

## ADOPTION AMENDMENT BILL (NO. 2)

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### EXPLANATORY NOTE

#### GENERAL POLICY STATEMENT

THIS Bill implements in New Zealand the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Convention on Intercountry Adoption). It also provides for the approval of non-government organisations as accredited bodies to whom functions may be delegated under the Convention.

#### **Background**

The Convention was concluded on 29 May 1993 at the end of 6 years of negotiations by members of the Hague Conference on Private International Law. The main negotiators included the United Kingdom, Australia, Canada, the United States of America, and significant source countries for adoptable children such as China and Romania. 66 nations participated in the final negotiations in 1993, half of which were "source" countries for adoptable children. The Convention has been in force since 1 May 1995.

The Convention is supplementary to, and provides a more detailed implementation of, the provisions relating to intercountry adoption contained in the United Nations Convention on the Rights of the Child (to which New Zealand is a party).

The Hague Convention was developed because of the significant increase in international adoptions since the late 1960s, the emergence of serious problems such as trafficking in children, and the need for a multilateral approach to counter defects in existing domestic and international legal instruments.

#### **Objectives**

The objectives of the Convention are—

- (a) To establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognised in international law:
- (b) To establish a system of co-operation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children:

- (c) To secure the recognition in Contracting States of adoptions made in accordance with the Convention.

### **Obligations of parties**

The principal obligations of source countries under the Convention are to:

- (a) Establish that the child is adoptable; and
- (b) Determine, after having consideration to the possibility of placement of the child in his or her State of origin, that intercountry adoption is in the child's best interests; and
- (c) To ensure that the necessary consents to the adoption have been obtained and that the consents have not been induced by payment of any kind.

The principal obligations of receiving States are to determine:

- (a) Whether the prospective adoptive parents are eligible and suited to adopt and have been counselled regarding intercountry adoption; and
- (b) Whether the child can enter and reside permanently in the State.

Authorities in both source and receiving countries must also:

- (a) Take measures to prevent improper financial gain in respect of an adoption;
- (b) Facilitate, follow, and expedite proceedings with a view to obtaining the adoption;
- (c) Collect, preserve, and exchange information about the situation of a particular child and the prospective adoptive parents, so far as is necessary to complete the adoption;
- (d) Promote the development of adoption counselling and post-adoption services in their States;
- (e) Provide each other with general evaluation reports about experience with intercountry adoption;
- (f) Provide information about a particular adoption situation to the extent permitted by domestic law.

Adoptions made in a Contracting State in accordance with the Convention are required to be recognised in other Contracting States.

### **Central Authorities**

The Convention operates through Central Authorities. Each Contracting State must designate a Central Authority to be responsible for ensuring that the duties imposed by the Convention are carried out. The Bill designates the Director-General of Social Welfare as the New Zealand Central Authority.

### **Delegation of functions to accredited bodies**

The Convention provides for most of the Central Authority's functions to be delegated to public authorities, or to non-profit-making "accredited bodies" where that is permitted by the law of the Contracting State. However, while functions may be delegated to accredited bodies, the Convention does not give authority to a jurisdiction to accredit such agencies. That is left to domestic law. The Adoption Act 1955 does not currently contain rules for the approval of non-government agencies to carry out functions in relation to adoption. To permit non-government, non-profit-making bodies to be involved in intercountry adoptions, the Bill specifies criteria and procedures for accreditation of such bodies to carry out functions under the Convention.

Under the Convention, the Central Authority is required to monitor bodies to which it has delegated functions. The manner in which the monitoring is to be undertaken is again left to domestic law and the Bill contains provision for dealing with this matter.

The Convention also provides for profit-making agencies or individuals to be delegated certain functions under the Convention, if permitted by domestic law. It is not proposed that such agencies or individuals should be approved to act under the Convention in New Zealand. Profit-making bodies or persons have never had a role in adoption in New Zealand.

### **Intercountry adoptions to which the Convention does not apply**

The Convention only applies to adoptions between Contracting States. Adoptions in countries which are not parties to the Convention will continue to be recognised in accordance with section 17 of the Adoption Act 1955. Section 17 provides for the recognition of overseas adoptions providing certain criteria are met. These criteria differ from, and are less comprehensive than, the criteria for recognition required by the Convention. Therefore to ensure compliance with the Convention, the Bill amends section 17 to exclude its application to adoptions in Convention countries.

#### CLAUSE BY CLAUSE ANALYSIS

*Clause 1* provides that the Bill will come into force on a date appointed by the Governor-General by Order in Council.

*Clause 2* contains definitions.

#### *Intercountry Adoption*

*Clause 3* gives the Convention the force of law in New Zealand.

