| Chapter: | 290 | ADOPTION ORDINANCE | Gazette Number | Version Date |
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| | | Long title | L.N. 227 of 2005 | 25/01/2006 |

To make provision for the adoption of children, to give effect in Hong Kong to the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption and to provide for incidental and connected matters.
(Amended 28 of 2004 s. 2)

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

(Originally 22 of 1956)

| Section: | 1 | Short title | L.N. 227 of 2005 | 25/01/2006 |
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PART 1

PRELIMINARY

(Added 28 of 2004 s. 3)

This Ordinance may be cited as the Adoption Ordinance.

| Section: | 2 | Interpretation | L.N. 227 of 2005 | 25/01/2006 |
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In this Ordinance, unless the context otherwise requires-

"accreditation" (認可) means an accreditation granted or renewed under section 26; (Added 28 of 2004 s. 4)

"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; (Added 28 of 2004 s. 4)

"adoption order" (領養令) means an order under section 4, whether or not section 20C(2) applies in respect of the order; (Amended 28 of 2004 s. 4)

"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; (Replaced 28 of 2004 s. 4)

"Director" (署長) means the Director of Social Welfare; (Added 21 of 1960 s. 2)

"father" (父親), in relation to an infant born out of wedlock, means the birth father; (Amended 28 of 2004 s. 4)

"general register office" (登記總處) means the general register office appointed under section 3(1)(c) of the Births and Deaths Registration Ordinance (Cap 174); (Replaced 38 of 1979 s. 2)

"infant" (幼年人) means a person under 18 years of age, but does not include a person who is or has been married; (Amended 80 of 1997 s. 26)

"interim order" (臨時命令) means an order under section 9;

"parent" (父母、父或母), in relation to a child who is born out of wedlock, means- (Amended 28 of 2004 s. 4)

(a) his mother;

(b) in the case of a child whose father is entitled to exercise any right or authority in relation to the child by virtue of an order of a court under section 3(1)(d) of the Guardianship of Minors Ordinance (Cap 13), his father; (Amended 17 of 1993 s. 19)

"registers of births" (出生登記冊) means the register books of births kept in compliance with the provisions of the Births and Deaths Registration Ordinance (Cap 174) and the Births Registration (Special Registers) Ordinance (Cap 175);

"Registrar" (登記官) means the Registrar of Births and Deaths;

"relative" (親屬), in relation to an infant, means a grandparent, brother, sister, uncle or aunt, whether of the full blood, of the halfblood or by affinity, and includes-

(a) where an adoption order has been made in respect of the infant or any other person under this

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

(b) where the infant is born out of wedlock, the father of the infant and any person who would be a relative of the infant within the meaning of this definition if the infant were the legitimate child of his mother and father. (Amended 28 of 2004 s. 4)

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

| Section: | 3 | Delegation | | 30/06/1997 |
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The Director may delegate any of his powers, duties and functions under this Ordinance to any public officer.

(Added 21 of 1960 s. 3)

| Section: | 4 | Power to make adoption orders | L.N. 227 of 2005 | 25/01/2006 |
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PART 2

(Added 28 of 2004 s. 5)

MAKING OF 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.

(Replaced 28 of 2004 s. 6)

| Section: | 4A | Commencement and transfer of adoption applications | L.N. 227 of 2005 | 25/01/2006 |
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(1) Subject to section 20C(3), an application made under section 4 shall be commenced in the District Court. (Amended 28 of 2004 s. 7)

(2) An application commenced under subsection (1) may be transferred by the District Court to the Court of First Instance-

(a) at the request of any party to the proceedings; or

(b) on the motion of the District Judge.

(3) Rules may provide for the procedures connected with the transfer of applications to the Court of First Instance and for the retransfer of applications from the Court of First Instance to the District Court.

(Replaced 13 of 1987 s. 2. Amended 25 of 1998 s. 2)

| Section: | 5 | Restrictions on making adoption orders | L.N. 227 of 2005 | 25/01/2006 |
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(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. (Replaced 28 of 2004 s. 8)

(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. (Replaced 28 of 2004 s. 8)

(3) An adoption order shall not be made in respect of an infant who is a female in favour of a sole applicant who is a male, unless the Court is satisfied that there are special circumstances which justify as an exceptional measure the making of an adoption order. (Amended 48 of 1977 s. 2)

(4) (Repealed 28 of 2004 s. 8)

(5) Subject to sections 5A and 6, an adoption order shall not be made- (Amended 48 of 1977 s. 2; 13 of 1987 s. 3)

(a) in any case, but subject to section 20C(4), except with the consent of every person who is a parent or guardian of the infant, or who is liable by virtue of any order or agreement to contribute to the maintenance of the infant; or (Amended 28 of 2004 s. 8)

(b) on the application of one of 2 spouses, except with the consent of the other spouse.

(5A) A parent whose consent to an adoption order is required by virtue of subsection (5)(a) shall give that consent as the Director thinks fit in either the prescribed general form of consent or the prescribed specific form of consent. (Added 48 of 1977 s. 2)

(5B) Subject to subsection (5C), where the consent of a parent is given in the prescribed general form of consent, the parent shall cease to have any parental rights, duties, obligations or liabilities in respect of the infant with effect from the execution of the form of consent. (Added 48 of 1977 s. 2)

(5C) A parent whose consent to an adoption order was given in the prescribed general form of consent may revoke his consent by giving written notice of revocation to the Director within 3 months from the day on which the form of consent was executed, but subject to subsections (5D) and (5E) and save as aforesaid the consent shall be irrevocable. (Added 48 of 1977 s. 2)

(5D) Notwithstanding subsection (5C), a parent whose consent to an adoption order was given in the prescribed general form of consent may, at any time after the expiry of the period of 3 months referred to in that subsection and before the making of an adoption order, apply to the Court for an order revoking that consent on the ground that he wishes to resume the parental rights, duties, obligations and liabilities; and while the application is pending the Court shall not make any adoption order in respect of the child the subject of the consent. (Added 48 of 1977 s. 2)

