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**HONG KONG SPECIAL ADMINISTRATIVE REGION**

ORDINANCE NO. 28 OF 2004

A circular stamp containing the letters "L.S." in a bold, sans-serif font.

TUNG Chee-hwa  
Chief Executive  
22 July 2004

An Ordinance 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 2004.

(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 Inter-country 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 and section 23B, 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”—
  - (i) by adding “、父或母” after “(父母”;
  - (ii) by repealing “illegitimate” and substituting “born out of wedlock”;
- (e) in the definition of “relative”—
  - (i) in paragraph (b), by repealing “illegitimate” and substituting “born out of wedlock”;
  - (ii) by adding “、外祖父母” after “祖父母”;
- (f) in the definition of “臨時命令”, by repealing the full stop and substituting a semicolon;
- (g) by adding—
  - ““accreditation” (認可) means an accreditation granted or renewed under section 26;
  - “accredited body” (獲認可機構) means a body of persons accredited as an accredited body, or the accreditation of which is renewed, 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Section 4 is repealed and the following substituted—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 application made under section 4 or 20” and substituting “Subject to section 20C(3), an application made under section 4”;
- (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) and (4) and substituting—
  - “(1) The Court shall not make an adoption order authorizing a sole applicant to adopt 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;
    - (c) is a person who is married to a parent of the infant; or
    - (d) has attained the age of 25 years.
  - (2) The Court shall not make an adoption order authorizing applicants who apply jointly as 2 spouses to adopt an infant 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 under 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) Without limiting any other circumstances in which the Court may determine that continuous actual custody has not been broken 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.”;

(h) by adding—

“(9) For the purposes of paragraph (b) of subsection (7), in the case of an adoption in relation to which section 27 applies, no notice under that paragraph may be lodged unless the applicant has been assessed to be a suitable adoptive parent under section 29 and the provisions of section 29A, 29B or 29C (as may be applicable) have been complied with.”.

## 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 27A(2)(b), and all of the provisions of section 28 shall apply in relation to the person as if the authorization were submitted in accordance with section 27A(2)(b).”.

## 10. Freeing infant for adoption

Section 5A(4)(b) is repealed and the following substituted—

“(b) the Director or an accredited body may place, subject to the provisions of this Ordinance, the infant for adoption; and”.

## 11. 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 “the Director” and substituting “, the Director and any accredited body”;
- (c) in subsection (4), by repealing “for the welfare” and substituting “in the best interests”.



**12. 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”.

**13. Evidence of consent of parent or guardian**

Section 7(3) is amended—

- (a) by repealing “the mother of an infant” and substituting “a parent of an infant”;
- (b) in paragraph (a)—
  - (i) by repealing “6 weeks” and substituting “4 weeks”;
  - (ii) by repealing “該” and substituting “有關”.

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

Section 8 is amended—

- (a) in subsection (1)—
  - (i) in paragraph (a), by adding “(other than a parent referred to in section 5(1)(c) if the adoption order is applied for under 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 27A(2) (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”.

**15. Interim orders**

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

**16. Part heading added**

The following is added immediately after section 12—  
“PART 3”.

**17. 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 parent referred to in section 5(1)(c) if the order is made under 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;
  - (b) all the relevant matters shall vest in and be exercisable by and enforceable against the adopter, as if—
    - (i) where the order is made under section 5(1)(c), the infant were a child born to the adopter and the 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 made under 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.”.

## 18. Cessation of certain orders, etc.

Section 14 is amended—

- (a) in subsection (1), by repealing “illegitimate” and substituting “born out of wedlock”;
- (b) in subsection (3), by repealing “控制” and substituting “管束”.

## 19. 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 made under section 5(1)(c), as if the adopted person were the child of the adopter and the 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 made under section 5(1)(c), if the adopted person were the child of the adopter and the 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 made under section 5(1)(c), subsection (2)(b) shall not apply in relation to the parent referred to in that section.”.

