16. In privately arranged adoptions, as soon as the applicants have lodged a Notice of Intention to apply for an Adoption Order (Form 1) with DSW, DSW will, as a matter of practice, assume the role of "guardian ad litem" (GAL). A GAL should be an independent, disinterested individual or entity, qualified to look after the best interests of the child. His duty is to present to the Court all relevant information in respect of the application. DSW, as the GAL, will investigate the circumstances of the application including gathering information relating to the conditions of the adoptive home and motivation of the prospective adopters. Within four months of lodging a Form 1, all supporting information relating to the adoption, including the Originating Summons on Application for an Adoption Order (Form 2) and the Statement in Support of Application of an Adoption Order (Form 3), must be filed with the Court. Six months from the date of filing the Form 1, a general report, confirming or otherwise the information submitted by the applicant and providing additional information on the matters contained in the applicant's statement and matters specified in the Second Schedule of the Adoption Rules, must be submitted to the Court. A decision is then made whether or not to grant an adoption order.

Appointing a GAL in private adoption cases

17. According to Rule 9⁵ of the Adoption Rules, an applicant may apply to the Court to appoint a person other than DSW as the GAL. The Court may also appoint the Official Solicitor to be the GAL of the child in lieu of DSW. Rule 16(b) of the Adoption Rules provides that DSW must be served with a Notice of Hearing (Form 6) if he is not the GAL. Rule 17 provides that any person served with a Form 6 may appear before the Court to show cause why an adoption order should not be made.

18. As indicated in Appendix 1, half of the adoption cases handled by the AUs are privately arranged adoption cases. The majority of these are step adoptions and relative adoptions. The Working Group has considered whether these cases should be allowed to go directly to Court without DSW assuming the role of GAL. It believes that the current practice should be maintained whereby DSW acts as GAL irrespective of the nature of the adoption unless the Court appoints another person to be the GAL. The reasons are: -

- (a) with the increasing number of divorce petitions and growing complications in child custody issues, a simple step-adoption case may become a complicated contested case if the other natural parent refuses to give consent to relinquish the child;
- (b) the social work input required by some step or relative adoption cases can be substantial. For example, when the Court is not satisfied with certain

⁵ Rule 9 of Adoption Rules, Cap 290 Subsidiary Legislation - Appointment of some other person as guardian ad litem

(1) Except where the Director has become guardian ad litem by virtue of section 5(5F) of the Ordinance, if the applicant desires that some person other than the Director should be appointed to act as guardian ad litem, the originating summons must ask for the appointment of a guardian ad litem and must be supported by an affidavit by the applicant setting out the facts together with the consent to act in writing of the proposed guardian ad litem and the judge may appoint such person as he thinks fit to be the guardian ad litem.

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

applications, it has directed DSW to provide extensive counselling services to the family. And even when granting an adoption order, the Court has on occasion directed DSW to continue supervising the case;

- (c) some judges have raised concerns about accepting persons other than DSW as the GAL. Between 1991/92 and 1997/98, seven direct applications to Court were made to appoint solicitors or private investigators to serve as GAL. The Court dismissed two of these applications and subsequently appointed DSW to be the GAL.

19. The Department of Justice has advised that, the current practice of DSW performing the role of GAL of a child for the purpose of the application for an adoption order is not inconsistent with Article 21(a) of the UN Convention on the Rights of the Child. Article 21(a) provides that States Parties shall ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary

Qualifications required of a GAL

20. In this connection, the Working Group has recommended that:-
- (a) that persons other than DSW seeking to be appointed as a GAL should be:-
 - (i) an independent, disinterested individual or entity, qualified to look after the best interests of the child;
 - (ii) able to observe and perform the duties required of a GAL as

stipulated in Rule 13 and 14 of the Adoption Rules in respect of full investigation of relevant circumstances and to treat all information as confidential;

- (iii) professionally competent to handle adoption and child welfare issues; and
- (iv) be clear that his duty is to the child and the Court alone, never to the adoptive parents; his position of being paid by the prospective adopters would undermine any appearance of independence and carry an inherent conflict of interest in protecting the child and in satisfying the adopters.

As an alternative to DSW, only voluntary organizations specializing in adoptions or individuals with special training in relation to children such as social workers, teachers or clinical psychologists should be appointed as GAL. In the case of individuals, they should have the backing of an organization with adequate resources to enable proper investigations to be made.

- (b) In cases where early intervention by DSW is desirable and to allow sufficient time for DSW to study the case and come to a view as to whether adoption is in the best interests of the child, administrative measures should be introduced: -
 - (i) to enable the Court to order social welfare reports from DSW and to facilitate early referral of cases to DSW; and

- (ii) to enable DSW to have access to adoption documents and general reports at least 14 days before the Court hearing.

The Judiciary Administrator was informed of the Working Group's recommendations in August 1996 and arrangements have been made to remind all Judges' Clerks of the operation of Rules 9 and 16 concerning the appointment of GAL and the Notice of Hearing (Form 6) to be served on DSW.

Measures to speed up Adoption Procedures

Streamlining of Adoption Procedures

21. In order to facilitate the early placement of DSW wards into adoptive homes, SWD has in recent years, introduced a number of measures to streamline the processing of adoption applications. These include:-

(A) Local adoption

(a) Introduction of group briefing sessions

Group briefing sessions are now conducted to replace individual intake interviews during which general information on adoption procedures, legal requirements, etc. is given.

(b) Introduction of a timeframe on adoption procedures

A timeframe of 2 to 3 months has been introduced for the processing of home studies. This has shortened the waiting period for a child to be matched to a suitable adoptive family. Matching panels are held twice a month to enable children to be matched and placed with prospective adopters as early as possible.

(B) Overseas adoption

(c) Parallel matching

To increase the placement opportunities for children who cannot initially be matched with local adoptive families, a parallel matching scheme which caters for both local and overseas adoptive homes has been developed. Should a local placement become available before a formal matching proposal is made to overseas adopters, the case is retrieved for local placement, although such instances are rare.

