

L.N. 230 of 2005**ADOPTION (AMENDMENT) RULES 2005****CONTENTS**

Rule	Page
1. Commencement	B1565
2. Interpretation	B1565
3. Rule added	
2A. Application	B1565
4. Proceedings to be disposed of in chambers	B1565
5. Form of application	B1565
6. Previous applications	B1567
7. Director of Social Welfare to be guardian ad litem subject to rule 9	B1567
8. Appointment of some other person as guardian ad litem	B1567
9. Form of statement and consent	B1567
10. Guardian ad litem to investigate all relevant circumstances ...	B1569
11. Information to be confidential	B1569
12. Heading amended	B1569
13. Mode of application	B1569
14. Notice of hearing	B1569
15. Heading substituted	B1571
16. Rule substituted	
28. Service of documents	B1571
17. Heading substituted	B1573
18. Persons who may attest documents and declarations outside Hong Kong	B1573
19. Heading and rule added	

Rule	Page
APPLICATIONS UNDER SECTION 23B OF THE ORDINANCE	
31A. Application for an order passing care and control of infant	B1573
20. Forms	B1575
21. Additional matters subject to investigation and report by guardian ad litem	B1585

ADOPTION (AMENDMENT) RULES 2005

(Made by the Chief Justice under section 12(1) of the Adoption Ordinance (Cap. 290))

1. Commencement

These Rules shall come into operation on 25 January 2006.

2. Interpretation

(1) Rule 2(1) of the Adoption Rules (Cap. 290 sub. leg. A) is amended, in the Chinese text, in the definition of “申請人”, by repealing the full stop and substituting a semicolon.

(2) Rule 2(1) is amended by adding—

““adoption order” (領養令) means an adoption order other than a Convention adoption order;

“guardian ad litem” (訴訟監護人) means the guardian ad litem of an infant for the purposes of the application for an adoption order that relates to the infant;”.

(3) Rule 2(2) is amended, in the English text, by repealing “the First Schedule” and substituting “Schedule 1”.

3. Rule added

The following is added—

“2A. Application

These rules do not apply to or in relation to Convention adoption.”.

4. Proceedings to be disposed of in chambers

(1) The heading of rule 4 is amended by repealing “**chambers**” and substituting “**private**”.

(2) Rule 4 is amended by repealing everything after “Ordinance” and substituting “are to be disposed of in private.”.

5. Form of application

Rule 5 is amended by adding “to the Court” after “made”.

6. Previous applications

(1) Rule 7 is amended by repealing “for an adoption order in respect” and substituting “to any court in Hong Kong for the adoption”.

(2) Rule 7 is amended by repealing “substantial” and substituting “material”.

7. Director of Social Welfare to be guardian ad litem subject to rule 9

(1) Rule 8(2) is amended, in the Chinese text, by repealing “\$2,840，以作為署長出任幼年人的訴訟監護人的適” and substituting “費用 \$2,840，以支付署長擔任幼年人的訴訟監護人的恰”。

(2) Rule 8(2) is amended, in the proviso, by repealing “, in his absolute discretion,”.

8. Appointment of some other person as guardian ad litem

(1) Rule 9(1) is amended by repealing “facts” and substituting “grounds for asking for such appointment”.

(2) Rule 9(1) is amended, in the Chinese text, by repealing “出任” where it twice appears and substituting “擔任”.

(3) Rule 9(2) is amended by repealing “in lieu of the Director” and substituting “in place of any person”.

9. Form of statement and consent

(1) Rule 10(2) is repealed and the following substituted—

“(2) Any document signifying the consent of any person to the making of the order shall be exhibited to the affidavit and the consent—

(a) if given by a parent of the infant, shall be in either Form 4, Form 4A or Form 4B (as may be appropriate);

(b) if given by—

(i) a guardian of the infant; or

(ii) a person who is liable to contribute to the maintenance of the infant by virtue of any order or agreement, shall be in Form 4; and

(c) if given by a spouse of the applicant and—

- (i) the spouse is a parent of the infant, shall be in either Form 4, Form 4A or Form 4B (as may be appropriate);
- (ii) the spouse is not a parent of the infant, shall be in Form 4.”.

(2) Rule 10(3) is repealed.

10. Guardian ad litem to investigate all relevant circumstances

Rule 13 is amended, in the English text, by repealing “the Second Schedule” and substituting “Schedule 2”.

11. Information to be confidential

(1) In the Chinese text, the heading of Rule 14 is repealed and the following substituted—
“資料須保密”.

(2) Rule 14 is amended by adding “, employee and member” after “officer”.

12. Heading amended

The heading before rule 14A is amended, in the English text, by adding “OF THE ORDINANCE” after “SECTION 5(5D)”.

