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Health, Welfare and Food Bureau
Government Secretariat, Government of the Hong Kong Special Administrative Region
The People's Republic of China

Our Ref. : HWF/CR/1/3281/98 Pt. 3

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NO. 18558-FOUE No.

DOSSIER

Conv. Enlèvement (exéc.)

BY FAX AND POST
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Dear Sir/Madam,

Total = 1 + 20 = 21 Pages

The 1980 Hague Convention on the Civil Aspects of
International Child Abduction
Response to Questionnaire on the Enforcement of Return Orders etc.

Enclosed please find one set of response to the captioned questionnaire of the Government of the Hong Kong Special Administrative Region of the People's Republic of China.

Please feel free to contact the undersigned if further assistance is required.

Yours sincerely,

(Gavin KWAI)

for Secretary for Health, Welfare and Food

Encl.

**Questionnaire on the Enforcement of Return Orders under the 1980
Hague Convention and of Access/Contact Orders
Response of the Central Authority of the HKSAR, China**

I. Legal Bases for the Enforcement of Hague Return Orders

Q1 Please give details of any specific legislative provisions which exist in your State concerning the enforcement of return orders under the 1980 Hague Convention. Please specify the title of the instrument, its legal nature (law, decree, administrative regulation or rules of court etc.) and short description of content.

A1 There are no specific legislative provisions in Hong Kong concerning the enforcement of return orders under the Hague Convention.

Q2 Please give details of any general legislative provisions which exist in your State concerning the enforcement of court orders in the area of family law and govern the enforcement of return orders under the 1980 Hague Convention (either in the absence of specific provisions under question I.1 or in addition to any such specific provisions). Please specify the title of the instrument, its legal nature (law, decree, administrative regulation or rules of court etc.) and the content of the relevant provisions.

A2 In general, i.e. not exclusive to the area of family law, court orders can be enforced under Orders 45 to 52 of the Rules of the High Court ("RHC", subsidiary legislation, Chapter. 4A, Laws of Hong Kong). Most of these enforcement measures are related to enforcement of monetary judgments only.

Order 46, rule 5 and Order 52 of the RHC are more relevant to the enforcement of return orders though, as far as we know, they have never been invoked for such purpose. In theory, a person in breach of a return order may be compelled to comply with the return order by a writ of sequestration or by an order of committal for contempt of court. See Annex 1 for the relevant provisions.

In order to enforce an order by sequestration, the order must specify the time within which the required act must be done. The writ of sequestration is a form of contempt proceedings and a drastic method of enforcing an order. Possession of the real and personal property of the contemnor may be taken by the sequestrators until the contempt is purged. Such writ can only be issued with the leave of the court. The motion must be served personally on the person against whose property the writ is sought and endorsed with a penal notice.

Likewise, before a person can be committed for contempt under Order 52, the Court must be satisfied that a "penal notice" is endorsed on the order, i.e. sufficient notice of the consequence of breach of the order had been given to that person, and personal service of the order on that person had been effected.

It is arguable that one may also apply for a writ of habeas corpus to secure the placing of the abducted child under the care and control of, for example, the Director of Social Welfare, pending the child's return. Under section 22A(2) of the High Court Ordinance (Chapter 4, Laws of Hong Kong), an application for writ of habeas corpus can be made by or on behalf of a person who claims to be legally entitled to the custody of another person. However, a writ of habeas corpus is indeed independent of any pre-existing court order. S.22A(1) of the High Court Ordinance provides that An application may be made to the Court of First Instance (a) alleging that a person named in the application is being detained without lawful justification; and (b) requesting the issue of a writ of habeas corpus in respect of that person. Procedural matters relating to applications for writ of habeas corpus are governed by Order 54 of the Rules of the High Court.

As said, there is no enforcement procedure directly effecting return of children, e.g. removing child from the abductor forcibly and bringing him/her on board a flight. If the person in favour of whom a return order is made encounters difficulties in bringing the order into effect, he/she may apply to the Court for further directions if there is a "liberty to apply" clause in the return order. In theory, the

Court may then order the abducted child be forcibly removed from the abductor, but this has never happened in Hong Kong.

Q3 Please give details of any judicial decisions, practice directives or guides concerning the enforcement of court orders in the area of family law that govern the enforcement of return orders under the 1980 Hague Convention (either in the absence of specific provisions under question 1.1 or in addition to any such specific provisions).

A3 There are no such judicial decisions, practice directives or guides in Hong Kong.

Q4 Do you have any other comments relating to the law governing enforcement of Hague return orders, including any comments on the effectiveness of these rules?

A4 The sequestration, committal proceedings, or applications for writ of habeas corpus (hereinafter referred as "formal enforcement proceedings") are to be used as a last resort. We have no comment on their effectiveness as they have not been used in previous Hague return cases. We believe the most effective enforcement measure is prevention, i.e. appropriate actions (e.g. removing the child from the abductor) should be taken at the first available opportunity if it is envisaged that the abductor will not comply with the return order in the event that the order is granted by the Court. For example, if the applicant is in Hong Kong when the application is made, a Court order will usually be obtained to grant interim care and control of the child concerned to the applicant with or without access/visitation to the abductor depending on the circumstances. In these circumstances, the applicant will rarely have difficulty to return with the child when the Court has made a return order. Equally, the terms of a return order shall be made as specific as possible, to avoid the risk of fleeing. For example, it may be specified in the return order that the child shall be allowed by the Immigration Department to leave Hong Kong for his return to the place of his habitual residence on board a particular pre-scheduled flight only.

II. Enforceability and Legal Remedies

Q1 a) Is a Hague return order subject to appeal or other forms of challenge? Please give details (number and character of legal remedies, possible time-limit for them, possible time-limit for appellate court or court of appeals to decide etc.)

