

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

**The Administration's response to issues raised at the
Bills Committee meeting on 25 March 2014,
11 February 2014 and 21 January 2014**

This paper responds to the outstanding issues raised at the meetings of the Bills Committee on the Child Abduction Legislation (Miscellaneous Amendment) Bill 2013 (the Bill) held on 21 January 2014, 11 February 2014 and 25 March 2014.

**Empowering the District Court to grant prohibition orders under the
Child Abduction and Custody Ordinance (Cap.512) (CACO)**

2. Under the proposed section 15 of CACO of the gazetted version of the Bill (now Clause 9A, proposed section 21 of CACO), the Court of First Instance (CFI) is empowered to make an order prohibiting removal of a child out of Hong Kong. Noting that most proceedings concerning custody or access rights are dealt with in the Family Court, Members of the Bills Committee suggested that the District Court (DC) should also be empowered to grant a prohibition order. Taking into account Members' views and having consulted the Judiciary, we agree that the DC be empowered to grant a prohibition order under the proposed section.

3. For the sake of clarity, we have added a definition for "court" in the new section 21(8) to set out the different circumstances under which the CFI or the DC may make a prohibition order.

Proposed three-part structure of CACO

4. Following the Law Reform Commission's (LRC) recommendations, the Bill includes new and general provisions to prevent parental child abduction cases that do not concern the operation of the Hague Convention on the Civil Aspects of International Child Abduction (the "Hague Convention") (e.g. the proposed prohibition order and the power to detain a child being removed out of Hong Kong in breach of a prohibition order). The Bill also proposes new provisions for better handling of Hague Convention cases (e.g. the proposed location order and

recovery order)¹.

5. During our consultation with the Judiciary on Members' suggestion as mentioned in paragraph 2 above, the Judiciary noted that CACO is now under the exclusive jurisdiction of the CFI. Under the Bill, Hague Convention cases will continue to be heard by CFI exclusively. In this context, the Judiciary questioned whether the extension of the power to the DC to make prohibition orders under CACO would cause confusion to legally qualified and lay court users.

6. In view of the Judiciary's concern, we propose a three-part structure of CACO to clearly differentiate provisions relating to Hague Convention cases from those governing cases that do not concern the operation of the Hague Convention. Please refer to the mark-up copy of the Bill in **Annex B**.² The gist of each part is as follows -

| Part | Scope |
|---|--|
| Part 1: Preliminary | <ul style="list-style-type: none">● Interpretations |
| Part 2: Provisions Giving Effect to the Hague Convention | <ul style="list-style-type: none">● Includes existing provisions of CACO and the proposed provisions relating to the handling of Hague Convention cases (e.g. the proposed location and recovery orders).● Matters contained in Part 2 fall under the exclusive jurisdiction of the CFI. |
| Part 3: Other Provisions Combating Child Abduction in Hong Kong | <ul style="list-style-type: none">● Includes the proposed provisions to combat parental child abduction that do not concern the operation of the Hague Convention. (e.g. the proposed prohibition order, notification of prohibition order, and the power to detain a child being removed out of Hong Kong in breach of a prohibition order) |

¹ Paragraph 3 of the Explanatory Memorandum of the Bill: "The purpose of the existing CACO is to give effect to the Hague Convention in Hong Kong. As the Bill includes new provisions that deal with cases not arising from an application under the Hague Convention, clause 3 widens the long title to the CACO to provide for combating child abduction generally."

² This mark-up copy of the Bill is for reference only and is subject to the final version of the full set of CSAs to be moved by the Government

| Part | Scope |
|------|--|
| | <ul style="list-style-type: none"> ● As recommended by Members, both the CFI and the DC will have jurisdiction for matters contained in Part 3. |

7. The above proposed structure is analogous to that in the Adoption Ordinance (Cap.290) (AO), which covers both applications falling within the exclusive jurisdiction of the CFI and applications over which the CFI and the DC have concurrent jurisdiction. Under Part 2 of AO, both the CFI and DC are empowered to grant adoption orders for infants residing in Hong Kong in favour of applicants residing in Hong Kong while under Part 5 only the CFI is empowered to grant adoption orders under the Hague Convention in respect of Intercountry Adoption. The Judiciary has been consulted and agreed that the proposal to divide the Bill into three distinct parts should provide greater clarity.

Imposing limitations or conditions on the use of information provided under a location order

8. Members were concerned that the information provided to the court under a location order may be used by relevant parties in other court proceedings (e.g. proceedings concerning custody or access of the child) or to the disadvantage of the child. Members suggested that limitations or conditions on the use of information provided to the court should be imposed. Taking into account the concern of Members, we propose to add a provision in the proposed new section 15 (previously the new section 16 in the Gazetted version of the Bill) to the effect that the applicable information provided in compliance with a location order may only be used for the proceedings for the return of the child under the Hague Convention that have commenced, or are about to be commenced, in Hong Kong or in another Contracting State.

Mark-up copy of the Bill

9. We propose to move Committee Stage Amendments (CSAs) in the light of the suggestions made by Members and to introduce the proposed three-part structure of CACO (as explained in paragraph 4-6 above). A summary of the amendments made to the gazetted version of the Bill is at **Annex A**. The mark-up copy of the Bill is at **Annex B**.

Criminalization of parental child abduction

10. At the Bills Committee meeting held on 25 March 2014, Members suggested to invite written views from relevant organisations/groups as to whether there would be a need to criminalise the act of parental child abduction. Two submissions, one from the Hong Kong Committee on Children's Rights and the other from the Against Child Abuse Ltd. were received, expressing views on enhanced parental education and support, training to frontline officers, etc. We agree with LRC that parental child abduction should not be criminalised along the lines of the UK Child Abduction Act 1984. The proposed power to detain a child when he or she is about to be removed out of Hong Kong in breach of a prohibition order is an improvement to the existing regime in, as well as a proportionate step to, preventing the unlawful removal of a child by his/her parent. The new power can also prevent parents from making further attempts to leave Hong Kong with the child by other means or to hide with the child. We will keep track of the experience of implementing the Bill in the context of the changing circumstances. The question of reviewing the issue of criminalisation of parental child abduction will be considered in that context.³ Regarding other points as raised in the submissions, please refer to **Annex C** for our detailed response.

Next Step

11. Subject to any comments Members may have, the Administration will move relevant amendments to the Bill at **Annex B** as CSAs. We will also proceed to prepare the necessary rules of court to provide for the procedure for applications under the new provisions. Upon making of the necessary rules, the Bill will come into operation on a day to be appointed by the Secretary for Labour and Welfare.

Labour and Welfare Bureau
June 2014

³ For details, please refer to the Administration's paper on "Discussion on Criminalization of Parental Child Abduction" (LC Paper No. CB (2)1302/13-14(01)).

