

International Child Abduction Bill

Bill No. 22/2010.

Read the first time on 16th August 2010.

INTERNATIONAL CHILD ABDUCTION ACT 2010

(No. of 2010)

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A BILL

i n t i t u l e d

An Act to give effect to the Convention on the Civil Aspects of International Child Abduction and for matters connected therewith, and to make consequential amendments to the Legal Aid and Advice Act (Chapter 160 of the 1996 Revised Edition) and the Legal Profession Act (Chapter 161 of the 2009 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

PART I

PRELIMINARY

Short title and commencement

5 **1.** This Act may be cited as the International Child Abduction Act 2010 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Interpretation

2.—(1) In this Act, unless the context otherwise requires —

10 “Convention” means the Convention on the Civil Aspects of International Child Abduction which was signed at The Hague on 25th October 1980;

“Court” means the High Court or a Judge thereof;

“Minister” means —

15 (a) except as provided in paragraph (b), the Minister charged with the responsibility for child welfare and protection; and

(b) for the purposes of Part IV, the Minister charged with the responsibility for legal aid.

20 (2) Unless the contrary intention appears, words and expressions used in this Act have the same meanings as in the provisions of the Convention set out in the Schedule.

Certain provisions of Convention to have force of law

3. Notwithstanding any written law or rule of law but subject to the provisions of Parts I to V, the provisions of the Convention as set out in the Schedule shall have the force of law in Singapore.

25 **Contracting States**

4.—(1) For the purposes of the Convention, the Contracting States (other than Singapore) shall be those for the time being specified by the Minister by an order published in the *Gazette*.

30 (2) An order under subsection (1) shall specify the date of coming into force of the Convention as between Singapore and any Contracting State

specified in the order, and, except where the order otherwise provides, the Convention shall apply as between Singapore and that Contracting State only in relation to —

- (a) wrongful removals or retentions of children; or
 - 5 (b) breaches of access rights to children,
- occurring on or after that date.

(3) Where the Convention applies, or applies only, to a particular territory specified in a declaration made by a Contracting State under Article 39 or 40 of the Convention, references to that Contracting State in
10 subsections (1) and (2) shall be construed as references to that territory.

PART II

CENTRAL AUTHORITY OF SINGAPORE

Central Authority

5 **5.** Subject to the provisions of this Part, the functions of a Central Authority under the provisions of the Convention set out in the Schedule shall be discharged in Singapore by the Minister.

Applications to Central Authority under Article 8 of Convention

20 **6.**—(1) A person who claims that, in breach of rights of custody attributed to a person, either jointly or alone, under the law of a Contracting State, a child has been wrongfully removed to or retained in Singapore within the meaning of the Convention may apply to the Central Authority of Singapore for his assistance in facilitating the voluntary return of the child or an amicable resolution of the dispute relating to the removal or retention of the child.

25 (2) A person who claims that, in breach of rights of custody attributed to a person, either jointly or alone, under the law of Singapore, a child has been wrongfully removed to or retained in a Contracting State within the meaning of the Convention may apply to the Central Authority of Singapore to have his claim sent to the Central Authority of the
30 Contracting State.

(3) An application under subsection (1) or (2) shall be made in such form and manner, and shall contain such information and be accompanied

by such documents, as may be specified by the Central Authority of Singapore.

(4) The Central Authority of Singapore may accept an application under subsection (1) or (2) from —

- 5 (a) the person to whom the rights of custody (claimed to have been breached) are attributed under the law of the Contracting State or Singapore, as the case may be; or
- (b) any other person appearing to the Central Authority of Singapore to have sufficient interest in the matter.

10 (5) The Central Authority of Singapore may refuse to accept an application under subsection (1) or (2) if it is not submitted in accordance with this section or section 21 or for any of the reasons specified in Article 27 of the Convention.

(6) In this section, “person” includes an institution or other body.

15 **Applications to Central Authority under Article 21 of Convention**

 7.—(1) A person who claims that his rights of access under the law of a Contracting State to a child in Singapore have been breached within the meaning of the Convention may apply to the Central Authority of Singapore for his assistance in facilitating an amicable resolution of the
20 dispute relating to the exercise of such rights.