13. Mode of application

(1) Rule 14A(2) is amended by adding before subparagraph (a)—
“(aa) if an application for a Convention adoption order is pending, in accordance with rule 14 of the Convention Adoption Rules (L.N. 231 of 2005);”.

(2) Rule 14A(2)(a) is amended, in the English text, by repealing “pending” and substituting “pending,”.

(3) Rule 14A(2)(b) is amended by repealing “such application” and substituting “application referred to in subparagraphs (aa) and (a)”.

(4) Rule 14A(3) is amended by repealing “in Chambers”.

14. Notice of hearing

(1) Rule 16(b) is amended by repealing “unless he is guardian ad litem” and substituting “(if he is not the guardian ad litem)”.

(2) Rule 16 is amended, in the English text, in the first proviso, by adding “the” before “notice”.

(3) Rule 16 is amended, in the English text, in the second proviso, by adding “the” before “notice”.

15. Heading substituted

The heading before rule 27 is repealed and the following substituted—
“DELEGATION BY DIRECTOR OF SOCIAL WELFARE”.

16. Rule substituted

Rule 28 is repealed and the following substituted—

“28. Service of documents

(1) Subject to paragraph (2), a document required to be served under these rules may be served—

- (a) in the case of an individual—
 - (i) by delivering it to the individual personally;
 - (ii) by leaving it with some person for the individual at the individual’s last known address or usual place of abode; or
 - (iii) by sending it to the individual by registered post addressed to the individual at the individual’s last known address or usual place of abode;
- (b) in the case of the Director—
 - (i) by delivering it to him at his principal office; or
 - (ii) by sending it to him by registered post addressed to him at his principal office;
- (c) in the case of a body of persons—
 - (i) by delivering it to that body at that body’s registered or principal office; or
 - (ii) by sending it to that body by registered post addressed to that body at that body’s registered or principal office.

(2) Where a document is to be served on—

- (a) an individual whose last known address or usual place of abode is in a place outside Hong Kong; or
- (b) a body of persons whose registered or principal office is in a place outside Hong Kong,

the document must be served in accordance with the law of that place.”.

17. Heading substituted

The heading before rule 29 is repealed and the following substituted—
“ATTESTATION OF DOCUMENTS”.

18. Persons who may attest documents and declarations outside Hong Kong

(1) The heading of rule 29 is amended, in the Chinese text, by repealing “或” and substituting “及”.

(2) Rule 29(c) is amended by repealing “any other place” and substituting “a place outside Hong Kong”.

(3) Rule 29(c)(iii) is amended, in the Chinese text, by repealing everything after “由” and before “誓” and substituting “該地方的法律在當其時授權為任何司法或其他法律目的監”.

19. Heading and rule added

The following is added immediately after rule 31—

“APPLICATIONS UNDER SECTION 23B OF
THE ORDINANCE

31A. Application for an order passing care and control of infant

(1) An application for an order under section 23B(1) of the Ordinance for passing the care and control of an infant to a person authorized by the Director may be made to the Court by the Director by an ex parte originating summons.

(2) The application shall be heard by a judge.

(3) The application must be supported by an affidavit by the Director that sets out—

(a) information on the infant’s identity, adoptability, background, social environment, family history and medical history;

(b) details of the person authorized by the Director for the purposes of section 23B(1) of the Ordinance; and

(c) the grounds for the Director’s belief that the granting of the order will be in the best interests of the infant.

(4) The following documents shall be exhibited to the affidavit—

- (a) the infant's birth certificate or any other proof of identity;
 - (b) order by which the Director was appointed as the legal guardian of the infant (if applicable);
 - (c) consent of every person whose consent is required by section 5(5)(a) of the Ordinance (if applicable);
 - (d) order declaring that the infant is freed for adoption under section 5A of the Ordinance (if applicable);
 - (e) copy of the infant study report;
 - (f) statement of acceptance for adoption signed by the prospective adopter;
 - (g) copy of the family study and assessment report of the prospective adopter; and
 - (h) letter of assumption of responsibility signed by the person referred to in paragraph (3)(b) stating that such person is responsible for the welfare of the infant while the infant is in the state to which the infant is intended to be sent and before the infant is adopted.
- (5) In this rule, "Court" (法院) means the Court of First Instance."

20. Forms

(1) The First Schedule is amended, in the English text, by repealing "FIRST SCHEDULE" and substituting "SCHEDULE 1".

(2) Schedule 1 is amended, in Form 1, in the Annex to Form 1—

- (a) by repealing "body*)⁽²⁾" and substituting "body*)⁽¹⁾";
- (b) in the English text, by repealing "Character" and substituting "Commercial";
- (c) by repealing "Witness⁽¹⁾" and substituting "Witness⁽²⁾";
- (d) by repealing the Note and substituting—

Note:

- (1) 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.
- (2) 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)."