Amendments made in light of the proposed three-part structure of CACO and in response to issues raised by Members

| Clause | Changes |
|---|---|
| Amendments to CACO – Part 1. Preliminary | |
| Clause 3A - 4 | <ul style="list-style-type: none">● Clause 3A names the first Part of the three-part CACO as “Part I. Preliminary”.● Clause 4 adds the definition of “District Court” (DC) in relation to section 21 empowering DC to grant a prohibition order; and moves the definitions of “authorized officer” and “immigration officer” (originally in section 20 of the gazetted Bill) to section 2 which defines the key terms in CACO. |
| Part 2. Provisions Giving Effect to Convention | |
| Clause 4A-5B | <ul style="list-style-type: none">● Clause 4A names the second part of the three-part CACO as “Part 2. Provisions Giving Effect to Convention”.● Clause 5A and 5B are technical amendments to sections 3 and 4 of CACO to update the cross-referencing in CACO. |
| Clause 8A | <ul style="list-style-type: none">● Clause 8A is a technical amendment on cross-referencing within the CACO. As in the existing law, the Rules Committee constituted under section 55 of the High Court Ordinance (Cap.4) may make rules of court for giving effect to Part 2 of CACO (i.e. Hague Convention cases) as appears to the Committee to be necessary or expedient. |
| Clause 9 – sections 15 -20 | <ul style="list-style-type: none">● Renumbering of the proposed sections on :<ul style="list-style-type: none">- location order (now the new section 15);- The Court of First Instance (CFI) to make order prohibiting removal of child from Hong Kong except to habitual residence (now the new section 16);- recovery order (now the new section 17); |

| Clause | Changes |
|--------|---|
| | <ul style="list-style-type: none"> - stay of custody application pending determination of proceedings under the Hague Convention (now the new section 20) ● As suggested by Members, the Chinese text of Section 15(2) is amended to read “是可在合理情況下取得的” to better reflect the English wording of “may reasonably obtain”¹. ● Section 15(2A) is added in response to Members’ concern on the use of information provided under a location order (Please refer to paragraph 8 of the paper). ● As suggested by Members, the Chinese text of Section 16(2)(b)(i) is amended to read “指將該兒童帶往或扣留於該國”². ● Section 16(4) and (5) are added in response to Members’ suggestion to include a provision to empower CFI specifically to vary, suspend or discharge a mirror-order made under the section³. ● Section 19 of the gazetted version of the Bill is renumbered as the new section 18 governing the notification of recovery order for Hague Convention cases. The notification of prohibition order for parental child abduction cases not invoking the operation of the Hague Convention is moved to section 22 in Part 3 of CACO. No changes are proposed to the notification arrangements for both orders. ● Section 20 of the gazetted version of the Bill is renumbered as the new section 19, empowering an authorized officer to detain a child being removed out of Hong Kong in breach of a recovery order. |

¹ See Paragraph 13 of the Administration’s Response to the issues raised at the Bills Committee meeting on 21 January and 11 February 2014 (LC Paper No. CB(2)1124/13-14(01) (the Administration’s Response)

² See Paragraph 17 of the Administration’s Response.

³ See Paragraph 4 of the Administration’s Response.

| Clause | Changes |
|--|--|
| Part 3. Other Provisions Combating Child Abduction in Hong Kong | |
| Clause 9A – Section 21 | <ul style="list-style-type: none"> ● Clause 9A names the third part of the three-part CACO as “Part 3. Other Provisions Combating Child Abduction in Hong Kong”. ● Section 15 of the gazetted version of the Bill empowering CFI to make a prohibition order is reproduced and renumbered as the new section 21 to empower both CFI and DC to make a prohibition order (Please refer to paragraph 2 of the paper). ● Section 21(4) and (5) are added in response to Members’ suggestion to include a new provision to state specifically that the court that made the order may vary, suspend or discharge a prohibition order made under the section.⁴ ● In the light of Members’ suggestion to empower DC to make prohibition orders, the definition of “court” is added in section 21(8) for the purpose of the new Part 3 of CACO. ● Definition of “child” is added in section 21(8) for the purpose of the new Part 3 of CACO, cross-referencing to the ordinances currently empowering CFI and DC to make orders concerning the custody of and access to a child⁵. Noting that different expressions are used in the respective ordinances to refer to a “child” under the age of 18⁶, the term is proposed to adopt the |

⁴ See Paragraph 4 of the Administration’s Response.

⁵ They include the Guardianship of Minor Ordinance (Cap.13)(GMO), the Separation and Maintenance Orders Ordinance (Cap.16) (SMOO), the Matrimonial Causes Ordinance (Cap.179) (MCO) and the Matrimonial Proceedings and Property Ordinance (Cap.196) (MPPO). Application for custody / access may also be made in wardship proceedings brought under the High Court Ordinance (Cap.4) (HCO).

⁶ - “minor” is used in the GMO. The term “minor” is not defined in the GMO. One has to go back to the general definition in section 3 of Cap.1 (“infant” (幼年人) and “minor” (未成年人) mean a person who has not attained the age of 18 years)
- “children of the marriage” is used in the SMOO (section 5)
- “child” in the MPPO (which is defined to include, in relation to one or both parties to a marriage, an illegitimate or adopted child of that party or, as the case may be, of both parties : section 2, MPPO); “child of the family” in the MPPO (which means, in relation to a marriage, a child of both those parties; and any other child who has been treated by both those parties as a child of their family : section 2, MPPO)
- “child” is used in the MCO. The term is not defined in the MCO. However, “child” and “child of the family” in the Matrimonial Causes Rules (Cap.179A) (MCR) (which is given the same meaning as in the MPPO: Rule 2, MCR)
- “infant” in wardship proceedings (there is no separate statutory definition for “infant” in wardship proceedings brought under HCO)

| Clause | Changes |
|--------------------------------------|--|
| | <p>same meaning as the equivalent in the respective ordinances. This ensures that the existing terminology denoting a person under the age of 18 and the definition of “child” in the relevant ordinances is not affected.</p> |
| <p>Clause 9A – Section 22-24</p> | <ul style="list-style-type: none"> ● Section 19 of the gazetted version of the Bill is reproduced and renumbered as the new section 22 governing the notification of prohibition order. No change is proposed to the notification arrangement. ● In the light of Members’ concern, section 22(1)(b) is amended to the effect that a pending application for a prohibition order is one for which the application concerned has already been filed and the date for the hearing of the application has been fixed by the court⁷. ● As suggested by Members, section 22(5)(a) and (b) are amended to indicate that a prohibition order may be varied, discharged or suspended on appeal or by the court that made the order⁸. ● Section 20 of the gazetted version of the Bill is reproduced and renumbered as the new section 23 empowering an authorized officer to detain a child being removed out of Hong Kong in breach of a prohibition order. ● As both CFI and DC will have the power to make prohibition orders under Part 3 of CACO, the new section 24 is added (similar to the existing section 12 of CACO) so that the Rules Committee constituted under section 55 of the High Court Ordinance (Cap.4) or the District Court Rules Committee may make rules of court for giving effect to Part 3 of CACO as appears to the Committee to be necessary or expedient. |

⁷ See Paragraph 19-20 of the Administration’s Response.

