

The Act on International Cooperation in Civil Matters regarding Breach of Custody Rights, B.E. 2555 (2012)

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BHUMIBOL ADULYADEJ, REX.

Given on the 28th Day of December B.E. 2555

Being the 67th Year of the Present Reign

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to have the law on international cooperation in civil matters regarding breach of custody rights;

This Act contains certain provisions in relation to **restriction of** individual rights and liberty where Section 29 together with Section 32, Section 33, Section 34, Section 35 and Section 41 of the Constitution of the Kingdom of Thailand so permits by virtue of law;

Be it, therefore, enacted by **His Majesty** the King, by and with the advice and consent **of** the National Assembly, as follows:

Section 1 This Act **shall** be called “ The Act on International Cooperation in Civil Matters regarding Breach of Custody Rights, B. E. 2555”.

Section 2 This Act shall enter into force after 90 days upon its publication in the Government Gazette.

Section 3 In this Act:

“ Child “ means the person not attaining the age of 16 years.

“ Custody Rights “ means the right to the care of the child including the right to **determine** the child’s place of residence, which may arise by the operation of law, **by** order of the court or State’s authority or **by reason of an agreement having legal effect**.

“Access Rights “ means to include the right of taking away the child from his or her habitual residence to other places within the limited time period.

“Central Authority “ means the Attorney General or the person designated by him or her with power and duty to coordinate the provision of assistance under this Act.

“Court“ means the Central Juvenile and Family Court.

Section 4 The Prime Minister and the Minister of Social Development and Human Security shall take charge of the execution of this Act and be empowered to issue ministerial regulations or rules for implementing this Act in accordance with their power and duty.

The ministerial regulations **or** rules shall become effective upon publication in the Government Gazette.

Chapter 1

Central Authority

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Section 5 The Central Authority has power and duty as follows:

- (1) Receiving the ***application*** for assistance from the applicant;
- (2) Considering and determining whether to provide or seek assistance;
- (3) Cooperating with the Central Authority or the Competent Authority of a foreign country including following ***up*** and accelerating the prompt return of the child and fulfilling the other objects of this Act;
- (4) Locating the whereabouts of the child being removed or retained under this Act;
- (5) Undertaking to protect the child from harm or prevent all interested parties from an unjust treatment;
- (6) Undertaking to secure the voluntary child return or to bring about an amicable and equitable resolution of the issues;
- (7) Exchanging the information of the child;
- (8) Providing information ***relating to*** the law of Thailand ***on*** the implementation of this Act;
- (9) Undertaking to secure the effective child return or access rights exercise;
- (10) Providing public prosecutors, legal counsels or advisers for securing the effective child return or access rights exercise;
- (11) Undertaking other acts for the fulfillment of providing or seeking assistance under this Act.

The Central Authority's undertakings must be expeditious taking account of the child interests as importance and considering also the possibility for the Court to grant the request under Section 13.

Chapter 2

Provision of Assistance to a Foreign Country

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Part 1

Seeking Assistance

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Section 6 The person who claims the breach of his or her custody rights may request the return of the child removed to or retained in Thailand to the habitual residence of the child in a foreign country immediately before the removal or retention by filing an application with the Central Authority of that country or the Central Authority according to the regulation the Central Authority prescribes.

The **application** for assistance shall contain:

- (1) The information **relating to** the identity of the applicant, the child and the person alleged to have removed or retained the child;
- (2) Where available, the date of birth of the child;
- (3) The grounds in support of the request;
- (4) All available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be;
- (5) Other documents and **evidence** as prescribed under the Central Authority's regulation.

Section 7 Upon receiving the **application** for assistance, if it contains the details and documents prescribed in Section 6 paragraph 2, and is eligible to provide assistance, the Central Authority shall provide it as prescribed under this Act or file a request with the Court.

If the application does not meet the requirement for providing assistance or it may be provided under certain conditions or there exists some difficulties, the Central Authority shall notify the refusal of providing assistance together with the reason thereof or notify the necessary conditions or the difficulties to the applicant.

Where there exists **a** reason to believe that the child is in the other State being the party to the Convention on the Civil Aspects of International Child Abduction, the Central Authority shall promptly transmit the application to such Contracting State's Central Authority and **then** inform the applicant.

The Central Authority may refuse the application if it affects the sovereignty, security or other crucial public interests of Thailand.

Section 8 The applicant may ask the Court to review the Central Authority's decision in refusing to provide assistance under Section 7 within thirty days as from the day of receiving the notification of its refusal.

The Court's judgment shall be final.

Section 9 The Central Authority's refusal of the **application** for assistance under Section 7 does not **deprive** the rights of the person **claiming** the breach of his or her custody rights to exercise his or her own rights by filing a request directly with the Court.

Section 10 In providing assistance under this Act:

(1) The Commissioner-General of the Royal Thai Police and the **Permanent Secretary of the** Ministry of Interior shall undertake to locate the child's whereabouts as notified by the Central Authority and inform it of the result thereof;

(2) The public prosecutor shall have power to file a request with the Court to order the return of the child;

(3) The public prosecutor shall have power to provide assistance under the request for assistance forwarded by the Central Authority. Upon learning of the child's whereabouts, before undertaking other acts, the public prosecutor may file an application with the Court for an injunction prohibiting any person from removing the child from the whereabouts unless the Court otherwise orders.

(4) Where there exists a reasonable ground to believe that the Court's injunction under (3) will be breached, or the child may be injured or there may be other acts likely to impede the proceedings under this Act, the public prosecutor shall file an application with the Court for an order granting him or her to undertake whatever necessary and suitable for committing the child under the protection and care of the Ministry of Social Development and Human Security, and the police official, upon being requested, shall provide assistance to the public prosecutor.

