

## **LEGISLATIVE COUNCIL BRIEF**

Adoption Ordinance (Chapter 290)

### **Intercountry Adoption (Contracting States) (Amendment) Order 2014**

#### **INTRODUCTION**

The Secretary for Labour and Welfare (“The Secretary”) made the Intercountry Adoption (Contracting States) (Amendment) Order 2014 (“the Amendment Order”) at **Annex** on 8 December 2014 under Section 20D of the Adoption Ordinance (Cap. 290) (“the Ordinance”) to –

- (a) add 19 Contracting States to the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (“the Convention”), namely Belize, the Republic of Mali (“Mali”), the Dominican Republic (“Dominican Republic”), the Republic of Seychelles (“Seychelles”), the former Yugoslav Republic of Macedonia (“Macedonia”), the Principality of Liechtenstein (“Liechtenstein”), the Republic of Kazakhstan (“Kazakhstan”), the Republic of Senegal (“Senegal”), Montenegro, the Republic of Rwanda (“Rwanda”), the Republic of Fiji (“Fiji”), the Kingdom of Lesotho (“Lesotho”), the Kingdom of Swaziland (“Swaziland”), the Republic of Croatia (“Croatia”), the Republic of Serbia (“Serbia”), the Hellenic Republic (“Greece”), Ireland, the Socialist Republic of Viet Nam (“Viet Nam”) and the Republic of Haiti (“Haiti”) to the

Schedule to the Intercountry Adoption (Contracting States) Order (Cap. 290 sub. leg. C) (“the Order”); and

- (b) reflect the change in the applicability of the Convention to different regions of the Kingdom of the Netherlands.

## **JUSTIFICATIONS**

2. The Convention sets out a framework for international cooperation in intercountry adoptions and provides safeguards to ensure that intercountry adoptions are made in the best interest of the child. It is currently in force in 93 States. From time to time, there are new States becoming parties to the Convention.

3. The following 15 States acceded to the Convention on various dates shown in the second column of the table below. According to Article 44 of the Convention, such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification of the accession issued by the depository of Convention (which is the Ministry of Foreign Affairs of the Kingdom of the Netherlands). In accordance with Article 46(2)(a)<sup>1</sup> of the Convention, the Convention has entered into force for the 15 Contracting States since the respective commencement dates shown in the third column of the table below. Since the Central People’s Government (“CPG”) has not raised any objection to the accession of these Contracting States, the Convention has entered into force between the People’s Republic of China (“China”) (including the Hong Kong Special Administrative Region (“HKSAR”)) and these Contracting States since the respective commencement dates shown in the third column of the table below.

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Note <sup>(1)</sup> Under Article 46(2)(a) of the Convention, the Convention shall enter into force for an acceding or ratifying State on the first day of the month following the expiration of the three months after the deposit of its instrument of accession or ratification.

<b>Acceding State</b>	<b>Accession Date</b>	<b>Commencement Date</b>
Belize	20 December 2005	1 April 2006
Mali	2 May 2006	1 September 2006
Dominican Republic	22 November 2006	1 March 2007
Seychelles	26 June 2008	1 October 2008
Macedonia	23 December 2008	1 April 2009
Liechtenstein	26 January 2009	1 May 2009
Kazakhstan	9 July 2010	1 November 2010
Senegal	24 August 2011	1 December 2011
Montenegro	9 March 2012	1 July 2012
Rwanda	28 March 2012	1 July 2012
Fiji	29 April 2012	1 August 2012
Lesotho	24 August 2012	1 December 2012
Swaziland	5 March 2013	1 July 2013
Croatia	5 December 2013	1 April 2014
Serbia	18 December 2013	1 April 2014

4. Greece, Ireland, Viet Nam, and Haiti deposited their instrument of ratification on 2 September 2009, 28 July 2010, 1 November 2011 and 16 December 2013 respectively. In accordance with Article 46(2)(a) of the Convention, the Convention has entered into force between China (including HKSAR) and Greece since 1 January 2010, Ireland since 1 November 2010, Viet Nam since 1 February 2012, and Haiti since 1 April 2014.

5. Pursuant to section 20D of the Ordinance, the Secretary may, by order published in the Gazette, declare that a State is a Contracting State to the Convention and specify the date of the coming into effect of the Convention between HKSAR and the State. Accordingly, the Secretary has made the Amendment Order to declare that the 19 States referred to in paragraphs 3 and 4 above are Contracting States, and to specify the respective dates of the coming into effect of the Convention between HKSAR and these 19 Contracting States.

6. Separately, following a modification of the internal constitutional relations within the Kingdom of the Netherlands, the Government of the Kingdom of the Netherlands declared, on 18 October 2010, that the application of the Convention would be extended to the Caribbean part of the Netherlands, namely, the islands of Bonaire, Saba and Sint Eustatius. In accordance with Article 45 and 46(2)(b) of the Convention, the Convention entered into force for Bonaire, Saba and Sint Eustatius since 1 February 2011. The Secretary has made the Amendment Order to reflect also the change in the applicability of the Convention to different regions of the Kingdom of the Netherlands accordingly.