(5E) Where-

(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). (Replaced 28 of 2004 s. 8)

(5F) The Director shall, immediately upon the execution of the prescribed general form of consent by a parent, be guardian ad litem of the infant and may, where the infant does not have a guardian or no guardian can be found, perform such duties of a guardian as may be necessary in the best interests of the infant. (Added 48 of 1977 s. 2. Amended 28 of 2004 s. 8)

(6) Subject to section 20C(5), an adoption order shall not be made in respect of any infant unless the applicant and the infant reside in Hong Kong. (Amended 66 of 1999 s. 3; 28 of 2004 s. 8)

(7) An adoption order shall not be made in respect of any infant unless-

(a) subject to paragraphs (aa) and (ab), the infant has been continuously in the actual custody of the applicant for at least 6 consecutive months immediately preceding the date of the order; (Amended 21 of 1960 s. 4; 13 of 1987 s. 3; 28 of 2004 s. 8)

(aa) where the applicant or either of the applicants is a birth parent of the infant, the infant has been continuously in the actual custody of the applicant (or both applicants, where there are joint applicants) for at least 13 weeks immediately preceding the date of the order; (Added 13 of 1987 s. 3. Amended 28 of 2004 s. 8)

(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; (Added 28 of 2004 s. 8)

(b) the applicant has lodged with the Director, not less than- (Amended 28 of 2004 s. 8)

(i) 6 months before the date of the order; or

(ii) such shorter period before that date as the Court may allow on application by the applicant,

notice in writing in the prescribed form of his intention to apply for an adoption order in respect of the infant; (Replaced 62 of 1971 s. 2. Amended 28 of 2004 s. 8)

(c) the applicant has, within 4 months after the date of lodging such notice as is referred to in paragraph (b), applied to the Court for an adoption order in respect of the infant. (Added 21 of 1960 s. 4)

(8) 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. (Replaced 28 of 2004 s. 8)

(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. (Added 28 of 2004 s. 8)

[cf. 1950 c. 26 s. 2 U.K.]

| Section: | 5AA | Applicant's authorization for criminal record checking | L.N. 227 of 2005 | 25/01/2006 |
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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).

(Added 28 of 2004 s. 9)

| Section: | 5A | Freeing infant for adoption | L.N. 227 of 2005 | 25/01/2006 |
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(1) Subject to subsection (2), where on an application made by the Director, the Court is satisfied that any consent required by section 5(5)(a) should be dispensed with, it may make an order declaring an infant free for adoption.

(2) An application in respect of an infant may be made by the Director under subsection (1) only if under any Ordinance the Director is the legal guardian of the infant or the infant is in the care of the Director.

(3) Before making an order under this section, the Court shall notify every person whose consent is to be dispensed with and who can be found (other than a person who is incapable of giving his consent) of the application under subsection (1) and give every such person an opportunity of being heard.

(4) On the making of an order under this section-

(a) all rights, duties, obligations and liabilities of the parents or guardians of the infant, referred to in section 13(1), shall vest in the Director as if the order were an adoption order and the Director were the adopter; (Amended L.N. 587 of 1995)

(b) the Director or an accredited body may place, subject to the provisions of this Ordinance, the infant for adoption; and (Replaced 28 of 2004 s. 10)

(c) section 5(5)(a) shall not apply.

(Added 13 of 1987 s. 4)

[cf. 1976 c. 36 s. 18 U.K.]

| Section: | 5B | Revocation of section 5A order | L.N. 227 of 2005 | 25/01/2006 |
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(1) Any person whose consent is required by section 5(5)(a) (hereinafter in this section referred to as "former parent"), at any time more than 1 year after the making of the order under section 5A, may if-

(a) no adoption order or interim order has been made in respect of the infant; and

(b) the infant does not have his home with a person with whom he has been placed for adoption,

apply to the Court which made the order for a further order revoking it on the ground that the former parent wishes to resume the rights, duties, obligations and liabilities referred to in section 13(1).

(2) While an application under subsection (1) is pending, the Director and any accredited body shall not place the infant for adoption without the leave of the Court. (Amended 28 of 2004 s. 11)

(3) Where an order under section 5A is revoked under this section-

(a) all rights, duties, obligations and liabilities of the parents or guardians of the infant, referred to in section 13(1), shall be vested in the person or, as the case may be, the persons in whom they were vested immediately before that order was made;

(b) if such rights, duties, obligations and liabilities, or any of them, were vested in the Director immediately before that order was made, those rights, duties, obligations and liabilities shall be vested in the person or, as the case may be, the persons in whom they were vested immediately before they

were vested in the Director,

but the revocation shall not affect any right, duty, obligation or liability so far as it relates to any period before the date of revocation.

(4) Subject to subsection (5), where an application under subsection (1) is dismissed on the ground that to allow it would not be in the best interests of the infant, the former parent who made the application shall not be entitled to make any further application under subsection (1) in respect of the infant. (Amended 28 of 2004 s. 11)

(5) Subsection (4) shall not apply where the Court which dismissed the application gives leave to the former parent to make a further application under subsection (1), but such leave shall not be given unless it appears to the Court that because of a change in circumstances or for any other reason it is proper to allow the application to be made.

(Added 13 of 1987 s. 4)
[cf. 1976 c. 36 s. 20 U.K.]

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| Section: | 5C | Validation of adoption orders | | 30/06/1997 |

Any adoption order made by the District Court prior to the commencement of the Adoption (Amendment) Ordinance 1987 (13 of 1987) shall not be invalid by reason only that the District Court dispensed with any consent required under section 5(5)(a).

