

HONG KONG / JUDGMENT

LCG v. IK**[2021] HKFC 120****COURT**

Family Court

DECIDED

22 June 2021

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bjbj FCMP 231 / 2019

**[2021] HKFC 120 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MISCELLANEOUS PROCEEDINGS NO. 231 OF 2019**

IN THE MATTER OF the minor, LZY, also known as IA, a girl born on the Xth February 2013 (the Minor) And IN THE MATTER OF Section 26 of High Court Ordinance (Cap 4) and Order 90 of Rules of the High Court (Cap 4A) and IN THE MATTER OF Guardianship of Minors Ordinance (Cap 13)

BETWEEN LCG Applicant and IK Respondent

(Transferred from the High Court to the Family Court pursuant to the Order of the Honourable Madam Justice B Chu made on 22 October 2019) Coram: Her Honour Judge Grace Chan in Chambers (Not Open to Public) Date of Hearing: 3-4 & 8-10 December 2020 Date of Applicant s written closing submission: 12 January 2021 Date of Respondent s written closing submission: 19 January 2021 Date of Applicant s written reply closing submission: 26 January 2021 Date of Judgment: 22 June 2021

J U D G M E N T (Care and control & Relocation)

Introduction

This case concerns an application by a parent (who is not the parent with de facto care and control of the child in question) to permanently relocate the child to Shenzhen, China. It brings into play the dynamics of international marriages and cross-border enforcement of orders made by Hong Kong courts in China. As pointed out by Peter Jackson LJ in *Re L (Relocation: Second Appeal)* [2017] EWCA Civ 2121, [2018] 2 FLR 608, relocation applications are as among the more difficult applications that come before the Family Court. The effects of distance on relationships, often accompanied by cultural and linguistic factors that may shape the child's lifelong identity, raise the stakes above those found in most domestic cases. I fully agree. The parties of this case were married couple. The applicant (father), now 47, is a Chinese national currently living with the elder daughter (as defined below) in Shenzhen. The respondent (mother), now 46, is a Japanese lady currently living with the younger daughter (as defined below) in Hong Kong. The parties met in Shenzhen in about 2004 and got married in 2007. Two daughters were born within their wedlock: LRY or S, the elder daughter (), born in September 2007 and will turn 14 this September; LZY or A, the younger daughter (), born in February 2013 and is now 8 years old. Both S and A were born in China and are Chinese nationals. At the same time, they also hold Japanese passports. By his amended originating summons dated 24 June 2019 and amended on 29 October 2020, the father seeks to have the sole custody, care and control of A and to relocate her to Shenzhen. The mother originally applied to have the care and control of S and to relocate S to Hong Kong. She withdrew this application shortly in the pre-trial review (PTR), after taking into account the wish of S to remain in China. Hence, this trial concerns the relocation and care arrangement of A only. Both parties have agreed in the children's dispute resolution (CDR) that they shall have joint custody of A (and also S). They have also agreed the access arrangement of A, including their undertakings, in the different scenarios of: A is to be relocated to Shenzhen to live with the father; or A is to remain in Hong Kong to live with the mother. In gist, it is the case of the father that (i) he is the main carer of A and has closer relationship with her, whereas the mother does not know how to take care or guide A; (ii) A does not have right of abode in Hong Kong, nor does the mother. They stay in Hong Kong only on the strength of the mother's working visa. Their status to remain in Hong Kong will end if the mother loses her job; (iii) the mother has been obstructive to his access to A, and there is a real danger that if the mother loses her job, she would remove A to another place or back to Japan out of his reach; (iv) A is unable to adapt to the study in Hong Kong, as she cannot speak fluent Cantonese nor read traditional Chinese characters; (v) A has repeatedly asked him to take her back to Shenzhen; (vi) returning to live in Shenzhen will allow sibling unity; (vii) if relocation to Shenzhen is allowed, the father will let the mother enjoy very generous access to A. In opposition to the father's applications, the mother mainly avers that (i) the parties settled the arrangement of A under the PRC Order (as defined below) and he has not shown any material change of circumstances that warrants the agreement be changed; (ii) contrary to his allegation that he experienced difficulty in having access to A, the father did have access to A from time to time in Hong Kong; (iii) A is under good care of the

mother, and that she is adapting well to the life and education in Hong Kong; (iv) the latest wish of A is to stay with the mother in Hong Kong; (v) there is real risk that the father would cut A's tie with the mother if his relocation application is allowed, because of the lack of communication and/or poor communication between the parties and his propensity to conceal material information; and (vi) there is the issue of enforcement of an Order made by the Hong Kong Courts in China. There are 5 witnesses in this case, namely 2 social investigation officers (), Ms Yiu and Ms Wong, the father, the mother and her Filipino maid, H (Maid). By consent, a single joint expert in Chinese law () was engaged to give an opinion on whether a relocation/custody/access order in relation to a minor made by Hong Kong Courts can be enforced in the PRC; and if yes, how. The SJE has prepared 3 reports respectively dated 25 November 2020, 30 November 2020 and 3 January 2021. I shall go into greater details of these reports later in this judgment. Their divorce and the PRC Court Order

The relationship of the parties during their marriage cannot be said as harmonious. The mother accuses the father of providing insufficiently for the family and thus she was forced to work. She also accuses him of repeated physical and/or oral abuse on her. The father denies and says that he had worked hard to provide for the daughters but it was that the mother did not open up herself to him. While the reason(s) causing the breakdown of their marriage is an irrelevant issue in this trial, I have to point out that the WeChat messages in the family chat group of the father and the school chat group of S regrettably show that the father was unreasonably hostile towards S from the father during the marriage. On 20 September 2017 and without the father's prior knowledge or agreement, the mother left Shenzhen and took the daughters to stay in Hong Kong. Unable to locate the daughters, the father made a report to the Chinese police and also tried to locate them via social media platform but to no avail. He even planned to fly to Japan to find them. Fortunately, shortly before the Chinese New Year of 2018, he was finally able to locate the daughters via one of the social media platforms. On 2 February 2018, the father came to Hong Kong to meet the daughters by staying in the mother's place. To his surprise, the mother asked him to sign a document to give up the custody of the daughters, which he vehemently refused. On the other hand, he asked the mother to let him bring the daughters back to China to visit the paternal grandparents over Chinese New Year holiday. At first, she refused the request. But on his repeated plea and promise that he would return them back to her at the end of the holiday, she finally acceded to his request. He thus left Hong Kong for China with the daughters on 17 February 2018. The father was supposed to return the daughters to the mother on 28 February 2018. Unfortunately, he did not keep his promise, but decided on his own and without telling the mother that he would keep the daughters to live and study in Shenzhen (January 2018 Incident). The mother went over to Shenzhen but was unable to locate the daughters. In the end and on legal advice, she filed her petition for divorce in the PRC Courts in March 2018. She asked for custody of both daughters. Both parties were legally represented in the PRC proceedings. During a mediation session before the PRC judge, the parties settled the custody and ancillary relief matters, which was made into a court order of 23 July 2018 (PRC Order). Under the PRC Order: S is to be brought up by the father; A is to be brought up by the mother; Each parent has access to the daughter not living with him/her. However, access is not defined in the PRC Order. Their settlement on the ancillary relief does not feature in this trial, and thus there is no need to expand on it. Wardship proceedings in Hong Kong After the PRC

Order, the mother took A to settle in Hong Kong on or about 31 July 2018. The father says that since A was relocated to Hong Kong, he faces immense difficulty in access, due to the obstruction of the mother. On or about 30 April 2019, he came to see A in Hong Kong and asked to bring A back to China for the golden week holiday, which was not agreed by the mother. A dispute then broke out in front of A between the parties at the mother's place. As a result, police was called (30/4/2019 Incident). In the end, no arrangement was made for A to visit China during the golden week holiday. On 24 June 2019, the father started a wardship proceedings in the High Court of Hong Kong in respect of A (HCMP 909 of 2019). The case came before B Chu J. Interim access order was made and the case was later transferred to the Family Court for disposal. Besides, pursuant to the order of Her Ladyship, neither party shall remove A out of the jurisdiction of Hong Kong unless with leave of the court or with the consent of the other party.

Current situation The mother works as an administrative assistance in a Japanese company owned by her friend in Hong Kong, earning at about \$40,000 per month. She is now living with A in a rented flat in Tai Po, assisted by the Maid who has started to work for her since about July/August 2018. The Maid's employment contract was recently renewed. A is now 8 and is studying primary 2 in a local primary school. She has been living continuously in Hong Kong for about 3 years since the end of July 2018. The father is now living with S in Shenzhen at a self-owned flat. His parents (who used to live with him in Shenzhen) have returned to their hometown in Maoming, after his father contracted serious illness. Since August 2020, he has engaged the service of a maid (Madam Zhang) to assist in taking care of S. He runs his own beauty and cosmetic business with his partner. Their business has a factory in Guangzhou and various branches in China. His business is doing very good and yields him an average income of about \$150,000 per month. S will turn 14 this September. She is studying Form 1 in a secondary school in Shenzhen which is close to their home. The current access arrangement put in place by B Chu J (but as varied from time to time by the Family Court) is like these: the father shall have bi-weekly staying access to A on Saturday from about 12 noon to Sunday 10.30 am in Hong Kong; the mother shall have bi-weekly day access to S on Sunday from 10.30 am to 4.30 pm; the father shall have electronic access to A every Tuesday and Thursday for not less than 10 minutes between 5 pm to 7 pm; and on Sunday (when he has no physical access to A) from 10 am to 12 noon; the mother shall have electronic access to S every Tuesday and Thursday for not less than 10 minutes between 7 pm to 9 pm. However, with the travel restrictions imposed during the Covid-19 pandemic, the father has not conducted any physical access to A, or M to S, in Hong Kong since or about January 2020.