## 20. 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) in subsection (2)(c)(ii), by repealing “一州” and substituting “國家”;
- (d) by adding—
  - “(4) In this section, the expression “Convention adoption” (公約領養) shall have the meaning assigned to it by 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”.”.

## 21. Part heading added

The following is added immediately after section 17—  
“PART 4”.

## 22. 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”.

### **23. 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).”.

### **24. 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”.

### **25. 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, regardless of whether in respect of which Hong Kong acts as the State of origin or the receiving State,

other than any adoption that is excluded from the meaning of “Convention adoption” by an order made under section 20J;

“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.

#### **20J. Modification of the definition of “Convention adoption”**

(1) Subject to subsection (2), the Secretary for Health, Welfare and Food may by order published in the Gazette declare that, for the purposes of this Ordinance, such adoptions as specified in the order shall be excluded from the meaning of “Convention adoption”.

(2) An order under subsection (1) may be made only if—

- (a) the People’s Republic of China has made a declaration under Article 25 of the Convention to the effect that Hong Kong will not be bound to recognize adoptions made in accordance with any agreement concluded by application of paragraph 2 of Article 39 of the Convention; and
- (b) the order specifies the adoptions.”.

**26. Heading substituted**

The heading “MISCELLANEOUS” before section 21 is repealed and the following substituted—

“PART 6  
OFFENCES”.

**27. Supervision of infants**

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

**28. 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, in an amount that is calculated in accordance with a schedule of fees approved by the Director from time to time in relation to the accredited body.”;

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

**29. 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”.

**30. Sections added**

The following are added—

**“23A. Restriction on arranging adoption and placing of infant for adoption**

(1) Subject to subsections (2) and (3), no person other than—  
(a) the Director;  
(b) an accredited body acting under and in accordance with its accreditation; or  
(c) a person acting in pursuance of an order of the Court,  
shall make arrangements for the adoption of an infant, or place an infant for adoption.

(2) Subsection (1) shall not apply if the prospective adopter, or (where the prospective adopters are 2 spouses) either of the prospective adopters, is—

- (a) a parent or relative of the infant; or
- (b) a person who is married to a parent of the infant.

(3) If an arrangement leads to the placement of an infant from a place that lies outside Hong Kong but within the People’s Republic of China with a person resident in Hong Kong, then subsection (1) shall not apply to the arrangement nor the placement.

(4) A person who—

- (a) contravenes subsection (1); or
- (b) 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.

(5) 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 the adoption of the infant by any other person where the adoption is effected, or is intended to be effected, in Hong Kong or in a place outside the People’s Republic of China;
- (b) he initiates or takes part in negotiations the purpose or effect of which 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) were 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 infant 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 purposes of subsection (1), “relative” (親屬), in relation to an infant, means a grandparent, brother, sister, uncle or aunt of the full blood or of the half blood, but excluding, where the infant is born out of wedlock, the blood relations of his father.

- (4) 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 U.K.]

### **31. Adoption to be effected under the Ordinance**

Section 25 is renumbered as section 33.

### **32. Sections added**

The following are added—

## **“PART 7**

### **ACCREDITED BODIES, SUITABILITY ASSESSMENT OF PROSPECTIVE ADOPTERS, AND PLACEMENT, ETC.**

#### **25. Interpretation of Part 7**

In this Part and Schedule 4, unless the context otherwise requires—  
“adoption of overseas children” (海外兒童領養) means an adoption within the meaning of paragraph (a) of the definition of “non-Convention adoption”;

“Convention adoption” (公約領養) has the meaning assigned to it by paragraph (a) of the definition of the expression in section 20A(1);

“local adoption” (本地領養) means the adoption of an infant resident in Hong Kong by a person resident in Hong Kong;

“non-Convention adoption” (非公約領養) means—

- (a) the adoption of an infant resident in a place outside the People’s Republic of China by a person resident in Hong Kong, other than a Convention adoption; or
- (b) the adoption of an infant resident in Hong Kong by a person resident in a place outside the People’s Republic of China, other than a Convention adoption.