(Added 13 of 1987 s. 4)

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| Section: | 6 | Dispensing with consent to adoption | L.N. 227 of 2005 | 25/01/2006 |

(1) The Court may dispense with any consent required by section 5(5)(a) if it is satisfied-

(a) in the case of a parent or guardian of the infant, that he has abandoned, neglected or persistently ill-treated the infant;

(b) in the case of a person liable by virtue of an order or agreement to contribute to the maintenance of the infant, that he has persistently neglected or refused so to contribute;

(c) in any case, that the person whose consent is required cannot be found or is incapable of giving his consent or that his consent is unreasonably withheld,

or if it is of opinion that such consent ought, in all the circumstances of the case, to be dispensed with.

(2) The Court may dispense with the consent of the spouse of an applicant for an adoption order if satisfied that the person whose consent is to be dispensed with cannot be found or is incapable of giving the consent or that the spouses have separated and are living apart and that the separation is likely to be permanent, or if it is of opinion that such consent ought, in all the circumstances of the case, to be dispensed with.

(3) The consent required by section 5(5)(a) may be given without knowing the identity of the applicant for the order; and where consent so given by any person is subsequently withdrawn on the ground only that he does not know the identity of the applicant, his consent shall be deemed for the purposes of this section to be unreasonably withheld. (Amended 28 of 2004 s. 12)

(4) While an application for an adoption order in respect of an infant is pending in any Court, any parent or guardian of the infant who has signified his consent to the making of an adoption order in pursuance of the application shall not be entitled, except with the leave of the Court, to remove the infant from the care and possession of the applicant; and in considering whether to grant or refuse such leave the Court shall have regard to the best interests of the infant. (Amended 28 of 2004 s. 12)

[cf. 1950 c. 26 s. 3 U.K.]

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| Section: | 7 | Evidence of consent of parent or guardian | L.N. 227 of 2005 | 25/01/2006 |

(1) Where any person whose consent to the making of an adoption order is required by section 5(5)(a) does not attend in the proceedings for the purpose of giving it, then, subject to the provisions of subsection (3), a document signifying his consent to the making of such an order shall, if the person in whose favour the order is to be made is named in the document or (where the identity of that person is not known to the consenting party) is distinguished therein in the prescribed manner, be admissible as evidence of that consent, whether the document is executed before or after the commencement of the proceedings:

Provided that this subsection shall not apply to a consent given by a parent in the prescribed general form of consent. (Added 48 of 1977 s. 3)

(1A) A document signifying the consent of a parent to the making of an adoption order given in the prescribed general form of consent, shall subject to subsection (3), be admissible as evidence of that consent whether the document is executed before or after the commencement of the proceedings. (Added 48 of 1977 s. 3)

(2) Where a document signifying consent to an adoption order, whether given in the prescribed specific form of consent or the prescribed general form of consent, is attested by a Commissioner for Oaths (or, if executed outside Hong Kong, by a person of any such class as may be prescribed), the document shall be admissible as aforesaid without further proof of the signature of the person by whom it is executed; and for the purposes of this subsection, a document purporting to be attested as aforesaid shall be deemed to be so attested, and to be executed and attested on the date and at the place specified therein, unless the contrary is proved. (Amended 21 of 1960 s. 5; 48 of 1977 s. 3; 47 of 1997 s. 10; 66 of 1999 s. 3)

(3) A document signifying the consent of a parent of an infant shall not be admissible under this section unless- (Amended 28 of 2004 s. 13)

(a) the infant is at least 4 weeks old on the date of the execution of the document; and (Amended 28 of 2004 s. 13)

(b) the document is attested on that date by a Commissioner for Oaths or, as the case may be, by a person of a class prescribed for the purposes of subsection (2). (Amended 10 of 1963 s. 2; 47 of 1997 s. 10)

[cf. 1950 c. 26 s. 4 U.K.]

| Section: | 8 | Functions of Court as to adoption orders | L.N. 227 of 2005 | 25/01/2006 |
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(1) The Court before making an adoption order shall be satisfied-

(a) that every person (other than a parent referred to in section 5(1)(c) if the adoption order is applied for under that section) whose consent is necessary under this Ordinance, and whose consent is not dispensed with, has consented to and understands the nature and effect of the adoption order for which application is made, and in particular in the case of any parent understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental rights;

(b) that the order if made will be 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;

(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 (Added 28 of 2004 s. 14)

(c) that the applicant has not received or agreed to receive, and that no person has made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption except such as the Court may sanction.

(1A) The Court, in making an adoption order shall consider whether it is in the interests of the infant that his original identity should be disclosed to him, having regard to the views of the prospective adopter, the opinion of the Director and also to the age and understanding of the infant. (Added 48 of 1977 s. 4)

(2) The Court in an adoption order may impose such terms and conditions as the Court may think fit, and in particular may require the adopter by bond or otherwise to make for the infant such provision (if any) as in the opinion of the Court is just and expedient.

(Amended 28 of 2004 s. 14)

[cf. 1950 c. 26 s. 5 U.K.]

| Section: | 9 | Interim orders | L.N. 227 of 2005 | 25/01/2006 |
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(1) Subject to the provisions of this section and section 20C(7), the Court may, upon any application for an adoption order, postpone the determination of the application and make an interim order giving the custody of the infant to the applicant for a period not exceeding 2 years by way of a probationary period upon such terms as regards provision for the maintenance and education and supervision of the welfare of the infant and otherwise as the Court may think fit. (Amended 28 of 2004 s. 15)

(2) All such consents as are required to an adoption order shall be necessary to an interim order but subject to a like power on the part of the Court to dispense with any such consent.

(3) An interim order shall not be made in any case where the making of an adoption order would be unlawful by virtue of section 5(7).

(4) An interim order shall not be deemed to be an adoption order within the meaning of this Ordinance.

[cf. 1950 c. 26 s. 6 U.K.]

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| Section: | 10 | Adoption order in respect of infants previously adopted | | 30/06/1997 |

(1) An adoption order or an interim order may be made in respect of an infant who has already been the subject of an adoption order under this Ordinance.

