

**Code of Practice for Accredited Bodies
in the Hong Kong Special Administrative Region (HKSAR)
under the Adoption Ordinance (Chapter 290)**

1. PREAMBLE

GENERAL

1.1 Adoption is a legal process by which parental rights and responsibilities over a child are transferred from the birth parents to the adoptive parents. An adoption in Hong Kong must be effected in accordance with the Adoption Ordinance, Cap. 290. The “best interests of the child” is the guiding principle in the adoption process.

1.2 This Code of Practice is issued by the Director of Social Welfare with delegated power conferred by the Secretary for Labour and Welfare for the purpose pursuant to Section 32(b) and (d) of the Adoption Ordinance, Cap. 290. It aims to set out the **criteria, principles and guidelines** that apply to organisations that are granted accreditation as Accredited Bodies (corporate or unincorporated) (here below refers as ABs) pursuant to Section 26(1) to (6) in performing adoption services pertaining to local and inter-country adoption as well as intra-country adoption where applicable¹.

1.3 The statutory provisions and document referred to in this Code of Practice are those in force as at 1 November 2010, readers should check if there are any subsequent amendments to the same. The ABs² should read this Code of Practice carefully, in conjunction with the Adoption Ordinance (Cap. 290) and the Adoption Rules (Cap. 290A). If the ABs are operated in a manner that is inconsistent with the principles set out in this Code of Practice, the Director of Social Welfare may revoke or suspend their accreditation in accordance with Section 26A(a) of the Adoption Ordinance.

1.4 Compliance with this Code of Practice does not release the ABs or any other person from any liabilities, obligations or requirements imposed under any other ordinances or common law.

¹Intra-country adoption refers to adoption services between residents of Macau SAR and Hong Kong SAR, between Mainland China and Hong Kong SAR and vice versa.

² ABs should also refer to two prevailing policy documents, namely "Accreditation System in respect of Local Adoption in the HKSAR" issued in July 2008 and "Accreditation System in respect of Inter-country Adoption in the HKSAR" last updated in September 2008. For details, please visit the website of Social Welfare Department : http://www.swd.gov.hk/en/index/site_pubsvc/page_family/sub_listofserv/id_adoptionse/

RELEVANT INTERNATIONAL AND LOCAL DOCUMENTS

1.5 These criteria are based on the following four international documents and three local documents, which are referred to in the text by their abbreviations in brackets:

International documents

(1) The 1993 Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (HC) and Guide(s) to Good Practice as well as other relevant documents endorsed by the Special Commission on the HC or published by the Permanent Bureau of the Hague Conference on Private International Law from time to time;

(2) The 1989 United Nations Convention on the Rights of the Child (UNCRC);

(3) The 1986 United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (UN Declaration);

(4) The 1996 International Council of Social Workers (ICSW) Guidelines for Practice on National and Intercountry Adoption and Foster Family Care; and The Child's Right to Grow Up in a Family;

Local documents

(5) The Adoption Ordinance, Cap. 290 of the Laws of the HKSAR (AO);

(6) The Code of Practice for Registered Social Workers of the Social Worker Registration Board (CoP for RSW); and

(7) The Prevention of Bribery Ordinance, Cap. 201 of the Laws of the HKSAR (PBO).

1.6 The first four documents are widely recognised as fundamental cornerstones in child welfare and inter-country adoption work while the three local documents govern the practice of adoption in HKSAR by registered social workers as required by AO. It is therefore not necessary to reiterate all the principles and guidelines set forth in them. Accreditation to perform functions and duties under the HC is granted only to organisations that comply with the principles and guidelines laid down in these seven documents.

FUNDAMENTAL PRINCIPLES

1.7 The set of criteria should apply to organisations including affiliated, wholly or partly controlling, subsidiary and partnering etc. that are granted accreditation as ABs. The criteria are minimum requirements for the structure and function of organisations performing duties under the HC. These criteria are based on the fundamental principles embedded in the seven documents mentioned above:

1st CHILD PRIORITY RULE [HC: Article 1, ICSW: Paragraphs 1.3.1-4, AO: Sections 5(5F), 5B(4), 6(4), 8(1)(b), 20H(1), 23B, 29B, 29C(2)(b) and 29D]

1.8 This is the fundamental principle. The well-being, rights and best interests of the child are of paramount importance and should take precedence over any other interests. The interests and rights of prospective adopters, institutions, organisations and authorities are all secondary to the best interests of the child.

