

## **LEGISLATIVE COUNCIL BRIEF**

### **Adoption (Amendment) Bill 2003**

#### **INTRODUCTION**

At the meeting of the Executive Council on 27 May 2003, the Council ADVISED and the Chief Executive ORDERED that the Adoption (Amendment) Bill 2003 (the Bill), at **Annex A**, should be introduced into the Legislative Council to improve local adoption arrangements and give effect to the Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (the Hague Convention).

#### **JUSTIFICATIONS**

##### **(A) Background**

2. The number of adoption orders granted by the courts in Hong Kong and elsewhere known to the Social Welfare Department (SWD) has fallen from 225 in 1997-98 to 172 in 2002-03. As at the end of March 2003, the Director of Social Welfare (DSW) was the legal guardian of 94 infants under the Protection of Children and Juveniles Ordinance (Cap. 213), who were available for adoption. Most of them (92) are children with special needs, such as those with difficult background, ill health, disability or of older age.

3. The Adoption Ordinance (AO) first came into force in 1956. Adoption procedures need to be critically examined and streamlined on a regular basis to meet present-day circumstances. The Ordinance was last reviewed and substantially amended in 1987. Certain minor amendments to the Ordinance were also accomplished by virtue of the Law Reform (Miscellaneous Provisions and Minor Amendments) Ordinance in 1997.

4. The Hague Convention, which was drawn up by the Hague Conference on Private International Law<sup>1</sup>, was concluded at the Hague on 29 May 1993. As at 12 May 2003, ten States have signed but not yet ratified the Hague Convention (including the People's Republic of China), 39 States have ratified the Hague Convention and 13 States have acceded to the Hague Convention.

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

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

7. Under Article 153 of the Basic Law, the application to the Hong Kong Special Administrative Region (HKSAR) of international agreements to which the People's Republic of China is or becomes a party shall be decided by the CPG, in accordance with the circumstances and needs of the HKSAR and after seeking the views of the Government of the HKSAR. The CPG has consulted the HKSAR Government 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 AO being updated to meet the requirements of the Hague Convention.

## **(B) Local Adoption**

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

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

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

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

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

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

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

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

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

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

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

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

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

**(d) *Step-parent Adoption***

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

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

**(e) *Administrative Appeals Board***

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

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

**(f) *Penalty***

20. The AO currently provides for penalties for contravention of certain provisions.<sup>2</sup> These penalties, made over 40 years ago, are outdated and long overdue for revision. The existing penalties (either \$1,000 or \$2,000) fail to reflect the seriousness of the offences and carry minimal retributive and deterrent effects. We therefore propose that the existing fines be replaced with fines at \$50,000 (Level 5) and \$100,000 (Level 6).

**(g) *Discriminatory Provision***

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

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

**(h) *Religious Persuasion***

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

24. At present, the SWD through counselling seeks the birth parents’ voluntary agreement not to specify the religious persuasion of the child. But such an administrative arrangement cannot preclude birth parents from insisting on exercising this statutory right at the expense of the child and the adoptive parents. We therefore propose to remove the birth parents’ right to specify the religious persuasion in which the adopted child should be brought up. This is also in line with Articles 14 and 20 of the UNCRC which provide, on the one hand, that due

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<sup>2</sup> (a) Section 21 (concerning supervision of infants): refusing to allow DSW to visit and examine any infant is punishable by a fine of \$2,000;  
(b) Section 22 (prohibition of certain payments except legal fees): payment, remuneration or reward in connection with adoption (without the sanction of the Court) is punishable by a fine of \$2,000 or imprisonment for 6 months; and  
(c) Section 23 (restrictions and advertisements): publishing an adoption-related advertisement in contravention of this section is punishable by a fine of \$1,000.

regard should be paid to the desirability of continuity in a child's upbringing and his religious background, whilst on the other, that his freedom of religion should be respected<sup>3</sup>.

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

25. Section 5(5C) of the AO provides that a parent whose consent to an adoption order was given in the prescribed general form of consent may revoke his/her consent by giving written notice of revocation to DSW within three months from the day on which the form of consent was executed. Section 5(5D) states that a parent whose consent to an adoption order was given in the prescribed general form of consent may, at any time after the expiry of the period of three months and before the making of an adoption order, apply to the Court for an order revoking that consent on the ground that he/she wishes to resume the parental rights, duties, obligations and liabilities.

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

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

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

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

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

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

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

**(k) Notice to DSW**

29. In the legal proceedings for adoption, the child, who is a minor<sup>4</sup>, will be represented by a guardian ad litem (GAL). Pursuant to Rule 13 of the AR, the GAL will be responsible for investigating all circumstances relevant to a proposed adoption with a view to safeguarding the interests of the child before the Court and making a report to the Court for that purpose (e.g. background information of the infant and applicant(s) as well as assessment of the suitability of the applicant(s) to adopt the infant). Rule 16 provides that on a date being fixed for the hearing of the application, the GAL shall serve a notice onto DSW, unless DSW is the GAL. DSW may appear at the hearing to give his/her views on the application. However, since notice of the hearing is often given to DSW six months after the filing of the Notice of Intention to apply for an Adoption Order (Form 1), and only shortly before the hearing, this does not allow SWD sufficient time to look into the merits of the application nor to intervene at an early stage in order to protect the interests of the child.

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

**(l) Continuous Custody Requirement**

31. Section 5(7) of the AO states that an adoption order shall not be made in respect of any infant unless the infant has been continuously in the actual custody of the applicant(s) for at least six consecutive months immediately preceding the date of the order; and where the applicant or either of the applicants is a birth parent of the infant, the infant has been continuously in the actual custody of the applicant (or both applicants, where there are joint applicants) for at least 13 weeks immediately preceding the date of the order. Section 5(8) states that for the purposes of

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

subsection (7), continuous actual custody shall not be regarded as broken during any period when the infant is an in-patient in a hospital or resides at a boarding school either in or outside Hong Kong.

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

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

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

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

35. Under the RTS, an adopted person can request SWD to disclose his/her birth and adoptive records, provided (a) in the case of an adopted child under the age of 18, the adoptive parents have given their consent and (b) in the case of all applications, the birth parents have not exercised a power of veto on the release of such information. Specifically, we propose that the veto on the release of the identifying information [i.e. the full name, identity card number, contact address and

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<sup>5</sup> Article 7

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

Article 8

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

<sup>6</sup> Article 17 states that –

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



telephone number of the birth parent(s)] shall apply, until such time as the birth parent(s) either withdraws the veto or passes away. In this connection, SWD has worked out a proposal at **Annex D**, which sets out the detailed modus operandi of the RTS and VM.

**(n) *Other Textual and Formatting Amendments***

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

**(C) Intercountry Adoption**

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

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

- (a) the Hague Convention provides for the automatic recognition of adoptions made in accordance with its provisions. Thus, adoption of a Hong Kong child by a habitual resident of another Contracting State made in such a way, will be recognized in all Contracting States;
- (b) it will demonstrate Hong Kong’s commitment to facilitate the intercountry adoption of children in appropriate cases, supervise the intercountry adoption process to safeguard the interests of these children who are subject to an intercountry adoption application, and help prevent profiteering, abduction or trafficking of children through such an adoption process;
- (c) it will facilitate our existing adoption work by extending the network of suitable adoptive parents overseas, and facilitate SWD in establishing formal working relationships with the relevant authorities of other Contracting States; and
- (d) it will reinforce Hong Kong’s position as a world city in the international community. There may be an expectation in the global community that with the CPG signing the Hague Convention, implementation would be extended to Hong Kong given our already well-developed adoption system.

39. The major provisions/principles of the Hague Convention and the salient

features of the proposed new intercountry adoption system in Hong Kong, which follow the Hague Convention, are set out below.

***(a) Objectives***

40. 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 and with respect for his or her fundamental rights.

***(b) Principle of Priority***

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

***(c) Scope of Application***

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

***(d) Central Authority***

43. The Hague Convention provides that a Contracting State shall designate a Central Authority to discharge the set of prescribed duties under the Hague Convention, such as to receive applications and take appropriate measures in the adoption process to safeguard the interests of children.

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

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

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

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

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

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

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

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

49. To harmonise the local and Convention adoption systems, we propose that the existing local adoption requirements and procedures (as modified by the Bill) would, so long as they are consistent with the provisions of the Hague Convention, apply to Convention adoptions (e.g. consent requirements, custody requirement and penalties). New provisions are proposed where appropriate to cater for the specific requirements and procedures in Convention adoptions (e.g. "habitual residence" being one of the criteria which apply to Convention adoption).

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

50. The Hague Convention allows both full adoptions (i.e. adoptions which create a new and irrevocable legal relationship between the child and adoptive parents and which sever all legal ties between the child and his/her birth parents) and simple adoptions (i.e. adoptions which do not have the effect of totally severing all ties with the birth parents) (see Article 26).

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

***(i) Registration of Intercountry Adoption Orders***

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

***(j) Immigration Arrangements***

53. Article 5(c) of the Hague Convention provides that an intercountry adoption shall take place only if the competent authorities of the Receiving State have determined that the child is or will be authorized to enter and reside permanently in that State. The Hague Convention does not require a child brought into the HKSAR through intercountry adoption to be immediately given the status of a permanent resident of the HKSAR.

54. Under the existing immigration policy, foreign children adopted overseas (excluding intra-country adoption e.g. where the adopted child is a Mainland resident) may be permitted to enter Hong Kong immediately as dependants of their adoptive parents once their bona fide status as adopted children has been confirmed.<sup>7</sup> They can acquire the status of permanent residents of the HKSAR when they satisfy the requirement of Basic Law Article 24(2)(4), i.e. they have ordinarily resided here for seven years or more and have taken Hong Kong as their place of permanent residence.

***(k) Subsidiary Legislation***

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

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

**OTHER OPTIONS**

57. It is necessary to proceed with the Bill. It is impracticable to implement

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<sup>7</sup> Natural children born overseas to Hong Kong residents and overseas step children to Hong Kong residents may also apply to enter Hong Kong as dependants.

the proposed improvement measures to the AO through administrative means. Local implementing legislation is necessary to ensure the Hague Convention can be fully implemented under the laws of Hong Kong. The HKSAR's international image could be undermined if we do not bring our existing adoption system up-to-date.

## **THE BILL**

58. The main provisions are –

- (a) The provisions of sections 4 and 5 of the Ordinance overlap to a certain extent. Clause 6 amends section 4 to simplify the drafting and eliminate the provisions that overlap with section 5.
- (b) Clause 8 amends section 5 of the Ordinance –
  - (i) to put in place the procedure of step-parent application;
  - (ii) to repeal subsection (3), which prohibits (subject to the Court's order to the contrary) the adoption of a female infant by a sole applicant of the opposite sex;
  - (iii) to repeal subsection (4), as the matter provided for is subsumed in the new section 4;
  - (iv) subsection (5)(a) is amended to take into account the requirements under the Hague Convention in relation to consent for a Convention adoption;
  - (v) to amend subsection (5E) to spell out expressly the re-vesting of parental rights and duties upon a parent's revocation of his consent (given in the prescribed general form of consent) within three months of that consent;
  - (vi) subsection (6) is amended to take into account the "habitual residence" requirements under the Hague Convention;
  - (vii) to add a new paragraph (ab) to subsection (7) to provide for the period of continuous actual custody required for a step-parent application; and
  - (viii) to amend subsection (8) to modify the requirement of continuous actual custody for the purpose of adoption.
- (c) The new section 5AA (added by clause 9) and the new sections 27 and 28 (added by clause 31) are added, so that any applicant for an adoption order has to comply with the "criminal record check" requirement in manner as provided in those sections.
- (d) Clause 11 amends section 6 of the Ordinance to remove the right of a birth parent to specify the religious persuasion in which an adopted child should be brought up.

- (e) Clause 12 amends section 7(3) of the Ordinance so that the consent required under section 5(5)(a) could be given only if the infant is at least four weeks' old (instead of six weeks).
- (f) Clause 13(a) amends section 8 of the Ordinance to take into account the requirements applicable to a Convention adoption. Clause 13(b) and (d) contain minor amendments to that section.
- (g) Clauses 16 and 18 amend section 13 (*vesting of parental rights and obligations in the adoptive parents on the grant of an adoption order*) and section 15 (*intestacies, wills and settlements*) respectively, to cater for changes necessitated by the newly available procedure of step-parent application.
- (h) Clause 19 amends section 17 to exclude Convention adoptions from the application of that section. This is necessary as the Convention contains specific provisions on the recognition of Convention adoptions and the effect of such recognition, which are reflected under the new Part 5 (added by clause 24) of the Ordinance.
- (i) Clauses 21 to 23 amend sections 18 to 20, while clause 32 adds the new Schedule 1. These amendments enable entries to be made in the Adopted Children Register for registration of adoption orders made outside Hong Kong in respect of Hong Kong children.
- (j) Clause 24 adds a new Part 5 to the Ordinance to implement the Convention. The main provisions in this Part are –
  - (i) section 20A, which defines the terms used in the new Part 5;
  - (ii) section 20B, which enables the Articles of the Hague Convention set out in the new Schedule 3 (added by clause 32) to have the force of law in Hong Kong;
  - (iii) section 20C, which stipulates the extent of application of the other provisions of the Ordinance in relation to Convention adoptions;
  - (iv) section 20D, pursuant to which the Secretary for Health, Welfare and Food has the power to declare such States as he may specify by order in the Gazette to be the Contracting States, and the Hague Convention shall apply to a Convention adoption between Hong Kong and any such State;
  - (v) section 20E, which designates DSW as the Central Authority under the Hague Convention. Subsection (3) spells out clearly that DSW may request a person to make a report to him with respect to the matters described in that subsection, and subsection (4) permits the delegation of the functions of the Central Authority to accredited bodies;
  - (vi) section 20F, which provides for the recognition of Convention

- adoption orders and the effect of such recognition;
  - (vii) section 20G, which empowers the Court of First Instance to direct that a Convention adoption order shall not have the effect as stipulated in section 20F(2);
  - (viii) section 20H, which provides that the Court of First Instance may declare that a Convention adoption made outside Hong Kong shall not be recognized in Hong Kong on the ground that the adoption is manifestly contrary to public policy; and
  - (ix) section 20I, pursuant to which the Court of First Instance may issue Convention adoption certificate (as defined in section 20A).
  
- (k) Clauses 26 to 28 amend sections 21 to 23 to increase the existing penalty levels of the offences under those sections. In addition, clause 27(a) adds a new paragraph (b) to section 22(1) to allow for payment to be made to an accredited body in connection with the adoption or proposed adoption of an infant.
  
- (l) Clause 29 adds –
  - (i) a new section 23A to create a new offence in relation to private arrangement or placement for unrelated adoption. No person (other than the DSW or an authorized person) shall make such arrangement or placement except where he acts pursuant to an order of the Court of First Instance;
  - (ii) a new section 23B to empower the Court of First Instance 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 Hong Kong; and
  - (iii) a new section 23C to outlaw the removal of a child residing in Hong Kong to any place outside Hong Kong (except under the authority of an order under section 23B) for unrelated adoption.
  
- (m) Clause 31 adds the new sections 26 to 30 –
  - (i) the new section 26 provides for the approval of accredited bodies, which may undertake the functions mentioned in subsection (2) of that section as well as those mentioned in the new section 20E(4) of the new Part 5;
  - (ii) the new sections 27 and 28 apply to certain categories of persons. Those sections provide for such a person to apply to DSW for assessment of his suitability to be an adoptive parent before any adoption arrangement can be made;
  - (iii) the new section 30 enables an aggrieved person to appeal to the AAB against such of the decisions of DSW as specified in that section.

- (n) Clause 32 adds the new Schedules 1 (*registration of certain adoptions made outside Hong Kong*) and 3 (*articles of the Convention*). Schedule 2 (*Form of Entry in Adopted Children Register*) in essence reproduces the existing Schedule of the Ordinance.
- (o) The Schedule of the Bill amends the AR (Cap. 290 sub leg. A) and the AAB Ordinance (Cap. 442). The amendments are either consequential amendments or amendments that are technical in nature -
  - (i) clause 1 of the Schedule amends Rule 9 of the AR to require the applicant to serve a copy of the adoption application to DSW, even where DSW is not the GAL of the infant;
  - (ii) clause 2 of the Schedule amends Rule 10(2) of the AR to require the signing of a new form of consent (i.e. Form 4B) in connection with the new procedure of step-parent application;
  - (iii) clause 3 of the Schedule amends Rule 29, which deals with the requirement of attestation where a document is executed outside Hong Kong;
  - (iv) clause 4 of the Schedule amends the forms set out in the First Schedule of the AR and adds the new Form 4B;
  - (v) clause 5 of the Schedule replaces the expression of "illegitimate" "born out of wedlock"; and
  - (vi) clause 6 of the Schedule amends the AAB Ordinance (Cap. 442), to reflect the provisions of the new section 30 of the AO (added by clause 31).

The existing provisions being amended are at **Annex G**.

## **LEGISLATIVE TIMETABLE**

59. The legislative timetable will be –

Publication in the Gazette	6 June 2003
First Reading and commencement of Second Reading debate	18 June 2003
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

## **IMPLICATIONS OF THE PROPOSAL**

60. The proposal seeks to modernize adoption arrangements having regard to present day circumstances and hence should have insignificant financial and civil



service implications on the departments concerned. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It does not affect the current binding effect of the Ordinance. A detailed assessment is set out at **Annex H**. It has no economic, productivity or sustainability implication.

## **PUBLIC CONSULTATION**

61. Public consultation on the proposed improvements to the local adoption arrangements has been conducted. Respondents generally supported the proposals.

62. NGOs providing (or with an interest in) adoption service, the Social Welfare Advisory Committee, the Legislative Council Panel on Welfare Services have also been consulted and they welcomed the proposals.

## **PUBLICITY**

63. A Legislative Council brief and a press release were issued on 3 June. A spokesman will be available to answer media enquiries.

## **ENQUIRIES**

64. For enquiries, please contact Mr. Kenneth Chan, Assistant Secretary (Welfare) for the Health, Welfare and Food Bureau, at 2973 8126.

**Health, Welfare and Food Bureau**  
**3 June 2003**

## **Adoption (Amendment) Bill 2003**

<b>Annex A</b>	Adoption (Amendment) Bill 2003
<b>Annex B</b>	Convention on Protection of Children and Cooperation in respect of Intercountry Adoption
<b>Annex C</b>	Administrative Appeals Board
<b>Annex D</b>	Root Tracing System in Adoption Service
<b>Annex E</b>	Editorial Amendments
<b>Annex F</b>	Accreditation System in respect of Intercountry Adoption
<b>Annex G</b>	Existing Provisions of the Adoption Ordinance Being Amended
<b>Annex H</b>	Implications of the Adoption (Amendment) Bill 2003

A BILL

To

Amend the Adoption Ordinance.

Enacted by the Legislative Council.

**1. Short title and commencement**

(1) This Ordinance may be cited as the Adoption (Amendment) Ordinance 2003.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Health, Welfare and Food by notice published in the Gazette.

**2. Long title amended**

The long title to the Adoption Ordinance (Cap. 290) is amended by repealing the full stop and substituting ", to give effect in Hong Kong to the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption and to provide for incidental and connected matters.".

**3. Part heading added**

The following is added immediately before section 1 -

"PART 1  
PRELIMINARY".

**4. Interpretation**

Section 2 is amended -

(a) in the definition of "adoption order", by repealing everything after "(領養令)" and substituting "means an order under section 4, whether or not section 20C(2) applies in respect of the order;"

(b) by repealing the definition of "Court" and substituting -

"Court" (法院) means -

(a) subject to paragraph (b), the Court of First Instance or the District Court;

(b) in Part 5, the Court of First Instance;"

(c) in the definition of "father", by repealing "illegitimate infant, means the natural" and substituting "infant born out of wedlock, means the birth";

(d) in the definition of "parent", by repealing "illegitimate" and substituting "born out of wedlock";

(e) in the definition of "relative", in paragraph (b), by repealing "illegitimate" and substituting "born out of wedlock";

(f) by adding -

"accredited body" (獲認可機構) means a body of persons approved under section 26;"

**5. Part heading added**

The following is added immediately after section 3 -  
"PART 2".

