



HONG KONG LAWYER

THE OFFICIAL JOURNAL OF THE LAW SOCIETY OF HONG KONG 香港律師會會刊



Reproductive Technology in Hong Kong – Legal Framework Ethics and Emerging Judicial Trends

Features [Medical Law](#) | August 2026



Introduction

Louise Joy Brown, born in Manchester on 25 July 1978, was the world's first baby conceived via in vitro fertilisation ("IVF"). Eight years later, Hong Kong's first IVF baby was born in December 1986 at a private hospital in Happy Valley. His birth at the time was so controversial that his parents declined to reveal his and their identities, as well as his



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⁵⁶¹ (“HRTTO”). Enacted in 2000, the HRTTO is the principal legislation that governs human reproductive technology (“RT”) procedures in Hong Kong. The HRTTO at present effectively ringfences access to RT procedures (other than egg freezing) to “parties to a marriage”. Same sex marriage is not yet recognised under Hong Kong laws, leaving access to infertile, married heterosexual couples. Commercial surrogacy is also prohibited under the HRTTO.



Principal Legislation

The HRTTO preamble states that it is an ordinance “to regulate reproductive technology procedures, and the use, for research and other purposes, of embryos and gametes; to confine the provision of reproductive technology procedures to infertile couples subject to any express provision to the contrary in any code; to regulate surrogacy arrangements; to establish a Council on Human Reproductive Technology; and to provide for matters incidental thereto or connected therewith”.

Regulatory Body and Licensing



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e. a procedure specified in a notice under subsection (2)(a)(ii) to be a reproductive technology procedure; and

f. a gender selection achieved or intended to be achieved by means of a procedure which falls within this definition,

but excludes a procedure specified in a notice under subsection (2)(b)(ii) not to be a reproductive technology procedure;”.

The HRTD does not define infertility. There is a general reference in the preamble to confining reproductive technology procedures to infertile couples. The World Health Organization defines [infertility](#) as “a disease of the male or female reproductive system defined by the failure to achieve a pregnancy after 12 months or more of regular unprotected sexual intercourse” and this is a generally accepted definition for practical purposes.



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Code of Practice and Professional Standards

Pursuant to the HRTTO, s.8, the CHRT shall issue and maintain a [Code of Practice on Reproductive Technology and Embryo Research](#) (“Code”), which sets out detailed guidelines for RT service providers and embryo researchers. The Code first came into effect on 1 August 2007.

The preamble of the Code states that while it provides guidance and minimum standards to safeguard the health and interests of service users and to protect the welfare of children born via RT, professionals concerned should still follow the codes of practice and professional ethics of their own disciplines, which the Code does not supersede.

Eligibility

The HRTTO, s.15(5) restricts RT procedures being provided to persons who are parties to a marriage. Read in conjunction with the preamble to the HRTTO and the Code paragraph 4.2 which refer specifically to infertile couples, in general only infertile married couples are treated in practice as able to avail themselves of RT procedures except this shall not apply to surrogate mothers pursuant to section 15(6) or couples who are permitted to use embryo sex selection for medical conditions e.g., to avoid serious sex linked diseases, pursuant to section 15(3) and as specified in Schedule 2 of the HRTTO.

Since the preamble of the HRTTO and Chapter IV of the Code state that RT procedures should only be made available to infertile couples, RT procedures for social or non medical reasons are not generally permitted except in very limited circumstances.

Specific Exclusions and Exceptions



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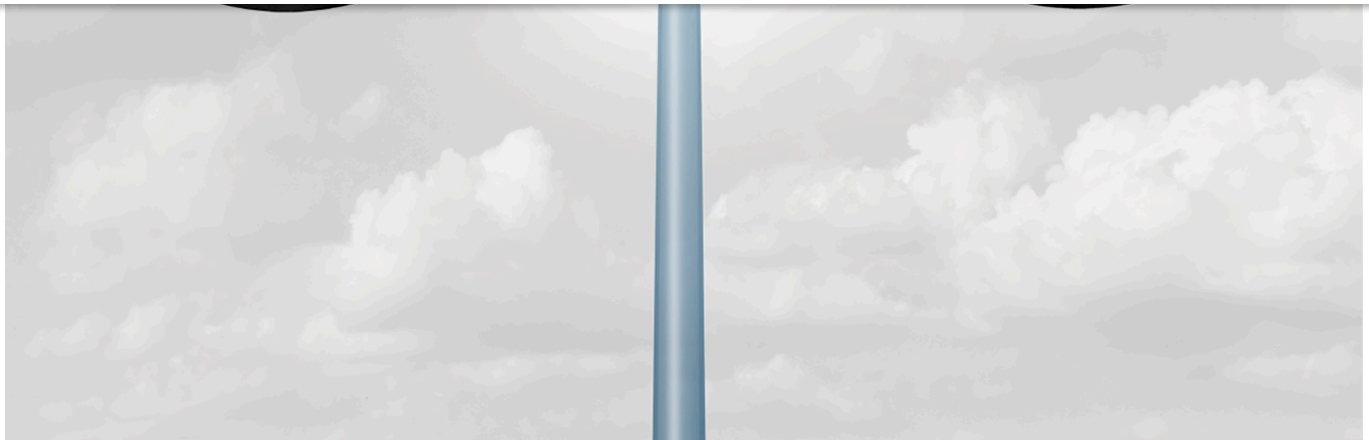
Commercial transactions in (the buying and selling of) embryos, gametes and surrogacy are prohibited. Hence, only altruistic donations of embryos, gametes and surrogacy arrangements are permitted although reimbursement of legitimate expenses is allowed, in accordance with the HRTD, s.16 and s.17. Appendix II of the Code sets out guidelines on reimbursing donors.





