

For information

LEGISLATIVE COUNCIL BRIEF

**High Court Ordinance (Cap 4)
District Court Ordinance (Cap 336)
Child Abduction and Custody Ordinance (Cap 512)**

RULES OF THE HIGH COURT (AMENDMENT) (NO. 4) RULES 2015

**RULES OF THE DISTRICT COURT (AMENDMENT)
(NO. 2) RULES 2015**

**CHILD ABDUCTION LEGISLATION
(MISCELLANEOUS AMENDMENTS) ORDINANCE 2014
(COMMENCEMENT) NOTICE**

INTRODUCTION

On 21 December 2015, the High Court Rules Committee made the Rules of the High Court (Amendment) (No. 4) Rules 2015 (“the High Court Amendment Rules”) (at **Annex A**), and the District Court Rules Committee made the Rules of the District Court (Amendment) (No. 2) Rules 2015 (“the District Court Amendment Rules”) (at **Annex B**). The purposes of the two sets of Amendment Rules are to provide for procedures regulating applications for the new court orders under the Child Abduction Legislation (Miscellaneous Amendments) Ordinance 2014 (“the Amendment Ordinance”) and to effect other related miscellaneous and technical amendments.

2. Under section 1(2) of the Amendment Ordinance, the Secretary for Labour and Welfare appointed 5 April 2016 as the day on which the Amendment Ordinance comes into operation, and this will be published in the Gazette on 15 January 2016 in the form of the Child Abduction Legislation (Miscellaneous Amendments) Ordinance 2014 (Commencement) Notice (“the Commencement Notice”).

BACKGROUND

3. The Child Abduction Legislation (Miscellaneous Amendments) Bill

2013, which aims at amending 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 (“the Convention”) and for related matters, was passed by the Legislative Council (“LegCo”) on 20 November 2014 and has been enacted as the Amendment Ordinance. The Amendment Ordinance will come into operation on a day to be appointed by the Secretary for Labour and Welfare.

PROPOSAL AND JUSTIFICATIONS

New court orders under the Amendment Ordinance

4. The Amendment Ordinance introduces the following new court orders to CACO:

- (a) Location order: A new section 15 is added to Part 2 of CACO to empower the Court of First Instance of the High Court to order the disclosure of the whereabouts or location of the relevant child, subject to the proceeding(s) under the Convention;
- (b) “Mirror order”¹: A new section 16 is added to Part 2 of CACO to empower the Court of First Instance of the High Court to make a “mirror order” prohibiting the 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 Convention;
- (c) Recovery order: A new section 17 is added to Part 2 of CACO to empower the Court of First Instance of the High Court to make a recovery order relating to the return of a child subject to the Convention proceeding(s); and
- (d) Prohibition order: A new section 21 is added to Part 3 of CACO to empower the Court of First Instance of the High Court or District

¹ A “mirror order” is an order granted by a court which reflects the terms of an order granted by a court of another jurisdiction. The new section 16 added to Part 2 of CACO empowers the Court of First Instance of the High Court to make an order, which has the effect of a “mirror order”, to prohibit a child from being removed from Hong Kong except to his habitual residence to enable a person to exercise access rights in Hong Kong or when the child is in transit in Hong Kong.

Court to make an order prohibiting the removal of a child out of Hong Kong without consent.

Power of the Rules Committees under CACO

5. The Amendment Ordinance adds section 12(1) and section 24 to CACO to empower the High Court Rules Committee and District Court Rules Committee (Rules Committees) to make rules of court as appears to the Rules Committees to be necessary or expedient. Cap 4A and Cap 336H have to be amended by the Rules Committees to regulate the applications for the four new court orders.

Proposed Amendments to Cap 4A and Cap 336H

6. Order 121 of Cap 4A currently governs the application procedures for the orders/applications under the existing CACO. It is necessary to amend Order 121 of Cap 4A to set out the application procedures for the new court orders as referred to in paragraph 4(a) to (d) above. The details are at **Annex C**.

7. Before the Amendment Ordinance commences operation, CACO falls within the exclusive jurisdiction of the Court of First Instance of the High Court. The existing Cap 336H does not concern the implementation of CACO. However, the new prohibition order pursuant to the Amendment Ordinance is under the jurisdiction of both the Court of First Instance of the High Court and the District Court. It is therefore necessary to introduce a new Order to Cap 336H to provide for the application procedures for the prohibition order. The details are at **Annex D**.

Other miscellaneous and technical amendments

8. Having regard to the advice of the Department of Justice, we propose that several miscellaneous and technical amendments be made to support the smooth implementation of CACO. The details are as follows –

- (a) in respect of the application for a declaration relating to section 10 of CACO under Order 121, Rule 4 of Cap 4A, since it is required only when a child has been wrongfully removed out of Hong Kong (which means that the other party, usually the abducting parent, is not within Hong Kong's jurisdiction), we propose that the aforementioned application could be made ex parte;

