

HONG KONG / JUDGMENT

IB v. MCR**[2025] HKFC 42****COURT**

Family Court

DECIDED

28 February 2025

CASE / FILE NUMBER

FCMC10128/2017

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bjbj FCMC 10128/2017

**[2025] HKFC 42 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MATRIMONIAL CAUSES NO. 10128 OF 2017**

BETWEEN IB Petitioner and MCR Respondent

Coram: Her Honour Judge Thelma Kwan in Chambers (not open to public) Date of Trial: 7-10,
13-14, and 24 May 2024 Date of Opening Submission: Petitioner and Respondent 29 April 2024
Date of Closing Submission: Petitioner and Respondent 28 June 2024 Date of Judgment: 28
February 2025

J U D G M E N T (Relocation)

There are two applications before me:

- a. By a Summons dated 10 October 2023, from the Petitioner mother () to take the child of the family to Zurich, Switzerland; and
- b. By a Summons dated 28 October 2022, from the Respondent father () to take the child of the family to Los Angeles, USA (). The parties have one child, their son J, born on XX August 2013, who was age 10 at the time of the hearing. Background of Parties and Procedural History M is 44 years of age at the time of the hearing, she was born in Latvia and holds American and Latvian citizenship. She is a skilled perfumer, who used to work with an international perfume company in NY (), sometime after her arrival in Hong Kong, she took up the role of a consultant for the company. F is 51 years of age at the time of this hearing,

he is a US citizen. He now works for C Capital as Head of Capital Markets, specializing in real estate investment. The company headquarters is in Dallas Texas, but he says he works remotely from LA. Parties got married in July 2011, J was born in the US in August 2013. In 2014, F was sent to HK by his then employer Citibank. H moved here in June 2015, and W came with J in August 2015. The parties separated soon after, and in 2016, M moved out to live with her new partner. J was under a shared care arrangement with Monday after school to Friday morning with M, and Friday after school to Monday morning with F. After the separation and since April 2016, M commenced a consultant role with MSA in the USA. She initially earned a monthly salary of US\$16,000 which was increased up to US\$20,000. M filed for divorce in August 2017, they arrived at an agreement for the finances and for J's custody, and the shared care arrangement ensues. Each were to pay for J's expenses when he is with them respectively, and F pays for school fees, some school related expenses, agreed ECAs, and medical and dental insurance. The two Orders were dated 28 September 2018. Decree Absolute was pronounced on 6 December 2018. In around September 2020, it was F's case that he found the job in HK unsustainable, and eventually found another job in Hawaii. He received an offer in September 2020 and signed the contract with them in December 2020. F left for Hawaii in May 2021, M and J stayed in HK. F says that he took the job on the understanding that W and J would join him in the US. M disagrees; she says H took the job in Hawaii without discussion with her. In November 2021, H obtained permission from his employer to move to New York, but had returned to HK in December only to find out that M did not intend to go to the US with him. Initially there was an agreement for F to pay child maintenance of \$35,000 per month allegedly inclusive of school fees. However, when the parties relationship deteriorates, M says F started levelling allegations and demands against her in early 2022 ending with F unilaterally stopping maintenance payment to M. In April 2022, M proposed relocation to Berlin, and to leave for Berlin in the Summer of 2022; F did not agree. M did not make any application for this proposal. H says that as M expressed no interest in returning to the US, he eventually moved to LA instead in July 2022. In September 2022, M filed her Summons and supporting affidavit for variation of child maintenance for J. F filed his relocation application the following month. F signs his contract with his current employer C Capital in February 2023, at the time of trial, he declares that he makes US\$400,000 per annum. The CDR took place on 20 April 2023. M's employment as consultant to MSA terminated in August 2023, she says she received income only up to May 2023. Thereafter in September 2023, she found a new job with LZ, a perfume company in Zurich (.). At the point of trial, M was working on a contract basis remotely for this company. She proceeded to file her relocation application in October 2023. The trial took over 7 days. Both parties gave evidence, together with the SWO, F's mother, sister and brother-in-law; and M's sister and brother-in-law. The Issue The key issue before me is whether J's best interest lies in relocation to LA or Zurich. The Evidence Petitioner M Respondent F 28/10/2022 2nd Aff US Relocation 14/12/2022 2nd Aff US Relocation Opposition 20/02/2023 4th Aff US Relocation reply 21/02/2023 1st SIR 12/03/2023 ISIR US 11/04/2023 2nd SIR 10/10/2023 4th Aff Zurich Relocation 08/11/2023 s mother s Affidavit 08/11/2023 s sister s Affidavit 08/11/2023 R brother-in-law s Affidavit 08/11/2023 5th Aff US Relocation 24/11/2023 5th Reply on US relocation

05/12/2023 P brother-in-law s Affidavit 05/12/2023 P sister s Affidavit 09/01/2024 6th Reply US Relocation 21/02/2024 7th Opposition on Z relocation 26/02/2024 6th Reply on Z Relocation 06/03/2024 Psychoeducation Report first draft 14/03/2024 Report from ISS Switzerland 08/04/2024 3rd SIR 16/04/2024 Psychoeducational Report filed s case M has been J s primary carer since birth, during the time when the parties were together. Even when they were separated, M continues in her role in managing J s life, including school, organising his ECAs, and homeschooling J during Covid; and was very involved with J s school including volunteer work there. She says that she has always supported J s academic progress and learning needs. M also says J is reliant on her for emotional support. There is no doubt that M is J s sole carer after F left HK in May 2021, she says that the impact on J being removed from her will be profound . Even the SWO attested in oral evidence that J is evidently well taken care of, with positive comments from the school. M s consultancy income from MSA at US\$20,000 was dropped to US\$6,000 per month from February 2021. M says that with the slashing of her income and then F cutting maintenance payment since January 2022, it has left her in an untenable financial situation in Hong Kong. She has tried looking for jobs elsewhere, and she says the only place in the US where she might find a job is NY, but she received no offers there; and LA has no perfume house. She has now secured a well-paid position at LZ which gives her financial security. She is able to work at 80%, and finishes work at 3/4pm so she can care for J after school. She is able to work two days from home a week. The employment would provide transportation allowance, and health insurance that covers her and J. She has identified suitable housing. She intends to rent a 2-3 bedroom apartment in Zurich close to her propose school for J, which is IM in Zug. For the first 6 months her employer will pay for her rental up to CHF4,000 per month. She has also found a good international school, the English stream at IM for J. The 3rd SIR reveals that there were still seats available but the admission test was not for selection purpose but was required for the school to better understand their students. Mother s sister and family support and J s cousins (who are of J s age) are in Berlin, nearby. M says that Hong Kong is not her home, after F went to the US, she had proposed to go to Berlin. At the CDR on 20 April 2023, it was said that she brought in the discussion of going to NY at the eleventh hour. And then at the end of the failed CDR, it was indicated by her counsel that she is considering Europe. M says she has facilitated F s access to J, enables video contact, and F has taken trips with J, including trips to the US to see F s extended family. M s Proposal: If J goes to Zurich M proposes F to continue to have daily Facetime with J, which could take place at 6pm in Zurich which is 9am in LA. As for holidays, with the school calendar from IM for 2024-2025, she proposes the following: Autumn half term (around 10 days): every year with F Christmas (around 23 days): alternate with F year on year Spring half term (around 10 days): alternate with F year on year Easter (around 23 days): 2 weeks with F, and 1 week with M Summer (around 8 weeks): 5 weeks with F, and 3 weeks with M M offers to take J to US once a year until J reaches 14 years of age after which he will travel to US as an unaccompanied minor. If F is in Zurich physically, then F can spend J s afterschool time with him till 7:30pm, and on weekends from 9am Saturday to 7:30pm Sunday. M will also accommodate weekday overnights if F will take J to school the following day. F s Case F has settled in the US since