⁸ See Paragraph 4 of the Administration’s Response.

| Clause | Changes |
|---|--|
| Amendments to Judicial Proceedings (Regulation of Reports) Ordinance – | |
| Clause 18 | <ul style="list-style-type: none"> ● In the light of Members’ concern, section 1A proposed to be added to the Judicial Proceedings (Regulation of Reports) Ordinance (Cap.287) is amended to the effect that the identity of the persons referred to in the judgment is kept anonymous for publication⁹. |

⁹ See Paragraph 22 of the Administration’s Response

**Mock-up CSAs to Child Abduction Legislation
(Miscellaneous Amendments) Bill 2013**

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Mock-up CSAs to Child Abduction Legislation (Miscellaneous Amendments) Bill
2013~~Mock-up CSAs to Child Abduction Legislation (Miscellaneous Amendments)-~~
~~Bill~~2013

A BILL To

Amend the Child Abduction and Custody Ordinance and other enactments to provide for combating child abduction and for better implementing the Convention on the Civil Aspects of International Child Abduction, and for related matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Child Abduction Legislation (Miscellaneous Amendments) Ordinance 2013.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Labour and Welfare by notice published in the Gazette.

Part 2

Amendments to Child Abduction and Custody Ordinance

2. Child Abduction and Custody Ordinance amended

The Child Abduction and Custody Ordinance (Cap. 512) is amended as set out in this Part.

3. Long title amended

~~(1) Long title, after “An Ordinance1980”—~~

Add

~~“; to combat child abduction; and to provide for related matters”.~~

~~(2) Long title, before the full stop—~~

Add

~~“; and to provide for related matters”.~~

3A. Part 1 added

Before section 1—

Add

“Part 1

Preliminary”

4. Section 2 amended (interpretation)

(1) Section 2, English text, definition of *Rules Committee*—

Repeal the definition.

~~“(Cap. 4).”~~

Substitute

~~“(Cap. 4).”~~

(2) Section 2—

Add in alphabetical order

*“application under ~~this Ordinance~~ Part 2 (根據第 2 部之下
本條例提出的申請) means—*

- (a) an application under the Convention; or
- (b) an application under section 15, 16, or 17 ~~or 18~~;

authorized officer (獲授權人員) means—

- (a) a police officer; or
- (b) an immigration officer;

*District Court (區域法院) means the District Court
established by section 3 of the District Court Ordinance
(Cap. 336);*

*immigration officer (入境事務人員) means the holder of a
rank specified in Schedule 1 to the Immigration Service
Ordinance (Cap. 331);*

*place of safety (安全地方) includes a place listed in the
Schedule to the Protection of Children and Juveniles
(Places of Refuge) Order (Cap. 213 sub. leg. B);*

*prohibition order (禁止離境令) means an order made under
section ~~15(4)~~ 21(3);*

*recovery order (返還令) means an order made under section
17(2);*

*~~stop order (截停令) means a prohibition order or recovery
order.”.~~*

4A. Part 2 added

Before section 3—

Add

“Part 2

Provisions Giving Effect To Convention”.

5. ~~Section 6 amended (judicial authorities)~~

Section 6—

Repeal

“the Convention”

Substitute

“this Ordinance”.

5A. Section 3 amended (Convention to have force of law in Hong Kong)

Section 3—

Repeal

“Ordinance”

Substitute

“Part”.

5B. Section 4 amended (Contracting States)

Section 4(1)—

Repeal

“Ordinance”

Substitute

“Part”.

6. Section 7 substituted

Section 7—

Repeal the section

Substitute

**“7. Powers of Court of First Instance in applications under
this Ordinance~~Part 2~~**

- (1) Before an application under ~~this Ordinance~~Part 2 is determined, the Court of First Instance may do one or more of the following—
 - (a) give an interim direction as the Court thinks fit for securing the welfare of the child concerned, or for preventing changes in the circumstances relevant to determining the application;
 - (b) require the personal attendance of a person specified by the Court, including either or both of the parents of the child, at the hearing of the application.
- (2) This section does not affect the powers and discretions of the Court of First Instance that are exercisable apart from this section.”.

7. Section 8 amended (reports)

Section 8—

Repeal

everything before “may—”

Substitute

“For discharging a Central Authority’s functions in relation to a child under Articles 7 and 21 of the Convention, the Secretary for Justice”.

8. Section 9 amended (proof of documents and evidence)

Section 9(1), after “For the purposes of”—

Add

“section ~~18~~16, and”.

8A. Section 12 amended (rules of court)

(1) Section 12, heading, after “court”—

Add

“for giving effect to Part 2”.

(2) Section 12(1)—

Repeal the subsection

Substitute

“(1) The Rules Committee constituted under section 55 of the High Court Ordinance (Cap. 4) may make rules of court for giving effect to this Part as appears to the Committee to be necessary or expedient.”.

9. Sections 15 to ~~21~~20 added

After section 14—

Add

~~“15. Court of First Instance may make order prohibiting removal of child out of Hong Kong without consent~~

~~(1) In this section—~~

~~*child* (兒童) includes a child of the family as defined by section 2(1) of the Matrimonial Proceedings and Property Ordinance (Cap. 192).~~

~~—— (2) This section applies to a child who is under the age of 18 if ——~~

~~—— (a) a court order concerning the rights of custody of or access to the child is in force; or~~

~~—— (b) proceedings concerning those rights are pending in a court.~~

~~—— (3) A person must not remove the child out of Hong Kong without the consent of the following persons (whether or not a parent of the child) ——~~

~~—— (a) if a court order concerning the rights of custody of or access to the child is in force the person, or each of the persons, who has and is exercising those rights under the order; or~~

~~—— (b) if proceedings concerning those rights are pending in a court each party to the proceedings.~~

~~—— (4) To prevent a person from breaching subsection (3), a person specified in subsection (3)(a) or (b) may apply to the Court of First Instance for an order prohibiting the removal of the child out of Hong Kong except ——~~

~~—— (a) with the leave of the Court; or~~

~~—— (b) on compliance with the terms specified in the order.~~

~~—— (5) Unless otherwise directed by the Court of First Instance, the application may be made ex parte. (6) This section does not affect ——~~

~~—— (a) other powers of the Court of First Instance under this Ordinance; or~~

~~—— (b) the effect of any other court order.~~

“1615. Court of First Instance may make location order relating to child’s whereabouts

(1) In this section—

applicable information (適用資料), in relation to a child, means information about the child’s whereabouts or other circumstances relevant to locating the child;

applicable proceedings (適用程序) means proceedings for the return of a child under the Convention that are commenced, or about to be commenced, in Hong Kong or in another Contracting State.

(2) For any applicable proceedings relating to a child, the Court of First Instance may, on application, make a location order providing for one or more of the following—

- (a) requiring a person to provide the Court with applicable information that the person has or may reasonably obtain about the child;
- (b) requiring a public officer to provide the Court with applicable information that the officer has or may reasonably obtain in an official capacity about the child.

(2A) A location order made for any applicable proceedings may also provide that the applicable information provided in compliance with the order may only be used for the applicable proceedings.

(3) Any of the following persons may apply for a location order—

- (a) a party to the applicable proceedings;

- (b) the Secretary for Justice.
- (4) Unless otherwise directed by the Court of First Instance, the application may be made ex parte.
- (5) The Court of First Instance may make a location order despite the production of the child before a judicial or administrative authority, or the Central Authority, of Hong Kong or another Contracting State.
- (6) A person to whom a location order applies must comply with it, regardless of whether or not—
 - (a) there is any restriction imposed by a law or agreement concerning the disclosure of the applicable information; or
 - (b) the applicable information is subject to legal professional privilege.
- (7) A person is not excused from complying with a location order only because doing so may incriminate the person or the person's spouse.
- (8) However, a statement made by a person in compliance with a location order is not admissible in evidence against the person, or against the person's spouse, in proceedings for an offence other than perjury.