- (b) in respect of the service of originating summons outside Hong Kong, court's leave is currently required in accordance with Order 11 of Cap 4A and Order 11 of Cap 336H. To align with the practice of general matrimonial causes (i.e. Rule 109 of the Matrimonial Causes Rules (Cap 179A)), we propose to amend the rules to the effect that court's leave is not required when serving an originating summons outside Hong Kong under CACO;
- (c) to facilitate the applications for orders or declaration under CACO by originating summons, we propose to prescribe a new dedicated expedited form and a new ex-parte form under Cap 4A and Cap 336H for proceedings under CACO. They will be modelled on Forms No. 10 and No. 11 under Cap 4A and Cap 336H, except that the time for acknowledging service of an originating summons within jurisdiction will be within 7 days, and that the time for acknowledging service outside jurisdiction will be within 14 days²;
- (d) the procedures on fixing time in Order 28, Rules 2 and 3 under Cap 4A and Cap 336H contain provisions applicable to originating summons in Form No. 10, in Appendix A of the two sets of court rules, and ex parte originating summons. We propose that the existing procedures applicable to originating summons in Form No. 10 and ex parte originating summons equally apply to the new forms as referred to in (c) above; and
- (e) we propose to make miscellaneous amendments to align the Chinese and English versions of Order 121 of Cap 4A.

THE HIGH COURT AMENDMENT RULES AND THE DISTRICT COURT AMENDMENT RULES

9. The High Court Amendment Rules at **Annex A** and the District Court Amendment Rules at **Annex B** serve to give effect to the proposed amendments as referred to in paragraphs 6 to 8 above. We propose that the two sets of Amendment Rules come into operation on the same day as the Amendment Ordinance.

² This will tie in with Order 121, Rule 6 of Cap 4A.

LEGISLATIVE TIMETABLE

10. The legislative timetable for the High Court Amendment Rules, the District Court Amendment Rules and the Commencement Notice is as follows

—

Publication in the Gazette	15 January 2016
Tabling at LegCo for negative vetting	20 January 2016
Commencement	5 April 2016

PUBLIC CONSULTATION

11. We issued a paper explaining the proposal to the Panel on Welfare Services of LegCo on 20 July 2015. No views have been received from Members of the Panel. Upon consulting the Judiciary, we have proceeded to seek the approval of the Rules Committees for the High Court Amendment Rules and the District Court Amendment Rules.

PUBLICITY

12. The High Court Amendment Rules, the District Court Amendment Rules and the Commencement Notice will be published in the Gazette on 15 January 2016. A spokesperson from the Labour and Welfare Bureau will be available to answer any enquiries on this subject.

ENQUIRIES

13. For enquiries on this brief, please contact Mr Kenneth CHENG, Principal Assistant Secretary for Labour and Welfare (Welfare), at 2810 3931.

Labour and Welfare Bureau
January 2016

Rules of the High Court (Amendment) (No. 4) Rules 2015

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Rules of the High Court (Amendment) (No. 4) Rules 2015

(Made by the Rules Committee of the High Court under section 54 of the High Court Ordinance (Cap. 4))

1. Commencement

These Rules come into operation immediately after the Child Abduction Legislation (Miscellaneous Amendments) Ordinance 2014 (16 of 2014) comes into operation.

2. Rules of the High Court amended

The Rules of the High Court (Cap. 4 sub. leg. A) are amended as set out in rules 3 to 21.

3. Order 3, rule 2 amended (reckoning periods of time)

Order 3, Chinese text, rule 2(4), after “整天”—

Add

“或整日”.

4. Order 7, rule 2 amended (form of summons, etc.)

Order 7, rule 2(3)—

Repeal

everything after “rule 5(1)”

Substitute

“, Order 54, rule 2(3) and Order 121, rule 2(1).”.

5. Order 11, rule 9 amended (service of originating summons, petition, notice of motion, etc.)

(1) Order 11, rule 9(1), after “Subject to”—

Add

“paragraph (4A) and”.

- (2) Order 11, rule 9(4), after “Subject to”—

Add

“paragraph (4A) and”.

- (3) Order 11, after rule 9(4)—

Add

“(4A) Service out of the jurisdiction of any originating summons or summons issued under Order 121, rule 2 is permissible without the leave of the Court.”.

6. Order 121, rule 1 amended (interpretation)

- (1) Order 121, rule 1—

Repeal paragraph (1)**Substitute**

“(1) In this Order, unless the context otherwise requires—

application (申請) means an application under the Convention or the Ordinance;

decision (決定) includes a judgment or an order of any judicial authority as well as an order of an administrative authority;

Ordinance (《條例》) means the Child Abduction and Custody Ordinance (Cap. 512);

relevant authority (有關當局) includes the Court, a District Court and a juvenile court.”.

- (2) Order 121, rule 1—

Repeal paragraph (3).

7. Order 121, rule 2 amended (mode of application)

Order 121, rule 2—

Repeal paragraph (1)**Substitute**

“(1) Except as provided in the Ordinance and in paragraphs (1A) and (2), an originating application under the Ordinance may be made by originating summons in—

- (a) (subject to subparagraph (b)) Form No. 10A in Appendix A; or
- (b) (if the application is made ex parte as provided in this Order) Form No. 10B in Appendix A.

(1A) If there are existing proceedings commenced under the Ordinance in Hong Kong, an application may be made by summons.”.

8. Order 121, rule 3 amended (application for return of a child)

- (1) Order 121, rule 3(1), after “return of a child”—

Add

“under the Ordinance”.

