

ADOPTION

Doc. pré. No 1
Prel. Doc. No 1

août / August 2009



**QUESTIONNAIRE SUR LES ORGANISMES AGRÉÉS DANS LE CADRE DE LA
CONVENTION DE LA HAYE DU 29 MAI 1993 SUR LA PROTECTION
DES ENFANTS ET LA COOPÉRATION EN MATIÈRE
D'ADOPTION INTERNATIONALE**

établi par le Bureau Permanent

* * *

**QUESTIONNAIRE ON ACCREDITED BODIES IN THE FRAMEWORK OF THE
HAGUE CONVENTION OF 29 MAY 1993 ON PROTECTION
OF CHILDREN AND CO-OPERATION IN RESPECT
OF INTERCOUNTRY ADOPTION**

drawn up by the Permanent Bureau

*Document préliminaire No 1 d'août 2009 à l'intention de la
Commission spéciale de juin 2010 sur le fonctionnement pratique de la
Convention de La Haye du 29 mai 1993 sur la protection des enfants et
la co-opération en matière d'adoption internationale*

*Preliminary Document No 1 of August 2009 for the attention of the
Special Commission of June 2010 on the practical operation of the
Hague Convention of 29 May 1993 on Protection of Children and
Co-operation in Respect of Intercountry Adoption*

**QUESTIONNAIRE SUR LES ORGANISMES AGRÉÉS DANS LE CADRE DE LA
CONVENTION DE LA HAYE DU 29 MAI 1993 SUR LA PROTECTION
DES ENFANTS ET LA COOPÉRATION EN MATIÈRE
D'ADOPTION INTERNATIONALE**

établi par le Bureau Permanent

* * *

**QUESTIONNAIRE ON ACCREDITED BODIES IN THE FRAMEWORK OF THE
HAGUE CONVENTION OF 29 MAY 1993 ON PROTECTION
OF CHILDREN AND CO-OPERATION IN RESPECT
OF INTERCOUNTRY ADOPTION**

drawn up by the Permanent Bureau

Introduction

The Permanent Bureau is undertaking preparations for the Third Special Commission Meeting to review the practical operation of the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (1993 Hague Convention), which is to be held in The Hague in June 2010. It is intended that the Special Commission will provide the opportunity for State Parties to the Convention (as well as States which are considering or preparing for ratification or accession) to exchange information and experiences on the operation of the Convention, to compare practices, and to discuss any difficulties in respect of the implementation and practical operation of the Convention.

Following the recommendations of the 2005 Special Commission, and based on the Discussion Paper on Accreditation Issues,¹ the Permanent Bureau is gathering information for a new Guide to Good Practice on Accreditation. The following Questionnaire has been developed for this purpose. Your responses to this Questionnaire will be an invaluable source of information for us in developing the new Guide.

As you know, in many countries, accredited bodies perform the functions of Central Authorities in relation to particular adoptions under the 1993 Hague Convention. The process of accreditation of bodies is one of the Convention's safeguards to protect children during the adoption process. The Convention requires that accredited bodies be not for profit, staffed by qualified and experienced personnel and be subject to supervision by competent authorities (Art. 11). Basic standards are imposed by the Convention to guide the accreditation process. It is implicit in the Convention that States will develop their own accreditation criteria, based on Convention objects and standards and expanded as necessary to meet the requirements of the individual State. The new Guide will include a set of model accreditation criteria.

In addition, according to Article 12, bodies accredited in one State and wishing to operate in another State must be specifically authorised to do so by the competent authority of both States (the accrediting State and the State of operation). In order to clear up some misunderstandings, the new Guide will explain the differences between accreditation and authorisation.

This Questionnaire is addressed to Member States of the Hague Conference and Contracting States to the 1993 Hague Convention. Obviously, it is understood that some questions can only be readily answered by Contracting States. It is also understood that some questions are more relevant to States of origin than to receiving States and vice versa.

As regards all other States which are not yet Party to the Convention, as well as certain intergovernmental organisations and non-governmental international organisations which have also been invited to Special Commissions as Observers, we would welcome from them any comments in respect of any items in the Questionnaire which are considered relevant.

We intend, except where expressly asked not to do so, to place all replies to the Questionnaire on the Hague Conference website. We would therefore request that replies be sent to the Permanent Bureau, if possible by e-mail, to: secretariat@hcch.net.

¹ "A Discussion Paper on Accreditation Issues", drawn up by Jennifer Degeling, Principal Legal Officer, with the assistance of Carlotta Alloero, Intern.

NAME OF STATE OR ORGANISATION: Hong Kong Special Administrative Region, People's Republic of China ("HKSAR")

EXPLANATIONS AND QUESTIONS

If a question does not apply to your State, please answer "Not applicable" or "N/A".

