

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

**The Administration's response to the written submission of the  
Law Society of Hong Kong dated 3 Dec 2013**

This paper responds to the issues raised by the Family Law Committee of the Law Society of Hong Kong (the Committee) in its written submission dated 3 December 2013 on the Child Abduction Legislation (Miscellaneous Amendment) Bill 2013 (the Bill).

**Clause 3 (Preamble to the Ordinance)**

2. The Committee suggests that the preamble of the Convention on the Civil Aspects of International Child Abduction (Hague Convention) should be included in the “preamble” of the Bill. Under the Bill, the long title of the Child Abduction and Custody Ordinance (CACO) (Cap.512) is proposed to be amended to read “An Ordinance to combat child abduction; to give effect in Hong Kong to the Convention on the Civil Aspects of International Child Abduction signed at The Hague on 25 October 1980; and to provide for related matters.” Since the long title indicates clearly that the Ordinance, amongst others, gives effect to the Hague Convention in Hong Kong, the preamble of the Convention also applies to Hong Kong.

**Section 15: Court of First Instance (CFI) may make order prohibiting removal of child out of Hong Kong without consent**

3. The Law Reform Commission (LRC) recommended in its Report on International Parental Child Abduction (the Report) to include a provision in primary legislation to restrict the removal of a child from the jurisdiction without the consent of the parent who has custody, or control of the child's residence, or with whom the child has regular contact. It further proposes that such section would apply in cases where proceedings have already been issued or court orders made concerning the child.<sup>1</sup>

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<sup>1</sup> Recommendation 1 of the LRC Report on International Parental Child Abduction.

4. Under the proposed new section 15, a prohibition order may be sought by a parent who has the rights of custody of or access to the child under a court order, or a party to pending proceedings concerning those rights, prohibiting the removal of his/her child out of Hong Kong without his/her consent. Should the court make a prohibition order and the parent notifies the Director of Immigration of such order/application, an authorized officer may exercise the power to detain the child under the proposed new section 20 if the officer reasonably suspects that the child is about to be, or is being removed out of Hong Kong.

5. The proposed new prohibition order will not affect the existing legal regime in preventing removal of the child from Hong Kong. For instance, an order that the child be made a ward of Court may be sought from the CFI to prevent the child from being removed from Hong Kong without the leave of the Court<sup>2</sup>. Moreover, Rule 94(2) of the Matrimonial Causes Rules (Cap.179, sub. leg. A) also allows for an *ex parte* application to be made by the petitioner or respondent in matrimonial proceedings to the court to prevent removal of a child.

#### **Section 16: CFI may make location order relating to child's whereabouts**

6. As recommended by the LRC, the proposed new section 16 is drafted along the lines of section 36 of the Irish Child Abduction and Enforcement of Custody Orders Act 1991 and section 67J of the Australian Family Law Act 1975. Under the proposed section 16(2)(a), it requires a person to provide the Court with “applicable information that the person has or may reasonably obtain about the child”. “Applicable information” is defined under section 16 as “information about the child’s whereabouts or other circumstances relevant to locating the child”. In other words, should the Court consider such information (e.g. about a person who has wrongfully abducted the child) relevant to locating the child, the court is empowered to order such disclosure under the proposed section 16(2)(a).

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<sup>2</sup> Pursuant to section 26, High Court Ordinance (Cap.4). See also Order 90, Rules of the High Court (Cap.4, subsidiary legislation A), and Practice Direction 23.1.

## **Section 17: CFI may make recovery order relating to child's return**

7. The proposed new section 17 is applicable in proceedings under the Hague Convention that are commenced in Hong Kong for the return of a child to another Contracting State. It empowers the CFI to make 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.

8. Under the proposed new section 20, if a recovery order is made and is served to the Director of Immigration, an authorized officer may exercise the power to detain a child if the officer reasonably suspects that the child is about to be, or is being removed out of Hong Kong. Upon detaining the child, immigration officer would as soon as practicable transfer the child into the charge of a police officer. The Police will then 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.

9. The purpose of the proposed power to detain under the proposed section 20 is to prevent the child from being wrongfully removed out of Hong Kong and to return the child to the appropriate person. LRC does not propose to go so far as to have a general power of arrest (of both the child and the person accompanying the child) nor does it recommend to detain the person accompanying the child. The child would be detained and would be returned to the person who has the right of custody.

## **Section 18: CFI may make order prohibiting removal of child from Hong Kong except to habitual residence, etc.**

10. The proposed new section 18 empowers the CFI to make a mirror-order prohibiting removal of a child 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 Hague Convention. According to the experience of the Department of Justice (DoJ) in dealing with relevant cases as the Central Authority of the Hague Convention in Hong Kong, such cases normally arise when a judicial or administrative authority of a Contracting State has made an order providing for the child to be taken to Hong Kong to enable a person to exercise the rights of access or to return the child to his home

jurisdiction via Hong Kong (the new section 18(2)(a) and (2)(b)). It is not envisaged that under the new section 18(2)(a), there will be cases where the relevant order of a Contracting State is made for a purpose other than to enable a person in Hong Kong “to exercise the rights of access to the child”. As a general rule in dealing with cases under the Hague Convention, it is expected that the Central Authority of the other Contracting State would contact DoJ for assistance in those cases. Thus, it would be sufficient for Secretary of Justice to make such application under the proposed section 18.

### **Section 19: Notification of stop orders, etc**

11. Administrative guidelines will be issued to facilitate the relevant officers in the Departments/Authorities involved in implementing the Bill. These will ensure suitable interface and coordination between the relevant Departments/Authorities. Such guidelines will cover the relevant arrangements e.g., the manner and form for notification under the proposed new section 19. We would engage relevant stakeholders upon preparation of the relevant guidelines in due course.

**Labour and Welfare Bureau**  
**December 2013**