May 2021, and in LA since July 2022. F proposes to move from his one bedroom and for J and him to live in a 2-3 bedroom apartment where J will have his own bedroom and play space. F says he will be the main carer driving J to and from school and ECAs. F has said he need to be at work 45 hours a week, although this has changed by the trial and he says he can work from home all the time. If F is unavailable during the day, he will get a sitter to pick up and drop off J; there is also the option of the Adventure Camp, a state licensed childcare program for after school care for children; and if he has to travel, which is 3-4 days every few months, he will arrange for his mother, sister or his brother-in-law to come to LA to take care of J. F has picked elementary schools, one middle school and one high school, all in Beverly Hills. J should be attending middle school for the upcoming academic year; F says his place is guaranteed. These are public schools, he also says they have a highly rated academic program, and extensive ECA choices. F s research shows that the schools have trained special education professional who will evaluate J s learning disabilities and prepare an individual education program which may include co-teaching the student, one-on-one support, special classroom accommodations, modification to curriculum and other tools and resources. As for ECAs, F proposes that he will seek M s agreement to sign J up for cello / piano, and swimming lessons; and other things in which J shows interest. F also proposes to engage a private tutor to assist with J s learning challenges. F criticizes M s constant changing of plans. To Berlin in April 2022. To NY in April 2023, and that the financial package she proposed at the CDR was unrealistic and will strip F of his salary. This current application to Zurich in October 2023. F says M has previously said that should relocation be granted for J to go to the US, she would go too. But by correspondence on 22 March 2024, she says she would not go to LA if J were to move there. Quoting from the letter, it says: she needs to make sure she is financially secure, as well as in a career which give her satisfaction and supports her psychological well-being. F says that M has systemically excluded him from important decision concerning J. F s Proposal: If J goes to US M will have daily remote access to J at a time to be agreed with M. If M visits LA, she must give 14 days advance notice, and not to exceed 7 days unless otherwise agreed. She can have overnight access with J. For holiday access: Three weeks of Christmas holiday with one parent and alternate year on year, M will have access in 2024 and even years, and F in odd years thereafter. M to have J for 75% of the Summer holidays, and F to have 25%. M to choose to spend the whole of Easter holiday/spring break or Thanksgiving with J, and will alternate the other holiday with F who will have the odd number year, and M to have the even number. M to have more than 50% of J other public / school holidays. If M moves to the US, all holidays will be split equally. F says he will not ask M for child support, and each party continues to pay for J for the time he spends with them. F offers M US\$5,000 per year to contribute to her travelling expenses. Psychoeducation Report Parties request for a comprehensive psychoeducation assessment on J to understand his learning style, cognitive and academic skills and to clarify the underlying nature of his learning difficulties. This was performed by Dr G. It appears that the parties had a zoom meeting with Dr G in around November 2023. The first draft of the report was produced dated 9 March 2024, and the final version filed on 16 April 2024. Dr G diagnoses J with language processing disorder, mild

ADHD and dyslexia. In contrast to his many strengths, J has difficulty with his literacy skills, overall fluency, word reading, decoding and oral reading. He is performing below grade level in some academic areas including reading, reading fluency, spelling, and some written expression task. While J has tried his best to keep pace during home learning, his literacy struggles, and overall skills were below grade level benchmarks. DR G's recommendations include, inter alia: J would benefit from working with his literacy specialist outside of school in addition to receiving learning support services in school, and the additional support and practice his mother provides. J would benefit from time to process information and answer choices, and frequent breaks and an understanding of expectation. J does not require a specialised school, but he would benefit from an academic environment that provides additional support and accommodations to help him demonstrate his knowledge. J would benefit from a quiet distraction-free environment (e.g. individual room or small group in a separate classroom) during all formalized tests and assessments. J should be studying in a place with minimal distraction: noise, temperature, number of people in the room. J should be seated towards the front of the class and near the teacher to promote attention, minimize distractions, and provide opportunities for frequent check ins. J would benefit from individual time with his teachers, who should check in with him to provide him with opportunities to seek assistance. J would benefit from keeping learning groups small to provide scaffolding, guidance and explanations. These recommendations will assist me in assessing the parties' choice of schools. The Social Investigation Report Social Investigation Reports Three reports were filed with the following dates. First Report dated 21 February 2023 (1st SIR) The 1st SIR was called for the F's relocation application. It provides useful background to the parties and to J. This report says that the parties did manage to co-parent well before F left in May 2021. At the beginning of their separation, F would have J dinner on a weekday night, often joined by M, and the parents had higher trust with each other in terms of their co-parenting relationship. However, this relationship deteriorated, with M complaining about F's often anger outbursts, and picking fights with her over small matters. In speaking to the school supervisor, the SWO reports that J needs help with language development. The supervisor says the parents were able to handle childcare and relationship difficulties in a civilized manner. A letter from a class teacher also says that M was an engaged parent who was always organised and reliable. J's self-regulation was observed to have improved recently. J believed that J had a stable, loving home with good boundaries. The SWO reports that J is conscious of the tension and the fights between his parents. J says he does not want to stay in HK. In the previous year, M has proposed to F that she is considering Berlin, J told the SWO that says he does not want to go to Berlin as he was worried about learning German. He says his first language are English, second Russian, and third Chinese. J says that following a recent trip with his F, he would feel sad about separation from him. He also says F is better in supporting him in handling J's matters. The observation of the interactions between J and both his parents are positive, it is clear that J is comfortable and at ease with both of them. There is no finding that M's care was wanting in anyway. This Report makes a positive finding on F's relocation plan to LA, but the SWO reserves her position pending the ISIR on US. Second SIR dated 11 April 2023 (2nd SIR) This

is an updated report prepared by the SWO who wishes to await the ISIR to finalize her recommendation. This report also reveals that M has counter-proposed to go to the NY US, F was not keen on this as he was concerned that M would assume sole care and control, and he would only have access. He also says that NY is too expensive. In this second report, the SWO says that J is stressed by his involvement in these proceedings, and has changed his mind about LA. He continues to find HK boring and does not wish to stay here. When J arrives to meet the Investigating Officer, he obviously lacked spirit and greeted with limited eye contact and social smiles. The Investigating Officer was aware of his avoidance and expressed concern for him. His initial response was that he was simply tired. J frankly elaborated on feeling uneasy about meeting the Investigating Officer and having to go through this again; Upon revisiting his stand on the relocation, he disclosed that he had changed his mind to remain with his mother in Hong Kong because his mother would not be living in the USA; their parents would not be staying in the same city. He was sure his father would visit him wherever he went due to the fact that his father liked him a lot and that he was able to travel as much as he desired. At the same time, J decided against traveling to Los Angeles. He rated Los Angeles as a 7 out of 10 whereas he rated Hong Kong as a four. He consistently found Hong Kong to be a boring place and he did not feel like staying here. However, J again disclosed future uncertainties, yet, as in his words, I will never leave my mother. (my emphasis) The SWO reports that J is taking on more psychological burden from this litigation. The SWO was also able to observe J with his cousin A who is in town from Berlin, and see how close the cousins are and A's positive influence on J. The SWO maintains that F's plan to relocate to US was appropriate, well considered and in the child's best interest. She cited some reasons as follows: F has been planning relocations since he left HK. M as American can visit and move to the US anytime. F has been a hands on, involved parent. F has a stable employment history and can give J security. He can give the J strong financial support, good quality of life at a comfortable level. They will live at a safe community with low crime rate, and LA is easy to travel to. F picks good schools. F can give M financial support to cover her travel costs. It is important to pause here. It does not appear to be F's case that he plans his relocation since May 2021; F has not been a hands-on parent since he left HK in 2021; and all the factors in d, e and f are extraneous and speak to the hardware that F can provide. As to J's change of mind from LA, the SWO dismisses this with J being in loyalty conflict: Factors of the child's wish, were deliberated as follows: J's decision concerning relocation were always influenced by his concern for his relationship with his parents. In light of this, he was unable to make solid choices regarding his future, and his fluctuating preferences demonstrated the child's ambivalence to make decisions when both parents were significant and his personality was compatible with living with both of them. The child had consistently reflected his needs for the active involvement of both parents. J's stand on the relocation had been fluctuating without a consistent preference, his wish could hardly be given significant weight over the relocation decision. Despite the above, the Investigating Officer deemed his voices: sad to be away from the father and I will never leave my mother crucial in measuring the feasibility of his move to the USA. Most important of all the child would need a serious commitment from the father to facilitate