 (2) A person who claims that his rights of access under the law of Singapore to a child in a Contracting State have been breached within the meaning of the Convention may apply to the Central Authority of Singapore to have his claim sent to the Central Authority of the
25 Contracting State.

 (3) An application under subsection (1) or (2) shall be made in such form and manner, and shall contain such information and be accompanied by such documents, as may be specified by the Central Authority of Singapore.

30 (4) The Central Authority of Singapore may refuse to accept an application under subsection (1) or (2) if it is not submitted in accordance with this section or section 21 or for any of the reasons specified in Article 27 of the Convention.

PART III

APPLICATIONS TO COURT

Application for return of child

5 **8.**—(1) A person who claims that, in breach of rights of custody attributed to a person, either jointly or alone, under the law of a Contracting State, a child has been wrongfully removed to or retained in Singapore within the meaning of the Convention may apply to the Court for an order that the child be returned.

(2) An application under subsection (1) may be made by —

10 (a) the person to whom the rights of custody (claimed to have been breached) are attributed under the law of the Contracting State; or

(b) any person appearing to the Court to have sufficient interest in the matter.

15 (3) The applicant shall notify the Central Authority of Singapore of his application by forwarding a copy of his application to the Central Authority of Singapore as soon as practicable.

20 (4) The Court may, if it determines that the child should be returned to the Contracting State, give leave for the child to be taken out of Singapore either unconditionally or subject to such conditions or undertakings as the Court may think fit.

(5) In this section, “person” includes an institution or other body.

Power to allow intervention on terms

25 **9.** On the application of any person who is not a party to an application under section 8, the Court may, if satisfied that it is in the interest of the child (in respect of whom the application under section 8 has been made) for that person to be made a party, allow that person to intervene in the proceedings upon such terms as the Court thinks just.

Interim powers of Court

30 **10.**—(1) Where an application has been made to the Court under section 8 for the return of a child, the Court may, at any time before it determines the application, make such interim orders or give such interim directions

as it thinks fit for the purpose of securing the welfare of the child or of preventing changes in the circumstances relevant to the determination of the application.

- 5 (2) Without prejudice to the generality of subsection (1), the Court may make interim orders or give interim directions for the care and control of or access to the child.

Power of Court to restrain taking of child out of Singapore

- 10 **11.**—(1) Without prejudice to the generality of section 10, where an application under section 8 for the return of a child is pending or has been dismissed by the Court, the Court may issue an injunction restraining any person from taking the child out of Singapore.

(2) An application for an order under subsection (1) may be made by any person appearing to the Court to have sufficient interest in the matter.

Advice of welfare officers, etc.

- 15 **12.** The Court may receive advice from any person, whether or not a public officer, who is trained or experienced in matters relevant to the Court's determination of an application under section 8, but shall not be bound to follow any such advice.

Stay of decision in respect of custody, care and control and access

- 20 **13.**—(1) When an application has been made to the Court under section 8 for the return of a child, no decision shall be made by any court in respect of the custody of, care and control of or access to the child in any proceedings until the Court has determined the application.

- 25 (2) The reference to deciding on the merits in respect of the custody of, care and control of or access to a child in subsection (1) shall be a reference to making, varying, revoking or enforcing a custody order, a care and control order or an access order, as the case may be, in respect of the child.

- 30 (3) Subsection (1) shall not affect or limit the Court's power to make interim orders or give interim directions under section 10.

(4) In this section, "court" includes the Syariah Court and the Appeal Board constituted under the Administration of Muslim Law Act (Cap. 3).

Declarations by Court

14.—(1) The Court may, on an application made for the purpose of Article 15 of the Convention by any person appearing to the Court to have sufficient interest in the matter, make a declaration that the removal of a child from Singapore, or the retention of the child outside Singapore, was wrongful within the meaning of the Convention.

(2) For the avoidance of doubt, section 35A of the Administration of Muslim Law Act (Cap. 3) and section 17A(3) of the Supreme Court of Judicature Act (Cap. 322) shall not apply to an application under subsection (1).

