

Changing Life Stories:
Understanding the Legal Aspects of
Working with Children and Families

Birth Registration and Immigration



An Introductory Manual for Child Welfare Professionals

About the Authors



母親的抉擇
Mother's Choice

Mother's Choice is a charity serving the many children without families and pregnant teenagers in Hong Kong. We join hands with our community to give hope, and change the life stories of vulnerable girls and babies. We are a champion for children and a voice for every child to be in a safe, loving and permanent family.

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Birth Registration

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

Article 7

“The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality.....”

Introduction

It is the legal right of every child to have his or her birth registered.¹ A child’s right to be registered is a fundamental right, and is closely linked to many other rights, such as access to healthcare and education.² Despite this, anecdotal evidence suggests that there are still cases in Hong Kong where children remain unregistered.

The right to be registered applies to **all** children born in Hong Kong, including children of immigrants and migrant workers.³

In order to ensure that all children born in Hong Kong are registered, it is important to know who has a duty to register a child, the procedures involved, and whose names can be registered on the birth certificate.

WHAT ROLE CAN I PLAY?

Social workers can play an important role in educating parents about the importance of registering their child and helping them understand both how to register and the type of information to be included on the birth certificate. In particular, it is important to help parents understand whether, and how, the biological father can be registered on the birth certificate.

WHAT ROLE CAN OTHERS PLAY?

Officials at the Birth and Deaths General Register’s Office have a duty to register **all** children, including children of immigrants or migrant workers, or those whose parents are not available at the time of registration.

Parents have a duty to register a child’s birth. If the parents are not available, this duty will fall on others (see below).

- 1 Convention on the Rights of the Child, Art. 7; International Covenant on Civil and Political Rights, Art. 24(2).
- 2 Report of the Office of the United Nations High Commissioner for Human Rights, ‘Birth registration and the right of everyone to recognition everywhere as a person before the law’ (17 June 2014) (A/HRC/27/22), para. 3; United Nation Human Rights Council, Birth registration and the right of everyone to recognition everywhere as a person before the law (19 March 2013) (A/HRC/22/L.14/Rev.1), preamble.
- 3 United Nation Human Rights Council, Birth registration and the right of everyone to recognition everywhere as a person before the law (19 March 2013) (A/HRC/22/L.14/Rev.1RE), s 2; Report of the Office of the United Nations High Commissioner for Human Rights, ‘Birth registration and the right of everyone to recognition everywhere as a person before the law’ (17 June 2014), (A/HRC/27/22), para. 10, 11.

WHO HAS A DUTY TO REGISTER BIRTH?

The following individuals have a duty to register a child:

- a. His or her father; *or*
- b. His or her mother (if the father is unavailable); *or*
- c. The occupier of the house where child was born or any person who was present at the birth (if the parents are unavailable); *or*
- d. The person having charge of a public institution (when the child is born in, or admitted to, such an institution); *or*
- e. The person who found the child (where the child is found exposed).⁴

Children Living in Institutional Care

It is a legal requirement that any child born in, or admitted to, an institution or residential care facility must be registered. It is the duty of the person in charge of this institution to obtain as much information as possible from the mother or other person admitting the child into their care and to duly register that child within 42 days.⁵

WHAT IS THE TIME FRAME IN WHICH BIRTH REGISTRATION MUST OCCUR?

Registration should occur within **42 days** after a child is born.⁶ When registered on time, there is no registration fee.⁷

After 42 days, however, the person registering the child will have to pay a registration fee of HK\$140.⁸ If more than 12 months have passed since the child's birth, the child can be registered only with the consent of the Registrar, and on payment of a HK\$680 registration fee.⁹

WHAT HAPPENS IF A PERSON DOES NOT REGISTER A CHILD?

By not registering a child, a person is potentially preventing the child from having access to healthcare, education, or other social services later in life.

In addition, anyone listed in paragraph 5.1.2.1 above who fails to perform his or her duty to register a child may be liable, on conviction, to a fine of up to HK\$2,000 or imprisonment for up to 6 months.¹⁰

WHOSE NAMES SHOULD BE INCLUDED ON THE BIRTH CERTIFICATE? DOES THE BIOLOGICAL FATHER'S NAME NEED TO BE REGISTERED?

If the mother's identity is known, her name should be included on the birth certificate.