~~17. Court of First Instance may make recovery order relating to child's return~~

~~(1) In this section—~~

~~*applicable proceedings* (適用程序) means proceedings under the Convention that are commenced in Hong Kong for the return of a child to another Contracting State.~~

~~(2) For any applicable proceedings relating to a child, the Court of First Instance may, on application, make a~~

~~recovery order providing for one or more of the following—~~

~~(a) requiring a person to return or deliver the child to another person specified by the Court (*specified person*);~~

~~(b) authorizing or directing a police officer to do one or more of the following for finding the child (and to do so with the assistance the officer requires and by force if necessary)—~~

~~(i) stop and search a vehicle, vessel or aircraft;~~

~~(ii) enter and search a place;~~

~~(c) authorizing or directing a police officer to recover the child (and to do so with the assistance the officer requires and by force if necessary);~~

~~(d) authorizing or directing a police officer to return or deliver the recovered child to the specified person;~~

~~(e) authorizing or directing a police officer to take the recovered child to, and keep the child in, a place of safety until the return or delivery of the child to the specified person;~~

~~(f) if the specified person cannot be contacted within a reasonable time authorizing or directing the Director of Social Welfare to take the follow up actions that the Director considers appropriate;~~

~~(g) giving directions about the day to day care of the child until the return or delivery of the child to the specified person.~~

~~(3) Any of the following persons may apply for a recovery order—~~

~~—(a) a party to the applicable proceedings;~~

~~—— (b) the Secretary for Justice.~~

~~—— (4) Unless otherwise directed by the Court of First Instance,
the application may be made ex parte.~~

1816. Court of First Instance may make order prohibiting removal of child from Hong Kong except to habitual residence, etc.

(1) In this section—

home state (本國), in relation to a child, means the Contracting State of the child's habitual residence.

(2) This section applies to a child if—

(a) a judicial or administrative authority of the child's home state has made an order providing for the child to be taken to Hong Kong temporarily (whether or not also to another jurisdiction) for enabling a person to exercise the rights of access to the child; or

(b) all of the following conditions are met—

(i) a judicial or administrative authority of a Contracting State has made a decision or other determination that the child has been wrongfully removed to or retained in that State within the meaning of Article 3 of the Convention;

(ii) that authority has made an order providing for the return of the child to the child's home state via Hong Kong (whether or not also via another jurisdiction);

(iii) the child is in, or will be entering, Hong Kong in transit on return to the child's home state.

(3) The Court of First Instance may, on application by the Secretary for Justice, make an order prohibiting the removal of the child from Hong Kong to a jurisdiction other than—

- (a) the child's home state; or
- (b) another jurisdiction as may be specified in the order mentioned in subsection (2)(a) or (b)(ii).

(4) If the Court of First Instance has made an order under subsection (3), it may do one or more of the following—

- (a) vary or discharge the order;
- (b) suspend the operation of a provision of the order, and revive the operation of the provision so suspended.

(5) This section does not affect the powers and discretions of the Court of First Instance that are exercisable apart from this section.

(46) The Secretary for Justice may make an application under this section on request by the Central Authority of a Contracting State.

(57) Unless otherwise directed by the Court of First Instance, the application may be made ex parte.

17. Court of First Instance may make recovery order relating to child's return

(1) In this section—

applicable proceedings (適用程序) means proceedings under the Convention that are commenced in Hong Kong for the return of a child to another Contracting State.

(2) For any applicable proceedings relating to a child, the Court of First Instance may, on application, make a

recovery order providing for one or more of the following—

(a) requiring a person to return or deliver the child to another person specified by the Court (*specified person*);

(b) authorizing or directing a police officer to do one or more of the following for finding the child (and to do so with the assistance the officer requires and by force if necessary)—

(i) stop and search a vehicle, vessel or aircraft;

(ii) enter and search a place;

(c) authorizing or directing a police officer to recover the child (and to do so with the assistance the officer requires and by force if necessary);

(d) authorizing or directing a police officer to return or deliver the recovered child to the specified person;

(e) authorizing or directing a police officer to take the recovered child to, and keep the child in, a place of safety until the return or delivery of the child to the specified person;

(f) if the specified person cannot be contacted within a reasonable time—authorizing or directing the Director of Social Welfare to take the follow-up actions that the Director considers appropriate;

(g) giving directions about the day-to-day care of the child until the return or delivery of the child to the specified person.

(3) Any of the following persons may apply for a recovery order—

(a) a party to the applicable proceedings;

(b) the Secretary for Justice.

(4) Unless otherwise directed by the Court of First Instance,
the application may be made ex parte.

1918. Notification of stop recovery orders, etc.

~~(1) In this section—~~

~~*Director* (處長) means the Director of Immigration.~~

~~(21) This section applies if—~~

~~—(a) a stop recovery order has been made in relation to a
child; or~~

~~—(b) an application for a prohibition order in relation to a
child is pending.~~

~~(32) For the purposes of section 2019—~~

~~—(a) an applicant for a prohibition order may notify the
Director that the order has been made or the
application is pending;~~

~~(ba) an applicant for a recovery order may notify the
Director of Immigration that the order has been
made; and~~

~~(eb) an applicant for a stop recovery order that has been
revived after suspension may notify the Director of
Immigration that the order has been revived.~~

~~—(4) If an applicant has given a notification under subsection
(3), and the notification relates to a prohibition order that
has been made, or revived after suspension, or is under
application, the applicant must as far as practicable
inform the following persons that the notification has
been given—~~

~~— (a) if a court order concerning the rights of custody of or access to the child is in force the person, or each of the persons, who has and is exercising those rights under the order; or~~

~~— (b) if proceedings concerning those rights are pending in a court each party to the proceedings.~~

(53) If an applicant has given a notification under subsection (32), ~~and the notification relates to a recovery order that has been made, or revived after suspension,~~ the applicant must as far as practicable inform each party to the related applicable proceedings mentioned in section 17 that the notification has been given.

(64) A failure to comply with subsection (4) ~~or (53)~~ does not affect the validity of a stop-recovery order or the operation of section 2019.

(75) Subsection (86) applies if—

~~—~~ (a) ~~a stop order~~ a recovery order has been varied by the Court of First Instance; or

(b) ~~a stop order~~ a recovery order has been discharged on appeal or by the Court of First Instance, or suspended on appeal ~~by the Court of First Instance;~~

~~— (c) an application for a prohibition order has been rejected or withdrawn;~~

~~— (d) for a stop order that is a prohibition order the Court of First Instance has granted the leave under section 15(4)(a); or~~

~~— (e) for a stop order that is a prohibition order made subject to an exception mentioned in section 15(4)(b) the Court of First Instance has certified~~

~~that the terms specified in the order have been
complied with.~~

- (86) For the purposes of section 2019, an applicant for a stop recovery order who has given a notification under subsection (32) must, or a person affected by the order ~~or the application~~ may, notify the Director of Immigration about the matter mentioned in subsection (75)(a); or (b); ~~(c); (d) or (e)~~ (whichever is applicable).
- (97) The notification under subsection (32) or (86) must be—
- (a) given in a manner and form specified by the Director of Immigration; and
 - (b) accompanied by the supporting documents required by the Director of Immigration.