*Clause 4* provides that the Director-General of Social Welfare is the New Zealand "Central Authority" for the purposes of the Convention, and provides that the Director-General has all the duties, powers, and functions of a Central Authority under the Convention. The Director-General will not be liable to pay costs relating to adoptions (which are the responsibility of the adopters).

Article 6 of the Convention requires New Zealand to designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities. These duties include—

- (a) Co-operation to protect children and to achieve the other objects of the Convention (Article 7);
- (b) The taking of all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention (Article 8);
- (c) The taking of all appropriate measures to collect information to complete adoptions, facilitate proceedings with a view to obtaining adoptions, and promote the development of adoption counselling and post-adoption services (Article 9).

*Clause 5* enables the New Zealand Central Authority to delegate certain functions relating to intercountry adoption to public authorities or New Zealand accredited bodies.

Articles 9 and 22 envisage that this may be done. Article 22 (2) also contemplates delegation, in certain circumstances, to other bodies (such as profit-making agencies and individuals) to the extent permitted by the law of a State. No provision is made in the Bill for other bodies to exercise functions under the Convention.

*Clause 6* provides that the New Zealand Central Authority may authorise New Zealand accredited bodies to act in another Contracting State.

*Clause 7* provides that the New Zealand Central Authority may authorise a body accredited in another Contracting State to act in New Zealand.

Article 12 provides that a body accredited in one Contracting State may act in another Contracting State only if the competent authorities of both States have authorised it to do so.

*Clause 8* provides that a child who is habitually resident overseas may not be entrusted to prospective adoptive parents who are habitually resident in New Zealand unless the New Zealand Central Authority has approved the decision. The giving of approval is one matter that may be delegated to public authorities or accredited bodies under *clause 5*.

Article 17 provides that a decision in the State of origin that a child should be entrusted to prospective adoptive parents may only be made if the Central Authority of the receiving State has approved the decision where such approval is required by the law of that State or by the Central Authority of the State of origin.

*Clause 9* gives legal effect to adoptions made in accordance with the Convention. The only exception is that recognition of an adoption may be refused by the Family Court if the adoption is manifestly contrary to public policy, taking into account the best interests of the child.

Article 23 requires Contracting States to recognise by operation of law adoptions made in accordance with the Convention. Article 24 sets out the grounds for refusal of recognition.

*Clause 10* enables adoptive parents to apply to the Family Court for an order that the adoption of a child terminates the legal relationship between the child and the existing parents. This will be used where the laws of the other country do not provide for automatic termination of that relationship. The Family Court may make such an order only if the consents to the adoption were given for the purpose of an adoption terminating the pre-existing legal parent-child relationship.

Article 27 provides that adoptions which do not have the effect of terminating pre-existing legal parent-child relationships may be converted into adoptions having such an effect if the law of the receiving State so permits and if those consents were given for that purpose.

*Clause 11* provides that any person adopted in accordance with the Convention has a right of access to information about that person to the extent permitted by the Adoption Act 1955 and the Adult Adoption Information Act 1985 and any other enactments.

Article 30 requires the competent authorities of Contracting States to ensure—

- (a) That information held by them concerning the child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved:
- (b) That the child or his or her representative has access to such information, under appropriate guidance, in so far as permitted by the law of the State.

*Clause 12* provides for the Secretary of Foreign Affairs and Trade to give certificates as to whether or not a country is a Contracting State.

#### *New Zealand Accredited Bodies*

*Part II* deals with New Zealand accredited bodies. This Part enables the Director-General of Social Welfare to grant accreditation to appropriate organisations.

Articles 10 and 11 provide that—

- (a) Accreditation shall only be granted to and maintained by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted:
- (b) Accredited bodies shall pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation:
- (c) Accredited bodies shall be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption; and
- (d) Accredited bodies shall be subject to supervision by competent authorities of that State as to their composition, operation, and financial situation.

*Part II* reflects those principles, and specifies procedural requirements relating to applications for, and grants, suspensions, and revocations of, accreditation, and the supervision of accredited bodies.

*Part III* makes amendments to other Acts.

#### *Amendments to Adoption Act 1955*

*Clause 19* provides that section 17 of the Adoption Act 1955 (effect of overseas adoption) shall not apply to an adoption which takes place in another Contracting State on or after the date on which the Convention has entered into force as between that Contracting State and New Zealand.

Section 17 of the Adoption Act 1955 provides for the recognition of overseas adoptions. The section does not meet the requirements of the Convention. The Convention does not specifically answer the question as to whether an adoption granted in a Contracting State and falling within the scope of its application, but not in accordance with the Convention's rules, could be recognised in another Contracting State whose laws permitted such recognition. The Rapport on the Convention states that in such a case, the Contracting State granting the adoption would be violating the Convention and such conduct may give rise to a complaint under Article 33. However, the question of recognition would be outside the Convention and the answer would depend on the law applicable in the recognising state. It is considered desirable that the issue is put beyond doubt.

