

**Guidelines on the Assessment of Application
To Advertise Adoption Service
In the Hong Kong Special Administrative Region (HKSAR)**

I. Application Law

- 1.1 Any advertisement relating to adoption related matters is governed by Section 23(1) (Restrictions upon advertisements) of the Adoption Ordinance, Cap. 290 which stipulates that:
- 1.2 Except with the written consent of the Director (which refers to the Director of Social Welfare, Social Welfare Department, Hong Kong Special Administrative Region Government), no advertisement shall be published indicating-
- (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.
- 1.3 The Director of Social Welfare (DSW) is responsible for approval of such advertisement in Hong Kong.

II. Applicable Principles

- 2.1 As the HKSAR is a party to the 1993 Hague Inter-country Adoption Convention (the Convention), HKSAR is obliged to follow the four general principles of the Convention, namely:
- (a) Ensuring adoptions take place in the best interests of the child and with respect for his or her fundamental rights including subsidiarity, non-discrimination and measures supporting the best interests principle;
 - (b) Establishing safeguards to prevent abduction, sale and trafficking in children for adoption including protection of families, combating

abduction, sale and trafficking in children, ensuring that proper consents are given and preventing improper financial gain and corruption;

- (c) Establishing co-operation between States including co-operation between Central Authorities, co-operation regarding Convention procedures and co-operation to prevent abuses and avoidance of the Convention; and
- (d) Ensuring authorisation of competent authorities [UNCRC, Article 21(a)] including Competent Authorities, Central Authorities (CAs) and Accredited Bodies (ABs) and Approved (non-accredited) Persons (APs).

2.2 In relation to advertisement of adoption service, particular attention must be paid to the subsidiarity principle in adoption as stated in paragraph 2.1(a) above and as in the following paragraphs since, to safeguard the child's best interests, attempt for local adoption must be exhausted before a child is being arranged for inter-regional / country adoption (Please see details in **Appendix I**).

2.3 Hence, in line with the spirit and framework of the Convention, only application(s) made by an AB / AP (refer to as the Applicant below) as stated in paragraph 2.1(d) above which has a proven good record of compliance with the four general principles of the Convention as stated above will be considered. A two-stage assessment will be conducted for all applications.

III. Assessment Procedures

3.1 All applications should be sent by hand or by post to the following address :

Director of Social Welfare
(Attn: Officer-in-charge, Adoption Unit)
Social Welfare Department
Room 201, 2/F., North Point Government Offices

333 Java Road, North Point
Hong Kong

To ensure compliance with the principles of the Convention, the following steps will be taken in assessing the application (Please see the Flow Chart in **Appendix II**) :

3.2. Stage I:

- i. Upon receiving the application, if not all the required information is provided, DSW or his/her delegate will issue a letter within 14 working days from the date of receipt of application by hand or the date of the postal chop if sent by post to acknowledge receipt of the application and request the Applicant to provide the following information if such is not yet available:
 - (a) confirmation whether the Applicant is an AB / AP of a member state;
 - (b) written evidence from the CA of the State where the Applicant provides adoption service if the answer to (a) is affirmative;
 - (c) the purpose, layout and relevant information / substance of the advertisement;
 - (d) confirmation from the CA of the State where the Applicant provides adoption service and of the State(s) where the child(ren) being advertised for adoption, if applicable, that the child(ren) available for adoption has / have already been considered for local adoption but could not find suitable prospective adoptive parents; and
 - (e) the list of other CAs and/or ABs / APs that the Applicant has been partnering with, if applicable.
- ii. Upon receipt of sufficient information on the background / status of the Applicant (i.e. sub-paragraph i(a), (b), (d) & (e) above), DSW or his/her delegate should contact the CA of the State where the Applicant provides adoption service within seven working days to check AB / AP status and track record of the Applicant.

- iii. If the result of (ii) is not affirmative, the application should be turned down and the Applicant will be informed that his/her application is not approved within seven working days from the date of the decision.
- iv. For the Applicant who fails to provide the required documents / information within two months starting from his/her initial application date, the application should be turned down and the Applicant will be informed that his/her application is not approved within seven working days from the date of the decision.

3.3. Stage II:

- i. Upon receipt of all the required information and documents from the Applicant and the CA, DSW or his/her delegate will assess the application based on the applicable principles set out in Part II above. If the Applicant fails to comply with any one of the principles, the application will be turned down. The Applicant will be informed of the application result within seven working days from the date of the decision.
 - (a) in assessing the purpose, layout and relevant information / substance of the advertisement as stated in paragraph 3.2(i)(c) above, DSW or his/her delegate must ensure that privacy of the child(ren) is protected;
 - (b) in any event, the advertisement should not contain any picture of the child(ren) or personal information of the child(ren) that leads to the identification of the child(ren); and
 - (c) the Applicant should be informed in writing within 14 working days on the final result of the application upon receipt of all the required information and documents from the Applicant and the CA.

**Family and Child Welfare Branch
Social Welfare Department
Hong Kong Special Administrative Region Government
March 2011**

The Subsidiarity Principle in Adoption

A. Extract from The Hague Convention

1. The principle of subsidiarity is highlighted in the Preamble to the Convention and in Article 4 (b) which provides that:

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

2. Subsidiarity means that States Party to the Convention recognises that a child should be raised by his or her birth family or extended family whenever possible. If that is not possible or practicable, other forms of permanent family care in the country of origin should be considered.
3. Only after due consideration has been given to national solutions should intercountry adoption be considered, and then only if it is in the child's best interests.
4. Intercountry adoption serves the child's best interests if it provides a loving permanent family for the child in need of a home. Intercountry adoption is one of a range of care options which may be opened to a child in need of a permanent family.