2019. Authorized officer may detain child being removed out of Hong Kong in breach of stop-recovery order, etc.

~~(1) In this section—~~

~~**authorized officer** (獲授權人員) means—~~

~~(a) a police officer; or~~

~~(b) an immigration officer;~~

~~**immigration officer** (入境事務人員) means the holder of a rank specified in Schedule 1 to the Immigration Service Ordinance (Cap. 331).~~

- (21) An authorized officer may detain a child if the following conditions are met—
- (a) the officer is satisfied that—
 - (i) a notification has been given under section 19(3)18(2), or a notification about the matter mentioned in section 19(7)(a)18(5)(a) has

been given under section ~~19(8)~~18(6), in relation to the child; and

- (ii) no notification about ~~any of~~ the matters mentioned in section ~~19(7)(b) to (e)~~18(5)(b) has been given under section ~~19(8)~~18(6) in relation to the child; and

- (b) the officer reasonably suspects that the child is about to be, or is being, removed out of Hong Kong.

~~(32)~~ To avoid doubt—

- (a) the mere fact that ~~any of~~ the matters mentioned in section ~~19(7)(b) to (e)~~18(5)(b) exists does not render unlawful the exercise of the power by an authorized officer under subsection ~~(21)~~ if the officer is unaware of that fact; and
- (b) if the officer has detained a child under subsection ~~(21)~~, the officer may continue to do so for as long as it is necessary for the officer to discharge the functions under subsection ~~(43), (6), (7) or (84)~~, regardless of whether the condition in subsection ~~(21)~~(b) continues to be met.

- ~~(43)~~ If an immigration officer detains a child under subsection ~~(21)~~, the officer must as soon as practicable transfer the child into the charge of a police officer.

~~(5) Subsections (6), (7) and (8) apply if—~~

- ~~(a) a police officer detains a child under subsection (2); or~~
- ~~(b) a child is transferred into the charge of a police officer under subsection (4).~~

- ~~—— (6) If the stop order made or under application is a prohibition order ——~~
 - ~~—— (a) the police officer must as soon as practicable take the child to, and keep the child in, a place of safety until ——~~
 - ~~—— (i) the arrival of, and the return of the child to, the person specified in subsection (7); or~~
 - ~~—— (ii) in any other case the Director of Social Welfare is to take the follow up actions that the Director considers appropriate; and~~
 - ~~—— (b) if the person specified in subsection (7) cannot be contacted within a reasonable time, the Director of Social Welfare is to take the follow up actions that the Director considers appropriate.~~
- ~~—— (7) For subsection (6)(a)(i) and (b), the following person is specified ——~~
 - ~~—— (a) the person who ——~~
 - ~~—— (i) has the sole rights of custody of the child under a court order; and~~
 - ~~—— (ii) is not the person who attempts to remove the child out of Hong Kong;~~
 - ~~—— (b) if 2 or more persons have joint rights of custody of the child under a court order, and one of them attempts to remove the child out of Hong Kong —— the other person, or one of the other persons; or~~
 - ~~—— (c) if proceedings concerning the rights of custody of the child are pending in a court —— the applicant for the prohibition order.~~
- (84) If the stop order made is a recovery order. If a police officer detains a child under subsection (1) or a child is

transferred into the charge of a police officer under subsection (3)—

- (a) the police officer must as soon as practicable take the child to, and keep the child in, a place of safety until the return or delivery of the child to a person specified in the recovery order; and
- (b) if that person cannot be contacted within a reasonable time, the Director of Social Welfare is to take the follow-up actions that the Director considers appropriate.

2120. Stay of custody application pending determination of proceedings under the Convention

- (1) In this section—

custody application (管養權申請), in relation to a child, means an application relating to the merits of rights of custody of the child;

rights of custody (管養權) has the same meaning as in the provisions of the Convention set out in Schedule 1;

specified authority (指明當局) includes the Court of First Instance, the District Court, and a juvenile court within the meaning of the Juvenile Offenders Ordinance (Cap. 226).

- (2) If a party to proceedings under the Convention in relation to a child knows that a custody application in relation to that child is pending in a specified authority, that party must file in the Registry of the High Court a notice containing a statement that sets out—
- (a) the nature of the custody application; and
 - (b) that specified authority.

- (3) On receipt of that notice, the Registrar of the High Court must—
 - (a) give the specified authority notification of the proceedings under the Convention; and
 - (b) subsequently give that authority notification of the result of those proceedings.
- (4) On receipt by the specified authority of the notification under subsection (3)(a)—
 - (a) all further proceedings in the custody application are to be stayed until the final determination or final disposal of the proceedings under the Convention; and
 - (b) the specified authority must give the parties to that application notice of the stay.”.

9A. Part 3 added

Before Schedule 1—

Add

“Part 3

**Other Provisions Combating Child Abduction In
Hong Kong**

**21. Court of First Instance or District Court may make order
prohibiting removal of child out of Hong Kong without
consent**

- (1) This section applies to a child who is under the age of 18
if—

- _____ (a) a court order concerning the custody of or access to the child is in force; or
- _____ (b) proceedings concerning the custody of or access to the child are pending in a court.
- _____ (2) A person must not remove the child out of Hong Kong without the consent of the following persons (whether or not a parent of the child)—
 - _____ (a) if the court order is in force—the person, or each of the persons, who has the custody of or access to the child under the order or who is exercising the rights of that custody or access; or
 - _____ (b) if proceedings concerning the custody of or access to the child are pending in a court—each party to the proceedings.
- _____ (3) To prevent a person from breaching subsection (2), a person specified in subsection (2)(a) or (b) may apply to the court for an order prohibiting the removal of the child out of Hong Kong except—
 - _____ (a) with the leave of the court; or
 - _____ (b) on compliance with the terms specified in the order.
- _____ (4) If an order has been made under subsection (3), the court that made the order may do one or more of the following—
 - _____ (a) vary or discharge the order;
 - _____ (b) suspend the operation of a provision of the order, and revive the operation of the provision so suspended.

(5) Subsection (4) does not affect the powers and discretions of the court that are exercisable apart from that subsection.

(6) Unless otherwise directed by the court, the application under subsection (4) may be made ex parte.

(7) This section does not affect the effect of any other order.

(8) In this section—

child (兒童)—

(a) in relation to a court order made by the Court of First Instance in the exercise of its jurisdiction relating to a ward of court under section 26 of the High Court Ordinance (Cap. 4), or any proceedings related to the exercise of that jurisdiction—means the infant who is the subject of that order or those proceedings;

(b) in relation to a court order made under section 10(1), 11(1)(a), 12(a) or 13(1)(b) or (3) of the Guardianship of Minors Ordinance (Cap. 13), or any proceedings related to an application under that section—means the minor who is the subject of that order or those proceedings;

(c) in relation to a court order made under section 5(1)(b) of the Separation and Maintenance Orders Ordinance (Cap. 16), or any proceedings related to an application under that section—a child of the marriage who is the subject of that order or those proceedings;

(d) in relation to a court order made under section 48(1) of the Matrimonial Causes Ordinance (Cap. 179), or any proceedings related to an application

under that section—a child who is the subject of that order or those proceedings; or

- (e) in relation to a court order made under section 19(1) or 20(1) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), or any proceedings related to an application under that section—a child of the family who is the subject of that order or those proceedings;

court (法院)—

- (a) in relation to a court order made by the Court of First Instance, or any proceedings pending in that Court—means the Court of First Instance; or
- (b) in relation to a court order made by the District Court, or any proceedings pending in that Court—means the District Court.