regular visitation of the mother through concrete access proposal and to adhere to them consistently. (my emphasis) Third SIR dated 8 April 2024 (3rd SIR) This report is an updated one for F's relocation application and also take into account M's relocation application. The following is some of the information elicited by the SWO: J reiterated his old saying that HK is a small and boring place, and that he is not a fan of crowdedness. He held fascination with the places he had been lately in US and Europe, where he felt free and comfortable. J says he feels like an American when he is in the US and a Swiss in his trip to Zurich. H stated he loved Zurich because of its reliable train system. He disliked HK's tall buildings, but the Swiss houses were not tall at all. He figured out that when he was good with his mom, he would not miss his father, or vice versa: when he was good with his dad, he would not miss his mom. He says mom was good at caring for him when he was sick, His dad was good at playing with him. The Investigating Officer asks J about his preference for Zurich versus Los Angeles: He said that he did not want to bother himself with these. He said it was sad to keep asking yourself all the time: Zurich or Los Angeles? He therefore decided not to bother about Zurich or Los Angeles. He thought for a while and replied that he preferred Zurich a bit more than Los Angeles, with Zurich being 10 and Los Angeles being 9 out of 10. He explained that the difference was due to the snow and beautiful landscape in Zurich, as well as the fact that he liked to ski. He quickly clarified that there should be a 2-mark difference. With Los Angeles being 8 and Zurich was 10 because he did not include A in his previous scores and the snow made Zurich a little more preferable than Los Angeles. (my emphasis) At a point when J was more relaxed, the SWO reports: With ease, he answered thoroughly on the rationale behind the relocation preferences. When asked how he would feel if the Judge said he should go to Zurich with his mother, he replied that he was okay and that he would miss his father. When I asked him how he would feel if the Judge said he should go to Los Angeles with his father he replied that was okay but that he would miss his mother. He confirmed that he was ready for whatever the judge finally decided for him. He said he needed time to get to know the new things in either the US or Switzerland perhaps he needed a year to know everything after that he would be comfortable in either location. He confirmed with the IO that he agreed to have his thoughts recorded in the report. With regard to education support for J, the SWO seems to be find the F's research most suited to J's needs, she says this: Viewing the above, the IO believed that the father was able to accurately match J to appropriate services and that he could work closely with the helping profession to accompany J in overcoming the hurdles of his learning difficulties As for the M, out of the two choices of schools she has in Zurich. One did not respond to her ask for school support for J, so she dropped that as a choice, and maintain her choice of IM for J. The SWO finds that IM is not a special needs school but offers an individual learning approach and worked with students on a case-by-case basis. Their teachers, class advisers and heads of programs work closely together with the relevant department of student services to cater for each student who needs additional support. The SWO conclusion is as follows: In summary, the IO was of the view that parental capacity and generous access commitment from the father, language and educational choices in the US, maintaining care in the familiar environment, feasibility of the plan, the developmental needs of J, a

promising transition in the role of the primary caregiver, the readiness of the child for the relocation plan, the permanence of the move and the other favorable circumstances of living in the home country were all compelling factors supporting the father's relocation proposal to Los Angeles, the US. The father's proposal did not deviate from the child's wishes and served the best interests of the child. The mother's relocation proposal to Switzerland did not carry enough weight to override the US proposal. If relocation was granted to J under his father's care in the US, the IO would recommend joint custody, sole care and control be granted to the father and access be granted to the mother open. (my emphasis) The International Reports ISIR US Report 12 March 2023 This Report is also positive with regard to the F's application for LA. This goes to the F's home, financial resources, neighbourhood, and to F's parenting skills; and the interviewer finds that F has convinced him of his intention to include M in the parenting process. ISS Switzerland 14 March 2023 This report was specific about not being an International Social Investigation Report (ISIR), but says it is provided by the Swiss International Social Service (ISS), which is an NGO. It is clear in its role in providing the HK Court with information in order to make its decision about J in these relocation applications. The report provides general information about Zurich, the health care, the school system, child protection system, and legal position. It also provides a statement of the M in her relocation plan. Looking at the date, this is after the M's last affidavit. It reveals that M's salary will be SFR13,600 per month (\$120,437 equivalent) in Zurich. What is clear to me is that M has made plans with regard to looking for accommodation, with the priority (and she has been consistent) that it must be close to J's school. She has also researched into various schools, at that point of time preferring either C School and IM. She mentioned here J is motivated to learn German, as his favourite cousin A lives in Berlin. She aims to find a school which will provide an easier transition for J. She talks about the support she has from family members, all of whom J knows well and have spent time with. J speaks to his maternal grandma in Russian, and aunt, uncle and cousins in English. The family members were also interviewed. I find this report informative, it also shows that M has continued to hone in her plans for J. Other Witnesses M's sister and brother-in-law (who live in Berlin) give evidence in support of W's application, they confirm their willingness to support W, and how close their children are to J, especially A. F's mother (who lives in South Carolina), sister and brother-in-law (who live in Alabama) also give evidence in support of F's application. Under cross examination, they said they last met J in the Summer / Christmas of 2023, but none of them have visited F in LA, or see J in LA.

January 2025 incident In early January, I received a consent summons from the parties with regard to F's intended vacation with J to Japan over the Chinese New Year, which I duly made an order in terms. Shortly after, F came in with an ex-parte application just before the CNY break for temporary removal of J to LA. I ordered that the application be made inter-partes, with a return date after CNY. The events leading up to this are in dispute. In brief, M needs to leave on rather short notice to Zurich as well as to visit her ailing mother in Latvia. She asked F to take care of J while she goes on the trip since he is planning the CNY holiday with J. F then found out that W's tenancy has expired, and she had terminated school for J, this came as a surprise to him. There were discussions between the parties on what to do

with J: finding a nanny to take care of J was not an option. So somewhere along the line, they agree that F can take J to the US in the interim. There were disputes as to the duration of this trip. F says it was agreed to be until the end of the current school year in the US, but M says it is only to be till the handing down of this decision. It appears that parties have agreed to be bound by my then upcoming decision, and also agree they will not take advantage of this development to advance their respective cases. Just before the return date, M has filed an affidavit in opposition with her side of the story. In brief, she has misgivings about the agreement, she has since found accommodation for J pending this decision, and his school confirms there is a place for him still; and she no longer wants F to take J to the US. Facts were disputed as to what happened over this incident between the parties, including allegation that F has failed to put in full version of Whatsapp messages. On the return date, I indicated to the parties that I do not intend to reopen the evidence for this one incident. This is because from the affidavits of the parties, J is clearly stressed due to the uncertainty of his future. On a balance, I am of the view meeting the deadline for this decision is more important than reopening the whole case to argument on this single incident, and further delaying the result cannot be in J's best interest. Given school place in HK is still available, and F says he will stay until M's return from Europe, I dismissed F's application. As the evidence was untested, I will not rely on these affidavits for this decision. I do make the observations that M have made some rash decisions, and clearly not in full communication with F on what is happening. But what troubles me also, is the disappointment F clearly exhibits in Court when I said I will not reopen this case. It appears to me that he is more keen to prove M's alleged wrong actions (as was evident by the rather scathing submission made by his counsel), than thinking about how further delay of this case can impact his son. While parties have said they will not take advantage of this development, F has included the ask for dismissal of M's relocation application in this temporary removal application. One has to wonder why. Legal Principles My starting point is found in s.3 of the Guardianship of Minors Ordinance (Cap. 13), which states that the best interest of the minor is the first and paramount consideration. The applicable principles governing relocation application were based on the English Court of Appeal case of *Payne v Payne* [2001] Fam 473 and adopted by our Court of Appeal in *SMM v TWM* [2010] HKFLR 308, [2010] HKLRD 37 CA where Cheung JA summarised them at 21 of his judgment as follows: 2)