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

1.9 The 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.

2. ADOPTION SERVICES [HC: Chapters II to IV, ICSW: Chapter 2 and AO: Sections 2, 22, 23, 23A and 26 and Schedule 4 where applicable]

2.1 AVAILABILITY OF SERVICE (AO: Section 26 and Schedule 4)

The ABs shall offer their adoption services (the Service) to the applicants (interchangeably referred to "prospective adoptive parents" hereafter) on a non-discriminatory basis according to the terms of its accreditation. All applicants shall have equal access to the Service, provided that they fulfil the criteria for adoption as stated in the HC and the laws and regulations of the HKSAR.

2.2 INFORMATION (HC: Articles 5 and 17, ICSW: Paragraph 2.3)

The ABs shall give the applicants all relevant information concerning the principles guiding adoptions, requirements and possibilities to adopt, waiting time, risks and costs. The ABs shall define the rights and responsibility of the applicants, the ABs and their co-operation partners and convey this information to the applicants and its co-operation partners. The ABs shall at an early stage inform the applicants of the procedural, legal and financial consequences of an interruption of the adoption process by the applicants or the ABs. The ABs shall furnish all relevant information to the applicants, their cooperation partners and relevant authorities without undue delay.

2.3 ADOPTION COUNSELLING (HC: Articles 5, 15 and 17, ICSW Paragraph 2.3)

Adoption counselling must be carried out according to the rules, regulations and criteria defined by the competent authority of the HKSAR. The ABs shall ensure that these standards are upheld and that the same criteria are applied to all applicants when considering their applications for adoption.

2.4 PREPARATION OF PROSPECTIVE ADOPTIVE PARENTS (HC: Article 5, ICSW: Paragraphs 2.3.1, 2.3.3 and 2.3.5)

The ABs shall promote appropriate preparation of the applicants for adoption either through its own programmes or programmes offered by other entities competent to do so. Such programmes should focus on the special psychological, social, cultural and legal issues associated with adoption.

2.5 THE ADOPTION PROCESS [HC: Article 9(b), Chapter IV, and Article 35, ICSW: Paragraphs 2.2.1, 2.3 and 2.4]

The ABs shall comply with the practices including but not limited to the following basic ones:

- i. follow a clearly defined adoption policy and a systematic plan for the Service throughout the adoption process;
- ii. monitor and evaluate continuously the Service and its quality to ensure high standards;
- iii. collect and maintain the information necessary to plan, manage and evaluate their adoption programme properly;
- iv. conduct their work taking into account of the primary objectives of an adoption (the best interests of the child) and ensure their compatibility with

- the requests for service and defined needs of those requesting the Service; Expediency must be a guiding principle for the procedures of its work; and
- v. encourage the prospective adoptive parents to travel to the child's country of origin and bring him or her home as far as possible, in cases of inter-country adoption. The ABs must ensure that the child's welfare is safeguarded during the journey to the receiving country.

2.6 DOCUMENTATION (HC: Chapter IV, Articles 30 and 31, ICSW: Paragraphs 2.4.10 and 2.4.11)

The ABs shall maintain client records in a secure manner, ensuring the necessary confidentiality. Only information relevant to the Service rendered and compliant with legal regulations should be documented and stored. Documents concerning adoption cases shall be preserved permanently and be available to adoptees on request for root-tracing. In case the ABs cease to function, the continued preservation of their adoption records must be either properly secured or passed to the Central Authority (CA) for retention. Such documentation shall be preserved to facilitate root-tracing and research that does not breach the confidentiality of those involved in the adoption. The ABs should facilitate research that may improve adoption practice and procedures.

2.7 ETHICAL RULES

The ABs shall have their own set of written ethical rules and subscribe to it, which shall be in conformity with the seven documents referred to in the Preamble and their fundamental principles and regulations. The rules should also be acceptable to a wider forum of organisations engaged in child welfare work. The ABs should cooperate with other adoption bodies to develop standards and practice of adoptions.