**26. Accredited bodies**

(1) The Director may, in accordance with the principles set out in Articles 10 and 11 of the Convention (as defined in section 20A(1)), accredit, or renew the accreditation of, a body of persons (corporate or unincorporate) as an accredited body in relation to—

- (a) Convention adoption; or
- (b) non-Convention adoption.

(2) The Director may, in accordance with the principles set out in Schedule 4, accredit, or renew the accreditation of, a body of persons (corporate or unincorporate) as an accredited body in relation to local adoption.

(3) An accreditation may be subject to such conditions as the Director may reasonably impose.

(4) Unless revoked or suspended, an accreditation shall be valid for a period of 4 years or such lesser period as the Director may determine when he grants or renews the accreditation.

(5) The Director may, at any time by notice in writing served on the accredited body, amend or revoke any such condition, or impose new conditions, as may be reasonable in the circumstances.

(6) An accredited body may, while acting under and in accordance with its accreditation and subject to the provisions of this Ordinance, make arrangements for the adoption of infants and proceed with their placement for adoption.

**26A. Revocation or suspension of accreditation**

The Director may, at any time by notice in writing served on an accredited body, revoke or suspend its accreditation if—

- (a) in his opinion, the accredited body is operated in a manner that is inconsistent with the principles in accordance with which it is accredited under section 26(1) or (2); or
- (b) any condition of the accreditation has not been or is not being complied with by the accredited body.

**26B. Register of accredited bodies**

(1) The Director shall cause to be kept, in such form as he may specify, a register of accredited bodies containing—

- (a) the name and address of every accredited body; and
- (b) such other particulars as the Director thinks fit.

(2) The Director shall make such amendment to the register as may be necessary for the purpose of maintaining the accuracy of the register.

(3) The register may be inspected at the office of the Director during office hours by any member of the public.

(4) A certificate purporting to be signed by or for the Director that a body of persons is or is not an accredited body shall be evidence of the facts stated in the certificate until the contrary is proved.

(5) A copy of an entry in the register purporting to be certified under the hand of the Director shall, until the contrary is proved, be admitted in evidence as proof of the facts stated in the certificate.

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

(1) Subject to subsection (2), a person resident in Hong Kong who intends to adopt any infant, other than a person who is—

(a) a parent or relative of the infant; or

(b) married to a parent of the infant,

shall apply in accordance with section 27A(1) and (2) for assessment of his suitability to be an adoptive parent.

(2) A person habitually resident in Hong Kong who intends to make an application for Convention adoption shall apply in accordance with section 27A(1) and (2) for assessment of his suitability to be an adoptive parent.

**27A. Application for suitability assessment and authorization for checking criminal record, etc.**

(1) An application under section 27 shall be made in a form specified by the Director and submitted—

(a) in the case of local adoption, to the Director or an accredited body accredited for that purpose;

(b) in the case of adoption of overseas children or Convention adoption, to the Director or an accredited body authorized by the Director in that behalf.

(2) The application shall be submitted together with—

(a) such information as the Director or the accredited body (as the case may be) may reasonably require; and

(b) a written authorization 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.

(3) In the case of local adoption where the application is submitted to an accredited body, the applicant may, in the authorization, designate the accredited body in substitution of the Director for the purposes of subparagraphs (i) and (ii) of subsection (2)(b).

(4) On receiving an authorization submitted under subsection (2), the accredited body shall forthwith send the authorization to the Director for him to proceed in accordance with section 28.

(5) The Director or the accredited body (as the case may be) may refuse to consider an application in respect of which subsections (1) and (2) are not complied with.

## **28. Criminal record checking, etc.**

(1) On receipt of an authorization under section 27A(2)(b), the Director shall forthwith send to the Commissioner of Police—

- (a) the authorization; and
- (b) (if an accredited body is designated in the authorization pursuant to section 27A(3)) the Director's certification to the effect that the authorization is submitted in support of an application for adoption.