**6. Section substituted**

Section 4 is repealed and the following substituted -

**"4. Power to make adoption orders**

Subject to the provisions of this Ordinance, the Court may, upon an application made in the prescribed manner, make an order authorizing -

(a) the sole applicant; or

(b) the applicants who apply jointly as 2 spouses,  
to adopt an infant.".

**7. Commencement and transfer of adoption applications**

Section 4A(1) is amended -

(a) by repealing "An" and substituting "Subject to  
section 20C(3), an";

(b) by repealing "開始" and substituting "展開".

**8. Restrictions on making adoption orders**

Section 5 is amended -

(a) by repealing subsections (1), (2), (3) and (4) and  
substituting -

"(1) The Court shall not make an adoption order in respect of an infant under section 4(a) unless the applicant -

(a) is the mother or father of the infant;

(b) is a relative of the infant and has attained the age of 21 years;

(c) is a person who is married to a person -

(i) who is a birth parent of the infant; and

(ii) to whom the infant was born in lawful wedlock; or

(d) has attained the age of 25 years.

(2) The Court shall not make an adoption order in respect of an infant under section 4(b) unless -

(a) one of the applicants is the mother or father of the infant; or

(b) the condition set out in subsection (1)(b) or (d) is satisfied in the case of one of the applicants and the other applicant has attained the age of 21 years.";

(b) in subsection (5)(a) -

- (i) by adding "but subject to section 20C(4)," after "in any case,";
  - (ii) by repealing "infant or who" and substituting "infant, or who";
  - (c) by repealing subsection (5E) and substituting -
    - "(5E) Where -
      - (a) a parent revokes his consent by a written notice under subsection (5C); or
      - (b) the Court makes an order under subsection (5D) revoking a consent,
- then -
- (c) the parental rights, duties, obligations and liabilities relating to the child shall vest in the parent; but
  - (d) the revocation shall not affect any right, duty, obligation or liability so far as it relates to any period before the day when the Director receives the notice or the date of the order (as the case may be).";

- (d) in subsection (5F), by repealing "interests of the welfare" and substituting "best interests";
- (e) in subsection (6), by repealing "An" and substituting "Subject to section 20C(5), an";
- (f) in subsection (7) -
  - (i) in paragraph (a), by repealing "paragraph (aa)" and substituting "paragraphs (aa) and (ab)";
  - (ii) in paragraph (aa), by repealing "natural" and substituting "birth";
  - (iii) by adding -
    - "(ab) where the applicant applies by virtue of subsection (1)(c), the infant has been continuously in the actual custody of the applicant and the birth parent referred to in that subsection for at least 13 weeks immediately preceding the date of the order;"
  - (iv) in paragraph (b) -
    - (A) by adding "lodged with the Director," before "not less than";
    - (B) by repealing "lodged with the Director" where it last appears;



(g) by repealing subsection (8) and substituting -

"(8) For the purposes of subsection (7),  
continuous actual custody shall not be  
regarded as broken during any period when the  
infant -

(a) is an in-patient in a hospital;

(b) resides at a boarding school  
either in or outside Hong Kong;  
or

(c) receives full-time education  
outside Hong Kong.".

**9. Section added**

The following is added before section 5A -

**"5AA. Applicant's authorization for  
criminal record checking**

If a person lodging a notice referred to in section  
5(7)(b) is not an applicant under section 27(1) or (2), he  
shall in the notice include his authorization to the  
Commissioner of Police in like terms as those set out in  
section 27(3)(a) and (b), and all of the provisions of  
section 28 shall apply in relation to the person as if the  
authorization were an application submitted in accordance  
with section 27(3).".

**10. Revocation of section 5A order**

Section 5B is amended -

- (a) in subsection (1)(b), by repealing "獲安置給某人領養"  
and substituting "為領養的目的而獲交託給某人";
- (b) in subsection (2), by repealing "安置幼年人接受領養"  
and substituting "為領養的目的而將幼年人交託";
- (c) in subsection (4), by repealing "for the welfare"  
and substituting "in the best interests".

#### **11. Dispensing with consent to adoption**

Section 6 is amended -

- (a) in subsection (3), by repealing everything before  
"without knowing" and substituting -  
  
"(3) The consent required by section  
5(5)(a) may be given";
- (b) in subsection (4), by repealing "welfare" and  
substituting "best interests".

#### **12. Evidence of consent of parent or guardian**

Section 7(3) is amended -

- (a) by repealing "the mother of an infant" and  
substituting "any person whose consent is required  
by section 5(5)(a)";
- (b) in paragraph (a) -
  - (i) by repealing "該" and substituting "有關";
  - (ii) by repealing "6 weeks" and substituting  
"4 weeks".

**13. Functions of Court as to adoption orders**

Section 8 is amended -

(a) in subsection (1)

(i) in paragraph (a), by adding "(other than a birth parent referred to in section 5(1)(c) if the adoption order is applied for by virtue of that section)" after "every person";

(ii) in paragraph (b) -

(A) by repealing "for the welfare" and substituting "in the best interests";

(B) by adding "and opinions" after "the wishes";

(C) by repealing "and" at the end;

(iii) by adding -

"(ba) that section 5AA or 27(3) (as the case may be) has been complied with and that, taking into account the information obtained by the Director from the Commissioner of Police, the applicant is a fit and proper person to be granted the adoption order; and";

(b) in subsection (1A), by repealing "true" and substituting "original".

**14. Interim orders**

Section 9(1) is amended by adding "and section 20C(7)" after "this section".

**15. Part heading added**

The following is added immediately after section 12 -  
"PART 3".

**16. Rights and duties of parents and capacity to marry**

Section 13(1) and (2) is repealed and the following substituted -

"(1) Upon an adoption order being made -

- (a) all rights, duties, obligations and liabilities of the parents (other than a birth parent referred to in section 5(1)(c) if the order is applied for by virtue of that section) or guardians of the infant in relation to the future custody, maintenance and education of the infant (in this section referred to as "the relevant matters"), including all rights to appoint a guardian to consent or give notice of dissent to marriage, shall be extinguished ; and
- (b) all the relevant matters shall vest in and be exercisable by and enforceable against the adopter, as if -

- (i) where the order is applied for by virtue of section 5(1)(c), the infant were a child born to the adopter and the birth parent referred to in that section in lawful wedlock;
    - (ii) in any other case, the infant were a child born to the adopter in lawful wedlock; and
  - (c) in respect of the relevant matters -
    - (i) where the order is applied for by virtue of section 5(1)(c), the infant shall stand to the adopter and that parent exclusively in the position of a child born to them in lawful wedlock;
    - (ii) in any other case, the infant shall stand to the adopter exclusively in the position of a child born to the adopter in lawful wedlock.
- (2) In any case where -
- (a) 2 spouses are the adopters; or
  - (b) the adopter's spouse is the birth parent referred to in section 5(1)(c),

then, in respect of the relevant matters, and for the purposes of the jurisdiction of any court whatsoever to make orders as to the custody and maintenance of and right of access to children -

- (c) the spouses, or the adopter and the spouse, as the case may be, shall stand to each other and to the infant in the same relation as they would have stood if the infant had been born to them in lawful wedlock; and
- (d) the infant shall stand to them respectively in the same relation as to a lawful father and mother respectively."

**17. Cessation of certain orders, etc.**

Section 14(1) is amended by repealing "illegitimate" and substituting "born out of wedlock".

**18. Intestacies, wills and settlements**

Section 15 is amended -

- (a) by repealing subsection (1) and substituting -

"(1) Where, at any time after the making of an adoption order, the adopter or the adopted person or any other person dies intestate in respect of any property, that property shall devolve in all respects -

- (a) subject to paragraph (b), as if the adopted person were the child of the adopter born in lawful wedlock and were not the child of any other person; and

- (b) where the order was applied for  
by virtue of section 5(1)(c),  
as if the adopted person were  
the child of the adopter and  
the birth parent referred to in  
that section born in lawful  
wedlock and were not the child  
of any other person.";
- (b) in subsection (2)(b) -
  - (i) by adding "subject to subsection (3)," before "any reference";
  - (ii) by repealing "natural" and substituting "birth";
- (c) in subsection (2)(c), by repealing everything after "would be related to" and substituting -  
"the adopted person in that degree -
  - (i) subject to subparagraph (ii), if the adopted person were the child of the adopter;
  - (ii) where the order was applied for by virtue of section 5(1)(c), if the adopted person were the child of the adopter and the birth parent referred to in that section,  
born in lawful wedlock and were not the child  
of any other person.";

(d) by adding -

"(3) Where the order was applied for by virtue of section 5(1)(c), subsection (2)(b) shall not apply in relation to the birth parent referred to in that section.".

**19. Effect of adoption outside Hong Kong**

Section 17 is amended -

- (a) in subsection (2), by adding "(other than a Convention adoption)" before ", if -";
- (b) in subsection (2)(b) and (c)(ii), by repealing "natural" and substituting "birth";
- (c) by adding -

"(4) In this section, the expression "Convention adoption" (公約領養) shall have the meaning assigned to it in paragraph (b) of the definition of the expression in section 20A(1) as if the reference to "section 20F" in that paragraph were a reference to "section 17"."

**20. Part heading added**

The following is added immediately after section 17 -

"PART 4".

**21. Adopted Children Register**

Section 18 is amended -



- (a) in subsection (1), by repealing everything after "such entries as" and substituting -
  - "may be -
    - (a) directed to be made in it by adoption orders; or
    - (b) required to be made under section 1(1)(a) of Schedule 1, but no other entries.";
- (b) in subsection (4), by adding "or pursuant to section 1(1)(b) of Schedule 1" after "pursuant to section 19";
- (c) in subsection (5), by repealing "and of section 19" and substituting ", section 19 and Schedule 1".

## **22. Registration of adoptions**

Section 19 is amended -

- (a) in subsection (1) -
  - (i) by repealing "the Schedule" and substituting "Schedule 2";
  - (ii) by repealing "columns" and substituting "items";
- (b) by adding -
  - "(6) Without prejudice to the operation of the provisions in this Part, Schedule 1 shall have effect in relation to the registration of a registrable adoption made

outside Hong Kong (as defined in section 1(4) of that Schedule)".

**23. Amendment of adoption orders and rectification of Registers**

Section 20(1) is amended by repealing "The Court may" and substituting "The Court by which an adoption order has been made may".

**24. Part 5 added**

The following is added immediately after section 20 -

"PART 5

THE CONVENTION

**20A. Interpretation of Part 5**

(1) In this Part, unless the context otherwise requires -

"the Convention" (《公約》) means the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption done at the Hague on 29 May 1993 or such Convention as may be amended from time to time and as applied to Hong Kong;

"Convention adoption" (公約領養) means an adoption to which the Convention applies by virtue of Article 2 (as read together with Article 3) of the Convention and -

(a) subject to paragraph (b), in respect of which Hong Kong acts as the State of origin or the receiving State;

(b) for the purposes of section 20F, whether or not Hong Kong acts as the State of origin or the receiving State in respect of the adoption;

"Convention adoption certificate" (公約領養證書) means a certificate certifying the matters set out in Article 23 of the Convention;

"Convention adoption order" (公約領養令) means an adoption order made pursuant to section 20C(2);

"receiving State" (收養國) has the meaning assigned to it in Article 2(1) of the Convention;

"State of origin" (原住國) has the meaning assigned to it in Article 2(1) of the Convention.

(2) For the purposes of this Part and for the purposes of the Convention as it has effect under this Ordinance,

"Contracting State" (締約國) means any State declared as such by an order under section 20D(1), whether or not it is a Contracting State only in respect of such territorial unit or units as specified in the order.

**20B. Convention to have force of law in Hong Kong**

Subject to the provisions of this Part, the Articles of the Convention set out in Schedule 3 shall have the force of law in Hong Kong.

**20C. Application of the other Parts of this Ordinance**

(1) Subject to the provisions of this Part, all the provisions of the other Parts of this Ordinance shall apply in relation to a Convention adoption.

(2) An adoption order under section 4 shall be made as a Convention adoption order if the application is made in respect of a Convention adoption.

(3) An application made under section 4 for the grant of a Convention adoption order shall be commenced in the Court, and section 4A shall not apply in relation to the application.

(4) Sections 5(5)(a), (5A), (5B), (5C), (5D), (5E) and (5F), 5A, 5B, 6 (other than subsection (2)) and 7 shall not apply in relation to any Convention adoption in respect of which Hong Kong acts as the receiving State.

(5) Section 5(6) shall not apply in relation to any Convention adoption order, and the Court shall not make a Convention adoption order in respect of an infant unless –

- (a) (if Hong Kong acts as the receiving State) the applicant habitually resides in Hong Kong and the infant habitually resides in a Contracting State; or

- (b) (if Hong Kong acts as the State of origin) the infant habitually resides in Hong Kong and the applicant habitually resides in a Contracting State.

(6) Where -

- (a) an application is made for a Convention adoption order; and
- (b) the Convention adoption is one in respect of which Hong Kong acts as the receiving State,

then -

- (c) section 8(1)(a) shall not apply; and
- (d) the Court shall be satisfied that any person whose consent is necessary under section 5(5)(b), and whose consent is not dispensed with, has consented to and understands the nature and effect of the adoption order for which the application is made.

(7) Section 9 shall not apply in relation to an application for a Convention adoption order.

#### **20D. Contracting States**

(1) For the purposes of the Convention as it has effect under this Ordinance, the Secretary for Health, Welfare and Food may, by order published in the Gazette, declare that a State specified in the order -

- (a) is a Contracting State; or

- (b) (where a State has made a declaration under Article 45 of the Convention so that the Convention applies only to such territorial unit or units as specified in the declaration) is a Contracting State in respect of any territorial unit or units specified in the order.

(2) Unless the order under subsection (1) otherwise provides, the Convention as it has effect under this Ordinance shall apply to a Convention adoption between Hong Kong and a Contracting State only in relation to an application -

- (a) made pursuant to Article 14 of the Convention; and
- (b) received on or after such date of the coming into effect of the Convention between Hong Kong and that State as specified in the order.

## **20E. Central Authority**

(1) The functions under the Convention of the Central Authority shall be discharged by the Director.

(2) Any application made under Article 14 of the Convention by a person habitually resident in Hong Kong for the adoption of an infant habitually resident in a Contracting State shall be addressed to the Director as the Central Authority in Hong Kong.

(3) In complying with the obligation to provide any report or other information under Article 15 or 16 of the Convention, the Director as the Central Authority may request any person as he may specify to make a report to him with respect to any matter which appears to him to be relevant; and the person shall comply with such a request.

(4) The Director may, to the extent permitted by the provisions of the Convention, delegate his functions as the Central Authority to accredited bodies.

**20F. Recognition of Convention adoption  
made outside Hong Kong**

(1) This section applies to and in relation to a Convention adoption made in accordance with the provisions of the Convention -

- (a) in a Contracting State; or
- (b) in any other part of the People's Republic of China where the Convention is in force.

(2) Subject to sections 20G and 20H, a Convention adoption to which this section applies shall, for the purposes of this Ordinance and all other Ordinances, have the same effect as an adoption order validly made in accordance with this Ordinance in respect of a full adoption (as defined in section 20G(2)), and shall have no other effect.

(3) A Convention adoption certificate in respect of an adoption issued by the competent authority authorized in that

behalf in the place where the adoption was made is for all purposes prima facie evidence of the facts stated on it.

**20G. Convention adoption not recognized as full adoption on application to Court**

(1) Where, in the case of a Convention adoption referred to in section 20F(1), the Court is satisfied, on an application under this subsection, that -

- (a) under the law of the place in which the adoption was made, the adoption is not a full adoption;
- (b) the consents referred to in Article 4(c) and (d) of the Convention have not been given for a full adoption; and
- (c) it would be more favourable to the adopted person for a direction to be given under this subsection,

the Court may direct that section 20F(2) shall not apply, or shall not apply to such extent as may be specified in the direction.

(2) In this section, "full adoption" (完全領養) means an adoption by virtue of which the adopted person falls to be treated in law as if he were not the child of any person other than the adopter.

**20H. Convention adoption not recognized on public policy ground**



(1) The Court may on application declare that a Convention adoption referred to in section 20F(1) shall not be recognized in Hong Kong on the ground that the adoption is manifestly contrary to public policy, taking into account the best interests of the infant.

(2) Except as provided in subsection (1), the validity of a Convention adoption to which section 20F applies shall not be impugned in Hong Kong in proceedings in any court.

**20I. Convention adoption certificate  
issued in Hong Kong**

The Court may on an application by a person issue a Convention adoption certificate in respect of a Convention adoption order."

**25. Heading substituted**

The heading "MISCELLANEOUS" before section 21 is repealed and the following substituted -

"PART 6  
OFFENCES".

**26. Supervision of infants**

Section 21(3) is amended by repealing "of \$2,000" and substituting "at level 6".

**27. Prohibition of certain payments**

Section 22 is amended -

(a) in subsection (1), by repealing everything  
after "of an infant" and substituting -  
", except -

(a) in consideration of the  
professional services of a  
qualified barrister or  
solicitor within the  
meaning of the Legal  
Practitioners  
Ordinance (Cap. 159);

(b) payment to an accredited  
body for its cost and  
expenses reasonably  
incurred in connection  
with the adoption or  
proposed adoption of an  
infant.";

(b) in subsection (2), by repealing "of \$2,000" and  
substituting "at level 6".

## **28. Restrictions upon advertisements**

Section 23 is amended -

(a) in subsection (1)(c), by repealing "的領養" and  
substituting "接受領養而";

(b) in subsection (2), by repealing "of \$1,000" and  
substituting "at level 5".

**29. Sections added**

The following are added -

**"23A. Restriction on arranging adoptions  
and placing of infants for adoptions**

(1) Other than the Director or any person authorized by the Director for the purposes of this subsection, a person shall not make arrangements for the adoption of an infant, or place an infant for adoption, unless -

(a) the prospective adopter or (where 2 spouses are the prospective adopters) either of the prospective adopters is a parent or relative of the infant; or

(b) the person is acting in pursuance of an order of the Court.

(2) A person who -

(a) takes part in the management or control of a body of persons (corporate or unincorporate) which -

(i) exists wholly or partly for the purpose of making arrangements for the adoption of infants; and

(ii) is not a person authorized by the Director for the purposes of subsection (1);

(b) contravenes subsection (1); or

(c) receives an infant placed with him in contravention of subsection (1), shall be guilty of an offence and shall be liable to a fine at level 6 and to imprisonment for 6 months.

(3) In any proceedings for an offence under subsection (2)(a), proof of things done or of words written, spoken or published (whether or not in the presence of any party to the proceedings) by any person taking part in -

(a) the management or control of a body of persons (corporate or unincorporate); or

(b) making arrangements for the adoption of infants on behalf of the body,

shall be admissible as evidence of the purpose for which that body exists.

(4) For the purposes of this section, a person shall be deemed to make arrangements for the adoption of an infant if -

(a) he enters into any agreement or makes any arrangement for, or for facilitating, the adoption of the infant by any other person, whether the adoption is effected, or is intended to be effected, in Hong Kong or elsewhere;

(b) he initiates or takes part in any negotiations of which the purpose or effect is the conclusion of any agreement, or the making of

any arrangement, as referred to in paragraph

(a); or

(c) he causes another person to do an act  
specified in paragraph (a) or (b).

[*cf.* 1976 c.36 s.11 U.K.; 1976 c.36 s.72(3) U.K.]