(2) In relation to an application for an adoption order in respect of such an infant, the adopter or adopters under the previous or last previous adoption order shall be deemed to be the parent or parents of the infant for all the purposes of this Ordinance.

[cf. 1950 c. 26 s. 7 U.K.]

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| Section: | 11 | (Repealed) | | 30/06/1997 |

(Repealed 48 of 1977 s. 5)

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| Section: | 12 | Rules, etc. | | 30/06/1997 |

(1) Rules in regard to any matter to be prescribed under this Ordinance and dealing generally with all matters of procedure and incidental matters arising out of this Ordinance and for carrying this Ordinance into effect shall be made by the Chief Justice. (Amended 92 of 1975 s. 58; 79 of 1981 s. 8)

(2) Such rules may provide for applications for adoption orders being heard and determined otherwise than in open court and for the non-disclosure by the Director of the whereabouts of an infant the subject of an application under section 5A, where such non-disclosure is in the interests of the infant. (Amended 13 of 1987 s. 5)

(3) For the purpose of any application for an adoption order, the Court shall, subject to any rules under this section, appoint some person to act as guardian ad litem of the infant upon the hearing of the application with the duty of safeguarding the interests of the infant before the Court. (Amended 48 of 1977 s. 6)

[cf. 1950 c. 26 s. 8 U.K.]

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| Section: | 13 | Rights and duties of parents and capacity to marry | L.N. 227 of 2005 | 25/01/2006 |

## PART 3

(Added 28 of 2004 s. 16)

## EFFECTS OF ADOPTION ORDERS

(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. (Replaced 28 of 2004 s. 17)

(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. (Replaced 28 of 2004 s. 17)

(3) For the purpose of the law relating to marriage, an adopter and the person whom he has been authorized to adopt under an adoption order shall be deemed to be within the prohibited degrees of consanguinity; and the provisions of this subsection shall continue to have effect notwithstanding that some person other than the adopter is authorized by a subsequent order to adopt the same infant.

[cf. 1950 c. 26 s. 10 U.K.]

| Section: | 14 | Cessation of certain orders, etc. | L.N. 227 of 2005 | 25/01/2006 |
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(1) Where an adoption order is made in respect of an infant who is born out of wedlock, then, subject to the provisions of this section, any order or agreement whereby the father of the infant is required or has undertaken to make payments specifically for the benefit of the infant, shall cease to have effect, but without prejudice to the recovery of any arrears which are due under the order or agreement at the date of the adoption order. (Amended 28 of 2004 s. 18)

(2) Where an infant to whom any such order or agreement as aforesaid relates is adopted by his mother, and the mother is a single woman, the order or agreement shall not cease to have effect by virtue of subsection (1) upon the making of the adoption order, but shall cease to have effect if she subsequently marries.

(3) Where an adoption order is made in respect of an infant in respect of whom an order is in force under section 34 of the Protection of Women and Juveniles Ordinance (Cap 213), committing the infant to the care of a person or institution, or under section 35 of that Ordinance regarding the control and custody of the infant, the last mentioned order shall cease to have effect.

(4) Where an adoption order is made in respect of an infant of whom the legal guardianship is vested in the Director, the Director shall cease to be the legal guardian of the infant. (Amended 1 of 1958 s. 2; 21 of 1960 s. 6)

[cf. 1950 c. 26 s. 12 U.K.]

| Section: | 15 | Intestacies, wills and settlements | L.N. 227 of 2005 | 25/01/2006 |
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(1) Where, at any time after the making of an adoption order, the adopter or the adopted person or any other person dies intestate in respect of any property, that property shall devolve in all respects-

(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. (Replaced 28 of 2004 s. 19)

(2) In any disposition of property made, whether by instrument inter vivos or by will (including codicil), after the date of an adoption order-

(a) any reference (whether express or implied) to the child or children of the adopter shall, unless the contrary intention appears, be construed as, or as including, a reference to the adopted person;

(b) subject to subsection (3), any reference (whether express or implied) to the child or children of the adopted person's birth parents or either of them shall, unless the contrary intention appears, be construed as not being, or as not including, a reference to the adopted person; and

(c) any reference (whether express or implied) to a person related to the adopted person in any degree shall, unless the contrary intention appears, be construed as a reference to the person who would be related to the adopted person in that degree- (Amended 28 of 2004 s. 19)

(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. (Amended 28 of 2004 s. 19)

(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. (Added 28 of 2004 s. 19)

[cf. 1950 c. 26 s. 13 U.K.]

| Section: | 16 | Provisions supplementary to section 15 | | 30/06/1997 |
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(1) Notwithstanding any rule of law, a disposition made by will or codicil executed before the date of an adoption order shall not be treated for the purposes of section 15 as made after that date by reason only that the will or codicil is confirmed by a codicil executed after that date.

(2) Notwithstanding anything in section 15, trustees or personal representatives may convey or distribute any property to or among the persons entitled thereto without having ascertained that no adoption order has been made by virtue of which any person is or may be entitled to any interest therein, and shall not be liable to any such person of whose claim they have not had notice at the time of the conveyance or distribution; but nothing in this subsection shall prejudice the right of any such person to follow the property, or any property representing it, into the hands of any person, other than a purchaser, who may have received it.

(3) Where an adoption order is made in respect of a person who has been previously adopted, the previous adoption shall be disregarded for the purposes of section 15 in relation to the devolution of any property on the death of a person dying intestate after the date of the subsequent adoption order and in relation to any disposition of property made after that date.

[cf. 1950 c. 26 s. 14 U.K.]

| Section: | 17 | Effect of adoption outside Hong Kong | L.N. 227 of 2005 | 25/01/2006 |
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(1) Where a person has been adopted, whether before or after the coming into operation of this section, in any place outside Hong Kong according to the law of that place, and the adoption is one to which this section applies, then for the purposes of this Ordinance and all other Hong Kong enactments, the adoption shall have the same effect as an adoption order validly made in accordance with the provisions of this Ordinance, and shall have no other effect.