22. Notification of prohibition orders

- (1) This section applies if—

- (a) a prohibition order has been made in relation to a child; or
- (b) an application for a prohibition order in relation to a child is pending, and the date for the hearing of the application has been fixed by the court.

- (2) For the purposes of section 23—

- (a) an applicant for a prohibition order may notify the Director of Immigration that the order has been made or, if the application is pending, the date for the hearing of the application has been fixed by the court; and

- (b) an applicant for a prohibition order that has been revived after suspension may notify the Director of Immigration that the order has been revived.
- (3) If an applicant has given a notification under subsection (2), the applicant must as far as practicable inform the following persons that the notification has been given—
 - (a) if a court order concerning the custody of or access to the child is in force—the person, or each of the persons, who has the custody of or access to the child under the order or who is exercising the rights of that custody or access; or
 - (b) if proceedings concerning the custody of or access to the child is pending in the court—each party to the proceedings.
- (4) A failure to comply with subsection (3) does not affect the validity of a prohibition order or the operation of section 23.
- (5) Subsection (6) applies if—
 - (a) a prohibition order has been varied on appeal or by the court that made the order;
 - (b) a prohibition order has been discharged or suspended on appeal or by the court that made the order;
 - (c) an application for a prohibition order has been rejected or withdrawn;
 - (d) the court that made the prohibition order has granted the leave under section 21(3)(a); or
 - (e) for a prohibition order that is made subject to an exception mentioned in section 21(3)(b)—the court

that made the order has certified that the terms specified in the order have been complied with.

(6) For the purposes of section 23, an applicant for a prohibition order who has given a notification under subsection (2) must, or a person affected by the order or the application may, notify the Director of Immigration about the matter mentioned in subsection (5)(a), (b), (c), (d) or (e) (whichever is applicable).

(7) The notification under subsection (2) or (6) must be—

(a) given in a manner and form specified by the Director of Immigration; and

(b) accompanied by the supporting documents required by the Director of Immigration.

23. Authorized officer may detain child being removed out of Hong Kong in breach of prohibition order

(1) An authorized officer may detain a child if the following conditions are met—

(a) the officer is satisfied that—

(i) a notification has been given under section 22(2), or a notification about the variation of the prohibition order mentioned in section 22(5)(a) has been given under section 22(6), in relation to the child; and

(ii) no notification about any of the matters mentioned in section 22(5)(b), (c), (d) or (e) has been given under section 22(6) in relation to the child; and

- (b) the officer reasonably suspects that the child is about to be, or is being, removed out of Hong Kong.
- (2) To avoid doubt—
 - (a) the mere fact that any of the matters mentioned in section 22(5)(b), (c), (d) or (e) exists does not render unlawful the exercise of the power by an authorized officer under subsection (1) if the officer is unaware of that fact; and
 - (b) if the officer has detained a child under subsection (1), the officer may continue to do so for as long as it is necessary for the officer to discharge the functions under subsection (3) or (4), regardless of whether the condition in subsection (1)(b) continues to be met.
- (3) If an immigration officer detains a child under subsection (1), the officer must, as soon as practicable, transfer the child into the charge of a police officer.
- (4) If a police officer detains a child under subsection (1) or a child is transferred into the charge of a police officer under subsection (3)—
 - (a) the police officer must, as soon as practicable, take the child to, and keep the child in, a place of safety until—
 - (i) the arrival of, and the return of the child to, the person specified in subsection (5); or
 - (ii) in any other case—the Director of Social Welfare is to take the follow-up actions that the Director considers appropriate; and

_____ (b) if the person specified in subsection (5) cannot be contacted within a reasonable time, the Director of Social Welfare is to take the follow-up actions that the Director considers appropriate.

_____ (5) For subsection (4)(a)(i) and (b), the following person is specified—

_____ (a) the person who—

_____ (i) has sole custody of the child under a court order; and

_____ (ii) is not the person who attempts to remove the child out of Hong Kong;

_____ (b) if 2 or more persons have joint custody of the child under a court order, and one of them attempts to remove the child out of Hong Kong—the other person, or one of the other persons; or

_____ (c) if proceedings concerning the custody of the child is pending in a court—the applicant for the prohibition order.

24. Rules of court for giving effect to Part 3

_____ (1) The Rules Committee may make rules of court for giving effect to this Part as appears to the Committee to be necessary or expedient.

_____ (2) The power to make rules of court under section 54 of the High Court Ordinance (Cap 4), or section 72 of the District Court Ordinance (Cap 336), includes power to make rules of court for the purposes of this Part.

_____ (3) In this section—

Rules Committee (規則委員會) means—

(a) the Rules Committee constituted under section 55
of the High Court Ordinance (Cap 4); or

(b) the District Court Rules Committee established
under section 17 of the District Court Ordinance
(Cap. 336).”.

**10. Schedule 1 amended (Convention on the Civil Aspects of
International Child Abduction)**

Schedule 1—

Repeal

“[s. 3]”

Substitute

“[ss. 3 & ~~24~~20]”.

Part 3

Amendments to Rules of the High Court

11. Rules of the High Court amended

The Rules of the High Court (Cap. 4 sub. leg. A) are amended as set out in this Part.

12. Order 121 amended (Child Abduction and Custody Ordinance (Cap. 512))

(1) Order 121, rule 2(1)—

Repeal

“Subject to”

Substitute

“Except as provided in the Ordinance and in”.

(2) Order 121—

Repeal rule 10

Substitute

“10. Stay of custody application pending determination of proceedings under the Convention (O. 121, r. 10)

(1) A notice filed under section [21\(2\)](#)~~20(2)~~ by a party to proceedings under the Convention must be verified by an affidavit sworn by that party or a person duly authorized to swear it on behalf of that party.

(2) The affidavit must be filed at the same time as the notice.”.

(3) Order 121, after rule 11—

Add

“12. Application for an order under section 48-16 (O. 121, r. 12)

- (1) An application for an order under section 48-16 must be supported by an affidavit sworn by—
 - (a) the applicant; or
 - (b) a person duly authorized to swear it on behalf of the applicant.
- (2) The affidavit must, as far as possible, state the following—
 - (a) the particulars of the request made by the requesting Contracting State;
 - (b) the particulars of any relevant order, decision or determination of a judicial or administrative authority of the requesting Contracting State;
 - (c) the particulars of the travel arrangements of the child and accompanying persons, including the dates of arrival and departure, and contact details while they are in Hong Kong; and
 - (d) if the child is in, or is being taken to, Hong Kong temporarily for enabling a person to exercise the rights of access to the child—
 - (i) the basis for believing that the child may be wrongfully removed from Hong Kong to a jurisdiction other than the one mentioned in section 48-16(3)(a) or (b); or
 - (ii) if that person consents to the making of the order sought—the particulars of the consent.