*Clause 20* amends section 25 of the Adoption Act 1955 by creating an exception to the prohibition on payments for arranging an adoption. The amendment provides that organisations approved as accredited bodies under *Part II* of the Bill will be permitted to receive reasonable costs and expenses incurred in connection with any function relating to intercountry adoption delegated to the organisation under *Part I* of the Bill.

Article 32 provides that no improper gain shall be derived from an intercountry adoption. However, the Article allows for costs and expenses involved in an adoption to be charged and paid.

*Clause 21* amends section 26 of the Adoption Act 1955 by creating an exception to the restriction on publishing any advertisement indicating that any person or body of persons is willing to make arrangements for the adoption of a child. The amendment provides that the restriction does not apply to advertisements by accredited bodies if the advertisement relates to functions delegated to that body under *Part I* of the Bill.

*Clause 22* increases from \$100 to \$15,000 the monetary penalty for various offences against the Adoption Act 1955. This includes the offence of giving or receiving payment in consideration of adoptions. The penalty of 3 months' imprisonment still stands. Other offences affected are—

- (a) Keeping any child in the home for the purpose of adoption without the approval of a Social Worker or an interim adoption order:
- (b) Taking out of New Zealand without leave of the Court any child in respect of whom an interim adoption order is in force:
- (c) Failure to notify change of residence:
- (d) Publication of an advertisement in contravention of section 26 of the Adoption Act 1955:
- (e) Making a false statement for the purpose of obtaining or opposing an adoption order, etc.

*Amendments to Citizenship Act 1977*

*Clause 23* amends section 3 (2) of the Citizenship Act 1977 to provide that a person adopted overseas by a New Zealand citizen by an adoption order which is certified by the competent authority of the Contracting State in which the adoption took place as being an adoption made in accordance with the Convention, is deemed to be the child of that citizen. This means that the child obtains automatic New Zealand citizenship by descent.

Article 5 provides that an adoption within the scope of the Convention shall take place only if the receiving State has determined that the child is or will be authorised to enter and reside permanently in that State.

*Amendment to the Births, Deaths, and Marriages Registration Act 1995*

*Clause 24* applies section 24 of the Births, Deaths, and Marriages Registration Act 1995 to Convention adoptions. Section 24 provides that where the Registrar-General receives notice of an adoption, the Registrar-General may include that information in the registration. The provision only applies to a person whose birth has already been registered under the Act. The provision already applies to overseas adoptions under section 17 (1) of the Adoption Act 1955.

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**ADOPTION AMENDMENT (NO. 2)**

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A BILL INTITULED

An Act to—

- 5 (a) Implement in the law of New Zealand the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption; and
- (b) To provide for the approval of organisations as accredited bodies to whom functions may be delegated under the Convention; and
- 10 (c) To make other provision for intercountry adoption and other matters related to adoption

BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Adoption Amendment Act (No. 2) 1996, and shall be read together with and deemed part of the Adoption Act 1955\* (in this Act referred to as the principal Act).

(2) This Act shall come into force on a date to be appointed by the Governor-General by Order in Council. 5

**2. Interpretation**—In this Act, unless the context otherwise requires,—

“Contracting State” means, subject to Article 45 of the Convention, a country for which the Convention is for the time being in force as between that country and New Zealand: 10

“The Convention” means the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption signed at The Hague on the 29th day of May 1993, a copy of the English text of which is set out in the Schedule to this Act: 15

“Director-General” means the Director-General of Social Welfare, being the chief executive of the Department of Social Welfare appointed under Part III of the State Sector Act 1988: 20

“New Zealand accredited body” means an organisation approved as an accredited body under Part II of this Act and the Convention:

“New Zealand Central Authority” has the meaning given by section 4 of this Act: 25

“Organisation” means any body or organisation, whether incorporated or unincorporated.

## PART I

### INTERCOUNTRY ADOPTION 30

**3. Convention to have force of law**—Subject to the provisions of this Act, the provisions of the Convention shall have the force of law in New Zealand.

**4. New Zealand Central Authority**—(1) The Director-General is the New Zealand Central Authority for the purposes of the Convention. 35

(2) The Director-General shall have all the duties, may exercise all the powers, and shall perform all the functions, that a Central Authority has under the Convention.

\*R.S. Vol. 1, p. 35

Amendments: 1987, No. 19; 1995, No. 4



5 (3) The Director-General shall not be made subject to any order to pay costs relating to adoptions in relation to the exercise or performance, by the Director-General, of any of the Director-General's duties, powers, or functions as the New Zealand Central Authority.

Cf. 1991, No. 19. s. 7

10 **5. Delegation of functions**—The New Zealand Central Authority may, to the extent permitted by the Convention, delegate the functions of a Central Authority under Article 9 or Chapter IV of the Convention to public authorities or New Zealand accredited bodies.