Some questions can be answered by marking a box.

Where your answer refers to specific provisions of your law / laws, please cite the law and provision number as it may be a helpful reference in the Guide to Good Practice.

Where your answers can be enhanced by providing a link to an electronic version of a document (*e.g.*, guidelines, criteria), please give that link.

USE OF TERMINOLOGY

There are three situations in which accreditation and authorization (as used in the Convention) may occur. A distinction is to be made between "accreditation" and "authorisation":

- (1) adoption bodies are accredited in the receiving State to work in States of origin (Arts 10, 11) (1993 Hague Convention terminology: **accreditation**);
- (2) those adoption accredited bodies of receiving States are granted authorisation in the State of origin with a view to arranging the adoption (Art. 12) (1993 Hague Convention terminology: **authorisation**);
- (3) bodies in the State of origin are accredited by it to work with foreign bodies of the receiving State with a view to adoption (Arts 10, 11) (1993 Hague Convention terminology: **accreditation**).

NB: FOR STATES OF ORIGIN, PLEASE MAKE IT CLEAR IN YOUR ANSWERS IF YOU ARE REFERRING TO YOUR OWN ACCREDITED BODIES OR TO FOREIGN ACCREDITED BODIES WORKING IN YOUR STATE.

A. General policy issues concerning accreditation

1. In your State what terminology do you use for the situations described in (1), (2) and (3) above? Is it the same or different? If different, please specify, define and indicate if you intend to use your own terminology to answer the following questions.

In the HKSAR, we generally share the same understanding on the use of the terminology described above. Accreditation under situation 3 is the most common situation in the HKSAR.

2. Is your State a receiving State or a State of origin or both?

Both. Our legislation allows us to be both a receiving place and a place of origin.

Having said that, the HKSAR has been acting primarily as a place of origin. There are about 20 children from the HKSAR placed for overseas adoption each year and only about one to two children adopted by local families from places outside the HKSAR. We expect the same situation in future.

3. Have you informed the Permanent Bureau all of the details of bodies accredited by your State, as required by Article 13? Is the information which is currently on the

Hague Conference website up to date?

Yes, we have informed the Permanent Bureau of all the details of the bodies accredited by us pursuant to Article 13 of the Convention. The information on Accredited Bodies (ABs) of the HKSAR on the Hague Conference website is also up to date.

If your State has decided not to use accredited bodies, please explain the reasons and indicate what has influenced the decision. Please answer any questions that are relevant to your State's situation.

N.A. (We use ABs)

4. How do you define "accreditation" and "accredited body" in your State?

"accreditation" and "accredited body" are defined in the Laws of the HKSAR under section 2 of the Adoption Ordinance (AO, Cap. 290, http://www.legislation.gov.hk/blis_ind.nsf/CurAllEngDoc/5888AE9A7C830DE9482571000023D32C?OpenDocument) -

"accreditation" means an accreditation granted or renewed under section 26 of the AO which stipulates that -

- 1) The Director (i.e. the Director of Social Welfare (DSW)) may, in accordance with the principles set out in Articles 10 and 11 of the Convention, 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.

(http://www.legislation.gov.hk/blis_ind.nsf/CurAllEngDoc/B491B0735557E99248257100002437B1?OpenDocument)

"accredited body" means a body of persons accredited as an AB, or the accreditation of which is renewed, under section 26 of the AO.

5. Do the following categories of actors come within the definition of accredited body (are they included as accredited body staff, employees or personnel)?

- facilitators (if they exist in your State, please specify their role)
- national representatives of foreign accredited body
- translators
- lawyers (*e.g.*, with a power of attorney from prospective adopters)
- guide, drivers, etc.

None of the above categories of actors come within the definition of ABs in the HKSAR.

If these actors are not employees of the accredited body, what is their legal relationship, if any, to the accredited body?

N/A.

6. As at 30 September 2009, what is the current number of accredited bodies in your State, state or province? If possible, please indicate how many bodies have been refused accreditation, have lost their accreditation or discontinued their activities since 1 January 2006, and for what reason.

As at 30 September 2009, there were three ABs in respect of intercountry adoption in the HKSAR.

Since the implementation of the accreditation system in 2006, no application for accreditation has been turned down, and no ABs have lost their accreditation or discontinued their activities.

7. Do you think the number of accredited bodies accredited by, or operating in your State is proportional to the number of intercountry adoptions taking place? If not, do you intend to take any appropriate measures?

Yes, given that the number of children available for intercountry adoption is not large.

8. Do you impose any limits on the number of accredited bodies which are granted accreditation in your State? If yes, on what grounds are limits imposed?

No

9. Does the Central Authority or the accredited body make the choice of the foreign States with which the accredited body could work (if authorisation were to be given)?