2.8 PUBLICITY AND ADVERTISEMENT [AO: Section 23(1)]

The ABs must pay due regard to the privacy of the adoptive children, the birth parents, the prospective adoptive parents and the adoptive parents. Other than the necessary information to inform the public with reference to those stated in paragraph 2.2 above during their normal course of delivering the Service, the ABs should seek written consent from the CA for any publicity and advertisement according to the Laws of the HKSAR. The ABs should read in conjunction the specific guidelines in this regard, which is also promulgated in March 2011.

2.9 CONFLICT OF INTEREST [AO: Sections 22(1) and 23A(5)]

2.9.1 The ABs must not hold any financial or other interest, and must not give an undertaking, that could directly or indirectly compromise the performance of their functions. The ABs must notify the CA of the HKSAR in writing if a potential or actual conflict of interests arises.

2.9.2 The ABs shall ensure that there will not be any infringement of the laws including those stated in Sections 22(1) and 23A(5) of the AO which stipulate that:

Section 22(1): 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 those stated in Sections 22(1)(a) & (b) and (3).

Section 23A(5): 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).

2.9.3 Furthermore, the ABs should have a clear accounting policy as stipulated in paragraph 4 below and a practice to register every donation; and should account for their source of income. Such information should be ready for inspection by the CA upon request.

2.10 ACCEPTANCE OF GIFTS OR BENEFITS [AO: Section 22(1)(b)]

Except for the payment for the cost and expenses reasonably incurred in connection with the adoption or proposed adoption of an infant approved by the CA, the ABs must not, either directly or indirectly accept a gift, donation or benefit if it could either actually or potentially be seen as intended or likely to cause the ABs to undertake their responsibilities in a particular way, or to deviate from the proper course of action.

2.11 FAIRNESS AND EQUITY

2.11.1 The manner in which the ABs deal with issues or applicants for adoption must be consistent, prompt and fair. This includes dealing with matters in accordance with accepted procedures set by the CA, dealing with matters without discrimination against race, gender, ethnicity etc., and providing appropriate review and appeal mechanisms.

2.11.2 If an AB proposes to exercise a discretionary power in relation to a particular case, the AB must ensure that all relevant considerations are taken into account in regard to the particular merits of the case and maintain proper documentation (see also paragraph 2.6 above).

2.12 USE OF INFORMATION (HC: Article 31), Personal Data (Privacy) Ordinance, Cap. 486

If an AB or its staff has received any information by virtue of its position as an AB or staff of an AB, it must not give or disclose to any other person, use or in any way deal with such information save and except for the purposes of carrying out the AB's functions and which are consistent with the purpose of data collection or unless approved by the CA. The provisions and principles stipulated in the Personal Data (Privacy) Ordinance, Cap. 486 should be observed, for example, Personal data collected from the prospective adoptive parents solely for adoption purpose shall not without prescribed consent of the prospective adoptive parents be used for any purpose other than adoptive purpose or a directly related purpose.

3. ORGANISATION

3.1 RELATION TO THE LAWS OF THE HKSAR (AO: Schedule 4)

The objectives and organisational structure of the ABs shall be laid down in statutes, a charter, a memorandum or articles or a document of similar nature that complies with the laws of the HKSAR of accreditation. This document must be approved at the appropriate level of the organisation to be valid under the laws of the HKSAR. The ABs must be registered, licensed or incorporated as a charitable organisation according to the laws of the HKSAR in which it is accredited. The objects and methods of work of the ABs must be in conformity with the laws and regulations of the HKSAR in which it is accredited.

3.2 INSPECTION [HC: Article 11(c), ICSW: Paragraph 2.4.12]

The ABs shall be open to inspection by the CA at any time both with regard to their finances and functions. The CA shall have the right to carry out inspection within its jurisdiction. The ABs shall be obliged to provide all material necessary to enable the CA to satisfy itself that the requirements for accreditation are fulfilled.

3.3 GOVERNANCE (HC: Articles 10 and 11, AO: Sections 26(1), 26A(a) and Schedule 4)

Each AB shall have a governing entity, which shall establish its policy and strategy, decide on its programmes, guide its development and provide leadership. The governing entity shall ensure that the policy and activities of the ABs are in conformity with the HC and the laws and regulations of the HSKAR by which it is accredited to act. The members of the governing entity should be well informed and keep themselves updated on developments in adoption work. The ABs must have a clearly defined management structure and appoint qualified staff to perform the duties entrusted to it.