(d) Introduction of a home study dossier

Drawing reference from SWD's comprehensive application form, the International Social Service - Hong Kong Branch has devised a home study dossier consisting of a Family Report and Notes on the Assessment Report. The dossier has facilitated the collection of factual information on family background from various overseas agencies.

(e) Wardship proceedings

Children placed for overseas adoption are made wards of Court⁶ to enable their departure to overseas countries for adoption. To reduce the time spent on wardship proceedings, officers-in-charge of the AUs also serve as Commissioner for Oaths to witness DSW's swearing of an affidavit in wardship proceedings. Six weeks is allowed for the processing of legal papers in wardship proceedings involving various departments, counting from the date of referral from SWD to the fixing of a date of hearing in the Court of First Instance.

⁶ Wards of Court - Section 26 of the Supreme Court Ordinance (Cap. 4) empowers the High Court to make a child a ward of the Court. The effect of wardship proceedings is to vest the pre-existing parental rights in the Court, the successful applicant merely being warded care and control; all important decisions in the child's life such as its education, upbringing and marriage become matters for the Court's decision, thereby enabling the Court to exercise physical and moral protection over the child.

(C) Privately arranged adoptions

- (f) Since 1993, the target for completing the processing of a simple and straight-forward private adoption case by the AU is 12 months. Processing of complicated cases can normally be completed within 24 months.

The Working Group noted that the timeframe for processing applications for an adoption order in Hong Kong was generally in line with international standards.

Supervision period for adoption placement

22. Under section 5(7) of the Adoption Ordinance, an adoption order is not made unless, the child has been continuously in the actual custody of the adoptive parents for at least 6 consecutive months immediately preceding the date of the order, or where either of the applicants is a natural parent, 13 weeks. The Working Group has examined the acceptability of the duration of these supervisory periods.

23. Supervision of adoption placement by the AUs has the dual purpose of evaluating the placement and strengthening it by rendering appropriate assistance to the proposed adopters. During the 6-month period, the adoption caseworker maintains close contact with and conducts regular visits to, the adoptive family, prepares legal papers and reports to the Court. The focus of the initial 2-3 months is on the adjustment of the child after he has been placed in the adoptive home. In the following 3 months, the adoption caseworker makes a more in-depth assessment as to the relationship and bonding which has developed between the child, the proposed adopters and other family members. Towards the end of the period, the caseworker reviews the placement and if appropriate, makes preparation for finalising the adoption proceedings.

24. Having regard to local circumstances and overseas experience, (adoption placement of 12 months in the UK, and from 3 - 6 months in various states in the USA), the Working Group recommends that section 5(7)(a) of the Adoption Ordinance should remain unaltered. This is particularly so, given that section 5(7)(b)(ii) of the Ordinance provides that the Court may shorten the placement period where necessary.

Authorization of selected non-governmental organizations (NGOs)
to handle adoption cases

25. Under section 3 of the Adoption Ordinance, DSW may delegate any of his powers, duties and functions under the Ordinance to public officers. Section 3 does not, however, provide for similar delegation to NGOs. A few years ago, the Working Group considered whether selected NGOs should be authorized to handle adoption cases to help clear the backlog of privately arranged adoption cases which existed in the early 1990s. It recommended this should not be pursued. The justifications were: -

- (a) the respective roles of the Government and NGOs have been clearly set out in the 1991 White Paper on Social Welfare. SWD should focus on statutory duties and services with legal implications;
- (b) additional staff were deployed to the Adoption Unit in the early 1990s and with the streamlining of adoption procedures, the backlog of cases quickly disappeared. Since then, the Adoption Units have met the various target timeframes (referred to in para. 21) and given the relatively small number of cases involved each year, see no justification to deviate from the existing arrangement.

Appeal Mechanism

26. The Working Group has reviewed the current mechanism concerning unsuccessful adoption applications. Under the existing practice, unsuccessful applicants can appeal to DSW or seek a judicial review of DSW's decision. The Working Group has noted that since 1990/91, only 4 appeals have been made. At present, appeals are dealt with by the District Social Welfare Officer (who is the Complaints Officer in the District). The Working Group considers that while it may not be cost-effective to set up a separate Appeals Board, the feasibility of introducing an appeal mechanism involving an independent third party to handle appeal cases, should be explored. The Administration will examine this in more detail.

Part III

PROPOSED LEGAL AMENDMENTS

Basic Principles and Selection of Adoptive Parents for DSW Wards

Best Interests to the Child

27. The Working Group has reviewed the adoption process and found that the principle of "the best interests of the child as the first and paramount consideration in the adoption process" is upheld administratively by SWD. Section 8(1)(b) of the Adoption Ordinance provides that the Court should be satisfied that an adoption order is made for the welfare of the child. However, the Working Group recommends that the Adoption Ordinance should be amended to reflect this principle in more explicit terms.

Criminal Record Check

28. During the review of the application process, the current administrative practice of requiring adoptive applicants to declare criminal convictions in order to ensure the safe custody of the adopted child, was considered to be necessary and consistent with the Rehabilitation of Offenders Ordinance. However, the Working Group believes that such a practice should be made legally mandatory. It therefore recommends that the Adoption Ordinance should be amended to require applicants to be subject to a criminal record check.

Religious Upbringing

29. As regards the review on the rights of an adopted child to choose his religious beliefs, the Working Group recommends that the provision for birth parents to state the choice of religious upbringing for the child relinquished for adoption (as stipulated in section 6(3) of the Adoption Ordinance and Form 4 and Form 4A of the

Adoption Rules), should be removed. This proposal is consistent with the Bill of Rights Ordinance.

Removal of Discriminatory Provisions in the Adoption Ordinance

30. The Working Group was earlier of the view that sections 5(3) and 21(2) of the Adoption Ordinance might contravene Article 1(2) of the Hong Kong Bill of Rights Ordinance, which provides that: -

"Men and women shall have an equal right to the enjoyment of all civil and political rights set forth in this Bill of Rights."

Section 5(3) of the Ordinance

31. This provides that: -

"An adoption order shall not be made in respect of an infant who is a female in favour of a sole applicant who is a male, unless the Court is satisfied that there are special circumstances which justify as an exceptional measure the making of an adoption order."