(2) The applicant may be required 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 or an accredited body may, for a purpose connected with a person's proposed adoption of an infant, release any information on the person that the Director or the accredited body has obtained pursuant to section 27A(2)(b) (as read with section 27A(3)) to—

- (a) the Government, or a government in a place outside the People's Republic of China;



- (b) an accredited body, or a person duly authorized (howsoever described) by a competent authority in a place outside the People's Republic of China to place infants, or make arrangements, for adoption;
- (c) any court having jurisdiction to make the adoption order;
- (d) any other person who, in the opinion of the Director, reasonably requires the information to facilitate the process of the proposed adoption;
- (e) the Administrative Appeals Board.

## **29. Suitability assessment**

(1) After considering an application made under section 27A(1)(a) for local adoption, the Director or (if the application is submitted to an accredited body) the accredited body may decide that the applicant is suitable, or is not suitable, to be an adoptive parent.

(2) After considering an application made under section 27A(1)(b) for adoption of overseas children or Convention adoption, the Director may decide that the applicant is suitable, or is not suitable, to be an adoptive parent.

(3) In relation to an application made under section 27A(1)(b) for adoption of overseas children or Convention adoption, 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.

### **29A. Placement of infants for local adoption where specific consent is given**

(1) This section applies to local adoption where consent for the adoption of an infant is given in the prescribed specific form of consent.

(2) If a person is named in the consent as the prospective adopter for the infant and the person applies with the Director for an assessment under section 29(1), then as and when the Director has assessed the person to be a suitable adoptive parent, the Director may proceed with the infant's placement.

(3) If a person is named in the consent as the prospective adopter for the infant and the person applies with an accredited body for an assessment under section 29(1), then as and when the accredited body has assessed the person to be a suitable adoptive parent, the accredited body may proceed with the infant's placement.

**29B. Placement of infants for local adoption  
where general consent is given**

(1) This section applies to local adoption where consent for the adoption of an infant is given in the prescribed general form of consent.

(2) As and when the Director decides, having due regard to any opinion given to him pursuant to subsection (3), that—

(a) an applicant assessed to be a suitable adoptive parent under section 29(1) would be a suitable adoptive parent for a particular infant; and

(b) the placement of the infant with the applicant for adoption would be in the best interests of the infant,

the Director, or (if the application was submitted to an accredited body) the accredited body, may proceed with the placement.

(3) Before the Director makes a decision under subsection (2), he shall seek the opinion of each and every accredited body that has proposed any prospective adopter for that particular infant and such other persons as the Director may consider appropriate.

**29C. Placement of infants for adoptions  
other than local adoption**

(1) This section applies to adoption of overseas children and Convention adoption.

(2) As and when the Director decides that—

(a) an applicant assessed to be a suitable adoptive parent under section 29(2) would be a suitable adoptive parent for a particular infant; and

(b) the placement of the infant with the applicant for adoption would be in the best interests of the infant,

the Director may proceed with the placement, or authorize an accredited body to proceed with the placement.

**29D. Termination of placement**

(1) If at any time after the Director has proceeded with an infant's placement or authorized an accredited body to proceed with an infant's

placement with a prospective adopter, the Director opines that to continue the placement would not be in the best interests of the infant, then the Director may terminate the placement or direct the accredited body to terminate the placement.

(2) If at any time after an accredited body has proceeded with an infant's placement with a prospective adopter for local adoption, pursuant to section 29A(3) or 29B(2), the accredited body opines that to continue the placement would not be in the best interests of the infant, then the accredited body may terminate the placement.

## PART 8

### MISCELLANEOUS

#### **29E. Review of decisions of accredited bodies**

- (1) If a person is aggrieved by an accredited body's decision—
- (a) on the assessment of that person's suitability to be an adoptive parent; or
  - (b) to terminate a placement,

the person may, within (in the case of paragraph (a)) 28 days or (in the case of paragraph (b)) 7 clear days of receiving notice of the decision, lodge with the Director a written notice requesting the Director to review the decision.

(2) In any such review, the Director may confirm, vary or reverse the decision under review.

(3) A decision referred to in subsection (1) shall have immediate effect, or have effect from a date specified in the decision (if applicable), notwithstanding any review against the decision.