- (2) Order 121, rule 3—

Repeal paragraph (2)**Substitute**

“(2) The affidavit must be filed at the same time as the application.

- (3) However, for an urgent case, the affidavit may be filed—
 - (a) within the time specified by the Court; or
 - (b) (if no time is specified by the Court) as soon as possible after the application.”.

9. Order 121, rule 4 amended (application for a declaration under section 10)

- (1) Order 121, English text, rule 4, heading—

Repeal

“section 10”

Substitute

“section 10 of the Ordinance”.

- (2) Order 121, rule 4—

Repeal paragraph (2)**Substitute**

“(2) The affidavit must be filed at the same time as the application.

- (3) However, for an urgent case, the affidavit may be filed—

(a) within the time specified by the Court; or

(b) (if no time is specified by the Court) as soon as possible after the application.

- (4) The application may be made ex parte.”.

10. Order 121, rule 5 amended (defendants)

- (1) Order 121, rule 5, heading—

Repeal

“Defendants”

Substitute

“Respondents to application for return of child”.

- (2) Order 121, rule 5(1)—

Repeal

“defendants”

Substitute

“respondents”.

- (3) Order 121, rule 5(2)—

Repeal

“defendants”

Substitute

“respondents”.

- (4) Order 121, English text, rule 5(2)—

Repeal

“section 10”

Substitute

“section 10 of the Ordinance”.

11. Order 121, rule 6 amended (time for acknowledging service)

Order 121, rule 6—

Repeal

everything after “pursuant to rule 2”

Substitute

“is—

- (a) (subject to subparagraph (b)) 7 days after the service of the originating summons, including the day of service; or

- (b) (if the service takes place out of the jurisdiction) 14 days after the service of the originating summons, including the day of service.”.

12. Order 121, rule 6A added

Order 121, after rule 6—

Add**“6A. Hearing of originating summons (O. 121, r. 6A)**

- (1) A day and time for the attendance of the parties before the Court for the hearing of an originating summons may be fixed on the application of the applicant.
- (2) If an originating summons is required to be served, the time limited for acknowledging service may, where appropriate, be abridged so as to expire on the 2nd day before the day so fixed.
- (3) If an originating summons is required to be served and a day is fixed under paragraph (1) for the hearing of the originating summons, the applicant must, at least 4 clear days before that day, serve on the respondent—
 - (a) the originating summons and the affidavit required under this Order; or
 - (b) (if the respondent has been served with the originating summons and the affidavit required under this Order) a notice of the day fixed for the hearing.
- (4) If the hearing of an originating summons required to be served is adjourned and any party to the proceedings desires to apply at the resumed hearing for any order or direction not previously asked for, that party must, at least 2 clear days before the resumed hearing of the originating summons, serve on the other party a notice specifying those orders and directions.”.

13. Order 121, rule 7 amended (further evidence)

- (1) Order 121, rule 7(1)—

Repeal

“defendant”

Substitute

“respondent”.

- (2) Order 121, rule 7(2)—

Repeal

“plaintiff”

Substitute

“applicant”.

- (3) Order 121, rule 7(2)—

Repeal

“defendant”

Substitute

“respondent”.

14. Order 121, rule 8 amended (assignment of proceedings)

Order 121, rule 8—

Repeal

“defendant”

Substitute

“respondent”.

15. Order 121, rule 9 amended (interim directions)

Order 121, English text, rule 9—

Repeal

“section 7”

Substitute

“section 7 of the Ordinance”.

16. Order 121, rule 10 amended (stay of custody application pending determination of proceedings under the Convention)

Order 121, English text, rule 10(1)—

Repeal

“section 20(2)”

Substitute

“section 20(2) of the Ordinance”.

17. Order 121, rule 11A added

Order 121, after rule 11—

Add

“11A. Application for a location order under section 15(2) of the Ordinance (O. 121, r. 11A)

- (1) An application for a location order under section 15(2) of the Ordinance 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—
 - (a) state the particulars of the person who has, or may reasonably obtain, applicable information about the child;
 - (b) state the basis for believing that the person mentioned in subparagraph (a) has, or may reasonably obtain, applicable information about the child;
 - (c) provide any other relevant information; and

(d) exhibit all relevant documents.

(3) The affidavit must be filed at the same time as the application.

(4) However, for an urgent case, the affidavit may be filed—

(a) within the time specified by the Court; or

(b) (if no time is specified by the Court) as soon as possible after the application.

(5) The application may be made ex parte.”.

18. Order 121, rule 12 amended (application for an order under section 16)

(1) Order 121, rule 12, heading—

Repeal

“section 16”

Substitute

“section 16(3) of the Ordinance: for prohibiting removal of child from Hong Kong to certain jurisdictions”.

(2) Order 121, rule 12(1)—

Repeal

“section 16”

Substitute

“section 16(3) of the Ordinance”.

(3) Order 121, Chinese text, rule 12(1)(a)—

Repeal

“有關”.