- (3) In addition, the affidavit must, as far as possible, exhibit the following—
 - (a) a copy of the relevant order, decision or determination of the judicial or administrative authority of the requesting Contracting State; and
 - (b) all other relevant documents.
- (4) The affidavit must be filed at the same time as the application.
- (5) However, for an urgent case, the affidavit may be filed as soon as possible after the application.

13. Searching for, inspecting and obtaining copies of documents filed in proceedings under the Ordinance (O. 121, r. 13)

- (1) Unless otherwise directed by the Court, a party to any proceedings under the Ordinance or the party's solicitor, or the Secretary for Justice, may do one or more of the following—
 - (a) have a search in the Registry made for a document filed in the Registry in those proceedings;
 - (b) inspect or obtain a copy of the document.
 - (2) Except as provided in paragraph (1), if a document is filed in the Registry in any proceedings under the Ordinance (other than an order made in open court)—
 - (a) the document is not open to inspection by any person without leave of the Court; and
 - (b) no copy of the document, or of an extract from the document, may be taken by, or issued to, any person without leave of the Court.”.
-

Mock-up CSAs to Child Abduction Legislation (Miscellaneous Amendments) Bill
2013

Explanatory Memorandum

[Paragraph 11](#)

[32Paragraph 11](#)

Part 4

Amendments to Matrimonial Causes Ordinance and its Subsidiary Legislation

Division 1—Matrimonial Causes Ordinance

13. Matrimonial Causes Ordinance amended

The Matrimonial Causes Ordinance (Cap. 179) is amended as set out in this Division.

14. Section 48D added

In Part VII, after section 48C—

Add

“48D. Order for prohibiting removal of child out of Hong Kong

- (1) This section applies to a child of the family as defined by section 2(1) of the Matrimonial Proceedings and Property Ordinance (Cap. 192) who is under the age of 18.
- (2) If a parent of the child is a party to any proceedings under this Ordinance, that parent may apply to the court for an order prohibiting the removal of the child out of Hong Kong, or out of the custody, care or control of a person named in the application, except—
 - (a) with the leave of the court; or
 - (b) on compliance with the terms specified in the order.

- (3) Unless otherwise directed by the court, the application may be made ex parte.”.

Division 2—Matrimonial Causes Rules

15. Matrimonial Causes Rules amended

The Matrimonial Causes Rules (Cap. 179 sub. leg. A) are amended as set out in this Division.

16. Rule 94 amended (removal of child out of Hong Kong, etc.)

Rule 94—

Repeal paragraph (2).

Part 5

Amendments to Judicial Proceedings (Regulation of Reports) Ordinance

17. Judicial Proceedings (Regulation of Reports) Ordinance amended

The Judicial Proceedings (Regulation of Reports) Ordinance (Cap. 287) is amended as set out in this Part.

18. Section 5 amended (publication of information relating to proceedings in private)

- (1) After section 5(1)(a)—

Add

“(ab) subject to subsection (1A), where the proceedings are brought under the Child Abduction and Custody Ordinance (Cap. 512);”.

- (2) After section 5(1)—

Add

“(1A) The publication of a judgment, in which the identity of a person referred to is kept anonymous, of a competent court in proceedings under the Hague Convention ~~on an anonymous basis~~ is not of itself contempt of court if—

- (a) none of the parties to those proceedings objects to that publication; and
- (b) the court has made an order authorizing that publication.”.

- (3) After section 5(3)—

Add

“(4) In subsection (1A)—

Hague Convention (《海牙公約》) means the Convention on the Civil Aspects of International Child Abduction signed at The Hague on 25 October 1980.”.

Explanatory Memorandum

The object of this Bill is to amend the Child Abduction and Custody Ordinance (Cap. 512) (*CACO*) and other enactments to provide for combating child abduction and for better implementing the Convention on the Civil Aspects of International Child Abduction signed at The Hague on 25 October 1980 (*Convention*), and for related matters. The main amendments contained in the Bill are based on the recommendations made in the report of the Law Reform Commission of Hong Kong on International Parental Child Abduction (*LRC Report*).

Part 1—Preliminary

2. Clause 1 provides for the short title and commencement.

Part 2—Amendments to CACO

3. The purpose of the existing CACO is to give effect to the Convention in Hong Kong. As the Bill includes new provisions that deal with cases not arising from an application under the Convention, clause 3 widens the long title to the CACO to provide for combating child abduction generally.
4. Clause 4 adds new definitions of *application under this Ordinance*, *place of safety*, *prohibition order*, *recovery order* and *stop order* to section 2 of the CACO.
5. Section 6 of the CACO provides that the Court of First Instance (*CFI*) has the jurisdiction to hear and determine an application under the Convention. Clause 5 amends that section to expand that jurisdiction to cover applications under the new provisions added by the Bill.

6. Clause 6 re-enacts section 7 of the CACO to expressly empower the CFI to require a person (including parents of the child concerned) to personally attend at the hearing of an application under the CACO.
7. Clause 7 amends section 8 of the CACO to empower the Secretary for Justice to request written reports on matters relating to children with reference to the Secretary's functions as a Central Authority under Articles 7 and 21 of the Convention. These Articles require the cooperation of Contracting States to secure the prompt return of children and the effective exercise of rights of access to them.
8. Section 9 of the CACO deals with the proof of documents for the purposes of the Convention. Clause 8 amends that section to include an additional cross-reference to the new section 18 added by clause 9.
9. For tackling the problem of cross-border child abduction, clause 9 adds new provisions to the CACO to empower the CFI to make the following orders—
 - (a) a prohibition order against removing a child out of Hong Kong without consent (new section 15);
 - (b) a location order requiring information about a child's whereabouts or other circumstances relevant to locating the child (new section 16);
 - (c) a recovery order, which may require the return or delivery of a child to a specified person, and may authorize a police officer to recover the child and exercise certain powers for finding the child (new section 17); and
 - (d) an order prohibiting a child from being removed from Hong Kong except to the child's habitual residence or other jurisdictions specified in an order made by a

judicial or administrative authority of a Contracting State to the Convention (new section 18).

10. The new section 19 deals with the notification of a stop order (defined as either a prohibition order under the new section 15(4), or a recovery order under the new section 17(2)), or of a pending application for a prohibition order, to be given to the Director of Immigration and other parties for the purposes of the new section 20.
11. The new section 20 empowers a police officer or immigration officer to detain a child being removed out of Hong Kong on satisfaction of the specified conditions. The child is to be taken to and kept in a place of safety until the return of the child to an appropriate party, or follow-up actions to be taken by the Director of Social Welfare.
12. The new section 21 provides that a local custody application in relation to a child is to be stayed pending the result of any proceedings for the return of the child under the Convention.

Part 3—Amendments to Rules of the High Court

13. Clause 12 amends Order 121 of the Rules of the High Court (Cap. 4 sub. leg. A) to do the following—
 - (a) make a consequential amendment to rule 2(1);
 - (b) replace rule 10 consequent on the addition of the new section 21 to the CACO by clause 9;
 - (c) add a new rule 12 for implementing the new section 18 added to the CACO by clause 9; and
 - (d) add a new rule 13 restricting the inspection, and obtaining of copies, of court documents filed in proceedings under the CACO.