This provision is aimed at protecting an adopted female infant from possible sexual abuse. However, section 5(3) would appear to discriminate against men since no such provision applies to women who wish to adopt boys.

Section 21 of the Ordinance

32. This provides that: -

"(1) Subject to the provisions of subsection (2), the Director or any public officer authorized by him for the purposes of this section may visit and examine any infant in respect of whom a notification

has been given to the Director under section 5(7)(b) and may enter and inspect any premises in which the Director or such public officer has reason to believe such infant is being kept.

- (2) The powers conferred by subsection (1) shall cease: -
- (a) upon such notification being withdrawn; or
 - (b) in the case of a male infant, upon an adoption order being made in respect of the infant; or
 - (c) in the case of a female infant, upon the infant attaining 21 years of age."

Section 21(2) provided for differential treatment of a male adopted child and a female adopted child and the Working Group therefore recommended its deletion. Under the Law Reform (Miscellaneous Provisions and Minor Amendments) Ordinance 1997, section 21(2) was repealed, in June 1997.

33. Regarding section 5(3), advice from the then Attorney General's Chambers in 1992 was that "where there is a fear based on statistical evidence that adoptees of one sex or adoptive parents of one sex should be subject to special conditions, it is perhaps better for a Court to impose these conditions on a case by case basis". The Working Group therefore agreed in 1992 that section 5(3) should be retained and that all references to sex should be removed. It was further proposed that section 5(3) should be revised to read - "An adoption order shall not be made in respect of an infant in favour of a sole applicant, unless the Court is satisfied that there are special circumstances which justify as an exceptional measure the making of an adoption order". However, upon re-examination of this recommendation in 1998, it was observed that while the proposed

amendment is intended to remove a (sex) discriminatory provision, it may still be considered discriminatory on the grounds of marital status.

34. In order to comply with the relevant anti-discriminatory legislation while at the same time highlighting the importance of protecting children in the adoption process, the Working Group recommends that a new part be added to section 5(3) to ensure parity of treatment for both sexes and that the element of protection should be included together with the principle of the best interests of the child, as the first and paramount consideration in the Adoption Ordinance. Inevitably, this is an important consideration for the Court to take into account before deciding whether to grant an adoption order.

Access to Adoption Records

35. Under section 18 of the Adoption Ordinance, the Registrar of Births and Deaths is required to maintain an Adopted Children Register. Entries in the Register are made whenever an adoption order is granted, and this effectively replaces the child's birth certificate. Any person is entitled to require a search to be made of the index of the Register and to have a certified copy of any entry in the Register in the same manner as the registers of births, as set out under section 22 of the Births and Deaths Registration Ordinance (Cap 174).

36. In addition, the Registrar is required to keep other registers in order to make traceable, the connection between any entry in the registers of birth that has been marked "Adopted" and any corresponding entry in the Adopted Children Register.

However, records which enable the tracing of the original name and natural parentage of adopted children are not open for public inspection or search. The Registrar is allowed to furnish persons with information on them only by order of the Court.

37. The absence of a statutory right for an adopted person to be informed of the identity of his birth parents may constitute a breach of Article 17 of the International Covenant on Civil and Political Rights. This Article provides that: -

"(1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

(2) Everyone has the right to the protection of law against such interference or attacks."

38. The Working Group notes that the practice in overseas jurisdictions varies widely. Most jurisdictions studied allow for some form of access to birth records provided that no prior objection has been lodged by the birth parents.

39. To introduce legislative provisions to give recognition to an adopted person's right of access to information relating to his natural parents would bring the Adoption Ordinance in line with Article 14 of the Hong Kong Bill of Rights Ordinance. This Article gives effect in Hong Kong to Article 17 of the International Covenant on Civil and Political Rights.

Rights of the Birth Parents

40. However, consideration should also be given to protecting the rights of the birth parents. For example, the parents might have been minors when the child was born, were not married, or already had their own families, or the mother, might have been a rape victim. Also some form of protection should perhaps also be given to the adoptive parents to avoid possible interference by the birth parents before the adopted child reaches the age of majority.

41. Having regard to the need to strike a balance between the interests of the adopted child, the birth parents and the adoptive parents, the Working Group recommends that provisions be included in the Adoption Ordinance to allow adopted persons the right of access to their original birth records provided: -

- (a) in the case of an adopted child under the age of 18, the adoptive parents consent to the application; and
- (b) in the case of all applications, the birth parents have not exercised a power of veto on the release of such information.

The Birth Parents' Right of Veto

42. The Working Group suggests that the following procedures be introduced:-

- (a) when signing off a child for adoption, the birth parent(s) should be informed of the existence of the veto mechanism and advised that: -
 - (i) the veto will remain in place for the duration of their lifetime;
 - (ii) they can, at any time in future, request the Registrar of Births and Deaths to lift the veto; and

- (iii) notwithstanding the veto, should the adopted child seek access to his birth records, the birth parent(s) will be discreetly asked to confirm whether or not they wish the veto to be upheld;
- (b) where the birth parents are unmarried, the decision on whether or not to impose a veto rests with the birth mother. (Where there is disagreement between the birth parents, the matter should be decided by the Court since the birth father could still establish his parental rights by means of a Court order);
- (c) where the birth parents are married, both parents must agree if a veto is to be imposed or, once imposed, to be lifted;
- (d) the veto should also apply to the release of information to the adoptive parents; and
- (e) the right of access to birth records should not be introduced with retrospective effect.

43. Counselling, on a non-compulsory basis, should be offered to the birth parents by SWD caseworkers when they sign off the child so that they are made aware of the effect of the veto. An adopted person who either seeks access to his birth records or contact with his birth parent(s), should also be offered appropriate counselling.

44. Under existing practice in Hong Kong, information about an adopted child's family history and medical background, except identifying data of his birth parents, is provided to the adoptive parents after an adoption order has been granted. Adoptive parents are encouraged to tell the child about his adoption. To ensure that a

child's access to information is not denied, the Working Group recommends that an additional provision should be included in the Adoption Ordinance to give an adopted child the right of access to information about his background, upon reaching the age of 18.