**23B. Order passing care and control of  
infant with a view to his adoption**

(1) Where on an application made to the Court by the Director in relation to an infant residing in Hong Kong, the Court is satisfied that care and control of the infant should be passed to a person authorized by the Director for the purposes of this subsection with a view to adoption of the infant by a person not residing in Hong Kong, then the Court may, subject to subsection (2), make an order to that effect.

(2) The Court shall not make an order under subsection (1) unless it is satisfied -

(a) that -

(i) the infant is freed for adoption by  
virtue of an order made under  
section 5A;

(ii) consent for the infant to be adopted  
has been given by each and every  
person whose consent is required by  
section 5(5)(a); or

(iii) (where any person whose consent is  
required by section 5(5)(a) has not

given such consent) the application made for an adoption order, his consent ought, in all the circumstances of the case, to be dispensed with under section 6; and

- (b) that the order will be in the best interests of the infant, due consideration being for this purpose given to the wishes and opinions of the infant, having regard to the age and understanding of the infant.

**23C. Restriction on removal of infants with a view to adoption**

(1) Except under the authority of an order under section 23B, it shall not be lawful for any person to take or send an infant residing in Hong Kong to any place outside Hong Kong with a view to the adoption of the infant by any person not being a parent or relative of the infant.

(2) Any person who takes or sends an infant out of Hong Kong to any place in contravention of subsection (1), or makes or takes part in any arrangement for placing an infant with any person for the purpose of adoption as referred to in that subsection, shall be guilty of an offence and shall be liable to a fine at level 6 and to imprisonment for 6 months.

(3) For the purpose of subsection (2), a person shall be deemed to take part in an arrangement for placing an infant with a person if -

- (a) he facilitates the placing of the infant with that person;
- (b) he initiates or takes part in any negotiations of which the purpose or effect is the conclusion of any agreement or the making of any arrangement for such placement; or
- (c) he causes another person to do an act specified in paragraph (a) or (b).".

[c.f. 1976 c. 36 s. 56 UK]

**30. Part heading added**

The following is added immediately before section 25 -

"PART 7

MISCELLANEOUS".

**31. Sections added**

The following are added -

**"26. Accredited bodies**

(1) The Director may approve a body of persons (corporate or unincorporate) as an accredited body in accordance with the principles set out in Articles 10 and 11 of the Convention.

(2) Without prejudice to the operation of section 20E(4), an accredited body may, subject to the prior authorization of the Director, make arrangements for -

- (a) the adoption in a place outside Hong Kong of an infant residing in Hong Kong, and in so

acting pursuant to the prior authorization, the accredited body shall be regarded as a person authorized by the Director for the purposes of sections 23A(1) and 23B(1);

(b) the adoption in Hong Kong of an infant residing out of Hong Kong, or place such an infant for such an adoption, and in so acting pursuant to the prior authorization, the accredited body shall be regarded as a person authorized by the Director for the purposes of section 23A(1), whether the adoption is a Convention adoption (as defined in section 20A(1)) or otherwise.

**27. Application for assessment of suitability to be an adoptive parent**

(1) Subject to subsection (2), a person resident in Hong Kong may apply to the Director for assessment of his suitability to be an adoptive parent of any infant of whom he is neither a parent nor a relative .

(2) Where a person habitually resident in Hong Kong intends to make an application under Article 14 of the Convention in accordance with section 20E(2), the person shall apply to the Director for assessment of his suitability to be an adoptive parent of any infant who habitually resides in a Contracting State.



(3) An application under subsection (1) or (2) shall be made in writing and submitted together with -

(a) such information as the Director may require;  
and

(b) a notice from the applicant to the  
Commissioner of Police authorizing the  
Commissioner of Police -

(i) to inform the Director whether or not the  
applicant has at any time been convicted  
of any offence in Hong Kong or elsewhere;  
and

(ii) if the applicant has a previous  
conviction, to release to the Director  
the particulars of the conviction.

(4) The Director may refuse to consider an application in respect of which subsection (3) is not complied with.

(5) On receipt of an application for an assessment under subsection (1) or (2), the Director may -

(a) designate an accredited body to collect such  
information as the Director may reasonably  
require to enable him to make the assessment;

(b) in making his assessment, take into account  
any recommendation made by that body on the  
basis of such information.

**28. Duty to proceed with criminal record  
checking, and etc.**

(1) On receipt of an application submitted to him in accordance with section 27(3), the Director shall make inquiries with the Commissioner of Police to ascertain whether or not the applicant has been convicted of any offence in Hong Kong or elsewhere.

(2) For the purposes of subsection (1), the Director may require the applicant to -

- (a) attend before a public officer authorized by the Commissioner of Police for the purpose of subsection (3); and
- (b) allow that officer to take and record his fingerprints.

(3) For the purpose of verifying whether or not the applicant has been convicted of an offence in Hong Kong or elsewhere, a public officer authorized by the Commissioner of Police for the purpose of this subsection may take and record the fingerprint impressions of the applicant for checking against police records, but any fingerprints obtained pursuant to this subsection shall be destroyed as soon as reasonably practicable after the record checking has been conducted.

(4) The Director may release to such person as the Director may consider appropriate any information that the Director has obtained from the Commissioner of Police pursuant to section 27(3).

**29. Director's assessment, prospective adoptive parent and placement**

(1) After considering an application made under section 27(1) or (2), the Director may decide that the applicant is suitable or is not suitable (as the case may be) to be an adoptive parent.

(2) If the Director decides that an applicant under section 27(1) or (2) is suitable to be an adoptive parent, he may, as and when the Director is of the opinion that the placement of a particular infant with the applicant would be in the best interests of that infant, proceed with the placement or authorize an accredited body to proceed with the placement.

(3) Subject to section 6(4), where an infant has been placed with the applicant pursuant to subsection (2) and, at any time after the placement, the Director is of the opinion that the continued placement of the infant with the applicant would not be in the infant's best interests, the Director may terminate the placement or direct the accredited body to terminate the placement.

**30. Appeals**

If a person is aggrieved by the Director's decision -

- (a) on the assessment of that person's suitability to be an adoptive parent;
- (b) to terminate a placement;

- (c) on the person's application to become or  
continue to be an accredited body; or
- (d) to suspend or revoke the person's status as an  
accredited body,

the person may, within 28 days of receiving notice of the  
decision, appeal to the Administrative Appeals Board."

### **32. Schedule substituted**

The Schedule is repealed and the following substituted -

"SCHEDULE 1 [ss. 18 & 19(6)]

#### **REGISTRATION OF CERTAIN ADOPTIONS MADE OUTSIDE HONG KONG**

##### **1. Registration of adoptions on the Director's application**

(1) If the Registrar is satisfied, upon the Director's  
request for an entry to be made in the Adopted Children  
Register under this section, that the Director has furnished  
him with sufficient particulars relating to an infant adopted  
under a registrable adoption made outside Hong Kong to enable  
such an entry to be made for the infant -

- (a) he shall make the entry accordingly; and
- (b) if he is also satisfied -
  - (i) that the infant and a child to whom an  
entry in the registers of births relates  
are the same person, he shall ensure that  
the entry in those registers is marked  
with the word "Adopted" or the words "受領

養", followed by the name (in brackets) of the country in which the adoption was effected; or

- (ii) from documents furnished by the Director, that the infant has previously been the subject of an adoption order made by the Court, he shall cause the previous entry in the Adopted Children Register to be marked with the word "Re-adopted" or the words "再受領養", followed by the name (in brackets) of the country in which the adoption was effected.

(2) An entry made in the Adopted Children Register pursuant to this section shall be made in the form set out in Schedule 2 of this Ordinance.

(3) On making a request to the Registrar under subsection (1), the Director shall specify the particulars to be entered under the headings in items 2, 3, 4, 5 and 6 of the form set out in Schedule 2 of this Ordinance, supported with such documents as the Registrar may require, and -

- (a) where the Director is not aware of the precise date or the country of birth of the infant, the particulars of that date or that country (as the case may be) may be omitted from the entry in the Adopted Children Register; and

- (b) where the name or surname which the infant is to bear after the adoption differs from his original name or surname, the new name or surname shall be specified instead of the original,

and if a new name or surname is specified pursuant to paragraph (b), the Director shall also furnish to the Registrar proof (if available to the Director) that the infant and a child whose entry in the registers of birth has been marked with the word "Adopted" or the words "受領養" are the same person.

- (4) In this section -

"registrable adoption made outside Hong Kong" (可登記外地領養)

means -

- (a) a Convention adoption in respect of which -

- (i) Hong Kong acted as the State of origin;
- and

- (ii) an adoption order was made outside Hong Kong on or after the commencement of this Schedule; or

- (b) an adoption to which section 17 of this Ordinance applies, if -

- (i) the adopted person was an infant residing in Hong Kong before he was placed for the adoption; and

(ii) the adoption order concerned was made on  
or after the commencement of this  
Schedule.

**2. Rectification of registers**

(1) If the Registrar is satisfied, upon the Director's request for rectification of an entry in the Adopted Children Register under this section, that an adoption order in respect of a registrable adoption made outside Hong Kong (as defined in section 1(4)) is amended or revoked, he shall -

- (a) cause the entry in the Adopted Children Register to be amended accordingly; or
- (b) cause the marking of the entry in the registers of births or the Adopted Children Register to be cancelled.

(2) A copy or extract of an entry in any register, being an entry the marking of which is cancelled under this section, shall be deemed to be an accurate copy if and only if both the marking and cancellation are omitted from the copy.

SCHEDULE 2

[s.19(1) & Sch.1]

FORM

## 領養子女登記冊記項表格

## FORM OF ENTRY IN ADOPTED CHILDREN REGISTER

1.	<b>記項編號</b> No. of entry	
2.	<b>子女出生日期及國家</b> Date and country of birth of child	
3.	<b>子女姓名</b> Surname and name of child	
4.	<b>子女性別</b> Sex of child	
5.	<b>領養人或各領養人的 姓名、地址及職業</b> Surname and name, address and occupation of adopter or adopters	
6.	<b>領養令日期及作出該令的法院名稱</b> Date of adoption order and description of Court which made the order	
7.	<b>登記日期</b> Date of entry	
8.	<b>登記官所委任的 核簽記項的人員的簽署</b> Signature of officer deputed by Registrar to attest the entry	
9.	《入境條例》(第115章)下的	



	<p>香港特別行政區永久性居民身分 ( 確定 / 未確定 )</p> <p>Status of permanent resident of the Hong Kong Special Administrative Region under the Immigration Ordinance (Cap. 115) (Established/Not established)</p>	
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SCHEDULE 3

[s. 20B]

RELEVANT PROVISIONS OF  
CONVENTION ON PROTECTION OF CHILDREN AND  
CO-OPERATION IN RESPECT OF  
INTERCOUNTRY ADOPTION  
*(Done at the Hague on 29 May 1993)*

CHAPTER I - SCOPE OF THE CONVENTION

*Article 2*

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

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

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

*Article 3*

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

CHAPTER II - REQUIREMENTS FOR INTERCOUNTRY ADOPTIONS

*Article 4*

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

- (a) have established that the child is adoptable;
- (b) have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child's best interests;
- (c) have ensured that -
  - (1) the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary

and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin,

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

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

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

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

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

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

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

and expressed or evidenced in writing,  
and

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

*Article 5*

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

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

CHAPTER III - CENTRAL AUTHORITIES AND ACCREDITED BODIES

*Article 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.

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.

#### CHAPTER V - RECOGNITION AND EFFECTS OF THE ADOPTION

##### *Article 23*

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

#### CHAPTER VI - GENERAL PROVISIONS

##### *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.

(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 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 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."

### **33. Consequential and other amendments**

The enactments specified in the Schedule are amended as set out in the Schedule.

#### **SCHEDULE**

[s. 33]

#### **CONSEQUENTIAL AND OTHER AMENDMENTS**

##### **Adoption Rules**

#### **1. Appointment of some other person as guardian ad litem**

Rule 9(1) of the Adoption Rules (Cap. 290 sub. leg. A) is amended by repealing everything after "to act as" and substituting -

"guardian ad litem, then -

- (a) the originating summons must ask for the appointment of a guardian ad litem and must be supported by an affidavit by the applicant setting out the facts together with the consent to act in writing of the proposed guardian ad litem; and

(b) a copy of the originating summons shall be served on the Director,  
and the judge may appoint such person as he thinks fit to be the guardian ad litem."

**2. Form of statement and consent**

Rule 10(2) is amended -

- (a) in subparagraph (b), by repealing "and";
- (b) in subparagraph (c), by repealing the full stop and substituting "; and";
- (c) by adding -
  - "(d) the spouse of the applicant where the application for the adoption order is made by virtue of section 5(1)(c) of the Ordinance, be in Form 4B."

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

Rule 29 is amended -

- (a) by repealing paragraphs (a) and (b);
- (b) by repealing paragraph (c)(i) and (ii);
- (c) in paragraph (c)(iii), by repealing everything after "(iii)" and before "by any person".

**4. Forms**

The First Schedule is amended -

- (a) in Form 1 -



- (i) by repealing the year reference of ", 19";
- (ii) by adding at the end -

"ANNEX TO FORM 1

*Authorization for Criminal Record Check*

To: Commissioner of Police

In connection with my application for assessment of suitability to be an adoptive parent under Section 5AA\* / 27\* of the Adoption Ordinance (Cap. 290), I hereby authorize you, or your designate, to conduct criminal record check on myself and to inform and release to the Director of Social Welfare the particulars of my previous conviction(s) (if any) in Hong Kong or elsewhere.

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

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

Name in full (Block letters) .....  
HKID Number .....  
Travel Document Number .....  
Chinese Character Code .....  
Date of Birth .....

(Day/month/year) .....

Place of Birth .....

Signature of Applicant: .....

Signature of Witness<sup>(1)</sup>: .....

Post title of Witness: .....

Date: .....

\* Delete as appropriate

*Note :*

<sup>(1)</sup> The witness should be a public officer of the Social Welfare Department, HKSAR";

(b) in Form 2 -

(i) by repealing "19 ,No." and substituting

"20 ,No.";

(ii) by repealing the year reference of ",19";

(c) in Form 3 -

(i) by repealing the year references of "19"  
wherever it appears;

(ii) by repealing the year references of ",19"  
where it twice appears;

(iii) in the Annex to Form 3, in Notes (5) and (7),  
by repealing "illegitimate" and substituting  
"born out of wedlock";

(d) in Form 4 -

(i) by repealing "6 weeks" and substituting "4  
weeks";

(ii) by repealing the year reference of "19";

(iii) by repealing "[on condition that the religious  
persuasion in which the infant is brought up  
is.....]<sup>(7)</sup>";

(iv) by repealing "she fully" and substituting  
"he/she\* fully";

(v) by repealing "was prepared to surrender her  
child" and substituting "agreed to the  
placement of the infant";

(vi) by repealing note (7);

(e) in Form 4A -

(i) by repealing -

"\*(3) I desire that the infant  
shall be brought up in the .....  
..... religion.

\*(4) I do not desire to express a  
wish with respect to the religious  
upbringing of the infant.

\*Delete (3) or (4).";

- (ii) by repealing "was prepared to surrender the infant for adoption and" and substituting "agree to the placement of the infant for adoption and relinquish";
- (iii) in Note (4), by repealing "Where the consenting party is the mother of the infant, the" and substituting "The";
- (f) by adding -

"FORM 4B

[rule 10]

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

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

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

I, the undersigned .....

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

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

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

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

.....  
(Signature)

Signed at <sup>(8)</sup>..... on .....  
..... by the said .....

..... who satisfied me  
that he/she\* fully understood the nature of the  
foregoing statement and the effect of an adoption  
order.

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

(*Address*) .....

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

\* Delete as appropriate

*Notes :*

- (1) Insert name as known to the  
consenting party.
- (2) Where a serial number has been  
obtained for the application under  
rule 6 of the Adoption Rules (Cap.  
290 sub. leg. A), complete the entry  
contained in the second square  
brackets.

- (3) If the infant has previously been adopted, a certified copy of the entry in the Adopted Children Register should be attached, and not a certified copy of the original entry in the registers of births; and the description of the consenting party should include the words "by adoption" or "經領養" where appropriate.
- (4) Delete the words in square bracket except where the consenting party is the mother of the infant.
- (5) Delete the words in square bracket except where the consenting party is the spouse of the applicant.
- (6) Except where the consenting party is the spouse of the applicant AND the birth parent of the infant, the effect of an adoption order will deprive a parent of all rights in respect of the maintenance and upbringing of the infant.
- (7) The document will not be admissible as evidence unless the signature is attested by a Commissioner for Oaths

[or, if executed outside Hong Kong, by an officer authorized by the Adoption Rules (Cap. 290 sub. leg. A) - see note (8)]. In all cases the document if so attested will be admissible without further proof of execution.

(8) Where the document is executed outside Hong Kong, attestation in accordance with rule 29 of the Adoption Rules (Cap. 290 sub. leg. A), has the same effect as attestation by a Commissioner for Oaths.";

(g) in Form 5, by repealing the year reference of  
",19";

(h) in Form 6 -

(i) by repealing the year reference of "19" where  
it twice appears;

(ii) by repealing the year reference of ",19";

(i) in Form 7 -

(i) by repealing the year reference of "19";

(ii) by repealing the year reference of ",19"  
wherever it appears;

(iii) by repealing the Schedule to Form 7 and  
substituting -



**"SCHEDULE TO FORM 7**

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

**Notes :**

(1) Delete where there is no change of name.

(2) Delete this entry -

(a) if the infant is not identified with a person whose birth is registered in the registers of births;

(b) if the infant has previously been adopted.

(3) Delete "probable" where the precise date of the infant's birth is proved.

(4) Delete except where the infant has previously been adopted.

(5) Where a probable date of birth is specified in the body of the order, enter that date without qualification. If the infant is one of twins, include, if possible, the hour as well as the date of birth.

(6) Where there is a change, enter only the name by which the infant is to be known.";

(j) in Form 8 -

(i) by repealing the year reference of "19";

(ii) by repealing the year reference of ",19";

(k) in Form 9 -

(i) by repealing the year reference of "19"

wherever it appears;

(ii) by repealing the year reference of ",19".

**5. Additional matters subject to investigation and report by guardian ad litem**

The Second Schedule is amended, in paragraph 14 of Part III, by repealing "illegitimate" and substituting "born out of wedlock".

**Administrative Appeals Board Ordinance**

**6. Schedule amended**

The Schedule to the Administrative Appeals Board Ordinance (Cap. 442) is amended by adding -

- "61. Adoption                      A decision of the Director of Social Ordinance (Cap. Welfare - 290)
- (a) on the assessment of a person's suitability to be an adoptive parent;
  - (b) to terminate a placement;
  - (c) on a person's application to become or continue to be an accredited body; or
  - (d) to suspend or revoke a person's status as an accredited body,
- as referred to in section 30."

**Explanatory Memorandum**

The main objects of this bill are to amend the Adoption Ordinance (Cap. 290) ("the Ordinance") -

- (a) to make available a new procedure for a step-parent of a child to apply as the sole applicant for an adoption order in respect of the child ("step-parent application");
- (b) to give effect in Hong Kong to the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption ("the Convention");
- (c) to prohibit privately arranged adoption or placement for adoption (i.e. adoption or placement for adoption arranged by a person other than the Director of Social Welfare and a person authorized by the Director) where the prospective adopter is neither a parent nor a relative of the infant ("unrelated adoption") nor is acting pursuant to a court order;
- (d) to regulate arrangements for sending out of Hong Kong any child residing in Hong Kong for his adoption by a person who is neither his parent nor his relative;
- (e) to provide for a right of appeal to the Administrative Appeals Board in respect of certain decisions of the Director of Social Welfare; and
- (f) to make consequential amendments related to the matters mentioned in paragraphs (a) to (e), and to provide for miscellaneous matters regarding adoption and placement for adoption.

2. Clause 2 amends the long title of the Ordinance to include in its scope the matters added to the Ordinance by this Bill.

