

## CHILD ABDUCTION IN THE CAYMAN ISLANDS

### **What is the Hague Convention?**

The Hague Convention on Child Abduction is the main international agreement that covers international parental child abduction. It provides a streamlined process through which a parent can seek to have their child returned to their home country.

### **What is child abduction?**

Child abduction can be one of two things – it can be either a move from one country to another (removal) by a parent or a non-return of a child usually at the end of a holiday or contact time (wrongful retention). For the removal of a child from one country to another or a retention to be “child abduction” the following have to apply:

1. The child has to be habitually resident in the country from where it is taken. Habitual residence means where the child usually lives.
2. The move has to be in breach of rights of custody of someone else.
3. The rights of custody have to be exercised at the time of the move.

The above conditions can sometimes be difficult to establish, and you should seek legal advice if you are in doubt about any of them.

### **What are the defences to a Hague convention child abduction?**

The Hague Convention provides that the court must order a return to the country of habitual residence. However, the court has the power not to order a return in the following cases:

1. An abduction does not occur if the other parent acquiesced in (consented to) the move, either at the time of the removal/retention or subsequently.
2. It is a defence if the child has been settled in his new environment for more than a year.
3. It is also a defence if the parent seeking the return of the child has not been exercising so-called “rights of custody” before the removal/retention.
4. If the child objects to being returned this can be a defence. This will however depend on the age and maturity of the child.
5. The child’s return will also not be ordered if there would be a risk of physical or psychological harm.

If you think a defence applies, you should get legal advice on your particular circumstances. Sometimes there is an argument about consent and what the other parent agreed to. This is why it is good to ensure that any agreements for a child to go abroad, on holiday or to visit another parent are put in writing and signed by both parties after obtaining independent legal advice.

**I am anxious that my child might be abducted or retained in a country if I let them travel. What should I do?**

You can obtain a “prohibited steps” order to prevent the child being taken out of the Cayman Islands.

It is important to obtain independent legal advice on your particular circumstances and on whether such an order is appropriate.

**What should I do if my child has been removed from Cayman or kept in another country after a holiday or contact?**

You must act fast. You should immediately contact the Central Authority of the Cayman Islands so that you can make an application for the child’s return.

Given that the questions around Hague convention applications are often complex, with significant consequences for the parties it is advisable to seek the assistance of a professional who can give legal advice and assist in the application process. For further information contact [yvonne@broadhurstllc.com](mailto:yvonne@broadhurstllc.com) or [lynne@broadhurstllc.com](mailto:lynne@broadhurstllc.com).

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