Relinquishment of Parental Rights and Revocation of Consent for Adoption

45. The objective of the adoption service is to help needy children find permanent and suitable homes. A child should be placed in a potential adoptive home as at young an age as possible. As adoption results in a complete and final severance of all ties between a birth parent and a child, the rights and interests of the former should be appropriately balanced against those of the child. The relinquishment of a child for adoption is a very important decision for both the parents and the child. If handled improperly, it can be a traumatic experience for both parties.

46. Under section 7(3)(a) of the Adoption Ordinance, a parent cannot relinquish a child until the child is six weeks' old. This serves to ensure that a parent has sufficient time to think carefully about adoption.

47. When a parent has expressed an interest to DSW to relinquish a child before it is six weeks' old, SWD will arrange for its temporary care. The parent will be asked to sign a "Declaration" indicating his intention to relinquish the child. Since 1994, a proviso has been included in the "Declaration" advising the parent to approach DSW within six weeks of the birth of the child to discuss the welfare plan for the child. After the child reaches six weeks, DSW can apply to the Court to free the child for adoption in the absence of parental consent.

Consent for Adoption from Parents

48. If a parent has decided to relinquish a child for adoption and the child has reached the age of six weeks, a "consent for adoption" is sought from the parent before adoption arrangements proceed. After giving consent, however, a parent can revoke this in one of two ways:-

(a) Specific consent

Specific Consent (SC) generally applies to adoption applications through private arrangements where the birth parent has identified the prospective adoptive parent such as step-parents or relatives. The birth parent can give a SC under Rule 10 of the Adoption Rules. After the SC has been given, the birth parent must be served with a Notice of Hearing under Rule 16. The birth parent has an opportunity to oppose the application for an adoption order and to present his objection to the Court.

(b) General Consent

General Consent (GC) usually applies to adoption cases where the birth parent has no prior knowledge of the prospective adoptive parents. This is generally the case when unmarried mothers relinquish their children to DSW for adoption. After giving a GC under Rule 10, a parent may revoke the consent by notifying DSW in writing within three months of the execution of the form of consent. After the three-month period and before any adoption order is made, the birth parent may still apply to the Court to revoke that consent.

Minimum Period for Relinquishing a Child

49. Between 1992 and April 1998, SWD handled 615 adoption cases which involved relinquishment of parental rights. Of these, 11 parents signed off their children once the six weeks' minimum period was reached; 218 parents required between six to ten weeks and 386 parents required more than ten weeks. Thus, the majority of parents had not yet made up their mind before birth and very few required less than the minimum period to decide on adoption.

50. However, there are cases in which parental consent cannot be obtained. For example, when a birth mother has abandoned the child. In order to protect the interests of these children and to enable them to be freed for adoption as soon as possible, DSW may apply to the Court under section 5A of the Adoption Ordinance.

Revocation of Parental Consent

51. As regards revocation of parental consent within three months after the execution of the consent, the Working Group notes that some mothers treat this as an extension of the six-week period, enabling them to change their minds after they have given their consent. However, a child may have already been placed in an adoptive home before the consent is revoked. As such, the child has to be removed from the adoptive home, and depending on the age of the child and the circumstances, this removal may have an adverse impact on the psychological development of the child. The number of adoption cases involving revocation of consent is, however, quite small. Since 1990, there have only been eight cases.

52. The Working Group has reviewed the minimum period for a parent to relinquish a child and for revocation of that parental consent. The Working Group recommends that :

- (a) the minimum statutory period for relinquishing a child should be reduced from six to four weeks;
- (b) the existing three-month period for revoking parental consent should be retained;
- (c) the pre-natal counselling for unmarried mothers provided by SWD caseworkers should be strengthened; and
- (d) post-natal counselling to help mothers prepare for the relinquishment of their children after birth and cope with the emotional stress arising from signing off their children, should be reinforced.

53. The justifications are as follows: -

- (a) reducing the minimum period for relinquishing a child will facilitate early placement of the child. Early settlement of the signing off procedures can also save a birth mother who is a rape/incest victim from prolonged emotional disturbance;
- (b) the reduction will not exert pressure on the birth mother to make a quicker decision as she can always take a longer period to decide; and
- (c) the Working Group recognizes the need to preserve a parental right to revoke consent. Although this may affect the child to an extent, the parent-child relationship should be preserved as far as practicable and should not be extinguished against the wishes of a parent.

Legal Control on Private Adoption Arrangements by Unrelated Persons

Local Unrelated Adoption

54. Over the years, the private arrangement of adoption of children by unrelated persons has become an area of concern for the following reasons: -

(a) lack of prior assessment on the adoptive parents before placement

In the absence of any assessment before the child joins an adoptive family, there are no safeguards to ensure that the child has joined the most suitable adoptive home. The child's life would be severely disrupted if the applicant is eventually found to be unsuitable;

(b) absence of pre-adoption counselling

Without pre-adoption counselling, the success of an adoption arrangement could be seriously undermined as the birth parents may change their mind in relinquishing the child, the adoptive parents may find the child more than they can cope with, and the child, if he is old enough, may experience adjustment problems settling into a new environment;

(c) validity of consent given by the birth parents - The adoption process will be delayed if the birth parents disappear after giving up the child and their consent to adoption is subsequently found to be legally invalid; and

(d) monetary involvement - In some cases, it is suspected that money transactions, (prohibited under section 22 of the Adoption Ordinance), may take place in the course of private adoption arrangements.

55. To address these problems, the Working Group recommends that a provision, along the lines of section 11 of the UK Adoption Act 1976, be added to the

Adoption Ordinance to make it unlawful for unrelated persons, or an organization other than SWD, to make arrangements for the adoption of a child, with the exception of proposed adoption by a parent, or relative of the child, or those acting in pursuance of a Court order. This would ensure that children in need of adoption placement are made known to SWD Adoption Units and a formal assessment on the suitability of the adoptive parents, made before placement occurs. Birth parents' consent could be obtained properly. Counselling service could also be made available to the birth parents, adoptive applicants, and the child, if he is old enough, to prepare them for the adoption.