It is the ABs which make the choice when they apply for accreditation. They may extend their lists of foreign State(s) by making applications to the Central Authority (CA) of the HKSAR (i.e. DSW)

Receiving State questions

10. (i) Receiving States: does the grant of accreditation automatically include an authorisation to act in:

- a) any State of origin;
- b) a specified State / States of origin?

No. A separate application is required.

- (ii) Do you limit the number of accredited bodies for every State of origin?

No

B. Organisation and structures

11. On which subjects does the accredited body have to provide evidence to, or inform, the Central Authority or other competent authority to obtain or maintain accreditation? Please tick relevant box:

- Composition of the accredited body's personnel and any changes
- Qualifications and experience of personnel
- Resolution of the board of governors attesting that the body is bound by ethical principles and rules of professional conduct
- Internal statute, regulations and guidelines of accredited body, including
 - documents which demonstrate the legal constitution of the accredited body
 - financial management and accounting practices
- Costs and expenses charged by accredited body
- Copy of the terms of collaboration between the accredited body and the body or person to whom the body entrusts responsibilities in performance of the adoption procedure
- Budget forecasts for 12-24-36 months
- Copy of the standard-form contract between the body and adoptive candidate
- Insurance for legal liability
- Other – please provide details

Receiving State questions

- Certified true copy of an official version of the legislation of the State of origin with which the accredited body will co-operate
- Contracts with foreign collaborators or intermediaries, their qualifications and mode of payment (monthly salary / flat rate for every adoption)
- Agreements with orphanages in the countries of origin or internal regulations relating to the handling of cases, and confidentiality rules
- Copy of the statement of authorisation or approval to work in the State of origin if applicable
- Evidence of knowledge of the situation (cultural, social and legal) in the State of origin
- Evidence of knowledge of the adoption law and practice in the State of origin, and understanding of the role of counterparts in the State of origin

None of the above. Instead, we request applicants to submit, with proof, their lists of overseas network of government bodies or accredited adoption bodies with which they work in arranging for intercountry adoption. We would then check whether the bodies on their lists are ABs in their respective countries through the Hague Conference website.

12. Is it compulsory for staff of an accredited body to be professionally qualified? If yes, which professions? (*e.g.*, lawyers, psychologists, psychiatrists, social workers, etc).

The document "Accreditation System in respect of Intercountry Adoption in the HKSAR" (the Document on Accreditation) issued by the Social Welfare Department (SWD) sets out, among other things, the principles and criteria adopted by DSW in considering applications for accreditation in respect of intercountry adoption in the HKSAR. As stated in that document, one of the criteria for accreditation is that there is or will be a designated section in the agency directed by persons with appropriate qualifications and staffed by registered social workers to undertake home assessment and placement tasks for adoption. Registered social workers are defined in the Social Workers Registration Ordinance (Cap 505 of the laws of the HKSAR) and are bound by the code of practice issued by the social workers

registration board.

13. If volunteers are used, what is the ratio of volunteers to professional staff?

No such restriction.

14. Are your accredited bodies required to sign a contract or agreement with the prospective adoptive parents? In general, what are the obligations of accredited bodies to adoptive candidates?

No

15. What are the role and responsibility of the Central Authority or competent authorities with respect to the training of accredited bodies?

The CA of the HKSAR has no specific statutory role and responsibility in the training of ABs. That said, the qualification requirements as mentioned at Q12 above can help to ensure the professionalism and competency of personnel in ABs.

16. Are your accredited bodies required to have internal guidelines for carrying out tasks related to adoptions including guidelines on confidentiality of information?

Yes, as required by the Document on Accreditation, ABs shall have clearly defined adoption procedures and a systematic plan for the services it renders throughout the adoption process. As for staff requirement, as mentioned at Q12 above, the designated adoption service team of ABs must include registered social workers (as defined in the Social Workers Registration Ordinance (Cap 505 of the laws of the HKSAR)). All registered social workers are bound by the code of practice issued by the Social Workers Registration Board, in which upholding confidentiality is one of the principles and practices. You may access the code of practice at http://www.swrb.org.hk/Engasp/draft_cop_e.asp

17. Are your accredited bodies required to keep the adoption records for a certain number of years? How many years?

Yes. Pursuant to the Document on Accreditation, documents concerning adoption cases shall be kept permanently and be available to adoptees on request.

C. Accreditation procedure

18. Please provide details (including powers and resources) of the authority or authorities which grant accreditation. Briefly describe the procedure to obtain accreditation.

As stipulated in section 26 of AO, DSW may, in accordance with the principles set out in Articles 10 and 11 of the Convention, accredit, or renew the accreditation of, a body of persons (corporate or unincorporated) as an accredited body in relation of convention adoption; or non-convention adoption.