A1 a) Yes, a Hague return order, like other court orders, is subject to appeal. A party who is discontent with the return order may appeal to the Court of Appeal under Order 59 of the Rules of the High Court as of right. Further appeal can be lodged with the Court of Final Appeal under Section 22 of the Hong Kong Court of Final Appeal Ordinance (Chapter 484, Laws of Hong Kong), but leave (i.e. permission) to appeal must first be obtained by showing that the question involved in the appeal is one which, by reason of its great general or public importance, or otherwise, ought to be submitted to the Court of Final Appeal for decision. For an appeal to the Court of Appeal, an appellant has 28 days from the date on which the order was sealed to lodge an appeal. For appeal to the Court of Final Appeal, the application for leave to appeal must be filed within 28 days from the date of the judgment to be appealed from. The hearing may, upon urgency being shown, be expedited. There is no time-limit as such for the appellate courts to decide the appeal.

Q1 b) Please specify whether any such challenge may only be made once, and which court or body has jurisdiction to hear the appeal.

A1 b) Hong Kong has a two-tier appeal system. Appeals against return orders go first to the Court of Appeal and then, if leave to appeal is granted, to the Court of Final Appeal. Since 1997, we have only had one appeal made to the Court of Appeal against a return order.

Q2 a) Please give details of any authorisation or other decision required for the actual enforcement of

the Hague return order (e.g. registration for enforcement, declaration of enforceability, order of a specific enforcement measure or other).

A2 a) As there is no direct enforcement of Hague return orders as such in Hong Kong, this question is not applicable. For formal enforcement proceedings such as sequestration or committal, leave (i.e. the Court's permission) must be obtained before possession of the property of the person who fails to comply with a court order can be taken or before such person can be committed.

Q2 b) *Which is the competent organ for these decisions?*

A2 b) Court of First Instance.

Q3 *Does the Hague return order have to be final and no longer subject to ordinary appeal before any authorisation for enforcement or other measure specified under II.2 may be ordered?*

A3 In general, if no appeal is laid against a Court of First Instance's order within 28 days from the date of the sealing of the order, the order can be said to be final although in theory time for appealing can be extended by the Court. Also, an application may be made to the Court for stay of execution of a court order pending appeal and the Court may grant such application if it thinks appropriate to do so. Whether or not a stay of execution will be granted depends on the individual merits and circumstances of each case.

Q4 a) *Are any of the decisions specified under II.2.a) (authorisation to enforce or other decision) subject to appeal independent of any appeal against the merits of the return order? Please give details (number and character of legal remedies, possible time limit to lodge them, possible time-limit for appellate court or court of appeals to decide etc.)*

A4 a) Yes, such appeals are also governed by Order 59 of the Rules of the High Court in respect of appeal to the Court of Appeal and by Section 22 of the Hong Kong Court of Final Appeal Ordinance as explained in A1(a) above.

Q4 b) *Please specify whether any such challenge may only be made once, whether it suspends the enforceability / enforcement of the order and which is the court or body to decide the appeal.*

A4 b) Appeals against a sequestration order, a committal order or a writ of habeas corpus is subject to appeal to the Court of Appeal and if leave to appeal is granted, to the Court of Final Appeal. An appeal does not automatically suspend the enforceability / enforcement of the order. An application to stay the execution pending appeal must be made in the first instance to the court making the order and then to the appellate court if being refused. In the case of an appeal against an order of committal and the appellant is in custody, the Court of Appeal may order his release on his giving security for his appearance within 10 days after the appellate judgment is given, see Order 59, rule 20(2) of RHC.

Q5 *If in your State both types of legal remedy as specified under II.1 and II.4 (i.e. against the order on the merits and against any decision taken at or required for the enforcement stage) exist, can they be lodged simultaneously? Is it the same court that deals with them if they are lodged (a) simultaneously, and (b) at different times?*

A5 In general, if a person is appealing against a return order which does not specify a time limit within which the return must be effected, it may not be necessary for him to apply for a stay of execution of the Court of First Instance's order pending appeal. If the return order has a time limit within which the return must be effected, the appellant should apply for a stay of execution pending appeal. The application for a stay must first be made to the Court of First Instance, and then to the Court of Appeal if the application is refused by the Court of First Instance. If the application for a stay is granted, there will be no enforcement of the return order until further directions of the Court.

Q6 Do you have any other comments relating to legal remedies and the enforcement of Hague return orders?

A6 We have no further comments.

III. Enforcement Procedure

A. The order to be enforced and the aims of enforcement

Q1 If an application for return of a child under the 1980 Hague Convention is successful, what is normally ordered:

a) the surrender of the child to the applicant (if necessary, "for the purposes of returning the child to his / her State of habitual residence")

b) the return of the child to State X

c) other

A1 Orders in term of (b) are usually granted though orders in more specific terms like (a) may also be granted.

Q2 If such order has to be enforced, please specify which of the following is / are normally the aim of enforcing a return order:

a) to remove the child from the abductor or any other person

b) to hand the child over to the applicant or a person designated by him or her in the State where enforcement takes place

c) to ensure the child's return to his or her State of habitual residence

d) other

A2 As formal enforcement action (including sequestration or committal proceedings) has never been taken in Hong Kong, we are not in a position to comment. If an applicant is in Hong Kong when the return proceedings are instituted, and there is indication that the abductor is unlikely to be willing to comply with a return order if made, the applicant may be granted interim care and control of the child and the child will be removed from the abductor as early as possible. As a result, the child can be returned to the place of his habitual residence as soon as a return order is made. Such arrangement should render enforcement of a return order unnecessary.