Overseas Unrelated Adoption

56. Arrangements are made for DSW wards with special needs who are not adopted locally to be placed overseas with the assistance of International Social Service Hong Kong Branch (ISS-HK) and the Holt International Children's Services Inc. in the USA working through Mother's Choice in Hong Kong. There is no provision in the Adoption Ordinance to enable a Court to make an order giving leave to place a child for adoption outside its jurisdiction. There has, however, been a long standing practice approved by the High Court (SC (an infant) (No. 2) (1962) HKLR 499) to use the wardship jurisdiction of the High Court to approve such a placement. Adoption Units have made use of the wardship jurisdiction of the High Court to obtain leave of the Court to send a child out of Hong Kong for overseas adoption placement and to pass care and control of the child to suitable parties overseas.

57. Non-governmental organizations involved in arranging the overseas adoption of children by private arrangement are, at present, ISS-HK and Caritas - Hong Kong. ISS-HK is involved in relative adoption cases initiated by the overseas relatives of

the child. The average number of new applications received each year is 7. Caritas - Hong Kong is involved in unrelated adoption cases and matches local children with overseas adoptive parents. The children arranged for overseas adoption by Caritas are mostly healthy babies born to unmarried mothers. According to Caritas, the agency has dealt with about 9 cases per annum in recent years. In arranging such placements, the agency has used the jurisdiction of the Court under the Guardianship of Minors Ordinance, (Cap. 13). Caritas arranges for the prospective adopters to come to Hong Kong and for the birth mother to apply to the Court under the Guardianship of Minors Ordinance for a custody order in favour of the prospective adopters. Leave for the child to be removed from Hong Kong permanently for the purpose of overseas adoption is also sought. Since the Guardianship of Minors Ordinance does not require a background case/report from DSW, it is a matter for the Court to decide whether such reports are required.

Problems with Current Provisions in the Ordinance

58. The lack of specific provisions in the Adoption Ordinance has led not only to different practices being adopted by SWD Adoption Units and NGOs but also leaves uncertain the extent to which the requirements of the Ordinance for the making of an adoption order (such as parental consent) must be satisfied before a child can be sent overseas for adoption. The Working Group considers this unsatisfactory. The possibility of inadequate protection of children sent overseas for adoption is a major concern. As a result, the Working Group recommends that provisions be added to the Adoption Ordinance prohibiting the removal of a child from Hong Kong for adoption overseas by any person not being a parent, guardian or relative except under the authority of a Court order.

Proposed Arrangements for Overseas Adoption

59. It is proposed that the application to Court for an order authorising the removal of a child for adoption overseas be made by the DSW (or the parent(s) / guardian(s), prospective adopters or any interested person), and must be supported by two reports, one each from a local person qualified to be a guardian ad litem and an overseas adoption agency licensed in the prospective adopters' country of residence. It is further proposed that, for adoption by unrelated person(s), such an order would have the effect of making the child a ward of the Court, empowering the Court to give consent to the removal of the child for adoption overseas, and vesting the care and control of the child in the licensed overseas adoption agency.

60. The appointment of an individual (other than DSW) as guardian ad litem according to Rule 9 may appear cumbersome to some overseas adopters. To avoid delaying the application and deterring overseas adopters from adopting special needs children from Hong Kong (currently over 100 are awaiting adoption), a simpler procedure under Rule 9 is proposed. The Court would appoint the proposed guardian ad litem, hear the application for the order, and authorise the removal of the child overseas, on the basis of reports presented at one single hearing.

61. It is also proposed that the following requirements should be fulfilled before such an order is made by the Court:-

- (a) the child is established to be adoptable and the overseas adoption arrangement is in the best interests of the child;

- (b) confirmation that the adoptive parents are eligible and suitable to adopt by an adoption agency licensed under the law of the country where the prospective adoptive parents are domiciled;
- (c) proof that the adoptive parents intend to adopt the child under the law of or within the country, in which they are domiciled;
- (d) proof that the child is or will be authorized to enter and reside permanently in the country where the prospective adoptive parents are domiciled; and
- (e) consent of the birth parent(s)/legal guardian(s) to the legal adoption of the child has been properly obtained or dispensed with by the Court (ie no restriction that the birth parent(s) must sign off to DSW for adoption, but they should only sign off after (a) to (d) are proven, if prospective adopters are identified, in order to protect the child's interest).