(4) Order 121, Chinese text, rule 12(1)(b)—

Repeal

“該”。

- (5) Order 121, Chinese text, rule 12(2)—

Repeal

“有關誓章須在可能範圍內，盡量”

Substitute

“在盡可能的範圍內，誓章須”。

- (6) Order 121, English text, rule 12(2)(d)(i)—

Repeal

“section 16(3)(a) or (b)”

Substitute

“section 16(3)(a) or (b) of the Ordinance”。

- (7) Order 121, Chinese text, rule 12(3)—

Repeal

“有關誓章須在可能範圍內，盡量”

Substitute

“在盡可能的範圍內，誓章須”。

- (8) Order 121, Chinese text, rule 12(4)—

Repeal

“上述誓章須與有關”

Substitute

“誓章須與”。

- (9) Order 121, rule 12(5)—

Repeal

everything after “may be”

Substitute

“filed—

(a) within the time specified by the Court; or

(b) (if no time is specified by the Court) as soon as possible after the application.”.

- (10) Order 121, after rule 12(5)—

Add

“(6) The application may be made ex parte.”.

19. Order 121, rules 12A to 12D added

Order 121, after rule 12—

Add

“12A. Application for an order under section 16(4) of the Ordinance: for variation, discharge, suspension or revival (O. 121, r. 12A)

- (1) An application for an order under section 16(4) of the Ordinance 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—

(a) state the ground of the application;

(b) provide any other relevant information; and

(c) exhibit all relevant documents.

- (3) The affidavit must be filed at the same time as the application.

- (4) However, for an urgent case, the affidavit may be filed—

(a) within the time specified by the Court; or

(b) (if no time is specified by the Court) as soon as possible after the application.

(5) The application may be made ex parte.

12B. Application for a recovery order under section 17(2) of the Ordinance (O. 121, r. 12B)

- (1) An application for a recovery order under section 17(2) of the Ordinance 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—
 - (a) state the particulars of the person with whom the child is believed to be;
 - (b) state the circumstances warranting the making of the order;
 - (c) provide any other relevant information; and
 - (d) exhibit all relevant documents.
- (3) The affidavit must be filed at the same time as the application.
- (4) However, for an urgent case, the affidavit may be filed—
 - (a) within the time specified by the Court; or
 - (b) (if no time is specified by the Court) as soon as possible after the application.
- (5) The application may be made ex parte.

12C. Application for an order under section 21(3) of the Ordinance: for prohibiting removal of child out of Hong Kong (O. 121, r. 12C)

- (1) An application for an order under section 21(3) of the Ordinance 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—
 - (a) provide the information set out in paragraph (3) about the following persons—
 - (i) the child;
 - (ii) the applicant;
 - (iii) the person believed to be intending to remove, or to be removing, the child out of Hong Kong; and
 - (iv) the person specified in section 21(2)(a) of the Ordinance who has the custody of the child under a court order or who is exercising the rights of that custody (other than the applicant);
 - (b) state the basis for believing that the person mentioned in subparagraph (a)(iii) may remove the child out of Hong Kong;
 - (c) provide any other relevant information; and
 - (d) exhibit all relevant documents.
- (3) The information includes—
 - (a) the following in respect of the child—
 - (i) name (in both Chinese and English, if applicable);
 - (ii) date of birth (if available);
 - (iii) gender;
 - (iv) birth certificate number (if available);

- (v) Hong Kong Identity Card number (if available);
- (vi) travel document number (if available); and
- (vii) address (if available);
- (b) the following in respect of the applicant—
 - (i) name (in both Chinese and English, if applicable);
 - (ii) gender;
 - (iii) Hong Kong Identity Card number or travel document number;
 - (iv) address;
 - (v) contact telephone number; and
 - (vi) relationship with the child;
- (c) the following in respect of the person mentioned in paragraph (2)(a)(iii)—
 - (i) name (in both Chinese and English, if applicable);
 - (ii) gender;
 - (iii) (if available) Hong Kong Identity Card number or travel document number;
 - (iv) address (if available);
 - (v) contact telephone number (if available); and
 - (vi) relationship with the child; and
- (d) the following in respect of the person mentioned in paragraph (2)(a)(iv)—
 - (i) name (in both Chinese and English, if applicable);
 - (ii) gender;

- (iii) (if available) Hong Kong Identity Card number or travel document number;
- (iv) address (if available);
- (v) contact telephone number (if available); and
- (vi) relationship with the child.
- (4) The affidavit must be filed at the same time as the application.
- (5) However, for an urgent case, the affidavit may be filed—
 - (a) within the time specified by the Court; or
 - (b) (if no time is specified by the Court) as soon as possible after the application.
- (6) The application may be made ex parte.

12D. Application for an order under section 21(4) of the Ordinance: for variation, discharge, suspension or revival (O. 121, r. 12D)

- (1) An application for an order under section 21(4) of the Ordinance 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—
 - (a) state the ground of the application;
 - (b) provide any other relevant information; and
 - (c) exhibit all relevant documents.
- (3) The affidavit must be filed at the same time as the application.
- (4) However, for an urgent case, the affidavit may be filed—

- (a) within the time specified by the Court; or
- (b) (if no time is specified by the Court) as soon as possible after the application.
- (5) The application may be made ex parte.”.