#### **30. Appeals**

- (1) 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 his accreditation,

the person may, within (in the case of paragraph (b)) 7 clear days or (in other cases) 28 days of receiving notice of the decision, lodge a notice of appeal with the Administrative Appeals Board to appeal against the decision.

(2) A decision referred to in subsection (1) shall have immediate effect, or have effect from a date specified in the decision (if applicable), notwithstanding any appeal against the decision.

### **31. Cessation of accreditation**

(1) If an accreditation expires without having been renewed, or is revoked or suspended, the Director may, in relation to an adoption case handled by the accredited body concerned (“the defunct accredited body”) under its accreditation—

- (a) take over the adoption case; or
- (b) designate any other accredited body to take over the adoption case.

(2) The Director or an accredited body so designated (as the case may be) may exercise any function that the defunct accredited body would be entitled to exercise under this Ordinance in relation to the adoption case but for the expiration, revocation or suspension.

### **32. Regulation**

The Secretary for Health, Welfare and Food may make regulations—

- (a) to provide for the procedure to be followed and the requirements to be observed, in relation to—
  - (i) assessment and approval of any person to be a suitable adoptive parent;
  - (ii) placement of infants for adoption;
- (b) in respect of the exercise by accredited bodies of their functions of placing infants, or making arrangements, for adoption of infants;
- (c) to provide for matters related to—
  - (i) the grant or renewal of accreditation; or
  - (ii) the suspension or revocation of accreditation; and
- (d) to provide for incidental and connected matters.”.

### **33. Sections added**

The following are added—

**“34. Transitional provisions for section 23A**

(1) If a person has filed, before the commencement of section 23A, a notice under section 5(7)(b) stating his intention to apply for an adoption order in respect of an infant, then section 23A shall not apply to any arrangement or placement for the infant’s adoption by the person.

(2) If an infant has been placed with a person for an adoption to be effected in a place outside the People’s Republic of China and the adoption has not yet been effected as at the commencement of section 23A, then that section shall not apply to any arrangement or placement for the infant’s adoption by the person.

**35. Transitional provisions for Part 7**

(1) Part 7 shall not apply in relation to any arrangement or placement for adoption referred to in section 34.

(2) If the Director has assessed that a person is suitable to be an adoptive parent and the assessment remains valid as at the commencement of section 27, then it may be taken as an assessment made by the Director under section 29, and accordingly, the provisions of Part 7 shall apply in relation to any decision made after that commencement for placing a particular infant with that person.

(3) If a prospective adopter for the adoption of an infant has not filed, as at the commencement of Part 7, a notice under section 5(7)(b) stating his intention to apply for an adoption order in respect of the infant, then subject to subsection (2), the prospective adopter shall apply for an assessment under section 27 and accordingly, the provisions of that Part shall apply in relation to the proposed adoption in all respects.”

**34. 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 births 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) &amp; Sch.1]

## FORM

## 領養子女登記冊記項表格

## FORM OF ENTRY IN ADOPTED CHILDREN REGISTER

1.	記項編號 No. of entry	
2.	子女出生日期及國家 Date and country of birth of child	
3.	子女姓名 Surname and name of child	
4.	子女性別 Sex of child	
5.	領養人或各領養人的姓名、 地址及職業 Surname and name, address and occupation of adopter or adopters	
6.	領養令日期及作出該令的 法院名稱 Date of adoption order and description of Court which made the order	
7.	登記日期 Date of entry	
8.	登記官所委任的核簽記項的 人員的簽署 Signature of officer deputed by Registrar to attest the entry	
9.	《入境條例》(第 115 章) 下的香港特別行政區永久性 居民身分 (確定／未確定) Status of permanent resident of the Hong Kong Special Administrative Region under the Immigration Ordinance (Cap. 115) (Established/ Not established)	

## 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, subparagraph (c), have not been given before the child attains the age of eighteen years.