Appendix 1

Statistics on Adoption Cases Handled by the Adoption Units

Table 1 - Adoption Applications Processed by the Adoption Units

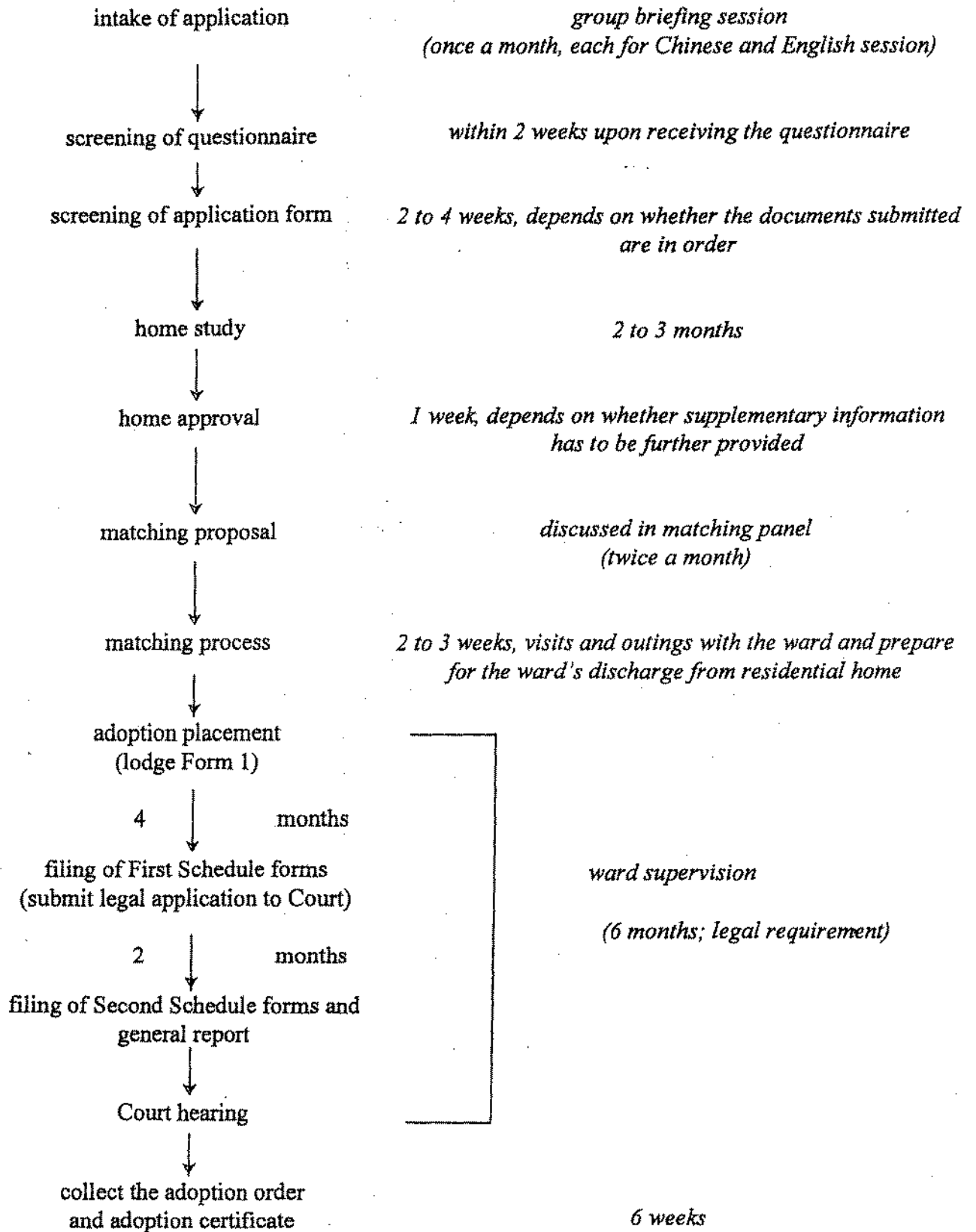
	1993/94	1994/95	1995/96	1996/97	1997/98
Adoption of DSW wards:					
Local adoption	158	126	128	137	138
Overseas adoption	17	9	7	29	15
Sub-total	175	135	135	166	153
Adoption by private arrangements:					
Step-adoption	120	107	91	70	55
Relative adoption	59	58	48	35	35
Unrelated adoption	45	29	25	15	20
Sub-total	224	194	164	120	110
Total	399	329	299	286	263

Table 2 - Characteristics of DSW wards available for adoption as at 31.3.1998

Characteristics of DSW Wards	Local Adoption	Overseas Adoption
Normal and healthy	8	0
Hard background (e.g. abandoned children, natural parents are mentally ill, drug addicts, etc.)	13	24
Older age	5	19
Ill health	13	15
Disabled	0	84
Total	39	142

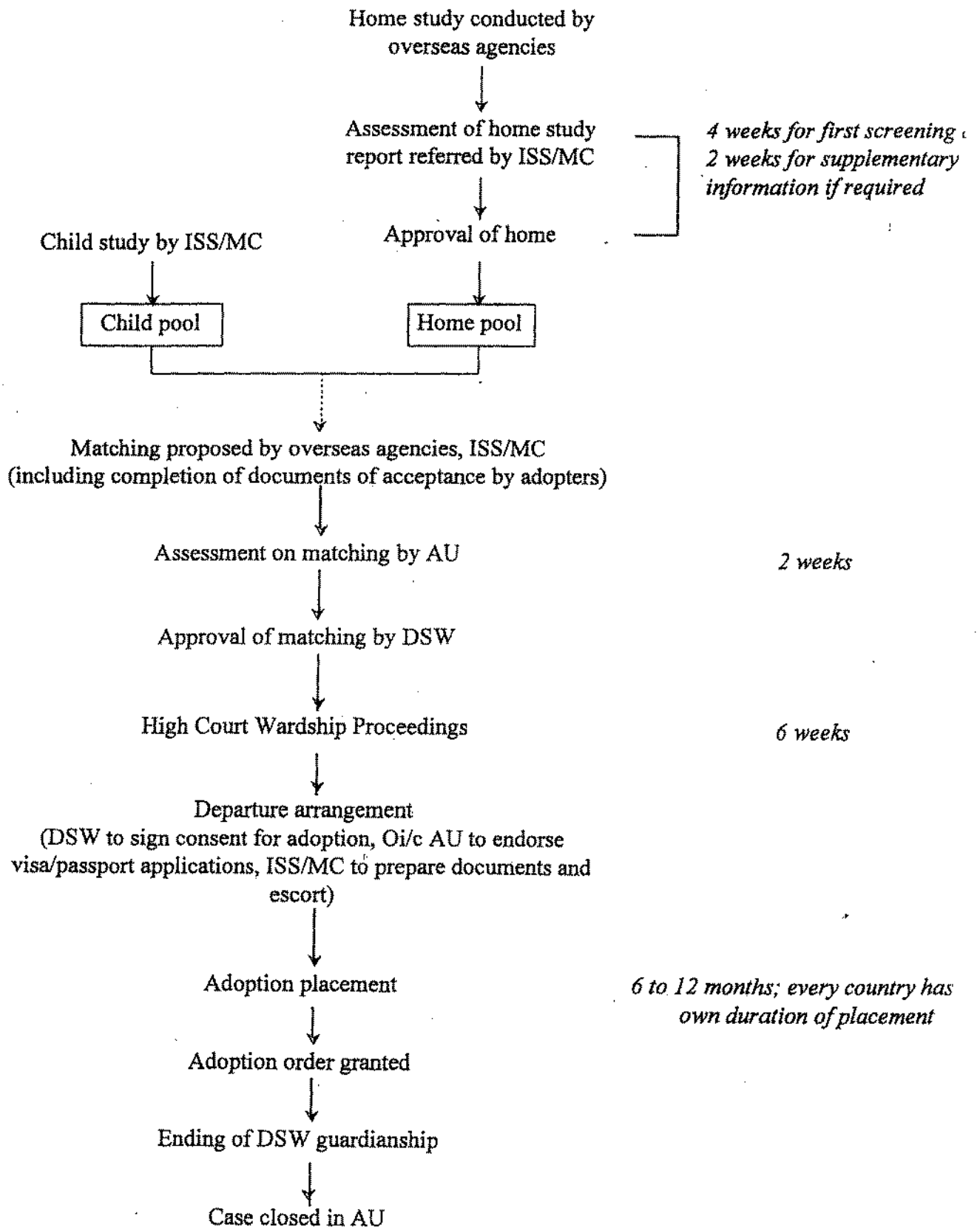
Time Frame for Local Adoption of DSW Wards