If the mother is married, her husband may be presumed at law to be the father of the child, unless proven otherwise (on the balance of probabilities)¹¹

4 Births and Deaths Registration Ordinance (Cap 174), ss 7 & 8.

5 Births and Deaths Registration Ordinance (Cap 174), s 8.

6 Births and Deaths Registration Ordinance (Cap 174), ss 7 & 8.

7 Births and Deaths Registration Ordinance (Cap 174), s 9(1).

8 Births and Deaths Registration Ordinance (Cap 174), s 9(2).

9 Births and Deaths Registration Ordinance (Cap 174), s 9(3).

10 Births and Deaths Registration Ordinance (Cap 174), s 28; Criminal Procedure Ordinance, Schedule 8.

11 Parent and Child Ordinance (Cap 429), s 5.

If the child is born outside of wedlock, the biological father of the child may be included on the birth certificate only in the following circumstances:¹²

- a. At the joint request of the mother and the father;
- b. At the request of the mother who personally attends the registry and produces:
 1. **a declaration stating that the person is the child's father; AND**
 2. **a statutory declaration made by that other person stating that he is the child's father;**
- c. At the request of the person claiming to be the father who personally attends the registry and produces:
 1. **a declaration stating that he is the father; AND**
 2. **a statutory declaration made by the mother stating that person is the father of the child;**
- d. At the request of the mother or the alleged father where either personally attends the registry and produces:
 1. **a certified copy of a court order; AND**
 2. **if the child has attained 16 years of age, his or her written consent to the registration of that person as his or her father.**¹⁹⁰

What is a Statutory Declaration?

A statutory declaration is a legal document in which a person declares or swears in writing that something is true. It must be made in a particular format in order to be valid. In Hong Kong, a justice, notary, commissioner or other person authorized by law to administer an oath may take and receive the declaration.¹³

If the father was not included on the birth certificate at the time of birth, it is possible to register him at a later time. The Registrar of Births and Deaths can re-register the birth to show that a person is the father if any of the four requirements in paragraph 5.1.5.3 is fulfilled.¹⁴

The child may also apply to court for a declaration that a person is his or her parent – essentially altering the birth certificate.¹⁵ The court will respond to such requests where, at the time of application, the application is domiciled in Hong Kong or has been resident for 1 year or more, or has a substantial connection with Hong Kong. If the Registrar is satisfied that the birth should be re-registered, he or she will authorize it.¹⁶

DOES INCLUSION ON THE BIRTH CERTIFICATE HAVE AN IMPACT ON A MOTHER OR FATHER'S PARENTAL RIGHTS AND RESPONSIBILITIES?

A birth certificate is a piece of evidence indicating that certain persons are the parents of the child, but it does not actually prove that they have any parental rights.

12 Births and Deaths Registration Ordinance (Cap 174), s 12(1).

13 Oaths and Declarations Ordinance (Cap 11), s 12.

14 Births and Deaths Registration Ordinance (Cap 174), s 12A.

15 Parent and Child Ordinance (Cap 429), s 6.

16 Births and Deaths Registration Ordinance (Cap 174), s 12B.

For children born within wedlock, there is a presumption that the legal husband of the child's mother is the father of the child.¹⁷ This means that it is assumed that he is the father and has parental rights. However, this presumption can be challenged if there is enough evidence showing that he is not, in fact, the biological father.¹⁸ If the evidence proves that the legal husband is not the biological father, his name on the birth certificate **would not give him any parental rights**.

Currently, for children born out of wedlock, "parent" refers only to the biological mother and not the father. The biological father also currently has **no automatic legal parental rights with regards to the child**, even if his name is on the birth certificate.¹⁹ The only way for a biological father that is not married to the biological mother (unmarried biological father) to gain parental rights is through applying for a court order (note, however, below).²⁰

Rights of the Unmarried Biological Father

Unmarried biological fathers do not automatically have any parental rights under Hong Kong law. They must instead seek these rights through a court order under the Guardianship of Minors Ordinance (Cap 13). In a recent case, however, the court ruled that there should be "some efforts" made to locate the biological father, in order to give him an "opportunity to decide whether to make application under the Guardianship of Minors Ordinance".²¹ This means that even if unmarried biological fathers do not have any automatic parental rights, they may have the right to be **contacted**, in order to enable them to seek these rights.