- (3) Schedule 1 is amended, in Form 3—
- (a) in the Chinese text, in paragraph 5, by repealing “經” where it twice appears and substituting “已”;
 - (b) in paragraph 14, by repealing “an Adoption Order in respect of the same or any other infant to any court [except an application made to the court at” and substituting “the adoption of the same infant or any other infant in Hong Kong or elsewhere [except an application made to the at”;
 - (c) in the Chinese text, in the Annex to Form 3—
 - (i) by adding “或申請人等” before “的其他詳情”;
 - (ii) by repealing “有何” where it twice appears and substituting “的”;
 - (d) in the Chinese text, in the Annex to Form 3, in note (1), by repealing “證件” and substituting “文件”;
 - (e) in the Annex to Form 3, by repealing note (3) and substituting—
 - “(3) (a) If the infant has not been adopted, a birth certificate should be attached. If there is no such certificate, a certified copy of the document showing that the persons named in paragraphs 5, 6 and 7 have parental rights over the infant should be attached.
 - (b) If the infant has previously been adopted, do not attach the birth certificate. Instead, a certified copy of the entry in the Adopted Children Register should be attached. If there is no such entry, a certified copy of the document showing that the persons named in paragraphs 5, 6 and 7 have parental rights over the infant should be attached. In any case, the particulars given in paragraph 5 should relate to the parent(s) by adoption.”.
- (4) Schedule 1 is amended, in Form 4—
- (a) in the heading, by repealing “*an adoption order in respect*” and substituting “*the adoption*”;
 - (b) by repealing paragraph (1) and substituting—
 - “(1) I understand that once the infant is adopted (whether in Hong Kong or elsewhere), a permanent parent-child relationship between the adopter and the infant will be created.”;

- (c) by repealing paragraph (2) and substituting—
“(2) I understand that when the application for the adoption of the infant is made, this document may be used as evidence of my consent to the adoption.⁽⁶⁾”;
- (d) by repealing paragraph (3) and substituting—
“(3) I hereby consent to the adoption of the infant by [C.D./C.D. and E.D.]”;
- (e) by repealing note (3) and substituting—
“(3) (a) If the infant has not been adopted, a birth certificate should be attached. If there is no such certificate, a certified copy of the document showing that the consenting party has parental rights over the infant should be attached.
(b) If the infant has previously been adopted, do not attach the birth certificate. Instead, a certified copy of the entry in the Adopted Children Register should be attached. If there is no such entry, a certified copy of the document showing that the consenting party has parental rights over the infant should be attached; and the description of the consenting party should include the words “by adoption” or “經領養” where appropriate.”;
- (f) in note (6), by repealing “, as mentioned in rule 29 of the Adoption Rules (Cap. 290 sub. leg. A)”.
- (5) Schedule 1 is amended, in Form 4A—
- (a) in the heading, by repealing “*an adoption order*” and substituting “*the adoption of an infant*”;
- (b) by repealing everything after “consent to” and before “and I state” and substituting “the infant to whom the birth certificate no.⁽³⁾ now produced and marked “A” relates to be adopted by 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 application for adoption will be made”;
- (c) by repealing paragraph (2) and substituting—
“(2) I understand that when the application for the adoption of the infant is made, this document may be used as evidence of my consent to the adoption.⁽⁴⁾”;

- (d) by repealing note (3) and substituting—
- “(3) (a) If the infant has not been adopted, a birth certificate should be attached. If there is no such certificate, a certified copy of the document showing that the consenting party has parental rights over the infant should be attached.
- (b) If the infant has previously been adopted, do not attach the birth certificate. Instead, a certified copy of the entry in the Adopted Children Register should be attached. If there is no such entry, a certified copy of the document showing that the consenting party has parental rights over the infant should be attached; and the description of the consenting party should include the words “by adoption” or “經領養” where appropriate.”;
- (e) in note (4), by repealing “, as mentioned in rule 29 of the Adoption Rules (Cap. 290 sub. leg. A)”;
- (f) in note (6), by adding “if the application for the adoption order is made in Hong Kong” after “Rules”.
- (6) Schedule 1 is amended, in Form 4B—
- (a) by repealing the heading and substituting—
- “*Specific consent to the adoption of an infant named A.B.⁽¹⁾ by a step-parent (as sole applicant)*”;
- (b) by repealing paragraph (1) and substituting—
- “(1) I understand that once the infant is adopted (whether in Hong Kong or elsewhere), a permanent parent-child relationship between the adopter and the infant will be created.”;
- (c) by repealing paragraph (2) and substituting—
- “(2) I understand that when the application for the adoption of the infant is made, this document may be used as evidence of my consent to the adoption.⁽⁷⁾”;
- (d) by repealing paragraph (3) and substituting—
- “(3) I hereby consent to the adoption of the infant by
..... .”;
- (e) by repealing “foregoing statement and the effect of an adoption order” and substituting “foregoing statement and the effect of the infant being adopted by”;

