

**Child Abduction Legislation (Miscellaneous  
Amendments) Bill 2013**

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# 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.

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## 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 Ordinance”—

**Add**

“to combat child abduction;”.

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

**Add**

“; and to provide for related matters”.

#### 4. Section 2 amended (interpretation)

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

**Repeal**

“(Cap. 4).”

**Substitute**

“(Cap. 4);”.

- (2) Section 2—

**Add in alphabetical order**

“*application under this Ordinance* (根據本條例提出的申請)  
means—

(a) an application under the Convention; or

(b) an application under section 15, 16, 17 or 18;

***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);

***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.”.

## 5. Section 6 amended (judicial authorities)

Section 6—

**Repeal**

“the Convention”

**Substitute**

“this Ordinance”.

## 6. Section 7 substituted

Section 7—

**Repeal the section**

**Substitute**

### “7. Powers of Court of First Instance in applications under this Ordinance

(1) Before an application under this Ordinance 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, and”.

**9. Sections 15 to 21 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.

**16. 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.
- (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***);

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- (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*.

**18. 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) The Secretary for Justice may make an application under this section on request by the Central Authority of a Contracting State.
- (5) Unless otherwise directed by the Court of First Instance, the application may be made *ex parte*.

## 19. Notification of stop orders, etc.

- (1) In this section—

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

- (2) This section applies if—

- (a) a stop order has been made in relation to a child;  
or
- (b) an application for a prohibition order in relation to a child is pending.

- (3) For the purposes of section 20—

- (a) an applicant for a prohibition order may notify the Director that the order has been made or the application is pending;
- (b) an applicant for a recovery order may notify the Director that the order has been made; and
- (c) an applicant for a stop order that has been revived after suspension may notify the Director 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.
  - (5) If an applicant has given a notification under subsection (3), 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.
  - (6) A failure to comply with subsection (4) or (5) does not affect the validity of a stop order or the operation of section 20.
  - (7) Subsection (8) applies if—
    - (a) a stop order has been varied by the Court of First Instance;
    - (b) a stop order has been discharged or suspended 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.
  - (8) For the purposes of section 20, an applicant for a stop order who has given a notification under subsection (3)

must, or a person affected by the order or the application may, notify the Director about the matter mentioned in subsection (7)(a), (b), (c), (d) or (e) (whichever is applicable).

- (9) The notification under subsection (3) or (8) must be—
- (a) given in a manner and form specified by the Director; and
  - (b) accompanied by the supporting documents required by the Director.

**20. Authorized officer may detain child being removed out of Hong Kong in breach of stop 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).

- (2) 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), or a notification about the matter mentioned in section 19(7)(a) has been given under section 19(8), in relation to the child; and
    - (ii) no notification about any of the matters mentioned in section 19(7)(b) to (e) has been given under section 19(8) 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.
  - (3) To avoid doubt—
    - (a) the mere fact that any of the matters mentioned in section 19(7)(b) to (e) exists does not render unlawful the exercise of the power by an authorized officer under subsection (2) if the officer is unaware of that fact; and
    - (b) if the officer has detained a child under subsection (2), the officer may continue to do so for as long as it is necessary for the officer to discharge the functions under subsection (4), (6), (7) or (8), regardless of whether the condition in subsection (2)(b) continues to be met.
  - (4) If an immigration officer detains a child under subsection (2), 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.
- (8) If the stop order made is a recovery order—
  - (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.

**21. 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.”.

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

Schedule 1—

**Repeal**

“[s. 3]”

**Substitute**

“[ss. 3 & 21]”.

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## **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) 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 18 (O. 121, r. 12)**

- (1) An application for an order under section 18 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 18(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.”.
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## **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*.”.

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## **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).**

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## 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 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.”.

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## 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.

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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.

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**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.