Regarding application procedures, the applicant should submit its application by completing the form "Accreditation Application/Renewal Application in respect of Inter-country Adoption" and submitting all the information/documents required as listed in the form. The form can be downloaded at http://www.swd.gov.hk/en/index/site_download/page_document/. Upon receiving all relevant information, DSW will consider thoroughly whether the application should be approved or not.

19. Please give a brief outline of your accreditation criteria, guidelines or legislation. If possible, please provide an electronic copy of your accreditation criteria, guidelines or legislation, and any translations into English, French or Spanish.

According to the Document on Accreditation, an agency seeking accreditation by DSW in the HKSAR shall meet the following objectives/requirements, irrespective of whether it intends to handle Convention, non-Convention adoptions, or both:

- the agency pursues only non-profit-making objectives and has sound financial conditions to enable it to take on intercountry adoption work;
- the agency has specialized experience in providing child welfare services;
- the agency has a clearly-delineated organization structure, resources to make adoption arrangements for children, and a written policy and working procedures governing the work of the agency;
- there is or will be a designated section in the agency directed by persons with appropriate qualifications and staffed by registered social workers to undertake home assessment and placement tasks for the purpose of intercountry adoption;
- there is or will be a committee/board set up by the management of the agency to monitor the adoption work of the agency;
- there is a good track record of the agency in providing adoption or other child welfare services and clear documentation on such services; e.g. for agency currently providing adoption services, reference will be made to the number of children adopted through the agency's programme, types of special needs children placed for adoption, and length of adoption processing time by the agency in the HKSAR, etc.;
- the agency has no record of conviction for offences against children;
- the agency places or undertakes to place the child's interests as the paramount consideration in its intercountry adoption work;
- the agency complies with the laws of the HKSAR (particularly the AO if previous adoption arrangements have been made) and will follow the principles laid down in the Hague Convention, as applicable, in respect of intercountry adoption work carried out by the agency;
- for an agency seeking accreditation for non-Convention adoption, it has an established overseas network (or has a concrete plan to develop such a network) of government bodies and/or licensed/accredited adoption bodies in the arrangement of adoption; and
- there is or will be a mechanism in place to handle complaints arising from the adoption service provided by the agency.

20. Is there a central registry of all accredited bodies?

Yes, it is actually required in law. As stipulated in section 26B of the AO -

- (1) DSW shall cause to be kept, in such form as he may specify, a register of ABs containing—
 - (a) the name and address of every accredited body; and
 - (b) such other particulars as DSW thinks fit.
- (2) DSW 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 DSW during office hours by any member of the public.
- (4) A certificate purporting to be signed by or for DSW 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 DSW shall, until the contrary is proved, be admitted in evidence as proof of the facts stated in the certificate.

21. For how long is the accreditation granted?

As stipulated in section 26(4) of the AO, an accreditation, unless revoked or suspended, shall be valid for a period of 4 years or such lesser period as DSW may determine when he grants or renews the accreditation.

22. What are the conditions for renewal of accreditation?

Conditions for renewal of accreditation are more or less the same as a fresh application.

D. Authorisation of foreign accredited bodies

23. In your State how do you define “authorisation” in the context of Article 12? Do you have criteria for authorisation?

It is not defined in the AO. A foreign body accredited in a Contracting State would also need to go through the accreditation process and be accredited in the HKSAR if it would like to act under the Convention in the HKSAR.

24. Who makes the decision to authorise accredited bodies in accordance with Article 12? Is your process of authorisation formal or informal? Please describe the process.

N.A.

25. Is the Permanent Bureau informed of the authorisations?²

N.A.

Receiving State questions

26. As a receiving State, can you provide the current numbers of accredited bodies authorised for individual countries of origin?

N.A.

27. On what basis does the accredited body seek authorisation to work in a State of origin?

² “Where a body accredited in one Contracting State is, in accordance with Article 12, authorised to act in another Contracting State, such authorisation should be communicated to the Permanent Bureau by the competent authorities of both States without delay”, Recommendation No 3 of the 2005 Special Commission (reaffirming Recommendation No 2 of the 2000 Special Commission).

N.A.

28. What factors or criteria are relevant for the Central Authority (or competent authority) to consider when giving or denying authorisation to work in a State of origin?

N.A.

State of origin questions

29. As a State of origin, have you authorised foreign accredited bodies to undertake intercountry adoptions in your State (see Art. 12)? How many accredited bodies are currently authorised and from which receiving countries? How many were authorised as at 31 December 2005?

N.A.

30. As a State of origin, is the foreign accredited body required to be fully accredited by your State and by your procedures, rather than simply "authorised"?

N.A. (We have not received such requests.)

31. As a State of origin, how do you decide how many foreign accredited bodies are needed in your State?

N.A.