15 **6. Authority for New Zealand accredited bodies to act overseas**—The New Zealand Central Authority may authorise a New Zealand accredited body to act in another Contracting State.

20 **7. Authority for overseas accredited bodies to act in New Zealand**—The New Zealand Central Authority may authorise a body accredited under Chapter III of the Convention in another Contracting State to act in New Zealand.

25 **8. Approval of placement**—A child who is habitually resident in another Contracting State shall not be entrusted to prospective adoptive parents who are habitually resident in New Zealand unless the New Zealand Central Authority has approved the decision.

**9. Recognition of Convention adoptions**—(1) An adoption made in accordance with the Convention shall, subject to Article 24 of the Convention,—

30 (a) Be recognised in accordance with the Convention; and  
(b) For the purposes of this Act and all other New Zealand enactments and laws, have, subject to **section 10** of this Act, the same effect as an adoption order validly made under the principal Act.

35 (2) A certificate signed by the competent authority in the State where the adoption took place and stating that the adoption was made in accordance with the Convention shall for all purposes be *prima facie* evidence of that fact.

(3) The Family Court may, under Article 24 of the Convention, refuse to recognise an adoption made in

accordance with the Convention, subject to such terms and conditions as it thinks fit.

(4) No application to the Court under **subsection (3)** of this section shall be made without the prior approval of the Attorney-General.

(5) Every application to the Court under **subsection (3)** of this section shall be heard as soon as practicable.

**10. Termination of pre-existing legal parent-child relationships**—(1) An adoption in accordance with the Convention does not have the effect of terminating a pre-existing legal parent-child relationship unless—

(a) The adoption has that effect in the State where it was made; or

(b) The Family Court makes an order converting the adoption into one having that effect.

(2) The Court may, on application, make such an order if satisfied that—

(a) The adoptive parent is habitually resident in New Zealand; and

(b) The adoptive parent has, in accordance with the Convention, adopted, in another Contracting State, a child who is habitually resident in that Contracting State; and

(c) The consents to the adoption required by paragraphs (c) and (d) of Article 4 of the Convention have been given for the purpose of an adoption that terminates the pre-existing legal parent-child relationship.

**11. Access to information**—Any person adopted in accordance with the Convention has, to the extent permitted by section 23 of the principal Act and the provisions of the Adult Adoption Information Act 1985 and any other enactment or rule of law, a right of access to information about that person.

**12. Certificate of Secretary of Foreign Affairs and Trade**—A certificate signed by the Secretary of Foreign Affairs and Trade and stating that a specified country is or is not a Contracting State shall, unless the contrary is proved by the production of another certificate issued under this section (being a certificate that was issued after the first-mentioned certificate was issued), for all purposes be conclusive evidence of that fact.

PART II

NEW ZEALAND ACCREDITED BODIES

5 **13. Accredited bodies**—(1) The Director-General may approve as a New Zealand accredited body under the Convention any organisation that—

- (a) Pursues only non-profit objectives; and
- (b) Has demonstrated its capability and competence to carry out properly and on a continuing basis the tasks that may be delegated to it under the Convention; and
- 10 (c) Is directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.

(2) An organisation that is formed or carried on for the purpose of trading or securing a pecuniary profit for its members shall, for the purpose of this Act, be treated as pursuing profit objectives.

**14. Application for accreditation**—Any application for approval as an accredited body—

- 20 (a) Shall be in writing and contain such information relating to the organisation as is required by the Director-General; and
- (b) Shall nominate a person to act as principal officer of the organisation for the purposes of this Act.

25 **15. Grant of accreditation**—Where the Director-General approves an organisation as an accredited body, the accreditation shall—

- (a) Be in writing; and
- (b) Specify any conditions to which it is subject (if any); and
- 30 (c) Specify the functions that have been delegated to the organisation under Article 9 or Chapter IV of the Convention; and
- (d) Be notified in the *Gazette*.

35 **16. Application not to be declined without giving applicant opportunity to make submissions**—The Director-General shall not decline an application made under section 14 of this Act without giving the applicant—

- (a) A copy of any information on which the Director-General relies in proposing to decline the application; and
- 40 (b) A reasonable opportunity to make written submissions to the Director-General in relation to the information.