3. Clause 4 deals with section 2 (definitions) of the Ordinance. The definitions of "adoption order" and "Court" are amended to reflect certain provisions that are added under the new Part 5, which implements the Convention. A new definition, "accredited body", is added. The other amendments to section 2 are made to align with current usage in terminology.

4. The provisions of sections 4 and 5 of the Ordinance overlap to a certain extent. Clause 6 amends section 4 to simplify the drafting and eliminate the provisions that overlap with section 5. Amendments to section 5 are included in clause 8.

5. Clause 7 amends section 4A(1) of the Ordinance so that, as read with the new section 20C(3) (added by Clause 24), application for an adoption order in respect of an adoption that is governed by the Convention ("Convention adoption") can only be commenced in the Court of First Instance.

6. Clause 8 amends section 5 of the Ordinance -

(a) to put in place the procedure of step-parent application;

(b) to repeal subsection (3), which prohibits (subject to the Court's order to the contrary) the adoption of a female infant by a sole applicant of the opposite sex;

(c) to repeal subsection (4), as the matter provided for is subsumed in the new section 4;

- (d) subsection (5)(a) is amended to take into account the requirements under the Convention in relation to consent for a Convention adoption;
- (e) to amend subsection (5E) to spell out expressly the re-vesting of parental rights and duties upon a parent's revocation of his consent (given in the prescribed general form of consent) within 3 months of that consent;
- (f) subsection (6) is amended to take into account the "habitual residence" requirements under the Convention;
- (g) to add a new paragraph (ab) to subsection (7) to provide for the period of continuous actual custody required for a step-parent application; and
- (h) to amend subsection (8) to modify the requirement of continuous actual custody for the purpose of adoption.

7. The new section 5AA (added by clause 9) and the new sections 27 and 28 (added by clause 31) are added, so that any applicant for an adoption order has to comply with the "criminal record check" requirement in manner as provided in those sections. The new paragraph (ba) to section 8(1) of the Ordinance (added by clause 13(c)) ensures that no adoption order will be granted by the Court if the requirement has not been complied with.

8. Clause 11 amends section 6 of the Ordinance to remove the right of a birth parent to specify the religious persuasion in which an adopted child should be brought up.

9. Clause 12 amends section 7(3) of the Ordinance so that any consent required under section 5(5)(a) could be given only if the infant is at least 4 weeks' old (instead of 6 weeks).

10. Clause 13(a) amends section 8 of the Ordinance in the light of the new procedure of step-parent application. Clause 13(b) and (d) contains minor amendments to that section to tie in with the wording of the Convention.

11. Clauses 16 and 18 amend section 13 (vesting of parental rights and obligations in the adoptive parents on the grant of an adoption order) and section 15 (Intestacies, wills and settlements) of the Ordinance respectively, to cater for changes necessitated by the newly available procedure of step-parent application.

12. Clause 19 amends section 17 of the Ordinance to exclude Convention adoptions from the application of that section. This is necessary as the Convention contains specific provisions on the recognition of Convention adoptions and the effect of such recognition, which are reflected under the new Part 5 (added by clause 24) of the Ordinance.

13. Clauses 21 to 23 amend sections 18, 19 and 20 of the Ordinance, while clause 32 adds the new Schedule 1. These amendments enable entries to be made in the Adopted Children

Register for registration of certain adoption orders made outside Hong Kong in respect of Hong Kong children.

14. Clause 24 adds a new Part 5 to the Ordinance to implement the Convention. The main provisions in this Part are -

- (a) section 20A, which defines the terms used in the new Part 5;
- (b) section 20B, which enables the Articles of the Convention set out in the new Schedule 3 (added by clause 32) to have the force of law in Hong Kong;
- (c) section 20C, which stipulates the extent of application of the other provisions of the Ordinance in relation to Convention adoptions;
- (d) section 20D, pursuant to which the Secretary for Health, Welfare and Food has the power to declare such States as he may specify by order in the Gazette to be the Contracting States, and the Convention shall apply to a Convention adoption between Hong Kong and any such State;
- (e) section 20E, which designates the Director of Social Welfare as the Central Authority under the Convention. Subsection (3) of that section spells out clearly that the Director may request a person to make a report to him with respect to the matters described in that subsection, and subsection (4) of that section permits the delegation of the



functions of the Central Authority to accredited bodies;

- (f) section 20F, which provides for the recognition of Convention adoption orders and the effect of such recognition;
- (g) section 20G, which empowers the Court of First Instance to direct that a Convention adoption order shall not have the effect as stipulated in section 20F(2);
- (h) section 20H, which provides that the Court of First Instance may declare that a Convention adoption made outside Hong Kong shall not be recognized in Hong Kong on the ground that the adoption is manifestly contrary to public policy; and
- (i) section 20I, pursuant to which the Court of First Instance may issue Convention adoption certificate (as defined in section 20A).

15. Clauses 26, 27 and 28 amend sections 21, 22 and 23 to increase the existing penalty levels of the offences under those sections. In addition, clause 27(a) adds a new paragraph (b) to section 22(1) to allow for payment to be made to an accredited body in connection with the adoption or proposed adoption of an infant.

16. Clause 29 adds -

- (a) a new section 23A to create a new offence in relation to private arrangement or placement for

unrelated adoption. No person (other than the Director of Social Welfare or an authorized person) shall make such arrangement or placement except where he acts pursuant to an order of the Court of First Instance;

- (b) a new section 23B to empower the Court of First Instance to make an order passing the care and control of a child to a person authorized by the Director of Social Welfare with a view to adoption of the child by a person not residing in Hong Kong; and
- (c) a new section 23C to outlaw the removal of a child residing in Hong Kong to any place outside Hong Kong (except under the authority of an order under section 23B) for unrelated adoption.

17. Clause 31 adds the new sections 26, 27, 28, 29 and 30 -

- (a) the new section 26 provides for the approval of accredited bodies, which may undertake the functions mentioned in subsection (2) of that section as well as those mentioned in the new section 20E(4) of the new Part 5;
- (b) the new sections 27 and 28 apply to certain categories of persons. Those sections provide for such a person to apply to the Director of Social Welfare for assessment of his suitability to be an

adoptive parent before any adoption arrangement can be made;

- (c) the new section 30 enables an aggrieved person to appeal to the Administrative Appeals Board against such of the decisions of the Director of Social Welfare as specified in that section.

18. Clause 32 adds the new Schedules 1 (registration of certain adoptions made outside Hong Kong) and 3 (articles of the Convention). Schedule 2 (Form of Entry in Adopted Children Register) in essence reproduces the existing Schedule of the Ordinance.

19. The Schedule to the Bill amends the Adoption Rules (Cap. 290 sub. leg. A) ("the Rules") and the Administrative Appeals Boards Ordinance (Cap. 442). The amendments are either consequential amendments or amendments that are technical in nature -

- (a) section 1 of the Schedule amends Rule 9 of the Rules to require the applicant to serve a copy of the adoption application to the Director of Social Welfare, even where the Director is not the guardian ad litem of the infant;
- (b) section 2 of the Schedule amends Rule 10(2) of the Rules to require the signing of a new form of consent (i.e. Form 4B) in connection with the new procedure of step-parent application;
- (c) section 3 of the Schedule amends Rule 29 of the Rules, which deals with the requirement of

attestation where a document is executed outside  
Hong Kong;

- (d) section 4 of the Schedule amends the forms set out in the First Schedule of the Rules and adds the new Form 4B;
- (e) section 5 of the Schedule replaces the expression of "illegitimate" with "born out of wedlock"; and
- (f) section 6 of the Schedule amends the Administrative Appeals Board Ordinance (Cap. 442), to reflect the provisions of the new section 30 of the Ordinance (added by clause 31).

20. Opportunity has also been taken to take on board some minor amendments.

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

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

**CHAPTER I – SCOPE OF THE CONVENTION**

***Article 1***

The objects of the present Convention are –

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

***Article 2***

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

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

***Article 3***

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

**CHAPTER II – REQUIREMENTS FOR INTERCOUNTRY ADOPTIONS**

***Article 4***

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

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

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

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

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

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

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

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

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

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

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

***Article 5***

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

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

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

may be necessary; and

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

### **CHAPTER III – CENTRAL AUTHORITIES AND ACCREDITED BODIES**

#### ***Article 6***

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

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

#### ***Article 7***

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

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

a) provide information as to the laws of their States concerning adoption and other general information, such as statistics and standard forms;

b) keep one another informed about the operation of the Convention and, as far as possible, eliminate any obstacles to its application.

#### ***Article 8***

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

#### ***Article 9***

Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to –

a) collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption;

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

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

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

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

***Article 10***

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

***Article 11***

An accredited body shall –

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

***Article 12***

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

***Article 13***

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

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

***Article 14***

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

***Article 15***

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



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

***Article 16***

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

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

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

***Article 17***

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

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

***Article 18***

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

***Article 19***

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

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

(3) If the transfer of the child does not take place, the reports referred to in

Articles 15 and 16 are to be sent back to the authorities who forwarded them.

***Article 20***

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

***Article 21***

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

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

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

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

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

***Article 22***

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

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

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

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

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

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

paragraph 1.

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

## **CHAPTER V – RECOGNITION AND EFFECTS OF THE ADOPTION**

### ***Article 23***

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

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

### ***Article 24***

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

### ***Article 25***

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

### ***Article 26***

(1) The recognition of an adoption includes recognition of

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

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

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

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

(3) The preceding paragraphs shall not prejudice the application of any

provision more favourable for the child, in force in the Contracting State which recognizes the adoption.

***Article 27***

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

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

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

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

**CHAPTER VI – GENERAL PROVISIONS**

***Article 28***

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

***Article 29***

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

***Article 30***

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

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

***Article 31***

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

***Article 32***

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

to an intercountry adoption.

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

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

***Article 33***

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

***Article 34***

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

***Article 35***

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

***Article 36***

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

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

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

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

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

***Article 37***

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

***Article 38***

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

***Article 39***

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

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

***Article 40***

No reservation to the Convention shall be permitted.

***Article 41***

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

***Article 42***

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

**CHAPTER VII – FINAL CLAUSES**

***Article 43***

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

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

***Article 44***

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

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

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

accession. Any such objection shall be notified to the depositary.

***Article 45***

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

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

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

***Article 46***

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

(2) Thereafter the Convention shall enter into force –

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

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

***Article 47***

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

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

***Article 48***

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

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

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

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

- d)* the declarations and designations referred to in Articles 22, 23, 25 and 45;
- e)* the agreements referred to in Article 39;
- f)* the denunciations referred to in Article 47.

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

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



**Administrative Appeals Board (AAB)**

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

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

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

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

## **Root Tracing System in Adoption Service**

### **Purpose**

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

### **Background**

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

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

3. Under the existing root tracing practice, birth information about an adopted person, except identifying data of his/her birth parents, is provided by SWD to the adoptive parents as an operational procedure after an adoption order has been granted. The information provided includes the biological and medical history of the adopted person and the birth parents as well as the reasons for relinquishment, etc. A copy of the standard background information is at **Appendix 2**. Adoptive parents are encouraged to share the information with the adopted person. A copy of the information will also be given to the adopted person who approaches SWD for such information<sup>1</sup>. This practice will continue upon the proposed RTS being put in place.

4. Developed from the existing root tracing service, the proposed RTS helps the

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<sup>1</sup> The adopted person who has reached the age of majority may have access to information concerning his/her birth family. For an adopted person who is under 18, he/she shall obtain the written consent of the adoptive parents when making request for access to birth information and SWD will involve the adoptive parents during the counseling process before the disclosure of information to the adopted person.

adopted persons to obtain information about themselves and their birth parents, subject to a VM (*the operation of the VM will be elaborated in the following paragraphs*). If it is so requested, SWD will render tracing service to facilitate contact among the adopted person, the adoptive parents and the birth parent(s). To enable the adopted person to resolve his/her possible emotional difficulty arising from his/her identity and to have better understanding of his/her background and the reason behind his/her adoption, the adopted person who either seeks access to his/her birth records or contact with his/her birth parent(s) are required to receive counselling as appropriate before the release of information to him/her. Where the adopted person is under 18<sup>2</sup>, his/her adoptive parents will also be involved in the counselling process before the release of information to the adopted person.

### **Operation of VM**

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

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

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

- (a) the veto, once imposed, will remain in place for the duration of his/her lifetime and become ineffective after his/her death;
- (b) he/she can, at any time in future, request the veto to be lifted;
- (c) the detailed operation of the root tracing system in light of the VM and the implication and possible consequences of exercising or not exercising a veto;

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<sup>2</sup> For an adopted person under 18 who fails to obtain the consent of the adoptive parents for root tracing request, his/her request will be considered at SWD's discretion on a case-by-case basis.

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

**Principles in Exercising the Veto**

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

- (d) the veto should also apply to the release of information to the adoptive parents; and
- (e) the proposed RTS cum VM should commence upon the enactment of the Adoption (Amendment) Bill and should not be given retrospective effect. An adopted person whose custody is relinquished by his/her birth parent(s) before the introduction of the new system should follow the existing procedures of root tracing service rendered by SWD as at **Appendix 1**.

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

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

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

### **Nature of Requests**

10. A root tracing request may have the following purposes:
- (a) Request for birth information and non-identifying information on the birth parent(s); and/or
  - (b) Request for birth information and identifying information on the birth parent(s); and/or
  - (c) Request for establishing contact/meeting with birth parent(s).

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

11. If an adopted person wishes to obtain his/her birth information, he/she may approach either SWD or an AB previously known to him/her as appropriate direct for root tracing services. The adopted person may also approach the Registrar of Births and Deaths, who will in turn refer the case to SWD for processing. In general, SWD would entertain the request only if the adopted person reaches 18 or has the written consent of the adoptive parents if the adopted person is under the age of 18<sup>3</sup>. Where matching record for the adopted person is identified, he/she will be required to receive counseling by SWD/AB to help him/her deal with any emotional or adjustment problems that may arise and give advice on any further enquiries he/she may wish to make about his/her birth parent(s). If the adopted person is under 18, both the adopted person and his/her adoptive parents will be requested to receive counselling service as part of the root tracing service.

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

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

13. Where the adopted person would like to search for birth information and the identifying information on the birth parent(s), SWD will check against the file record to ascertain if a veto has been imposed by the birth parent(s) either at the time of relinquishment of the child's custody or any time after the relinquishment. If the adopted person approaches an AB direct to request identifying information on the birth parent(s), the AB shall refer the case to SWD to ascertain whether a veto is in place. In case **a veto has not been imposed**, all birth information including the identifying information on the birth parent(s) will be provided to the adopted person by SWD/AB. In case when **a veto is in place and has not been lifted**, SWD/AB will only release the birth information without birth parent(s)' identifying information. If so requested, SWD will attempt to trace the birth parents(s) to see if he/she agrees to lift the veto. In case the birth parents have different views on the disclosure of information, SWD will only release the identifying information of the parent who has not exercised the veto/ has lifted the veto to the adopted person. The adopted person is required to receive counseling by SWD/AB in handling the issue of not being able to obtain the required identifying information. On the other hand, advice will also be given to the adopted person on other means of root tracing, e.g. application for a Court Order under section 18(4) of the AO to search information contained in the Adopted Children Register.

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<sup>3</sup> For an adopted person under 18 who fails to obtain the consent of the adoptive parents for root tracing request, his/her request will be considered at SWD's discretion on a case-by-case basis.

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

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

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

*Social Welfare Department  
May 2003*



## **Existing Root Tracing System in Adoption Service**

### **Purpose**

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

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

2. The root-tracing service aims to assist an adopted person<sup>4</sup> to trace information related to the birth parents and/or to contact them. The services include counseling, furnishing of information through record checking, arrangement of meeting or correspondence among adopted person, adoptive parents and birth parents. The direct contacts with the birth parent(s) may enable the adopted person resolve his/her feelings and to have greater understanding of his/her background and the reason behind his/her adoption.

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

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

### **Nature of Requests**

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

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

5. If an adopted person wishes to obtain his/her background information, he/she may approach SWD direct. SWD would entertain the

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<sup>4</sup> The adopted person who has reached the age of majority may have access to information concerning his/her birth family. For an adopted person who is under 18, he/she shall obtain the written consent of the adoptive parents when making request for access to birth information and SWD will involve the adoptive parents during the counselling process before the disclosure of information to the adopted person.

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

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

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

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

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

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

Our Ref. :

Tel. No. :

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

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

**I. Information of the child**

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

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

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

**Annex D**  
**Appendix 2**

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

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

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

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

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**VI. Adoption procedures**

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

Other e.g.

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

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

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Caseworker of Adoption Unit  
Social Welfare Department

Dated this                      day of                      200

**Editorial Amendments**

Textual amendments to the AO and AR include -

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

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

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

4. The above editorial amendments are not exhaustive. For details, please refer to the Bill at **Annex A**.

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

*General Statement*

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

**Part I – Background**

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

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

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

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

5. At present, the adoption of DSW wards by overseas applicants is



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

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

7. As for the adoption of children from places outside the HKSAR by unrelated persons, ISS-HK has initiated a program to assist local families, mostly expatriate families, to adopt children from places outside HKSAR on a self-financing basis<sup>6</sup>. Local residents, including expatriates who wish to adopt children from these countries shall meet the adoption requirements of Hong Kong as well as those of the place where the child resides. On average, ISS-HK receives and processes 3-4 such applications each year.

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

## **Part II – The Hague Convention**

9. The Hague Conference on Private International Law (the Hague Conference) is an inter-governmental organization working for the progressive unification of the rules of private international law. The Hague Convention, which was drawn up by the Hague Conference, was adopted in the Hague on 29

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<sup>5</sup> In the intercountry adoption program for DSW wards, ISS-HK has overseas connection with six countries, namely the United States of America, Canada, Australia, New Zealand, the United Kingdom and Singapore. Meanwhile, MC has only established connection with the licensed adoption agencies in the United States.

<sup>6</sup> Presently, ISS-HK has programs with the Mainland China (for expatriates only), India, the Philippines and Thailand. Each country has different criteria and requirements for documents and procedures.

May 1993. As at 12 May 2003, it had 52 Contracting States, and had been signed (but not yet ratified) by another 10 States, including China and the USA.

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

### ***Terminology***

11. The Hague Convention (**Appendix 1**<sup>7</sup>) contains 48 Articles which set out its objectives and scope, the requirements and procedures and the responsibilities of Contracting States for intercountry adoption, provide for the accreditation of adoption agencies and the recognition by Contracting States of intercountry adoptions made in accordance with its provisions. A State which has ratified or acceded to the Hague Convention is described as a “**Contracting State**”. A State that allows children habitually resident in that State to be adopted by families of other Contracting States according to the Hague Convention is known as a “**State of origin**”. A State that permits a child from another Contracting State to enter its country and live permanently with the adoptive parents habitually resident in that State is a “**receiving State**”. Where a country (e.g. China) has different territorial units with different legal systems (e.g. HKSAR), the term “State” also refers to such territorial unit to which the Hague Convention applies. However, according to international law principles and as stated in Article 38 of the Hague Convention, a State, including one within which different territorial units have their own rules of law in respect of adoption, shall not be bound to apply the Hague Convention to adoptions within that State.

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

### ***The Framework***

13. Under the Hague Convention, a person is required to apply to the CA in the Contracting State of his/her habitual residence if he/she wishes to adopt a child habitually resident in another Contracting State. For easy reference, the intercountry adoptions processed by Contracting States in accordance with the

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<sup>7</sup> See **Annex B**.

provisions of the Hague Convention are referred to as “Convention adoptions” in this document. On the other hand, intercountry adoptions processed with countries which have not yet become party to the Hague Convention, such as the USA, are referred to as “non-Convention adoptions”.

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

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

### ***The Situation in the HKSAR***

16. In the HKSAR, the functions of CA as described in Article 9 and Articles 15-21 are, at present, performed by SWD and the two NGOs (i.e. ISS-HK and MC) through Funding and Service Agreement signed between SWD and ISS-HK; and Tripartite Arrangements signed among SWD, MC and overseas adoption agencies. Such arrangements aim at facilitating the identification of suitable overseas adoptive parents for children with special needs in the HKSAR by making good use of the international network of the two agencies.