Reference

The Guide to Good Practice (Guide No. 1) of the Convention (2008), The Hague Conference on Private International Law, Family Law, Jordan Publishing, UK.

B. Extract from the Code of Practice for Accredited Bodies in HKSAR under the Adoption Ordinance, Cap. 290

2nd SUBSIDIARITY PRINCIPLE [HC: Preamble, ICSW: Paragraph 1.3, AO: Section 20B and Schedule 3 Article 4(b)]

1.9 Prevention of child abandonment has priority over various alternative solutions. Hence, we need to support the child's natural parent(s) if he/she/they want to take care of the child by rendering available and eligible assistance such as financial assistance. When an inter-country adoption is considered for a child, this measure should be compared to alternative permanent placements. A family placement always has priority over placement in an institution, local placements have priority over intra-country placements and intra-country placements have priority over inter-country placements.

Flow Chart on Handling Application to Advertise Adoption Service in HKSAR

All applications to advertise adoption service should be sent to:
 Director of Social Welfare (Attn.: Officer-in-charge, Adoption Unit)
 Social Welfare Department, Room, 201, 2/F., North Point Government Offices,
 333 Java Road, North Point, Hong Kong

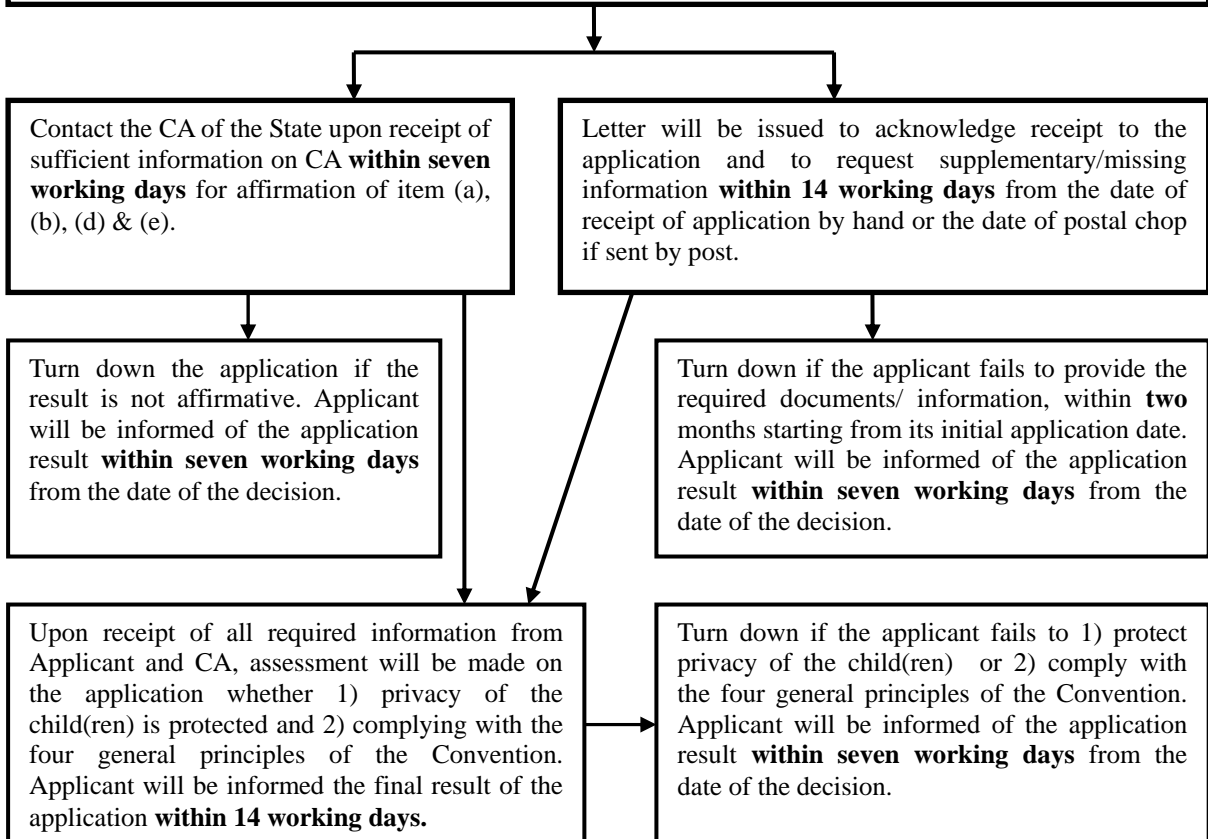
Stage I

Director of Social Welfare (DSW) or his/her delegate makes assessment upon receipt of the application

Applicant is required to provide the following information/supporting document from item (a) to (e):

- a) Confirmation whether the applicant is an AB/AP of a member state;
- b) Written evidence from the CA of the State where the Applicant provides adoption service if the answer to (a) is affirmative;
- c) The purpose, layout and relevant information/substance of the advertisement;
- d) Confirmation from the CA of the State where the Applicant provides adoption service and of the State(s) where the child(ren) being advertised for adoption, if applicable, that child(ren) available for adoption has/have been considered for local adoption but could not find suitable prospective adoptive parent(s) and
- e) List of other CA and/or ABs/ APs that the applicant has been partnering with, if applicable.

AB: Accredited body, AP: Authorized person, CA: Central Authority



Stage II