Applicable legal principles The applications of the father, as at this trial, consist of 2 parts, namely for care and control of A, and to relocate her to China, pursuant to the Guardianship of Minors Ordinance, Cap 13 (). Section 3(1) of the GMO sets out the general principles governing applications concerning children. The court shall regard the best interests of the minor as the first and paramount consideration. The court shall also give due consideration to the wishes of the minor, having regard to the age and understanding of the minor and to the circumstances of the case, and the social welfare investigation report(s) available to the court at the hearing. The often quoted authorities on relocation are *Payne v Payne* [2001] 1 FRL 1053 and *SMM v TWM* [2010] 4 HKLRD 37, followed by more recent judgments in *ZJ* and *XWN* (Leave to Appeal: Child Relocation) [2018] 2 HKLRD 644 and *BA v BL* [2019] 4 HKLRD 23. In *BA v BL* (supra), it is

reiterated by the Court of Appeal that whether a relocation application is made by a primary carer or a non-primary carer does not give rise to any presumption in favour of or against the applicant. In *ZJ v XWN* (supra), the Court of Appeal reviewed recent development of the English authorities on relocation, such as *K v K* (Children: Permanent Removal from Jurisdiction) [2011] EWCA Civ 793, [2012] Fam 134 and *Re C (A Child)* (Internal Relocation) [2016] Fam 253. The Court of Appeal concluded that the comments made by Cheung JA in *SMM v TWM* (supra) should be read in the light of the recent developments in the UK, namely the best interests of the child are paramount and any other protocols or tools designed to assist in coming to a decision in that respect are to be regarded as guidance only. However, it does not mean that the Payne guidelines should be jettisoned. In their most recent judgment on relocation in *H v W*, CACV 81/2021, [2021] HKCA 733, the Court of Appeal (Lam VP, Yuen JA and C Chu J) succinctly summarized the legal principles on relocation and explained that the Payne guidelines identify a number of relevant factors which provide a structured framework in which the appraisal is to be made holistically: The legal principles

31. There was no dispute as to the applicable legal principles on relocation as summarized by the Judge in paragraphs 16 to 20 of the Judgment. In fact, shortly after *ZJ and XWN* [2018] 2 HKLRD 644, Cheung JA again set out the legal principles in paragraphs 4.1 to 4.14 of his judgment in *BA v BL* (Child Relocation) [2019] 4 HKLRD 23, [2019] HKCA 822, CACV 18/2018. In particular, paragraph 4.14 states as follows: In Hong Kong the paramount consideration is whether the relocation is in the best interests of the child. Hence whether a relocation application is made by a primary carer or a non primary carer does not give rise to any presumption in favour of or against the applicant. There may be myriad reasons why such a parent applies for the relocation of the child. 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.
32. The Payne guidance can be summarised as (1) Is the applicant's proposal genuine and realistic in the sense that it is not motivated by some selfish desire to exclude the father from the child's life? (2) Is the respondent's opposition motivated by genuine concern for the future of the child's welfare or is it driven by some ulterior motive? (3) What would be the impact on the applicant, either as the single parent or as a new spouse of a refusal of his/her realistic proposal? (4) The outcome of the appraisals in (2) and (3) must be considered in the overriding review of the child's welfare [or in Hong Kong the child's best interests] as the paramount consideration. In stressing that the only test that the court should apply is the paramountcy as to the welfare of the child, the Court of Appeal in *ZJ v XWN* (supra) cited with approval what Vos LJ said in *Re C (A Child)* (Internal Relocation):

82. . 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. . Whilst the Payne factors may still be of some utility in some cases, they are no part of the applicable test or the applicable principles. In some circumstances, the judge may find them useful. In others, the judge may not. If the judge finds them a useful guide to some of the factors that he should consider, he will be doing so only as part of the multi-factorial balancing exercise that is required. (my emphasis added) Further, when dealing with children matters, the court often refers to the welfare checklist under the English Children Act 1989 which are: the ascertainable wishes and feeling of the child concerned (considered in the light of his age and understanding); his physical, emotional and educational needs; the nature of his relationship with each parents and other persons; the likely effect on him of any change in his circumstances; his age, sex, background and any characteristics of his 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 he 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 his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs; 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 regular basis; the range of powers available to the court in the proceedings in question; any other fact or circumstance that the court thinks is relevant. It is trite law that 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 (See: ZJ and XWN (supra) at 25 and 28; H v N [2012]5 HKLRD 498 at 26-33). Hence, in my analysis, I should bear in mind that the one and only authentic legal principle that I need be concerned with is that the best interests of A. I shall use the aforesaid welfare checklist and the guidance provided by Payne, in so far as it is necessary and appropriate, in coming to a decision in the best interest of A. Further, I will not attempt to discuss each and every dispute raised by either party in this judgment. Suffice it is for me to say that I have considered them all, but would not elaborate on those which I find to be irrelevant or insignificant. The Maid s evidence Having considered her affidavits and the chance of observing her demeanour in court, I can say from the outset that I do not find that the Maid is a reliable witness. It is plain and obvious that she gave diametrically conflicting information about the father, as well as the mother, in the WeChat messages between her and the father (from September 2018 to September 2020), and her 1st and 2nd affidavits. In the WeChat messages with the father, she described him as a loving and caring father, and she wanted A to be with him, but the mother was a selfish person whom A did not like. She also complained that the mother made her do the Chinese and Mathematics

homework or tests with A, knowing that she did not read Chinese at all. Yet, in her 1st and 2nd affidavits, she said that the father was a hot-tempered person and she was scared of him. She also hinted in her affidavit that the father bribed her by offering to buy presents for her daughter and to hire her to work in Shenzhen to take care of A. She said that with hindsight, she realised that he was only using her to fight his case. On the other hand, she described in her affidavits that the mother was a kind and easy-going employer to work with. She explained that they had misunderstanding previously, in that she thought the mother required her to learn reading Chinese to help A do her homework, but in fact the mother only wanted her to make sure that A completed the homework on the list sent over by the mother. She fails to impress me in this trial as to why she has such a drastic change of views towards the father and/or the mother. I do not find it safe to accept any of her written or oral evidence at all, including her WeChat messages with the father. In her closing submission, Ms Karen Wong, counsel for the father, submits that the Maid is an extremely evasive and untruthful witness, and admitted telling lies in her affidavit that she told nobody except the SWO that she thought of quitting the job, but in fact she had told the father of such thought. Counsel also says that the Maid was not a fair and independent witness, because she has an indirect financial interest in the outcome of the proceedings. If A relocates to Shenzhen, she may be dismissed by the mother. In such circumstances, counsel concludes that little weight should be given to her evidence. I do accept the comment of Ms Wong on the Maid's evidence, but I find it illogical for counsel to invite me to place little weight on the Maid's evidence on one hand, but seeks to her evidence to support their case that the mother is not able to meet the needs of A, or that the father has a close relationship with A on the other hand. These 2 arguments do not reconcile well with each other. Hence, in this judgment, apart from accepting that the Maid has a good relationship with A and that she has renewed her contract with the mother in August 2020, I will not accept or take into account what she said/wrote in the WeChat messages with the father or her evidence given in this trial.

Change of circumstances Both parties have dispute as to whether the father's application for care and control of A is a variation application, and whether he will have to prove material change of circumstances in this trial. Mr Felix Li, counsel for the mother, adamantly says that since the parties have previously settled the children matters under the PRC Order, the father needs to show that there is a material change of circumstances in order to persuade this court that the care and control of A should be varied in his favour. However, Ms Karen Wong for the father is of the view that Hong Kong Court has no jurisdiction nor power to vary an order given in the PRC and that a change of circumstances is not necessary as arrangements concerning children are always subject to variation. Even if a change of circumstances is required, Ms Wong says that there is change of circumstances in this case, as evidenced by, for example, the wish of A to return to Shenzhen, her difficulties in adapting to the study in Hong Kong and the breach of the mother of the PRC Order to provide any or any meaningful access to A by the father. Ms Wong goes even further to argue that given the mother herself applied for the relocation of S to Hong Kong (which was later withdrawn by her), she must have agreed that there is a change of circumstances. As a starting point, it must be true that the PRC Order does not bind this court, nor does this

court have the jurisdiction to vary any order made in the PRC. Hence, the father's application cannot be viewed as a variation application as such. However, this does not mean that this court cannot take into account any agreement or settlement made by the parties in respect of A under the PRC Order. As provided by the welfare checklist, the court is entitled to consider any other fact or circumstance that the court thinks is relevant. I am of the view that the PRC Order is a fact or circumstance which is relevant in this case. Importantly, according to the father, during the PRC divorce proceedings, he agreed that A was to be brought up by the mother because he knew that the education system in Hong Kong was more perfect (settlement in the PRC, he did accept the arrangement under the PRC Order, had it not been the alleged refusal or obstruction of the mother in respect of his access to A (which will be further discussed below). In such circumstances, I shall give due weight to the agreement of the parties under the PRC Order. International social investigation reports Two international social investigation reports dated 9 October 2019 (1st ISIR) and 18 September 2020 (2nd ISIR) respectively were obtained in this case. It is fair to say that the mother has no issue with the physical living environment of Shenzhen. She should also be familiar with the primary school suggested by the father that A is going to attend in case of relocating to Shenzhen, because it is the same primary school that S graduated. The 2nd ISIR records that there is a change of caring plan of the father, in that the paternal grandparents have moved back to their hometown in Maoming as a result of the illness of paternal grandfather. Since 27 August 2020, the father has hired Madam Zhang as the maid to assist in taking care of S. According to the 2nd ISIR, Madam Zhang worked as the maid of this family assisting in taking care of A when she was still a toddler for about half a year. At present, she works until dinner is prepared and does not stay overnight, as S is rather independent. But when A is relocated to Shenzhen, she will stay overnight in order to assist in taking care of A. I shall come back on this change of care arrangement later in this judgment. Social investigation reports There are 3 local social investigation reports or short memo made in this case in the following sequence: A social investigation report dated 4 October 2019 and prepared by Ms Yiu (1st SIR); and An updated social investigation report dated 30 September 2020 and prepared by Ms Wong (2nd SIR); A short memo dated 27 November 2020 prepared by Ms Wong solely on the updated adaption of A to the school life and her academic performance (3rd SIR). It is settled law that while the court has to give due consideration to any report from the SWO, the court is not bound to accept or follow the recommendation therein. The status of the recommendation of the SWO cannot be escalated to the decision of the court. (See: *Naziya Aslam v Ali (Custody and Removal)* [2009] HKFLR 294 at 28; *ZJ v XWN* (supra) at 44; *In Re C (A Child)* [2016] Fam 253 at 72). 1st SIR During her investigation, Ms Yiu observed that the daughters interacted well with both parents, and that both parents loved them. Sibling relationship was close and intimate. Further, both S and A told that they missed each other very much and wanted to live together in Shenzhen. A said that when she was not happy, she would tell the father. She missed him and S but could only see them on Saturdays. She did not like the primary school that she was studying now, and could not understand what the teacher(s) said during lessons. She did not know how to do the homework and thus she would throw tantrum. She