32. Countries of origin: If you authorise a foreign accredited body to "act" in your State, does this mean:

- a) the foreign accredited body must establish an office with professional staff (nationals of the State of origin or of the receiving State)?
- b) the foreign accredited body can "act" in your State through an individual facilitator or intermediary
- c) the foreign accredited body does not have an office or intermediary in the State of origin and it liaises directly with the Central Authority?

N.A.

33. Countries of origin: have you experienced any difficulties with foreign accredited bodies working with or in your State?

N.A.

E. Supervision and review of accredited bodies

34. How do you supervise bodies accredited in your State (Art. 11 c)? Are regular reports required such as annual reports (including financial reports) from the accredited body to the supervising authority?

ABs are required to provide a number of regular reports to DSW, which include –

- monthly statistical returns to be submitted quarterly, including the profile of users, services rendered, programmes conducted and other information as may be required, such as the number of applications received, child studies completed, etc.;
- self-assessment to be submitted at least annually to confirm that the essential system, services, records and resources are in place to ensure compliance with the requirements regarding its accreditation;
- annual audited financial reports to ensure that the agency has in place an effective system of financial management and control; and
- information on organizations and individuals with whom the AB has worked, to be submitted annually, etc.

35. What supervision occurs in the State of origin of authorised foreign accredited bodies?

N.A.

36. How is the performance of the accredited body assessed or evaluated?

ABs are required to submit annual self-assessment reports to DSW. The performance of ABs will be assessed based on the criteria for accreditation as mentioned at Q19 above.

In assessing the performance of ABs, DSW may require the ABs to provide such information in connection with the application as he thinks necessary. The following assessment activities may also be carried out:

- review of programme records and case records;
- review of administrative records;
- programme implementation site visit; and
- actual observation on the operation of the programme.

37. Does the supervising authority have the power to make regular inspections of and reports on the accredited bodies? Have secrecy or privacy laws hindered inspections?

As set out in the Document on Accreditation, ABs need to make regular reports to DSW (i.e. the supervising authority) as mentioned at Q34 above. Besides, ABs are also required to maintain records in relation to their adoption service and make them available at all reasonable times for inspection by DSW, which include -

- records relating to the adoption service, including case records with home assessment reports, child study records and placement records;
- records of staff handling adoption matters;
- service statistics as DSW may from time to time require;
- records of complaints and legal proceedings involving the AB; and
- financial records of the AB.

Furthermore, DSW also has the power to carry out the activities as listed out in Q36 above for the purpose of accreditation assessment.

The secrecy or privacy laws have not hindered inspection.

38. Do you require accredited bodies to report on any problems with intercountry adoptions, such as problems with particular countries, procedural problems or problems with implementation of the 1993 Hague Convention (see Convention Art. 33)?

No. ABs will seek advice from CA or its agent (i.e. Adoption Unit of the CA) should they encounter any problem with the implementation of the 1993 Hague Convention.

39. Does your law have provisions to deal with breach of duties or breach of the conditions of accreditation by accredited bodies? *E.g.*, Suspension or revocation of accreditation or authorisation? Other penalties / measures? Please give details.

Yes. As stipulated in section 26A of the AO, DSW, 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.

40. If accreditation has been suspended or withdrawn and is later re-instated, what conditions, if any, apply after re-instatement?

So long as an applicant meets the criteria of accreditation, it can apply for accreditation. DSW will consider each case based on the criteria mentioned at Q19, which include, among other things, that the applicant has a good track record in providing adoption or other child welfare services.

41. Is it possible to suspend or withdraw accreditation if the general situation in the State no longer offers the necessary guarantees for intercountry adoptions?

Yes. Pursuant to section 26A of the AO, DSW, 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.

42. Are there restrictions upon activities of accredited bodies (*e.g.*, advertising their services; advertising, including on the internet, of adoptable children; limits on amounts that can be charged for fees and other expenses)?

Yes. Under section 23 of the AO,

- (1) Except with the written consent of DSW, 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.
- (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. (which is HK\$50,000 (approximately US\$6,400) at present).

Under section 22(1)(b) of the AO, payment to an accredited body is permitted 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 DSW from time to time in relation to the accredited body. Prior approval from DSW should be obtained if there is any change of fee.

43. Are you aware of any acts or behaviour by accredited bodies that contravened your accreditation criteria? Please also provide details of any sanctions or penalties applied?

No.

44. What are the means used by the authorities supervising accredited bodies in order to improve good practices or remedy breaches in relation to requirements for accreditation or as regards to behaviour?

DSW provides guidance to ABs through the Document on Accreditation to which a Code of Conduct for ABs is annexed. To further promote good practices in providing adoption services, DSW plans to issue a Guide to Provision of Intercountry Adoption Service and a Code of Practice for ABs.

45. Is there collaboration among the accredited bodies working in the same State of origin, or in different countries? If so, what kind of collaboration?