20. Order 121, rule 13 amended (searching for, inspecting and obtaining copies of documents filed in proceedings under the Ordinance)

- (1) Order 121, Chinese text, rule 13, heading—

Repeal

“搜尋、查閱及取得存於《條例》下的法律程序檔案的文件副本”

Substitute

“搜尋、查閱及取得在根據《條例》進行的法律程序中存檔的文件的副本”.

- (2) Order 121, Chinese text, rule 13(2)—

Repeal

“(進行公開)”

Substitute

“(在公開)”.

- (3) Order 121, Chinese text, rule 13(2)(a) and (b)—

Repeal

“如”.

21. Appendix A amended (forms)

- (1) Appendix A, English text, Form No. 10—

Repeal

“(O. 7 r. 2”

Substitute

“(O. 7 r. 2;”.

- (2) Appendix A, after Form No. 10—

Add

“No. 10A

Originating summons—expedited form for applications under Child Abduction and Custody Ordinance

(O. 121 r. 2)

IN THE HIGH COURT OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION

COURT OF FIRST INSTANCE

20....., No.

In the matter of an application
under of the Child Abduction and
Custody Ordinance (Cap. 512) and Order 121 of the Rules of
the High Court (Cap. 4 sub. leg. A) in respect of a child,
namely

Between	<i>A.B.</i>	Applicant
	AND	
	<i>C.D.</i>	Respondent

Let *C.D.* of attend before
the Registrar (or Judge) in Chambers, at the High Court in
Hong Kong, on day,
the day of 20....., at
o'clock (or, if no application has yet been made for a day to

be fixed, on a day to be fixed), on the hearing of an application by the applicant *A.B.* of that

And let the respondent within 7 days after service of this summons (or within 14 days after service of this summons out of the jurisdiction) on the respondent counting the day of service, return the accompanying Acknowledgment of Service to the Registry of the High Court.

Dated the day of 20.....

Note:—This summons may not be served later than 12 calendar months beginning with the above date unless renewed by order of the Court.

This summons was taken out by of solicitors for the applicant whose address is as stated above.

[or where the applicant acts in person:

This summons was taken out by the applicant who resides at and (if the applicant does not reside within the jurisdiction) whose address for service is].

Note:—If the respondent does not attend personally or by counsel or solicitor at the time and place above-mentioned, such order will be made as the Court may think just and expedient.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

No. 10B

Ex parte originating summons for applications under Child Abduction and Custody Ordinance

(O. 121 r. 2)

IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

20....., No.

In the matter of an application under of the Child Abduction and Custody Ordinance (Cap. 512) and Order 121 of the Rules of the High Court (Cap. 4 sub. leg. A) in respect of a child, namely

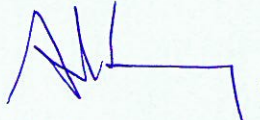
Let all parties concerned attend before the Judge in Chambers (or the master), at the High Court in Hong Kong, on day, the day of 20....., at o'clock, on the hearing of an application by the applicant *A.B.* that

Dated the day of 20.....

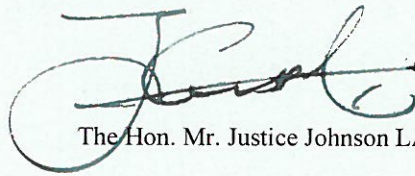
This summons was taken out by of

solicitors for the applicant whose address
is

Made this 21st day of December 2015.



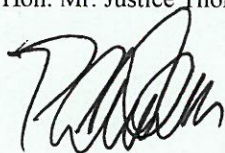
The Hon. Mr. Justice Andrew CHEUNG
Chief Judge of the High Court



The Hon. Mr. Justice Johnson LAM V.P.



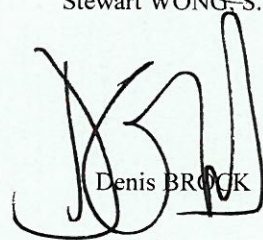
The Hon. Mr. Justice Thomas AU



Paul T.K. LAM, S.C.



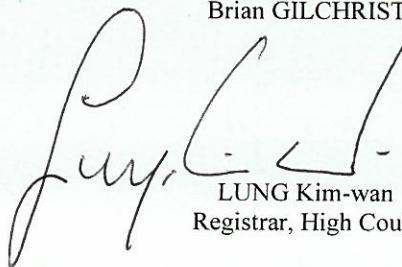
Stewart WONG, S.C.



Denis BROOK



Brian GILCHRIST



LUNG Kim-wan
Registrar, High Court

Herbert LI

Explanatory Note

These Rules amend the Rules of the High Court (Cap. 4 sub. leg. A) (*HC Rules*) to provide for the procedures relating to applications for certain court orders under the Child Abduction and Custody Ordinance (Cap. 512) (*Ordinance*), and to effect other related and technical amendments.