Q3 Whose responsibility is it to organise the repatriation of the child?

A3 In general, the applicant shall be responsible for organizing the return of the child. If resistance from the abductor is anticipated, the Court may be invited to request the law enforcement agents, e.g. Police, to assist in ensuring the safety of the child and facilitating the return of the child. The extent of assistance varies from case to case, depending on the particular circumstances of each case, and any order made by the Court.

B. Actors involved in enforcement

Q1 Once a return order is made, is a specific request for enforcement necessary?

A1 Yes, if the return order itself is silent on how the return should be implemented. However, separate application should normally be unnecessary as it is our normal practice, in cases where there is any reason to believe that the abductor is unlikely to be willing to comply with a return order, to invite the Court to set out the detailed arrangements in the return order to ensure the return can be effected smoothly.

Q2 Please specify who initiates enforcement of the court's return order:

- a) the applicant (in person or through his or her lawyer)*
- b) the Central Authority*
- c) the court*
- d) the enforcement organ itself*
- e) other*

Where the law leaves choices or discretion, please give details concerning actual practice.

A2 In general, application for enforcement of a court order should be made by the person in favour of whom the order was made.

Q3 a) Please give details of the persons, organs and institutions (e.g. enforcement organs, court, parties, psychologists, social workers, Central Authorities, other) involved in the enforcement of return orders under the 1980 Hague Convention

- i) according to the law*
- ii) in practice*

Please describe their respective roles and functions in enforcement, and whether their participation is mandatory. If this is not the case for some or all of the actors mentioned, please specify who decides about their respective participation and to what extent they are normally involved in Hague return cases (regularly or exceptionally and, in the latter case, depending on which conditions).

- b) In particular, are any social or psychological services available in order to prepare the child and / or the defendant for the return in order to de-escalate or even avoid enforcement by coercive measures?*
- c) Please specify also whether presence of the applicant (or a person designated by him or her) is required and, if this is the case, at which stage of the enforcement proceedings and for what purpose.*

A3 (a) In law, under section 8(a)(i) of the Child Abduction and Custody Ordinance (Chapter 512, Laws of Hong Kong), where the Central Authority is requested to provide information relating to a child under Article 7(a) or (d) of the Convention, the Central Authority may request the Police, Immigration Department, Social Welfare Department and any other person to make reports in writing with respect to any matter which appears to the Central Authority to be relevant. For example, the Social Welfare Department may upon the Central Authority's request provide a report relating to the social background of the child.

Depending on the circumstances of each case, the Court may be invited to request the Police, Immigration Department and Social Welfare Department (including social workers and psychologists) to provide appropriate assistance. Although their participation is not mandatory, there is a mutual understanding that they will assist as far as possible upon being requested by the Court. As a matter of good practice, the Central Authority will liaise with the relevant agencies in advance and discuss the detailed arrangements to be included in the return order to facilitate a smooth and safe return of the child. For example, Social Work Officer of the Family and Child Protective Services Units of the Social Welfare Department may provide the concerned child and parents with counselling and other support services if necessary.

A3 (b) If the child abduction case is brought to the attention of the Social Welfare Department, the responsible Social Work Officer will render assistance to the child and the left-behind parent/abducting parent as appropriate to prevent further harm to the child. Services provided include counselling and arrangement of financial assistance, temporary accommodation, and child care etc.

A3 (c) The applicant's presence is not necessary but in his/her absence, there should be someone who is designated by him or her and authorised by the Court to bring the child back to his/her place of habitual residence.

Q4 a) *Is there any supervision / control of the enforcement procedure by a court, the Central Authority or any other State authority? If a court is supervising / controlling the enforcement procedure, which court is it? The court that made the order or other (e.g. a specific enforcement court)?*

A4 a) If detailed arrangements regarding assistance to be provided by enforcement agencies have been included in the return order to ensure smooth return, the Central Authority (of its own motion or upon being requested by an applicant's own lawyers) would normally act as a co-ordinator to see to it that the various agencies will act in accordance with the terms of the order. The Court has no role to play after making the return order until and unless one or both parties apply under the 'liberty to apply' clause (if there is one) or for leave to apply to enforce the return order.

Q4 b) *What if the court of first instance refused return, and the appellate court or court of appeals ordered return? Would the court of first instance, the appellate court or court of appeals which ordered return, or any other court be the court supervising/controlling enforcement in such a case?*

A4 b) As explained, the Court has no role to play after making a return order until and unless one or both parties apply under the 'liberty to apply' clause (if the order contains such clause) or for leave to apply to enforce the return order. An application for leave should be made in the first instance to the Court of First Instance even if a return order is made by an appellate court.

C. The enforcement of procedure proper

Q1 *Is there a timeline for enforcement?*

A1 There is no timeline as such but an applicant is expected to act with reasonable promptness to enforce a return order.

Q2 *Is it normal to allow a period of time for voluntary compliance with a return order or to allow appropriate practical arrangements for the return of the child to be made?*

A2 If there is no indication that the abductor is unlikely to comply with the return order, it is not unusual to allow a period of time for voluntary compliance with a return order or to allow appropriate practical arrangements be made. Usually, a deadline for the return of the child will be specified in the order, in particular, if the child is going to be returned by the abductor.

Q3 Are any measures available in order to prevent the abductor from taking the child into hiding after the return order is made and before it can be enforced? In the affirmative, please give details.