PART IV

LEGAL AID AND ADVICE

Interpretation of this Part

15. In this Part, unless the context otherwise requires —
- 15 “authorised solicitor” means a solicitor on any panel established under section 4 of the Legal Aid and Advice Act (Cap. 160) who has been assigned by the Director to provide legal representation or legal advice to a person under this Part;
- 20 “Director” means the Director of Legal Aid appointed under section 3 of the Legal Aid and Advice Act and includes a Deputy Director and an Assistant Director of Legal Aid appointed under section 3 of that Act.

Administration of legal aid and advice

16. The provision of legal aid and advice under this Part shall be administered by the Director.

Legal aid

17. Subject to the provisions of this Part, the Director may grant legal aid in connection with any proceedings under section 8 or 14 to any person —
- 30 (a) who is a citizen of, or habitually resident in, Singapore or a Contracting State; and

(b) who is or will be —

- (i) a party to the proceedings under section 8; or
- (ii) the applicant in the proceedings under section 14.

Legal advice

5 **18.** Subject to the provisions of this Part, on the application of any person who is a citizen of, or habitually resident in, Singapore or a Contracting State —

- 10 (a) the Director or an authorised solicitor may provide oral advice to the person on the law of Singapore in connection with the Convention; or
- (b) the Director may provide the person assistance with the preparation of an application by the person for legal aid under this Part.

Application of Legal Aid and Advice Act and Legal Aid and Advice Regulations to legal aid and advice under this Part

15 **19.** Except where expressly provided in this Part, the provisions of the Legal Aid and Advice Act (Cap. 160) and the Legal Aid and Advice Regulations (Cap. 160, Rg 1) shall apply (so far as relevant) in relation to the provision of legal aid and legal advice under this Part as they apply to
20 the provision of legal aid and legal advice under the Legal Aid and Advice Act, with such exceptions, modifications and adaptations as the Minister may prescribe.

Regulations

25 **20.** The Minister may make regulations for the purposes of carrying out the provisions of this Part or for the prescribing of anything which may be prescribed or is required to be prescribed under this Part.

PART V

MISCELLANEOUS

Language and translation

30 **21.** For the purposes of Article 24 of the Convention, any application, communication or other document sent to the Central Authority of

Singapore shall, if it is in a language other than English, be accompanied by an English translation of the application, communication or other document.

Proof of documents and evidence

5 **22.**—(1) For the purposes of Article 14 of the Convention, a decision of a judicial or administrative authority outside Singapore may be proved by a duly authenticated copy of the decision, and any document purporting to be such a copy shall be deemed to be a true copy unless the contrary is shown.

10 (2) For the purposes of subsection (1), a copy is duly authenticated if it bears the seal, or is certified by a judge or officer, of the authority.

(3) For the purposes of Articles 14 and 30 of the Convention, any document specified in Article 8 of the Convention or a certified copy of the document shall be sufficient evidence of anything stated in it.

Costs

15 **23.** No costs referred to in Article 26 of the Convention shall be borne by the Government, the Central Authority of Singapore or any other public authority in Singapore except insofar as they fall to be so borne by virtue of the grant of legal aid or advice under Part IV.

Regulations

20 **24.** The Minister may make regulations for the purposes of carrying out the provisions of this Act (other than those in Parts III and IV).

Consequential amendments to Legal Aid and Advice Act

25 **25.** The Legal Aid and Advice Act (Cap. 160) is amended —

(a) by inserting, immediately after the words “legal aid” in section 4(1)(a) and (b), the words “under this Act or Part IV of the International Child Abduction Act 2010”;

(b) by inserting, immediately after the words “this Act” in section 4(1)(c), the words “or Part IV of the International Child

30 Abduction Act 2010”;

(c) by inserting, immediately after the words “provisions of this Act” in section 4(5), the words “or Part IV of the International Child Abduction Act 2010”; and

- (d) by inserting, immediately after subsection (3) of section 23, the following subsection:

“(3A) Any fund established under this Act to meet the costs, fees, disbursements or expenses in connection with legal aid or advice under this Act may be applied for the purposes of legal aid or advice under the International Child Abduction Act 2010.”.