2. The procedures relating to those applications are provided for as follows—
 - (a) rule 17 adds to the HC Rules a new Order 121, rule 11A relating to a location order under section 15(2) of the Ordinance; and
 - (b) rule 19 adds to the HC Rules the following—
 - (i) a new Order 121, rule 12A relating to an order for variation, discharge, suspension or revival under section 16(4) of the Ordinance;
 - (ii) a new Order 121, rule 12B relating to a recovery order under section 17(2) of the Ordinance;
 - (iii) a new Order 121, rule 12C relating to an order for prohibiting removal of a child out of Hong Kong under section 21(3) of the Ordinance; and
 - (iv) a new Order 121, rule 12D relating to an order for variation, discharge, suspension or revival under section 21(4) of the Ordinance.
3. Rules 4, 5, 7, 8(2), 9(2), 11, 12, 18(10) and 21 contain related amendments and rules 3, 6, 8(1), 9(1), 10, 13 to 16, 18(1) to (9) and 20 contain technical amendments.

Rules of the District Court (Amendment) (No. 2) Rules 2015

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Order 121

Proceedings and Applications under Child Abduction and Custody Ordinance (Cap. 512)

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Rules of the District Court (Amendment) (No. 2) Rules 2015

(Made by the District Court Rules Committee under section 72 of the District Court Ordinance (Cap. 336))

1. Commencement

These Rules come into operation immediately after the Child Abduction Legislation (Miscellaneous Amendments) Ordinance 2014 (16 of 2014) comes into operation.

2. Rules of the District Court amended

The Rules of the District Court (Cap. 336 sub. leg. H) are amended as set out in rules 3 to 7.

3. Order 3, rule 2 amended (reckoning periods of time)

Order 3, Chinese text, rule 2(4), after “整天”—

Add

“或整日”.

4. Order 7, rule 2 amended (form of summons, etc.)

Order 7, after rule 2(2)—

Add

“(3) This rule is subject to Order 121, rule 2.”.

5. Order 11, rule 9 amended (service of originating summons, etc.)

(1) Order 11, rule 9(1)—

Repeal

“Rule 1”

Substitute

“Subject to paragraph (4A), rule 1”.

(2) Order 11, rule 9(4)—

Repeal

“Service out of”

Substitute

“Subject to paragraph (4A), service out of”.

(3) Order 11, after rule 9(4)—

Add

“(4A) Service out of the jurisdiction of any originating summons issued under Order 121, rule 2 is permissible without the leave of the Court.”.

6. Order 121 added

After Order 113—

Add

“Order 121

Proceedings and Applications under Child Abduction and Custody Ordinance (Cap. 512)

1. Interpretation (O. 121, r. 1)

(1) In this Order—

Ordinance (《條例》) means the Child Abduction and Custody Ordinance (Cap. 512).

(2) Expressions used in this Order that are used in the Ordinance have the same meanings in this Order as in the Ordinance.

2. Mode of application (O. 121, r. 2)

Except as provided in the Ordinance, an originating application under section 21(3) of the Ordinance may be made by originating summons in—

- (a) (subject to subparagraph (b)) Form No. 10A in Appendix A; or
- (b) (if the application is made ex parte as provided in this Order) Form No. 10B in Appendix A.

6. Time for acknowledging service (O. 121, r. 6)

The time limited for acknowledging service of an originating summons issued pursuant to rule 2 is—

- (a) (subject to subparagraph (b)) 7 days after the service of the originating summons, including the day of service; or
- (b) (if the service takes place out of the jurisdiction) 14 days after the service of the originating summons, including the day of service.

6A. Hearing of originating summons (O. 121, r. 6A)

- (1) A day and time for the attendance of the parties before the Court for the hearing of an originating summons may be fixed on the application of the applicant.
- (2) If an originating summons is required to be served, the time limited for acknowledging service may, where appropriate, be abridged so as to expire on the 2nd day before the day so fixed.
- (3) If an originating summons is required to be served and a day is fixed under paragraph (1) for the hearing of the originating summons, the applicant must, at least 4 clear days before that day, serve on the respondent—

- (a) the originating summons and the affidavit required under this Order; or
- (b) (if the respondent has been served with the originating summons and the affidavit required under this Order) a notice of the day fixed for the hearing.

- (4) If the hearing of an originating summons required to be served is adjourned and any party to the proceedings desires to apply at the resumed hearing for any order or direction not previously asked for, that party must, at least 2 clear days before the resumed hearing of the originating summons, serve on the other party a notice specifying those orders and directions.

7. Further evidence (O. 121, r. 7)

- (1) Any respondent may within 5 days after acknowledging service of the originating summons file and serve on the other parties any affidavit on which the respondent intends to rely.
- (2) The applicant may within 5 days thereafter file and serve on the respondent an affidavit in reply.

8. Assignment of proceedings (O. 121, r. 8)

Every application must be heard and determined by a judge, except that applications to extend time and to join a respondent may be heard by a master, and must be dealt with in chambers unless the Court otherwise directs.