liked the father to teach her do homework, because the father would not scold at her but the mother would call her stupid (which was denied by the mother). She also told that she once tried to peep for answers from the work of other classmates during tests, though she knew it was not correct to do so. Ms Yiu also made investigation with the class teacher of A in her primary school. The class teacher revealed that A had weak foundation in the major subjects of Chinese, English and Mathematics, thus causing her unable to follow what the teacher(s) said during classes. Arrangement was already made by the school to assist A. By way of recommendation, Ms Yiu recommended that sole custody, care and control of A be granted to the father and his relocation application be allowed, mainly because: Both S and A faced changes in their carer, living condition and school in the last 2 years, causing negative impact on their mood. They were thus in need of a stable and structured daily arrangement in order to establish their sense of stability and trust to parents. S had been in Hong Kong in 2017 but found herself unable to adapt to Hong Kong. It was thus better for her to remain in the PRC. Relocation of A to Shenzhen would allow the siblings to grow up together healthily; the fathers relocation plan was practical. He told that his flexible work time would allow him to take care of both daughters. He found a suitable school for A in Shenzhen. He had family support, as he lived with his parents and met other family members regularly. He was willing to let the mother see the daughters on weekends and long holidays, which would ensure that her tie with the daughters would not be cut. A had problem of adapting to school life in Hong Kong. I have considered the 1st SIR and its recommendation in the light of all evidence and submission from both parties. I come to the conclusion that I should place little weight on the recommendation of Ms Yiu due to the following reasons. First, it cannot be disputed that in the 1st SIR, Ms Yiu focused her investigation on the cross applications of the parties only, ie the father s applications for custody, care and control and relocation of A to Shenzhen, and the mother s application for care and control and relocation of S to Hong Kong. She was not tasked to investigate the option of status quo . Hence and not due to her fault, she has not had the opportunity of considering and weighing the pros and cons, and making recommendation in respect of the father s relocation application vis- -vis the latest status quo stance of the mother. When asked by this court in the trial, Ms Yiu told that she was not able to give her opinion on the option of status quo . Second, Ms Yiu was fully aware of the father s unwillingness to communicate with the mother. She was of the view that joint custody was not suggested in this case because the relationship between parties was still tense, and that they lacked mutual trust and good communication. Against this backdrop, I have grave concern that she has not given sufficient investigation and/or consideration of the real risk that the father would cut off the contact with the mother if his relocation application is allowed. Third, as the case develops, the father s care arrangement has changed, in that the paternal grandmother would no longer be available to assist the father when he is at work because the paternal grandmother has returned to their hometown to take care of the ill-ridden paternal grandfather. Hence, the favourable factor that the father had the support of the paternal grandparents does not engage any more. Fourth, there is also changes in S as well. At the time of the 1st SIR, S was still in primary school and she had more time in taking care of A, including assisting her to do homework. As at this trial, S was

already promoted to secondary school; she has become busier with her study and social activities, such that it is not the case that S could play with or assist A to do her homework at any time. Fifth, as to A's weak performance at school during the investigation period of the 1st SIR, I think one must bear in mind that by the time of the 1st SIR, A was promoted to Primary 1 for 1 month only, which was chronologically too rush to say that she could not adapt to the education of Hong Kong. After all, it would be nothing but fair and logical to allow an adaption period of varying degree for young children to get accustomed to their primary school life, which is so much different from that of their kindergarten times. Sixth, I should also say a few words about the alleged cheating of A during the test. The mother said that after the 1st SIR, she made enquiry with the school teacher on the alleged cheating of A. However, the school teacher said that since A was assigned to sit at the last left corner in the classroom, it was impossible for her to cheat as alleged during the test. I cannot say that the mother is telling lies on this point. It is unfortunate that Ms Yiu did not make enquiry and clarify with the school teacher and/or the mother on the alleged cheating before she finalised the 1st SIR. 2nd SIR and 3rd SIR I shall consider the 2nd and 3rd SIRs together, as both reports were prepared by SWO, Ms Wong. During the investigation of the 2nd SIR, Ms Wong observed the physical interaction of A with the mother and the electronic access by the father separately. Overall, it was observed that A had close and harmonious relationship with both parties. The 2nd SIR also reveals that A was promoted to Primary 2 in September 2020. Enquiries with class teacher of A who said that due to the Covid-19 pandemic, the school was not able to conduct any physical classes, but only online classes since January 2020. Hence, the school was not able to carry out any examination to obtain a formal assessment on A's performance for the academic year of 2019-2020 (ie when A was in Primary 1) and/or her current performance. However, the class teacher had asked other teachers of A's performance in the academic year of 2019-2020. In gist, A experienced difficulty of varying degrees in catching up with the subjects of Chinese (in which traditional Chinese characters are used), English and Mathematics. That said, the class teacher also pointed out that A had shown slight improvement as at January 2020 (before physical classes stopped) if compared with her performance as at the beginning of Primary 1 in September 2019. As to A's social circle at school, the class teacher said that A was introvert and passive; she had only a few close friends at school. However, her conduct was excellent and won the conduct prize last year. The mother has kept regular contact with the school and followed-up with the study of A according to the advice of the school. The 3rd SIR was prepared merely to give the court an update of A's performance in and/adaption to the school, as physical classes resumed since 29 September 2020 to half day each day. The class teacher revealed that of the 3 major subjects, A failed in Chinese and Mathematics. Her English was average and she got 72 marks in the examination. The class teacher said that A continued to be quiet and passive in class. As to A's social life at school, the class teacher did not have the chance to observe and assess this, due to constraint of time because physical classes, though resumed, were conducted for half day only. Perhaps, the most prominent feature of the 2nd SIR is that it recorded a change in attitude of A. During the interview on 5 September 2020, A said she was angry with the father and did not want to live in Shenzhen; rather she wished

that S should come to live with her in Hong Kong. However, Ms Wong had reservation on this change in wishes of A. During the interview, Ms Wong observed that A was jolly and energetic, which was different from the passive and non-participation attitude described by the school teacher(s). Further, when A was asked about her school or why she did not want to stay in Shenzhen, she moved around and avoided any eye contact with Ms Wong. Ms Wong felt that A was feeling uneasy, and so she did not press on any more on these topics. Due to the above observation, Ms Wong was of the view that A had not revealed her true wishes about whether she wanted to go to live in Shenzhen. She was of the further view that A has not adapted to the school life and study in Hong Kong. She said orally that it was possible that the mother had exerted pressure or coached A which leads to the change of her attitude about relocating to Shenzhen. Upon investigation, Ms Wong recommended in the 2nd SIR that A should be allowed to relocate to Shenzhen to live with the father and S. Broadly, she gave following reasons: Despite A orally said that she was angry with the father, she actually did not exhibit any resistance or hatred to the father; It would be better for the siblings to live and grow up together; Although A needed to re-adapt to the education system in the PRC, it would be easy for her to so adapt because she had studied in the PRC before and was familiar with simplified Chinese characters. Besides, there would be the assistance of S and the father. Having considered all the evidence and submission, I have concern and thus am not able to embrace the recommendation of Ms Wong due to the following reasons. First, Ms Wong has not given sufficient consideration to the father's choosing not to communicate his material change of his home address and carer of the children to the mother. By this, I am not suggesting that she has a duty to inform the mother of the change; such duty lies squarely on the parent himself/herself to inform the other parent. However, Ms Wong plays down the father's failure to inform the mother of such material changes; she says that it was not the case that he on purpose did not tell the mother of the changes, but that he merely chose not to tell the mother. On this, I have 2 points of observation. It is unclear how Ms Wong could arrive at this conclusion. It seems to me that she had not asked the father if and if not why he did not tell the mother of such material changes, the answer(s) of which would at least engage such factors of the welfare checklist as the capability of the parent, or the practical difficulty which will substantially affect the child's right to maintain personal/direct contact with both parents on regular basis. Further, it has to be borne in mind that the father has all along been legally represented, but he did not even inform his own legal team of the changes. In my view, once it is acknowledged (even by the father himself when he was being cross-examined) that the said changes are material in the proposed caring plan of A and that the mother has the right to know these changes, it is not up to him to choose whether or not to inform the mother or the court. A positive duty is imposed on him to inform the mother and the court of the changes forthwith. Withholding and/or delay in providing such material information in the caring arrangement of the child is a vital factor in my consideration if to allow relocation across the border from Hong Kong to China. Second, the way Ms Wong handled the father's material change of living and caring arrangement is, with respect, not satisfactory. It was her oral evidence that she came to know from the father about such change as early as June 2020 and that the father was not

