

**Bills Committee on the Child Abduction Legislation
(Miscellaneous Amendments) Bill 2013**

**The Administration's response to the issues raised
at the Bills Committee meeting on 20 December 2013**

This paper responds to the issues raised at the meeting of the Bills Committee on the Child Abduction Legislation (Miscellaneous Amendment) Bill 2013 (the Bill) held on 20 December 2013.

Criminalisation of parental child abduction

2. Members asked the Administration to reconsider whether to criminalise the act of parental child abduction. Noting that there was no evidence that there was a serious problem of children being abducted within, to or from Hong Kong, the Law Reform Commission (LRC) maintained the view that parental child abduction in Hong Kong should not be criminalized. We agree with the deliberation of LRC and consider that the power to detain a child when he or she is about to be removed out of Hong Kong in breach of a stop order is a proportionate step to prevent the child from being taken away from the custodial parent and home jurisdiction. We do not consider it necessary to criminalise such act at this stage.

Provision to empower the Court of First Instance to vary orders made under the Child Abduction and Custody Ordinance

3. The Assistant Legal Adviser and members enquired whether the Court of First Instance (CFI) has the powers to vary, suspend or discharge a prohibition order, location order or recovery order made under the new section 15 to 18 of the Child Abduction and Custody Ordinance (CACO) (Cap.512). In particular, upon the making of an *ex parte* order, the Court would often set a returnable date for *inter parte* hearing for the making of a formal order. It is noted that except for the power under O.32, r.6 of the Rules of the High Court (Cap. 4 sub. leg. A) to set aside an order made *ex parte*, there is no specific provision in the Bill empowering the CFI to vary, suspend or discharge orders made under the new sections 15 to 18. Taking into account members' views and with

reference to provisions of similar effect in other matrimonial ordinances (e.g. section 11 of the Matrimonial Proceedings and Property Ordinance (Cap.192)), we will consult the Judiciary on the suggestion to include a new provision to empower the CFI specifically to vary, suspend or discharge orders made by it under the CACO.

Views of the child and legal representation for children under the CACO

4. In family and matrimonial proceedings, the views of the child can be brought to the court's attention in a number of ways, including by being included in a social welfare officer's report; by appointment of a separate representative; by interviewing the child, etc. As stated in the "Guidance on Meeting Children" and the "Guidance on Separate Representation for Children in Matrimonial and Family Proceedings" issued by the Chief Justice in May and July 2012 respectively, which apply to children proceedings including proceedings under the CACO, the court may at its discretion, meet with the child or appoint either the Official Solicitor or a guardian *ad litem* for any child where it is considered that such separate representation is appropriate. At present, when a defence under Article 13 of the Convention on the Civil Aspects of International Child Abduction (the Hague Convention) has been raised (i.e. the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views), the court may order Official Solicitor to represent the child for parental child abduction cases under the Hague Convention. Similarly, should the court consider that meeting with the child or separate representation is in the best interests of the child in proceedings under the Bill, it may so order as appropriate.

Application of *habeas corpus* under the High Court Ordinance

5. If a child or his or her parent or legal guardian is aggrieved by the detention under the proposed section 20 of the Bill, they may have recourse to the courts by way of the prerogative writ of *habeas corpus* to challenge the lawfulness of the detention. Section 22A of the High Court Ordinance (Cap.4) clearly states that an application may be made to the CFI by the person alleged to be detained, or by any other person on that person's behalf. As *habeus corpus* can generally be invoked in

cases of persons being unlawfully detained, we do not consider it necessary to set out the right of the child (or his/her parent or legal guardian) to pursue *habeas corpus* application under section 22A of the High Court Ordinance in the CACO.

Recognition and enforcement of Hong Kong Matrimonial Court Orders in Taiwan and assistance to parents whose child has been abducted to the Mainland and Taiwan

6. There have been precedents whereby the courts in Taiwan recognized and enforced matrimonial judgments made in Hong Kong. Regarding the assistance to be provided to the left-behind parent whose child has been abducted to the Mainland and Taiwan, the Police will assess the case and contact the relevant authorities thereat to request them to locate and protect the child as appropriate. The Police may also pass the contacts for the parents' follow-up with the relevant authorities. As in other cases of Hong Kong residents in distress outside Hong Kong, the left-behind parent may also contact the Immigration Department for assistance.

Administrative guidelines for implementation of the Bill

7. The relevant departments/authorities including the Immigration Department, the Police and the Social Welfare Department are discussing the workflow and detailed arrangements to implement the Bill. Administrative guidelines will be prepared. We will ensure suitable coordination amongst the departments/authorities concerned.

Labour and Welfare Bureau
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