



**CHILD ABDUCTION LEGISLATION  
(MISCELLANEOUS AMENDMENT) BILL 2013 (“the Bill”)**

**Law Society’s submission**

The Family Law Committee of the Law Society (the Committee), has reviewed the Bill and has the following comments.

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

The Committee notes from the Explanatory Memorandum of the Bill the purpose of the amendment to the Child Abduction and Custody Ordinance (CACO) and considers that it is important to state the object in the preamble of this primary legislation. The missing out of this object in the preamble is the subject of comment by the Court in of *N v O* [1999] 1 HKLRD 68, in which Hartmann J (as he then was) states:-

*“The convention, which was signed in the Hague on 25 October 1980, is designed to counter the growing problem of the civil abduction of children across international borders. Although neither the preamble nor art.1 of the Convention have been enacted into Hong Kong law, they may nevertheless be considered in understanding the objects of the convention. The preamble states the objects succinctly; namely, ‘to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the state of their habitual residence’”*

The Committee suggests that the object, as above-quoted and highlighted, should be included in the preamble to the CACO.

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

**s.15 (3)**

*In summary, under this section, a person must not remove the child out of Hong Kong -*

*(a) if there is a court order; or*

(b) *if there are proceedings pending in the court.*

Difficulties or confusion could arise in situations when there is no court order or no proceeding pending in court (e.g. before a stop order is applied for, a person attempts to remove the child from Hong Kong). Should practitioners rely on MCR Rule 90 or a wardship order in those situations?

There should be clarification on the above.

**(3) Section 16 Court of First Instance may make location order relating to child's whereabouts**

*s.16 (2)(a) – in summary, this section provides that the Court of First Instance may make a location order requiring a person to provide information that person has or may reasonably obtain about the child.*

The Committee comments that a location order should be available to make the person to disclose information, not only on a child, but *also on a person who has wrongfully abducted the child*. This should address the situation when, e.g. a relative of an abducted child knows that a parent has abducted the child, but the relative does not know the whereabouts of the child.

The following is suggested to be added to the end of Section 16(2)(a) as currently drafted:-

*“...and/or or a person who has retained or removed the child.”*

**(4) Section 17 Court of First Instance may make recovery order relating to child's return**

**s.17**

*Under this section, police officers are authorised to, inter alia, recover the child and to return or deliver the recovered child to the specified person.*

Queries are raised as to whether the same power should be given to the Immigration Department officers.

Circumstances may arise when the Immigration Department, at the checkpoint/departure counter, stops the child from leaving Hong Kong (e.g. under a stop order), but they would not have power under this section to recover and to return the child to the specified person. They would have to inform the police, wait for the police to come and ask the police to return/deliver the child to the specified person. In the process, while waiting, the abductor could take away the child. The arrangement under this proposal could therefore be unsatisfactory, and could make the subsequent location and recovery to be difficult.

The Committee acknowledges that **section 20(4)** in the Bill, as drafted, provides that if an immigration officer detains a child under the specified condition, the officer must transfer the child into the charge of the police officer.

The Committee asks that the power under s.17 be revisited in order to address the above circumstances *and* also to empower the law enforcement agencies to stop and detain the *abductor*.

**(5) Section 18 Court of First Instance may make order prohibiting removal of child from Hong Kong except to habitual residence, etc.**

**(i) s.18 (2)(a)**

*This sets out the scope of application of the subsections, i.e. it applies to situations where the child has been taken to Hong Kong temporarily under an order of the home state of the child, in order to enable a person to exercise the rights of access to the child.*

The Committee queries why the provision is restricted to circumstances which only enable a person to exercise their rights of access to the child. There could be other situations in which a child is legitimately brought to Hong Kong on a temporary basis, such as an overseas travel.

The scope of application of this subsection should be expanded and the following words should be added to the end of the sub-section 18(2)(a):-

*“...or for any other purposes”.*

**(ii) s.18 (3)**

*This provides that the Court of First Instance could on the application by the Secretary for Justice make an order to prohibit the removal of the child from Hong Kong.*

It is suggested that not only the Secretary for Justice, but also *the parents or parties to the proceedings* should also be in a position to make such an application to the Court of First Instance.

**(6) Section 19 Notification of stop orders, etc.**

**s.19 (9)**

*Notifications under the relevant subsections are to be given in a manner and form specified by the Director.*

The Committee reserves comments on the subsections and the forms until it has the chance to review the forms

**The Law Society of Hong Kong**  
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