17. Upon application of the Hague Convention to the HKSAR, SWD will be designated as the CA. Besides, SWD also needs to put in place an accreditation system if the current practice of cooperation and delegation of

duties to NGOs in handling intercountry adoption cases is to be maintained. In this respect, there will be a provision in the revised Adoption Ordinance empowering DSW to delegate such functions to bodies duly accredited by him/her. The criteria for accreditation, the scope of work of the ABs, and the minimum standards of accreditation under the Hague Convention are set forth below.

### **Part III – Accreditation**

18. In view of the small number of intercountry adoption cases in the HKSAR each year, an agency accredited by DSW under the proposed accreditation system will be allowed to work on both Convention and non-Convention intercountry adoption cases<sup>8</sup>. The accreditation system aims at:

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

### ***Criteria for Accreditation***

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

- (a) the agency pursues only non-profit-making objectives and has sound financial condition to enable it to take on intercountry adoption work;
- (b) it has specialized experience in providing child welfare services;
- (c) it has a clearly-delineated organization structure, resources to make adoption arrangement for children, and a written policy and working procedures

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<sup>8</sup> The term “intercountry adoption” does not include adoption between the HKSAR and other parts of China. Hence, the adoption cases handled by AB under the accreditation system will not cover those made between the HKSAR, the Macao SAR and other parts of China.

governing the work of the agency;

- (d) there is a designated section in the agency directed by persons with appropriate qualifications and staffed by registered social workers<sup>9</sup> competent to undertake home assessment and placement tasks for the purpose of intercountry adoption;
- (e) there is a committee/board set up by the management of the agency to monitor the adoption work of the agency;
- (f) there is a good track record of the agency in providing the services and clear documentation on such services, e.g. for agencies currently providing adoption services, reference will be made to the number of children adopted through the agency's program, types of special needs children placed for adoption and length of adoption processing time by the agency in the HKSAR;
- (g) there is no record of conviction against the agency for offences against children;
- (h) the agency places the child's interests as the paramount consideration in its intercountry adoption work;
- (i) it complies with the law of the HKSAR and follows the principles laid down in the Hague Convention in respect of intercountry adoption work carried out by the agency;
- (j) for non-Convention adoption cases it has an established overseas network (or has a concrete plan to develop such a network) of government bodies and/or licensed/accredited adoption bodies in the arrangement of adoption; and
- (k) there is a mechanism in place to handle complaints arising from the adoption service provided by the agency.

***Scope of Work of the Accredited Body in the HKSAR***

20. The agency applying for accreditation may work with specific countries currently having intercountry adoption programs with the HKSAR<sup>10</sup>. These countries include both Contracting States, such as Australia, Canada, New

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<sup>9</sup> A registered social worker refers to a social worker who has registered in the Social Workers Registration Board, Hong Kong under the Social Workers Registration Ordinance (Cap. 505).

<sup>10</sup> Countries having intercountry adoption programmes with HKSAR children (i.e. HKSAR as the State of origin) include Contracting States (Australia, Canada, New Zealand and the United Kingdom) and non-Contracting States (Singapore and the United States). As for the intercountry adoption programmes where HKSAR is the receiving State, those countries include the Philippines which is a Contracting State, and India and Thailand which are non-Contracting States.

Zealand and the UK<sup>11</sup>; and non-Contracting States, such as Singapore and the USA. After the Hague Convention is applied to the HKSAR, it may also be possible for an intercountry adoption arrangement to be made with other Contracting States. ABs may, in consultation with SWD, initiate inquiries with or receive inquiries from the CA of a Contracting State to explore the likelihood of an intercountry adoption arrangement between a Contracting State and the HKSAR, and decide whether intercountry adoption arrangement will take place having examined whether the requirements of the Hague Convention and the Adoption Ordinance are satisfied. Regarding non-Convention adoption, the agency, before entering into partnership or cooperation with a new State, should obtain the prior approval of SWD which may impose additional requirements or supervisory control on the agency for working on intercountry adoption cases between the HKSAR and these countries.

21. An agency duly accredited in the HKSAR will be delegated with procedural duties relating to Convention and non-Convention adoptions, including the arrangement of overseas adoptive homes for children who cannot be placed locally, and providing services to local families<sup>12</sup> who wish to adopt children from places outside the HKSAR. ABs will be involved in the following duties in Convention adoption cases:

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

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

***Where HKSAR is the State of origin***

- (a) preparation of child study report for the purpose of overseas adoption;
- (b) forwarding the child study report to overseas CA/AB;

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<sup>11</sup> The Convention entered into force for the UK on 1 June 2003.

<sup>12</sup> To safeguard the best interests of children, all local prospective adoptive homes, no matter whether they apply for local adoption or adoption of children abroad, should go through a home study approved by the Adoption Unit of the Social Welfare Department.

- (c) screening the home assessment report on the prospective adoptive parents prepared by the overseas CA/AB; and
- (d) escorting the child to the overseas country of the prospective adoptive parents when required.

***Where HKSAR is the receiving State***

- (a) preparation of home study report for the purpose of overseas adoption;
- (b) forwarding the home study report to overseas CA/AB;
- (c) screening the child study report prepared by the overseas CA/AB; and
- (d) liaising with Immigration Department to confirm the child's permission to enter and stay in the HKSAR for the purpose of adoption.

22. A detailed description of duties and procedural requirements to be delegated to ABs in the HKSAR under the Hague Convention is at **Appendix 2**. To safeguard the service quality and professional practice of intercountry adoption in the HKSAR, the same service standard will be applied to non-Convention adoption as well. For non-Convention adoption cases, ABs also need to fulfill the requirement mentioned in paragraph in 20 and perform the same duties mentioned in paragraph 21.

23. While a number of the procedural functions will be delegated to the AB, SWD continues to take up the responsibility of liaising with the Police for administering the requirement of criminal record check on prospective adoptive parents and approving the suitability of prospective adopters, where the HKSAR is the receiving State. As the CA of the State of origin, SWD will also be accountable for approving the decisions on the child's placement/termination of placement in a prospective adoptive home; applying to the Court for an Order for a DSW ward's removal from the HKSAR for placement/adoption outside Hong Kong; and providing necessary information to Immigration Department to facilitate the registration of the child's adoption order granted overseas onto the Adopted Children Register in the HKSAR.

***Root-tracing***

24. For root tracing request in relation to an adopted person who had been arranged for intercountry adoption by SWD and AB, the AB will also be involved in root tracing service. In handling such requests, the AB concerned may release the birth information to the adopted person (subject to a veto mechanism) and render counselling to the adopted person as appropriate. The detailed procedures in providing the root tracing service and the division of work between SWD and AB in handling root-tracing requests are laid down in

**Annex D.**

**Part IV – Application and Approval Procedures**

***Application for Accreditation***

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

***Accreditation Assessment***

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

27. The assessment may include the following activities:

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

***Notification of Assessment Result***

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

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



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

***Validity Period***

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

- (a) the agency has failed to meet the accreditation criteria as specified in paragraph 19 and / or the conditions of accreditation stated in the accreditation certificate;
- (b) the agency has failed to fulfill any of the duties, requirements or conditions set out in this document or otherwise imposed by DSW from time to time, including without limitation the duties set out in paragraphs 21 and 22 above in processing intercountry adoption cases and the obligations set out in paragraphs 35 - 38 below;
- (c) the agency has failed to comply with the code of conduct for accredited bodies or guidelines on intercountry adoption service issued by SWD;
- (d) the agency has encountered financial problem, which may adversely affect its normal operation; or
- (e) the agency has ceased to provide intercountry adoption service.

31. For applicants not providing intercountry adoption service at the time of application but wishing to commence such service in the near future, DSW reserves the right, where she decides to give accreditation, to shorten the accreditation period to 24 months. During the period, DSW will assess the performance of the applicant concerned to see if accreditation certificate is to be renewed. The applicant, within the 24-month accreditation period, should demonstrate its ability to handle both incoming and outgoing cases, and complete successful intercountry adoption cases<sup>13</sup> of which at least 2 should be on wards of DSW. The period of accreditation can be extended by DSW up to 36 months where it is considered appropriate.

***Application for Renewal of Accreditation***

32. An application for renewal of accreditation shall be made to DSW not

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<sup>13</sup> Successful intercountry adoption case refers to the completion of adoption cases where a ward of DSW has been placed with an overseas adoptive home with an adoption order granted; and where an overseas child has joined the adoptive home in the HKSAR with an adoption order granted.

more than 6 months and not less than 4 months prior to the expiration of the accreditation or within such period of time as DSW may in writing permit. Procedures for accreditation application in paragraph 25 to paragraph 29 will be followed. Normally, the renewal accreditation certificate, if granted, shall have effect on the day following the day upon which the original accreditation expires. The period of accreditation can be extended by DSW on a temporary basis if DSW needs to take longer time to consider the renewal e.g. where there is unexpected change to the agency's intercountry adoption program.

***Accreditation Register***

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

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

**Part V – Monitoring of Accredited Bodies**

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

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

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

services, records and resources are in place to ensure compliance with the requirements regarding its accreditation;

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

### **Records and Information to be Maintained by the Accredited Body**

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

- (a) records relating to adoption service, including case records<sup>14</sup> with home assessment reports, child study records and placement records;
- (b) records of staff handling adoption matters;
- (c) records on service statistics as DSW may from time to time require;
- (d) records of complaints and legal proceedings involving the AB; and
- (e) financial records of the AB.

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

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

### ***Fees***

38. The AB shall operate on a self-financing basis, except for such activities as may be agreed with DSW under separate agreement. While the accredited body shall pursue only non-profit-making objectives, it may charge prospective adoptive parents fees to cover the administrative costs for providing the adoption service, but the level of such fees has to be reasonable. Besides, in accordance with Article 32 of the Hague Convention, the level of salaries of directors, administrators and employees of the accredited agencies should not be

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<sup>14</sup> Except for cases where applications are withdrawn or hard-to-place cases which are returned to SWD, all adoption case records shall be kept for permanent retention. Besides, all adoption case records should be kept confidential.

unreasonably high in relation to the services rendered. For any changes in staff structure and level of fees, SWD shall be informed in advance. As for the intercountry adoption program arranged for the wards of DSW, the level of fees charged shall be approved by DSW.

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

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

40. If the AB is found not to have acted in the best interests of the child or upon the occurrence of any of the events stated in paragraph 30, DSW may suspend the accreditation of the AB. The agency is required to investigate into the matter and provide a report to SWD within a given time frame and recommend remedial actions to be taken to the satisfaction of DSW. In case of serious or repeated default or non-compliance or the failure of AB to improve on the identified deficiencies, DSW may revoke the accreditation of the AB. Prior to suspension or revocation, SWD will bring the matter to the attention of the AB and provide the agency with the opportunity to make representation before a final decision is made.

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

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

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

43. If SWD determines that the complaint falls within the scope of

intercountry adoption services/procedures (including Convention and non-Convention adoptions), it shall collect the necessary information to make a preliminary determination, and shall conduct such site-visits and/or other investigative activities as may be necessary to determine whether the AB remains in compliance with conditions and requirements of accreditation.

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

**Appeal**

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

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

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

*Social Welfare Department  
May 2003*

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

	<u>Article*</u>	<u>Job Description</u>
1	9(a)	Collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption
2	9(c)	Promote the development of adoption counselling and post-adoption services in their States
3	9(d)	Provide each other with general evaluation reports about experience with intercountry adoption
4	15(1)	Prepare a report including information about the prospective adoptive parents' identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, as well as the characteristics of the children for whom they would be qualified to care
5	15(2)	Transmit the report to the Central Authority of the State of origin
6	16(1)(a)	Prepare a report including information about the child's identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child
7	16(1)(b)	Give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background
8	16(1)(c)	Ensure that consents have been obtained in accordance with Article 4
9	16(1)(d)	Determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child
10	16(2)	Transmit to the Central Authority of the receiving State its report on the child, proof that the necessary consents have been obtained and the reasons for its determination on the placement, taking care not to reveal the identity of the mother and the father if, in the State of origin, these identities may not be disclosed
11	17(a)	Has ensured that the prospective adoptive parents agree to adoption
12	17(b)	Has approved such decision, where such approval is required by the law of that State or by the Central Authority of the State of origin
13	17(c)	The Central Authorities of both States have agreed that the adoption may proceed
14	17(d)	It has been determined, in accordance with Article 5, that the prospective adoptive parents are eligible and suited to adopt
15	18	Take all necessary steps to obtain permission for the child to

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

*\* It refers to the Articles contained under the Convention on Protection of Children and Cooperation in respect of Intercountry Adoption.*

## **Accreditation Application / Renewal Application**

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

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

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

Existing Certificate Number: \_\_\_\_\_<sup>15</sup>

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

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

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

(a)    Name of the Organization in English:

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<sup>15</sup> This item is only applicable to applicants who apply for a renewal of certificate.



(b) Name of the Organization in Chinese:

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(c) Address of the Organization:

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Number and Name of Street/Estate

District

Hong Kong/Kowloon/New Territories \*

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

(e) Name of Responsible Person of the Organization:

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

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

Position held in the Organization :

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

(a) Name of the designated section:

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

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(c) Address of the designated section:

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

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

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

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

☐ Subvented

☐ Self-financing and non-profit-making

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

☐ Yes                      ☐ No

Name of the monitoring body:

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

☐ Yes                      ☐ No

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

☐ Yes                      ☐ No

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

☐ Yes                      ☐ No

Dates, details and outcome of the lawsuits :

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

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

☐ No

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

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

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

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

supervision and courier fees, etc) in each country.

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

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

I declare that :

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

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

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

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

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

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

Organization chop<sup>16</sup>: \_\_\_\_\_

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

4/F Harbour Building  
38 Pier Road  
Central  
Hong Kong

*\* Delete as appropriate*

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<sup>16</sup> The Application Form must be stamped with an official chop of the organization.

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

<b>Documents/records/information</b>	
<b>I. Background Information</b>	
•	Brief history of agency
•	Policy/goal/mission statement
•	Board of Directors, organization chart, staffing structure
•	Roles and responsibilities of the adoption committee or sub-committee of the organization overseeing the delivery of adoption service
•	Annual Report/Year Book/Newsletter/Publication/Brochure
<b>II. Services</b>	
•	Plans of the adoption service to be delivered, including service types, eligibility criteria of service recipients, guidelines on delivery of service
•	Experience of the organization in adoption or related family and child welfare services
•	Qualifications, experience and duties of the designated officer-in-charge and staff of the adoption service section of the organization
•	Office facilities including the availability of interview rooms to ensure confidentiality
•	Service statistics on adoption services, e.g. number of children adopted through the agency's adoption program, types of special needs children placed for overseas adoption, length of adoption processing time by the agency in Hong Kong, etc, if applicable (latest 3 years)
•	Assessment reports on service performance monitoring system (latest 3 years) endorsed by SPMS Unit of SWD
•	Mechanism in place to handle complaints
<b>III. Financial Status</b>	
•	Status (subvented or self-financing service)

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

## **CODE OF CONDUCT FOR ACCREDITED BODIES**

### ***Conflict of interest***

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

### ***Acceptance of gifts or benefits***

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

### ***Personal and professional behaviour***

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

### ***Fairness and equity***

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



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

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

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

**Existing Provisions of the Adoption Ordinance Being Amended**

(Date of this copy: 06/05/2003)

<b>Chapter:</b>	<b>290</b>	<b>ADOPTION ORDINANCE</b>
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		<b>Long title</b>
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To make provision for the adoption of children.

[12 October 1956] *G.N.A. 94 of 1956*

(Originally 22 of 1956)

<b>Section:</b>	<b>2</b>	<b>Interpretation</b>
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

- In this Ordinance, unless the context otherwise requires-
- "adoption order" (領養令) has the meaning assigned to it by section 4;
- "Court" (法院) means the Court of First Instance or the District Court; (Replaced 79 of 1981 s. 8. Amended 25 of 1998 s. 2)
- "Director" (署長) means the Director of Social Welfare; (Added 21 of 1960 s. 2)
- "father" (父親), in relation to an illegitimate infant, means the natural father;
- "general register office" (登記總處) means the general register office appointed under section 3(1)(c) of the Births and Deaths Registration Ordinance (Cap 174); (Replaced 38 of 1979 s. 2)
- "infant" (幼年人) means a person under 18 years of age, but does not include a person who is or has been married; (Amended 80 of 1997 s. 26)
- "interim order" (臨時命令) means an order under section 9;
- "parent" (父母), in relation to a child who is illegitimate, means-
- (a) his mother;
  - (b) in the case of a child whose father is entitled to exercise any right or authority in relation to the child by virtue of an order of a court under section 3(1)(d) of the Guardianship of Minors Ordinance (Cap 13), his father; (Amended 17 of 1993 s. 19)
- "registers of births" (出生登記冊) means the register books of births kept in compliance with the provisions of the Births and Deaths Registration Ordinance (Cap 174) and the Births Registration (Special Registers) Ordinance (Cap 175);
- "Registrar" (登記官) means the Registrar of Births and Deaths;
- "relative" (親屬), in relation to an infant, means a grandparent, brother, sister, uncle or aunt, whether of the full blood, of the halfblood or by affinity, and includes-
- (a) where an adoption order has been made in respect of the infant or any other person

under this Ordinance, any person who would be a relative of the infant within the meaning of this definition if the adopted person were the child of the adopter born in lawful wedlock;

- (b) where the infant is illegitimate, the father of the infant and any person who would be a relative of the infant within the meaning of this definition if the infant were the legitimate child of his mother and father.

[cf. 1950 c. 26 s. 45 U.K.]

<b>Section:</b>	<b>4</b>	<b>Power to make adoption orders</b>
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#### MAKING OF ADOPTION ORDERS

(1) Subject to the provisions of this Ordinance, the Court may, upon an application made in the prescribed manner, make an order (in this Ordinance referred to as an adoption order) authorizing the applicant to adopt an infant.

(2) An adoption order may be made on the application of 2 spouses authorizing them jointly to adopt an infant.

(3) An adoption order may be made authorizing the adoption of an infant by the mother or father of the infant, either alone or jointly with her or his spouse.

[cf. 1950 c. 26 s. 1 U.K.]

<b>Section:</b>	<b>4A</b>	<b>Commencement and transfer of adoption applications</b>
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

(1) An application made under section 4 or 20 shall be commenced in the District Court.

(2) An application commenced under subsection (1) may be transferred by the District Court to the Court of First Instance-

- (a) at the request of any party to the proceedings; or  
(b) on the motion of the District Judge.

(3) Rules may provide for the procedures connected with the transfer of applications to the Court of First Instance and for the retransfer of applications from the Court of First Instance to the District Court.