Process of Application



Time Frame for Overseas Adoption of DSW Wards

Process of Application



.....> waiting time in the home pool and child pool varies.

**1998-99 Public Consultation Exercise on the Report of
the Working Group on Review of the Adoption Ordinance**

**Respondents (individuals/organizations)
which had made submissions**

No.	From NGOs
1.	Hong Kong Council of Social Service
2.	Hong Kong Committee on Children's Rights
3.	Caritas – Hong Kong
4.	International Social Service Hong Kong Branch
5.	Hong Kong Family Welfare Society
6.	Adoptive Families of Hong Kong
7.	Mother's Choice
8.	Hong Kong Social Workers Association

No.	From Political Party
1.	Democratic Alliance for Betterment of Hong Kong (Research Section)

No.	From Law Society/Associations
1.	Law Society of Hong Kong (Family Law Committee)
2.	Hong Kong Bar Association
3.	Hong Kong Family Law Association

No.	From Academics
1.	Dr Agnes Yeung, Division of Social Studies, City University of Hong Kong
2.	Dr Grace Ko, Department of Applied Social Studies, City University of Hong Kong
3.	Ms Sandra Tsang, Department of Social Work & Social Administration, University of Hong Kong
4.	Dr. Bart Rwezaura, Department of Law, University of Hong Kong
5.	Dr. Athena Liu, Faculty of Law, University of Hong Kong
6.	Ms. Diana Mak, Department of Applied Social Studies, Hong Kong Polytechnic University

No.	From Birth Parents/Adoptive Parents
1.	24 submissions from adoptive parents
2.	A group of unmarried mothers (through a consolidated research by Mother's Choice)

No.	From Government Bureaux/Departments and Other Bodies
------------	---

(a) With Comments	
1.	Administration Wing
2.	Judiciary Administrator
3.	Legal Aid Department
4.	Official Solicitor's Office
5.	Security Bureau
(b) Without Comments	
6.	Civil Service Bureau
7.	Economic Services Bureau
8.	Financial Services Bureau
9.	Information Technology and Broadcasting Bureau
10.	Trade and Industry Bureau
11.	Transport Bureau
12.	Hong Kong Monetary Authority

Membership of the Revamped Working Group on Review of the Adoption Ordinance

Chairman

- DS/Welfare, HWB/HWFB

Members

- PAS/Welfare, HWB/HWFB
- Representatives from SWD
- Representatives from DoJ
- Ms Gretchen Ryan (and/or representative), Mother's Choice
- Mr Stephen Yau (and/or representative), International Social Service Hong Kong Branch
- Mr Thomas Mulvey (and/or representative), Hong Kong Family Welfare Society (also Hong Kong Family Law Association)
- Ms Joyce Chang (and/or representative), Caritas – Hong Kong
- Dr Grace Ko, City University of Hong Kong (also Happy Parents Association – Chinese-speaking supportive group for adoptive parents) – left the revamped Working Group subsequently on grounds of emigration

Secretary

- AS/Welfare, HWB/HWFB

**Differences between the Proposals in the 1998-99 Consultation Exercise (Stage 1);
the Proposals Modified after Consultation (Stage 2); and the Proposals in the Adoption (Amendment) Bill 2003 (Stage 3)**

Key Legislative Proposals/Administrative Measures

A. Local Adoption

Item	Stage 1 (1999): Proposals in the Report of the Working Group on Review of Adoption Ordinance published in November 1998 for public consultation	Stage 2 (2001): Proposals with modifications, having regard to the feedback from the public consultation and deliberations at the revamped Working Group	Stage 3 (2003): Proposals fine-tuned and details included in the course of the drafting of the Amendment Bill, and subsequently reflected in the Amendment Bill
1.	<p><u>Best Interest of the Child</u> To explicitly set out the principle that the best interests of the child should be the <i>first and paramount</i> consideration during the entire adoption process, in place of the existing “welfare of the infant” principle.</p>	To explicitly set out the principle that the best interests of the child should be the <i>paramount</i> consideration during the entire adoption process.	The proposal is to replace all references to “welfare” by “best interests” to reflect that the guiding principle in the entire adoption process is the best interests of the child.
2.	<p><u>Mandatory Criminal Record Check</u> To provide that persons applying for an adoption order should be subject to criminal record checks.</p>	same	same
3.	<p><u>Religious Persuasion</u> To remove existing provisions which allow birth parents to specify the religious persuasion in which the child should be brought up.</p>	same	same

4.	<p><u>Minimum Consent Period</u> To allow the birth mother of a child to give consent for the child to be placed for adoption when the child is four weeks old, in place of the current requirement of six weeks old.</p>	same	To extend the applicability of the proposed 4-week minimum statutory consent period from “birth mother” to “any other person(s) whose consent is required” under the Ordinance, e.g. guardian(s) and maintenance contributor(s)”.
5.	<p><u>Prohibit Private Arrangement/Placement for Adoption by Unrelated Persons</u> To insert new provisions making it unlawful for a person/organization, other than SWD or a person/organization authorized by SWD, to make arrangement/placement for adoption of a child by unrelated persons, with the exception of that by a parent or a relative of the child, or those acting in pursuance of an order of the Court.</p>	same	same
6.	<p><u>Court Order for the Removal of Children from HK</u> To insert provisions making it unlawful to remove a child from HK for overseas adoption by unrelated person without an order from the Court, and to stipulate the legal steps in HK necessary to undertake overseas adoption.</p>	same	same
7.	<p><u>Adoption of a Child by a Sole Applicant of the Opposite Gender</u> To add a new part to section 5(3) to ensure parity of treatment for female and male applicants, and to highlight the importance of the protection of the child in the adoption process.</p>	To amend the clause to read as “an adoption order shall not be made in respect of a child in favour of a sole applicant of the opposite gender, unless the Court is satisfied that that there are special circumstances which justify the making of an order”.	To repeal section 5(3) altogether. There will be another Bills Committee paper to address the concern recently raised by Members.

