



## 中 华 人 民 共 和 国 大 使 馆

He Wai Fa No. (05)-016

The Embassy of the People's Republic of China in the Kingdom of the Netherlands presents its compliments to the Permanent Bureau of the Hague Conference on Private International Law and has the honor to deliver the latter the Answers of the Macao Special Administrative Region of the People's Republic of China to the Questionnaire on the Enforcement of Return Orders under the 1980 Hague Convention and of Access/Contact Orders.

The Chinese Embassy avails itself of this opportunity to renew to the Permanent Bureau of the Hague Conference on Private International Law the assurances of its highest consideration.

The Hague, February 14, 2005



To:

The Permanent Bureau of  
the Hague Conference on Private International Law

ANSWERS OF THE MACAO SPECIAL ADMINISTRATIVE REGION  
(MSAR) OF THE PEOPLE'S REPUBLIC OF CHINA (PRC) TO THE  
QUESTIONNAIRE ON THE ENFORCEMENT OF RETURN ORDERS  
UNDER THE 1980 HAGUE CONVENTION AND OF ACCESS / CONTACT  
ORDERS

Introduction

The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (Convention) was extended to Macao with effect from 1 March 1999, and it continued to apply to the MSAR as the PRC notified the Netherlands' Ministry of Foreign Affairs, on 10 December 1999, that it would assume the responsibility for the international rights and obligations arising from the application of the Convention to the MSAR.

Considering some of the questions raised in the questionnaire, it is relevant to mention that the MSAR legal system is a civil law system.

The Questionnaire

**Part I - Legal bases for the enforcement of Hague return orders**

*1 - 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.*

In the MSAR, there are no specific legislative provisions concerning the enforcement of return orders under the 1980 Hague Convention.

The enforcement of return orders under the 1980 Hague Convention is done within the existing general legal provisions. Thus, the enforcement of return orders follows what is established in the Civil Procedure Code and in Decree-Law 65/99/M, of 25 October 1999, that regulates the "Child Educational and Social Protection Regime".

The latter foresees the "child judicial delivery procedure" which is a specific procedure for the return of a child (not necessarily under the 1980 Hague Convention) who, inter alia, has been wrongfully removed from his family's home or from the one the parents chose to be the child's home or who is kept away from the institution that has rights of custody over him.

Within this procedure, a decision for the return of the child is taken. The return order is enforced by the same procedure whereby the decision is taken. The decision stipulates the delivery, where the place, date and time of delivery is designated. The defendant is notified in order to proceed with the delivery that obeys to the predetermined method, while failure to comply might result in criminal charges of qualified disobedience.

Apart from pending appeals, there are no circumstances in which execution of a return order may not be carried out. Even in pending appeals, the judge of the First Instance Court is free to order the immediate return. As the return orders do not require separate enforcement proceedings, the parties are only allowed to appeal against the decision that grants or refuses the return.

All the decisions made by the judge must, according to the law, be in the best interest of the child.

*2 – 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 1.1 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.*

Please refer to the preceding answer.

*3 – 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).*

There is no other judicial decision, practice directive or guide concerning the enforcement of court orders in the area of family law that govern the enforcement of return orders under the 1980 Hague Convention.

The MSAR legal system is a civil law system. Therefore, there is no need to incorporate international law into domestic law for the former to be effective. Once the international treaties that are applicable to the MSAR are published in the Official Gazette, they immediately and automatically become part of the MSAR legal system.

However, in general, judges take into account the Hague Guide to Good Practice.

*4 – 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?*

No.

## Part II – Enforceability and legal remedies

*1 – 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.)*

Yes, return orders, whether they are Hague return orders or not, are subject to appeal.

As previously mentioned, the return orders are enforced by the same procedure whereby the decision for the return of the child is taken. As the return orders do not require separate enforcement proceedings, the parties are only allowed to appeal against the decision that grants or refuses the return.

The party against whom the First Instance Court grants or refuses the return application may appeal against that decision, within a period of ten days, to the Second Instance Court.

The judge of the First Instance Court is free to determine the effectiveness of the appeal, meaning that he may suspend the execution of the decision in regard to the child's return until the Second Instance Court takes its own decision or, alternatively, order the immediate return in spite of the appeal.

The appeal is admitted on any grounds, including judgments of convenience or opportunity, but the appellant is not allowed to produce, in general, new evidence. Yet, the Second Instance Court can determine the renewal of the oral evidence that were submitted to the First Instance Court.