Yes. There is collaboration in searching for suitable homes for children, etc.

46. Is the information on each accredited body's website regularly checked by the supervising authority? By an authority in the State of origin with which it co-operates?

Yes. The information is checked on a random basis.

F. Financial issues

47. How are your accredited bodies financed?

All the three existing ABs are subvented Non-Governmental Organisations which receive subventions from the government for delivering specific subvented social services. Yet, only one of them receives recurrent subventions from the government for arranging overseas adoption for wards of DSW or for children adopted by their relatives overseas. The other two ABs run the service on a self-financing basis. Having said the above, the ABs are allowed to flexibly deploy the subvention obtained from the Government for providing social welfare services to intercountry adoption services subject to some conditions.

ABs are allowed to charge the adoption applicants fees for the services they provide, but the fees should only be for covering the administration costs as all ABs must provide the service on a non-profit making basis. Accreditation is only granted to and maintained by a body of persons or a charitable institution exempted from tax under section 88 of the Inland Revenue Ordinance

Besides subvention from the Government and fee income, ABs may also be financed by other means such as donations.

48. How are fees and charges set? *E.g.*, by accredited bodies themselves, by a public authority. Is there bilateral co-operation between your State and other countries to establish appropriate fees for the 2 countries concerned?

Pursuant to section 22 of the AO, ABs may charge adoption applicants fees to cover the administration costs. The level of such fees has to be reasonable, in an amount that is calculated in accordance with a schedule of fees approved by DSW from time to time.

Moreover, as stipulated in the Document on Accreditation, the level of salaries of directors, administrators and employees of the AB should not be unreasonably high in relation to the services rendered. In general, the salaries of the staff of ABs in the HKSAR at present do not exceed those of civil servants of comparable ranks. We do not have any bilateral cooperation with other countries to establish appropriate fees for the 2 countries concerned.

49. Is detailed information about all the fees, charges and costs associated with an intercountry adoption available easily to adoptive candidates and other authorities?

Adoption applicants and other authorities can obtain such information from the ABs. ABs are required to publish their service fees in their service pamphlets.

50. How and when is that information provided to adoptive candidates?

Adoption applicants ask ABs for such information before they use the service.

51. How is financial transparency and accountability of accredited bodies achieved? *E.g.*, by standard bookkeeping? Receipts and proof of purchases? Reports submitted with financial statement?

ABs are required to keep a separate financial account for intercountry adoption. All income and expenditures in relation to the service have to be stated clearly. In addition, ABs are also required to submit annual audited financial reports to DSW to ensure that the agency has in place an effective system of financial management and control.

52. Do you allow donations to be paid to children's homes by the accredited bodies or prospective adoptive parents? Under what conditions?

There is no restriction on ABs or prospective adoptive parents making donation to children's homes, as the latter will not be involved in deciding who will adopt the children.

To avoid actual or apparent conflict of interests, the Code of Conduct for ABs annexed to the Document on Accreditation requires that ABs must not accept a gift, donation or benefit if it could be seen as intended or likely to cause the accredited body to undertake its responsibilities in a particular way, or to deviate from the proper course of action.

Moreover, the Document on Accreditation also requires ABs to account for its source of income and donations, make such accounts ready for inspection by the CA upon request, and submit them for inspection in each annual self-assessment and on renewal of its accredited status.

53. The costs relating to adoption are extremely difficult to evaluate. Can you state the average amount or range (smallest to highest amount payable) for the following items.

For the agent of the CA, the costs relating to adoption are as follows:

- Where the HKSAR is a receiving place and adoption order is granted in the HKSAR with DSW as Guidian Ad Litem(GAL), GAL fee of HK\$2,840 (approximately US\$365) will be charged; and
- Where the HKSAR is a place of origin, there will be no charge.

As for the Schedule of fee charging by ABs, they are as follows:

Costs in the receiving State

- a) registration with an accredited body,
HK\$2,000 (approximately US\$260).
- b) administrative costs, establishment and sending of the adoptive candidate's documents, etc.

to be included in the home study and programme fee which is charged at HK\$18,000 (approximately US\$2,310)
- c) costs for adoption training and preparation courses for prospective adoptive parents

to be included in the home study and programme fee which is charged at HK\$18,000 (approximately US\$2,310)
- d) cost of procurement of statutory documents (birth or marriage certificates, psychosocial report, etc.) –

N.A.
- e) cost of human resources (salaried staff) of the body in the receiving State and in the State of origin –

to be included in the home study and programme fee which is charged at

HK\$18,000 (approximately US\$2,310) and post-placement fee which is charged at HK\$6,000 (approximately US\$770) for service of one year or below and at HK\$10,000 (approximately US\$1,285) for service of more than a year for the AB/HKSAR

- f) cost of professional services in the receiving State (*e.g.*, lawyers, notaries, doctors) –

No such fee.