8.	<p><u>Root-tracing</u> To provide for the adopted person’s right of access to his/her original birth records and information about his/her background.</p>	To provide a root-tracing mechanism so as to enable an adopted person to have access to his/her birth records (except the addresses of the birth parents if they have exercised a veto against such disclosure), and to set up a contact register in SWD to facilitate contact between adopted children and their birth parents.	To put in place a root tracing system on an administrative rather than statutory basis, and to expand the scope of the veto mechanism from “the address(es) of the birth parent(s)” only to cover the following identifying information, i.e. the full name(s), identity card number(s), contact address(es) and telephone number(s), of the birth parent(s).
9.	<p><u>Appeal Mechanism</u> To explore the feasibility of introducing administratively an appeal mechanism involving an independent third party to handle appeal cases concerning unsuccessful adoption applications.</p>	To provide for an independent review board appointed by the then SHW to allow applicants in unsuccessful adoption applications to appeal against DSW’s decisions.	To make use of the Administrative Appeals Board (AAB) appointed by the CE instead of having a new and separate review board, and to clearly define the scope of the AAB’s powers under the Ordinance and to cover both local and intercountry adoptions.
10.	<p><u>Facilitate Early Intervention by DSW</u> To introduce administrative measures to facilitate early intervention by DSW.</p>	To require an applicant for an adoption order to serve notice to DSW at the earliest opportunity if persons other than DSW are to be appointed as the guardian ad litem.	To require an applicant for an adoption order to serve a notice to DSW as early as the submission of Form 2.
11.		<p><u>Step-parent Adoption</u> To improve the present arrangements for step-parent adoption, so as to avoid a birth parent who remarries, from having to adopt his/her child from a previous marriage when his/her new spouse wishes to adopt his/her child.</p>	same - to enable a step-parent to apply as a sole applicant if his/her spouse is the birth parent of the child born in wedlock.

12.		<p><u>Penalties</u> To update the penalty provisions to more accurately reflect the appropriate level of penalty for certain offences.</p>	<p>To replace the existing fines with fines at \$50,000 (Level 5) and \$100,000 (Level 6), as the case may be.</p>
13.		<p><u>Textual Amendments</u> To use more positive and appropriate terms.</p>	<p>To use more positive and appropriate terms, to amend the prescribed forms in the Adoption Rules, and to change layout of the forms in the First Schedule to facilitate computerization, etc.</p>
14.			<p><u>Re-vesting of Parental Rights</u> To expressly stipulate the re-vesting of parental rights in the birth parent(s) upon revocation of general consent to adoption within 3 months, pursuant to section 5 of the Ordinance, to bring it in line with the case where the consent is revoked after 3 months.</p>
15.			<p><u>Continuous Custody Requirement</u> To amend section 5(8) to the effect that continuous actual custody shall not be regarded as broken during any period when the child pursues overseas full-time education (whether or not residing at a boarding school), in addition to being an in-patient in a hospital or resides at a boarding school either in or outside HK.</p>

B. Convention Adoption – included in Stage 3

- During the 1998/99 public consultation and when the WG last met in 1999/00, the Administration had yet to reach the stage as to whether to apply the Hague Convention to HK. The Administration subsequently considers it appropriate to extend the Hague Convention to HK in order to provide more adoption opportunities for children and to accord better protection of children in the course of adoption. The Administration, therefore, proposes to introduce legislation to give effect to the Hague Convention in HK.
- The Revamped WG has been consulted on the various proposals and administrative arrangements. Major proposals are tabulated below :

Item	Subject	Proposals
1.	Central Authority	SWD be designated as the Central Authority for HK under the Hague Convention. The actual functions include receiving applications and taking relevant measures in the adoption process to safeguard the interests of children placed or to be placed for such intercountry adoption.
2.	Role of the Court	The High Court be empowered to hear Convention adoption applications and to grant Convention orders, whether Hong Kong acts as the State of origin or the receiving State.
3.	Role of Adoption Agencies	DSW be allowed to delegate some of the functions of the Central Authority to non-governmental adoption agencies accredited by DSW, in order to capitalize on the expertise and overseas network of the relevant NGOs.
4.	Accreditation System	To put in place an accreditation system of adoption agencies to be administered by SWD for quality control purposes.
5.	Appeal Mechanism	DSW's decision to approve a new or renewal application for accreditation or to suspend or revoke accreditation of an adoption agency be subject to appeal under the Administrative Appeals Board.

6.	Adoption requirements and procedures	The existing local adoption requirements and procedures, as modified by the Bill, would apply to Convention adoptions so long as they are consistent with the Hague Convention.
7.	Recognition of Convention adoptions	To provide for Convention adoptions made in other Contracting States and in other parts of China to which the Hague Convention applies, to be recognized in Hong Kong, and to follow the UK approach by deeming all adoptions to be “full” adoption in the first instance, with provisions enabling an adoption made in the overseas State of origin as a simple adoption to be recognized as such on application to the Court.
8.	Subsidiary Legislations	<p>Two sets of subsidiary legislations be enacted to implement the Convention, i.e. the court rules and the list of Contracting States -</p> <ul style="list-style-type: none"> • The Chief Justice will, under existing section 12 of the Adoption Ordinance, be empowered to make subsidiary legislation on the procedures and incidental matters in relation to Convention adoptions. • SHWF will have the power to specify by order in the Gazette the list of States which are parties to the Hague Convention, and the respective dates of the coming into force of the Hague Convention between Hong Kong and those States.