(Replaced 13 of 1987 s. 2. Amended 25 of 1998 s. 2)

<b>Section:</b>	<b>5</b>	<b>Restrictions on making adoption orders</b>
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Remarks:

Adaptation amendments retroactively made - see 66 of 1999 s. 3

(1) Subject to the provisions of subsection (2), an adoption order shall not be made in respect of an infant unless the applicant-

- (a) is the mother or father of the infant;
  - (b) is a relative of the infant and has attained the age of 21 years; or
  - (c) has attained the age of 25 years. (Replaced 21 of 1960 s. 4)
- (2) An adoption order may be made in respect of an infant on the joint application of 2 spouses-
  - (a) if either of the applicants is the mother or father of the infant; or
  - (b) if the condition set out in subsection (1)(b) or (c) is satisfied in the case of one of the applicants and the other applicant has attained the age of 21 years. (Added 21 of 1960 s. 4)
- (3) 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. (Amended 48 of 1977 s. 2)
- (4) Except as provided by section 4(2), an adoption order shall not be made authorizing more than one person to adopt an infant.
- (5) Subject to sections 5A and 6, an adoption order shall not be made- (Amended 48 of 1977 s. 2; 13 of 1987 s. 3)
  - (a) in any case, except with the consent of every person who is a parent or guardian of the infant or who is liable by virtue of any order or agreement to contribute to the maintenance of the infant; or
  - (b) on the application of one of 2 spouses, except with the consent of the other spouse.
- (5A) A parent whose consent to an adoption order is required by virtue of subsection (5)(a) shall give that consent as the Director thinks fit in either the prescribed general form of consent or the prescribed specific form of consent. (Added 48 of 1977 s. 2)
- (5B) Subject to subsection (5C), where the consent of a parent is given in the prescribed general form of consent, the parent shall cease to have any parental rights, duties, obligations or liabilities in respect of the infant with effect from the execution of the form of consent. (Added 48 of 1977 s. 2)
- (5C) A parent whose consent to an adoption order was given in the prescribed general form of consent may revoke his consent by giving written notice of revocation to the Director within 3 months from the day on which the form of consent was executed, but subject to subsections (5D) and (5E) and save as aforesaid the consent shall be irrevocable. (Added 48 of 1977 s. 2)
- (5D) Notwithstanding subsection (5C), a parent whose consent to an adoption order was given in the prescribed general form of consent may, at any time after the expiry of the period of 3 months referred to in that subsection and before the making of an adoption order, apply to the Court for an order revoking that consent on the ground that he wishes to resume the parental rights, duties, obligations and liabilities; and while the application is pending the Court shall not make any adoption order in respect of the child the subject of the consent. (Added 48 of 1977 s. 2)
- (5E) Where the Court makes an order under subsection (5D) revoking a consent given in the prescribed general form of consent the parental rights, duties, obligations and liabilities relating to the child shall vest in the parent; but the order of revocation shall not affect any right, duty, obligation or liability so far as it relates to any period before the date of the order. (Added 48 of 1977 s. 2)
- (5F) The Director shall, immediately upon the execution of the prescribed general form of consent by a parent, be guardian ad litem of the infant and may, where the infant does not have a guardian or no guardian can be found, perform such duties of a guardian as may be necessary in the interests of the welfare of the infant. (Added 48 of 1977 s. 2)
- (6) An adoption order shall not be made in respect of any infant unless the applicant and the infant reside in Hong Kong. (Amended 66 of 1999 s. 3)
- (7) An adoption order shall not be made in respect of any infant unless-
  - (a) subject to paragraph (aa), the infant has been continuously in the actual custody of the applicant for at least 6 consecutive months immediately preceding the date of the order; (Amended 21 of 1960 s. 4; 13 of 1987 s. 3)
  - (aa) where the applicant or either of the applicants is a natural parent of the infant, the infant has been continuously in the actual custody of the applicant (or both

applicants, where there are joint applicants) for at least 13 weeks immediately preceding the date of the order; (Added 13 of 1987 s. 3)

- (b) the applicant has not less than-
    - (i) 6 months before the date of the order; or
    - (ii) such shorter period before that date as the Court may allow on application by the applicant,
- lodged with the Director notice in writing in the prescribed form of his intention to apply for an adoption order in respect of the infant; (Replaced 62 of 1971 s. 2)
- (c) the applicant has, within 4 months after the date of lodging such notice as is referred to in paragraph (b), applied to the Court for an adoption order in respect of the infant. (Added 21 of 1960 s. 4)

(8) For the purposes of subsection (7), continuous actual custody shall not be regarded as broken during any period when the infant is an in-patient in a hospital or resides at a boarding school either in or outside Hong Kong. (Added 13 of 1987 s. 3)

[cf. 1950 c. 26 s. 2 U.K.]

<b>Section:</b>	<b>5B</b>	<b>Revocation of section 5A order</b>
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(1) Any person whose consent is required by section 5(5)(a) (hereinafter in this section referred to as "former parent"), at any time more than 1 year after the making of the order under section 5A, may if-

- (a) no adoption order or interim order has been made in respect of the infant; and
- (b) the infant does not have his home with a person with whom he has been placed for adoption,

apply to the Court which made the order for a further order revoking it on the ground that the former parent wishes to resume the rights, duties, obligations and liabilities referred to in section 13(1).

(2) While an application under subsection (1) is pending the Director shall not place the infant for adoption without the leave of the Court.

(3) Where an order under section 5A is revoked under this section-

- (a) all rights, duties, obligations and liabilities of the parents or guardians of the infant, referred to in section 13(1), shall be vested in the person or, as the case may be, the persons in whom they were vested immediately before that order was made;
- (b) if such rights, duties, obligations and liabilities, or any of them, were vested in the Director immediately before that order was made, those rights, duties, obligations and liabilities shall be vested in the person or, as the case may be, the persons in whom they were vested immediately before they were vested in the Director,

but the revocation shall not affect any right, duty, obligation or liability so far as it relates to any period before the date of revocation.

(4) Subject to subsection (5), where an application under subsection (1) is dismissed on the ground that to allow it would not be for the welfare of the infant, the former parent who made the application shall not be entitled to make any further application under subsection (1) in respect of the infant.

(5) Subsection (4) shall not apply where the Court which dismissed the application gives leave to the former parent to make a further application under subsection (1), but such leave shall not be given unless it appears to the Court that because of a change in circumstances or for any other reason it is proper to allow the application to be made.

(Added 13 of 1987 s. 4)

[cf. 1976 c. 36 s. 20 U.K.]

<b>Section:</b>	<b>6</b>	<b>Consent to adoption</b>
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- (1) The Court may dispense with any consent required by section 5(5)(a) if it is satisfied-
- (a) in the case of a parent or guardian of the infant, that he has abandoned, neglected or persistently ill-treated the infant;
  - (b) in the case of a person liable by virtue of an order or agreement to contribute to the maintenance of the infant, that he has persistently neglected or refused so to contribute;
  - (c) in any case, that the person whose consent is required cannot be found or is incapable of giving his consent or that his consent is unreasonably withheld,
- or if it is of opinion that such consent ought, in all the circumstances of the case, to be dispensed with.
- (2) The Court may dispense with the consent of the spouse of an applicant for an adoption order if satisfied that the person whose consent is to be dispensed with cannot be found or is incapable of giving the consent or that the spouses have separated and are living apart and that the separation is likely to be permanent, or if it is of opinion that such consent ought, in all the circumstances of the case, to be dispensed with.
- (3) The consent of any person to the making of an adoption order in pursuance of an application may be given (either unconditionally or subject to conditions with respect to the religious persuasion in which the infant is to be brought up) without knowing the identity of the applicant for the order; and where consent so given by any person is subsequently withdrawn on the ground only that he does not know the identity of the applicant, his consent shall be deemed for the purposes of this section to be unreasonably withheld.
- (4) While an application for an adoption order in respect of an infant is pending in any Court, any parent or guardian of the infant who has signified his consent to the making of an adoption order in pursuance of the application shall not be entitled, except with the leave of the Court, to remove the infant from the care and possession of the applicant; and in considering whether to grant or refuse such leave the Court shall have regard to the welfare of the infant.
- [cf. 1950 c. 26 s. 3 U.K.]

<b>Section:</b>	<b>7</b>	<b>Evidence of consent of parent or guardian</b>
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Remarks:

Adaptation amendments retroactively made - see 66 of 1999 s. 3

(1) Where any person whose consent to the making of an adoption order is required by section 5(5)(a) does not attend in the proceedings for the purpose of giving it, then, subject to the provisions of subsection (3), a document signifying his consent to the making of such an order shall, if the person in whose favour the order is to be made is named in the document or (where the identity of that person is not known to the consenting party) is distinguished therein in the prescribed manner, be admissible as evidence of that consent, whether the document is executed before or after the commencement of the proceedings:

Provided that this subsection shall not apply to a consent given by a parent in the prescribed general form of consent. (Added 48 of 1977 s. 3)

(1A) A document signifying the consent of a parent to the making of an adoption order given in the prescribed general form of consent, shall subject to subsection (3), be admissible as evidence of that consent whether the document is executed before or after the commencement of

the proceedings. (Added 48 of 1977 s. 3)

(2) Where a document signifying consent to an adoption order, whether given in the prescribed specific form of consent or the prescribed general form of consent, is attested by a Commissioner for Oaths (or, if executed outside Hong Kong, by a person of any such class as may be prescribed), the document shall be admissible as aforesaid without further proof of the signature of the person by whom it is executed; and for the purposes of this subsection, a document purporting to be attested as aforesaid shall be deemed to be so attested, and to be executed and attested on the date and at the place specified therein, unless the contrary is proved. (Amended 21 of 1960 s. 5; 48 of 1977 s. 3; 47 of 1997 s. 10; 66 of 1999 s. 3)

(3) A document signifying the consent of the mother of an infant shall not be admissible under this section unless-

- (a) the infant is at least 6 weeks old on the date of the execution of the document; and
- (b) the document is attested on that date by a Commissioner for Oaths or, as the case may be, by a person of a class prescribed for the purposes of subsection (2). (Amended 10 of 1963 s. 2; 47 of 1997 s. 10)

[cf. 1950 c. 26 s. 4 U.K.]

<b>Section:</b>	<b>8</b>	<b>Functions of Court as to adoption orders</b>
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(1) The Court before making an adoption order shall be satisfied-

- (a) that every person whose consent is necessary under this Ordinance, and whose consent is not dispensed with, has consented to and understands the nature and effect of the adoption order for which application is made, and in particular in the case of any parent understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental rights;
- (b) that the order if made will be for the welfare of the infant, due consideration being for this purpose given to the wishes of the infant, having regard to the age and understanding of the infant; and
- (c) that the applicant has not received or agreed to receive, and that no person has made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption except such as the Court may sanction.

(1A) The Court, in making an adoption order shall consider whether it is in the interests of the infant that his true identity should be disclosed to him, having regard to the views of the prospective adopter, the opinion of the Director and also to the age and understanding of the infant. (Added 48 of 1977 s. 4)

(2) The Court in an adoption order may impose such terms and conditions as the Court may think fit, and in particular may require the adopter by bond or otherwise to make for the infant such provision (if any) as in the opinion of the Court is just and expedient.

[cf. 1950 c. 26 s. 5 U.K.]

<b>Section:</b>	<b>9</b>	<b>Interim orders</b>
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(1) Subject to the provisions of this section, the Court may, upon any application for an adoption order, postpone the determination of the application and make an interim order giving the custody of the infant to the applicant for a period not exceeding 2 years by way of a probationary period upon such terms as regards provision for the maintenance and education and supervision of the welfare of the infant and otherwise as the Court may think fit.

(2) All such consents as are required to an adoption order shall be necessary to an interim order but subject to a like power on the part of the Court to dispense with any such consent.

(3) An interim order shall not be made in any case where the making of an adoption order would be unlawful by virtue of section 5(7).

(4) An interim order shall not be deemed to be an adoption order within the meaning of this Ordinance.

[cf. 1950 c. 26 s. 6 U.K.]

<b>Section:</b>	<b>13</b>	<b>Rights and duties of parents and capacity to marry</b>
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#### EFFECTS OF ADOPTION ORDERS

(1) Upon an adoption order being made, all rights, duties, obligations and liabilities of the parents or guardians of the infant in relation to the future custody, maintenance and education of the infant, including all rights to appoint a guardian to consent or give notice of dissent to marriage, shall be extinguished, and all such rights, duties, obligations and liabilities shall vest in and be exercisable by and enforceable against the adopter as if the infant were a child born to the adopter in lawful wedlock; and in respect of the matters aforesaid the infant shall stand to the adopter exclusively in the position of a child born to the adopter in lawful wedlock.

(2) In any case where 2 spouses are the adopters, the spouses shall in respect of the matters aforesaid, and for the purpose of the jurisdiction of any court whatsoever to make orders as to the custody and maintenance of and right of access to children, stand to each other and to the infant in the same relation as they would have stood if they had been the lawful father and mother of the infant and the infant shall stand to them respectively in the same relation as to a lawful father and mother respectively.

(3) For the purpose of the law relating to marriage, an adopter and the person whom he has been authorized to adopt under an adoption order shall be deemed to be within the prohibited degrees of consanguinity; and the provisions of this subsection shall continue to have effect notwithstanding that some person other than the adopter is authorized by a subsequent order to adopt the same infant.

[cf. 1950 c. 26 s. 10 U.K.]

<b>Section:</b>	<b>14</b>	<b>Cessation of certain orders, etc.</b>
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(1) Where an adoption order is made in respect of an infant who is illegitimate, then, subject to the provisions of this section, any order or agreement whereby the father of the infant is required or has undertaken to make payments specifically for the benefit of the infant, shall cease to have effect, but without prejudice to the recovery of any arrears which are due under the order or agreement at the date of the adoption order.

(2) Where an infant to whom any such order or agreement as aforesaid relates is adopted by his mother, and the mother is a single woman, the order or agreement shall not cease to have effect by virtue of subsection (1) upon the making of the adoption order, but shall cease to have effect if she subsequently marries.

(3) Where an adoption order is made in respect of an infant in respect of whom an order is in force under section 34 of the Protection of Women and Juveniles Ordinance (Cap 213), committing the infant to the care of a person or institution, or under section 35 of that Ordinance regarding the control and custody of the infant, the last mentioned order shall cease to have effect.



(4) Where an adoption order is made in respect of an infant of whom the legal guardianship is vested in the Director, the Director shall cease to be the legal guardian of the infant. (Amended 1 of 1958 s. 2; 21 of 1960 s. 6)

[cf. 1950 c. 26 s. 12 U.K.]

<b>Section:</b>	<b>15</b>	<b>Intestacies, wills and settlements</b>
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(1) Where, at any time after the making of an adoption order, the adopter or the adopted person or any other person dies intestate in respect of any property, that property shall devolve in all respects as if the adopted person were the child of the adopter born in lawful wedlock and were not the child of any other person.

(2) In any disposition of property made, whether by instrument inter vivos or by will (including codicil), after the date of an adoption order-

- (a) any reference (whether express or implied) to the child or children of the adopter shall, unless the contrary intention appears, be construed as, or as including, a reference to the adopted person;
- (b) any reference (whether express or implied) to the child or children of the adopted person's natural parents or either of them shall, unless the contrary intention appears, be construed as not being, or as not including, a reference to the adopted person; and
- (c) any reference (whether express or implied) to a person related to the adopted person in any degree shall, unless the contrary intention appears, be construed as a reference to the person who would be related to him in that degree if he were the child of the adopter born in lawful wedlock and were not the child of any other person.

[cf. 1950 c. 26 s. 13 U.K.]

<b>Section:</b>	<b>17</b>	<b>Effect of overseas adoption</b>
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(1) Where a person has been adopted, whether before or after the coming into operation of this section, in any place outside Hong Kong according to the law of that place, and the adoption is one to which this section applies, then for the purposes of this Ordinance and all other Hong Kong enactments, the adoption shall have the same effect as an adoption order validly made in accordance with the provisions of this Ordinance, and shall have no other effect.

(2) Subsection (1) shall apply to an adoption in any place outside Hong Kong, if-

- (a) the adoption is legally valid according to the law of that place; and
- (b) in consequence of the adoption, the adoptive parents or any adoptive parent had, or, if the adopted person had been a young child, would have had, immediately following the adoption, according to the law of that place, a right superior to that of any natural parent of the adopted person in respect of the custody of the person; and
- (c) either-
  - (i) the adoption order was made by an order of any Court whatsoever of a Commonwealth country or of the United States of America or of any State or territory of the United States of America; or
  - (ii) in consequence of the adoption, the adoptive parents or any adoptive parent had immediately following the adoption, according to the law of that place, a

right superior to or equal with that of any natural parent in respect of any property of the adopted person which was capable of passing to the parents or any parent of the person in the event of the person dying intestate without other next of kin and domiciled in the place where the adoption was made and a national of the State which had jurisdiction in respect of that place,

but not otherwise.

(3) Nothing in this section shall restrict or alter the effect of any other adoption made in any place outside Hong Kong.

(Added 21 of 1960 s. 7)

<b>Section:</b>	<b>18</b>	<b>Adopted Children Register</b>
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Remarks:

Adaptation amendments retroactively made - see 66 of 1999 s. 3

#### REGISTRATION OF ADOPTION ORDERS

(1) The Registrar shall maintain at the general register office a register, to be called the Adopted Children Register, in which shall be made such entries as may be directed to be made therein by adoption orders, but no other entries.

(2) A certified copy of any entry in the Adopted Children Register, if purporting to be sealed or stamped with the seal of the general register office, shall, without any further or other proof of that entry, be received as evidence of the adoption to which it relates and, where the entry contains a record of the date of the birth or the country of the birth of the adopted person, shall also be received as aforesaid as evidence of that date or country in all respects as if the copy were a certified copy of an entry in the registers of births.

(3) The Registrar shall cause an index of the Adopted Children Register to be made and kept in the general register office; and every person shall be entitled to require a search to be made of that index and to have a certified copy of any entry in the Adopted Children Register in all respects upon and subject to the same terms, conditions and regulations as to payment of fees and otherwise as are applicable under the Births and Deaths Registration Ordinance (Cap 174), in respect of searches in other indexes kept in the general register office and in respect of the supply from that office of certified copies of entries in the registers of births.

(4) The Registrar shall, in addition to the Adopted Children Register and the index thereof, keep such other registers and books, and make such entries therein, as may be necessary to record and make traceable the connection between any entry in the registers of births which has been marked "Adopted" or "受領養" pursuant to section 19 and any corresponding entry in the Adopted Children Register; but the registers and books kept under this subsection shall not be, nor shall any index thereof be, open to public inspection or search, nor, except under an order of the Court, shall the Registrar furnish any person with any information contained in or with any copy or extract from any such registers or books. (Amended 80 of 1997 s. 119)

(5) Regulations made by the Chief Executive in Council under the Births and Deaths Registration Ordinance (Cap 174) may make provision as to the duties to be performed by deputy registrars and district registrars appointed for the purposes of that Ordinance in the execution of this section and of section 19. (Amended 66 of 1999 s. 3)

[cf. 1950 c. 26 s. 17 U.K.]

<b>Section:</b>	<b>19</b>	<b>Registration of adoptions</b>
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(1) Every adoption order shall contain a direction to the Registrar to make in the Adopted Children Register an entry in the form set out in the Schedule, and (subject to the provisions of subsection (2)), shall specify the particulars to be entered under the headings in columns 2 to 6 of that form.

(2) For the purposes of compliance with the requirements of subsection (1)-

- (a) where the precise date of the infant's birth is not proved to the satisfaction of the Court, the Court shall determine the probable date of his birth and the date so determined shall be specified in the order as the date of his birth;
- (b) where the name or surname which the infant is to bear after the adoption differs from his original name or surname, the new name or surname shall be specified in the order instead of the original,

and where the country of birth of the infant is not proved to the satisfaction of the Court, the particulars of that country may, notwithstanding anything in that subsection, be omitted from the order and from the entry in the Adopted Children Register.

(3) Where upon any application to the Court for an adoption order in respect of an infant (not being an infant who has previously been the subject of an adoption order made by the Court) there is proved to the satisfaction of the Court the identity of the infant with a child to whom an entry in the registers of births relates, any adoption order made in pursuance of the application shall contain a direction to the Registrar to cause the entry in the registers of births to be marked with the word "Adopted" or the words "受領養". (Amended 80 of 1997 s. 120)

(4) Where an adoption order is made by the Court in respect of an infant who has previously been the subject of an adoption order made by the Court, the order shall contain a direction to the Registrar to cause the previous entry in the Adopted Children Register to be marked with the word "Re-adopted" or the words "再受領養". (Amended 80 of 1997 s. 120)

(5) The prescribed officer of the Court shall cause every adoption order to be communicated in the prescribed manner to the Registrar, and upon receipt of such communication the Registrar shall cause compliance to be made with the directions contained in the order both in regard to marking any entry in the registers of births with the word "Adopted" or the words "受領養", and in regard to making the appropriate entry in the Adopted Children Register. (Amended 80 of 1997 s. 120)

[cf. 1950 c. 26 s. 18 U.K.]