## CHAPTER II—REQUIREMENTS FOR INTERCOUNTRY ADOPTIONS

*Article 4*

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

- (a) have established that the child is adoptable;
- (b) have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child’s best interests;
- (c) have ensured that—
  - (1) the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin,
  - (2) such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing,
  - (3) the consents have not been induced by payment or compensation of any kind and have not been withdrawn, and
  - (4) the consent of the mother, where required, has been given only after the birth of the child; and
- (d) have ensured, having regard to the age and degree of maturity of the child, that—
  - (1) he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required,
  - (2) consideration has been given to the child’s wishes and opinions,
  - (3) the child’s consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and
  - (4) such consent has not been induced by payment or compensation of any kind.



*Article 5*

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

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

## CHAPTER III—CENTRAL AUTHORITIES AND ACCREDITED BODIES

*Article 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.

## SCHEDULE 4

[ss. 25 &amp; 26(2)]

## ACCREDITATION PRINCIPLES

1. Accreditation shall only be granted to and maintained by a body of persons (corporate or unincorporate) that—
  - (a) is a charitable institution exempted from tax under section 88 of the Inland Revenue Ordinance (Cap. 112); and
  - (b) demonstrates its competence to carry out properly tasks related to local adoption services, having regard to—
    - (i) its experience in adoption services or child welfare services; and
    - (ii) its financial status and its resources (financial or otherwise) that may be made available for providing local adoption services.
2. An accredited body—
  - (a) shall ensure that its local adoption services are undertaken by a team of staff designated by it for such services, and directed by persons qualified by their ethical standards and by training or experience to work in the field of local adoption;
  - (b) shall ensure that the team so designated includes registered social workers (as defined in the Social Workers Registration Ordinance (Cap. 505)), and that only those registered social workers may undertake home assessment and placement tasks for adoption; and
  - (c) shall establish effective internal procedures to supervise its operation related to local adoption.”.

**35. Consequential and other amendments**

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

## SCHEDULE

[s. 35]

## CONSEQUENTIAL AND OTHER AMENDMENTS

**Employment Ordinance****1. Interpretation**

Section 2(1) of the Employment Ordinance (Cap. 57) is amended, in the definition of “issue”—

- (a) in paragraph (b), by adding “(subject to paragraph (ba))” after “but”;
- (b) by adding—
  - “(ba) includes a child of the employee adopted by another person under an adoption order granted under paragraph (c) of section 5(1) of the Adoption Ordinance (Cap. 290) where the employee is the parent referred to in that paragraph;”.

**Intestates’ Estates Ordinance****2. Interpretation**

Section 2 of the Intestates’ Estates Ordinance (Cap. 73) is amended—

- (a) in subsection (2)—
  - (i) in paragraph (b), by adding “or 20F” after “section 17”;
  - (ii) by adding “, subject to subsection (2A),” after “shall be treated”;
  - (iii) by adding “如” after “任何人”;

(b) by adding—

“(2A) For the purposes of this Ordinance, a person adopted under an adoption order granted under paragraph (c) of section 5(1) of the Adoption Ordinance (Cap. 290) shall be treated as the child of the adopter and the parent referred to in that paragraph, and not as the child of any other person, and all relationships to the adopted person shall be deduced accordingly.”.

### **Surviving Spouses’ and Children’s Pensions Ordinance**

#### **3. Interpretation**

Section 2(1) of the Surviving Spouses’ and Children’s Pensions Ordinance (Cap. 79) is amended, in the definition of “child”, by repealing everything after “in relation to” and substituting—

“a contributor—

(a) includes—

- (i) an illegitimate child, a step-child and a child adopted by the contributor; and
- (ii) a child of the contributor adopted by another person under an adoption order granted under paragraph (c) of section 5(1) of the Adoption Ordinance (Cap. 290) where the contributor is the parent referred to in that paragraph; but

(b) subject to paragraph (a)(ii) and except as provided in subsection (5)(ac), does not include a child of the contributor adopted by another person;”.