**17. Suspension and revocation of accreditation—**

- (1) Subject to this section, if the Director-General is satisfied that a New Zealand accredited body—
- (a) Has pursued, or is pursuing, profit objectives; or
  - (b) Is no longer suited to performing functions that, under the Convention, may be delegated to accredited bodies; or 5
  - (c) Has failed in a significant way to adequately perform any function that has been delegated to that body under the Convention; or 10
  - (d) Has not provided to the New Zealand Central Authority access to documents or records relating to any adoption arranged by the body in accordance with functions delegated to it under the Convention; or
  - (e) Has not submitted to supervision of its composition, operation, and financial situation by the Director-General; or 15
  - (f) Has charged excessive costs and expenses in respect of the performance of any function delegated to that body under the Convention; or 20
  - (g) Has allowed the payment of unreasonably high remuneration to the principal officer or staff in relation to functions delegated to that body under the Convention,—
- the Director-General may exercise either or both of the powers contained in subsection (2) of this section. 25
- (2) The Director-General may—
- (a) Suspend the approval of an organisation as an accredited body if the Director-General considers that suspension is desirable in the public interest; and 30
  - (b) Give the organisation 60 days' notice of the Director-General's intention to revoke the approval of the organisation as an accredited body.
- (3) The Director-General shall have regard to any submissions that are received from the organisation before the decision to revoke the approval of the organisation as an accredited body is made. 35
- (4) The Director-General shall—
- (a) Give notice in writing of the suspension or revocation of accreditation, and the reasons for it, to the organisation; and 40
  - (b) Give notice of the suspension or revocation in the *Gazette*.
- 18. Supervision of accredited bodies—**(1) An employee of the Department of Social Welfare authorised by the

Director-General may, from time to time, carry out an assessment of a New Zealand accredited body, for the purpose of supervising the organisation as to its composition, operation, and financial situation.

5 (2) Every employee of the Department of Social Welfare who carries out an assessment of a New Zealand accredited body shall prepare a report on that assessment for the Director-General, and a copy of that report shall be supplied by the Director-General to that organisation.

10 (3) For the purpose of carrying out an assessment under this section, an employee of the Department of Social Welfare authorised by the Director-General may—

(a) Interview the principal officer or any other officer or employee of the organisation; and

15 (b) Examine any documents or records that are held by the organisation and that relate to its composition, operation, or financial situation; and

20 (c) Communicate with any person to whom the organisation is providing a service, or has provided a service, in relation to functions delegated to the organisation under the Convention.

(4) Every employee of the Department of Social Welfare who carries out an assessment under this section shall give reasonable notice of that person's intention to interview the principal officer or other officer or employee of an organisation, or to examine any documents or records held by the organisation.

### PART III

#### AMENDMENTS TO OTHER ENACTMENTS

##### *Amendments to Principal Act*

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**19. Recognition of overseas adoptions**—Section 17 of the principal Act is hereby amended by adding the following subsections:

35 “(5) This section shall not apply to any adoption in another Contracting State which takes place in that Contracting State on or after the date on which the Convention has entered into force as between New Zealand and that Contracting State.

40 “(6) In **subsection (5)** of this section, ‘Contracting State’ and ‘Convention’ have the same meaning as in the Adoption Amendment Act (No. 2) 1996.”

**20. Prohibition of payments**—Section 25 of the principal Act is hereby amended by adding, as subsection (2), the following subsection:

“(2) This section shall not apply to the payment of reasonable costs and expenses to any organisation approved as an accredited body under Part II of the Adoption Amendment Act (No. 2) 1996 provided those costs and expenses are in connection with the exercise of a function delegated to that body under Part I of that Act.”

**21. Restriction upon advertisements**—Section 26 of the principal Act is hereby amended by adding, as subsection (2), the following subsection:

“(2) Subsection (1) (c) of this section shall not apply to any advertisement placed by any organisation approved as an accredited body under Part II of the Adoption Amendment Act (No. 2) 1996 provided that advertisement relates solely to functions delegated to that body under Part I of that Act.”

**22. Offences**—Section 27 (2) of the principal Act is hereby amended by omitting the expression “\$100”, and substituting the expression “\$15,000”.

*Amendments to Citizenship Act 1977*

**23. Special provisions relating to parentage**—(1) Section 3 (2) of the Citizenship Act 1977 is hereby amended by inserting, after subparagraph (b) (ii), the word “or” and the following paragraph:

“(ba) He or she has been adopted by that citizen, outside New Zealand, by an adoption order which has been certified by the competent authority of the Contracting State in which the adoption was made as being an adoption made in accordance with the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption,—”.

(2) Section 3 of the Citizenship Act 1977 is hereby further amended by adding the following subsection:

“(6) In subsection (2) (ba) of this section, “Contracting State” has the same meaning as in the Adoption Amendment Act (No. 2) 1996.”

*Amendment to Births, Deaths, and Marriages Registration Act 1995*

**24. Registration of overseas adoptions**—Section 25 (a) of the Births, Deaths, and Marriages Registration Act 1995 is hereby amended by inserting, after the expression “Adoption

Act 1955”, the expression “or **section 9** of the Adoption  
Amendment Act (No. 2) **1996**”.