### **THE AMENDMENT ORDER**

7. The Amendment Order adds Belize, Mali, Dominican Republic, Seychelles, Macedonia, Liechtenstein, Kazakhstan, Senegal, Montenegro, Rwanda, Fiji, Lesotho, Swaziland, Croatia, Serbia, Greece, Ireland, Viet Nam and Haiti to the Schedule to the Order so that the Convention applies to an adoption between HKSAR and any of these 19 Contracting States in relation to an application made pursuant to the Convention. It also reflects the change in the applicability of the Convention to different regions of the Kingdom of the Netherlands.

### **LEGISLATIVE TIMEABLE**

8. The legislative timetable will be –

Publication in the Gazette	12 December 2014
Tabling at the Legislative Council for negative vetting	17 December 2014

## **IMPLICATIONS OF THE AMENDMENT ORDER**

9. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the current binding effect of the Ordinance and has no economic, productivity, environmental or sustainability implications.

10. Since the number of cases involving these Contracting States is expected to be very few, the additional workload, if any, on the Social Welfare Department will be absorbed from within their existing resources. In line with the funding arrangements agreed between the Administration and the Judiciary, the Judiciary will be provided with the necessary manpower and financial resources if such needs arise in future.

11. The proposal, which seeks to add 19 Contracting States to the Order, would allow the Convention to apply to an adoption between HKSAR and any of these 19 Contracting States in relation to an application made pursuant to the Convention, providing safeguards to ensure that intercountry adoptions are made in the best interest of the child. When the adopted child grows up in a caring and nurturing environment provided by his/her adoptive parents, it fosters mutual care of family members towards one another. Overall speaking, the proposal would bring a positive sustainability impact on family solidarity.

## **PUBLIC CONSULTATION**

12. Since this is a routine updating exercise, public consultation on the Amendment Order is considered unnecessary.

## **PUBLICITY**

13. A press release will be issued on 12 December 2014. A spokesperson from the Labour and Welfare Bureau will be available to

answer media enquiries.

## **BACKGROUND**

14. The CPG signed the Convention in 2000 and ratified it on 16 September 2005. The Convention entered into force for China, including HKSAR, on 1 January 2006. The Order was first made in December 2005 and took effect in January 2006.

## **ENQUIRIES**

15. Any enquiries on this brief should be addressed to Mr TANG Chun-yin, Assistant Secretary for Labour and Welfare (Welfare) 1B, at 2810 3933.

**Labour and Welfare Bureau**

**10 December 2014**

**Intercountry Adoption (Contracting States)  
(Amendment) Order 2014**

(Made by the Secretary for Labour and Welfare under section 20D of the Adoption Ordinance (Cap. 290))

1. **Intercountry Adoption (Contracting States) Order amended**  
The Intercountry Adoption (Contracting States) Order (Cap. 290 sub. leg. C) is amended as set out in section 2.
2. **Schedule amended (list of Contracting States)**
  - (1) The Schedule, Part 1—  
**Repeal**  
“Netherlands, The Kingdom of the 25 January 2006”.
  - (2) The Schedule, Part 1—  
**Add in alphabetical order**

“Belize	1 April 2006
Croatia, The Republic of	1 April 2014
Dominican Republic, The	1 March 2007
Fiji, The Republic of	1 August 2012
Haiti, The Republic of	1 April 2014
Hellenic Republic, The	1 January 2010
Ireland	1 November 2010
Kazakhstan, The Republic of	1 November 2010
Lesotho, The Kingdom of	1 December 2012
Liechtenstein, The Principality of	1 May 2009
Macedonia, The former Yugoslav	1 April 2009

Republic of	
Mali, The Republic of	1 September 2006
Montenegro	1 July 2012
Rwanda, The Republic of	1 July 2012
Senegal, The Republic of	1 December 2011
Serbia, The Republic of	1 April 2014
Seychelles, The Republic of	1 October 2008
Swaziland, The Kingdom of	1 July 2013
Viet Nam, The Socialist Republic of	1 February 2012”.

(3) The Schedule, Part 2—

**Add in alphabetical order**

“Netherlands, The Kingdom of the	The European part of the Netherlands	25 January 2006
	Bonaire	1 February 2011
	Saba	1 February 2011
	Sint Eustatius	1 February 2011”.

Secretary for Labour and Welfare

2014

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**Explanatory Note**

This Order amends the Schedule to the Intercountry Adoption (Contracting States) Order (Cap. 290 sub. leg. C)—

- (a) to add 19 Contracting States to Part 1 of the Schedule so that the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (*Convention*) applies to an adoption between Hong Kong and any of those states in relation to an application made pursuant to the Convention; and
- (b) to reflect the change in the applicability of the Convention to different regions of the Kingdom of the Netherlands.