IF A BABY IS FOUND ABANDONED AND THE PARENTS CANNOT BE LOCATED, HOW CAN THE BABY'S BIRTH BE REGISTERED?

There is no definitive or comprehensive answer to this question through research and case law. On a case-by-case basis, social workers should remain in close contact with the Social Welfare Department and Department of Justice to ensure that the child's rights are upheld in all areas including right to an identity and birth certificate.

DOES AN ADOPTION CERTIFICATE FUNCTION AS A BIRTH CERTIFICATE?

An adopted person will be re-registered in the Adopted Children Register.²² The original birth entry will be marked with the word 'Adopted.'²³

Under Hong Kong law, a certified copy of an entry in the Adopted Children Register, if sealed and stamped by the register's office and if it has a record of the date and country of birth, can be used as evidence of the date and country of birth, just as if it was an ordinary birth registration.²⁴

Any person is entitled to ask for a certified copy of an entry in the Adopted Children

17 Parent and Child Ordinance (Cap 429), s 5(1)(b).

18 Parent and Child Ordinance (Cap 429), s 5(3).

19 Guardianship of Minors Ordinance (Cap 13), s 3(1)(c).

20 Guardianship of Minors Ordinance (Cap 13), ss 3(1)(c)(ii) & 3(1)(d).

21 Director of Social Welfare v HSP (Adoption) [2013] HKFLR 489, para 113.

22 Adoption Ordinance (Cap 290), s 19.

23 Adoption Ordinance (Cap 290), s 19.

24 Adoption Ordinance (Cap 290), s 18(2).

Register, under the same terms as they could ask for a certified entry under the Births and Deaths Registration Ordinance.²⁵

PROCEDURES AND CONTACT INFORMATION

Where to Apply:

The birth of a child should be registered at a birth registry in the district in which the birth occurred. The child is not required to be present. In the case of married parents, only one parent has to be present. If the child was born outside of a hospital or clinic or the birth has not been registered within 1 year, the birth should be registered at the Births and Deaths General Register Office.

What to bring:

When applying to register the birth of a child, the parent(s) should bring originals of the following documents:

- Hong Kong identity cards or valid travel documents (e.g. passports, documents of identity etc.) of the mother (and spouse, where applicable);
- Married couples must also provide the husband's information as well as the mother's, along with a marriage certificate;
- If the biological father is not the legal husband and wishes to be listed, he will either need to come to the birth registration in person, or submit a Statutory Declaration (see 5.1.5.3 above).

CONTACT INFORMATION

Online Booking for Birth Registration Appointments

www.gov.hk/en/residents/immigration/bdmreg/birth/birthreg/bookbirthreg.htm

The Births and Deaths General Register Office

Address: 3/F, Low Block, Queensway Government Offices, 66 Queensway

Tel: (852) 2867 2785

General Enquiries:

Hotline: (852) 2824 6111

Email: enquiry@immd.gov.hk





Immigration Status

WHEN WILL A CHILD BE A HONG KONG PERMANENT RESIDENT?

A child born in Hong Kong will be a Hong Kong Permanent Resident (and therefore has the right of abode in Hong Kong) if:

- a. The child is a person of Chinese nationality. If one of the child's parent is a person of Chinese nationality he or she will be of Chinese nationality.²⁶ Both Hong Kong Chinese and the mainland Chinese are persons of Chinese nationality.
- b. The child is not a person of Chinese nationality but at least one of his or her parents is a Hong Kong Permanent Resident at if at the time of the child's birth or at any later time before he or she becomes 21, one of his or her parents has the right of abode in Hong Kong.²⁷ Please note that on attaining 21 years of age, the child ceases to be a Hong Kong Permanent Resident by virtue of his or her parent's permanent residency status. However, he or she may apply to be a permanent resident if he or she has ordinarily resided in Hong Kong for a continuous period of not less than seven years, has taken Hong Kong as his or her place of permanent residence, and was permitted to remain Hong Kong by an immigration officer or an immigration assistant.²⁸

A child born outside of Hong Kong will be a Hong Kong Permanent Resident if:

- a. The child is a person of Chinese nationality with a parent who is also a person of Chinese nationality who was born in Hong Kong or at the time of the child's birth had resided in Hong Kong for a continuous period of not less than seven years.²⁹
- b. The child is a person of Chinese nationality who has ordinarily resided in Hong Kong for a period of not less than seven years.³⁰