Consequential amendments to Legal Profession Act

26. The Legal Profession Act (Cap. 161) is amended —

- (a) by inserting, immediately after the words “Legal Aid and Advice Act (Cap. 160)” in section 29(2)(c), the words “or the International Child Abduction Act 2010”; and
- (b) by inserting, immediately after the words “Legal Aid and Advice Act (Cap. 160)” in section 34(c), the words “or the International Child Abduction Act 2010”.

THE SCHEDULE

Sections 2(2) and 3

CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

CHAPTER I – SCOPE OF THE CONVENTION

Article 1

The objects of the present Convention are —

- (a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and
- (b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

... ..

Article 3

The removal or the retention of a child is to be considered wrongful where —

- (a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention;
and
- (b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph (a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

Article 4

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.

Article 5

For the purposes of this Convention —

- (a) “rights of custody” shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;
- (b) “rights of access” shall include the right to take a child for a limited period of time to a place other than the child’s habitual residence.

... ..

CHAPTER II – CENTRAL AUTHORITIES

Article 7

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures —

- (a) to discover the whereabouts of a child who has been wrongfully removed or retained;

- (b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;
- (c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;
- 5 (d) to exchange, where desirable, information relating to the social background of the child;
- (e) to provide information of a general character as to the law of their State in connection with the application of the Convention;
- 10 (f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organising or securing the effective exercise of rights of access;
- (g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;
- 15 (h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;
- (i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

20 CHAPTER III – RETURN OF CHILDREN

Article 8

Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.

The application shall contain —

- (a) information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;
- (b) where available, the date of birth of the child;
- 30 (c) the grounds on which the applicant's claim for return of the child is based;
- (d) all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by —

- (e) an authenticated copy of any relevant decision or agreement;
- 35 (f) a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;

Article 9

Article 10

10

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has
15 elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

25 Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that —

(b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

5

Article 14

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognised or not in the State of the habitual residence of the child, without
10 recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

Article 15

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the
15 authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

20

...

Article 17

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested
25 State may take account of the reasons for that decision in applying this Convention.

Article 18

The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

Article 19

30 A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

Article 20

The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

5

CHAPTER IV – RIGHTS OF ACCESS

Article 21

An application to make arrangements for organising or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

10 The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.

15 The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organising or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

CHAPTER V – GENERAL PROVISIONS

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Article 22

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

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Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.

30 However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.

Article 26

Each Central Authority shall bear its own costs in applying this Convention.

5 Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.

10 However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.

15 Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

Article 27

25 When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

Article 28

30 A Central Authority may require that the application be accompanied by a written authorisation empowering it to act on behalf of the applicant, or to designate a representative so to act.

Article 29

35 This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

Article 30

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or
 5 provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

Article 31

In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units —

10 (a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;

(b) any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

15 *Article 32*

In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

20

EXPLANATORY STATEMENT

This Bill seeks to implement Singapore's obligations under the Convention on the Civil Aspects of International Child Abduction signed on 25th October 1980 (the Convention). The objects of the Convention (as specified in Article 1 of the Convention) are to secure the prompt return of children who are wrongfully removed to or retained in a Contracting State and to ensure that rights of custody and access under the law of one Contracting State are respected in the other Contracting States.

The Bill also seeks to make consequential amendments to the Legal Aid and Advice Act (Cap. 160) and the Legal Profession Act (Cap. 161).

PART I

PRELIMINARY

Clause 1 relates to the short title and commencement.

Clause 2 defines certain terms used in the Bill and also clarifies that unless a contrary intention appears, words and expressions used in the Bill have the same meanings as in the Articles of the Convention specified in the Schedule to the Bill.

Clause 3 provides that the Articles of the Convention that are specified in the Schedule to the Bill will have the force of law in Singapore. The application of the Articles specified in the Schedule is subject to the provisions in Parts I to V.

Clause 4 defines Contracting States for the purposes of the Convention as those which are specified by the Minister responsible for child welfare and protection by an order published in the *Gazette*. The clause also provides that the Convention will only apply as between Singapore and a Contracting State specified in the Minister's order in relation to the wrongful removal or retention of a child or the breach of access rights to the child, as the case may be, which occurs on or after the date specified in the order.

PART II

CENTRAL AUTHORITY OF SINGAPORE

Clause 5 provides that the functions of the Central Authority under the Articles of the Convention specified in the Schedule to the Bill are to be discharged in Singapore by the Minister responsible for child welfare and protection. The functions to be carried out by the Central Authority of Singapore are subject to the provisions in Part II.