### **Pensions Ordinance**

#### **4. Pensions to dependants when an officer dies on duty**

Section 18(3)(e) of the Pensions Ordinance (Cap. 89) is amended—

(a) in subparagraph (i)—

- (i) by repealing “other than” and substituting “but (subject to subparagraph (ia)) does not include”;
- (ii) by repealing “and” at the end;

(b) by adding—

“(ia) any child of the officer adopted by another person under an adoption order granted under paragraph (c) of section 5(1) of the Adoption Ordinance (Cap. 290) where the officer is the parent referred to in that paragraph; and”.

### **Widows and Orphans Pension Ordinance**

#### **5. Interpretation**

Section 2 of the Widows and Orphans Pension Ordinance (Cap. 94) is amended—

- (a) in subsection (1), in the definition of “child”, by adding “or 20F” after “section 17”;
- (b) in subsection (5), by repealing everything after “290” and before the dash and substituting “(other than section 5(1)(c) of that Ordinance), or in such other manner as is referred to in section 17 or 20F of that Ordinance,”.

**Pension Benefits Ordinance****6. Interpretation**

Section 2(1) of the Pension Benefits Ordinance (Cap. 99) is amended, in the definition of “child”, by repealing everything after “in relation to” and substituting—  
“an officer—

- (a) includes—
  - (i) an illegitimate child, a step-child and a child adopted by the officer; and
  - (ii) a child of the officer adopted by another person under an adoption order granted under paragraph (c) of section 5(1) of the Adoption Ordinance (Cap. 290) where the officer is the parent referred to in that paragraph; but
- (b) subject to paragraph (a)(ii), does not include a child of the officer adopted by another person;”.

**Auxiliary Forces Pay and Allowances Ordinance****7. Interpretation**

Section 2(1) of the Auxiliary Forces Pay and Allowances Ordinance (Cap. 254) is amended, in the definition of “child”—

- (a) in paragraph (a)—
  - (i) by repealing “other than” and substituting “but (subject to paragraph (aa)) does not include”;
  - (ii) by repealing “or” at the end;
- (b) by adding—
  - “(aa) any child of the member adopted by another person under an adoption order granted under paragraph (c) of section 5(1) of the Adoption Ordinance (Cap. 290) where the member is the parent referred to in that paragraph; or”.

**Employees’ Compensation Ordinance****8. Interpretation**

Section 3(2) of the Employees’ Compensation Ordinance (Cap. 282) is amended—

- (a) in paragraph (a)—
  - (i) in subparagraph (ii), by repealing “of the Adoption Ordinance (Cap. 290)” and substituting “or 20F of that Ordinance”;
  - (ii) in subparagraph (iii), by repealing “and” at the end;
- (b) in paragraph (b)—
  - (i) by adding “subject to paragraph (c),” before “any person so adopted”;
  - (ii) by repealing the full stop and substituting “; and”;
- (c) by adding—
  - “(c) any person adopted under an adoption order granted under paragraph (c) of section 5(1) of the Adoption Ordinance (Cap. 290) shall be treated as the child of the adopter and the parent referred to in that paragraph, and not as the child of any other person, and all relationships to the adopted person shall be deduced accordingly.”.

**Adoption Rules**

**9. 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.”.

**10. Form of statement and consent**

Rule 10(2)(a) is amended by repealing “or Form 4A” and substituting “, Form 4A or Form 4B”.

**11. 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”.

**12. 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\*/ .....(name of accredited body\*)<sup>(2)</sup> of

..... (address)  
the particulars of my previous conviction(s) (if any) in Hong Kong or elsewhere.

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

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



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

HKID Number .....

Travel Document Number .....

Chinese Character Code .....

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

Place of Birth .....

Signature of Applicant .....

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

Post title of Witness .....

Date .....