(2) Subsection (1) shall apply to an adoption in any place outside Hong Kong (other than a Convention adoption), if- (Amended 28 of 2004 s. 20)

(a) the adoption is legally valid according to the law of that place; and

(b) in consequence of the adoption, the adoptive parents or any adoptive parent had, or, if the adopted person had been a young child, would have had, immediately following the adoption, according to the law of that place, a right superior to that of any birth parent of the adopted person in respect of the custody of the person; and (Amended 28 of 2004 s. 20)

(c) either-

(i) the adoption order was made by an order of any Court whatsoever of a Commonwealth country or of the United States of America or of any State or territory of the United States of America; or

(ii) in consequence of the adoption, the adoptive parents or any adoptive parent had immediately following the adoption, according to the law of that place, a right superior to or equal with that of any birth parent in respect of any property of the adopted person which was capable of passing to the parents or any parent of the person in the event of the person dying intestate without other next of kin and domiciled in the place where the adoption was made and a national of the State which had jurisdiction in respect of that place,

but not otherwise. (Amended 28 of 2004 s. 20)

(3) Nothing in this section shall restrict or alter the effect of any other adoption made in any place outside Hong Kong.

(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". (Added 28 of 2004 s. 20)

(Added 21 of 1960 s. 7)

| Section: | 18 | Adopted Children Register | L.N. 227 of 2005 | 25/01/2006 |
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PART 4

(Added 28 of 2004 s. 21)

REGISTRATION OF ADOPTION ORDERS

(1) The Registrar shall maintain at the general register office a register, to be called the Adopted Children Register, in which shall be made such entries as may be- (Amended 28 of 2004 s. 22)

(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.

(2) A certified copy of any entry in the Adopted Children Register, if purporting to be sealed or stamped with the seal of the general register office, shall, without any further or other proof of that entry, be received as evidence of the adoption to which it relates and, where the entry contains a record of the date of the birth or the country of the birth of the adopted person, shall also be received as aforesaid as evidence of that date or country in all respects as if the copy were a certified copy of an entry in the registers of births.

(3) The Registrar shall cause an index of the Adopted Children Register to be made and kept in the general register office; and every person shall be entitled to require a search to be made of that index and to have a certified copy of any entry in the Adopted Children Register in all respects upon and subject to the same terms, conditions and regulations as to payment of fees and otherwise as are applicable under the Births and Deaths Registration Ordinance (Cap 174), in respect of searches in other indexes kept in the general register office and in respect of the supply from that office of certified copies of entries in the registers of births.

(4) The Registrar shall, in addition to the Adopted Children Register and the index thereof, keep such other registers and books, and make such entries therein, as may be necessary to record and make traceable the connexion between any entry in the registers of births which has been marked "Adopted" or "受領養" pursuant to section 19 or pursuant to section 1(1)(b) of Schedule 1 and any corresponding entry in the Adopted Children Register; but the registers and books kept under this subsection shall not be, nor shall any index thereof be, open to public inspection or search, nor, except under an order of the Court, shall the Registrar furnish any person with any information contained in or with any copy or extract from any such registers or books. (Amended 80 of 1997 s. 119)

(5) Regulations made by the Chief Executive in Council under the Births and Deaths Registration Ordinance (Cap 174) may make provision as to the duties to be performed by deputy registrars and district registrars appointed for the purposes of that Ordinance in the execution of this section, section 19 and Schedule 1. (Amended 66 of 1999 s. 3)

(Amended 28 of 2004 s. 22)
[cf. 1950 c. 26 s. 17 U.K.]

| | | | | |
|---|---|---|---|---|
| Section: | 19 | Registration of adoptions | L.N. 227 of 2005 | 25/01/2006 |

(1) Every adoption order shall contain a direction to the Registrar to make in the Adopted Children Register an entry in the form set out in Schedule 2, and (subject to the provisions of subsection (2)), shall specify the particulars to be entered under the headings in items 2 to 6 of that form. (Amended 28 of 2004 s. 23)

(2) For the purposes of compliance with the requirements of subsection (1)-

(a) where the precise date of the infant's birth is not proved to the satisfaction of the Court, the Court shall determine the probable date of his birth and the date so determined shall be specified in the order as the date of his birth;

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

and where the country of birth of the infant is not proved to the satisfaction of the Court, the particulars of that country may, notwithstanding anything in that subsection, be omitted from the order and from the entry in the Adopted Children Register.

(3) Where upon any application to the Court for an adoption order in respect of an infant (not being an infant who has previously been the subject of an adoption order made by the Court) there is proved to the satisfaction of the Court the identity of the infant with a child to whom an entry in the registers of births relates, any adoption order made in pursuance of the application shall contain a direction to the Registrar to cause the entry in the registers of births to be marked with the word "Adopted" or the words "受領養".

(4) Where an adoption order is made by the Court in respect of an infant who has previously been the subject of an adoption order made by the Court, the order shall contain a direction to the Registrar to cause the previous entry in

the Adopted Children Register to be marked with the word "Re-adopted" or the words "再受領養".

(5) The prescribed officer of the Court shall cause every adoption order to be communicated in the prescribed manner to the Registrar, and upon receipt of such communication the Registrar shall cause compliance to be made with the directions contained in the order both in regard to marking any entry in the registers of births with the word "Adopted" or the words "受領養", and in regard to making the appropriate entry in the Adopted Children Register.