<b>Section:</b>	<b>20</b>	<b>Amendment of orders and rectification of Registers</b>
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(1) The Court may, on the application of the adopter or of the adopted person, amend the order by the correction of any error in the particulars contained therein, and may-

- (a) if satisfied on the application of the adopter or of the adopted person that within 1 year beginning with the date of the order any new name has been given to the adopted person (whether in baptism or otherwise), or taken by him, either in lieu of or in addition to a name specified in the particulars required to be entered in the Adopted Children Register in pursuance of the order, amend the order by substituting or adding that name in those particulars, as the case may require;
- (b) if satisfied on the application of any person concerned that a direction for the marking of an entry in the registers of births or the Adopted Children Register included in the order in pursuance of section 19(3) or (4) was wrongly so included,

revoke that direction. (Replaced 48 of 1977 s. 7)

(1A) Where an adoption order is amended or a direction revoked under subsection (1), the prescribed officer of the court shall cause the amendment to be communicated in the prescribed manner to the Registrar, who shall as the case may require-

- (a) cause the entry in the Adopted Children Register to be amended accordingly; or
- (b) cause the marking of the entry in the registers of births or the Adopted Children Register to be cancelled. (Added 48 of 1977 s. 7)

(2) Where an adoption order is quashed or an appeal against an adoption order allowed, the Court shall give directions to the Registrar to cancel any marking of an entry in the registers of births, and any entry or any marking of an entry in the Adopted Children Register, which was effected in pursuance of the order. (Amended 48 of 1977 s. 7)

[cf. 1950 c. 26 s. 21(3) U.K.]

(3) A copy or extract of an entry in any register, being an entry the marking of which is cancelled under this section, shall be deemed to be an accurate copy if and only if both the marking and the cancellation are omitted therefrom.

[cf. 1950 c. 26 s. 21(6) U.K.]

[cf. 1976 c. 36 Schedule 1 para. 4 U.K.]

<b>Section:</b>	<b>21</b>	<b>Supervision of infants</b>
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#### MISCELLANEOUS

(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. (Amended 1 of 1958 s. 2; 21 of 1960 s. 6)

(2) The powers conferred by subsection (1) shall cease-

- (a) upon such notification being withdrawn; or
- (b) upon an adoption order being made in respect of the infant. (Replaced 80 of 1997 s. 27)
- (c) (Repealed 80 of 1997 s. 27)

(3) Any person who refuses to allow the Director or officer authorized by him to make a visit, examination, entry or inspection in accordance with subsection (1) shall be guilty of an offence and shall be liable to a fine of \$2000. (Amended 1 of 1958 s. 2; 21 of 1960 s. 6)

[cf. 1950 c. 26 s. 34 U.K.]

<b>Section:</b>	<b>22</b>	<b>Prohibition of certain payments</b>
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(1) Save with the sanction of the Court, no person shall make or give or agree to make or give, or receive or agree to receive, or attempt to obtain, any payment, remuneration or reward whatsoever in connection, directly or indirectly, with the adoption or proposed adoption of an infant, except in consideration of the professional services of a qualified barrister or solicitor within the meaning of the Legal Practitioners Ordinance (Cap 159).

(2) Any person who contravenes the provisions of this section shall be guilty of an offence and shall be liable to a fine of \$2000 and to imprisonment for 6 months.

(3) The provisions of this section shall not apply to the payment to the Director of any fee

prescribed by rules made in accordance with the provisions of section 12. (Added 21 of 1960 s. 8)

[cf. 1950 c. 26 s. 37(1) U.K.]

<b>Section:</b>	<b>23</b>	<b>Restrictions upon advertisements</b>
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(1) Except with the written consent of the Director, no advertisement shall be published indicating- (Amended 1 of 1958 s. 2; 21 of 1960 s. 6)

- (a) that the parent or guardian of an infant desires to cause the infant to be adopted;
- (b) that a person desires to adopt an infant; or
- (c) that any person is willing to make arrangements for the adoption of an infant.

(2) Any person who causes to be published or knowingly publishes an advertisement in contravention of the provisions of this section shall be guilty of an offence and shall be liable to a fine of \$1000.

[cf. 1950 c. 26 s. 38 U.K.]

<b>Schedule:</b>		<b>SCHEDULE</b>
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Remarks:

Amendments retroactively made - see 28 of 1998 s. 2(1)

[section 19]

FORM OF ENTRY IN ADOPTED CHILDREN REGISTER

## **Annex G**

1	2	3	4	5	6	7	8	9
No. of entry	Date and country of birth of child	Name and surname of child	Sex of child	Name and surname, address and occupation of adopter or adopters	Date of adoption order and description of Court by which made	Date of entry	Signature of officer deputed by Registrar to attest the entry	Status of permanent resident of the Hong Kong Special Administrative Region under the Immigration Ordinance (Cap 115) (Established/Not established)

(Amended 80 of 1982 s. 2; 31 of 1987 s. 28; 28 of 1998 s. 2(1))

<b>Chapter:</b>	<b>290A</b>	<b>ADOPTION RULES</b>
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<b>Rule:</b>	<b>9</b>	<b>Appointment of some other person as guardian ad litem</b>
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(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.

(G.N.A. 76 of 1960; L.N. 228 of 1977; L.N. 139 of 1986; 98 of 1991 s. 9)

<b>Rule:</b>	<b>10</b>	<b>Form of statement and consent</b>
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#### EVIDENCE IN SUPPORT OF APPLICATION

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

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

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

(3) The form of consent shall be exhibited to the verifying affidavit referred to in paragraph (1).

(L.N. 228 of 1977)

<b>Rule:</b>	<b>29</b>	<b>Persons who may attest documents and declarations outside Hong Kong</b>
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Remarks:

Adaptation amendments retroactively made - see 66 of 1999 s. 3

#### ATTESTATION OF CONSENTS, ETC.

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

- (a) if the document or declaration is executed or made at any place in the United Kingdom, the Channel Islands, the Isle of Man, or in any Colony, protectorate, protected state or United Kingdom trust territory, by any judge of any court of civil or criminal jurisdiction, any justice of the peace or magistrate or any person for the time being authorized by law in that place to administer an oath for any judicial or other legal purpose;
- (b) if the document or declaration is executed or made at any place in any of the countries mentioned in section 1(3) of the British Nationality Act 1948 (1948 c. 56 U.K.) or in the Republic of Ireland or in any mandated territory or trust territory administered by the government of any such territory, by any person for the time being authorized by law in that place to administer an oath for any judicial or other legal purpose;
- (c) if the document or declaration is executed or made at any other place-
  - (i) by any consular officer of Her Majesty's Government in the United Kingdom;
  - (ii) if there is no such consular officer, by any person authorized by the Secretary of State to administer the oath of allegiance for the purposes of section 6 or 10 of the British Nationality Act 1948 (1948 c. 56 U.K.); or
  - (iii) if there is no such consular officer and no person so authorized by the

Secretary of State, by any person for the time being authorized by law in that place to administer an oath for any judicial or other legal purpose; (L.N. 45 of 1973)

- (d) if the person by whom the document or declaration is executed or made is serving in any of Her Majesty's naval, military or air forces, by any officer holding a commission in any of those forces.

<b>Schedule:</b>	<b>1</b>	
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Remarks:

Adaptation amendments retroactively made - see 23 of 1998 s. 2; 66 of 1999 s. 3

[rule 2]

FORM 1

[rule 3]

Notice of Intention to apply for an Adoption Order

**ADOPTION ORDINANCE**  
(Chapter 290)

Notice is hereby given, in accordance with the provisions of section 5(7) of the Adoption Ordinance that <sup>(1)</sup> .....

(and ..... both) of .....

.....  
.....

intend to apply for an Order authorizing them to adopt a male/female infant known as <sup>(2)</sup> .....

.....  
.....

Dated this ..... day of ....., 19 .....

(3) .....  
.....

Notes:

(1) Enter the full names and addresses of the applicants.

(2) Enter the full name in English and in Chinese characters, if any, of the infant.

(3) This form must be signed either by the applicants or by their solicitors.

(L.N. 526 of 1994)



FORM 2

[rule 5]

Originating summons on application for an Adoption Order

19 , No.

IN THE DISTRICT COURT OF HONG KONG

His Honour Judge

IN THE MATTER OF A.B. (1) ..... an infant,  
and

IN THE MATTER OF the Adoption Ordinance.

BETWEEN

C.D.

APPLICANT

AND

A.B.(1)

RESPONDENT

To A.B. of

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

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

Dated the day of , 19 .

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

Notes:

- (1) Enter the name(s) and surname which the infant is to bear after the adoption.
- (2) Delete this paragraph if the Director of Social Welfare is to act as guardian ad litem.  
(L.N. 139 of 1986; L.N. 526 of 1994)

FORM 3

[rule 10]

Statement in support of application for an Adoption Order (1)

[Heading as in Form 1]

1. I, the undersigned, C.D./We, the undersigned, C.D. and E.D. desire to adopt A.B. (2  
an infant, under the Adoption Ordinance.
2. I am/We are resident in Hong Kong.
3. I am unmarried/a widow/widower/I am married to E.D.  
of ...../We are married to each other  
and are the persons to whom the attached marriage certificate (or other evidence of marriage)

relates.

4. The infant is of the ..... sex and unmarried. He/She was born on the ..... 19 ..... and is the person to whom the attached birth certificate (3) relates/was born on or about the ..... 19 ..... , in ..... (4)

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

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

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

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

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

10. The infant was received into my/our care and possession on the ..... 19 ..... , from ..... of ..... and has been continuously in my/our care and possession since that date.

11. I/We lodged with the Director of Social Welfare on the ..... day of ..... 19 ..... , notice of my/our intention to apply for an Adoption Order in respect of the infant.

[12. A certificate as to physical and mental health of the infant, signed by a registered medical practitioner on the ..... 19 ..... , is attached] (10).

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

.....]

14. I have not made/Neither of us has made a previous application for an Adoption Order in respect of the same or any other infant to any court [except an application made to the court at ..... on the ..... 19 ..... , which was dealt with as follows:

.....]

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

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

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

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

Dated this ..... day of ..... , 19 .....

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

ANNEX TO FORM 3

Further particulars of applicant or applicants

Particulars of C.D.

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

Address .....  
.....

Occupation .....  
.....

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

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

Particulars of E.D.

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

Address .....  
.....

Occupation .....  
.....

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

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

---

Notes:

- (1) This statement must be verified by affidavit, to which the statement, marriage certificate and other documents referred to in the statement should be exhibited.
- (2) Enter the first name(s) and surname as shown in the birth certificate referred to in paragraph 4, if available, otherwise enter name(s) and surname by which the infant was known at the time of the application.
- (3) If the infant has previously been adopted, a certified copy of the entry in the Adopted Children Register should be attached, and not a certified copy of the original entry in the registers of births; and the particulars given in paragraph 5 should relate to the parents by adoption and not to the natural parent or parents.
- (4) Where a birth certificate is not attached, enter the place (including country) of birth if known.
- (5) If the infant is illegitimate, the father's name should not be given in this entry; but see

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

(L.N 526 of 1994)

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FORM 4

[rule 10]

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

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

[Whereas the said A.B. (hereinafter called the infant) is not less than 6 weeks old, having been born in ..... on the ..... 19 ....., and is the person to whom the birth certificate<sup>(3)</sup> now produced and shown to be marked "A" relates]<sup>(4)</sup>:

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

the mother<sup>(3)</sup> of the infant/

the father<sup>(3)</sup> of the infant/

a guardian of the infant/

a person liable by virtue of any order or agreement to contribute to the maintenance of the infant/

a person (acting on behalf of a body) having parental rights in respect of the infant/the spouse of the said C.D.

hereby state as follows:-

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

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

(3) I hereby consent to the making of an adoption order in pursuance of the said application [on condition that the religious persuasion in which the infant is brought up

is .....](7).

.....  
(Signature)

Signed at (8) ..... on ..... by the  
said ..... [who satisfied me that she fully  
understood the nature of the foregoing statement and was prepared to surrender her child for  
adoption](4).

Before me (Signature) .....  
(Address) .....  
(Description)(6) .....

Notes:

- (1) Insert name as known to the consenting party.
- (2) Where the name of applicant is not known to the consenting party, and a serial number has been obtained for the application under rule 6 of the Adoption Rules, complete the entry contained in the second square brackets.
- (3) If the infant has previously been adopted, a certified copy of the entry in the Adopted Children Register should be attached, and not a certified copy of the original entry in the registers of births; and the description of the consenting party should include the words "by adoption" or "經領養" where appropriate.
- (4) Delete the words in square brackets except where the consenting party is the mother of the infant.
- (5) Delete all but one of the description which follow.
- (6) If the consenting party is the mother of the infant, the document will not be admissible as evidence unless the signature is attested by a commissioner for oaths (or, if executed outside Hong Kong, by an officer authorized by Adoption Rules-see note (8)). In all cases the document if so attested will be admissible without further proof of execution.
- (7) Delete the words in square brackets if the applicant is named, or if, although the applicant is not named, the consenting party does not desire to impose conditions as to religious upbringing.
- (8) Where the document is executed outside Hong Kong, attestation in accordance with rule 29 of the Adoption Rules, has the same effect as attestation by a commissioner for oaths. (L.N. 228 of 1977; L.N. 337 of 1982; L.N. 526 of 1994; 47 of 1997 s. 10; 80 of 1997 s. 121; 23 of 1998 s. 2; 66 of 1999 s. 3)

\_\_\_\_\_  
FORM 4A

[rule 10]

General consent of parent to an adoption order

ADOPTION ORDINANCE

(Chapter 290)

I, the undersigned ..... [Hong Kong  
Identity Card No. ....]  
of ..... being the

married/unmarried/widowed<sup>(1)</sup> parent of<sup>(2)</sup> ..... a male/female<sup>(1)</sup>  
infant (hereinafter called the infant) who was born  
in ..... on the ..... day  
of ..... consent to the making of an adoption order under which the infant to  
whom the birth certificate No. ....<sup>(3)</sup> now produced and marked "A" relates,  
will be the adopted child of any person or persons approved and selected to adopt the infant in  
accordance with the law of Hong Kong or the country in which the adoption order will be made  
and I state as follows-

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

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

\*(3) I desire that the infant shall be brought up in the .....  
..... religion.

\*(4) I do not desire to express a wish with respect to the religious upbringing of the infant.

\* Delete (3) or (4))

.....  
(Signature)  
Signed at<sup>(5)</sup> ..... on .....  
by the said .....  
who satisfied me that he/she<sup>(1)</sup> fully understood the foregoing statement and was prepared to  
surrender the infant for adoption and all parental rights, duties, obligations and liabilities in respect  
of the infant.

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

---

Notes:

- (1) Delete as appropriate.
- (2) Insert name of infant as known to the consenting party.
- (3) If the infant has previously been adopted, a certified copy of the entry in the Adopted Children Register should be attached, and not a certified copy of the original entry in the registers of births; the description of the consenting party should include the words "by adoption" or "經領養" where appropriate.
- (4) Where the consenting party is the mother of the infant, the document will not be admissible unless the signature is attested by a commissioner for oaths (or if executed outside Hong Kong, by an officer authorized by the Adoption Rules-see note (5)). In all cases the document so attested will be admissible without further proof of execution.
- (5) Where the document is executed outside Hong Kong, attestation in accordance with rule 29 of the Adoption Rules has the same effect as attestation by a commissioner for oaths.

- (6) If the consenting party wishes to revoke this form of consent after the expiry of 3 months from the date on which he executes this form, he may apply to the Court in accordance with rule 14A of the Adoption Rules.

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

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FORM 5

[rule 12]

Notice of application for an adoption order in respect  
of an infant named A.B. (1)

To ..... of ..... (2).

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

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

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

Dated the ..... day of ....., 19 .....

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

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Notes:

- (1) Enter the name(s) and surname as known to the person to whom the notice is given and also any other name(s) by which the infant is known.
- (2) Enter the name and address of any parent or guardian of the infant who has signified his consent to the making of an adoption order.
- (3) The name of the applicant must not be given where a serial number is specified in Form 3 (paragraph 16). In that case complete the second entry in square bracket  
(L.N. 337 of 1982; L.N. 526 of 1994)

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FORM 6

[rule 16]

Notice of hearing of application for an adoption order  
in respect of an infant named A.B. (1)

To ..... of ..... (2).

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

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

Take notice:

A.(3) [That the said application will be heard at the District Court, Hong Kong on the ..... 19 ....., at the hour of ..... in the ..... noon, and

that you may appear to show cause why the adoption order should not be made.]

B.(3) [That if you do not consent to the making of the order, you should notify me on or before ..... 19 ....., in order that a date and time may be fixed for you to attend and show cause why the adoption order should not be made. The form below may be detached and used for this purpose.]

Dated the ..... day of ....., 19 .....

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

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Notes:

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

----- Perforation -----

To: The Director of Social Welfare, Hong Kong.

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

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

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

or

Delete (a) or (b)

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

.....  
(Signature)

.....  
(Date)

.....  
(Address)

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

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FORM 7

[rule 19]

Adoption order in respect of an infant

[Heading as in Form 1]

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



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

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

[And the names by which the infant is to be known being P.D.](1).

[And it having been proved to the satisfaction of the judge that the infant is identical with  
A.B., to whom the entry numbered ..... and  
made on the ..... 19 ....., in the registers of births in the registration office  
at ..... relates.](2)

And the [probable](3) date of the birth of the infant appearing to be  
the ..... 19 .....

[And the infant having been previously the subject of an adoption order dated  
the ..... 19 ....., of which particulars are entered in the Adopted Children  
Register](4);

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

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

[And the following payment or reward is sanctioned:

.....]

[And as regards costs it is ordered that:

.....]

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

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

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

Dated the ..... day of ....., 19 .....

.....  
Registrar, District Court.  
(80 of 1997 s. 121)

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**SCHEDULE TO FORM 7**

Date (5) and country of birth of child	Name and surname of child (6)	Sex of child	Name and surname, address and occupation of adopter or adopters	Date of adoption order
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**Notes:**

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

(L.N. 337 of 1982)

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**FORM 8**

[rule 19]

**Interim order in respect of an infant**

[Heading as in Form 1]

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

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

And the applicant/one of the applicants

being the mother/father of the infant/

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

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

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

It is ordered that the determination of the application be postponed, and the custody of the infant be given to the applicant/applicants for a period ending on the ..... 19 ..... by way of a probationary period upon the following terms, namely ..... and that the applicant/applicants shall at least 2 months before that date apply for the final determination of the application;

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

Dated the ..... day of ....., 19 .....

.....  
Registrar, District Court.  
(L.N. 337 of 1982)

FORM 9

[rule 23]

Notice of further hearing of application for an adoption order  
in respect of an infant named A.B. (1)

To ..... of ..... (2).

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

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

And whereas the determination of the said application was postponed and an interim order was made by His Honour Judge ..... on the ..... 19 .....  
Take notice:

A.(3) [That the said application will be further heard before the judge at the District Court, Hong Kong, on the ..... 19 ..... at the hour of ..... in the ..... noon and that you may appear to show cause why the adoption order should not be made].

B.(3) [That if you do not consent to the making of the order, you should notify me on or before ..... 19 ....., in order that a date and time may be fixed for you to attend and show cause why the adoption order should not be made. The form below may be detached and used for this purpose].

Dated the ..... day of ....., 19 .....

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

Notes:

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

----- Perforation -----

To: The Director of Social Welfare, Hong Kong.

