

LEGISLATIVE COUNCIL BRIEF

Child Abduction and Custody Ordinance
(Chapter 512)

**Child Abduction and Custody (Parties to Convention)
(Amendment) Order 2014**

INTRODUCTION

At the meeting of the Executive Council held on 30 September 2014, the Council ADVISED and the Chief Executive (CE) ORDERED that the Child Abduction and Custody (Parties to Convention) (Amendment) Order 2014 (the Amendment Order) at Annex, which seeks to add the Principality of Andorra (Andorra), the Republic of Korea (Korea), the Kingdom of Morocco (Morocco), the Russian Federation (Russia) and Japan to the list of Contracting States to the Hague Convention on the Civil Aspects of International Child Abduction (the Convention) in the Child Abduction and Custody (Parties to Convention) Order (Chapter 512A) (the Order), should be made under Section 4 of the Child Abduction and Custody Ordinance (Chapter 512) (the Ordinance).

JUSTIFICATIONS

2. The Convention, which was signed at The Hague in 1980 and is now

in force in 92 States and Territories, provides an effective international mechanism for the swift return of children wrongfully removed from their place of habitual residence to another Contracting State in violation of custodial rights. It aims to establish a consistent approach in handling the civil aspects of international child abduction cases.

3. An agreement was reached at the Sino-British Joint Liaison Group in September 1996 on the extension of the Convention to Hong Kong by the United Kingdom and its continued application to the Hong Kong Special Administrative Region (HKSAR) after 30 June 1997. The People's Republic of China is a Contracting State to the Convention but the Convention only applies to HKSAR and Macao Special Administrative Region, but not to the Mainland.

4. Pursuant to section 4 of the Ordinance, Contracting States to the Convention have to be specified in an Order made by CE and published in the Gazette in order to implement the Convention between the Contracting States and HKSAR. The Order was first made by CE in January 1998. From time to time, there are new States acceding to the Convention. Article 38 of the Convention provides that the accession will have effect only as regards the relations between the acceding State and Contracting States which have declared their acceptance of the accession. If the HKSAR Government is satisfied that a newly acceding State has met our criteria for inclusion in the Order*, we shall request the Central People's Government (CPG) to deposit a declaration of acceptance of the accession on behalf of HKSAR. The concerned State will then be added to the list of Contracting States in the Order.

* Note The criteria established by the HKSAR Government include, among other things, whether the State has designated a Central Authority to handle cases under the Convention and whether there has been any adverse information on the legal system of the State, etc.

For the purpose of this exercise, the concerned States include Andorra, Korea, Morocco and Russia.

5. Meanwhile, there is also a Contracting State, i.e. Japan, ratifying the Convention. Article 43(1) of the Convention provides that the Convention will come into force for a ratifying State on the first day of the third calendar month after deposit of its instrument of ratification.

6. A certification from CPG confirming our proposed amendments to the list of Contracting States is required prior to our amending the Order. Having sought the consent and certification from CPG, we recommend adding Andorra, Korea, Morocco, Russia and Japan to the list of Contracting States in the Order.

EFFECTIVE DATE

7. According to Article 38 of the Convention, the Convention will enter into force between an acceding State and a Contracting State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance. CPG deposited, with the depository of the Convention (the Ministry of Foreign Affairs of the Kingdom of the Netherlands), the declaration of acceptance on behalf of HKSAR of the accession of Andorra, Korea, Morocco and Russia on 5 November 2013. The Convention has therefore entered into force between HKSAR and the preceding four states on 1 February 2014. Meanwhile, Japan has ratified the Convention on 24 January 2014 and hence the Convention has also entered into force between HKSAR and Japan on 1 April 2014. We suggest that the Amendment Order specifies 1 February and 1 April 2014 as the respective dates on which the Convention comes into force as between HKSAR and Andorra, Korea,

Morocco and Russia and as between HKSAR and Japan.

OTHER OPTIONS

8. There is no alternative option as the proposal has to be implemented by legislative means.

THE AMENDMENT ORDER

9. The Amendment Order amends the Schedule to the Order to add Andorra, Korea, Morocco, Russia and Japan as the Contracting States to the Convention so that the Convention will apply between HKSAR and Andorra, Korea, Morocco, Russia and Japan.

LEGISLATIVE TIMETABLE

10. The legislative timetable is as follows –

Publication in the Gazette	17 October 2014
Tabling at the Legislative Council for negative vetting	22 October 2014

IMPLICATIONS OF THE PROPOSAL

11. The proposal is in conformity with the Basic Law, including the

provisions concerning human rights. It will not affect the current binding effect of the Ordinance and has no economic, competition, productivity, environmental or sustainability implications.

12. The relevant agencies, including the Department of Justice, Legal Aid Department, Social Welfare Department, Immigration Department and the Police, will absorb the additional workload, if any, with their existing resources. Any additional resources, if required, will be sought in accordance with the established mechanism.

13. When a child is abducted, he/she suffers the trauma of being taken away from his/her home from the custodial parent and other family members. This could result in a harrowing experience for the child's left-behind family. The proposal, which aims to add Andorra, Korea, Morocco, Russia and Japan to the list of Contracting States to the Convention in the Order, would enhance the international mechanism provided under the Convention for the swift return of children wrongfully removed from their place of habitual residence to another Contracting State in violation of custodial rights. The proposal would have positive sustainability impact on family solidarity.

PUBLIC CONSULTATION

14. Since this is a routine updating exercise, public consultation on the Amendment Order is considered not necessary.

PUBLICITY

15. A press release will be issued on 17 October 2014. A spokesperson from the Labour and Welfare Bureau will be available to answer media enquiries.

ENQUIRY

16. Any enquiries on this brief should be addressed to Mr Eugene WAN, Assistant Secretary for Labour and Welfare (Welfare) 1A, at 2810 3932.

Labour and Welfare Bureau

14 October 2014

**Child Abduction and Custody (Parties to Convention)
(Amendment) Order 2014**

(Made by the Chief Executive under section 4 of the Child Abduction
and Custody Ordinance (Cap. 512) after consultation with
the Executive Council)

1. Child Abduction and Custody (Parties to Convention) Order amended

The Child Abduction and Custody (Parties to Convention) Order (Cap. 512 sub. leg. A) is amended as set out in section 2.

2. Schedule amended

- (1) The Schedule, after the following—
 “Albania, Republic of 1 April 2010”
Add
 “Andorra, Principality of 1 February 2014”.
- (2) The Schedule, after the following—
 “Italy, Republic of 1 September 1997”
Add
 “Japan 1 April 2014”.
- (3) The Schedule, before the following—
 “Latvia, Republic of 1 October 2005”
Add
 “Korea, Republic of 1 February 2014”.
- (4) The Schedule, after the following—
 “Montenegro 1 September 1997”
Add
 “Morocco, Kingdom of 1 February 2014”.
- (5) The Schedule, after the following—
 “Romania 1 September 1997”
Add
 “Russian Federation 1 February 2014”.

Chief Executive

Explanatory Note

This Order amends the Schedule to the Child Abduction and Custody (Parties to Convention) Order (Cap. 512 sub. leg. A) to add the Principality of Andorra, Japan, the Republic of Korea, the Kingdom of Morocco and the Russian Federation as Contracting States to the Convention on the Civil Aspects of International Child Abduction so that the Convention will apply between Hong Kong and those 5 States.