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## Section 2

## SCHEDULE

CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT  
OF INTERCOUNTRY ADOPTION

The States signatory to the present Convention,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Recalling that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin,

Recognizing that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin,

Convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children,

Desiring to establish common provisions to this effect, taking into account the principles set forth in international instruments, in particular the *United Nations Convention on the Rights of the Child*, of 20 November 1989, and the United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (General Assembly Resolution 41/85, of 3 December 1986),

Have agreed upon the following provisions—

## CHAPTER 1—SCOPE OF THE CONVENTION

*Article 1*

The objects of the present Convention are—

- a* to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law;
- b* to establish a system of co-operation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;
- c* to secure the recognition in Contracting States of adoptions made in accordance with the Convention.

*Article 2*

1 The Convention shall apply where a child habitually resident in one Contracting State ('the State of origin') has been, is being, or is to be moved to another Contracting State ('the receiving State') either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin.

2 The Convention covers only adoptions which create a permanent parent-child relationship.



SCHEDULE—*continued*

CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT  
OF INTERCOUNTRY ADOPTION—*continued*

*Article 3*

The Convention ceases to apply if the agreements mentioned in Article 17, sub-paragraph *c*, have not been given before the child attains the age of eighteen years.

CHAPTER II—REQUIREMENTS FOR INTERCOUNTRY ADOPTIONS

*Article 4*

An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin—

- a* have established that the child is adoptable;
- b* have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child's best interests;
- c* have ensured that
  - (1) the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin,
  - (2) such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing,
  - (3) the consents have not been induced by payment or compensation of any kind and have not been withdrawn, and
  - (4) the consent of the mother, where required, has been given only after the birth of the child; and
- d* have ensured, having regard to the age and degree of maturity of the child, that
  - (1) he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required,
  - (2) consideration has been given to the child's wishes and opinions,
  - (3) the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and
  - (4) such consent has not been induced by payment or compensation of any kind.

*Article 5*

An adoption within the scope of the Convention shall take place only if the competent authorities of the receiving State—

- a* have determined that the prospective adoptive parents are eligible and suited to adopt;
- b* have ensured that the prospective adoptive parents have been counselled as may be necessary; and

SCHEDULE—*continued*CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION—*continued*

*c* have determined that the child is or will be authorised to enter and reside permanently in that State.

## CHAPTER III—CENTRAL AUTHORITIES AND ACCREDITED BODIES

*Article 6*

1 A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

2 Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

*Article 7*

1 Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to protect children and to achieve the other objects of the Convention.

2 They shall take directly all appropriate measures to—

*a* provide information as to the laws of their States concerning adoption and other general information, such as statistics and standard forms;

*b* keep one another informed about the operation of the Convention and, as far as possible, eliminate any obstacles to its application.

*Article 8*

Central Authorities shall take, directly or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention.

*Article 9*

Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to—

*a* collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption;

*b* facilitate, follow and expedite proceedings with a view to obtaining the adoption;

*c* promote the development of adoption counselling and post-adoption services in their States;

*d* provide each other with general evaluation reports about experience with intercountry adoption;

SCHEDULE—*continued*

CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT  
OF INTERCOUNTRY ADOPTION—*continued*

*e* reply, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation.

*Article 10*

Accreditation shall only be granted to and maintained by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted.

*Article 11*

An accredited body shall—

*a* pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation;

*b* be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption; and

*c* be subject to supervision by competent authorities of that State as to its composition, operation and financial situation.

*Article 12*

A body accredited in one Contracting State may act in another Contracting State only if the competent authorities of both States have authorised it to do so.

*Article 13*

The designation of the Central Authorities and, where appropriate, the extent of their functions, as well as the names and addresses of the accredited bodies shall be communicated by each Contracting State to the Permanent Bureau of the Hague Conference on Private International Law.

CHAPTER IV— PROCEDURAL REQUIREMENTS IN INTERCOUNTRY  
ADOPTION

*Article 14*

Persons habitually resident in a Contracting State, who wish to adopt a child habitually resident in another Contracting State, shall apply to the Central Authority in the State of their habitual residence.

*Article 15*

1 If the Central Authority of the receiving State is satisfied that the applicants are eligible and suited to adopt, it shall prepare a report including information about their identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, as well as the characteristics of the children for whom they would be qualified to care.

SCHEDULE—*continued*CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION—*continued*

2 It shall transmit the report to the Central Authority of the State of origin.

*Article 16*

1 If the Central Authority of the State of origin is satisfied that the child is adoptable, it shall—

*a* prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child;

*b* give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background;

*c* ensure that consents have been obtained in accordance with Article 4; and

*d* determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child.

2 It shall transmit to the Central Authority of the receiving State its report on the child, proof that the necessary consents have been obtained and the reasons for its determination on the placement, taking care not to reveal the identity of the mother and the father if, in the State of origin, these identities may not be disclosed.