It **does not** matter whether the child's parents were **married** in order for the child to receive the right of abode. If either the biological mother or biological father is a Chinese national and had the right of abode at the time that the child was born, the child will have the right of abode.³¹

If a child is not entitled to permanent residence at birth, he or she can apply to become a Hong Kong Permanent Resident if he or she:

- a. is a Chinese citizen and has ordinarily resided in Hong Kong **continuously** for **seven years**,³² or
- b. is a non-Chinese citizen and has entered Hong Kong with a valid travel document, has ordinarily resided in Hong Kong **continuously** for **seven years** and has taken Hong Kong as his place of permanent residence. The seven years is calculated back from the date on which the child applies for Right of Abode.³³

26 Nationality Law of the People's Republic of China Article 4; Basic Law Article 24(1); Immigration Ordinance (Cap 115), Sch 1(2)(a).

27 Basic Law, Article 24(5); Immigration Ordinance (Cap 115), Sch 1(2)(e).

28 Basic Law, Article 24(4); Immigration Ordinance (Cap 115), Sch 1(2)(d), 3(3)(b) and 4(1).

29 Basic Law, Article 24(3); Immigration Ordinance (Cap 115), Sch 1(2)(c); Ng Ka Ling and Another v. The Director of Immigration [1999] HKCFA 72; [1999] 1 HKLRD 315; (1999) 2 HKCFAR 4; [1999] 1 HKC 291; FACV 14/1998 (29 January 1999).

30 Basic Law, Article 24(2); Immigration Ordinance (Cap 115), Sch 1(2)(b).

31 Ng Ka Ling and Another v. The Director of Immigration [1999] HKCFA 72; [1999] 1 HKLRD 315; (1999) 2 HKCFAR 4; [1999] 1 HKC 291; FACV 14/1998 (29 January 1999).

32 Basic Law, Article 24(2); Immigration Ordinance (Cap 115), Sch 1(2)(b).

33 Basic Law, Article 24(4); Immigration Ordinance (Cap 115), Sch 1(2)(d).

WHAT DOES IT MEAN FOR A CHILD TO HAVE “PERMANENT RESIDENCE?”

Permanent residence is not nationality; it is a separate legal status that allows a child to stay in Hong Kong indefinitely and to receive certain benefits. In particular, it gives the child the **right of abode**, which entitles him or her:

- to land in the HK Special Administrative Region;
- to be free from any condition of stay (including a limit of stay) in the HK Special Administrative Region;
- not to be deported from the HK Special Administrative Region; and
- not to be removed from the HK Special Administrative Region.³⁴

In addition, it gives the child the right to obtain social welfare assistance from the Social Welfare Department and receive other government and welfare benefits.³⁵ These include:

- Comprehensive Social Security Assistance (CSSA);
- low payment rate/free care in Hong Kong’s public health system;
- Hong Kong kindergarten voucher or Student Financial Assistance; and
- subsidized child care services.

WHAT IF THE CHILD DOES NOT QUALIFY FOR PERMANENT RESIDENCE? WHAT IS HIS OR HER IMMIGRATION STATUS?

A baby’s immigration status is always tied to his or her parents’ immigration status on the date that the baby’s birth is registered.

If only the biological mother’s name is registered on the birth certificate, the baby’s immigration status will be tied to that of the mother. If the biological father has his name on the birth registration, the baby’s immigration status will be tied to either the father or mother’s status, whichever is more favorable for the child.

The baby’s immigration status will be marked on his or her birth certificate:

- “Established” means that the child has Hong Kong Permanent Resident status;
- “Not Established” means that:
 - a. the baby has a permit to stay in Hong Kong (with Form ID235B) or
 - b. the baby has no permit to stay (without Form ID235B).

IF A BABY IS FOUND ABANDONED AND THE PARENTS CANNOT BE LOCATED, WHAT WILL THE CHILD’S IMMIGRATION STATUS BE?

In the case of an abandoned child, the nationality and immigration status of the parents can often be hard to determine. This decision is therefore to be made by the Director of Immigration. If the Director determines that the child appears to be of Chinese descent, the Director may grant him or her the right of abode.

