

# Rules of the High Court (Amendment) Rules 2008

## The Rules of the High Court (Cap. 4A)

### Order 121 – CHILD ABDUCTION AND CUSTODY ORDINANCE (Cap. 512)

Remarks:

Adaptation amendments retroactively made – see 25 of 1998 s. 2

#### Remarks

#### PROCEEDINGS AND APPLICATIONS

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

(1) In this Order “the Ordinance” means the Child Abduction and Custody Ordinance (Cap. 512) and a section referred to by number means the section so numbered in the Ordinance.

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

(3) In this Order, unless the context otherwise requires –

“application” means an application under the Convention or the Ordinance;

“decision” includes a judgment or an order of any judicial authority as well as an order of an administrative authority;

“relevant authority” includes the Court, a District Court and a juvenile court.

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

(1) Subject to paragraph (2), every originating application ~~shall be~~ may be made by originating summons in Form No. 10 in Appendix A.

Rule 84  
Rec 12

(2) Where an applicant seeks a direction under rule 9 without having filed an originating summons, the Court may, on sufficient cause being shown, allow such an application to be made on the applicant’s undertaking to the Court to issue an originating summons as soon as possible and on such other terms, if any, as the Court thinks fit.

##### 3. Application for return of a child (O. 121, r. 3)

(1) An application for the return of a child shall be supported by an affidavit

sworn by the applicant or, if the circumstances of the case justify it, a person duly authorized to swear it on behalf of the applicant, and the affidavit shall, so far as it is possible to do so –

- (a) state the following –
  - (i) the matters specified in Article 8(a) to (d) of the Convention;
  - (ii) if applicable, the matters stated in Article 8(e) and (f) of the Convention;
  - (iii) particulars of any pending or concluded proceedings, including proceedings out of Hong Kong, relating to the child;
  - (iv) any other information which may assist in securing the return of the child;
- (b) exhibit all relevant documents.

(2) The affidavit shall be filed at the same time as the application except that, in a case of urgency, the affidavit may be filed as soon as possible after the application.

**4. Application for a declaration under section 10 (O. 121, r. 4)**

(1) An application for a declaration that the removal or retention of the child was wrongful shall be supported by an affidavit sworn by the applicant or, if the circumstances of the case justify it, by a person duly authorized to swear it on behalf of the applicant, and the affidavit shall, so far as is possible –

- (a) state –
  - (i) full particulars of the request made by the requesting state;
  - (ii) the matters specified in Article 8(a) to (c) of the Convention and all other facts on which the applicant relies;
- (b) exhibit all relevant documents.

(2) The affidavit shall be filed at the same time as the application except that, where the case is one of urgency, the affidavit may be filed as soon as possible after the application.

**5. Defendants (O. 121, r. 5)**

(1) The following persons shall be made defendants to an application for the return of a child –

- (a) the person alleged in the affidavit to have brought into Hong Kong the child in respect of whom the application under the Convention is made;
- (b) the person with whom the child is alleged in the affidavit to be;
- (c) any parent or guardian of the child who is not otherwise a party;
- (d) the person in whose favour a decision, including a decision of a relevant authority in a Contracting State other than Hong Kong,

- relating to custody has been made, if he is not otherwise a party;  
and  
(e) any other person who has a sufficient interest in the welfare of the child.

(2) The persons referred to in paragraph (1)(b) to (e) shall be made defendants to an application under section 10.

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

The time limited for acknowledging service of an originating summons issued pursuant to rule 2 is 7 days after the service of the originating summons, including the day of service, or 14 days after the service of the originating summons, including the day of service, where the service has taken place outside the jurisdiction.

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

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

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

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

**9. Interim directions (O. 121, r. 9)**

An application for interim directions under section 7 may, where the case is one of urgency, be made ex parte.

**10. Stay of proceedings (O. 121, r. 10)**

- (1) A person wishing to give notice under Article 16 of the Convention that there has been a wrongful removal or retention of a child who is the subject of proceedings relating to the merits of rights of custody shall file in the Registry a notice to that effect, which shall contain a concise statement of the nature of those proceedings and shall identify the relevant authority before

which they are pending.

(2) A notice given under paragraph (1) shall be verified on affidavit by the person giving it and the affidavit shall be filed at the same time as the notice.

(3) The Registrar, upon receipt of such notice and affidavit, shall as soon as practicable, provide the relevant authority with copies thereof.

**11. Authenticated copy of Court's order (O. 121, r. 11)**

(1) A person who wishes to make an application under the Convention in a Contracting State other than Hong Kong and who wishes to obtain from the Court an authenticated copy of an order of the Court relating to the child in respect of whom the application is to be made shall apply in writing in that behalf to the Registrar.

(2) An application under paragraph (1) shall specify, so far as it is possible to do so –

- (a) the name and date of birth of the child;
- (b) the date of the order and the short title of the proceedings in which the order was made;
- (c) the nature of the application which is intended to be made, identifying the Contracting State in which the application is intended to be made;
- (d) the relationship of the applicant to the child;
- (e) the address of the applicant.

(3) On receipt of an application under this rule, the Registrar shall send by post to the applicant at the address indicated in the application an authenticated copy of the order or, if he is unable to locate the order, shall notify the applicant accordingly.

(4) The authenticated copy of the order shall be an office copy sealed with the Seal of the Court and endorsed with a certificate signed by the Registrar certifying that the copy is a true copy of an order obtained in the Court and that it is issued for the purposes of the Convention.

(L.N. 119 of 1998)