(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). (Added 28 of 2004 s. 23)

(Amended 80 of 1997 s. 120)
[cf. 1950 c. 26 s. 18 U.K.]

| Section: | 20 | Amendment of adoption orders and rectification of Registers | L.N. 227 of 2005 | 25/01/2006 |
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(1) The Court by which an adoption order has been made may, on the application of the adopter or of the adopted person, amend the order by the correction of any error in the particulars contained therein, and may- (Amended 28 of 2004 s. 24)

(a) if satisfied on the application of the adopter or of the adopted person that within 1 year beginning with the date of the order any new name has been given to the adopted person (whether in baptism or otherwise), or taken by him, either in lieu of or in addition to a name specified in the particulars required to be entered in the Adopted Children Register in pursuance of the order, amend the order by substituting or adding that name in those particulars, as the case may require;

(b) if satisfied on the application of any person concerned that a direction for the marking of an entry in the registers of births or the Adopted Children Register included in the order in pursuance of section 19(3) or (4) was wrongly so included, revoke that direction. (Replaced 48 of 1977 s. 7) [cf. 1976 c. 36 Schedule 1 para. 4 U.K.]

(1A) Where an adoption order is amended or a direction revoked under subsection (1), the prescribed officer of the court shall cause the amendment to be communicated in the prescribed manner to the Registrar, who shall as the case may require-

(a) cause the entry in the Adopted Children Register to be amended accordingly; or

(b) cause the marking of the entry in the registers of births or the Adopted Children Register to be cancelled. (Added 48 of 1977 s. 7) [cf. 1976 c. 36 Schedule 1 para. 4 U.K.]

(2) Where an adoption order is quashed or an appeal against an adoption order allowed, the Court shall give directions to the Registrar to cancel any marking of an entry in the registers of births, and any entry or any marking of an entry in the Adopted Children Register, which was effected in pursuance of the order. (Amended 48 of 1977 s. 7) [cf. 1950 c. 26 s. 21(3) U.K.]

(3) A copy or extract of an entry in any register, being an entry the marking of which is cancelled under this section, shall be deemed to be an accurate copy if and only if both the marking and the cancellation are omitted therefrom. [cf. 1950 c. 26 s. 21(6) U.K.]

| Section: | 20A | Interpretation of Part 5 | L.N. 227 of 2005 | 25/01/2006 |
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## PART 5

## THE CONVENTION

(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.

(Part 5 added 28 of 2004 s. 25)

| Section: | 20B | Convention to have force of law in Hong Kong | L.N. 227 of 2005 | 25/01/2006 |
|---|---|---|---|---|

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.

(Part 5 added 28 of 2004 s. 25)

| Section: | 20C | Application of the other Parts of this Ordinance | L.N. 227 of 2005 | 25/01/2006 |
|---|---|---|---|---|

(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.

(Part 5 added 28 of 2004 s. 25)

| Section: | 20D | Contracting States | L.N. 130 of 2007 | 01/07/2007 |
|---|---|---|---|---|

Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

(1) For the purposes of the Convention as it has effect under this Ordinance, the Secretary for Labour and Welfare may, by order published in the Gazette, declare that a State specified in the order— (Amended L.N. 130 of 2007)

(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.

(Part 5 added 28 of 2004 s. 25)

| Section: | 20E | Central Authority | L.N. 227 of 2005 | 25/01/2006 |
|---|---|---|---|---|

(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.

(Part 5 added 28 of 2004 s. 25)

| Section: | 20F | Recognition of Convention adoption made outside Hong Kong | L.N. 227 of 2005 | 25/01/2006 |
|---|---|---|---|---|

(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.

(Part 5 added 28 of 2004 s. 25)

| Section: | 20G | Convention adoption not recognized as full adoption on application to Court | L.N. 227 of 2005 | 25/01/2006 |
|---|---|---|---|---|

(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.

(Part 5 added 28 of 2004 s. 25)

| Section: | 20H | Convention adoption not recognized on public policy ground | L.N. 227 of 2005 | 25/01/2006 |
|---|---|---|---|---|

(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.

(Part 5 added 28 of 2004 s. 25)

| Section: | 20I | Convention adoption certificate issued in Hong Kong | L.N. 227 of 2005 | 25/01/2006 |
|---|---|---|---|---|

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

(Part 5 added 28 of 2004 s. 25)

| Section: | 20J | Modification of the definition of "Convention adoption" | L.N. 130 of 2007 | 01/07/2007 |
|---|---|---|---|---|

Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

(1) Subject to subsection (2), the Secretary for Labour and Welfare 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". (Amended L.N. 130 of 2007)

(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.

(Part 5 added 28 of 2004 s. 25)

| Section: | 21 | Supervision of infants | L.N. 227 of 2005 | 25/01/2006 |
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## PART 6

## OFFENCES

(Replaced 28 of 2004 s. 26)

(1) Subject to the provisions of subsection (2), the Director or any public officer authorized by him for the purposes of this section may visit and examine any infant in respect of whom a notification has been given to the Director under section 5(7)(b) and may enter and inspect any premises in which the Director or such public officer has reason to believe such infant is being kept. (Amended 1 of 1958 s. 2; 21 of 1960 s. 6)

(2) The powers conferred by subsection (1) shall cease-

(a) upon such notification being withdrawn; or

(b) upon an adoption order being made in respect of the infant. (Replaced 80 of 1997 s. 27)

(c) (Repealed 80 of 1997 s. 27)

(3) Any person who refuses to allow the Director or officer authorized by him to make a visit, examination, entry or inspection in accordance with subsection (1) shall be guilty of an offence and shall be liable to a fine at level 6. (Amended 1 of 1958 s. 2; 21 of 1960 s. 6; 28 of 2004 s. 27)

[cf. 1950 c. 26 s. 34 U.K.]

| Section: | 22 | Prohibition of certain payments | L.N. 227 of 2005 | 25/01/2006 |
|---|---|---|---|---|

(1) Save with the sanction of the Court, no person shall make or give or agree to make or give, or receive or agree to receive, or attempt to obtain, any payment, remuneration or reward whatsoever in connection, directly or indirectly, with the adoption or proposed adoption of an infant, except— (Amended 28 of 2004 s. 28)

(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.