able to give a confirmed care plan by mid July 2020. Instead of reporting to the court at once to seek further directions, Ms Wong suggested to the father that an updated ISIR was required and his care plan needed to be reviewed. She did not report to the court until 3 September 2020, which was after the father had made arrangement to hire Madam Zhang in August 2020. Third, when asked about the communication between the parties, Ms Wong confirmed that she knew that the father did not want to communicate with the mother. She was asked if there would be a real risk that the father (and thus S and A) would lose contact with the mother if relocation of A was allowed, to which she replied that she would not make this assumption; she went further to say that she did not agree that there would be such risk. Thus, it was not part of her consideration that there was a real risk that the father might lose contact with the mother. While I appreciate that whether there is such a risk is a question of fact to be decided by this court, I have real concern as to how and why Ms Wong arrived at such a conclusion that there was no such risk, given the background and case history of this case. Importantly, she repeatedly confirmed in her oral evidence that the father did not want to communicate or have any contact with the mother. Fourth, during the home visit on 5 September 2020, Ms Wong noticed that A and the mother had a natural and harmonious relationship. In fact, A clung to the mother during the electronic access between S and the mother. Yet, when she talked to A alone, she merely investigated why A did not want to stay in Shenzhen, but did not ask if A wanted to stay with the mother. The combined effect of all of the above matters unfortunately gives the overall impression that the investigation and conclusion of Ms Wong is prone to be one-sided and not all-rounded enough. In such circumstances, I am bound to say that I have difficulty in accepting the recommendations made by Ms Wong. As the trial judge, I have the opportunity of observing the parties themselves while giving evidence (though the father's evidence was given via video conferencing facilities due to travel restriction for him to come to Hong Kong amidst the Covid-19 pandemic). I hold the overall impression that the mother is a more reserved and cool-headed lady. She gave her evidence in a very conscious and careful manner. She has spent most of her adult life overseas, and her experience as a foreign woman living in foreign countries on her own at different periods of time must have contributed to the shaping of this character. This may create a wrong impression of her that she is too reserved and conscious, and that she is not as gentle as one may expect a Japanese lady would be. But in my view, it would have gone too far for the father to suggest in his affirmations that she is not a caring mother and does not know how to take care of her children. The father, on the other hand, is more expressive and sometimes, in my view, too ready to show his mood. For example, at the very beginning of his oral evidence, he suddenly broke down and went into tears when he mentioned that during a recent electronic access, A cried because she did not know how to do her homework. He broke down again and repeatedly at least 3 more times during his oral evidence. The court had to adjourn at times to let him calm down. The evidence also shows that when the father was angry, he would make very derogatory comments about the mother as set out at REF _Ref72140840 \r \h * MERGEFORMAT . Some of the remarks were unnecessary and inappropriately made in the school's WeChat group of S. I do take note of the explanation offered by him for behaving like this; he said that he was

very angry ive remarks about the mother in the WeChat group of S s class. He conceded that his emotion at that time was not stable, though he denied that his emotion was out of control. He agreed that sending these WeChat messages about the mother to the parents of the classmates of S directly affected the interest of S. I regret to say that the father had put the outburst of his own emotion above the interest of S. I have real concern as to his ability to control his emotion. I do not have the slightest intention to criticize either party as to their character. What I am concerned with is whether their character might adversely affect the best interest of A and/or the bonding of A with the parent who is not granted her care and control at the end of the day. If the relocating party with care and control is prone to be sentimental and moody too easily and readily, and when parental relationship is still at stress, it is not moonshining to opine that it is more likely than not that there will be a real danger that the non-relocating or left-behind parent would face difficulty in access to A, or that A being affected and sandwiched between the parents. In either situation, it is not in the best interest of A. Lack of communication In my view, the commitment of the relocating parent (in this case, the father) to contact and/or communicate with the other parent (in this case, the mother) following the intended relocation is one of the vital factors for the consideration of the court in international relocation cases. Such commitment is to be scrutinised not by mere oral assertion but by his conduct in relation to contact in the past. In *Re L (Relocation: Shared Residence)* [2013] 1 FLR 777, the English Court refused the mother s application to relocate and said that: What I find she has not thought through accurately and honestly are her proposals for contact and their practicability. Her proposals changed during the hearing but were characterised as I have found by a maternal lack of commitment to contact, an impaired insight into the importance of F s relationship with his father, a need to control it, and the obstacles she has placed in the father s path of contact in the past. Over time I do not believe this mother would sustain the contact between F and his father and she would easily tire of it. In this case, the past conduct/attitude in communication demonstrated by the father is worrying. The father has said in his own affirmation(s) that he does not wish to communicate with the mother. He says that after cted the mother to arrange for access; he usually contacted the Maid via S to arrange to see A without the knowledge of the mother. He also told the SWOs, eg Ms Yiu of the 1st SIR, that he was unwilling to speak to the mother direct. Despite it is already pointed out by Ms Yiu in the 1st SIR that the parties do not have good communication (and thus joint custody is an ideal arrangement), he still does not feel comfortable to communicate with [the mother] directly and is of the view that communication should not be conducted directly between the parties as at February 2020. Ms Wong, SWO of the 2nd SIR, said in her oral evidence that the father did not want to contact/communicate with the mother and thus did not tell her about the change of residence of S and the engagement of Madam Zhang in taking care of S and A upon relocation. Besides, the court is not particularly impressed by the father s lack of interest in having a CDR. A CDR was fixed to take place in May 2020 but it did not go ahead as scheduled, due to the fact that the father could not come to Hong Kong during the Covid-19 pandemic. When I took seizure of this case on 2 September 2020, however, the father informed me through his counsel that he did not want to have a CDR but preferred to go

straight to trial. It was only due to the insistence of the court that a CDR in true sense was conducted (by way of video conferencing facilities) after which the parties were able to agree on access arrangement in 2 different scenarios outlined earlier in this judgment and to narrow down the issues to relocation and care arrangement. On his behalf, Ms Karen Wong submits that the WeChat records of the parties in April/May 2020 show that the father started contacting the mother directly on exchanging information about both daughters. Ms Wong points out that even the mother agreed in her oral evidence that there was some improvement on the part of the father. Counsel thus concludes that communication between the parties is possible and workable. I have read at great length the WeChat messages between the parties produced by the father, especially those between 19 and 24 May 2020. The parties attempted to communicate on the school(s) and study of the daughters. My overall view is that the father still spoke rather negatively towards the mother. He asked the mother to provide information about A, which the mother did. But when she asked for information about S, he gave convoluted replies to simple enquiries, sometimes even in a sarcastic tone. At times, he attempted to attribute this to the expression or grammar of the mother's Chinese language, which I cannot accept. Rather, I find the mother's messages written in Chinese concise and comprehensible. For example, the mother asked the father about what secondary school(s) that S had selected for admission, their order of preference and the reasons why. He listed out 4 secondary schools selected for S, but instead of telling the mother directly the reasons for choosing these schools, he first gave an incomplete list of reasons for choosing these schools, because it was not possible to find out from the website of the education bureau the reason(s) for so choosing. The father finally explained that the secondary schools chosen were either established for a long time, or close to his home. The mother then legitimately asked if the curriculum of the school(s) was considered. The father did not reply directly but instead gave the following unhelpful remarks (translated from Chinese), If you really care and show concern to the schooling of [S], you may read the updated messages from each parent in the chat group, or make telephone enquiry with the education bureau of Longgang District of Shenzhen City. For another example, the father said that he taught A to do her homework during his electronic access and found that A did not know how to do her homework. He asked the mother to provide to him the score sheets of the homework (the current work sheets were not yet marked by the school. The father then responded sarcastically like these (translated from Chinese), Yes. Those who tell lies would have bad luck. You are not willing to share [the work sheets with marks] or you have not collected them? For a further example, in the morning of 23 May 2020, the mother shared with the father that A was attending tutorial classes twice a week in their neighbour and the teacher(s) said that she studied hard. She was also making friends with kids in the neighbourhood. She asked the father not to worry about A. She then asked the father to tell her about the learning and tutorial classes of S, as she explained that the school's WeChat group could not show the learning details and other privately arranged tutorial classes of S. Instead of providing the information of S to the mother, the father replied, rather bluntly and negatively, at 8.59 am of the same date stating that if she really cared and had concern with S, why she did not call up the class teacher of S.

He then went on to say that he would be very willing to provide and share the excellent academic performance result of elder daughter (ie S). When the mother pressed on for information, he then said that he had changed to a new mobile phone and thus needed to locate the information. That night at around 10.12 pm and after A had gone to sleep, the mother located and provided some work sheets of A (which was requested by the father) to him. After that, she asked again for information about S and queried why the father did not provide the same to her, whereas she had given a lot of A's information to him. She remarked that she was only asking for information about those outside-school tutorial/learning classes already arranged by him for S, and that he should be able to provide such information to her even without his mobile phone records. She further remarked that the father had deleted some of the WeChat messages sent out by him to her, and the content of the WeChat messages made u;m) [gjk ("] any specific information about the information that the mother had been requesting for, ie the learning/tutorial classes that were already arranged by him for S. From the evidence before me, it seems that he provided S's school report card to the mother only on 17 June 2020 through a letter of his solicitors. It does not occur to me that he has ever answered the mother's enquiries about the learning and tutorial classes arranged for S. There were further worrying messages between the parties after May 2020. On 1 August 2020, the mother provided him with a copy of A's academic report through WeChat message, and asked him to provide S's academic report and result of secondary school selection. The mother's message was concise and simple. However, for unknown reason(s), the father replied, in my view, in a rather hostile tone, saying that he did not know who S is, nor does he know who A is. He only knew the surname of his daughter is and their Chinese names were LRY and LZY. He told the mother to use the daughters Chinese names in future messages. Due to the matters set out above, I am unable to fully embrace Ms Karen Wong's submission on this issue. I am unable to believe what the father proffered in his oral evidence that he would communicate and work with the mother upon A's relocation to Shenzhen. I have a real and serious doubt if he will communicate, provide and/or share out the information of A with the mother if relocation is allowed, which in turn will definitely affect A's access with the mother and/or A's bonding with the mother, which is not in the interest of A (See: Re L (supra)). On the other hand, the father does not impress me at all by using S in his communication with the mother or in this litigation. I shall cite two examples as follows. On or about 11 May 2019, S messaged the mother and said that she and the father would come over to Hong Kong to meet A, but requested that the Maid should not be present. This was rejected by the mother. The father said this was yet another example of her obstruction to access. However, what was not yet known to the mother at the time when she rejected the aforesaid suggestion of S to see A with the father without the presence of her maid was that one day before the request was made (ie on 10 May 2019), the father had actually filed a claim in the PRC Court for custody of A be granted to him. He provided untrue information to the PRC Court that A's address was in the PRC. Although I was told that this claim was later withdrawn by the father, the incident reflects very badly on him and shows that in order to get what he wanted, he was prepared to make use of S and/or provide untrue information to the PRC Courts. In passing,