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Emerging Judicial Trends

While legislation has been updated at a slow pace, case law sits at the intersection of law, evolving ethics and current public policy. In [Re A and Another HKCFI 1749; 5 HKLRD 366](#) (HCMP 1571/2018, Au-Yeung J, 14 October 2019), the court had extended the statutory 6 month time limit in the [Parent and Child Ordinance Cap 429](#) s.12(2) and retrospectively approved commercial surrogacy payments despite the illegality of commercial surrogacy arrangements in Hong Kong because 1) the applicants acted in good faith without moral taint or intent to defraud, 2) the payments were not so disproportionate as to offend public policy and 3) the A & B v E ** HKCFI 3143** (HCMP 731/2023...) parental order was in the best interests of the children vis-a-vis their lifelong welfare and legal identity. Au-Yeung J applied and elaborated the same analytical framework in [A & B v E HKCFI 3143](#) (HCMP 731/2023, Au-Yeung J, 4 December 2023).

The above two cases, together with [CS v SW HKCFI 2326](#) (HCMP 1731/2023, Au-Yeung J, 25 September 2024) and [HSC v T; HSC v D HKCFI 770](#) (HCMP 706–707/2025, Au-Yeung J, 2 February 2026) form an emerging body of case law that points to Hong Kong courts granting parental orders and approving commercial surrogacy payments made in good faith, always with an overriding concern for the lifelong welfare of the child. In the latter case, the court again granted parental orders and approved separate commercial surrogacy payments for two oral surrogacy arrangements made in Shenzhen with two surrogates and extended the deadline of the statutory 6 month time limit in the [Parent and Child Ordinance Cap 429](#), s.12(2). The lifelong best interests of the two children were considered. Rather than deliberately committing a breach, the commissioning parents had unfortunately acted without obtaining proper legal advice and had been ignorant of the law.

Surrogacy and Legal Parenthood



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[The Parent and Child Ordinance Cap 429](#), s.9 states that the woman who gives birth is treated by law as the child's mother (and if she is married and her husband has consented, he is treated by law as the child's father) despite any surrogacy agreement that is in place. Section 12(2) prescribes that a commissioning couple must apply to the court within six months of their child's birth for a parental order, and the court may make such a parental order provided all the conditions of subsections 12(1) - (7) have been met.

In the case of [HC v WYH HKCFI 1157](#) (HCMC 3/2023, Chu J, 30 April 2024), the parties were married but subsequently separated. The issue before the court was whether the lack of parental orders or adoption orders (the two children in question were born out of commercial surrogacy arrangements made in California) were obstacles to the Family Court making orders in the best interests of the children as they were "children of the family".

The court ruled that the statutory definition of "child of the family" as set out in section 2 of the Matrimonial Proceedings and Property Ordinance Cap 192 is broad and autonomous and children born of commercial surrogacy arrangements fall within the definition (without adoption or parental orders in place), giving the court jurisdiction to make custody and maintenance orders in divorce proceedings.

In the case of [CS v SW HKCFI 2326](#), [HCMP 1731/2023](#) (25 September 2024, Au-Yeung J), the court ruled that the children's best interests and the need for secure lifelong legal status with their de facto parents outweighed the serious breaches of Cambodian, Thai and Hong Kong laws regarding commercial surrogacy and a delay of over 4 years beyond the statutory limit specified in the [Parent and Child Ordinance Cap 429](#) s.12(2).



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Sanctions and Enforcement

Breaching the HRTTO may be a criminal matter and may lead to fines, imprisonment and regulatory sanctions including the loss of professional licences for practitioners and researchers.

Conclusion

Hong Kong's legal framework in respect of RT was enacted a quarter century ago. The December 2025 removal of the 10-year limit on gamete and embryo storage was a welcome modernisation although the foundational framework for eligibility and access to RT remains the same.