*Article 17*

Any decision in the State of origin that a child should be entrusted to prospective adoptive parents may only be made if—

*a* the Central Authority of that State has ensured that the prospective adoptive parents agree;

*b* the Central Authority of the receiving State has approved such decision, where such approval is required by the law of that State or by the Central Authority of the State of origin;

*c* the Central Authorities of both States have agreed that the adoption may proceed; and

*d* it has been determined, in accordance with Article 5, that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorised to enter and reside permanently in the receiving State.

*Article 18*

The Central Authorities of both States shall take all necessary steps to obtain permission for the child to leave the State of origin and to enter and reside permanently in the receiving State.

SCHEDULE—*continued*

CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT  
OF INTERCOUNTRY ADOPTION—*continued*

*Article 19*

- 1 The transfer of the child to the receiving State may only be carried out if the requirements of Article 17 have been satisfied.
- 2 The Central Authorities of both States shall ensure that this transfer takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parents.
- 3 If the transfer of the child does not take place, the reports referred to in Articles 15 and 16 are to be sent back to the authorities who forwarded them.

*Article 20*

The Central Authorities shall keep each other informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

*Article 21*

- 1 Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in the child's best interests, such Central Authority shall take the measures necessary to protect the child, in particular—
  - a* to cause the child to be withdrawn from the prospective adoptive parents and to arrange temporary care;
  - b* in consultation with the Central Authority of the State of origin, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange alternative long-term care; an adoption shall not take place until the Central Authority of the State of origin has been duly informed concerning the new prospective adoptive parents;
  - c* as a last resort, to arrange the return of the child, if his or her interests so require.
- 2 Having regard in particular to the age and degree of maturity of the child, he or she shall be consulted and, where appropriate, his or her consent obtained in relation to measures to be taken under this Article.

*Article 22*

- 1 The functions of a Central Authority under this Chapter may be performed by public authorities or by bodies accredited under Chapter III, to the extent permitted by the law of its State.
- 2 Any Contracting State may declare to the depositary of the Convention that the functions of the Central Authority under Articles 15 to 21 may be performed in that State, to the extent permitted by the law and subject to the supervision of the competent authorities of that State, also by bodies or persons who—
  - a* meet the requirements of integrity, professional competence, experience and accountability of that State; and

SCHEDULE—*continued*CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT  
OF INTERCOUNTRY ADOPTION—*continued*

*b* are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.

3 A Contracting State which makes the declaration provided for in paragraph 2 shall keep the Permanent Bureau of the Hague Conference on Private International Law informed of the names and addresses of these bodies and persons.

4 Any Contracting State may declare to the depositary of the Convention that adoptions of children habitually resident in its territory may only take place if the functions of the Central Authorities are performed in accordance with paragraph 1.

5 Notwithstanding any declaration made under paragraph 2, the reports provided for in Articles 15 and 16 shall, in every case, be prepared under the responsibility of the Central Authority or other authorities or bodies in accordance with paragraph 1.

## CHAPTER V—RECOGNITION AND EFFECTS OF THE ADOPTION

*Article 23*

1 An adoption certified by the competent authority of the State of the adoption as having been made in accordance with the Convention shall be recognized by operation of law in the other Contracting States. The certificate shall specify when and by whom the agreements under Article 17, sub-paragraph *c*, were given.

2 Each Contracting State shall, at the time of signature, ratification, acceptance, approval or accession, notify the depositary of the Convention of the identity and the functions of the authority or the authorities which, in that State, are competent to make the certification. It shall also notify the depositary of any modification in the designation of these authorities.

*Article 24*

The recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.

*Article 25*

Any Contracting State may declare to the depositary of the Convention that it will not be bound under this Convention to recognize adoptions made in accordance with an agreement concluded by application of Article 39, paragraph 2.

*Article 26*

1 The recognition of an adoption includes recognition of

*a* the legal parent-child relationship between the child and his or her adoptive parents;

*b* parental responsibility of the adoptive parents for the child;

SCHEDULE—*continued*

CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT  
OF INTERCOUNTRY ADOPTION—*continued*

*c* the termination of a pre-existing legal relationship between the child and his or her mother and father, if the adoption has this effect in the Contracting State where it was made.

2 In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, the child shall enjoy in the receiving State, and in any other Contracting State where the adoption is recognized, rights equivalent to those resulting from adoptions having this effect in each such State.

3 The preceding paragraphs shall not prejudice the application of any provision more favourable for the child, in force in the Contracting State which recognizes the adoption.

*Article 27*

1 Where an adoption granted in the State of origin does not have the effect of terminating a pre-existing legal parent-child relationship, it may, in the receiving State which recognizes the adoption under the Convention, be converted into an adoption having such an effect—

*a* if the law of the receiving State so permits; and

*b* if the consents referred to in Article 4, sub-paragraphs *c* and *d*, have been or are given for the purpose of such an adoption.