I would add that looking at the matters in its totality, I do not agree that the mother should be criticized in rejecting the father's request to bring A to Shenzhen for access on 30 April or on 11 May 2019. The video excerpt of the 30/4/2019 Incident provided by the father is already considered and I do not think it helps to advance his case any further. By his 3rd affirmation, the father provided a Chinese memo which allegedly recorded what S told him of her unhappy life and lack of care by the mother during the period when the mother took both daughters to stay in Hong Kong in 2017. He said the content of the Chinese memo was provided by S, and typed out by him. He explained that he asked S for the information about their life with the mother in Hong Kong only when he commenced litigation about A in Hong Kong. What S told him showed that the mother did not care about the daughters' feeling and needs at all. I have grave concern if the content of this Chinese memo was provided by S. It defies logic that the father, allegedly the main carer and loving father of the children, would sit and wait for more than a year before he enquired with S of what had happened in Hong Kong, in particular it is his case that the mother addicted the daughters to Hong Kong but she is a mother who does not know how to take care of and guide the children. It is thus with much regrets that the father would involve S in this way in this litigation against the mother. The court is worried that the father may involve A inappropriately against the mother if relocation of A is allowed and her care and control is granted to him. Ascertainable wish of A In the 1st SIR, A expressed that she wanted to live in Shenzhen with the father and S, and that she missed them very much. However, about a year later in the 2nd SIR, she changed to say that she wanted S to come to Hong Kong to live with the mother and her. She told in the 2nd SWO that she was angry with the father as he hit the mother, and that there was flooding in Shenzhen. In his 4th affirmation, the father said during the time when A resided in Shenzhen, she was still very young (about 3 to 4 years old or so), and it was dubious that she could recall this alleged incident of the father hitting the mother. It was also strange that she did not mention this alleged incident when the 1st SIR was prepared. Besides, she said that she heard the sound of hitting only but did not see it. If so, how she could know that it was the father hitting the mother, but not the other way round. The father went on to point out that there was no flooding incident in Shenzhen. He thus concluded that the mother either gave pressure or coached A in saying all these. His counsel, Ms Wong, submits that the father's aforesaid view is reinforced by the oral evidence of Ms Wong, the SWO (See: REF _Ref74748365 \r \h * MERGEFORMAT above). Thus, counsel says that the court should place no weight on A's view stated in the 2nd SIR, but should give due weight to her view as reflected in the 1st SIR. Upon due consideration to all evidence, the court has the following observation/ view on the wishes of A and the submission made by the parties. First, although the father attempted to argue that A has a closer and more harmonious relationship with him than that with the mother, I am of the view (and this is also the observation of both SWOs) that A is close to both parties, and both parent love A. This must form the backdrop of the analysis in this judgment. Second, I tend to give little weight to the father's argument of A being too young to recall whether he had physically assaulted the mother. It is very telling of what the father's brother had written to the father in one of the WeChat messages of their family group: Big brother, a good man

should not resort to force (}Y7u N Nr RKb) trange for A to comment about Shenzhen having flooding and thus she does not want to live there. However, Ms Wong, the SWO, said in oral evidence that she did not press on to ask why A thought or said so, in order not to give her pressure. That being the case, I really cannot see her basis of commenting that it was possible that the mother had exerted pressure or coached A. Further, I have already given my view on the recommendation and opinion of Ms Wong, the SWO, at REF _Ref72240289 \r \h * MERGEFORMAT to REF _Ref72240307 \r \h * MERGEFORMAT of this judgment, which I shall not repeat here. I would add that if the mother did really exert her pressure or coach A, she could have done so earlier when the 1st SIR was called for and prepared. Fourth, although A said to Ms Wong, the SWO, on 5 September 2020 that she was mad about the father and did not want to live in Shenzhen, A indicated to the father during the electronic access of 8 September and 22 September 2020 that she missed him and asked when he would come to Hong Kong to see her. This does not sit well with the allegation that the mother had exerted pressure or coached A. In fact, Ms Wong, the SWO, observed during her investigation that A told that she did not resist having physical access with the father and recalled the happy moment when she and S had pillow war during previous access in the hotel(s) of Hong Kong. Fifth, there is another objective fact which should not be overlooked. The father has not had any physical access to A since January/February 2020, due to travel restriction put in place during Covid-19 pandemic. For about 3 months between early January to March/April 2020, the father sent numerous messages to A requesting to have electronic video calls with her, but A refused to take the video calls. In some of the messages sent by the father to A, he suggested and asked A if she was mad about him of not coming to see her in Hong Kong. In my view, the father would not have made such suggestion to A, had he not believed that this might be a reason for her declining to take the electronic video calls from him. Sixth, although the father asked in his WeChat messages with A if she was mad about him for not coming to Hong Kong to see her, via-a-vis the mother, he gave a totally different reason for A s refusing to speak to him. He accused the mother of continuously obstructive to his electronic access to A. The mother, however, provided a different explanation. She said that A was reluctant to have electronic access with the father on 28 January 2020 and declined it. Subsequently, S called at the mother s mobile phone to reach A, but then A heard over the phone that the father lost his temper and shouted loudly that the mother had refused the phone call deliberately and that he would ask the mother to pay \$100,000 as punishment for this. The mother said that this scared A who became even more reluctant to speak with the father. In his reply letter prepared by his solicitors, the father clarified that when the mother picked up S s call on that day, the father told the mother that even a sum of \$100,000 penalty will not be able to compensate the loss of precious time he could spend with A . He denied ever asking the mother to pay a sum of \$100,000 as punishment. What should be noted is that in that reply letter, the father did not deny that he had lost his temper and that A was scared on 28 January 2020. When all of the above matters are considered in the round, I am not persuaded that the mother has coached or given pressure on A on her view of relocating to Shenzhen. I think it is more likely than not that A was mad with the father for not coming to see her for such long time, or that she was scared

by his loss of temper on 28 January 2020. It is thus not moonshine to suggest that this may cause her to throw tantrum at the father and thus express a different view on the relocation question as reflected in the 2nd SIR. Overall, I accept that A is all along equally close to both parents. Due to the matters set out above and in all fairness to the father, I tend not to place much weight on the view expressed by A in the 2nd SIR. What about the view of A as reflected in the 1st SIR that she longed to live with the father and S in Shenzhen as she missed them and the classmates of Shenzhen very much? I have ruled that A is equally close to both parties, as well as to S. It is thus very natural that she would want to stay with the father and S more and would miss them during the time when she is unable to see them. It may very well be equally true that A would feel the same for the mother during the time when she is unable to see her. Further, it is pertinent to note that during the investigation period of the 1st SIR, A had just started primary 1 for a month or so. She was still in the stage of trying to adapt to the challenge faced by all kindergarten students entering into primary school. Not only did she have to attend longer school hours, but also had to face a whole new spectrum of subjects and lessons. Under such circumstances, it would not surprise this court that A expressed to Ms Yiu, the SWO, that she missed the school and friends in Shenzhen. There and then, she was studying K1 and K2 in Shenzhen, and the study pressure could not possibly be great in the kindergarten. Above all, it seems clear to me that A's wishes to remain in Hong Kong under the status quo scenario was not explored in the 1st SIR, and thus Ms Yiu told in her oral evidence that she was unable to give any recommendation on the status quo scenario. On the other hand, it is trite to say that the older the child is, the more weight the court should place on the child's view. In *YSYM v LKB*, CAMP 24/2020, [2020] HKCA 586, the children were 13 and 12 respectively at the time of the trial. They had expressed their strong, rational and articulated wishes to move to Canada for education with their mother (who would work in Canada on working visa with a view to apply for permanent residency in Canada). The Family Court refused the mother's application for removal. On appeal by the mother, the Court of Appeal allowed the appeal and the removal application, and was of the view that the wishes of the children (who were then over 10 years old) to study overseas in Canada should not have been discounted. Kwan VP in her judgment cited with approval what Rix LJ said at 57 and 58 in *Re R (Residence Order)* [2010] 1 FLR 509,

- [57] The importance of listening to a child once he or she has reached the age of 10 has been stressed in the authorities. Thus in *Re L (A Child) (Contact: Domestic Violence)* [2001] Fam 260, [2001] 2 WLR 339, [2000] 2 FLR 334 at 271-271, 347 and 340 respectively, Dame Elizabeth Butler-Sloss P sitting in this court cited with approval *Contact and Domestic Violence The Experts Court Report* [2000] Fam Law 615 at 624 on the subject of a child's wishes: while this needs to be assessed within the whole context of such wishes, the older the child the more seriously they should be viewed and the more insulting and discrediting to the child to have them ignored. As a rough rule we would see these as needing to be taken account of at any age; above 10 we see these as carrying considerable weight with 6-10 as an intermediate stage and at under 6 as often indistinguishable in many ways from the wishes of the main

carer (assuming normal development). In domestic violence, where the child has memories of that violence we would see their wishes as warranting much more weight than in situations where no real reason for the child's resistance appears to exist. See also *Re D (Abduction: Rights of Custody)* [2006] UKHL 51, [2007] 1 AC 619, [2006] 3 WLR 989, [2007] 1 FLR 961 per Baroness Hale at para [57]: 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.