3.4 CODE OF CONDUCT (PBO: Sections 2 and 9)

The ABs are fully committed to the principle of honesty, integrity and fair play in the delivery of the Service to the public and shall develop a code of conduct setting out the basic standard of conduct expected of all staff and the organisation's policy on matters including acceptance of advantages, declaration of conflict of interest by staff in connection with their work duties, misuse of work position and handling of classified or proprietary information, etc. The code also applies to volunteers, temporary or part-time staff employed by the organisation (see also paragraphs 2.7, 2.9, 2.10, 2.11 and 3.3 above).

4. FINANCES

4.1 NON-PROFIT [HC: Articles 11 and 32, ICSW: Paragraphs 2.4.15, AO: Sections 8(C) and 22(b) and Schedule 4]

4.1.1 The ABs shall have a written policy that establishes their non-profit status. The ABs shall also have a written policy on principles of payment to staff and advisors, in the HKSAR where they are accredited to act.

4.1.2 The salaries and fees paid to staff, representatives and advisors shall be within limits generally acceptable for such professional services in the

Government of the HKSAR. For persons who are in a position to influence the number of adoptions, their remuneration should not be based on the number of adoptions. Fees paid by the ABs to professionals should commensurate with the work carried out.

4.1.3 The fees and payments charged to prospective adoptive parents shall reflect operating costs and expenses related to the adoption work performed. Such fees and payment must be approved by the CA.

4.1.4 To avoid actual or apparent conflict of interest, the ABs should have a clear policy and practice to account for their source of income and donations which are ready for inspection by the CA upon request and submit for inspection in each annual self-assessment and renewal of their accredited status.

4.2 FINANCIAL STABILITY [AO: Schedule 4 subsection 1(b)(ii)]

The ABs shall have a stable financial basis that allows them to perform their duties and honour their long-term commitments, even if disruptions in their adoption programmes may temporarily reduce their revenues from fees and payments.

4.3 TRANSPARENCY

4.3.1 The ABs shall ensure full transparency in financial matters. Fees received and the purposes for which they are spent shall be available to the public (see also paragraphs 2.2 and 2.9 above).

4.3.2 The ABs must ensure transparency from their cooperation partners. If satisfactory clarity about purposes and/or spending of money cannot be obtained, co-operation must cease.

4.3.3 On request, the ABs shall provide the CA with all necessary information about their source of income, financial management and status and their audited annual accounts. The accounts must show other activities including donations, membership activities, aid and sponsorship programmes, etc. which are clearly separated from adoption work.

4.4 ACCOUNTABILITY [HC: Articles 4(d)(4), 8 and 32, ISCW: Paragraphs 1.3.13 and 2.4.7b].

4.4.1 The ABs shall follow principles of financial management, book-keeping and accounting that are accepted and mandated by the laws and regulations of

the HKSAR by which they are accredited. The ABs are responsible for the financial transactions related to their adoption work (legal fees, costs for care of children, etc). Such transactions should be identifiable in the accounts.

4.4.2 The costs of adoption must be paid by the prospective adoptive parents through the ABs of the receiving country to the ABs of the country of origin for inter-country adoption, and not directly to the ABs of the country of origin.

4.5 PREDICTABILITY

The principles applied in charging fees and costs should be established and known to the prospective adoptive parents before the adoption process. If the actual fees and costs and/or the principles for charging them may be changed during an adoption process, the change must be approved by the CA and communicated to the prospective adoptive parents in advance (see also paragraph 2.2 above).

4.6 DONATIONS AND CONTRIBUTIONS

4.6.1 When donating funds to other welfare services unit(s) or contributions related to their adoption programmes, the ABs must take great care to avoid the risk of unduly influencing its adoption work. There must be no direct link between support given or promised and the number of children or characteristics of children placed through the ABs. While striving to avoid such direct links between donations and adoptions, the ABs must try by other means to facilitate the provision of funds for welfare and development purposes in the HKSAR to avoid foreign aid to influence them in performing their independent role (see also paragraphs 2.9 and 2.10 above).

4.6.2 Prospective adoptive parents must be informed that direct donations in connection with their adoption process are not permitted. To avoid actual or potential conflict of interest, donations in any form to other services of the ABs should be avoided (see also paragraph 3.4 above).

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