

LEGISLATIVE COUNCIL BRIEF

Child Abduction and Custody Ordinance
(Chapter 512)

**Child Abduction and Custody (Parties to Convention)
(Amendment) Order 2011**

INTRODUCTION

At the meeting of the Executive Council held on 25 October 2011, the Council ADVISED and the Acting Chief Executive (CE) ORDERED that the Child Abduction and Custody (Parties to Convention) (Amendment) Order 2011 (the Amendment Order) at Annex, which seeks to add the Republic of Singapore (Singapore) to the list of Contracting States in the Child Abduction and Custody (Parties to Convention) Order (Chapter 512A) (the Order), should be made under section 4 of the Child Abduction and Custody Ordinance (Chapter 512) (the Ordinance).

JUSTIFICATIONS

2. Pursuant to section 4 of the Ordinance, Contracting States to the Hague Convention on the Civil Aspects of International Child Abduction (the Convention) have to be specified in an order made by the CE and published in the Gazette in order to implement the Convention between the Contracting States and the Hong Kong Special Administrative Region (HKSAR). The Order was first made by the CE in January 1998. From time to time, there are new States acceding to the Convention. Article 38 of the Convention provides that the accession will have effect only as regards the relations between the acceding State and Contracting States which have declared their acceptance of the accession.

3. If the Administration is satisfied that a newly acceding State has met our criteria for inclusion in the Order(*), we shall request the Central People's Government (CPG) to deposit a declaration of acceptance of the accession on behalf of HKSAR. The concerned State will then be added to the list of Contracting State in the Order. Singapore has become a party to the Convention since 1 March 2011 and met our criteria for inclusion in the Order. Having obtained the consent of CPG, the Administration considers it necessary to add Singapore to the list of Contracting States in 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. CPG deposited, with the depository of the Convention (the Ministry of Foreign Affairs of the Kingdom of the Netherlands), the declaration of acceptance on behalf of HKSAR of the accession of Singapore on 21 March 2011. The Convention has therefore entered into force between HKSAR and Singapore on 1 June 2011. Accordingly, the Amendment Order will take retrospective effect on 1 June 2011

OTHER OPTIONS

5. There is no alternative option as the proposal has to be implemented by legislative means.

THE AMENDMENT ORDER

6. The Amendment Order amends the Schedule to the Order to add Singapore as a Contracting State to the Convention so that the Convention will apply between HKSAR and Singapore.

(*) Note The criteria established by the HKSAR Government include, among other things, whether the State has designated a Central Authority to handle cases under the Convention and whether there has been any adverse information on the legal system of the State, etc.

LEGISLATIVE TIMETABLE

7. The legislative timetable is as follows –

Publication in the Gazette	4 November 2011
Tabling at the Legislative Council for negative vetting	9 November 2011

IMPLICATIONS OF THE PROPOSAL

8. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the current binding effect of the Ordinance and has no economic, productivity, environmental or sustainability implications.

9. As for the financial and civil service implications, the relevant agencies, including the Department of Justice, Judiciary, Legal Aid Department, Social Welfare Department, Immigration Department and the Police, will absorb the additional workload, if any, with their existing resources. Any additional resources, if required, will be sought in accordance with the established mechanism.

PUBLIC CONSULTATION

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

PUBLICITY

11. A press release will be issued on 4 November 2011. A spokesman from the Labour and Welfare Bureau will be available to answer media enquiries.

BACKGROUND

12. The Convention, which was signed at The Hague in 1980 and is now in force in 86 States, provides an effective international mechanism for the swift return of children wrongfully removed from their place of

habitual residence to another Contracting State in violation of custodial rights. It aims to establish a consistent approach in handling the civil aspects of the growing number of international child abduction cases.

13. An agreement was reached at JLG in September 1996 on the extension of the Convention to Hong Kong and its continued application to HKSAR after 30 June 1997. The People's Republic of China is a Contracting State to the Convention but the Convention only applies to HKSAR and Macao SAR, not to the Mainland.

ENQUIRIES

14. Any enquiries on this brief should be addressed to Mr Parson LAM, Assistant Secretary for Labour and Welfare (Welfare) 1A, at 2810 3932.

**Labour and Welfare Bureau
1 November 2011**

**Child Abduction and Custody (Parties to Convention)
(Amendment) Order 2011**

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

1. Child Abduction and Custody (Parties to Convention) Order amended

The Child Abduction and Custody (Parties to Convention) Order (Cap. 512 sub. leg. A) is amended as set out in section 2.

2. Schedule amended

The Schedule, after the following—

“Republic of Seychelles 1 April 2010”

Add

“Republic of Singapore 1 June 2011”.

Chief Executive

2011

Explanatory Note

This Order amends the Schedule to the Child Abduction and Custody (Parties to Convention) Order (Cap. 512 sub. leg. A) to add Singapore 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 Singapore.