- 3) The application should be approached as follows: Is the mother's application genuine in the sense that it is not motivated by some selfish desire to exclude the father from the child's life? Then ask, is the mother's application realistic, i.e. founded on practical proposals both well researched and investigated? If the application fails either of these tests, refusal will inevitably follow. If, however, the application passes these tests then there must be a careful appraisal of the father's opposition: is it motivated by genuine concern for the future of the child's welfare or is it driven by some ulterior motive? What would be the extent of the detriment to him and his future relationship with the child were the application granted? To what extent would that be offset by extension of the child's relationships with the maternal family and homeland? What would be the impact on the mother, either as the single parent

or as a new wife, of a refusal of her realistic proposal? The outcome of the second and third appraisals must then be brought into an overriding review of the child's welfare as the paramount consideration, directed by the statutory checklist in so far as appropriate. (per Thorpe LJ at paragraph 40)

- 4) In short, the relevant factors are: The welfare of the child is always paramount. There is no presumption created by section 13(1)(b) of the English Children Act 1989 in favour of the applicant parent. The reasonable proposals of the parent with a residence order wishing to live abroad carry great weight. Consequently the proposals have to be scrutinised with care and the Court needs to be satisfied that there is a genuine motivation for the move and not the intention to bring contact between the child and the other parent to an end. The effect upon the applicant parent and the new family of the child of a refusal of leave is very important. The effect upon the child of the denial of contact with the other parent and in some cases his family is very important. The opportunity for continuing contact between the child and the parent left behind may be very significant. (per Butler-Sloss P at paragraph 85) In the case of *BA v BL (Child Relocation)* [2019] 4 HKLRD 23 the Court of Appeal per Cheung JA reiterated and further elaborated on the approach to be taken in relocation cases: 4.12 This led to the more recent decisions of the English Court of Appeal such as *K v K* where it is stressed that, in the determination of applications for permission to relocate, the welfare of the child was the paramount consideration. The three judges in *K v K*, Thorpe, Moore Bick and Black LJ were of the same view on this point. 4.13 4.14 Ultimately it is one of the factors to be considered in the overall assessment whether the relocation is in the best interests of the child and the weight to be attached to this factor depends on the facts of the case. The value of *Payne* is that it "identifies a number of factors which will or may be relevant in a relocation case, explains their importance to the welfare of the child, and suggests helpful disciplines to ensure that the proper matters are considered in reaching a decision but it does not dictate the outcome of a case", per Black LJ at [144] in *K v K*. In my view *Payne* is not to be jettisoned. The relevant factors provide a structured framework in which the appraisal is to be made holistically. ... I also found the following from Lady Justice Black (as she then was) in the abovementioned case of *K v K* [2011] EWCA Civ 793 to be of assistance:
141. The first point that is quite clear is that, as I have said already, the principle the only authentic principle that runs through the entire line of relocation authorities is that the welfare of the child is the court's paramount consideration. Everything that is considered by the court in reaching its determination is put into the balance with a view to measuring its impact on the child. HHJ I Wong has in his recent case of *JTMW v NAV FCMC 8504/2017* [2020] HKFC 244 succinctly summarized important points of principles enunciated in the case of *ZJ v XWN* at paragraphs 53 - 55:
53. The Court of Appeal endorsed what Vos LJ said in *Re C (A Child) (International Relocation)* at [82] and [83],

82. I add a few words in an attempt to summarise the position that has now been reached. As counsel before us agreed, in cases concerning either external or internal relocation the only test that the court applies is the paramount principle as to the welfare of the child. The application of that test involves a holistic balancing exercise undertaken with the assistance, by analogy, of the welfare checklist, even where it is not statutorily applicable. The exercise is not a linear one. It involves balancing all the relevant factors, which may vary hugely from case to case, weighing one against the other, with the objective of determining which of the available options best meets the requirement to afford paramount consideration to the welfare of the child. It is no part of this exercise to regard a decision in favour or against any particular available option as exceptional.
83. ...
54. The Court of Appeal also dealt with the use of the welfare checklist in the balancing exercise. The welfare checklist is only an aide-memoire. A judge is not required to mechanically list every factor to demonstrate that he has considered the same.
55. The Court of Appeal emphasized that the guidance in *Payne* or *SMM v TWM* or the welfare checklist are simply tools to assist a Family Judge in making the multifactorial assessment to reach a result which is in the best interest of the child after taking account of the potential impact on the parents: at [30]. The consideration of guiding legal principles will be incomplete without citing what has been referred to as the welfare checklist factors, which have been listed in our Children's Proceedings (Parental Responsibility) Bill, and has yet to be passed as law in Hong Kong (the Welfare Checklist). These are factors that should be taken into account when determining issues relating to children and where their best interest is to be considered: the ascertainable wishes and feelings of the child concerned considered in the light of his age and understanding; the child's physical, emotional and educational needs; the nature of the relationship of the child with each of the child's parents and with other persons; The likely effect on the child of any change in the child's circumstances; The child's age, maturity sex, social and cultural background and any other characteristics which the court considers relevant; The attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents; Any harm which the child has suffered or is at risk of suffering; Any family violence involving the child or a member of the child's family; How capable each of the child's parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs; (a broader formulation along the lines of) the practical difficulty and expense of a child having contact with a parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with both parents on a regular basis; The range of powers available to the court under this Ordinance in the proceedings in question. Any other fact or circumstance that the court thinks is relevant. With regard to recognition of Children's point of view, it is of assistance to refer to the case of *Re D (Abduction: Rights of Custody)* [2007] 1 AC 619 at 641 F-G, which involves a child then age 8: But there is now a growing understanding of the importance of listening to the