(2) Any person who contravenes the provisions of this section shall be guilty of an offence and shall be liable to a fine at level 6 and to imprisonment for 6 months.

(3) The provisions of this section shall not apply to the payment to the Director of any fee prescribed by rules made in accordance with the provisions of section 12. (Added 21 of 1960 s. 8)

(Amended 28 of 2004 s. 28)

[cf. 1950 c. 26 s. 37(1) U.K.]

| Section: | 23 | Restrictions upon advertisements | L.N. 227 of 2005 | 25/01/2006 |
|---|---|---|---|---|

(1) Except with the written consent of the Director, no advertisement shall be published indicating- (Amended 1 of 1958 s. 2; 21 of 1960 s. 6)

(a) that the parent or guardian of an infant desires to cause the infant to be adopted;

(b) that a person desires to adopt an infant; or

(c) that any person is willing to make arrangements for the adoption of an infant.

(2) Any person who causes to be published or knowingly publishes an advertisement in contravention of the provisions of this section shall be guilty of an offence and shall be liable to a fine at level 5. (Amended 28 of 2004 s. 29)

[cf. 1950 c. 26 s. 38 U.K.]

| Section: | 23A | Restriction on arranging adoption and placing of infant for adoption | L.N. 227 of 2005 | 25/01/2006 |
|---|---|---|---|---|

(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).

(Added 28 of 2004 s. 30)

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

| Section: | 23B | Order passing care and control of infant with a view to his adoption | L.N. 227 of 2005 | 25/01/2006 |
|---|---|---|---|---|

(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.

(Added 28 of 2004 s. 30)

| Section: | 23C | Restriction on removal of infant with a view to adoption | L.N. 227 of 2005 | 25/01/2006 |
|---|---|---|---|---|

(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).

(Added 28 of 2004 s. 30)

[cf 1976 c. 36 s. 56 U.K.]

| Section: | 24 | Offences by corporations | | 30/06/1997 |
|---|---|---|---|---|

Where any offence under this Ordinance committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, member of the committee, secretary or other officer of the body, he, as well as the body, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

[cf. 1950 c. 26 s. 41(1) U.K.]

| Section: | 25 | Interpretation of Part 7 | L.N. 227 of 2005 | 25/01/2006 |
|---|---|---|---|---|

Remarks:
The original section 25 has been renumbered as section 33 — see 28 of 2004 s. 31.

PART 7

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

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.

(Part 7 added 28 of 2004 s. 32)

| Section: | 26 | Accredited bodies | L.N. 227 of 2005 | 25/01/2006 |
|---|---|---|---|---|

(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.

(Part 7 added 28 of 2004 s. 32)

| Section: | 26A | Revocation or suspension of accreditation | L.N. 227 of 2005 | 25/01/2006 |
|---|---|---|---|---|

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.

(Part 7 added 28 of 2004 s. 32)

| Section: | 26B | Register of accredited bodies | L.N. 227 of 2005 | 25/01/2006 |
|---|---|---|---|---|

(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.

(Part 7 added 28 of 2004 s. 32)

| Section: | 27 | Duty to apply for assessment of suitability to be an adoptive parent | L.N. 227 of 2005 | 25/01/2006 |
|---|---|---|---|---|

(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.

(Part 7 added 28 of 2004 s. 32)

| Section: | 27A | Application for suitability assessment and authorization for checking criminal record, etc. | L.N. 227 of 2005 | 25/01/2006 |
|---|---|---|---|---|

(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.

(Part 7 added 28 of 2004 s. 32)

| Section: | 28 | Criminal record checking, etc. | L.N. 227 of 2005 | 25/01/2006 |
|---|---|---|---|---|

(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.

(Part 7 added 28 of 2004 s. 32)

| Section: | 29 | Suitability assessment | L.N. 227 of 2005 | 25/01/2006 |
|---|---|---|---|---|

(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.

(Part 7 added 28 of 2004 s. 32)

| Section: | 29A | Placement of infants for local adoption where specific consent is given | L.N. 227 of 2005 | 25/01/2006 |
|---|---|---|---|---|

(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.

(Part 7 added 28 of 2004 s. 32)

| Section: | 29B | Placement of infants for local adoption where general consent is given | L.N. 227 of 2005 | 25/01/2006 |
|---|---|---|---|---|

(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.

(Part 7 added 28 of 2004 s. 32)

| Section: | 29C | Placement of infants for adoptions other than local adoption | L.N. 227 of 2005 | 25/01/2006 |
|---|---|---|---|---|

(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.

(Part 7 added 28 of 2004 s. 32)

| Section: | 29D | Termination of placement | L.N. 227 of 2005 | 25/01/2006 |
|---|---|---|---|---|

(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 7 added 28 of 2004 s. 32)

| Section: | 29E | Review of decisions of accredited bodies | L.N. 227 of 2005 | 25/01/2006 |
|---|---|---|---|---|

## PART 8

## MISCELLANEOUS

(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.

(Part 8 added 28 of 2004 s. 32)

| Section: | 30 | Appeals | L.N. 227 of 2005 | 25/01/2006 |
|---|---|---|---|---|

(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.

(Part 8 added 28 of 2004 s. 32)

| Section: | 31 | Cessation of accreditation | L.N. 227 of 2005 | 25/01/2006 |
|---|---|---|---|---|

(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.

(Part 8 added 28 of 2004 s. 32)

| Section: | 32 | Regulation | L.N. 130 of 2007 | 01/07/2007 |
|---|---|---|---|---|

Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

The Secretary for Labour and Welfare may make regulations— (Amended L.N. 130 of 2007)

(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.

(Part 8 added 28 of 2004 s. 32)

| Section: | 33 | Adoption to be effected under the Ordinance | L.N. 227 of 2005 | 25/01/2006 |
|---|---|---|---|---|

Remarks:

This section was originally section 25 but has been renumbered as section 33 - see 28 of 2004 s. 31.