Part 2

Protection and Care of the Child pending the Return Proceedings

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Section 11 The Ministry of Social Development and Human Security shall have duty to admit the child in Section 10(4) under its protection and care until the return proceedings is complete or the Court otherwise orders.

The protection and care under paragraph 1 shall be in conformity with the regulation the Ministry of Social Development and Human Security prescribes and it shall include:

(1) Providing the checking up of physical and mental health as well as the treatment and remedy for the child;

(2) Providing the suitable and sanitary shelter, **bedding**, clothing as well as sanitary and sufficient food for the child.

Part 3

Court and Proceedings

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Section 12 The Court shall have power to try and adjudicate cases as well as issuing **orders** on the request or application submitted to it under this Act.

The Court's judgment or order shall be final.

Section 13 The consideration for the child return shall proceed as follows:

(1) In the case where the time period commencing from the day the child was removed or retained until the request is filed with the Court does not reach one year, the Court shall consider forthwith whether to return the child;

(2) In the case where the time period commencing from the day the child is removed or retained until the request is filed with the Court is from one year upwards, the Court may consider ordering the child return unless the child has adapted to the new environment;

(3) In the case where it is manifest that the child has departed from Thailand, the Court may suspend the proceedings or dismiss the request;

(4) The Court may dismiss the request for the child return in the following matters:

(a) The person with custody rights over the child did not exercise them while the child was removed or retained or consented to it at the initial stage or subsequently acquiesced in it;

(b) The child return may **expose** seriously physical or psychological harm to the child or place the child in an intolerable situation;

(c) The child objects to being returned and the Court is of the opinion that the child has attained an age and **degree of** maturity at which it is appropriate to take account of his or her objection;

(d) The child return will contravene Thailand's fundamental principles on human rights and liberty;

(e) The child attains the age of 16 years.

The Court shall also take account of the child's information as proposed by the Central Authority or the **Competent** Authority of the child's habitual residence to supplement its consideration in issuing the order.

Section 14 In the case where the Court has not reached its decision **according to** the request within six weeks from the day of **its receipt** for the child return, the Central Authority or the public prosecutor, after receiving the application from the applicant or the requesting State's Central Authority, may ask for the facts then notifies the applicant or the requesting State's Central Authority.

Section 15 In the case where there are both a request for the child return and a dispute on custody rights, the Court can proceed with its consideration on the matter of custody rights after it has considered and ordered not **to return** the child.

Section 16 The Court, in considering the request for the child return, may order the applicant to submit the decision of the court or the other agency with power to make a final decision in the country of the child's habitual residence indicating that the child's removal or retention is in breach of custody rights for **complementing** the decision whether to return the child.

Section 17 The **application** for assistance in the exercise of access rights over the child shall be made in accordance with the **rules, procedures** and **conditions** as the Central Authority prescribes.

Ascendants, guardians and persons with custody rights over the child, legal representatives or persons related to the child in the same manner are entitled to apply for the assistance under paragraph 1.

The provisions on the request for the child return in this Chapter shall apply mutatis mutandis to the proceedings on the exercise of access rights over the child.

Chapter 3

Request for Assistance from a Foreign Country

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Section 18 The applicant in Thailand wishing to request the assistance from a foreign country for the exercise of custody rights and access rights under this Act shall refer the **matters** to the Central Authority according to the regulation **he or she** prescribes. **In this regard,** the provisions in Chapter 2, Part 1 shall apply mutatis mutandis.

Chapter 4

Miscellaneous

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Section 19 The request, document and evidence submitted to the Court under this Act shall be admissible.

Section 20 The **application** or other documents submitted to the Central Authority shall be made in the requesting country's language and accompanied by the Thai language translation or where that is not feasible, a translation into English.

Section 21 This Act does not **deprive** the right of the person with custody rights and the person with access rights over the child to file a request directly with the Court under this Act or other laws.

Section 22 No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses of the Central Authority's undertakings or the Court's proceedings.

Section 23 The Office of the Attorney General shall bear the Central Authority's expenses in applying this Act except the expenses for the child return.

Section 24 All expenses in applying this Act shall be in accord with the rules, procedures and conditions as prescribed under the ministerial regulation.

Section 25 In filing a request with the Court for the order on the child return or the access rights exercise under this Act, the applicant may ask the Court together with the request so filed, or file an application at any time period while the case under the request is pending trial in the Court for ordering the remover, the retainer or the impeder against the access rights exercise to be responsible for the expenses so far as necessarily incurred to the applicant or in the applicant's behalf, including expenses for travelling, locating the child, legal counsels or advisers and the child return.

The Court shall make the order requested under paragraph 1 as it deems reasonable.

Counter – Signature

Yingluck Shinawatra

Prime Minister

Remarks :- The reason for proclaiming the use of this Act is that Thailand has not yet had the law on international cooperation in civil matters regarding breach of custody rights, having objects of protecting the child from harm arising from wrongful removal or retention and returning the child promptly to the country of habitual residence as well as ensuring the protection of access rights. Moreover, Thailand has already acceded to the Convention on the Civil Aspects of International Child Abduction of 1980. Therefore, it has an obligation to comply with it in various aspects such as designating the Central Authority, government officials with power and duty to locate the child's whereabouts, securing the child return and ensuring the access rights exercise, designating the government agency with authority to take provisional care of the child pending the return process as well as assigning the power, duty and proceedings of the Court. It is thus necessary to enact this Act.