A3 The abductor cannot remove the child out of jurisdiction except pursuant to a return order as the stop order preventing the removal of the child out of jurisdiction is usually in force until the return order is executed. Once a stop order has been made and a sealed copy of the same has been properly delivered to the Immigration Department, the Immigration Department may stop a child from being removed from Hong Kong. Sealed copy of any stop order shall be delivered by hand to "Control Support Section" of the Immigration Department at "14/F, Immigration Tower, 7 Gloucester Road, Wanchai, Hong Kong" during office hours, together with a copy of the child's birth certificate, identity card and travel document(s) (if applicable and available). For outside office hours (including Sundays and public holidays), such court order and relevant documents should be delivered by hand to the Duty Immigration Officer, Departure Level (North) of the Hong Kong International Airport, Chek Lap Kok. If the abductor is in Hong Kong when the return order is made, and there is indication that he/she will not comply with the return order, the applicant will be advised to either to obtain a return order forthwith or to apply for interim care and control of the child pending return, with or without access/visitation right be granted to the abductor.

Q4 What happens if the child is taken into hiding after the order was made and before it can be enforced? Which actors would be involved (e.g. Central Authority, police, public prosecutor, other) and which measures can they take to locate the child? What is the effect of the hiding on a possible timeline for enforcement?

A4 The Police will be requested to assist in locating the child. Appropriate manpower and resources will be deployed to locate the child taking into account of circumstances of the case. The applicant may also engage private investigator to assist in locating the whereabouts of the child. As there is no timeline for enforcement as such, the third sub-question is inapplicable.

Q5 When enforcement is initiated, what are the required steps (e.g. measures by the applicant, the court or any other supervisory authority, and the enforcement organs)?

A5 An application is made to the Court usually by the applicant in person or through lawyers. The application should be supported by affidavit detailing the sequence of events leading to the application for enforcement proceedings.

Q6 Which coercive measures are available and under what conditions (e.g. pecuniary fines, physical force [against whom? the child? the defendant? others?], detention)? Which of these are normally used in practice?

A6 The Court may direct the sequestrators to take possession of the property of the defendant to compel his/her compliance with the return order or commit the defendant to imprisonment for contempt of court but the Court may impose alternative penalty, i.e. fine, on that person under Order 52 rule 9 of the Rules of the High Court if the Court finds it appropriate. In theory, the Court may also order a forcible removal of the child from the abductor. As mentioned above, none of these enforcement proceedings or measures have ever been taken in Hong Kong.

Q7 a) Do they have to be ordered specifically (i.e. either "fine", "physical force", "detention")? If so, when and by whom?

A7 a) Yes, they must be ordered specifically and the Court may make such order as it deems appropriate upon hearing the application for enforcement.

Q7 b) If problems occur during enforcement, may the enforcement organs unilaterally "upgrade" the intensity of coercive measures, or do they have to obtain authorization from any particular higher

authority (e.g. an enforcement court or other)? Please specify.

- A7 b) It depends on how the order has been drafted. If in the order, the Court has directed the law enforcement agents to assist and allowed the use of force by the agents in case of resistance without specifying the mode, the agents may use a form they deem most appropriate to enforce the order (against the abductor and/or the child) but this is still subject to the test of reasonableness.

Q8 Please give details of any court orders which can be obtained in emergency situations. Can these orders be obtained after hours and *ex parte*?

A8 In general for all kinds of legal proceedings in Hong Kong, any emergency application can be made to a duty judge outside office hours on an *ex parte* basis.

D. Costs

Q1 Are costs incurred for the enforcement? If so, are they part of the costs of the court proceedings as a whole? How are they calculated? For which services are they charged?

A1 If formal enforcement proceedings are instituted, the applicant will have to pay fixed sum as court fee since the proceedings are independent of the main return application. If the applicant is represented by lawyer, he/she is also required to pay the lawyer's fees (which are also calculated on a time basis) unless his/her legal representation is funded by legal aid.

Q2 Who has to pay the costs for enforcement? To whom? Is a reduction or exemption possible, e.g. under a Legal Aid Scheme? Under which conditions? In particular, is advance payment required in order for the enforcement organs to act? If legal aid was granted for the proceedings leading to the return order, would it cover the enforcement stage or would the application for legal aid have to be renewed?

A2 The primary burden of paying the costs for instituting formal enforcement proceedings and the lawyer's fees rests on the applicant. If the applicant has financial difficulty in taking enforcement proceedings, he/she may apply for legal aid. Where the applicant is legally aided in respect of the proceedings leading to the granting of the return order, he/she may apply to have the legal aid certificate extended to cover the enforcement proceedings. In both cases, the applicant must pass the means and merit tests under the Legal Aid Ordinance in order to obtain legal aid. Depending on the financial resources of the applicant, he/she may have to pay a contribution under the legal aid legislation. Where legal aid is granted in respect of the enforcement proceedings, legal aid will only fund the legal costs incurred in the enforcement proceedings. The applicant has to bear any other expenses such as accommodation and airfare etc. to secure the return of the child.

Q3 Are the costs of the actual repatriation of the child (e.g. airfare for child and possible accompanying person) considered as part of the enforcement costs? Who has to pay for the repatriation? Is advance payment a condition for enforcement?

A3 The Court may order the abductor to pay for the costs of the repatriation of the child. If the Court does not so order, the applicant has to pay, even if he/she is on legal aid. Court fee must be paid when filing the application for formal enforcement proceedings.

Q4 Please specify how foreign applicants are provided with information about enforcement costs to be borne by them.

A4 If a foreign applicant instructs a solicitor to act on his/her behalf, the solicitor concerned should be able to provide the applicant with an estimate of the likely costs of conducting the formal enforcement proceedings having regard to the facts and circumstances of the case. For more information on legal costs and taxation, please visit the Law Society of Hong Kong's website at <http://www.hklawsoc.org.hk>.