12C. Application for an order under section 21(3) of the Ordinance: for prohibiting removal of child out of Hong Kong (O. 121, r. 12C)

- (1) An application for an order under section 21(3) of the Ordinance 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—
 - (a) provide the information set out in paragraph (3) about the following persons—
 - (i) the child;
 - (ii) the applicant;
 - (iii) the person believed to be intending to remove, or to be removing, the child out of Hong Kong; and
 - (iv) the person specified in section 21(2)(a) of the Ordinance who has the custody of the child under a court order or who is exercising the rights of that custody (other than the applicant);
 - (b) state the basis for believing that the person mentioned in subparagraph (a)(iii) may remove the child out of Hong Kong;
 - (c) provide any other relevant information; and
 - (d) exhibit all relevant documents.
- (3) The information includes—
 - (a) the following in respect of the child—

- (i) name (in both Chinese and English, if applicable);
 - (ii) date of birth (if available);
 - (iii) gender;
 - (iv) birth certificate number (if available);
 - (v) Hong Kong Identity Card number (if available);
 - (vi) travel document number (if available); and
 - (vii) address (if available);
- (b) the following in respect of the applicant—
 - (i) name (in both Chinese and English, if applicable);
 - (ii) gender;
 - (iii) Hong Kong Identity Card number or travel document number;
 - (iv) address;
 - (v) contact telephone number; and
 - (vi) relationship with the child;
- (c) the following in respect of the person mentioned in paragraph (2)(a)(iii)—
 - (i) name (in both Chinese and English, if applicable);
 - (ii) gender;
 - (iii) (if available) Hong Kong Identity Card number or travel document number;
 - (iv) address (if available);
 - (v) contact telephone number (if available); and
 - (vi) relationship with the child; and

- (d) the following in respect of the person mentioned in paragraph (2)(a)(iv)—
 - (i) name (in both Chinese and English, if applicable);
 - (ii) gender;
 - (iii) (if available) Hong Kong Identity Card number or travel document number;
 - (iv) address (if available);
 - (v) contact telephone number (if available); and
 - (vi) relationship with the child.
- (4) The affidavit must be filed at the same time as the application.
- (5) However, for an urgent case, the affidavit may be filed—
 - (a) within the time specified by the Court; or
 - (b) (if no time is specified by the Court) as soon as possible after the application.
- (6) The application may be made ex parte.

12D. Application for an order under section 21(4) of the Ordinance: for variation, discharge, suspension or revival (O. 121, r. 12D)

- (1) An application for an order under section 21(4) of the Ordinance 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—
 - (a) state the ground of the application;
 - (b) provide any other relevant information; and

- (c) exhibit all relevant documents.
 - (3) The affidavit must be filed at the same time as the application.
 - (4) However, for an urgent case, the affidavit may be filed—
 - (a) within the time specified by the Court; or
 - (b) (if no time is specified by the Court) as soon as possible after the application.
 - (5) The application may be made ex parte.
- 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.”.

7. Appendix A amended (forms)

Appendix A, after Form No. 10—

Add

“No. 10A

**Originating summons—expedited form for applications under
Child Abduction and Custody Ordinance**

(Order 121 rule 2)

20....., No.

IN THE DISTRICT COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION

NO. OF 20.....

In the matter of an application under of the
Child Abduction and Custody Ordinance (Cap. 512) and Order
121 of the Rules of the District Court (Cap. 336 sub. leg. H) in
respect of a child, namely

Between *A.B.* Applicant

AND

C.D. Respondent

Let *C.D.* of attend before
His/Her Honour Judge/Master in
Chambers, at the District Court, Hong Kong, onday,
the day of 20....., at
o'clock in the noon (or, if no application has yet been
made for a day to be fixed, on a day to be fixed), on the hearing of
an application by the applicant *A.B.*
of
that

And let the respondent within 7 days after service of this
summons (or within 14 days after service of this summons out of
the jurisdiction) on the respondent counting the day of service,
return the accompanying Acknowledgment of Service to the
Registry of the District Court.

Dated the day of 20.....

Note:—This summons may not be served later than 12
calendar months beginning with the above date unless renewed by
order of the Court.

This summons was taken out by
of
solicitors for the applicant whose address is as stated above.

[or where the applicant acts in person:

This summons was taken out by the applicant who resides
at and (if the
applicant does not reside within the jurisdiction) whose address for
service is].

Note:—If the respondent does not attend personally or by
counsel or solicitor at the time and place above-mentioned, such
order will be made as the Court may think just and expedient.

IMPORTANT

Directions for Acknowledgment of Service are given with
the accompanying form.

No. 10B

**Ex parte originating summons for applications under Child
Abduction and Custody Ordinance**

(Order 121 rule 2)

20....., No.

IN THE DISTRICT COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION

NO. OF 20.....

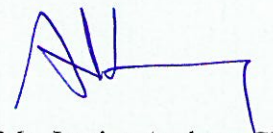
In the matter of an application under of the
Child Abduction and Custody Ordinance (Cap. 512) and Order
121 of the Rules of the District Court (Cap. 336 sub. leg. H) in
respect of a child, namely

Let all parties concerned attend before His/Her Honour
Judge/Master in Chambers, at the
District Court, Hong Kong, onday, the day
of 20....., at o'clock in
the noon, on the hearing of an application by the
applicant *A.B.* that

Dated the day of 20.....

This summons was taken out by
of
solicitors for the applicant whose address
is"

Made this 21st day of December 2015.



The Hon. Mr. Justice Andrew CHEUNG
Chief Judge of the High Court



H.H. Judge KO



H.H. Judge LEUNG



H.H. Judge LEVY



Elaine LIU



Amirali NASIR



Simon LUI
Temporary Registrar, District Court

Explanatory Note

These Rules amend the Rules of the District Court (Cap. 336 sub. leg. H) (*DC Rules*) to provide for the general procedures for applications made to the District Court under the Child Abduction and Custody Ordinance (Cap. 512) (*Ordinance*), and to effect other related and technical amendments.