2 Article 23 applies to the decision converting the adoption.

CHAPTER VI—GENERAL PROVISIONS

*Article 28*

The Convention does not affect any law of a State of origin which requires that the adoption of a child habitually resident within that State take place in that State or which prohibits the child's placement in, or transfer to, the receiving State prior to adoption.

*Article 29*

There shall be no contact between the prospective adoptive parents and the child's parents or any other person who has care of the child until the requirements of Article 4, sub-paragraphs *a* to *c*, and Article 5, sub-paragraph *a*, have been met, unless the adoption takes place within a family or unless the contact is in compliance with the conditions established by the competent authority of the State of origin.

*Article 30*

1 The competent authorities of a Contracting State shall ensure that information held by them concerning the child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved.

2 They shall ensure that the child or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State.

SCHEDULE—*continued*CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT  
OF INTERCOUNTRY ADOPTION—*continued**Article 31*

Without prejudice to Article 30, personal data gathered or transmitted under the Convention, especially data referred to in Articles 15 and 16, shall be used only for the purposes for which they were gathered or transmitted.

*Article 32*

- 1 No one shall derive improper financial or other gain from an activity related to an intercountry adoption.
- 2 Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid.
- 3 The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.

*Article 33*

A competent authority which finds that any provision of the Convention has not been respected or that there is a serious risk that it may not be respected, shall immediately inform the Central Authority of its State. This Central Authority shall be responsible for ensuring that appropriate measures are taken.

*Article 34*

If the competent authority of the State of destination of a document so requests, a translation certified as being in conformity with the original must be furnished. Unless otherwise provided, the costs of such translation are to be borne by the prospective adoptive parents.

*Article 35*

The competent authorities of the Contracting States shall act expeditiously in the process of adoption.

*Article 36*

In relation to a State which has two or more systems of law with regard to adoption applicable in different territorial units—

- a* any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
- b* any reference to the law of that State shall be construed as referring to the law in force in the relevant territorial unit;
- c* any reference to the competent authorities or to the public authorities of that State shall be construed as referring to those authorised to act in the relevant territorial unit;
- d* any reference to the accredited bodies of that State shall be construed as referring to bodies accredited in the relevant territorial unit.



SCHEDULE—*continued*

CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT  
OF INTERCOUNTRY ADOPTION—*continued*

*Article 37*

In relation to a State which with regard to adoption has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

*Article 38*

A State within which different territorial units have their own rules of law in respect of adoption shall not be bound to apply the Convention where a State with a unified system of law would not be bound to do so.

*Article 39*

1 The Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument.

2 Any Contracting State may enter into agreements with one or more other Contracting States, with a view to improving the application of the Convention in their mutual relations. These agreements may derogate only from the provisions of Articles 14 to 16 and 18 to 21. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

*Article 40*

No reservation to the Convention shall be permitted.

*Article 41*

The Convention shall apply in every case where an application pursuant to Article 14 has been received after the Convention has entered into force in the receiving State and the State of origin.

*Article 42*

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convene a Special Commission in order to review the practical operation of the Convention.

CHAPTER VII—FINAL CLAUSES

*Article 43*

1 The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Seventeenth Session and by the other States which participated in that Session.

2 It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

SCHEDULE—*continued*CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT  
OF INTERCOUNTRY ADOPTION—*continued**Article 44*

- 1 Any other State may accede to the Convention after it has entered into force in accordance with Article 46, paragraph 1.
- 2 The instrument of accession shall be deposited with the depositary.
- 3 Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph *b* of Article 48. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

*Article 45*

- 1 If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in the Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.
- 2 Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.
- 3 If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

*Article 46*

- 1 The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 43.
- 2 Thereafter the Convention shall enter into force—
  - a* for each State ratifying, accepting or approving it subsequently, or acceding to it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;
  - b* for a territorial unit to which the Convention has been extended in conformity with Article 45, on the first day of the month following the expiration of three months after the notification referred to in that Article.

*Article 47*

- 1 A State Party to the Convention may denounce it by a notification in writing addressed to the depositary.
- 2 The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

SCHEDULE—*continued*

CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT  
OF INTERCOUNTRY ADOPTION—*continued*

*Article 48*

The depositary shall notify the States Members of the Hague Conference on Private International Law, the other States which participated in the Seventeenth Session and the States which have acceded in accordance with Article 44, of the following—

- a* the signatures, ratifications, acceptances and approvals referred to in Article 43;
- b* the accessions and objections raised to accessions referred to in Article 44;
- c* the date on which the Convention enters into force in accordance with Article 46;
- d* the declarations and designations referred to in Articles 22, 23, 25 and 45;
- e* the agreements referred to in Article 39;
- f* the denunciations referred to in Article 47.