Q5 Please provide details regarding the enforcement organs' specific duties as they relate to the enforcement of Hague return orders concerning children.

A5 Upon court's request as detailed in the return order, the Police, Immigration Department and Social Welfare Department will endeavour to provide assistance in ensuring the return is effected smoothly and safely. The nature of their assistance varies from case to case and there is no specific mandate as such for them relating to enforcement of return orders.

Q6 Do you have any other comments relating to the enforcement procedure?

A6 We have no other comments.

IV. Statistical Information

Q1 How many Hague return orders that you are aware of were made per year in your country in 2001, 2002 and 2003? How many of them had to be enforced in each of these years because the abductor did not comply voluntarily with the order? Please give the figures for each year separately.

A1 1 in 2001, 2 in 2002, 4 in 2003. Some of the return orders were made by consent of the parties. None of them had to be enforced.

Q2 How many Hague return proceedings were pending in your country that you are aware of for 2001, 2002 and 2003? Please give figures per year. In how many of these cases was a legal challenge made in order to avoid enforcement (by challenging either the order on the merits, the declaration of enforceability, a particular enforcement measure or other)? If possible, please specify the type of challenge (on the merits or against an enforcement measure).

A2 All the Hague proceedings in 2001, 2002 and 2003 had been concluded. There is one case in 2002 that the decision was challenged on its merits in the Court of Appeal but the case was finally settled by mutual agreement.

Q3 How many of the legal challenges at the enforcement level (i.e. not on the merits) were ultimately successful (i.e. the order was not enforced)?

A3 None was challenged at the enforcement level.

Q4 What is the average length of enforcement proceedings from the moment the order is made until the moment the child is (a) removed from the abductor and (b) repatriated?

A4 Not applicable.

V. Co-operation

Q1 Please give details of any co-operative agreements existing between different agencies within your State, either formally or informally, with regard to the enforcement of Hague return orders. How did this co-operation develop?

A1 No such formal agreement exists although the Police, Immigration Department and Social Welfare Department will endeavour to provide appropriate assistance upon court's request pursuant to a return order. Such co-operation has developed on a need basis since the implementation of the 1980 Hague

Convention.

Q2 Please give details of any co-operative agreements with other States, either formal or informal between different Central Authorities or agencies, or at the judicial level, with regard to the enforcement of Hague return orders. How did this co-operation develop?

A2 No such formal agreement exists. Again, co-operation has developed on a need basis.

Q3 Please provide details (including contact details, websites etc.) of all agencies in your State which have a role to play in the enforcement of Hague return orders.

A3 They are the Police, Immigration Department and the Social Welfare Department and they may be contacted through the Central Authority.

Also, the websites of the above Government departments are at the following addresses: -

Police: www.info.gov.hk/police

Social Welfare Department (Family and Child Protective Services Units):
www.info.gov.hk/swd/html_eng/ser_ser/fam_ser/index.html

Immigration Department: www.immd.gov.hk/chtml/contactus.htm

Q4 Do you have any other comments relating to co-operation, including any comments on the effectiveness of co-operative agreements?

A4 Although no such formal agreement has been made, mutual understanding has been developed between the Central Authority and the relevant agents. In case of urgency, the relevant agents will make their best endeavours to assist in the implementation and enforcement of the return order upon the Central Authority's and the Court's request.

VI. Training and Education for Professionals

Q1 Please give details of any training or education that is available in your State for professionals (including, judges, Central Authority personnel, lawyers, mediators, enforcement organs [e.g. bailiffs], police officers, and social workers) as a means of preparing them to enforce Hague return orders or decisions in family law matters in general.

A1 Enforcement of Hague return orders is invariably a part of the general training on the law and practice relating to the 1980 Hague Convention. The Central Authority has in-house on-the-job training for government lawyers handling Hague cases. On request, training may be given by individual judges and the Central Authority to private practitioners as well as to officers of relevant government departments (e.g. the Social Welfare Department). To keep abreast of the development of operation of the Convention in other jurisdiction, judges as well as officers of the Central Authority also attend international or regional conferences relating to the 1980 convention from time to time.

For the Social Welfare Department, training is provided to equip the frontline professional staff, including social workers, clinical psychologists and child care workers with the knowledge and intervention skills on handling cases involving child custody issues. Refresher training for social workers of the Family and Child Protective Services Units on "Handling International Child Abduction Cases" is also conducted on need basis. The training is organised by the Staff Development and Training Section of the Social Welfare Department. The trainers include local and overseas trainers with experience in the subject.

Q2 Who provides this training and education?

A2 The Law School, organisers of professional continuing training, the judges as well as the Central Authority. Also, the Police have incorporated the handling procedures for request from the Central Authority and the public in its internal orders.

Q3 What form does this training take and how regularly does it occur? Does joint training of different professional groups which have to co-operate in the enforcement of Hague return orders (e.g. judges, bailiffs, police officers, social workers) also occur?

A3 Apart from the on-the-job training within the Central Authority, this training usually takes the form of seminars and it occurs may be once or twice per annum. So far, no joint training of different professional groups has been organised but this possibility may be explored.

Q4 Do you have any other comments relating to training and education of professionals, including any comments on the effectiveness of this training and education as a means of facilitating the enforcement of Hague return orders?

A4 We note that the Permanent Bureau organise seminars for judges and professionals in relation to the 1980 Convention from time to time. These seminars had been held in Europe and North America. We are interested in that such seminars be held in Asia-Pacific region.

VII. Other Information

Q1 Please give details of any web pages, and provide copies of any brochures, or information packs or similar materials which contain information or advice on the enforcement of Hague return orders in your State and which are available to parents, including applicants from abroad.