- [58] I respectfully conclude that the judge has erred in not giving any real effect to the child's wishes expressed in this case and thoughtful child close to the age of 10, who expressed his wishes rationally and, in my judgment, with considerable emotional understanding. Moreover, those wishes, in part natural given his love for his mother and his successful upbringing to date and therefore to be given all the more attention rather than discounted ... I do not understand why these well-evidenced concerns were overborne by a call for greater sophistication: in reality this was little more than a way to reinforce the judge's conclusion that he would not disturb the boy settled status. (my emphasis added) A was born in February 2013. When the 1st SIR was prepared, she was about 6.5 years old. At the time of the 2nd SIR, she was about 7.5 years old. She has not yet reached the age of 10, which age, according to the above authority, the court should give considerable weight to the view of a child. In conclusion, I take the view that A is still of tender age. For all the matters set out above, I will not place too much weight on the view expressed by A in the 1st SIR or the 2nd SIR. I will proceed on the basis that A is equally close to both parties and have good relationship with each of them. Siblings unity The father says that if he has A's care and control and that he is allowed to bring A back to China, A can live with S who can assist A in school works. They can grow up together. It is imperative to note that S and A did not historically grow up together. As recorded in the 1st SIR, on the father's own decision, he arranged A to be raised by his parents in Maoming after she was born until she reached 3 years old (ie from 2013 to 2016), while S lived with the parties in Shenzhen. After the PRC Order and on 31 July 2018, A moved to Hong Kong with the mother. Thus, it is fair to say that the siblings lived together for a short period of about 2.5 years only. However, the physical distance between the siblings has not created any negative effect on their bonding and close relationship, which, in my view, takes away any worry that sibling relationship may be adversely affected if A is to remain in Hong Kong under the care of the mother. Further, it is my view that modern smart phones or electronic devices, which this younger generation is so accustomed to, can provide a good avenue for the bonding and communication of the siblings. For example, during the pandemic of Covid-19 when travel restrictions are imposed, the sisters have regular contact via electronic devices. I have not lost sight of the comment of both SWOs that physical and daily interaction between the sisters are very important, which cannot be replaced by electronic communication. However, there is the consideration of the disparity of age between S and A. S will be 14 years old by this September. She is now studying Form 1. She is almost 6 years older than A. She has good academic results which means that she will more likely than not spend a substantial amount

of time in her study. In fact, this has already happened even before A is relocated to Shenzhen. For example, during the access session on 5 September 2020, A requested S to play with her but S was busy doing her homework and thus had not acceded to the request. The father's own affirmation evidence also says that the school work or study of S is getting heavier, and that she needs to attend tutorial classes not only on weekdays but also during holidays. There was one occasion that S got so much homework to do that she had no time to teach A. Besides, S is also entering her adolescence which means that she will be more independent and busy in her social life. In fact, as recorded in the 2nd SIR, S seldom has Sunday electronic access with the mother, due to her busy social diary on Sundays. It is noted by Ms Wong when preparing the 2nd SIR that there were occasions when S did not have the time to participate in the video calls with A. On the other hand, A is only 8 years old and studying Primary 2. She would not be studying together with S in the same school even if A was to relocate to Shenzhen. Overall, I view it with skeptical eyes that S is really able to spend a lot of time with A. In the result, I tend not to place too much weight on this factor of sibling unity.

Study and adaptation problem of A It is the submission of the father that the study problem and the interpersonal development of A at school is worrying. He urges this court to consider this in the light of the physical, emotional and educational needs of A. In the overall circumstances of this case, I reject any suggestion that a parent has a better edge over the parent in providing for the physical and emotional needs of A. The issue here is related to the educational needs of A. The father vehemently expresses that despite staying in Hong Kong for more than 2 years, A is still unable to communicate in Cantonese smoothly, nor to read traditional Chinese characters. She thus has immense difficulty in understanding and catching up with her study in Hong Kong. She cannot be assisted by the mother or the Maid, since both of them do not speak Cantonese. On the other hand, the mother averred that A enjoyed the school life in Hong Kong very much and has made many friends. Although the amount of her homework has increased, she has settled well into Primary 2. She does not feel stressful about school work, and is doing well and is adapted well in Hong Kong. Ms Karen Wong submits that the mother's portrayal of A's studies and school life in Hong Kong are her allegations which are litigation driven and go against all the objective evidence. Counsel says that the father's worries were echoed by the observation of SWOs: In the 1st SIR, it is recorded that when school term began, the teacher observed that A's foundation in Chinese, English and Mathematics was weak. This caused her inattentive during classes and often could not understand the teaching of the teachers; In the 2nd SIR, the teacher of the Chinese subject revealed that A was weaker in writing and recognizing traditional Chinese characters, causing her unable to catch up with the less xex[-N a(uL the 3rd SIR, it is revealed that A failed in recent Mathematics and Chinese examinations. She was introvert and was always quiet with few words at school. In her oral evidence, Ms Wong, the SWO who prepared the 2nd and 3rd SIRs, said that she was worried about A, as she behaved differently at school (being introvert and always quiet with few words) and during her interview with A on 5 September 2020 (being active, energetic and talkative). She guessed that A was quiet at school because she could not hear C a0R) servation/comment. First, it is imperative to point out that the observation of Ms Wong about A's character differs

from that of the father. Ms Wong expresses her worries that A is introvert in school due to her adaption and language problem. However, the father observes in his 3rd affirmation that, [A] is not a child good at expressing herself, Hence, it cannot be conclusively said that it is due to the adaptation and/or language issue(s), but not her own character, that A is introvert at school. Second, I shall reiterate what I have said at REF _Ref74754400 \r \h * MERGEFORMAT of this judgment about the challenge faced by children entering primary school from kindergarten. Notably, the teachers comments received by A in kindergarten K3 (ie the 1st years she came to Hong Kong after the PRC Order) were generally positive, which should not have been the case if A had not adapted to studying in Hong Kong. Third, schools were closed or physical lessons were not possible from January to mid-September 2020 due to Covid-19 pandemic, making it impossible for A to have sufficient opportunity to interact with other classmates and/or to get more accustomed to the primary school life. According to A s class teacher, even after physical lessons are resumed since 20 September 2020, the restriction to half-day schooling continues to limit the time for A to interact with the classmates. Fourth, although A s performance in the Chinese and Mathematics subjects in the primary school is not satisfactory, 0*gi a 0, yOUL ss teacher of A told in the 2nd SIR that A displayed some slight improvement if compared with her performance at the beginning of primary 1. Fifth, it is not disputed that the mother has kept contact with the primary school of A for advice or assistance. Further, she has arranged tutorial classes for A. Although A struggled a bit at first in learning traditional Chinese characters, I accept that she has shown improvement in these tutorial classes. I urge the mother to keep these arrangements up, and should review from time to time if additional or other tutorial classes are required for the benefit of A. On the other hand, the father, as admitted by him in his oral evidence, is not highly educated; he studied up to junior high school only. According to him, he will rely on S to teach A from time to time. I doubt the feasibility and/or sustainability of this arrangement, given that S is now in secondary school and is very busy in her school work and social life. Sixth, A will need to re-adapt to the education system in China and will have to face a more difficult Chinese and Mathematics curriculum if she is to relocate to Shenzhen. This is confirmed by the father and reflected in the 1st ISIR (translated from Chinese): 39. [The father] said that since the curriculum and study environment of Hong Kong and the Mainland is different, [he] would arrange A to study in the previous kindergarten that she had studied or the kindergarten downstairs near their home. After she becomes adapted, she may then study in the same primary school of S. Since the Chinese and Mathematics subjects in the Mainland are more difficult than those of Hong Kong, he would arrange A to attend tutorial classes if necessary. He believes that it will not be difficult for A to catch up with the curriculum in the Mainland. (my emphasis added) At one stage in court while giving his evidence, the father attempted to backtrack from this by saying that he was comparing the curriculum between the 2nd and 3rd tier cities in the Mainland. I do not accept these evidence, since it is in stark contradiction to what he told in the 1st ISIR. The picture thus becomes clear. Even if (just assuming) A has adaptation problem in her study in Hong Kong, she will have to, on relocation to Shenzhen, face similar, if not bigger, adaptation problem to the education and curriculum in the PRC, especially in the subjects of

Chinses and Mathematics, which will affect her educational needs. Under such circumstances, the court cannot turn a blind eye to the likely negative effect on A of the change of circumstances. Is the father's application genuine? Ms Karen Wong for the father lists out a number of reasons for his relocation application in her closing submission, such as A not feeling happy in Hong Kong and wishing to return to Shenzhen; A facing enormous difficulty in her studies; and the intimate relationship between siblings. However, in my view, one must go back to the supporting affirmations of the father, especially his 1st and 2nd affirmations said to be prepared in support of his originating summons dated 24 June 2019, when considering the basis of his relocation application. In my further view, the major basis for his relocation application boil down to the following points: Despite his repeated request to bring A back to Shenzhen for access, the mother did not reply to him. On 30 April 2019, he made the request again and suggested to take A back to Shenzhen to meet the paternal grandfather during the Labour Day long holidays. The mother bluntly refused; He was worried that the mother would move to another unknown address in Hong Kong or return to live in Japan, without his knowledge. This was because the mother had taken A to Japan in May 2019 without telling him. She did not discuss with him the primary school arrangement of A and whether she would continue to study in Hong Kong. Further, the tenancy of her current residence would expire in July; The mother does not know how to take care of the children. She is too strict and cold. She does not care about the homework of the children. When at home, she only plays on her smart phone or watch television; The closest family members of A are all in Shenzhen. A has repeatedly expressed her wish to spend more time with S, but S is not able to come to Hong Kong to meet A constantly because S is busy with her study. I shall discuss the above points one after another.