children involved in children's cases. It is the child, more than anyone else, who will have to live with what the court decides. Those who do listen to children understand that they often have a point of view which is quite distinct from that of the person looking after them. They are quite capable of being moral actors in their own right. Just as the adults may have to do what the court decides whether they like it or not, so may the child. But that is no more a reason for failing to hear what the child has to say than it is for refusing to hear the parents views. With these principles in mind, I shall proceed to apply them to the case at hand. The Analysis Parties relationship It is clear that there is declining trust and not much communication between the parties, this is unfortunate as there are years going forward when they still needs to co-parent. Mentioned above was that the parties were actually able to co-parent when they first separated, and their relationship started to deteriorate January 2022. W s counsel quotes a number of examples in his closing submission regarding F s conduct, including, inter alia, and to name only a few: You are selfish and you can t even see it I am done with your shit I will shield J from your horrible tendencies and selfishness as much as I can. God helped me if he grows up like you and becomes a arrogant insecure asshole Criticizing M on her condescending and arrogant I am holier than thou, and my opinion is the only one that matters attitude you can put my keys under the mat. This does us both good as I have no interest in seeing you and you can be saved from having to deal with someone who might question your everything I want is always best for J insane logic which is often just you trying to have an excuse to keep J near as a distraction to your incredible shortcomings in life. F concedes in cross examination that he was at times frustrated and upset, and he would even raised his voice. He also accepts that M is always urging mediation and does not adopt the tone that he has. M s counsel says that this attitude is relevant in assessing H s willingness to engage constructively with M where there is disagreement. It is clear that the parties relationship is strained, but the parties are aware that this is impacting J. It could only be hoped that after this decision has been handed down, and without the litigation looming over their heads, J is able to see the certainty and stability of his life ahead, the parties can come around to working together again in his best interest. H s move to the US M has maintained that when F left for Hawaii in May 2021. The events that precipitated this was nothing like what F says. He says he accepted the new contract in September 2020 and signed the agreement in December 2020 and resigned from his then employer in January 2021. F says that there was agreement for M to move with him to the US, but M s counsel cited from the WhatsApp messages between M and F which shows M asking for mediation, and to define clearly the boundaries within which they conduct themselves and with regard to J, and to have an agreement certified by the Court prior to his departure. Yet F was not able to point to any contemporaneous evidence showing that M has agreed to move with him to the US. Even as late as March 2021, M has written to him that: If your desire is for me to commit to move to the USA in the next two years then it will be difficult. Under cross examination, he was not able to give a date as to when there was an agreement to return. When asked why there was nothing put in writing, his evidence is quite garbled, and then he says that it is because of M s refusal to commit to a date. On a balance of probabilities, I am inclined to agree with M. There is no evidence to support F s version of

this event, he has chosen to leave M and J in HK in the midst of the Covid pandemic; and this has shed light on F's credibility. Dealing with F's objections M's changing plans Admittedly, W has changed her destination for her relocation plan, from Berlin (around April 2022), then to NY (around April 2023), then to Zurich, I need to look at these changes along the timeline. Her income was slashed in February 2021, F left HK in May 2021 with knowledge of this; F started lashing out with his harsh comments leading up to January 2022 when he unilaterally ceased his maintenance for J of \$35,000 per month. It cannot be disputed that HK is not a cheap place to live, and there is no difficulty in seeing the condition M has been placed under. Berlin is where her sister's family is, it was a reasonable proposition to make. M tried to propose NY as it is the only place in the US where she might find a job, it is not clear whether she knew MSA was about to terminate her contract at that point of time; but she was at least proposing a place in the US, which is where F is working; it was unfortunate that NY was too expensive a proposition after discussion at the CDR. Once M has landed her job at LZ, she took out her application soon after. F also criticizes M for changing her choice of school, she did start off her research with two schools: C School and IM. C School was a good choice for J as it is in Zurich, and the school promotes learning with music, which is what J enjoys. IM is in a nearby Canton in Zug. But after the psychoeducational report came out, she approached both schools to see what support they have. M decides to drop C School as an option when they did not revert, she then turns to focus on IM. I am not of the view that any party should be faulted just because plans have changed per se. The changes have to be seen in context. And in this case, even when the information of the change comes late, M has been subject to cross-examination on those proposed changes. Furthermore, there is nothing wrong with a party continuing to improve on his or her plans for the interest of a child; so long as it is made known, and tested properly at trial. F criticizes M in her denial of J's learning challenges. He says that both parties have spoken to Dr G and heard about J's learning disabilities in October 2023, and between then to the time she puts in her final affidavit before the trial on 26 February 2024, she was not researching for J's needs. This is despite her having visited Zurich for two weeks in January 2024, and two days in Feb 2024, and yet she produces no research in her affidavit on what assistance her choice of schools can render to J. According to F, it was not until after she spoke to the SWO on 22 March 2024, that she went to ask the schools for the information. On this point, I remind myself that M put in her relocation application only in October 2023. The conversation with Dr G was in the same month. From then until the trial in May 2024, it was barely 7 months. Her application, for all the right case management reasons, was brought together to be heard with the F's application launched more than 1 years before. Her preparation time was rushed, while F has more than double her time to put his case together. F's criticism was that her case was badly thrown together to support her career in Zurich, this is harsh in the light of this timeline. To be fair to M, it is not clear to me what transpired at the meeting with Dr G in October 2023 and how much information was divulged compared to the draft report that was submitted on 6 March 2024. Under cross-examination, she states there was a Zoom call, but Dr. G did not give a diagnose for J and requested additional tests, including auditory learning. M also says that she is fully aware of

J's learning challenges, and that he is struggling in writing and spelling. I accept her evidence. No matter how this is interpreted, M furthers her research after Dr G draft report is submitted within the short time frame available to her. She has turned around and changed her mind from bilingual learning to proposing J to be in the English teaching stream at IM's international school, this shows M can be flexible, and is willing to take advice to act in J's interest. I am of the view that M should not be faulted for her ongoing research for J, given the time frame she has to work within. In comparison, it is much easier for F to do his research as he is in the same city that he wants to bring J to, and M is doing her research remotely. Dealing with M's objections M opposes the finding of the SWO, who supports the F's application for the two rounds before M puts in her own relocation application, and then still prefers F's relocation plan in her last report. It is M's case that the SWO was evasive when asked about the benefits of Zurich, and has failed to give proper weight (or at all) to J's wishes, his emotional needs and education benefits to J in M's plans. M says the SWO has not given due weight to J's wishes, instead she focuses on J's comments that he is okay with going to either places. She says J maybe unaware that proximity to his cousin A and snow skiing were wishes that could be met by the father's generous access terms: His slight preference for Zurich was due to the environment (there was snow for skiing) and peer support (his closest cousin lives in a nearby country). J's concern seemed age appropriate, but it had little impact. Educational choices, home country, care stability, and so on all have significant impact on the child's future. There are always circumstances and complexities surrounding the two relocation-related contexts, such as different social systems, cultural backgrounds, nationalities, and so on, that young J may not understand at the time. J may be unaware of A and snow skiing were wishes that could be met by the father's generous access time. He would only meet A and go skiing during the school holidays. Furthermore, relocating to the US might fulfill his wishes for snow and peer support, or he might discover other more satisfying opportunities. The IO would proceed with caution when considering these two scores. (my emphasis) I find this statement from the SWO difficult to accept. Why would J's comment have little impact? All the other factors that the SWO talks about in the above paragraph are factors the Court needs to consider. To say that different social systems, cultural backgrounds, nationalities young J may not understand at the time, and therefore downplay J's wishes makes asking children for their wishes almost superfluous. This is an incorrect approach. I find that the SWO is quite dismissive of what J feels are important to him; she is also presumptuous, in this context, that J might discover other satisfying opportunities. I also agree with M that the reports have not covered much on the M's relationship with J, of their close bond, of the fact that she is the hands-on parent, that she is the only person who has been looking after J, and in particular his struggle with learning challenges since J was about 7 (M says she was aware of J's issues since his first grade), in around May 2021 when F left HK. On the topic of schooling support information, the SWO first describes the M's schooling information, SWO says the M tries to contact the two schools for more information after interview with her. When she received the information from M there was not much analysis, nor does there appear to be any follow up by the SWO on this information. On the other hand, the SWO quotes more