- (f) by repealing note (3) and substituting—
- “(3) (a) If the infant has not been adopted, a birth certificate should be attached. If there is no such certificate, a certified copy of the document showing that the consenting party has parental rights over the infant should be attached.
- (b) If the infant has previously been adopted, do not attach the birth certificate. Instead, a certified copy of the entry in the Adopted Children Register should be attached. If there is no such entry, a certified copy of the document showing that the consenting party has parental rights over the infant should be attached; and the description of the consenting party should include the words “by adoption” or “經領養” where appropriate.”;
- (g) by repealing note (6);
- (h) in note (7), by repealing “, as mentioned in rule 29 of the Adoption Rules (Cap. 290 sub. leg. A)”.
- (7) Schedule 1 is amended, in Form 6—
- (a) by repealing “To of” and substituting “To of^(1A)”;
- (b) by adding after note (1)—
- “(1A) It is not necessary to serve this notice on the parent of an infant who has given consent in Form 4A unless the hearing is to take place within 3 months from the day on which the form was executed.”;
- (c) in note (3)—
- (i) in the English text, by repealing “Form A” where it twice appears and substituting “Section A”;
- (ii) in the English text, by repealing “Form B” where it twice appears and substituting “Section B”;
- (iii) in the Chinese text, by repealing “姓名” and substituting “身分”.
- (8) Schedule 1 is amended, in Form 7—
- (a) by repealing “being the mother/father of the infant/” and substituting—
- “being the mother/father of the infant/
being the step-parent of the infant/”;
- (b) by repealing “appearing to be” and substituting “is”;

- (c) by repealing “*District Court*” and substituting “*District Court/High Court*”;
 - (d) by repealing “SCHEDULE TO FORM 7” and substituting “SCHEDULE”;
 - (e) in the Schedule—
 - (i) in note (2)(a), by adding “or” at the end;
 - (ii) in note (2)(b), by repealing everything after “if” and substituting “an entry in respect of the infant has been made in the Adopted Children Register.”;
 - (f) in note (4), by repealing everything after “where” and substituting “an entry in respect of the infant has been made in the Adopted Children Register.”.
- (9) Schedule 1 is amended, in Form 8—
- (a) by repealing “being the mother/father of the infant/” and substituting—
 - “being the mother/father of the infant/
being the step-parent of the infant/”;
 - (b) by repealing “*District Court*” and substituting “*District Court/High Court*”.
- (10) Schedule 1 is amended, in Form 9—
- (a) by adding “/the Hon. Mr. Justice” after “Judge”;
 - (b) in Section A, by adding “/Court of First Instance” after “District Court”;
 - (c) in note (3)—
 - (i) in the English text, by repealing “Form A” where it twice appears and substituting “Section A”;
 - (ii) in the English text, by repealing “Form B” where it twice appears and substituting “Section B”;
 - (iii) in the Chinese text, by repealing “姓名” and substituting “身分”.

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

- (1) The Second Schedule is amended by repealing—

“SECOND SCHEDULE

[rule 12]”

and substituting—

“SCHEDULE 2

[rule 13]”.

(2) Schedule 2 is amended, in the Chinese text, in paragraph 15, by repealing “交付與” and substituting “交付予”.

Andrew LI
Chief Justice

13 December 2005

Explanatory Note

The Adoption Rules (Cap. 290 sub. leg. A) (“the Adoption Rules”) provide for the court rules and procedures that relate to local adoption. These Rules amend the Adoption Rules so that intercountry adoptions, other than adoptions made under the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption done at the Hague on 29 May 1993 (“Convention”) could also be dealt with under the Adoption Rules.

2. The Adoption Rules as amended by these Rules do not apply to adoptions made under the Convention (new rule 2A of the Adoption Rules as added by rule 3).

3. These Rules expressly provide for the manner of service of documents outside Hong Kong (new rule 28 of the Adoption Rules as substituted by rule 16).

4. These Rules provide for the procedures for making an application under section 23B of the Adoption Ordinance (Cap. 290) for an order for passing the care and control of an infant with a view to the infant being adopted (new rule 31A of the Adoption Rules as added by rule 19).

5. The various forms used in relation to an adoption application as set out in Schedule 1 to the Adoption Rules are being amended so that the forms could be used for both local and intercountry adoptions, other than adoptions made under the Convention (rule 20).