(1) After 31 December 1972, an adoption in Hong Kong may be effected only in accordance with this

Ordinance.

(2) Subsection (1) shall not affect in any way the status or rights of a person adopted in Hong Kong under Chinese law and custom before 1 January 1973. (Amended 57 of 1995 s. 15)

(Replaced 28 of 1972 s. 2. Amended 28 of 2004 s. 31)

| Section: | 34 | Transitional provisions for section 23A | L.N. 227 of 2005 | 25/01/2006 |
|---|---|---|---|---|

(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.

(Added 28 of 2004 s. 33)

(Enacted 1994)

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**+ Commencement date: 25 January 2006.**

| Section: | 35 | Transitional provisions for Part 7 | L.N. 227 of 2005 | 25/01/2006 |
|---|---|---|---|---|

(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.

(Added 28 of 2004 s. 33)

| Schedule: | 1 | REGISTRATION OF CERTAIN ADOPTIONS MADE OUTSIDE HONG KONG | L.N. 227 of 2005 | 25/01/2006 |
|---|---|---|---|---|

[sections 18 & 19(6)]

**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.

(Added 28 of 2004 s. 34)

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**Note:**

**+ Commencement date: 25 January 2006.**

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| Schedule: | 2 | FORM | L.N. 227 of 2005 | 25/01/2006 |

[section 19(1) & Schedule 1]

領養子女登記冊記項表格

FORM OF ENTRY IN ADOPTED CHILDREN REGISTER

| | | |
|---|---|---|
| 1. | 記項編號<br>No. of entry | |
| 2. | 子女出生日期及國家<br>Date and country of birth of child | |

| | | |
|---|---|---|
| 3. | 子女姓名<br>Surname and name of child | |
| 4. | 子女性別<br>Sex of child | |
| 5. | 領養人或各領養人的姓名、地址及職業<br>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<br>Date of adoption order and description of Court which made the order | |
| 7. | 登記日期<br>Date of entry | |
| 8. | 登記官所委任的核簽記項的人員的簽署<br>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)<br>Status of permanent resident of the Hong Kong Special Administrative Region under the Immigration Ordinance (Cap 115) (Established/ Not established) | |

(Schedule 2 added 28 of 2004 s. 34)

| | | | | |
|---|---|---|---|---|
| Schedule: | 3 | RELEVANT PROVISIONS OF CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION | L.N. 227 of 2005 | 25/01/2006 |

[section 20B]

*(Done at the Hague on 29 May 1993)*

CHAPTER I—SCOPE OF THE CONVENTION

*Article 2*

(1) The Convention shall apply where a child habitually resident in one Contracting State ( "the State of

origin”) has been, is being, or is to be moved to another Contracting State (“the receiving State”) either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin.

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

*Article 3*

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

CHAPTER II—REQUIREMENTS FOR INTERCOUNTRY ADOPTIONS

*Article 4*

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

(a) have established that the child is adoptable;

(b) have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child’s best interests;

(c) have ensured that—

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

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

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

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

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

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

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

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

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

*Article 5*

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

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

(b) have ensured that the prospective adoptive parents have been counselled as may be necessary; and

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

CHAPTER III—CENTRAL AUTHORITIES AND ACCREDITED BODIES

*Article 7*

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

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

(a) provide information as to the laws of their States concerning adoption and other general information,

such as statistics and standard forms;

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

*Article 8*

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

*Article 9*

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

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

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

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

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

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

*Article 10*

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

*Article 11*

An accredited body shall—

(a) pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation;

(b) be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption; and

(c) be subject to supervision by competent authorities of that State as to its composition, operation and financial situation.

*Article 12*

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

CHAPTER IV—PROCEDURAL REQUIREMENTS IN INTERCOUNTRY ADOPTION

*Article 14*

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

*Article 15*

(1) If the Central Authority of the receiving State is satisfied that the applicants are eligible and suited to adopt, it shall prepare a report including information about their identity, eligibility and suitability to adopt, background,

family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, as well as the characteristics of the children for whom they would be qualified to care.

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

*Article 16*

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

(a) prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child;

(b) give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background;

(c) ensure that consents have been obtained in accordance with Article 4; and

(d) determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child.

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

*Article 17*

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

(a) the Central Authority of that State has ensured that the prospective adoptive parents agree;

(b) the Central Authority of the receiving State has approved such decision, where such approval is required by the law of that State or by the Central Authority of the State of origin;

(c) the Central Authorities of both States have agreed that the adoption may proceed; and

(d) it has been determined, in accordance with Article 5, that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorized to enter and reside permanently in the receiving State.

*Article 18*

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

*Article 19*

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

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

(3) If the transfer of the child does not take place, the reports referred to in Articles 15 and 16 are to be sent back to the authorities who forwarded them.

*Article 20*

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

*Article 21*

(1) Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in

the child's best interests, such Central Authority shall take the measures necessary to protect the child, in particular —

(a) to cause the child to be withdrawn from the prospective adoptive parents and to arrange temporary care;
(b) in consultation with the Central Authority of the State of origin, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange alternative long-term care; an adoption shall not take place until the Central Authority of the State of origin has been duly informed concerning the new prospective adoptive parents;
(c) as a last resort, to arrange the return of the child, if his or her interests so require.

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

*Article 22*

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

CHAPTER V—RECOGNITION AND EFFECTS OF THE ADOPTION

*Article 23*

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

CHAPTER VI—GENERAL PROVISIONS

*Article 29*

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

*Article 30*

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

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

*Article 31*

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

*Article 32*

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

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

*Article 34*

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

*Article 36*

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

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

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

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

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

*Article 37*

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

(Schedule 3 added 28 of 2004 s. 34)

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| Schedule: | 4 | ACCREDITATION PRINCIPLES | L.N. 227 of 2005 | 25/01/2006 |

[sections 25 & 26(2)]

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.

(Schedule 4 added 28 of 2004 s. 34)