Obstruction/difficulty in access I can say from the outset that I do not accept that the father has difficulty in access to A in Hong Kong. I only need to refer to the access table compiled by the father himself. From 31 July 2018 to 22 June 2019 (ie immediately before he took out his application for relocation), he and/or his family came to Hong Kong to have access to A on 24 occasions. He was able to have meals with A, attended her school functions or her extra-curricular arts classes, albeit it the Maid was present all the times. The mother frankly admits that she either did not respond to or rejected the father's request to bring A to Shenzhen for access after the PRC Order. She explains that she was afraid that the father would not return A to her, like what he had done in January 2018. I accept this explanation of the mother. Notably, the father, now speaking with hindsight, also agrees that he could have handled the matter in a better way. Hence, I do not accept the father has a genuine case on difficulty in access to A in respect of the period between August 2018 and mid-July 2019. Subsequent to the father's 1st and 2nd affirmation, he says that there is further development of obstruction to access by the mother, namely: failed electronic access from early January to mid-April 2020; and continued pressure from the mother on A after mid-April 2020. I have already described and analysed the allegation of lack of electronic access of the father to A from January to April 2020 (See: REF _Ref74917858 \r \h * MERGEFORMAT REF _Ref74917869 \r \h * MERGEFORMAT). I shall not repeat myself here. I do not accept that the lack of electronic access from January to April 2020 was caused by the mother. I now

turn to the father's allegation that the mother continues to exert pressure on A since April 2020. He says that the mother has installed CCTV at home to monitor the access of the father to A and the father-and-daughter conversation therein. In his 4th affirmation, he adds that whenever the mother is around, A is unwilling to show her love to the father during the electronic access. For example, on 10 March and 30 April 2021, he had electronic access to A from about 5 pm. When it was close to 6 pm, there came the sound of door-opening and A immediately came close to the iPad and said softly to the father that she had to go. He then asked A if the mother returned, to which A answered softly in the positive. She then switched off the iPad. Seeing the enormous pressure that A was facing, the father stopped electronic access on Sundays; he resumed Sunday electronic access only since mid-September 2020 when he found out that A was facing increasing pressure about her homework. I have doubt as to what the father described in the aforesaid 4th affirmation. His allegation does not sit well with the WeChat records produced by he himself showing that A had refused to take any of his WeChat video calls between January to March 2020. Further, in those WeChat records disclosed by him, there was no chat records or video call which took place on 10 March 2020. On the other hand, I note that the mother did not deny that CCTV has been installed at home, but explained that no sound will be recorded by the CCTV. She denied imposing any pressure on A in communicating with the father. She further pointed out that the father seemed anxious about A's homework only when there was a forthcoming court hearing or an updated SIR/ISIR that needed to be prepared. In my view, the mother has not explained why CCTV needs to be installed. It cannot possibly be for the purpose of monitoring the Maid, because according to her, she and the Maid are now of good and trustful working relationship. That being the case, it is dubious why she has to install the CCTV at home. I have some concern that with CCTV installed, A may feel uneasy communicating with the father during electronic access. I therefore urge the mother to make arrangement that either the CCTV be removed, or that A be allowed to talk to the father in her own bedroom not under the lens of the CCTV. However, on the whole, I do not accept that the father has genuine case on difficulty in access to A. Removal to another address or to Japan without his knowledge. The mother conceded in her oral evidence under cross examination that it was a planned move of her to leave China and take the children to Hong Kong when the father was away on business trip in 2017. I believe the father was at pain trying to locate the daughters and was worried that the mother had taken them back to Japan. Given that background, I can understand his worry at the time of his application that the mother might leave with A to a place unknown to him. But it seems to me that he did not openly discuss such concern or his worry with the mother. This again shows that there was a real and serious breakdown of communication between the parties there and then. On his behalf, Ms Karen Wong argues that the mother and A are living in Hong Kong on the strength of the working visa of the mother, which may be revoked when she loses her job. But the mother has provided a letter from her current employer (who is also her friend) showing that her job in Hong Kong is secured. I have no reason not to believe such evidence. The mother adds that she worked in Hong Kong for 2 years previously, and if these 2 years are counted, she would be able to get her permanent residency by 2022; and if not, by 2024.

In either situation, I do accept that the mother does not have the intention to leave Hong Kong in the near future. It is pertinent to note that she has been living overseas for most of her working life. And Hong Kong is close to Shenzhen which has the convenience of the mother seeing S and/or for A to meet S. Caring ability of the mother The father insists on putting forward his case of criticizing the mother caring ability. Not only does he say that she relies on the Maid to take care of A on a daily basis, but he also argues that the mother spends half of her time after work on her laptop or smart phone, playing mobile games or watching other video clips. He provides a video clip of the mother scolding at S to support his allegation that the mother has a bad relationship with S and that both daughters are afraid of her. I will dismiss the above argument for the following reasons. First, there is nothing objectionable for a working mother to rely on her maid to take care of a child when she is at work. I do not think the father would welcome the idea of the mother s quitting her job to take care of A and then seek child maintenance from him. Second, the mother has been the carer of A since A returned to live in Shenzhen from Maoming when she turned 3 (save and except the time when the father kept A in Shenzhen in February to July 2018). Notably, it is the father s own affirmation evidence that between 2009 and 2017, he did not often stay at home and often had business trips to different places of China. Further, he told Ms Yiu, SWO of the 1st SIR, that he went for business trips at times but assisted in taking care of the daughters by combing their hair or bathing them. Third, it lacks logic that the father will consent to let A live with the mother under the PRC Order, if he has real complaint or concern as to her caring ability. Fourth, it is not the mother s evidence that she spent half of her time after work on laptop or her smart phone. The correct records of her evidence is that she was cross-examined if she played on her mobile phone after work, to which she replied that she was half-half agreed with this question. But the point is: in today s world, who does not spend time on his/her smart phone after work, such as playing electronic games, watching video clips etc? Importantly, neither SWOs has expressed any concern about the caring ability of the mother. Fifth, the video clip provided by the father shows that the mother was speaking very loudly to S in Japanese. Since no certified transcript is provided, the court is not sure if the mother was scolding at S, and if so why. But as the father admits, S was still very young at the time of the video clip. I doubt how much probative value this video clip can have in proving that the mother is handicapped in providing care to A. After all, she has been A s main carer after A returned from Maoming to Shenzhen when she was about 3 years old. I thus reject the father s case on lack of caring ability of the mother. Shenzhen has her closest family The issue of sibling unity and the wish of A are already discussed earlier in this judgment, and I shall not repeat myself. What I wish to add is that A has been living in Hong Kong non-stop since July 2018 for almost 3 years. If one is to take into account those months of September 2017 to January 2018 that A lived in Hong Kong with the mother and S, she has lived in Hong Kong for almost 3.5 years. In all respects, she is habitually resident in Hong Kong. Is the father s application realistic? The father says that once relocated, A would live with him and S in the new flat purchased by him, which is located in the same development of the former matrimonial home. He would arrange A to study in the same primary school which S had graduated. It cannot be

disputed that the mother should be familiar with that school and the area where the former matrimonial home was situated. The 1st and 2nd ISIRs have also provided sufficient information on the living environment of and the school suggested by the father. I accept that these arrangements should be in good order if relocation is allowed. The mother raises the concern about the financial ability of the father who says that he is earning roughly RMB150,000 per month from his cosmetics and beauty business. She provides some online searches from a search engine of the father's companies and suggests that his companies face litigation and/or business risk in China. Such evidence is duly considered but I would accept the father's explanation to these online searches. The fact that he is able to buy 2 properties in Shenzhen within a short period of time after the divorce tends to support that his financial means are healthy. In my view, the only issues to consider under this topic are whether the father's working hours really allow him to be a hands-on father and the role or ability of Madam Zhang. On the whole, I believe the father's evidence that he is now working flexible hours and thus be able to take care of the daughters himself. He is able to answer my questions promptly and without hesitation on the division of labour and the names of his staff in each major areas of work who are now helping him out in his company. I also believe that he is a hands-on father to S. During the investigation of the 2nd ISIR, the international social welfare officer observed that S called the father for arrangement of her afternoon tutorial classes, and that he made constant and direct contact with the tutorial classes. Although it is not satisfactory that Madam Zhang is not called to give evidence in this trial, I do not consider this to be detrimental to the father's caring plan. I accept that Madam Zhang will be an assisting carer only, with the father himself as the main carer of the daughters if relocation of A is allowed. In my view, there is nothing objectionable that a working parent is assisted by a third party, be it a relative or a maid. That will not make the working parent a lesser hands-on parent. The mother, while at work, is assisted by her own maid. Appraisal of the mother's opposition A summary of the mother's grounds of opposition are set out at REF _Ref73194022 \r \h * MERGEFORMAT , and they have been sufficiently dealt with under different headings in the earlier parts of this judgment. Upon considering background and all evidence, I agree that if relocation to Shenzhen is allowed, the lack of communication between the parties would create a real risk that the father would not provide and/or share out the information of A would affect the access to A by the mother and/or the mother-and-daughter bonding. I accept this is a genuine and real concern of the mother. I do not think she has any ulterior motives in opposing this relocation application on this ground. Detriment to the mother & her future relationship with A During cross-examination of the father, Mr Li, counsel for the mother, suggested that the father was dismissive of the Japanese culture. On the whole, I am not inclined to so conclude. The father has explained how and why he decided on the Chinese names of S and A, which bear correlation to the country name and the symbolic flower of Japan. However, I have ruled that due to the parties character and communication problem, I have real and serious concern that if A is allowed to be relocated to Shenzhen, the father would not communicate or provide or share out A's information with the mother, and that the access of the mother to A and/or her bonding with A would be affected. Impact of refusal on the father Ms Karen