information from F's school support, and says that F was able to accurately match J to appropriate services and he could work closely with the helping professionals to accompany J in overcoming the hurdles of his learning difficulties. Nothing was said of the M's choice, nor does the SWO say how M is unable to match J's needs and why, it was just silence. Under cross examination, the following were elicited by the M's counsel: The SWO agrees that J has been in M's constant good care. That it was M that J would turn to when he has a bad dream, or is unwell and needs to be taken care of and comforted. This is so even when F was in town and J was unwell, and he still asks for his M's care. When asked whether J is a child who seeks the physical and emotional care and supervision of his mother, the SWO's evasive answer ends with it does not mean he will not consider his father. When questioned whether the SWO has failed to give sufficient weight to this point, the SWO partially accepts this, and then refer the Court to her paragraph about J being okay either way on what the Judge decides, which does not answer the question. The SWO admits to not putting any weight on J's European identity in her recommendation for J to go to the US. As for reduced exposure to M will result in J losing his Russian language, which is the language J and M speak in, the SWO answer was again evasive when she says both parents would like him to have English built in first. The SWO has failed to consider M's contract with LZ, she says she has not seen it, the document which is in the exhibit bundle was brought to the SWO's attention. She was asked whether she could see that the contract shows the time M has to work, she has in fact more time with J than F does on his declared 45 hours week. The SWO's answer was she could not visualize which one of the parents can have more time with J. The SWO was also brought to look at how M has supervised and guide J in his homework, and how J's work has improved over the 4 school reports. The SWO concedes that J has benefited from M's academic support and in working with him regularly; but the SWO says that she does not consider it a risk to J's academic performance absent M's support, without elaborating why. My further comments on the SIRs I do not agree with the SWO where she says J has two primary caregivers. The WhatsApp messages that were in evidence shows that it was M who is the main carer of J even when the parties were initially together, and during the parties separation. The SWO was cross-examined on this, and it was clear that she has not considered these messages; she says something along the lines that this was because this subject was not brought up during the parents interview. Even in J's own words, it is M who cares, and F who plays. While it is not disputed that the F has a close relationship with J, the transition that the SWO reports in the 3rd SIR, is more of M being the primary carer to being the sole carer when F left in May 2021. The SWO also talks about whether M can keep her job in Zurich, and if she cannot, it will lead to J further moving around. I don't have a crystal ball, and I do not consider it practical to consider too many variables at this point of time as M has a job waiting for her in Zurich. The SWO raises three disputed incidents in her third report. The first disputed incident concerns a proposed move to New Jersey, SWO asks if M has considered a move to New Jersey, she says no. The SWO says she finds this intriguing as she heard the F mentioned this in a previous interview, when he says he could not afford NY, but Connecticut and NJ would be more affordable. M says there were no discussion on NJ, and says it was only where they were living in proximity to NY before they

came to HK. In any event, it looks like that it was F who brought up NJ. The second disputed incident concerns finance, the SWO accepts that this will be the subject matter of further litigation. The third disputed incident concerns a version by M that J has cried and says F has told him what to say to a woman, it turns out that the woman is the SWO. M also says that F has asked J his preference for relocation destination. When confronted with this, F denies that he ever says that, and says it is false accusation from M. The SWO says, based on the time she spent with J, she is of the view that the reported incidents were one sided, disputable, and not carrying weight. I find none of these disputed incidents has any impact on my decision, and the SWO's position not much grounded. The SWO says: As a result of the mother's ongoing research during this USIR investigation, she kept changing her choice of location and educational plan in Zurich. It seems to me that the SWO finds M's changing / unsettled plans something that is not in her favour as the SWO kept commenting on F's settled life in the US. As said above, I think it is important that M has kept refining her plans for J, this shows that she has worked relentlessly to ensure that J's interest is being catered for. Under cross examination, she did say that when she finally decided on IM, only then can she decide where to live as she wants to be close to the school. That decision was made around 3 April; in hindsight, that is probably the reason why M's plans were more mature by the time of the hearing, which became subject matters for cross examination. At the end, the SWO says: The father's proposal did not deviate from the child's wishes and served the best interest of the child. The mother's relocation proposal to Switzerland did not carry enough weight to override the US proposal. First, accepting the F's proposal does indeed deviate from the child's wishes because he prefers Zurich. Secondly, I find the SWO's use of terminology strange, why does the subsequent relocation by M need to override the first one that came earlier in time? And what standard did the SWO apply in deciding whether a plan is overridden or not? The assessment for the child's relocation should be looked at from each application's perspective, whether it is in the child's best interest and in what way; the important exercise comes in the end in assessing the balance. While I acknowledge the SWO's effort in gathering information, I am not of the view that I can rely on the SWO's recommendations. In particular, I find that not much analysis was given to J's relationship with his M and how it would impact him if he moves to LA. The mere say-so from J of him being okay in either city should have invited a deeper dive in the light of his comment that he will never leave his mother, it is clearly a matter which must be addressed, and it was not. My finding The following deals with the application of the principles and guidelines from the caselaw to the facts in this case. Are the applications genuine and not motivated by the parties' desire to exclude the other parent from the J's life M says this of the F's motives: F started making accusations to M in January 2022 and then stopped maintenance payment to her. Less than one month after M asked F to allow her to relocate with J to Berlin, F says he would be moving to LA, and want to take J with him. F makes his relocation application one month after M's variation of maintenance application; and 1 year after he left HK. F has chosen to live in LA, a place he knows full well M cannot find suitable employment and cannot afford to live. F says M has excluded her from important decisions regarding J, that there have been obstructions in access, one time arising from M's unwillingness to put J

through quarantine following a proposal to go to the US during Covid. Access with parents in one place is difficult enough; access with parents in two different parts of the world who are distrustful of each other and have issues in communicating make this difficulty multi-fold. However, looking at the parties respective cases, each of them wants to have J by their side, it is my view that their applications are not taken out with the parties desire to keep the other parent out of J's life. Is the application realistic and found on proposals well researched and investigated Accommodation Both parties say they will be looking for a 2-3 bedroom apartment. As F plans to move, and M has not found actual accommodation, I do not have any information on their accommodation and living environment. F's commute to his intended schools for J is around 5-8 minutes by car. At the trial, M says that she will be living in the Canton of Zurich around 20 mins by car to J's intended school IM. She says she will take J to school, park and then commute from Zug to her office around 70 mins away; after work, she will take the 70 mins journey back, pick up J and drive 20 mins home. F's counsel says that is 4 hours per day, and asks How realistic is this? I do not see anything wrong with this plan. M chooses to conduct her commute in this fashion and for only three days a week, she says she can handle this as she is an adult; as for J, he is in her car travelling back and forth only 20 mins each way. I find this criticism from F has no merits. Schools To investigate this factor. I will draw reference from the above where I have quoted from the psychoeducation report from Dr G, which summarizes the needs of J in this regard. To compare the schools, the following is of IM in Zurich and the middle school (Grades 6-8) and high school (grades 9-12) in Beverley Hills (BH Schools) found by the F. I have also been reminded by M's counsel that J's school in HK has around 100 students. BH Schools No of students 380-876 - 1248 No of students per grade 293 - 338 Student to staff ratio 14 to 15:1 Class size 16 - 26 M says IM offers an international school curriculum which teaches in English, and with entry level at Grade 5. There is a Learning Support Centre with dedicated staff which can provide individual learning plan for the students. M's counsel further comments that neither of the BS Schools fully meets the state standards. Only 73-76% meet standards in English and 53-55% meet standard in Mathematics in these schools. F criticizes M's change of plans for the level that J will be getting into. She has originally said that J will enter Grade 6 in IM's international school which teaches in English. However, under cross examination, she changes her mind and says that J will start at the Foundation Year at IM, F says this is unsuitable for J nor designed for students like him. Looking at the brochure of IM, it says the International School entry age is 11-12, for Grades 5-12, it is conducted in English or Bilingual (Chinese, German, Spanish, French, Italian and Russian). Language assessment tests are available, and support is provided when required. For the International School stream, there appears to be two start-off levels: Cambridge English Foundation Year (CEFY) from grades 5 to 7, and Cambridge Lower Secondary Program (CLSP) from grade 6 to 8. So the above complain from F is that M has said that J would go to CLSP and at the trial she says J would go to CEFY instead, and this new information was not in her final affidavit. Quoting from the brochure, F says the CEFY is designed for students with little knowledge of English to help them seamlessly transfer to our mainstream CLSP. It is his interpretation that therefore CEFY is not suitable for J. Looking at the pathways, the International School