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

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

Delete (a) or (b)

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

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

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

.....  
(Date)

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

<b>Schedule:</b>	<b>2</b>	<b>ADDITIONAL MATTERS SUBJECT TO INVESTIGATION AND REPORT BY GUARDIAN AD LITEM</b>
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[rule 12]

## PART I

### THE APPLICANT

1. In the case of a joint application, how long the applicants have been married.
2. In the case of an application by one only of 2 spouses-
  - (a) whether the other spouse consents to the application; and
  - (b) why he or she does not join in the application.
3. What other children (including adopted children) the applicant has.

4. What is the age and sex of all children living in the home of the applicant, and what is their relationship to the applicant.
5. What number of living rooms and bedrooms are contained in the home of the applicant, and what is the condition of the home.
6. What are the means of the applicant.
7. Whether the applicant suffers or has suffered from any serious illness, and whether there is any history of tuberculosis, epilepsy or mental illness in his or her family.
8. Whether any person specified in the applicant's statement as a person to whom reference may be made is a responsible person and recommends the the applicant without reservation.
9. Whether the applicant understands that an adoption order is irrevocable and that the order if made will render him or her responsible for the maintenance and upbringing of the infant.

## PART II

### THE INFANT

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

## PART III

### THE PARENTS

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

<b>Chapter:</b>	<b>442</b>	<b>ADMINISTRATIVE APPEALS BOARD ORDINANCE</b>
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<b>Schedule:</b>		<b>SCHEDULE</b>
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Remarks:

1. Item 45 of this schedule has commenced operation since 19 June 2000 only in so far as it relates to a decision of the Commissioner for Labour to refuse to register a person under section 6 or to register a person under that section subject to conditions. - see L.N. 131 of 2000.
2. paragraphs (b) and (c) of item 45 of this schedule has commenced operation since 1 April 2002. - see L.N. 21 of 2002.

[sections 3, 4 & 22]

Item	Ordinance	Decision
1.	Apprenticeship Ordinance (Cap 47)	A decision of the Director of Apprenticeship or any public officer in the performance or exercise of any function, duty or power under the Ordinance.
2.	Boilers and Pressure Vessels Ordinance (Cap 56)	<p>(a) The revocation or suspension of an appointment as a boiler inspector, air receiver inspector or pressurized fuel container inspector under section 5A. (Amended 15 of 2002 s. 8)</p> <p>(b) A decision of the Boilers and Pressure Vessels Authority on the issue or endorsement of a certificate of competency under section 6(1)(a) or (3A)(a). (Added 15 of 2002 s. 8)</p> <p>(c) A decision of the Boilers and Pressure Vessels Authority to revoke or amend a certificate of competency under section 6(4)(a) or (b), as the case may be. (Added 15 of 2002 s. 8)</p>
3.	Employment Ordinance (Cap 57)	A decision of the Commissioner for Labour under section 53(1) to refuse to issue or renew or to revoke a licence to operate an employment agency.
4.	Factories and Industrial Undertakings Ordinance (Cap 59)	<p>(a) An exemption by the Commissioner for Labour under section 7(4) of an industrial undertaking from any regulation.</p> <p>(b) An order by the Commissioner for Labour under section 7(4), for an industrial undertaking to adopt special precautions in addition to any precautions required by any regulation.</p> <p>(c) Under section 9A-</p> <p>(i) the issue by the Commissioner for Labour of a prohibition notice in respect of a notifiable workplace;</p> <p>(ii) a refusal by the Commissioner for Labour to cancel a prohibition notice;</p> <p>(iii) the giving by the Commissioner for Labour of any direction upon the cancellation of a prohibition notice.</p> <p>(d) (Repealed 39 of 1997 s. 49)</p>
5.	Quarries (Safety) Regulations (Cap 59 sub. leg.)	<p>(a) A refusal by the Commissioner for Labour to approve any person as a supervisor or deputy supervisor under regulation 4(1) or 6(1).</p> <p>(b) A withdrawal by the Commissioner for Labour of his approval of a supervisor or deputy supervisor under regulation 10(1).</p>
6.	Factories and Industrial Undertakings (Safety Officers and Safety Supervisors) Regulations (Cap 59 sub. leg.)	<p>(a) A refusal by the Commissioner for Labour to register a person as a safety officer under regulation 7.</p> <p>(b) The cancellation by the Commissioner for Labour of a person's registration as a safety officer under regulation 9.</p>

- (c) The suspension by the Commissioner for Labour of a person's registration as a safety officer under regulation 10.
  - (d) A refusal by the Commissioner for Labour to renew or revalidate a person's registration as a safety officer under regulation 7B. (Added L.N. 100 of 2002)
- 7. Weights and Measures Ordinance (Cap 68) A decision of the Commissioner, as defined in section 2, or of an authorized officer which is taken in the exercise or performance of any function under the Ordinance.
- 8. Miscellaneous Licences Ordinance (Cap 114) The decision under section 5 of any officer authorized to issue a licence under the Ordinance as to the grant of a licence, the renewal of a licence or the revocation of a licence.
- 9. Control of Chemicals Ordinance (Cap 145) (Amended 23 of 2002 s. 14) A decision of the Commissioner, as defined in section 2(1), under the Ordinance, relating to-
  - (a) the issue of a licence or permit;
  - (b) the refusal to issue a licence or permit;
  - (c) the cancellation or suspension of a licence or permit;
  - (d) the cancellation or variation of any condition or the specification of a new condition in a licence or permit.
- 10. Gambling Ordinance (Cap 148) The decision under section 22 of the Commissioner for Television and Entertainment Licensing as to the grant of a licence, the renewal of a licence, the imposition of conditions of a licence or the cancellation of a licence.
- 11. Chinese Temples Ordinance (Cap 153)
  - (a) The refusal by the Chinese Temples Committee under section 4 to grant an exemption from section 4(1).
  - (b) The withdrawal by the Chinese Temples Committee under section 4 of an exemption granted under section 4(1).
- 12. Weapons Ordinance (Cap 217) A decision of the Commissioner of Police under section 9(1) to order the delivery up to him or seizure of any martial arts weapon.
- 13. Travel Agents Ordinance (Cap 218) A decision of the Registrar of Travel Agents-
  - (a) to refuse to grant a licence under section 12(1);
  - (b) to impose conditions on a licence under section 11(1) or 18;
  - (c) to refuse consent to a change of ownership or control under section 18(c);
  - (d) to suspend or revoke a licence under section 19.
- 14. Firearms and Ammunition Ordinance (Cap 238)
  - (a) A decision of the Commissioner of Police refusing to grant a licence under section 30 or to renew a licence under section 32.
  - (b) A decision of the Commissioner of Police, under section 33, cancelling a licence or varying or revoking any condition attached thereto or adding any further condition or



- deleting any premises from a dealer's licence at which business may be carried on.
- (c) The imposition of a condition of licence which is considered to be unreasonable.
- (d) A decision of the Commissioner referred to in section 34(1AA). (Added 14 of 2000 s. 33)
- (e) The imposition of a term or condition under section 4(3), 12(4), 12A(3), 27A(1), 29 or 46C(3), which is considered to be unreasonable. (Added 14 of 2000 s. 33)
15. Massage Establishments Ordinance (Cap 266) A decision of the licensing authority under section 6, 7, 8 or 9.
16. Grant Schools Provident Fund Rules (Cap 279 sub. leg.) A question of interpretation or application of the Rules.
17. Subsidized Schools Provident Fund Rules (Cap 279 sub. leg.) A decision of the Board under the Rules.
18. Mining Ordinance (Cap 285) The cancellation of an Authorized Buyer's Licence under section 41.
19. Mining (General) Regulations (Cap 285 sub. leg.) A decision of the Commissioner of Mines under regulation 30(4A)(a) specifying the rate per tonne at which royalty shall be payable in respect of minerals and the period for which it shall be payable.
20. Dangerous Goods Ordinance (Cap 295) A decision under section 9 of an officer authorized under the Ordinance to issue a licence-
- (a) to refuse to grant a licence;
- (b) to refuse to renew a licence; or
- (c) to revoke a licence.
21. Dangerous Goods (General) Regulations (Cap 295 sub. leg.) Prohibiting or imposing conditions on the continued use of a storage tank under regulation 127.
22. Business Registration Ordinance (Cap 310) (a) The service of a notice under section 3(4) by the Commissioner of Inland Revenue that a person is to be deemed to be a person carrying on business.
- (b) The service of a notice under section 3(4AA) by the Commissioner of Inland Revenue that a person is to be deemed to be a person carrying on business at a branch of a business.
- (c) The service of a notice under section 6(4D) by the Commissioner of Inland Revenue requesting a person to make an application for registration under a different name. (Amended 3 of 1999 s. 19)
- (d) The service of a notice under section 9(5) by the Commissioner of Inland Revenue that an exemption is not granted. (Added 23 of 2002 s. 14)

- |   |   |
|---|---|
| 23. Motor Vehicles (First Registration Tax) Ordinance (Cap 330) | A decision of the Commissioner for Transport under the Ordinance.   |
| 24. Animals (Control of Experiments) Ordinance (Cap 340)        | A refusal to issue a licence, endorsement or permit under section 7, 8, 9, 10 or 14.  |
| 25. Chinese Permanent Cemeteries Rules (Cap 1112 sub. leg.)     | <p>A decision of the Board of Management of the Chinese Permanent Cemeteries not to withdraw a notice in rule 12(2) regarding reversion of a subscriber lot to the Board.</p> <p>Note: The Board of Management of the Chinese Permanent Cemeteries is specified for the purpose of section 22(5) of this Ordinance.</p>   |
| 26. Sewage Services Ordinance (Cap 463)                         | A decision of the Drainage Authority under the Ordinance. (Added 105 of 1994 s. 15)   |
| 27. Timber Stores Ordinance (Cap 464)                           | <p>A decision of the Director relating to-</p> <ul style="list-style-type: none"><li>(a) an application for a licence under section 4;</li><li>(b) an application for transfer of a licence under section 5;</li><li>(c) the revocation, suspension, refusal to renew or transfer; amendment or variation of conditions of a licence under section 8. (Added 11 of 1995 s. 23)</li></ul>  |
| 28. Marine Parks Ordinance (Cap 476)                            | A decision of the Country and Marine Parks Authority under section 11 or 22 of the Ordinance. (Added 37 of 1995 s. 36)  |
| 29. Personal Data (Privacy) Ordinance (Cap 486)                 | <p>A decision of the Privacy Commissioner for Personal Data-</p> <ul style="list-style-type: none"><li>(a) to impose conditions on his consent to the carrying out of a matching procedure under section 32(1)(b)(i);</li><li>(b) to refuse to consent to the carrying out of a matching procedure under section 32(1)(b)(ii);</li><li>(c) to refuse under section 39(3) to carry out or continue an investigation initiated by a complaint;</li><li>(d) not to delete under section 46(5) a matter from a report under the Ordinance;</li><li>(e) not to serve an enforcement notice under section 47;</li><li>(f) to serve an enforcement notice under section 50. (Added 81 of 1995 s. 73)</li></ul> |
| 30. Dutiable Commodities Ordinance (Cap 109)                    | A decision of the Commissioner of Customs and Excise under section 7, 26, 26A or 29. (Added 46 of 1996 s. 43)   |

31. Dogs and Cats Ordinance (Cap 167)
- (a) A decision by a police officer or an authorized officer under section 6(1)(c)(i) or (ii) to destroy a dog.
  - (b) A decision by an authorized officer under section 9 in specifying the place or period of detention of a dog or cat or any other thing under this Ordinance.
  - (c) A decision by an authorized officer under section 10 to vary the period of detention of a dog or cat or any other thing under this Ordinance.
  - (d) A decision by an authorized officer under section 11(1) to refuse an application for the removal from detention under this Ordinance of a dog or cat or any other thing.
  - (e) A decision by the Director under section 11(2) to order the forfeiture of a dog or cat or any other thing.
  - (f) A decision by the Director under section 17(2) to impose any condition in granting an exemption under section 17. (Added 97 of 1997 s. 11)
33. Child Care Services Ordinance (Cap 243)
- A decision of the Director of Social Welfare-
- (a) under section 7(2), refusing an application for registration;
  - (b) under section 9, cancelling a registration;
  - (c) under section 11B(3), refusing an application for exemption from registration;
  - (d) under section 11D, revoking an exemption from registration;
  - (e) under section 15B(2), determining a person to be unsuited to act as a childminder;
  - (f) under section 15C(4), refusing a request for the issue of a certificate;
  - (g) under section 15D(4), refusing to make a declaration that a person should no longer be deemed unsuited to act as a childminder. (Added 38 of 1997 s. 19)
34. Wild Animals Protection Ordinance (Cap 170)
- A decision of the Director in relation to-
- (a) the granting of or the refusal to grant a permit or a special permit pursuant to section 13 or 15; or
  - (b) the cancellation of a permit or a special permit under section 15A. (Added 77 of 1996 s. 22)
35. Occupational Safety and Health Ordinance (Cap 509)
- A decision of the Commission for Labour under Part III. (Added 39 of 1997 s. 49)
36. Ozone Layer Protection Ordinance (Cap 403)
- A decision of the Director of Environmental Protection under section 5, 6 or 7 or under provisions of the regulations that may be specified to be subject to an appeal under section 8. (Added 6 of 1997 s. 10)

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|---|--|
| 39. Volunteer and Naval Volunteer Pensions Ordinance (Cap 202)                                  | A decision in a review under section 22. (Added 56 of 1997 s. 7)   |
| 40. Child Care Services Regulations (Cap 243 sub. leg.)   | A decision of the Director of Social Welfare under regulation 4 refusing an application for inclusion in a register or removing the name of a person from a register. (Added L.N. 272 of 1997. Amended 32 of 2000 s. 37)   |
| 41. Prevention of Copyright Piracy Ordinance (Cap 544)  | A decision of the Commissioner of Customs and Excise under section 11 or 12 of the Ordinance. (Added 22 of 1998 s. 43)   |
| 42. Education Ordinance (Cap 279)   | (a) An attendance order made under section 74(1).<br>(b) A variation of an attendance order made under section 74(2). (Added 8 of 2001 s. 31)  |
| 44. Dangerous Dogs Regulation (Cap 167 sub. leg.)   | A direction by an authorized officer under section 14 of the Regulation. (Added L.N. 185 of 2000)  |
| 45. Factories and Industrial Undertakings (Safety Management) Regulation (Cap 59 sub. leg. AF)  | (a) A decision of the Commissioner for Labour to refuse to register a person under section 6 or to register a person under that section subject to conditions.<br>(b) A decision of the Commissioner for Labour under section 24(1) to require the appointment of a new safety review officer.<br>(c) A decision of the disciplinary board under section 29(2) to reprimand a registered person, cancel the registration of a registered person or suspend the registration of a registered person. (Added L.N. 298 of 1999) |
| 46. Port Control (Cargo Working Areas) Regulations (Cap 81 sub. leg.)                           | A decision of the Director or the supervisor under regulation 4A(4), 5B, 6AA, 7, 7A, 7B, 7C, 7D, 7E, 13 or 21. (Added L.N. 280 of 1999)  |
| 47. Karaoke Establishments Ordinance (Cap 573)  | A decision of the Secretary for Home Affairs or the Director of Food and Environmental Hygiene (as the case may be) under section 5, 6, 8, 9 or 10. (Added 22 of 2002 s. 22)   |
| 48. Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance (Cap 566) | A determination or decision of the Director of Social Welfare under section 6(2)(b), 8(3)(b), 9(3)(b) or 14. (Added 10 of 2001 s. 33)  |
| 49. Road Traffic Ordinance (Cap 374)  | A decision of the Commissioner of Police under section 55(3). (Added 3 of 2002 s. 17)  |
| 50. Dutiable Commodities Regulations (Cap 109 sub. leg.)  | A forfeiture of security under regulation 27(2). (Added 23 of 2002 s. 14)  |
| 51. Security and Guarding Services Ordinance (Cap 460)  | A decision under section 14(5), 15(3), 16(4), 18(4), 21(2), 23(4), 24(4), 24A(13) or 25(4). (Added 23 of 2002 s. 14)   |
| 52. Merchant Shipping (Seafarers) Ordinance (Cap 478)   | A decision of the Superintendent of the Mercantile Marine Office-<br>(a) to refuse to grant a permit;<br>(b) to impose any condition under section   |

- 52(3);
- (c) to refuse to approve any person for the purposes of section 57(1); or
- (d) to cancel a permit. (Added 23 of 2002 s. 14)
53. Merchant Shipping (Seafarers) (Certification of Officers) Regulation (Cap 478 sub. leg.) A decision of the Seafarers' Authority under section 8(2) or 10(2) to refuse to issue a certificate or licence. (Added 23 of 2002 s. 14)
54. Merchant Shipping (Seafarers) (Tankers-Officers and Ratings) Regulation (Cap 478 sub. leg.) A decision of the Seafarers' Authority to refuse to make an entry referred to in section 5(2) or (3) in an employment registration book, service record book or discharge book. (Added 23 of 2002 s. 14)
55. Merchant Shipping (Seafarers) (Engine Room Watch Ratings) Regulation (Cap 478 sub. leg.) A decision of the Seafarers' Authority to refuse to issue an Engine Room Watch Rating Certificate under section 5(1). (Added 23 of 2002 s. 14)
56. Merchant Shipping (Seafarers) (Navigational Watch Ratings) Regulation (Cap 478 sub. leg.) A decision of the Seafarers' Authority to refuse to issue a Navigational Watch Rating Certificate under section 5(1). (Added 23 of 2002 s. 14)
57. Merchant Shipping (Seafarers) (Certificates of Competency as A.B.) Rules (Cap 478 sub. leg.) A decision of the Seafarers' Authority-
- (a) under section 6(3) to refuse an application for the grant of a certificate of competency as A.B.; or
- (b) under section 10 (whether to confirm, vary or reverse the decision concerned of the examiner or to substitute another decision for that decision). (Added 23 of 2002 s. 14)
58. Merchant Shipping (Seafarers) (Certificates of Proficiency in Survival Craft, Rescue Boats and Fast Rescue Boats) Rules (Cap 478 sub. leg.) A decision of the Seafarers' Authority-
- (a) to refuse to issue a certificate of proficiency in survival craft and rescue boats under section 4;
- (b) to refuse to issue a certificate of proficiency in fast rescue boats under section 4A; or
- (c) to cancel a certificate of proficiency in survival craft and rescue boats or a certificate of proficiency in fast rescue boats under section 7(2). (Added 23 of 2002 s. 14)
59. (Repealed 23 of 2002 s. 14)

(Enacted 1994)

**IMPLICATIONS OF THE ADOPTION (AMENDMENT) BILL 2003**

**BASIC LAW IMPLICATIONS**

The Department of Justice advises that the Bill is in conformity with the Basic Law, including the provisions concerning human rights.

2. The United Nations Convention on the Rights of the Child (UNCRC) has applied to Hong Kong since 1994. In accordance with Article 21 of the UNCRC, the HKSAR Government should ensure that a child subject to intercountry adoption enjoys safeguards and standards equivalent to those existing in the case of local adoption, and should take measures to ensure that, in intercountry adoption, the placement does not result in improper financial gain for those involved in it, and to ensure that the placement of the child in another country is carried out by competent authorities or organs (where appropriate through the framework of bilateral and multilateral agreements). Applying the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (the Hague Convention) to Hong Kong would be consistent with Article 21 of the UNCRC.

**BINDING EFFECT OF THE LEGISLATION**

3. The Bill does not affect the current binding effect of the existing provisions of the Adoption Ordinance.

**FINANCIAL AND CIVIL SERVICE IMPLICATIONS**

4. The proposals to enhance the local adoption arrangements are not expected to bring significant financial and staffing implications for the enforcement departments, having regard to the general downward trend in the number of local adoption applications. While it is difficult to assess the additional workload emanating from the proposal to give effect to the Hague Convention in Hong Kong, we do not anticipate an upsurge of work at this stage. Any additional resource implications arising from the legislative proposals will be absorbed by the relevant parties, including the Social Welfare Department, Immigration Department, Police and Judiciary, within their respective financial envelope allocations.