

LEGISLATIVE COUNCIL BRIEF

Adoption Ordinance (Chapter 290)

Intercountry Adoption (Contracting States) Order 2008

INTRODUCTION

The Secretary for Labour and Welfare (SLW) made the Intercountry Adoption (Contracting States) Order 2008 (the Order) at Annex on 15 January 2008 under section 20D of the Adoption Ordinance (Cap.290) (the Ordinance) to declare that the Republic of Kenya (Kenya), Republic of Cuba (Cuba), Republic of Armenia (Armenia), the Kingdom of Cambodia (Cambodia) and the United States of America (USA) as Contracting States to the Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (the Convention).

JUSTIFICATIONS

2. Kenya, Cuba, Armenia and Cambodia acceded to the Convention on 12 February 2007, 20 February 2007, 1 March 2007 and 6 April 2007 respectively. In accordance with Article 46(2) of the Convention¹, the Convention entered into force for Kenya, Cuba and Armenia on 1 June 2007; and for Cambodia on 1 August 2007. The Central People's Government (CPG) has not raised objection to the accession of the four

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

countries². As such, the Convention has entered into force between China (including the Hong Kong Special Administrative Region (HKSAR)) and Kenya, Cuba and Armenia on 1 June 2007, and Cambodia on 1 August 2007.

3. Pursuant to section 20D of the Ordinance, SLW may by order published in the Gazette, declare States which are parties to the Convention to be Contracting States, and specify the respective dates of the coming into effect of the Convention between the HKSAR and those States. Accordingly, SLW made the Order to declare that Kenya, Cuba, Armenia and Cambodia as Contracting States, as well as to specify the respective date of the coming into effect of the Convention between the HKSAR and these States.

4. Separately, the USA has deposited its instrument of ratification on 12 December 2007. In accordance with Article 46(2)³, the Convention will enter into force between the USA and China (including the HKSAR) on 1 April 2008. Therefore, in the Order, SLW also declared the USA as a Contracting State and specified 1 April 2008 as the date of the coming into effect of the Convention between the HKSAR and the USA.

5. The Order will take effect on 1 April 2008, to tie in with the date of the coming into effect of the Convention between the HKSAR and the USA.

LEGISLATIVE TIMETABLE

6. The legislative timetable is as follows –

² According to Article 44(3) of the Convention, such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the relevant notification.

³ Under Article 46(2) of the Convention, for each State ratifying the Convention after the Convention takes effect, the Convention shall enter into force for that State on the first day of the month following the expiration of three months after the deposit of its instrument of ratification. No objection period is applicable in respect of a ratifying State.

Publication in the Gazette

18 January 2008

Tabling at the Legislative Council

23 January 2008

IMPLICATIONS OF THE PROPOSAL

7. The Order is in conformity with the Basic Law, including the provisions concerning human rights. It has no economic, environmental or sustainability implications.

8. There may be some additional workload for the Social Welfare Department, and to a lesser extent, the Judiciary, to comply with the Convention requirements in dealing with applications for intercountry adoptions concerning the new Contracting States. The additional workload will be absorbed from within their existing resources.

9. The Order will not affect the current binding effect of the Ordinance.

PUBLIC CONSULTATION

10. Since this is a routine updating exercise, public consultation on the Order is considered not necessary.

PUBLICITY

11. A press release will be issued on 18 January 2008. A spokesman will be available to answer media enquiries.

BACKGROUND

12. The Convention was concluded in the Hague in 1993 and is in

force in 75 States as at 4 January 2008. It aims at -

- (a) establishing safeguards to ensure that intercountry adoptions are made in the best interest of the child and with respect for his or her fundamental rights;
- (b) establishing a system of cooperation amongst Contracting States to ensure that those safeguards are respected and thereby preventing the abduction of, sale of, or traffic in children; and
- (c) securing the recognition in Contracting States of adoptions made in accordance with its provisions.

13. The Central People's Government (CPG) signed the Convention in 2000 and ratified it on 16 September 2005. The Convention entered into force for China (including the HKSAR) on 1 January 2006.

14. Under section 20D of the Ordinance, SLW may by order published in the Gazette, declare States which are parties to the Convention to be Contracting States, and specify the respective dates of the coming into effect of the Convention between the HKSAR and those States. In this connection, the Intercountry Adoption (Contracting States) Order was made in December 2005 and took effect in January 2006.

ENQUIRIES

15. Enquiries can be addressed to Miss Shea Wing-man, Assistant Secretary for Labour and Welfare (Welfare) 1A, at 2973 8126.

Labour and Welfare Bureau

16 January 2008

INTERCOUNTRY ADOPTION (CONTRACTING STATES) ORDER 2008

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

1. Commencement

This Order shall come into operation on 1 April 2008.

2. Contracting States

(1) It is hereby declared that a State specified in column 1 of the Schedule is a Contracting State.

(2) The Convention (as defined in section 20A(1) of the Ordinance) comes into effect between Hong Kong and a State specified in column 1 of the Schedule on the date set out opposite to that State in column 2 of the Schedule.

3. Section amended

Section 2(2) of the Intercountry Adoption (Contracting States) Order (Cap. 290 sub. leg. C) is amended by adding “(as defined in section 20A(1) of the Ordinance)” after “Convention”.

4. Schedule amended

Part 1 of the Schedule to the Intercountry Adoption (Contracting States) Order (Cap. 290 sub. leg. C) is amended –

(a) by adding –

“The United States of America 1 April 2008”

after –

“The Republic of Albania 25 January 2006”;

(b) by adding –

“The Republic of Armenia 1 June 2007”

after –

“The Principality of Andorra 25 January 2006”;

- (c) by adding –
 “The Kingdom of Cambodia 1 August 2007”
 after –
 “The Republic of Burundi 25 January 2006”;
- (d) by adding –
 “The Republic of Cuba 1 June 2007”
 after –
 “The Republic of Costa Rica 25 January 2006”;
- (e) by adding –
 “The Republic of Kenya 1 June 2007”
 after –
 “The Republic of Italy 25 January 2006”.

SCHEDULE

[s. 2]

LIST OF CONTRACTING STATES

Column 1	Column 2
Contracting States	Date of coming into effect of the Convention
The United States of America	1 April 2008
The Republic of Armenia	1 June 2007
The Kingdom of Cambodia	1 August 2007
The Republic of Cuba	1 June 2007
The Republic of Kenya	1 June 2007

Secretary for Labour and Welfare

2008

Explanatory Note

This Order declares that the United States of America, the Republic of Armenia, the Kingdom of Cambodia, the Republic of Cuba and the Republic of Kenya are Contracting States so that the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption done at the Hague on 29 May 1993 (“the Convention”) shall apply to an adoption between Hong Kong and any of those states in relation to an application made pursuant to the Convention.