Besides the appeal, the decisions of the First Instance Court may always be modified by that same court, without prejudice to the effects already produced, when supported by supervening circumstances that justify its alteration. It is considered supervening circumstances either if they occurred after the decision had been taken, or they were not alleged due to unawareness or any other considerable motive.

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

Please refer to the preceding answer.

*2- 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).*

Please refer to the preceding answers.

If the return is based upon a foreign judicial decision, this decision must be revised and confirmed prior to the "child judicial delivery procedure".

In fact, in the MSAR legal system, for a foreign sentence to be effective, and therefore enforceable, it has to be revised and confirmed meeting determined requirements expressly stated in the MSAR Civil Procedure Code. Namely, there must be no doubt about the authenticity and intelligibility of the decision; the decision must have acquired *res judicata* force according to the law from which it was rendered; fraud to the law must not have been used for the determination of the competence of the court that rendered the decision; the decision must have been rendered on matters not befalling on the exclusive competence of the MSAR courts; there must be no *litispendens*; the defendant must have been properly served according to the law of the court of origin; the principles of equality and due process of law must have been observed and the decision must not be against public policy.

The competent court for the procedure of revision and confirmation is the Second Instance Court. An appeal against this decision can be lodged to the Last Instance Court.

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

Please refer to the preceding answers.

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

Yes. Please refer to answer to question number II.2.a).

*4 – 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.).*

Yes. Please refer to answer to question number II.2.a).

*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.*

Please refer to answers to questions number II.1.a) and II.2.a).

*5 – 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?*

Please refer to answers to question number II.1.a) and II.2.a).

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

There are no other comments.

### **Part III – Enforcement procedure**

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

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

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

*the return of the child to State X*

*other?*

Normally the surrender of the child to the applicant and the return of the child to State X are ordered.

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

*to remove the child from the abductor or any other person*

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

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

*other?*

The aim of enforcing a return order is normally to ensure the child's return to his State of habitual residence.

*3 – Whose responsibility is it to organise the repatriation of the child?*

It is the responsibility of the Central Authority ("Instituto de Acção Social") to organize the repatriation of the child.

#### **B. Actors involved in enforcement**

*1 – Once a return order is made, is a specific request for enforcement necessary?*

No. As thoroughly explained, the return orders are enforced by the same procedure whereby the decision is taken. In case the return application is based upon a foreign decision, it must be previously revised and confirmed.

*2 – Please specify who initiates enforcement of the court's return order:*

*the applicant (in person or through his or her lawyer)*

*the Central Authority*

*the court*

*the enforcement organ itself*

*other.*

*Where the law leaves a choice or discretion, please give details concerning actual practice.*

According to law, either the applicant (in person or through his or her lawyer) or the Central Authority (if required to do so) can initiate the proceedings.

The MSAR legal system also provides that minors, absent and incompetent persons who do not have any other legal representative are represented by the MSAR Procuratorate, which is an independent and autonomous judiciary entity.

In practice, it is usually the Central Authority who initiates enforcement of the court's return order.

*3 – 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 Hague Convention*

*i) according to the law*

According to the law, the defendant is notified to proceed with the delivery that obeys to the predetermined method. At this delivery, the defendant and the applicant (or whoever is representing him) may be present, as well as the persons, organs and institutions that the judge has determined (enforcement organs, psychologists, social workers, Central Authorities, etc.). The judge himself can be present if he considers it necessary.

If there exists failure to comply with the delivery, besides the criminal charges of qualified disobedience, the defendant can also be criminally charged with subtraction of minor. In this case, the procedure will follow the regular terms of a criminal procedure.



*ii) in practice*

The Central Authority is also responsible for the follow-up of the return / access requests. Legal consultants, psychologists and social workers can be involved. The police assists in the location and return of the child.

*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).*

Please refer to the preceding answers.

*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?*

Yes. Please refer to the preceding answer to question number III.B.3.a).ii).

*c) Please specify also whether presence of the applicant (or a person designated by him or her) is required and, if this the case, at which stage of the enforcement proceedings and for what purpose.*

The presence of the applicant is not required. Please refer to the answers to question III.B.3.a).

*4 – a) Is there any supervision / control of the enforcement procedure by a court, the Central Authority or any other 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)?*

Please refer to the answers to question III.B.1.

As already referred, the return orders are enforced by the same procedure whereby the decision is taken and the Central Authority is responsible for the follow-up of all return / access requests.

*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?*

Please refer to the preceding answer. In what relate to appeals please refer to answer to question number II.1.a).

**C. The enforcement procedure proper**

*1 - Is there a timeline for enforcement?*

As the return orders are enforced by the same procedure whereby the decision is taken, the timeline is the one that is stipulated by the judge in the decision for the return of the child.