The Immigration Ordinance (Cap 115) states that:

- a. A new-born infant, who appears to the Director to be of Chinese descent, is taken, in the absence of evidence to the contrary, to be the legitimate child of a Chinese citizen who was a permanent resident of the Hong Kong Special Administrative Region at the time of birth of the child;

³⁴ Immigration Ordinance (Cap.115), Section 2A(1).

³⁵ Basic Law, Article 36.

- b. A new born infant, who appears to the Director to be **not** of Chinese descent, is taken, in the absence of evidence to the contrary, to be the legitimate child of a parent not of Chinese nationality but who had the right of abode in Hong Kong at the time of birth of the child.³⁶

This determination by the Director of Immigration can be challenged if there is evidence to the contrary. Legal advice should be sought in this scenario.



What are the Rights of the Child?

We have a responsibility to uphold children's rights. How does understanding the rights of children help us to be the voice for vulnerable children and families?

- 1 Everyone under 18 has these rights
- 2 **All children have rights, and I should be treated fairly and equally no matter who I am, what I look like, where I live, what language I speak, what my religion is, whether I am a boy or a girl and whether I have a disability.**
- 3 Adults must do what is best for me.
- 4 The government has a responsibility to make sure my rights are protected and respected.
- 5 **My family has the responsibility to help me learn to exercise and protect my rights.**
- 6 I should be supported to live and grow.
- 7 I have the right to a name, and to belong to a country.
- 8 I have the right to an identity which no one can take away.
- 9 **I have the right to live with a family who cares for me.**
- 10 I have the right to be together with my family if we live in different countries.
- 11 I have the right to be protected from kidnapping.
- 12 **I have the right to be listened to, and to be taken seriously.**
- 13 I have the right to find out and share information, unless it harms or puts someone in danger.
- 14 I have the right to have my own beliefs and choose my own religion, with my parents' guidance.
- 15 I have the right to meet with friends and join groups, unless it harms or puts someone in danger.
- 16 I have the right to my privacy.
- 17 **I have the right to get information in lots of ways, and adults have a responsibility to make sure it is not harmful.**
- 18 I have the right to be raised by both parents if possible.
- 19 **I have the right to be protected from abuse - from being hurt or badly treated in body and mind.**
- 20 & 21 **I have the right to special protection, care and support if I cannot live with my parents. I have the right to have care and protection if I am adopted or living in foster care.**
- 22 If I am a refugee (if I have been forced to leave my home country), I have the same rights as children in my new country.
- 23 **If I have a disability, I have the right to special care and education.**
- 24 I have the right to good quality healthcare, to clean water, and good food.
- 25 **If I am waiting for my safe, loving, and permanent family, I have the right for my care to be reviewed regularly to make sure it is good for me.**
- 26 I have the right to receive help from the government if my family doesn't have enough money.
- 27 I have the right to a safe place to live, food, and clothing to help me reach my potential.
- 28 I have the right to an education, and I should be encouraged to go to school to the highest level I can.
- 29 I have the right to an education which allows me to thrive, live peacefully, protect the environment, and respect others.
- 30 I have the right to speak my own language, and follow my family's religion and culture if I choose.
- 31 **I have the right to play and rest.**
- 32 If I work, I should be paid fairly, and I should not be made to do work that is dangerous or hinders my education and development.
- 33 I should be protected from dangerous drugs.
- 34 **I have the right to be free from sexual abuse. No one should touch me in ways that make me feel uncomfortable, unsafe, or sad.**
- 35 I should not be kidnapped, or sold.
- 36 I have the right to protection from being taken advantage of.
- 37 I have the right not to be punished in a cruel or hurtful way.
- 38 I have the right to not be enlisted in the army until I am 15 (18 years old in HK).
- 39 I have the right to help if I have been hurt, neglected, or badly treated.
- 40 I have the right to legal help and to be treated fairly if I have been accused of breaking the law.
- 41 If my country has laws that treat me better than the UNCRC, then those laws apply.
- 42 **I have the right to know my rights! And everyone around me should learn about my rights.**
- 43 - 54 These articles are about how governments and international organizations will work together to give children our rights.

Hong Kong agreed to the United National Convention on the Rights of the Child (UNCRC) in 1994.

I am a child, and I have all of these rights.

As I grow older, I have more responsibility to make choices and exercise my rights.

These rights will help me thrive and reach my full potential.