\* Delete as appropriate

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*Note:*

- (1) The witness should be a solicitor practising in Hong Kong, a notary public, or a registered social worker working with the Social Welfare Department or an accredited body accredited under the Adoption Ordinance (Cap. 290).
- (2) If the proposed adoption is processed by a body of persons accredited for local adoption under the Adoption Ordinance (Cap. 290), the applicant may insert the name of the accredited body as the recipient of the information.”;

(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 paragraph 10, by repealing “care and possession” where it twice appears and substituting “actual custody”;
- (iv) 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 “茲因” and substituting “由於”;
- (ii) by repealing “又因” and substituting “又由於”;
- (iii) by repealing “6 weeks” and substituting “4 weeks”;
- (iv) by repealing the year reference of “19”;
- (v) by repealing paragraph (1) and substituting—  
“(1) I understand that the effect of an adoption order is that a parent or guardian will lose all his rights in respect of the maintenance and upbringing of the infant.”;
- (vi) by repealing “[on condition that the religious persuasion in which the infant is brought up is .....]”<sup>(7)</sup>;
- (vii) by repealing “she fully” and substituting “he/she\* fully”;
- (viii) by repealing “was prepared to surrender her child” and substituting “agreed to the placement of the infant”;
- (ix) in note (6), by repealing everything before “In all cases” and substituting—

- “(6) The document will not be admissible as evidence unless the signature is attested by a commissioner for oaths (or, if executed outside Hong Kong, by any person for the time being authorized by law in that place to administer an oath for any judicial or other legal purpose, as mentioned in rule 29 of the Adoption Rules (Cap. 290 sub. leg. A)).”;
- (x) by repealing note (7);
- (xi) by repealing note (8);
- (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 everything before “In all cases” and substituting—
    - “(4) The document will not be admissible as evidence unless the signature is attested by a commissioner for oaths (or, if executed outside Hong Kong, by any person for the time being authorized by law in that place to administer an oath for any judicial or other legal purpose, as mentioned in rule 29 of the Adoption Rules (Cap. 290 sub. leg. A)).”;
  - (iv) by repealing Note (5);
- (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>is that I will / will not\* lose 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 .....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 parent (as defined in the Adoption Ordinance (Cap. 290)) of the infant, the effect of an adoption order is that a parent will lose all his rights in respect of the maintenance and upbringing of the infant.
- (7) The document will not be admissible as evidence unless the signature is attested by a Commissioner for Oaths [or, if executed outside Hong Kong, by any person for the time being authorized by law in that place to administer an oath for any judicial or other legal purpose, as mentioned in rule 29 of the Adoption Rules (Cap. 290 sub. leg. A)]. In all cases the document if so attested will be admissible without further proof of execution."

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

*Notes:*

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

### 13. 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”.

### Employees Compensation Assistance Ordinance

#### 14. Interpretation

Section 2(2) of the Employees Compensation Assistance Ordinance (Cap. 365) is amended—

- (a) in paragraph (a)—
  - (i) in subparagraph (ii), by repealing “of the Adoption Ordinance (Cap. 290)” and substituting “or 20F of that Ordinance”;
  - (ii) in subparagraph (iii), by repealing “and” at the end;
- (b) in paragraph (b)—
  - (i) by adding “subject to paragraph (c),” before “any person so adopted”;
  - (ii) by repealing the full stop and substituting “; and”;
- (c) by adding—
 

“(c) any person adopted under an adoption order granted under paragraph (c) of section 5(1) of the Adoption Ordinance (Cap. 290) shall be treated as the child of the adopter and the parent referred to in that paragraph, and not as the child of any other person, and all relationships to the adopted person shall be deduced accordingly.”.

**Pension Benefits (Judicial Officers)  
Ordinance**

**15. Interpretation**

Section 2(1) of the Pension Benefits (Judicial Officers) Ordinance (Cap. 401) is amended, in the definition of “child”, by repealing everything after “in relation to” and substituting—  
“an officer—

- (a) includes—
  - (i) an illegitimate child, a step-child and a child adopted by the officer; and
  - (ii) a child of the officer adopted by another person under an adopted order granted under paragraph (c) of section 5(1) of the Adoption Ordinance (Cap. 290) where the officer is the parent referred to in that paragraph; and
- (b) subject to paragraph (a)(ii), does not include a child of the officer adopted by another person;”.

**Administrative Appeals Board Ordinance**

**16. Schedule amended**

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

“61. Adoption Ordinance  
(Cap. 290)

A decision of the Director of Social Welfare—

- (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.”.