

LEGISLATIVE COUNCIL BRIEF

Child Abduction and Custody Ordinance
(Chapter 512)

CHILD ABDUCTION AND CUSTODY (PARTIES TO CONVENTION) (AMENDMENT) ORDER 2005

INTRODUCTION

At the meeting of the Executive Council on 27 September 2005, the Council ADVISED and the Chief Executive ORDERED that the Child Abduction and Custody (Parties to Convention) (Amendment) Order 2005 (the Amendment Order) at Annex should be made under section 4 of the Child Abduction and Custody Ordinance (Cap.512)(the Ordinance) to update the list of Contracting States and territories to the Convention on the Civil Aspects of International Child Abduction (the Convention).

JUSTIFICATIONS

2. The Ordinance was enacted in May 1997 to implement the Convention after its extension to Hong Kong. Section 4 of the Ordinance provides that the Chief Executive shall make and publish in the Gazette an Order, specifying certain States as the Contracting States to the Convention. In this connection, the Child Abduction and Custody (Parties to Convention) Order was made in January 1998. It has since then been updated from time to time and the last updating exercise was done in June 2002.

3. A number of States have acceded to the Convention over the past few years. In line with the spirit of the agreement at the Sino-British Joint Liaison Group (JLG) in 1996, a certification from the Central People's Government (CPG) indicating the list of new Contracting States and territories to be included in the Amendment Order is required prior to amending the list of Contracting States specified under the existing Order.

4. The following considerations are relevant in our selection of the new Contracting States and territories to be included in the Amendment Order:-

- (a) the prevailing state of acceptance of the particular Contracting States or territories concerned by the international community;
- (b) the designation of an efficient and competent Central Authority by the particular Contracting States and territories concerned to handle applications; and
- (c) the legal system of the particular Contracting States and territories concerned.

5. Having sought the consent and certificate from the CPG via the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the HKSAR, the following 13 new Contracting States will be added to the Child Abduction and Custody (Parties to Convention) Order -

- (1) The Republic of Uzbekistan
- (2) The Federative Republic of Brazil
- (3) The Republic of Malta
- (4) Oriental Republic of Uruguay
- (5) The Republic of Estonia
- (6) The Republic of the Fiji Islands
- (7) The Republic of Trinidad and Tobago
- (8) The Republic of Peru
- (9) The Democratic Socialist Republic of Sri Lanka
- (10) The Republic of Latvia

- (11) The Republic of Lithuania
- (12) The Kingdom of Thailand
- (13) The Republic of Bulgaria.

THE AMENDMENT ORDER

6. According to Article 38 of the Convention, the Convention will enter into force as 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.

7. The CPG indicated in its certification, which reached us on 15 August 2005, that it had deposited with the depositary of the Convention (the Government of the Netherlands) its acceptance on behalf of the HKSAR of the accession of the 13 States specified in paragraph 5 on 19 July 2005 and the Convention will take effect between the HKSAR and these States from 1 October 2005. The list of 13 States and the effective date of the declaration under Article 38 of the Convention, which is 1 October 2005, are reflected in the Amendment Order accordingly.

LEGISLATIVE TIMETABLE

8. The legislative timetable is as follows –

Publication in the Gazette	30 September 2005
Tabling at the Legislative Council	12 October 2005

9. The Convention will take effect between the HKSAR and the said acceding States on 1 October 2005 in accordance with the Convention. To ensure that China and the HKSAR will be able to fulfill their obligations under the Convention from the specified date, and taking into account the routine nature of this updating exercise, the Amendment Order will take effect on 1 October 2005, before tabling at the LegCo.

IMPLICATIONS OF THE PROPOSAL

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

11. 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.

12. There may be some additional workload for the Department of Justice, Judiciary, Legal Aid Department, Social Welfare Department, Immigration Department and the Police, in dealing with abduction cases from these States and territories. However, the number of cases is likely to be few and the additional workload can be absorbed within the existing resources.

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

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

PUBLIC CONSULTATION

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

PUBLICITY

16. A press release will be issued on 29 September 2005. A spokesman will be available to answer media enquiries.

BACKGROUND

The Convention

17. The Convention, which was signed at The Hague in 1980, is now in force in 75 States. It provides an effective international mechanism for the swift return home 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.

18. An agreement was reached in the JLG 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.

OTHERS

19. For further enquiries, please contact Miss SHEA Wing-man, Assistant Secretary for Health, Welfare and Food (Family), at 2973 8126.

Health, Welfare and Food Bureau
29 September 2005

**CHILD ABDUCTION AND CUSTODY (PARTIES TO CONVENTION)
(AMENDMENT) ORDER 2005**

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

1. Commencement

This Order shall come into operation on 1 October 2005.

2. Schedule amended

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

(a) by adding -

"Federative Republic of 1 October 2005"
Brazil

after -

"Republic of Bosnia and 1 September 1997";
Herzegovina

(b) by adding -

"Republic of Bulgaria 1 October 2005"

before -

"Democratic Republic of 1 September 1997";
Burkina Faso

(c) by adding -

"Republic of Estonia 1 October 2005"

after -

"Republic of Ecuador 1 September 1997";

(d) by adding -

- "Republic of the Fiji Islands" 1 October 2005"
 before -
 "Republic of Finland" 1 September 1997";
 (e) by adding -
 "Republic of Latvia" 1 October 2005"
 after -
 "Republic of Italy" 1 September 1997";
 (f) by adding -
 "Republic of Lithuania" 1 October 2005"
 before -
 "Grand-Duchy of Luxembourg" 1 September 1997";
 (g) by adding -
 "Republic of Peru" 1 October 2005"
 after -
 "Republic of Panama" 1 September 1997";
 (h) by adding -
 "Democratic Socialist Republic of Sri Lanka" 1 October 2005"
 after -
 "Kingdom of Spain" 1 September 1997";
 (i) by adding -
 "Oriental Republic of Uruguay" 1 October 2005"
 after -
 "United States of America" 1 September 1997";
 (j) by adding -

- “Republic of Uzbekistan 1 October 2005”
before -
“Republic of Venezuela 1 September 1997”;
- (k) by adding -
- (i) “Republic of Malta 1 October 2005”
after -
“Republic of 1 September 1997”;
Macedonia
- (ii) “Kingdom of 1 October 2005”
Thailand
after -
“Confédération 1 September 1997”;
Suisse
(Switzerland)
- (iii) “Republic of 1 October 2005”
Trinidad and
Tobago
before -
“Republic of 1 August 2000”.
Turkey

Chief Executive

2005

Explanatory Note

This Order amends the Child Abduction and Custody (Parties to Convention) Order (Cap. 512 sub. leg. A) to add Federative Republic of Brazil, Republic of Bulgaria, Republic of Estonia, Republic of the Fiji Islands, Republic of Latvia, Republic of Lithuania, Republic of Peru, Democratic Socialist Republic of Sri Lanka, Oriental Republic of Uruguay, Republic of Uzbekistan, Republic of Malta, Kingdom of Thailand and Republic of Trinidad and Tobago as Contracting States to the Convention on the Civil Aspects of International Child Abduction so that the Convention will apply between Hong Kong and those states.