Part 4—Amendments to Matrimonial Causes Ordinance and its subsidiary legislation

14. Clause 14 adds a new section 48D to the Matrimonial Causes Ordinance (Cap. 179), which provides that a party to proceedings under the Ordinance may apply for a court order prohibiting the removal of a child of the family out of Hong Kong. This new section replaces rule 94(2) of the Matrimonial Causes Rules (Cap. 179 sub. leg. A), which is repealed by clause 16, as recommended in the LRC Report.

Part 5—Amendments to Judicial Proceedings (Regulation of Reports) Ordinance

15. Clause 18 amends section 5 of the Judicial Proceedings (Regulation of Reports) Ordinance (Cap. 287) to ensure that the confidentiality of proceedings under the CACO is protected.

**The Administration's response to the written submissions
as to whether there was a need to criminalize
the act of parental child abduction**

**LRC recommendation - Enhanced arrangement to prevent parental
abduction under the Bill**

2. The recommendations put forward by the Law Reform Commission (LRC) in its Report on International Parental Child Abduction aim at improving Hong Kong's current legal protection against parental child abduction in Hong Kong. Having examined Hong Kong's civil and criminal law relating to child abduction as well as the law which apply in other common law jurisdictions, and taking into account the findings of its consultation exercise, LRC proposed to empower the holding of a child who was reasonably suspected to be or was being removed from the jurisdiction in breach of a court order so that he/she could be returned to the custodial parent¹, to foil the attempt to remove the child from Hong Kong.

3. The proposed power to detain² is an improvement to the existing arrangement whereby the Immigration Department (ImmD) and the Police can only stop and turn away a child departing from Hong Kong at the checkpoints when they are aware of a court order prohibiting removal. It is a proportionate step to prevent the child from being unlawfully removed out of Hong Kong by his/her parents. The new power can also prevent parents from making further attempts to leave Hong Kong with the child by other means or to hide with the child.³

¹ Paragraph 6.27 of the LRC Report

² Under the proposed section 15 of CACO of the gazetted version of the Bill (now Clause 9A, proposed section 21 of CACO), a person with a custody or access order in hand or each party to pending proceedings concerning those rights may apply for a prohibition order to prohibit the removal of the child out of Hong Kong without appropriate consent. If a notification of the prohibition order or the application has been duly made and the officer reasonably suspects that the child is about to be, or is being, removed out of Hong Kong, an authorized officer may detain a child and keep the child in a place of safety until the arrival of and return of the child to the appropriate person.

³ Regarding details of the proposed power to detain, please refer to paragraph 10 of the Administration's response to the issues raised at the Bills Committee meeting on 21 January and 11 February 2014 (LC Paper No. CB(2) 1124/13-14(01)), and paragraphs 11-12 of the Administration's paper on "Discussion on criminalization of parental child abduction"(LC Paper No. CB(2) 1302/13-14(01)).

Training for front-line officers

4. Relevant departments organize training and programmes regularly for front-line officers to handle child-related cases. For example, ImmD has incorporated sensitivity training for immigration officers to ensure that they acquire the awareness and sensitivity in dealing with persons with special needs, including children of tender age. Training on various aspects of child protection and child abuse investigation is also provided to police officers as part of their basic training and on an ad-hoc basis. Moreover, the Social Welfare Department (SWD) organizes programmes for front-line social workers on topics related to child-related issues and family crisis, such as child abuse, child abduction, custody evaluation, domestic violence, etc.

5. Regarding training for personnel from the Judiciary, the Judiciary has all along been providing appropriate training to Judges and Judicial Officers (JJOs) handling family cases and their support staff. In 2013 and 2014, these JJOs participated in various activities, including an international meeting covering topics such as international child protection and relocation; a talk delivered by the Former Secretary General of the Hague Conference on Private International Law for JJOs with focus on the International Hague Network of Judges specialising in family matters and international children protection; and an international conference to look into cross-border family law disputes, issues and problems and exchange views on resolving these matters in the best interests of the child. Other training activities will continue to be held in the latter half of 2014, for example, a sharing session among Judges on handling cases involving domestic violence.

6. To facilitate front-line officers' understanding of the process and procedures under the provisions in the Bill, sharing sessions and training programmes will be organised for front-line staff of the relevant units of SWD and related non-governmental organizations before the commencement of the Bill. Likewise, briefings will be held to ensure that the police and immigration officers are familiar with the new legislation and the relevant procedures prior to implementation.

Parental education and support to divorced families

7. SWD has all along been providing parent education programmes through Family Life Education Units, as well as Integrated Family Service Centres, Integrated Children & Youth Services Centres and School Social Work Units in the forms of seminars, talks, family activities and exhibition, etc. The programmes aim to enhance family functioning, strengthen family relationship and prevent family breakdown. The major target groups are couples-to-be, married couples, parents-to-be, parents and adolescents. With the increasing number of marriage breakdown, the service units delivering family life education have organized more family education programmes and seminars to enhance young couples' knowledge in parenting and to strengthen family resilience.

8. Apart from family life education, social workers would provide counselling service to parents in marital discord to assist them in improving their relationship. If their marriage is broken down irreversibly, social workers would also assist divorcing parents in reaching agreement regarding the future arrangements for their children. Moreover, social workers will render other assistance as appropriate, including clinical psychological service to the parents and their children to facilitate co-operation in parental responsibilities and to reduce the negative impact of parents' divorce on children. For high-conflict families, the 11 Family and Child Protective Services Units (FCPSUs) of SWD have been providing services to safeguard the interest of the children affected by custody disputes and referred by the courts. Social workers of FCPSUs provide investigation reports to courts and render statutory supervision to cases as ordered by courts. During the process, social workers would remind the parents that parental responsibilities continue after divorce or separation, and that divorced or separated parents should work together in providing a secure, stable and caring environment conducive to the healthy development for their children.

9. As part of our on-going effort to promote the concept of continuing parental responsibility, a poster entitled "Marriage may end but parenthood goes on" has been issued and put up at the public transportation network to promote the continuing responsibilities of both parents upon divorce towards their children; and an educational DVD and two sets of information sheets have been produced and distributed to

frontline casework units and target users. These aim at educating couples who are considering divorce or have been separated or divorced about the impact of their separation or divorce on themselves and their children, and facilitating them to co-operate with each other for the best interest of their children.

Others

10. As for other supportive services provided to parents affected by parental child abduction and the voice of the child under CACO, please refer to paragraph 3 of the Administration's response to the Bills Committee in December 2013⁴, paragraphs 15-16 of the Administration's paper on "Discussion on criminalization of parental child abduction"⁵ and paragraph 4 of the Administration's response to the Bills Committee in January 2014⁶ respectively.

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⁴ LC Paper No. CB(2)430/13-14(02): The Administration's response to the issues raised at the Bills Committee meeting on 24 October 2013

⁵ LC Paper No. CB(2) 1302/13-14(01)

⁶ LC Paper No. CB(2)712/13-14(01): The Administration's response to the issues raised at the Bills Committee meeting on 20 December 2013