prepares their students for IB diploma program, it is understandable that they need to bring the mostly German speaking young students into an English-speaking teaching environment, which is what CEFY offers. But it does not necessarily mean that it is not suitable for J. J has a drawback on his English reading and writing, so putting him in a class with children picking up English at different levels may assist him in transitioning better to CLSP and may give him less stress in catching up to a standard expected from his age. The school will make assessment and advise on what J needs and what support the school can provide to him. Under cross examination, M says J and her have visited the two schools in February 2024. She says that IM is a school that provides help to integrate foreign students into their culture, their brochure also shows that IM has students from 55 nationalities. She says when they visited IM, the language spoken between the students in the English stream is English. The school also provides homework support after school. I do acknowledge that under this heading, there are some uncertainties as to what level J will be entering into at IM, M says there are seats available at school, and tests are taken not for admission purpose but to give information to the school about the student. On the other hand, I find F's choice of the BS Schools to be unsuitable for J. From the psychoeducation report, J needs a quieter learning environment, with little sensory distractions, sitting in proximity to teachers who will be checking in on him frequently. These are important factors for choice of school in this case, especially for J's learning condition and arriving in a new city. The LA middle school has 8 times more students than his current school in HK, and more than double the students in IM; the class size can be around double of that in IM; and the higher teachers-students ratio in the BS Schools means less devoted attention to J's needs. I am most concerned that J will find schools in LA overwhelming and not conducive to his adjustment and learning, especially in the absence of his mother's usual support. Financially, as F works in the financial industry in Los Angeles, it is clear that he has a higher income / earning capacity than M. He told the ISIR US that he makes US\$400,000 per year with possible bonus of an additional US\$200,000, this is the equivalent of \$258,333 to \$387,500 per month. Mother's LZ contract says she will be making \$120,437 per month. It is not either party's case that they are unable to support themselves and to contribute to J's expenses. At this point, there is no application before me as to whether M will be asking for any maintenance support from F if J were to go to Zurich. While F has made clear that he will not be seeking any child support from M and even says he will pay US\$5,000 a year to contribute to M's travel to the US. However, F makes at least twice of mother's income, it is not unreasonable to expect F to contribute to J's expenses if he lives in Zurich, in the same way he had paid for child maintenance when he left HK. Care Plan Each party's care plan has been provided in their respective cases above and will not be repeated here. M says that she can work from home in Zurich, two days a week, she proposes to do this on Mondays and Fridays, and put in ECAs for J after school on Tuesdays to Thursday, which will facilitate her to pick him up after when she gets off work. She says after dropping off J, she can take the 8:00/8:30am train to work, she gets off at 4pm and can be picking up J after his afterschool activities around 5:30pm. M's work does not require travelling. Despite having said he needs to work 45 hours a week, and told the ISIR US that he needs to be at work from 7:15 to 5 on weekdays, F says

he can work from home 5 days a week in his latest affidavit. But at one point he also says if he is unavailable, he can find a nanny to assist to pick up and drop off J to or from school. There will be occasion when he will need to fly to his work headquarters for meeting which is in Dallas, he says he will rely on his family members to look after J then. As mentioned above, both sides extended family will be brought in to assist when in need. Is the party's opposition motivated by genuine concern for the future of the Children's welfare or is it driven by some ulterior motive? Both parties oppose the other party's application, each holds their view that they have a better plan for J than the other. It is clear that J is loved by both parents, both feels that they are providing the best care and plan for J. I am of the view that neither of them is driven by any ulterior motive in their applications. Will the granting of the Relocation Application be detrimental to the other party and their respective future relationship with J? This point is heavily stressed by F's counsel, who claims that M has kept him from important decisions about J. Yet M has put forward evidence showing how she continues to support F, send photos to him, inform him of medical decisions and information about his activities, and facilitate his holidays with J both overseas and in HK. I am very conscious that the parties are not on very good terms. But there was a time when they could co-parent, during their shared care arrangement before F left for the US. There is an obvious need for F to put aside the history and restrain his outbursts; and for M to improve her communication with him, and to be done in a more timely fashion; and be accountable in terms of J's expenses if this becomes relevant. I am not of the view that granting the relocation application to either side would have a detrimental effect on the other party in his / her relationship with J. But parties should put their differences aside, place J in priority, and work together to give J stability, security and confidence to ensure that J feels that he no longer needs to be caught in loyalty conflict between his parents. After this decision, it is paramount that parties need to obtain mirror order in the relevant jurisdiction to ensure that access arrangement can be enforced. To what extent would that detriment be offset by extension of the child's relationship with the respective extended family? If J goes to Zurich, his maternal grandmother is in Riga, Latvia. And M's sister and her family are in Berlin, there are cousins in his age group. Berlin is 1.5 hours flight time away. If J goes to the US, his paternal grandmother is in South Carolina, and his uncle, aunts and adult cousins are in Alabama, respectively 7-7.5 hours flight time from LA. I find the various witnesses helpful to stating their support to the parties' respective cases. They were credible, and I have no doubt that they will come to assist when called upon. I do note that J's preference for Zurich is in part rooted in the presence of his cousin A nearby in Berlin. It would appear that J is closer to the maternal side of the family, and he is happier in proximity to his cousin. It also came out in evidence that when J is with his F, he does not contact A at all, for reasons unexplained. If that is indeed the case, it would not be in J's best interest to lose his close bond to his cousin if he is to reside in LA, and only see him physically during holidays. What would be the impact on the M and F on the refusal of their realistic proposal? There is no doubt to me that M will miss J as she has been her primary and sole carer since birth. One could safely assume that this would be a large void in the M's life, although dealing with settling down to a new life, new job, new accommodation and

new community will keep her busy initially. However, in the light of the time F proposes M to have access to J, she will be able to maintain her contact with J. I also acknowledge that she may not be as well resourced financially to just take off to visit J whenever she wishes. I am also certain the F will be disappointed if I allow J to go to Zurich. He will revert to his previous access arrangements to J, this is status quo and has been the norm since May 2021, this should be less difficult to adjust to. As F is clearly in funds, visiting J in Zurich should not be an issue, and M has proposed access when F visits Zurich. Other factors to consider

159. Reference must be made to the Welfare Checklists although a number of points have already been covered. The following are the additional factors. Wishes of the Child
160. There have been three SIRs, in the latest one, J says he prefers Zurich to LA, giving Zurich a 10, and LA 8 out of 10.
161. In his closing submission, F refers to the 1st SIR report and cites what J says about turning to F when he has peer group troubles. He chose to focus on this one particular paragraph and quote the often-cited case of *YSYM v LHB* [2020] HKFLR 533 71 quoting from *Re R* (Residence Order) [2010] 1 FLR 509 and *Re D* [2007] 1 FLR 961 as to Court's need to listen to voice of the child. But F did not address at all the above comparison that J made in the latest SIR report.
162. I have also mentioned above that I have found the SWO dismissive of J's view, which she has brushed aside with her comment that it has little impact. I maintain the view that the way she dealt with J's clear wishes is unacceptable, I have dealt with this above, and there is no need to repeat further.
163. A child's wishes must be given due weight as guided by the aforementioned principles; a relocation application impacts the child most. His words must be considered no matter how trivial, unimportant or immature it sounds to the listener's ears, and it must be borne in mind that it is uttered from the child's perspective and not an adult.
164. Due weight shall be given to J's wishes as to the reasons he prefers Zurich. Child's needs and effect of any change In J, I am dealing with a child who has a close bond to his mother. It is clear from that M plays an important role to him as a source of comfort and support in all aspects of his young life. I have no doubt that J will be impacted on his separation from his mother on a daily basis, it is just not possible to imagine the extent of that impact. Other than on vacation with his F, this has not happened before, and J would always know that he would be seeing his mother shortly when he returns from holiday with his F; but relocation to the US will result in long duration away from her. I find this to be a concerning factor in my assessment of these applications. Holistic assessment of what is in the best interest of the Children: the Balancing Exercise I have only one guiding principle in making the determination for these two applications, I have to decide what is in J's best interest. I have decided to grant leave for J to go to Zurich with M. There is in here a fine balance. As a foundation of this consideration, is my conviction that both parents love J, and J feels close to both of them. I take into account that J's relationship with both parents are positive.