A1 The enforcement of Hague return orders has not been singled out as a subject on its own but the Central Authority maintains a website containing general information about the implementation of the 1980 Convention in Hong Kong. The URL of the website is <http://www.doj.gov.hk/childabduct/index.html>.

Q2 Who provides this information? When was it compiled? When was it last updated? How is the information made available and in which language(s)?

A2 The Central Authority. The website came into use in 2002 and it is updated regularly. The website was last reviewed in May 2004. The information is available on Internet and in both Chinese and English, which are the official languages in Hong Kong.

Q3 Do you have any other comments relating to information for parents, including any comments on whether such information is effective in assisting the left-behind parent in having his or her return order enforced?

A3 We have no other comments.

Q4 Please provide any other information which may be relevant to the issue of the enforcement of Hague return orders.

A4 Legislation of Hong Kong is available on-line in the Bilingual Laws Information Systems ("BLIS") in the Department of Justice's website at <http://www.blis.gov.hk/eng/index.htm>. Amongst others, BLIS contain the Child Abduction and Custody Ordinance and the Rules of the High Court. Judgments of

various levels of the courts in Hong Kong are available at the Judiciary's website at <http://www.judiciary.gov.hk>. Information about legal aid in Hong Kong is available at the Legal Aid Department's website at <http://www.info.gov.hk/lad/>.

Q5 Please provide details of any other bodies or authorities in your State who may have information useful to the research covered by this questionnaire.

A5 None for the time being.

Q6 Have you any general comments to make regarding the enforcement of Hague return orders?

A6 We have no other comments.

Q7 Are there any changes envisaged in your legislation and / or practice? If this is the case, please give details in the answer to the respective question and indicate as of when such changes will take effect.

A7 None for the time being.

VIII. Orders Granting Rights of Contact/Access/Visitation

Q For each reply, please indicate whether the same applies to the enforcement of contact orders. If this is not the case, please give details concerning the latter.

Where the contact order refers to a specific period of time (e.g. where the child is to spend "the first part of the 2004 summer holidays from 1 to 20 July 2004" with the applicant) and is not complied with, please explain also whether coercive measures can be applied only as long as the period mentioned in the order contact has not yet expired (i.e. in order to implement the order), or also afterwards (i.e. as a sort of punishment although contact during this particular period can no longer be implemented). Please indicate also whether the same rules apply to the enforcement of domestic and foreign contact orders. If this is not the case, please specify the differences.

A Foreign orders granting rights of contact/access/visitation etc. are not automatically enforceable or recognised. Any person who wishes to apply for access right or recognition of an overseas order granting him/her access right has to make an application to the Court under domestic proceedings. Once an order is made by the Court, the order will be enforced in the same way as a domestic order. If the order concerned is an order allowing the child to stay in Hong Kong for a specific period of time, in the meantime the overseas parent can have contact with the child, and upon the expiry of that period the child shall be returned to the place of his habitual residence, such order may be recognised by the Hong Kong Court by way of a mirror order. An application for mirror order shall be made to the Court of First Instance of the High Court.

Section 22A of the High Court Ordinance**Applications for, and issue of, writs of habeas corpus**

- (1) An application may be made to the Court of First Instance-
 - (a) alleging that a person named in the application is being detained without lawful justification; and
 - (b) requesting the issue of a writ of habeas corpus in respect of that person.
 - (2) An application can be made by the person alleged to be detained, or by any other person on that person's behalf, and, in particular, can be made by or on behalf of a person who claims to be legally entitled to the custody of another person.
 - (3) An application can be made ex parte.
 - (4) As soon as practicable after receiving an application, the Court of First Instance must inquire into the allegation that the applicant is being unlawfully detained. All proceedings under this section are to be conducted in open court unless the Court, in exceptional circumstances specified by the Court, orders the proceedings, or a part of the proceedings, to be conducted in camera. All orders and decisions made in respect of those proceedings, and the reasons for those orders and decisions, are in every case to be announced in open court.
 - (5) On considering the application, the Court of First Instance must, if satisfied that the application has substance, do either of the following-
 - (a) order the issue of a writ of habeas corpus directing the person having custody of the applicant to have the applicant brought before the Court at a specified time on a specified date and to certify to the Court the grounds for the applicant's detention;
 - (b) order the person having custody of the applicant to appear before the Court in order to justify the lawfulness of the applicant's detention.
 - (6) The Court of First Instance may dismiss an application for a writ of habeas corpus if satisfied, on considering the application, that it has no substance.
 - (7) The person to whom a writ of habeas corpus is directed must, not later than the time and on the date specified in the writ-
 - (a) produce before the Court of First Instance the person alleged to be detained; and
 - (b) make a formal return to the writ.
- However, the Court of First Instance may extend the time within which a writ of habeas corpus must be complied with if it is satisfied that there is a good reason to do so.
- (8) If for any reason it is not possible for the person to whom a writ of habeas corpus is directed to comply with the writ, that person must nevertheless make a return to the Court of First Instance specifying the reason why it is not possible to comply with the writ.
 - (9) When a person is brought before the Court of First Instance in accordance with a writ of habeas corpus, the Court must immediately inquire into the circumstances surrounding the detention of the person

and must order the release of that person from detention unless satisfied that the detention is lawful.

(10) If a person who has custody of a detained person appears before the Court in accordance with an order made under subsection (5)(b) but fails to satisfy the Court that the detention is lawful, the Court must order the detained person to be released from detention immediately.

(11) If a writ of habeas corpus has been issued in respect of a detained person, the person having custody of the detained person must not, until the writ is discharged or the proceedings are concluded-

(a) allow the detained person to be moved to another place of detention in Hong Kong otherwise than under the authority of the Prisons Ordinance (Cap 234) or of any other enactment expressly providing for the detention of persons; or

(b) allow the detained person to be removed from Hong Kong.