*2 - 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?*

Please refer to answers to question number III.B.3.a).

*3 - 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.*

Please refer to answers to question number III.B.3.a).

The court will decide if there is the need for any measure to prevent the abductor from taking the child into hiding. There are no other specific measures foreseen by law.

*4 - 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?*

As already explained, if the defendant fails with the delivery, it might incur in the criminal charges of qualified disobedience as well as subtraction of minor. In that case the following steps are the ones of a regular criminal procedure. Please refer to answers to question number III.B.3.a).

*5 – 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)?*

Please refer to answers to question number III.B.1. and III.B.3.a).

*6 – 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?*

The court is the only competent authority to decide and order any appropriate coercive measures whenever it considers necessary.

*7 – a) Do they have to be ordered specifically (i.e. either “fine”, “physical force”, “detention”)? If so, when and by whom?*

Please refer to the preceding answer.

*b) If problems occur during enforcement, may the enforcement organs unilaterally “upgrade” the intensity of coercive measures, or do they have to obtain authorisation from any particular higher authority (e.g. an enforcement court or other)? Please specify.*

Please refer to the preceding answers.

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

Please refer to the preceding answers.

#### **D. Costs**

*1 – 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?*

The costs incurred for the enforcement are part of the costs of the court proceeding as a whole and are regulated in the general legal regime for court costs, contained in Decree-Law n° 63/99/M, of 25 October 1999. According to this regime, the “child delivery procedures” have a reduction of ¼ of the regular costs of the court proceedings.

*2 – 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?*

Please refer to the preceding answer.

In the MSAR, everyone is entitled to have access to the law, to the courts, to legal advice in protecting their lawful rights and interests and to judicial remedies. Justice cannot be denied on any grounds, namely lack of financial resources. The MSAR legal aid system covers the non-payment of judicial costs as well as free legal counselling. It is available for everyone under the same terms.

*3 – Are there 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?*

Although there has never been a case requiring repatriation, under the law the Central Authority would request the applicant to pay for the child's repatriation expenses (e.g. airfare for the child and possible accompanying person).

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

The Central Authority provides foreign applicants with information about enforcement costs.

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

Please refer to answers to question number III.B.3.a).

The duties of the enforcement organs are the same whether they relate to the enforcement of Hague return orders or to the enforcement of any other return orders.

*6 – Do you have any other comments relating to the enforcement procedure?*

No.

#### Part IV – Statistical information

*1 – 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.*

There are no available statistics.

*2 – 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).*

There are no available statistics.

*3 – 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)?*

There are no available statistics.

*4 – 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?*

There are no available statistics.

#### Part V – Co-operation

*1 – 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?*

In the MSAR legal system the powers and competencies of the public entities and bodies are those specifically and expressly stipulated by law. The concept of “co-operative agreements” between agencies does not apply. However, according to the Administrative Procedure Code all the public entities must obey to the principle of co-operation.

*2 – 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?*

At present, there is no co-operative agreement with other States. Please refer to the preceding answer.

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

The MSAR Central Authority is the “Instituto de Acção Social” (IAS) which has the following website [www.ias.gov.mo](http://www.ias.gov.mo). Its contacts haven’t been changed, being the ones that appear on the Hague Conference website.

Besides IAS, only the courts have a role to play in the context of return orders. In practical terms, cases of child abduction or access / contact are subsumed to judicial proceedings and the MSAR First Instance Court is the competent court, within which there are several “units” (juízos), having a different judge in charge of each one of them.

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

No.

#### Part VI – Training and education for professionals

*1 – 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.*

There is no training or education concerning Hague return orders. However, the general training for judges covers this matter. This general training is provided by the Legal and Judicial Training Centre of the MSAR.

*2 – Who provides training and education?*

Please refer to the precedent answer.

*3 – 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?*

Please refer to precedent answers.

*4 – 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?*

No.

#### Part VII – Other information

*1 – 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.*

N/A.

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

N/A.

*3 – 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?*

No.

*4 – Please provide any other information, which may be relevant to the issue of the enforcement of Hague return orders.*

N/A.

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

N/A.

*6 – Have you any general comments to make regarding the enforcement of Hague return orders?*

No.

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

No changes are envisaged.

#### Part VIII – Orders granting rights of contact / access / visitation

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

The legal framework applicable to the enforcement of return orders is also applicable to the enforcement of contact orders.

*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 not the case, please specify the differences.*

Coercive measures will be applied as ordered by the court. Until now, the MSAR Central Authority has had no such case.

The same rules apply to the enforcement of both domestic and foreign contact orders.