

## **LEGISLATIVE COUNCIL BRIEF**

### **Child Abduction and Custody Ordinance (Chapter 512)**

#### **CHILD ABDUCTION AND CUSTODY (PARTIES TO CONVENTION) (AMENDMENT) (No.2) ORDER 2008**

#### **INTRODUCTION**

At the meeting of the Executive Council on 23 September 2008, the Council ADVISED and the Chief Executive ORDERED that the Child Abduction and Custody (Parties to Convention) (Amendment) (No.2) Order 2008 (the Amendment Order) at Annex should be made under section 4 of the Child Abduction and Custody Ordinance (Chapter 512)(the Ordinance) to add the Republic of Costa Rica (Costa Rica) as a Contracting State to the Convention on the Civil Aspects of International Child Abduction (the Convention) so that the Convention would apply between the Hong Kong Special Administrative Region (HKSAR) and Costa Rica. The Amendment Order is to update the Child Abduction and Custody (Parties to Convention) Order (the Order) in order to implement the Convention between HKSAR and Costa Rica, whose accession to the Convention has recently been accepted by the Central People's Government (CPG).

## **JUSTIFICATIONS**

2. Section 4 of the Ordinance provides that the Chief Executive shall make and publish in the Gazette an order specifying, among other things, certain States as the Contracting States to the Convention. The list is updated from time to time by amendment orders.

3. Costa Rica acceded to the Convention in 1999. Since Costa Rica met our criteria for inclusion in the Order, with the consent of the CPG, the Administration considered it necessary to add Costa Rica to the Order.

## **EFFECTIVE DATE**

4. According to Article 38 of the Convention, the Convention will enter into force between an acceding State and a Contracting State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

5. The CPG had deposited with the depository of the Convention (the Government of the Netherlands) its acceptance on behalf of the HKSAR of the accession of Costa Rica on 16 June 2008. Based on the certificate from the CPG, the Convention has entered into force between HKSAR and Costa Rica on 1 September 2008. Accordingly, the Amendment Order has specified 1 September 2008 as the date on which the Convention came into force as between HKSAR and Costa Rica. The effective date is before the expiry of the standard negative vetting period of 28 days (or 28 plus 21 days of extended negative vetting period). This is to ensure our full compliance with the requirements in accordance with Article 38 of the Convention.

## **LEGISLATIVE TIMETABLE**

6. The legislative timetable will be —

Publication in the Gazette 26 September 2008

Tabling at the Legislative Council 8 October 2008

## **IMPLICATIONS OF THE PROPOSAL**

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

8. The Amendment Order is also consistent with Article 11 of the United Nations Convention on the Rights of the Child which provides that State Parties shall take measures to combat the illicit transfer and non-return of children abroad and, to this end, shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

9. There may be some additional workload for the Department of Justice, Judiciary, Legal Aid Department, Social Welfare Department, Immigration Department and the Police. However, the number of cases is likely to be very few and the additional workload can be absorbed within existing resources.

10. The legislative amendments, which aim at updating the list of Contracting States to the Convention, would provide a broader and more up-to-date framework in combating international child abduction. There should be no economic implication.

11. The Amendment Order will not affect the current binding effect of

the Ordinance.

## **PUBLIC CONSULTATION**

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

## **PUBLICITY**

13. A press release will be issued on 24 September 2008. A spokesman from the Labour and Welfare Bureau will be available to answer media enquiries.

## **BACKGROUND**

14. The Convention, which was signed at the Hague in 1980 and is now in force in 81 States, provides an effective mechanism for the swift return of children wrongfully removed from their place of habitual residence to another Contracting State in violation of custodial rights.

15. An agreement was reached at the Sino-British Joint Liaison Group in September 1996 on the extension of the Convention to Hong Kong by the United Kingdom and its continued application to the HKSAR after 30 June 1997. The Convention does not apply to the Mainland, but the declaration of acceptance of new accessions is made by the CPG on behalf of the HKSAR.

16. Any state may accede to the Convention in accordance with Article 38. Article 38 also provides that the accession will have effect only as regards the relations between the acceding state and such Contracting States as will have declared their acceptance of the accession.

## **ENQUIRIES**

17. For further enquiries, please contact Miss SHEA Wing-man, Assistant Secretary for Labour and Welfare (Welfare) 1A, at 2973 8126.

**Labour and Welfare Bureau**

**24 September 2008**

**CHILD ABDUCTION AND CUSTODY (PARTIES TO  
CONVENTION) (AMENDMENT) (NO. 2) ORDER  
2008**

(Made by the Chief Executive under section 4 of the Child Abduction and  
Custody Ordinance (Cap. 512) after consultation with the Executive  
Council)

**1. Schedule amended**

The Schedule to the Child Abduction and Custody (Parties to Convention)  
Order (Cap. 512 sub. leg. A) is amended by adding –

“Republic of Costa Rica 1 September 2008”

after –

“Republic of Colombia 1 September 1997”.

Chief Executive

2008

**Explanatory Note**

This Order amends the Child Abduction and Custody (Parties to  
Convention) Order (Cap. 512 sub. leg. A) to add the Republic of Costa Rica as a  
Contracting State to the Convention on the Civil Aspects of International Child  
Abduction so that the Convention will apply between Hong Kong and the  
Republic of Costa Rica.