(12) If a person who was formerly held in detention on a particular ground is released because of the issue of a writ of habeas corpus, or in accordance with an order made under subsection (10), a person may redetain that person on the same or a similar ground only if there has been a material change in the relevant circumstances.

(13) A person who-

(a) fails to comply with a writ of habeas corpus or with a requirement of this section; or

(b) contravenes subsection (12),

is guilty of contempt of the Court of First Instance.

(14) The right to obtain a writ of habeas corpus under the common law is preserved and is affected by this section only in so far as it is inconsistent with this section.

(15) For the purposes of this section-

(a) a person has custody of another person not only when the person has actual custody over the body of that other person but also when the person has power or control over that other person's body; and

(b) in relation to an application made on behalf of a person, a reference to an applicant includes a reference to that person.

(Added 95 of 1997 s. 3. Amended 25 of 1998 s. 2)

Order 46, rule 5 of the Rules of the High Court (O.46, r.5, RHC)

Application for leave to issue writ of sequestration

(1) Notwithstanding anything in rules 2 and 4, an application for leave to issue a writ of sequestration must be made to a judge by motion.

(2) Subject to paragraph (3), the notice of motion, stating the grounds of the application and accompanied by a copy of the affidavit in support of the application, must be served personally on the person against whose property it is sought to issue the writ.

(3) Without prejudice to its powers under Order 65, rule 4, the Court may dispense with service of the notice of motion under this rule if it thinks it just to do so.

(4) The judge hearing an application for leave to issue a writ of sequestration may sit in private in any

case in which, if the application were for an order of committal, he would be entitled to do so by virtue of Order 52, rule 6, but, except in such a case, the application shall be heard in open court.

**Order 52 of the Rules of the High Court (Order 52, RHC)
Committal**

1. Committal for contempt of court (O. 52, r. 1)

The power of the Court or of the Court of Appeal to punish for contempt of court may be exercised by an order of committal made by a single Judge or by a single justice of appeal. (See App. A, Form 85)

**(HK)2. Grant of leave to apply for
committal (O. 52, r. 2)**

(HK)(1) No application for an order of committal against any person may be made unless leave to make such an application has been granted in accordance with this rule.

(2) An application for such leave must be made ex parte to a judge, and must be supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on.

(3) The applicant must give notice of the application for leave not later than the preceding day to the Registrar and must at the same time lodge with the Registrar copies of the statement and affidavit.

(HK)(4) The judge may determine the application for leave without a hearing, unless a hearing is requested in the notice of application, and need not sit in open court; and in any case the Registrar shall serve a copy of the judge's order on the applicant.

(HK)(5) Where an application for leave is refused by a judge or is granted on terms, the applicant may appeal against the judge's order to the Court of Appeal within 10 days after such order.

(HK)(6) Without prejudice to the powers conferred by Order 20, rule 8, the judge hearing an application for leave may allow the applicant's statement to be amended on such terms, if any, as the judge thinks fit.

(HK)(7) If the judge grants leave he may impose such terms as to costs and as to giving of security as he thinks fit.

**3. Application for order after leave
to apply granted (O. 52, r. 3)**

(1) When leave has been granted to make an application for an order of committal, the application shall be made by motion to a judge and unless the Court granting leave has otherwise directed, there must be at least 8 clear days between the service of the notice of motion and the day named therein for the hearing. (L.N. 125 of 1991)

(1A) The notice of motion shall state the grounds in respect of which leave for making an application for an order of committal has been granted. (L.N. 108 of 2002)

(2) Unless within 14 days after such leave was granted the motion is entered for hearing the leave shall lapse.

(3) The notice of motion, accompanied by a copy of the statement and affidavit in support of the application for leave under rule 2, must be served personally on the person sought to be committed.

(4) Without prejudice to the powers of the Court under Order 65, rule 4, the Court may dispense with service of the notice of motion under this rule if it thinks it just to do so.

5. Saving for power to commit without application for purpose (O. 52, r. 5)

Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Court of First Instance or the Court of Appeal to make an order of committal of its own motion against a person guilty of contempt of court.

(25 of 1998 s. 2)

6. Provisions as to hearing (O. 52, r. 6)

(1) Subject to paragraph (2), the Court hearing an application for an order of committal may sit in private in the following cases, that is to say-

(a) where the application arises out of proceedings relating to the wardship or adoption of an infant or wholly or mainly to the guardianship, custody, maintenance or upbringing of an infant, or rights of access to an infant;

(b) where the application arises out of proceedings relating to a person suffering or appearing to be suffering from mental disorder within the meaning of the Mental Health Ordinance (Cap 136);

(c) where the application arises out of proceedings in which a secret process, discovery or invention was in issue;

(d) where it appears to the Court that in the interests of the administration of justice or for reasons affecting the security of Hong Kong the application should be heard in private;

but, except as aforesaid, the application shall be heard in open court.

(2) If the Court hearing an application in private by virtue of paragraph (1) decides to make an order of committal against the person sought to be committed, it shall in open court state-

(a) the name of that person,

(b) in general terms the nature of the contempt of court in respect of which the order of committal is being made, and

(c) the length of the period for which he is being committed.

(3) Except with the leave of the Court hearing an application for an order of committal, no grounds

shall be relied upon at the hearing except the grounds as stated in the notice of motion under rule 3(1A). (L.N. 108 of 2002)

The foregoing provision is without prejudice to the powers of the Court under Order 20, rule 8.

(4) If on the hearing of the application the person sought to be committed expresses a wish to give oral evidence on his own behalf, he shall be entitled to do so.