Clause 6 provides for the applications that can be made to the Central Authority of Singapore (the Singapore Central Authority) pursuant to Article 8 of the Convention. These applications are as follows:

- (a) a person who claims that, in breach of rights of custody attributed to a person under the law of a Contracting State, a child has been wrongfully removed to or retained in Singapore within the meaning of the Convention may apply to the Singapore Central Authority to facilitate the voluntary return of the child or an amicable resolution of the dispute relating to the removal or retention of child; and
- (b) a person who claims that, in breach of rights of custody attributed to a person under the law of Singapore, a child has been wrongfully removed to or retained in a Contracting State within the meaning of the Convention may apply to the Singapore Central Authority to have his claim sent to the Central Authority of the Contracting State.

The application under clause 6 may be made by the person whose rights of custody have been breached or by any other person appearing to the Singapore Central Authority to have sufficient interest in the matter. The application must include such information and documents and comply with such requirements as the Singapore Central Authority may specify. The Singapore Central Authority may reject an application if the requirements of the Convention are not satisfied or if the application is otherwise not well founded or if the application is not submitted in accordance with the requirements of clauses 6 and 21.

Clause 7 provides for the applications that can be made to the Singapore Central Authority pursuant to Article 21 of the Convention. These applications are as follows:

- (a) a person who claims that his rights of access under the law of a Contracting State to a child in Singapore have been breached within the meaning of the Convention may apply to the Singapore Central Authority to facilitate an amicable resolution of the dispute relating to the exercise of such rights; and
- (b) a person who claims that his rights of access under the law of Singapore to a child in a Contracting State have been breached within the meaning of the Convention may apply to the Singapore Central Authority to have his claim sent to the Central Authority of the Contracting State.

Only the person whose rights of access have been breached may apply for the Singapore Central Authority's assistance under clause 7.

The application must include such information and documents and comply with such requirements as the Singapore Central Authority may specify. The Singapore Central Authority may reject an application if the requirements of the Convention are not satisfied or if the application is otherwise not well founded or if the application is not submitted in accordance with the requirements of clauses 7 and 21.

PART III

APPLICATIONS TO COURT

Clause 8 provides for an application to be made to the High Court (the Court) for the return of a child who, in breach of rights of custody attributed to a person under the law of a Contracting State, has been wrongfully removed to or retained in Singapore within the meaning of the Convention. The applicant may be the person whose rights of custody have been breached or any other person appearing to the Court to have sufficient interest in the matter. The applicant is required to forward a copy of his application to the Singapore Central Authority as soon as practicable after filing his application with the Court. The power of the Court to order the return of the child or dismiss the application and the factors that the Court may take into account are set out in the Articles of the Convention specified in the Schedule to the Bill (in particular, Articles 3, 4, 5, 12, 13, 14, 15, 17 and 20). If the Court decides that the child should be returned, the Court has the power to impose conditions or require undertakings before the child can be taken out of Singapore.

Clause 9 enables a person to intervene in an application under clause 8 for the return of a child if the Court is satisfied that such intervention is in the interest of the child.

Clause 10 empowers the Court to make interim orders or give interim directions (at any time before it determines an application under clause 8 for the return of a child) for the purpose of securing the welfare of the child or preventing changes in the circumstances relevant to the determination of the application. The clause further clarifies that the interim orders or directions that the Court may make includes interim orders or directions for the care and control of the child or access to the child.

Clause 11 empowers the Court to restrain any person from taking a child out of Singapore if an application for the return of the child under clause 8 is pending or has been dismissed by the Court.

Clause 12 enables the Court, when considering applications for the return of children under clause 8, to receive advice from persons who are trained or experienced in matters relevant to the applications. The Court is, however, not bound to follow any advice received.