- g) other – please specify.

Nil

Costs in the State of origin

- a) the body's administrative costs,

Registration fee: US\$100

- b) cost of procurement of statutory documents (birth or marriage certificates, psychosocial report, etc.),

No such fee

- c) co-ordination of the case through (in-country staff of) the accredited body,

No such fee

- d) cost of professional services (lawyers, interpreters, guides, drivers, etc) in the State of origin,

If the documents submitted to us are in English or Chinese, no interpretation fee is required. Otherwise, there will be a charge for the interpretation costs incurred.

The CA does not require adoption applicants to hire other professional services (lawyers, interpreters, guides, drivers, etc) unless they consider it necessary.

- e) cost of filing of the documents with the appropriate authorities,

to be included in the processing fee of US\$500 for one child except the adoption order to be granted in the HKSAR (in such case the charge will be HK\$2,840(or approximately US\$365))

- f) translation and assistance,

If the documents are in English or Chinese, no interpretation fee is required. Otherwise, there will be a charge for the interpretation costs incurred.

- g) legal or administrative costs in the State of origin,

The CA does not require adoption applicants to be represented by lawyer. Other administrative costs are included in the US\$500 processing fee.

- h) transport and hotel costs for the adoptive parents,

by reimbursement

i) humanitarian contribution and donation to the orphanage, etc.,

No such requirement

j) other – please specify.

Optional: escort service fee – varies according to the actual expenditures on airfare, hotel accommodation, visa application fee, airport transfer, and a daily allowance of about HK330 (approximately US\$42) or less per day

54. What is the relation between adoption fees (and contributions) and actual costs? Is it calculated for the whole budget of the accredited body, or per State, or does each adoption carry its own costs? How is the relation between fees and actual costs supervised?

The adoption fees are calculated for the whole budget of the AB

As mentioned at Q42 above, the schedule of fees charged by ABs has to be approved by DSW pursuant to section 22 of the AO. Prior approval from DSW should be obtained if there is any change of fee.

55. What general comments can you give about costs of intercountry adoption (from the perspective of your own State and in other countries?)

The schedule of fees charged by ABs has to be approved by DSW pursuant to section 22 of the AO. All ABs only charge the adoption applicant to cover the administrative costs for providing the adoption service.

State of origin questions

56. In the State of origin, who is responsible for the co-ordination of the costs: an accredited body's employee? A third-party? In case of a third-party, how is he selected? How is he financed? How is he evaluated? What mechanisms are in place to ensure that these costs are reasonable and transparent? What are the factors that make these costs vary from one adoptive file to another?

ABs are responsible for co-ordination of the costs in the HKSAR after the fee charging is approved by DSW according to section 22 of the AO.

G. Operational issues

57. Which are the tasks carried out by accredited bodies in your State? Tick boxes if applicable. For countries of origin, please specify if your own national accredited bodies or foreign accredited bodies perform the tasks.

Receiving State questions

- Determination of eligibility of prospective adoptive parents (legal criteria)
- Evaluation of suitability of prospective adoptive parents (psychosocial criteria)
- Decision granting approval for the prospective adoptive parents to adopt
- Information and preparation of adoptive parents for intercountry adoption
- Make the matching decision
- Counselling of PAPs about child proposed to them (the proposed match)
- Agreements under article 17 of the 1993 Hague Convention
- Arrange to file documents with Court or authority of State of origin

Note: If HKSAR is the receiving place and the adoption order is granted in HKSAR Courts, the Adoption Unit, which is the agent of the CA instead of ABs will file the documents with Court

- Report to supervising authority on status of the adoption
- Assist PAPs with Travel preparations
- Follow, know, understand, and supervise the procedure for the adoption
- Other tasks: please provide details

State of origin questions

- Assessment of the adoptability of a child
- Work with birth parents on family preservation to avoid adoption of the child
- Decision on the adoptability of a child
- Counselling and information for birth parents / consequences of consent
- Obtaining Consent
- Search for parents in cases of abandonment
- Assume responsibility for the child prior to the adoption
- Prepare the child for adoption
Note: ABs have such a role after the matching is approved by DSW
- Agreements under Article 17 of the 1993 Hague Convention
- File adoption documents with court or authority
- Search for socio-biological background information of child and birth family and reunion with birth family
- Make the matching decision
- Preparation of the adoptive child–
Note: ABs have such a role after the matching is approved by DSW
- Assistance provided to the adoptive parents during their stay
- Other tasks: please provide details. such as liaison with overseas AB and preparation of child study report

H. Post adoption services and reports

58. What post adoption services do your accredited bodies offer (e.g., counselling and family support)? Is provision of post adoption services one of the conditions of accreditation?