2. Rule 6 adds a new Order 121 to the DC Rules setting out—
 - (a) the general procedures for applications made to the District Court under the Ordinance; and
 - (b) the procedures relating to applications for—
 - (i) an order for prohibiting removal of a child out of Hong Kong under section 21(3) of the Ordinance; and
 - (ii) an order for variation, discharge, suspension or revival under section 21(4) of the Ordinance.
3. Rules 4, 5 and 7 contain related amendments and rule 3 contains a technical amendment.

Amendments to the Rules of the High Court (Cap 4A)

Order 121 of Cap 4A currently sets out the rules regulating any orders/applications stipulated under the existing CACO. We propose to stipulate court procedures for applying for the new court orders. All such applications under Part 2 and Part 3 of CACO may be commenced by originating summons in the expedited form as set out in CACO. All applications for location order, “mirror order” and recovery order under Part 2 may also be made by summons in extant proceedings commenced in Hong Kong Court.

2. The gist of the proposed amendments to Order 121 of Cap 4A is set out below –

Part 2 of CACO – Provisions giving effect to the Convention

(a) Location order

Any application for a location order under the new section 15 of CACO must be supported by an affidavit sworn by (i) the applicant or (ii) a person duly authorised to swear it on behalf of the applicant. The application may be made ex parte. The affidavit shall be filed at the same time as the application except that, in a case of urgency, the affidavit may be filed as soon as possible after the application or in such time as directed by the court.

(b) “Mirror order”

The application procedures for obtaining a “mirror order” pursuant to the new section 16 of CACO are stipulated in section 17, Part 3, of the Amendment Ordinance (relevant extract at **Enclosure**). The proposed amendments therefore focus on the application procedures for variation, discharge or suspension for such order (pursuant to the new section 16(4) of CACO).

Any application for variation, discharge or suspension of a “mirror order” made under the new section 16 of CACO must be supported by an affidavit sworn by (i) the applicant or (ii) a person duly authorised to swear it on behalf of the applicant. The application may be made ex parte. The affidavit shall be filed at the same time as the application except that, in a case of urgency, the affidavit may be filed as soon as possible after the application or in such time as directed by the court.

(c) Recovery order

Any application for a recovery order under the new section 17 of CACO must be supported by an affidavit sworn by (i) the applicant or (ii) a person duly authorised to swear it on behalf of the applicant. The application may be made ex parte. The affidavit shall be filed at the same time as the application except that, in a case of urgency, the affidavit may be filed as soon as possible after the application or in such time as directed by the court.

Part 3 of CACO – Other provisions combating child abduction in Hong Kong

(d) Prohibition order

Any application for a prohibition order under the new section 21 of CACO must be supported by an affidavit sworn by (i) the applicant or (ii) a person duly authorised to swear it on behalf of the applicant. The application may be made ex parte. The affidavit shall be filed at the same time as the application except that, in a case of urgency, the affidavit may be filed as soon as possible after the application or in such time as directed by the court.

Any application for variation, discharge or suspension of a prohibition order made under the new section 21 of CACO must be supported by an affidavit sworn by (i) the applicant or (ii) a person duly authorised to swear it on behalf of the applicant.

The application may be made ex parte. The affidavit shall be filed at the same time as the application except that, in a case of urgency, the affidavit may be filed as soon as possible after the application or in such time as directed by the court.

Child Abduction Legislation (Miscellaneous Amendments) Ordinance 2014

Part 3
Section 16

Ord. No. 16 of 2014
A1637

Part 3

Amendments to Rules of the High Court

16. 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.

17. 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 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 16 (O. 121, r. 12)

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

Amendments to the Rules of the District Court (Cap 336H)

Currently (i.e. until the Amendment Ordinance is brought into operation), proceedings under CACO fall within the exclusive jurisdiction of the Court of First Instance of the High Court. Hence, there is no existing Order in Cap 336H regulating any orders/applications made under CACO. In this regard, we propose to introduce a new Order to Cap 336H specifically addressing the procedures for applications for the prohibition order which also falls within the jurisdiction of the District Court. All applications for the prohibition order may be commenced by originating summons in the expedited form as set out in Cap 336H.

2. The gist of the new Order to be introduced to Cap 336H is set out below –

(a) Application for prohibition order

Any application for a prohibition order under the new section 21 of CACO must be supported by an affidavit sworn by (i) the applicant or (ii) a person duly authorised to swear it on behalf of the applicant. The application may be made ex parte. The affidavit shall be filed at the same time as the application except that, in a case of urgency, the affidavit may be filed as soon as possible after the application or in such time as directed by the court.

(b) Application for variation, discharge or suspension of prohibition order

Any application for variation, discharge or suspension of a prohibition order made under the new section 21 of CACO must be supported by an affidavit sworn by (i) the applicant or (ii) a person duly authorised to swear it on behalf of the applicant. The application may be made ex parte. The affidavit shall be filed at the same time as the application except that, in a case of

urgency, the affidavit may be filed as soon as possible after the application or in such time as directed by the court.