Wong for the father submits that if the relocation of A is not allowed, there is a real possibility that he would no longer be able to keep contact with A, because she has a history of obstructive to his access to A since the PRC Order. The issue on the alleged obstruction by the mother to the access is already discussed above. I do not accept that a case on obstruction on access has been made out by the father. I thus see minimal, if any, impact of refusal on the father. The enforcement issue The concern of this court in this case is if, and if so how, the order of the Hong Kong courts, including the undertakings given by the parties, can be enforced in the PRC. By the consent of the parties, they have obtained 3 reports on Chinese law prepared by the single joint expert. In summary, the single joint expert gives the following opinion: On 20 June 2017, the Supreme People's Court of PRC issued the Arrangement of the Supreme People's Court and the Government of the Hong Kong Special Administrative Region on Reciprocal and Enforcement of Civil Judgment in Matrimonial and Family Cases by the Courts of the Mainland and of the Hong Kong Special Administrative Region (egQ0W /nyr%R ?e@S N\$Rzl relocation; However, the parties may issue separate proceedings in the PRC and conclude a mutual agreement on the custody and specific access within that proceedings. Where the PRC judge accepts that the agreement is legitimate and feasible under the Chinese law, he/she will endorse the agreement by issuing a mediation certificate which has the same effect in validity and enforcement of a court judgment; Anyone who refuses to fulfill the judgment of PRC court on visitation of a child may be detained or fined; On the issue of legitimacy, nothing contained in proposed order and/or undertakings as agreed by the parties in the 2 different scenarios of (i) A to relocate to Shenzhen, or (ii) A to remain in Hong Kong break any mandatory provisions in the Chinese laws; On the issue of feasibility, it depends on individual PRC judge's view and his/her discretionary power. Thus, the single joint expert is not able to give a conclusive opinion on this point; The single joint expert adds that the parties may enter into mutual agreement themselves, including their agreed undertakings. However, such mutual agreement cannot be equated as a court judgment or mediation certificate, which means that the mutual agreement cannot be directly by the PRC court. In view of the above opinion by the single joint expert, I am satisfied that the proposed order and/or undertakings as agreed by the parties in the said 2 scenarios will be able to pass the test of legitimacy under the PRC law. However, I am not able to agree with Ms Wong's submission that the feasibility test will for sure be satisfied. The single joint expert expressly explained the issue on feasibility of the 3rd expert report as follows: 8. To be more elaborated, if the judge of PRC Court dealing with the case doesn't believe any item or items in the agreement including undertakings can be enforced by the Court in case of any failure to fulfilled actively by the party, the item or items will not be regarded as feasible and may not be put in the court judgement or mediation certificate. Ms Wong for the father refers me to the case of W,Y v L, KP, FCMC 4636 of 2015, date of judgement 5/7/2016, where HHJ Melloy granted the application of the petitioner mother to relocate the child to Shanghai. However, it is trite to say that each case has to be decided on its own facts. Further, it is noted that the father (being the non-relocating parent) in W,Y v L, KP (supra) is not the primary carer of the child and that he did not seek a variation of care and control to be granted to him; he asked for shared care only.

In passing, the learnt judge commented in her judgment that it was her understanding (stood to be corrected) that it would be very difficult if not impossible to obtain a mirror order in the PRC. After this trial, it is noted by this court that the Legislative Council of Hong Kong has passed the long-awaited Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance on 5 May 2021. Its effective date is yet to be announced. However, the said ordinance deals with the enforcement of Mainland judgments in family cases in Hong Kong, and thus is of no assistance to solve the uncertainty on the feasibility test of a Hong Kong Court Order in the PRC. In conclusion, there is a genuine and real chance that the orders given and/or undertakings accepted by the Hong Kong court will not be recognized by the PRC court, in which event the best interest of A will not be protected and/or safeguarded. The best interest of A Upon considering and balancing all the factors and evidence set out above, I am of the view that it is in the best interest of A to continue to stay in Hong Kong, where she has been habitually resident at least since July 2018, and under the continued care of the mother. This is also the best way to retain the jurisdiction or some form of control of this court over A, as well as the parties, in protection of A in the post-judgment period, especially in the unfortunate event that something goes wrong. Joint custody and arrangement in respect of S Given the communication problem of the parties, I have given a great deal of thought if I should endorse their consent to have joint custody of A. My conclusion is that although there is a real issue of communication problem between the parties, orders on children are always said to be aspirational and since A will remain in Hong Kong which means that this court will retain some form of control over this matter, I think it is worthwhile to let the parties have a go on joint custody. Both parties indicate to the court that they have also reached agreement in respect of S, in that they agree joint custody of S be granted and that S will be subject to the same access arrangement as A. They invite the court to make an order to this effect. Since the mother has withdrawn her application about relocating S to Hong Kong, couple with the fact that S is a PRC citizen not living in Hong Kong and already subject to the PRC Order, it is in my view inappropriate for the Family Court of Hong Kong to make any Order concerning S. That said, however, there is nothing to prevent the parties to seek an Order from the PRC court of the latest agreed arrangement concerning S, which will be a good starting point for co-operation of the parties way forward.

Conclusion

For all the matters aforesaid, I dismiss the relocation application of the father. I will make an order that the parties by granted joint custody of A, with care and control to the mother. The parties have agreed on the father s access to A under the status quo scenario. I shall make an order on access and/or accept the undertaking of the respective parties as per their agreement, save and except that: any access (including staying access) in Shenzhen or Maoming shall commence only after the Arrangement has come into effect and the order under this judgment is duly registered with the PRC Court. Until then, these access shall take place in Hong Kong; recital paragraphs P to V are not necessary; titititi htn] hyC0 hN.t hyC0 htn] hyC0 gdN.t gdN.t gdyC0

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gd] gd] ti|tTLTLT h,y@ h,y@ h,y@ h,y@ gd] gd] gd] h^HN h,y@ h7HN h,y@ gd] gd] gd]
gd] gd] yq_M_M_:_ gdC' I shall hold the parties to their undertaking to this court that they
shall jointly apply to register this court order with the PRC Court within 28 days upon the
Arrangement coming into effect, and that they shall jointly report to this court with 14 days
upon successful registration of this order. For avoidance of doubt, A shall not be removed
out of the jurisdiction of Hong Kong without an Order of the court or unless with the written
consent of both parties. I shall give liberty to apply in respect of the implementation of the
Order. Penal notice will be endorsed, with personal service of the Order be dispensed with.
This Order shall be drawn up by the mother's legal team for approval. But I invite them to
correspond with the father's legal team on the final wording of the draft order before it is
submitted to the court for approval. Since this is a children matters, I shall make the usual
order that there will be no order as to costs of the father's applications, including all costs
reserved. This is an order nisi to be made absolute at the expiration of 14 days. I express my
gratitude to both counsel for their assistance in this matter. Grace Chan District Judge Ms
Karen Wong instructed by Messrs Wong & Poon for the applicant (father) Mr Felix Li
instructed by Messrs Ip & Heathfield for the respondent (mother) Closing submission of the
father at 70; 77. 2nd affirmation of the father [A1/78/ 33 of the 1st SIR. It is recorded in the
2nd SIR that S did not accept to play with A during the access on 5/9/2020 because S was busy
doing her homework [A2/204/ 17]. A was promoted to Primary 1 in 9/2019; the 1st SIR was

dated 4/10/2019. A got 51 in Mathematics and 55 in Chinese; the passing mark is 60. 27 and 28 of the 2nd SIR. Day 2 of trial (PM session). Day 2 of trial (PM session). The 3rd affirmation of the father [A1/149/ 52]. 1st SIR at 17 [A2/157] See letter from the father s solicitors dated 6/2/2020 [B3/546-547]. [B4/696-749]. [B2/406]. [B2/228-232]. [B2/382]. [A2/204-205/ 19]. Messages in March 2020 at [B3/578]; [B3/583]; [B3/591]. Letter dated 11/2/2020 from the mother s solicitors [B3/550-551]. [B3/552-553]. 2nd affirmation of the father [A1/81/ 15]. 4th affirmation of the father dated 11/11/2020 [A1/151-55/ 28]. 14 of the 2nd SIR. The 3rd affirmation of the father [A1/132/ 16]. Part C of the father s closing submission dated 12/1/2021. 1st affirmation of the father [A1/72/ 19]. 1st affirmation of the father [A1/73/ 22]. 2nd affirmation of the father [A1/79-81/ 14]. 2nd affirmation of the father [A1/81/ 17]. [B2/360-364]. 4th affirmation of the father [A1/151/ 17-18]. [B3/ 562-592]. Exhibit LCG1-18. Father s 1st affirmation [A1/68/ 1st social investigation report [A2/154/ 18 of the 1st SJE report dated 25 November 2020. 8 of the Judgment. PAGE - PAGE A B C D E F G H I J K L M N O P Q R 1udk q`XOD?;?; h=1. h=1. gd%t gd%t gdC' hqxl hP#e h)H& h)H& h!4 h!4 gd?o hV~< hOR' &`#\$ gd\5 gd,hG hv+z hW*- hW*- gdW*- hW*- hW*- D E F G H I J K L M N O P Q R S T U V gd%t ytN.t ytN.t ph@@@ ph@@@ [Content_Types].xml _rels/.rels theme/theme/ themeManager.xml K Y, sQ}# theme/theme/theme1.xml \$O}) Xp90 +PHI| PP yu 9xu5 fs+W VF7H q=. 8}d- qyI@ j!Q_ jyV` |PZ+ T ""p < 4V O&x\$ A8>v ;EUC n 8r *~P(5 .}x E /,EE} theme/ theme/_rels/themeManager.xml.rels 5 6?\$Q K(M&\$R(.1 [Content_Types].xmlPK _rels/.relsPK theme/theme/themeManager.xmlPK theme/theme/theme1.xmlPK theme/theme/_rels/ themeManager.xml.relsPK <?xml version="1.0" encoding="UTF-8" standalone="yes"?> <a:clrMap xmlns:a="http://schemas.openxmlformats.org/drawingml/2006/main" bg1="lt1" tx1="dk1" bg2="lt2" tx2="dk2" accent1="accent1" accent2="accent2" accent3="accent3" accent4="accent4" accent5="accent5" accent6="accent6" hlink="hlink" folHlink="folHlink"/> }/ [8 H; < (cJ>@h FD?h U%[2 :@ b OP{j # }> OP{j (cJ> }/[8 :@ b RtJX :)R2 :)R2 1OB* & 6" CACV Judiciary English.dot Windows User Microsoft Office Word Judiciary CACV CACV Title <?xml version="1.0" encoding="UTF-8" standalone="no"?><b:Sources SelectedStyle="\APA.XSL" StyleName="APA" xmlns:b="http://schemas.openxmlformats.org/ officeDocument/2006/bibliography" xmlns="http://schemas.openxmlformats.org/ officeDocument/2006/bibliography"></b:Sources> <?xml version="1.0" encoding="UTF-8" standalone="no"?> <ds:datastoreItem ds:itemID="{4EBFFFFFFF-813B-4C1F-A03B-47E0257BC1A8}" xmlns:ds="http://schemas.openxmlformats.org/officeDocument/2006/ customXml"><ds:schemaRefs><ds:schemaRef ds:uri="http://schemas.openxmlformats.org/ officeDocument/2006/bibliography"/></ds:schemaRefs></ds:datastoreItem> Microsoft Word 97-2003 Document MSWordDoc Word.Document.8

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Prepared on 29 October 2026 · Esheria