When the HKSAR is a receiving place, the post adoption services which ABs would provide include, among other things, counselling, family support, monitoring of the adopted child's development, preparation of progress report, etc. When we are a place of origin, ABs would receive post adoption report from overseas ABs.

59. Are there any publicly funded post adoption services?

Yes. one of the three ABs receives recurrent subventions from government for arranging overseas adoption and post adoption services for wards of DSW or for children adopted by their relatives overseas.

Receiving State questions

60. Do accredited bodies have to provide regular reports on the child? To whom are the reports sent e.g., Central Authorities of State of origin and of receiving State? Other?

We do not require ABs to prepare or submit to us reports on the child. Whether and how often they need to prepare the report depend on the requirement of individual States of Origin.

61. Do your accredited bodies prepare the post adoption report or do they ask the adoptive parents to prepare it and send it to the State of origin? If a public authority is responsible for post adoption reporting, please explain.

As mentioned at Q60, adoption placement reports are prepared by the ABs.

62. How do you monitor the obligation to the State of origin to send post adoption reports?

As mentioned at Q.60, we do not require ABs to prepare or submit to us reports on the child. Whether and how often they need to prepare the report depend on the requirement of individual States of Origin.

J. Approved (non accredited) bodies and persons³

63. Does your State permit approved (non-accredited) bodies or persons (see Art. 22(2)) to arrange intercountry adoptions. If not, go to Question 68. If yes,

No.

64. Have you informed the Permanent Bureau of the details of approved (non-accredited) bodies or persons in your State, as required by Article 22(3)? Is the information which is currently on the Hague Conference website up to date?

N.A.

65. What are the guidelines by which approval is granted?

N.A.

66. What is the process by which approval is granted and renewed?

N.A.

67. How is the supervision of approved (non-accredited) bodies or persons carried out in your State (Art. 22(2))?

N.A.

68. Has your State made a declaration under Article 22(4) to prohibit the involvement of approved (non-accredited) bodies or persons in intercountry adoptions?

Yes.

69. Are you aware of any acts or behaviour by approved (non-accredited) bodies or persons that contravened their conditions of approval? Please also provide details of any sanctions or penalties applied.

N.A.

State of origin questions

70. As a State of origin, do you allow approved (non-accredited) persons or bodies from abroad to "act" in your State (as a similar procedure to authorisation of accredited bodies under Art. 12)?

No. A foreign body accredited in a Contracting State would also need to go through the accreditation process and be accredited in the HKSAR if it would like to act under the Convention in the HKSAR.

K. Development aid activities

³ The term "non-accredited person" was used in the Explanatory Report of Professor Parra-Aranguren to refer to the person in Art. 22(2). Some countries now employ the term "approved person" when referring to person in Art. 22(2). However, the 2005 Questionnaire responses revealed enormous confusion when the term "approved persons" was used. Consequently, the Guide to Good Practice has followed the usage of the Explanatory Report to try to improve the public's understanding of the functions of these particular persons. The term "approved (non-accredited) person" is a compromise to retain the precision of the Explanatory Report, but recognises the usage by some countries of the term "approved person".

71. Are accredited bodies required to or permitted to engage in humanitarian projects or development co-operation activities in countries of origin?

ABs are not required to engage in humanitarian projects or development co-operation activities in countries of origin, nor are they restricted from doing so.

72. What types of activities are undertaken?

N.A.

73. How do you ensure that the humanitarian aid does not influence or jeopardize the integrity of the intercountry adoption process (*e.g.*, by the expectation of a regular "supply" of children in exchange for regular humanitarian or development aid)?

We require ABs to submit audited financial accounts both in their annual self-assessment and renewal application, and to keep a separate account for their adoption services. With such requirements, we can know whether the integrity of the intercountry adoption process is jeopardized or influenced by the humanitarian aid.

As clearly stipulated in the Document on Accreditation, if an AB is found not to have acted in the best interests of the child or complied with the code of conduct (the code in relation to conflict of interests, acceptance of gifts or benefits, and or fairness and equity, etc.), or has jeopardised the integrity of the intercountry adoption process, DSW may revoke / suspend the accreditation.

L. Co-operation between countries

74. Have you experienced any difficulties in obtaining assistance or co-operation from other Central Authorities in regard to accredited bodies?

No

75. Have you experienced any difficulties or concerns regarding the supervision of accredited bodies in other countries?

No.

76. Have you experienced any difficulties with other countries or Central Authorities because you do not use accredited bodies?

N.A. (as we use ABs)

77. Are there any particular aspects of your accreditation procedures *e.g.*, good practices that you would like to bring to the attention of other States?

No

78. Do you have any other comments about any of the topics covered by this Questionnaire?

No

State of origin questions

79. Have you experienced any pressure from foreign accredited bodies?

No