Neither of them has turned J against the other even if they did try, and there is no evidence before me that they did. I am also conscious that J wishes to be in a place where he has both parents. This is the usual case with children who face relocation application by their parents. But as often said, relocation applications are binary. I recall from the 1st SIR where J says this to the SWO: J confessed that the separation of his parents was annoying him. This was why he was trying to figure out where on earth the three of them could fit in 42 The factors in favour of J going to Zurich are as follows: J would be in the care of his M, with whom he has a close relationship, and has been his sole carer for the last few years. She knows him well, his preferences and temperament, how he reacts to school and homework, and how he engages with his various interests. J relies on M for emotional support and comfort, this came through in the SIRs. M is familiar with J's learning issues and knows best how to coach and support him; she assists him even through the difficult times during the pandemic when she homeschooled him; from the school reports exhibited, it has been shown how M has assisted in his improvements. With the focus provided by the psychoeducation report, M has acted on it, and sought an international school with an English teaching stream, and also finds tutors in Zurich to assist J. I have also taken into consideration the child's wish in J's preference for Zurich. Although H's counsel echoes the SWO in criticizing the child's reasoning, I accept these are J's reasons which make sense to him, and it should not be downplayed. It is important to acknowledge that J has spoken honestly of his wishes and proper weight must be given. I have taken into account that J needs to adjust in both places in any event. The important factor is who can support him best through the challenges and I take the view that M is in a better position to do this. The school environment in IM fits more into J's needs with his learning challenges, and accords with Dr G's recommendations. The smaller classes, the quieter surroundings, the less crowded environment. I accept that there may not be a place for J at the point of trial, but this uncertainty is far from enough to tip the balance I have to assess in these applications. This decision is handed down at the end of February, M will have plenty of time to secure a place at the school, find the right level of entry for J, start J on his German language class earlier, and prepare him before the new school year starts in late August 2025. J will have to learn German formally, and he has already started picking up through his relationship with his favourite cousin A. The ISS Switzerland says that there are municipalities in the Canton of Zurich which offers assistance to students learning German as a second language. I admit M's plans were fluid before her actual application, I accept that it was crystallized only when she found a job in Zurich. M's sister and family who can offer support are a mere 1 hour flight away. The factors that lie in favour of a relocation to LA are as follows: F has a settled life in LA where he intends to bring J into, compared to Zurich where both M and J will be adjusting to new environment, new work, new school, and new lifestyle. F has taken into consideration the issue of safety and comfort in his intended choice of accommodation and living community. F did research into learning support for J in various forms; and alternative carers should he be otherwise engaged. F has more financial resources to support J in his various needs. However, the two issues I have on F's application are that: his role as a sole care-giver to J on a daily basis is untested as the times he spent with J in the

recent years have been on vacation; F s choice of school is inappropriate for J in the light of Dr G s recommendations, and clearly a much less suitable school than IM in Switzerland. While the language will not be an issue, the schools he has chosen are too big and probably overwhelming for J, and may affect his adjustment to LA, with other subsequent consequences. In my consideration, I recall that F s case has accused M that she is only thinking of herself and her career in this move to Zurich. But I accept that M has probably seen herself as having sacrificed her career to accommodate F s career move to HK, and the dire financial position he has put her in made her feel that it is important that she is financially self-reliant, and in a position to support J in case F chooses to stop child support again. While I do not have the benefit of the SWO s input on the impact on J should he be separated from M, I am of the view that it will affect him on a several levels including physical and emotional support, the ways she organises of his life and activities, and the guidance and assistance she has given him in his academic work. Costs As these applications concern children, I shall make the usual no order on costs. The Order The M s application for leave to relocate the J to the Zurich is therefore granted, with immediate effect. Consequentially, F s application for leave to relocate J to LA is dismissed. For the avoidance of doubt, the Order dated on 28 September 2018 (and as amended on 30 November 2018) granting joint custody of the Child to the parties, do stand. The Order dated on 28 September 2018 (and as amended on 30 November 2018) is varied in that the Care and Control of J be granted to M. The access arrangement shall be as per paragraphs 3 of M s open proposal dated 29 April 2024, with the following Orders for school holidays in replacement of those in that paragraph: Unless agreed otherwise between the parties: Autumn half term: every year with F Christmas: alternate every year with 2025 to the F, and 2026 to M, and so forth Spring half term: alternate every year with 2026 to the M, and 2027 to F, and so forth Easter: 2 weeks to F, balance to M Summer: 5 weeks to F, balance to M M s application for variation of maintenance dated 28 September 2022 be adjourned for directions before a Master if so advised. I make no Order as to Costs, including all costs reserved. This to be a Costs Order nisi to be made absolute within 14 days of this Order, with certificates for counsels. The parties are directed to obtain Mirror Order in Switzerland of this Hong Kong Court Order. (Thelma Kwan) District Judge Petitioner represented by Mr Shaphan Marwah and Mr Knut Fournier instructed by Messrs Charles Russell Speechlys LLP Respondent represented by Ms Frances Irving instructed by Messrs Haldanes PAGE - PAGE - - PAGE - A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V tkdkd h3`q h1&I h+n7 h+n7 h+n7 yt+n7 gd+n7 gd+n7 yt+n7 gd+n7 yt+n7 gd+n7 gd+n7 yt+n7 gd+n7 gd+n7 yt+n7 gd+n7 gd+n7 yt+n7 gd+n7 gd+n7 yt+n7 gd+n7 yt+n7 gd+n7 yt+n7 gd+n7 yt+n7 gd+n7 yt+n7 h+n7 h+n7 h+n7 gd+n7 yt+n7 gd+n7 yt+n7 gd+n7 kdl yt+n7 gd+n7 kd8 yt+n7 gd+n7 yt+n7 gd+n7 yt+n7 gd+n7 yt+n7 gd+n7 gd+n7 kdt yt+n7 gd+n7 gd+n7 yt+n7 gd+n7 gd+n7 yt+n7 gd+n7 gd+n7 yt+n7 h1&I gdV gd?s gdV gdV zpdpz gdV gdV pibi\ hsPz hsPz hsPz hsPz hsPz rlclXOXOXOXOXOXOXO h 'm gdi6 h 'm gdV h 'm h 'm hR4= gd+n7 gd+n7 gd w hR4= hR4= h+n7 h+n7 h+n7 gd+n7 gd+n7 yt+n7 gd+n7 gd+n7 yt+n7 gd+n7 gd+n7 yt+n7 gd+n7 gd+n7 yt+n7 yt+n7 gdR4= gdR4= hR4= h/Hg hR4= hR4= hR4= hR4= xnxd gdFS h!U5 h!U5 h!U5

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Prepared on 26 October 2026 · Esheria