Clause 13 states that when an application has been made to the Court under clause 8 for the return of a child, no court (including the Syariah Court and Appeal Board constituted under the Administration of Muslim Law Act (Cap. 3)) is to make, vary, revoke or enforce a custody order, a care and control order or an access order in respect of the child until the Court has determined the application under clause 8. The stay on court decisions under clause 13 does not however operate on interim orders or directions that the Court may make under clause 10. Further, the stay on court decisions under clause 13 only operates until the Court (i.e. in the first instance) has made its decision on the application under clause 8. If a party to the application appeals against the decision of the Court and wishes to stay any custody, care and control or access proceedings pending the outcome of the appeal, the party should apply to the relevant court to stay the proceedings.

Clause 14 empowers the Court to make a declaration, for the purposes of Article 15 of the Convention, that the removal of a child from Singapore, or the retention of the child outside Singapore, was wrongful within the meaning of the Convention. Under Article 15, the judicial or administrative authorities of a Contracting State to whom an application has been made for the return of a child to Singapore may require the applicant to produce a decision of the Singapore Court that the removal or retention of the child was wrongful. Clause 14(2) clarifies that leave of the Syariah Court under section 35A of the Administration of Muslim Law Act is not required for an application for a declaration under clause 14(1) to be made or continued with.

PART IV

LEGAL AID AND ADVICE

This Part concerns the provision of legal aid and legal advice for the purposes of the Convention. Part IV implements Article 25 of the Convention under which the nationals of and the persons who are habitually resident in a Contracting State are, in connection with the Convention, entitled to legal aid and advice in Singapore on the same conditions as the citizens and permanent residents of Singapore.

Clause 15 defines certain terms used in Part IV.

Clause 16 states that the Director of Legal Aid appointed under the Legal Aid and Advice Act (Cap. 160) will administer the provision of legal aid and advice under Part IV.

Clause 17 states that a person who is a citizen of or habitually resident in Singapore or a Contracting State may be granted legal aid in connection with proceedings under —

- (a) clause 8 for the return of a child, where the person is a party to the proceedings, including as an intervenor in the proceedings under clause 9; or
- (b) clause 14 for a declaration as to whether the removal from or retention of a child outside Singapore is wrongful, where the person is the applicant for the declaration.

Clause 18 states that a person who is a citizen of or habitually resident in Singapore or a Contracting State may be provided oral legal advice on the law of Singapore in connection with the Convention or assistance with the preparation of an application for legal aid under Part IV.

Clause 19 enables the provisions of the Legal Aid and Advice Act (Cap. 160) and Legal Aid and Advice Regulations (Cap. 160, Rg 1) to apply to the provision of legal aid and advice under Part IV with such exceptions, modifications and adaptations that the Minister responsible for legal aid may prescribe.

Clause 20 empowers the Minister responsible for legal aid to make regulations for the purposes of Part IV.

PART V

MISCELLANEOUS

Clause 21, in response to Article 24 of the Convention, requires all applications, documents and other communications sent to the Singapore Central Authority, if not in the English language, to be accompanied by a translation in the English language.

Clause 22 provides for the proof of documents for the purposes of Articles 14 and 30 of the Convention.

Clause 23 provides that the costs referred to in Article 26 of the Convention will not be borne by the Government of Singapore, the Central Authority of Singapore or any other public authority in Singapore, with the exception of those costs that may be borne by the Government pursuant to the grant of legal aid or advice under Part IV.

Clause 24 empowers the Minister responsible for child welfare and protection to make regulations for the purposes of the Bill other than for Parts III and IV. The procedures relating to applications to the Court under Part III will be regulated by the Rules of Court (Cap. 322, R 5) and prescribed by the Rules Committee constituted under section 80 of the Supreme Court of Judicature Act (Cap. 322). The regulations required for the purposes of Part IV will be prescribed by the Minister responsible for legal aid (clause 20).

Clause 25 makes consequential amendments to the Legal Aid and Advice Act.

Clause 26 makes consequential amendments to the Legal Profession Act (Cap. 161).

The Schedule sets out the Articles of the Convention which have the force of law in Singapore. Generally, Articles of the Convention which concern purely matters between States or which concern matters that have been provided for in the main text of the Bill have been excluded from the Schedule. The application of the Articles specified in the Schedule is subject to the provisions in Parts I to V.

EXPENDITURE OF PUBLIC MONEY

This Bill will involve the Government in extra financial expenditure, the exact amount of which cannot at present be ascertained.