7. Power to suspend execution of committal order (O. 52, r. 7)

(1) The Court by whom an order of committal is made may by order direct that the execution of the order of committal shall be suspended for such period or on such terms or conditions as it may specify.

(2) Where execution of an order of committal is suspended by an order under paragraph (1), the applicant for the order of committal must, unless the Court otherwise directs, serve on the person against whom it was made a notice informing him of the making and terms of the order under that paragraph.

8. Discharge of person committed (O. 52, r. 8)

(1) The Court may, on the application of any person committed to prison for any contempt of court, discharge him.

(2) Where a person has been committed for failing to comply with a judgment or order requiring him to deliver any thing to some other person or to deposit it in court or elsewhere, and a writ of sequestration has also been issued to enforce that judgment or order, then, if the thing is in the custody or power of the person committed, the commissioners appointed by the writ of sequestration may take possession of it as if it were the property of that person and, without prejudice to the generality of paragraph (1), the Court may discharge the person committed and may give such directions for dealing with the thing taken by the commissioners as it thinks fit.

9. Saving for other powers (O. 52, r. 9)

Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Court to make an order requiring a person guilty of contempt of court, or a person punishable by virtue of any written law in like manner as if he had been guilty of contempt of the Court of First Instance, to pay a fine or to give security for his good behaviour, and those provisions, so far as applicable, and with the necessary modifications, shall apply in relation to an application for such an order as they apply in relation to an application for an order of committal.

(Enacted 1988)

(25 of 1998 s. 2)

Order 54 of the Rules of the High Court (Order 54, RHC)
Applications for writ of habeas corpus

1. Application for writ of habeas corpus
ad subjiciendum (O. 54, r. 1)

(1) An application for a writ of habeas corpus ad subjiciendum shall be made to a single judge in court, except that-

- (b) at any time when no judge is sitting in court, it may be made to a judge otherwise than in court; and
- (c) any application on behalf of a minor must be made in the first instance to a judge otherwise than in court.

(2) An application for such writ may be made ex parte and, subject to paragraph (3), must be supported by an affidavit by the person restrained showing that it is made at his instance and setting out the nature of the restraint.

(3) Where the person restrained is unable for any reason to make the affidavit required by paragraph (2), the affidavit may be made by some other person on his behalf and that affidavit must state that the person restrained is unable to make the affidavit himself and for what reason.

2. Power of Court to whom ex parte
application made (O. 54, r. 2)

(1) The judge to whom an application under rule 1 is made ex parte may make an order forthwith for the writ to issue, or may- (See App. A, Forms 87, 88)

- (a) where the application is made otherwise than in court, direct that an originating summons for the writ be issued, or that an application therefor be made by originating motion to a judge in court;
- (b) where the application is made to a judge in court, adjourn the application so that notice thereof may be given, or direct that an application be made by originating motion.

(2) The summons or notice of the motion must be served on the person against whom the issue of the writ is sought and on such other persons as the judge may direct, and, unless the judge otherwise directs, there must be at least 8 clear days between the service of the summons or notice and the date named therein for the hearing of the application.

3. Copies of affidavits to be supplied (O. 54, r. 3)

Every party to an application under rule 1 must supply to every other party on demand copies of the affidavits which he proposes to use at the hearing of the application.

**4. Power to order release of person
restrained (O. 54, r. 4)**

Without prejudice to rule 2(1), the judge hearing an application for a writ of habeas corpus ad subjiciendum may in his discretion order that the person restrained be released, and such order shall be a sufficient warrant to any superintendent of a prison, constable or other person for the release of the person under restraint.

5. Directions as to return to writ (O. 54, r. 5)

Where a writ of habeas corpus ad subjiciendum is ordered to issue, the judge by whom the order is made shall give directions as to the judge before whom, and the date on which, the writ is returnable.

6. Service of writ and notice (O. 54, r. 6)

(1) Subject to paragraphs (2) and (3), a writ of habeas corpus ad subjiciendum must be served personally on the person to whom it is directed.

(2) If it is not possible to serve such writ personally, or if it is directed to a superintendent of a prison or other public official, it must be served by leaving it with a servant or agent of the person to whom the writ is directed at the place where the person restrained is confined or restrained.

(3) If the writ is directed to more than one person, the writ must be served in manner provided by this rule on the person first named in the writ, and copies must be served on each of the other persons in the same manner as the writ.

(4) There must be served with the writ a notice (in Form No. 90 in Appendix A) stating the judge before whom and the date on which the person restrained is to be brought and that in default of obedience proceedings for committal of the party disobeying will be taken.

7. Return to the writ (O. 54, r. 7)

(1) The return to a writ of habeas corpus ad subjiciendum must be indorsed on or annexed to the writ and must state all the causes of the detainer of the person restrained.

(2) The return may be amended, or another return substituted therefor, by leave of the judge before whom the writ is returnable.

8. Procedure at hearing of writ (O. 54, r. 8)

When a return to a writ of habeas corpus ad subjiciendum is made, the return shall first be read, and motion then made for discharging or remanding the person restrained or amending or quashing the return, and where that person is brought up in accordance with the writ, his counsel shall be heard first, then counsel

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for the Crown, and then one counsel for the person restrained in reply.

9. Bringing up prisoner to give evidence, etc. (O. 54, r. 9)

(1) An application for a writ of habeas corpus ad testificandum or of habeas corpus ad respondendum must be made on affidavit to a judge in chambers.

10. Form of writ (O. 54, r. 10)

A writ of habeas corpus must be in Form No. 89, 91 or 92 in Appendix A, whichever is appropriate.
(Enacted 1988)