



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-SEVENTH LEGISLATURE

Bill 11
(2004, chapter 3)

**An Act to implement the Convention on
Protection of Children and Co-operation
in Respect of Intercountry Adoption and
to amend various legislative provisions
in relation to adoption**

**Introduced 20 June 2003
Passage in principle 30 October 2003
Passage 22 April 2004
Assented to 22 April 2004**

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EXPLANATORY NOTES

This bill provides that the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, set out in the schedule, has force of law in Québec.

The bill then specifies how the Convention is to apply in Québec. It designates the Minister of Health and Social Services as the Central Authority for Québec and harmonizes certain rules of the Civil Code with those of the Convention.

The bill makes amendments to the Civil Code primarily to entrust the adoption process in respect of children domiciled outside Québec exclusively to bodies certified under the Youth Protection Act, unless an order of the Minister of Health and Social Services provides otherwise. The possibility for the court to recognize decisions granting adoptions made outside Québec is extended to all such decisions, whether judicial or not, whereas decisions made within the framework of the Convention will be recognized by the sole operation of law. The bill enables the registrar of civil status, following the adoption of a child domiciled outside Québec, to draw up an act of birth on the basis of the judgment rendered in Québec or the decision judicially recognized in Québec, or on the strength of any other act which, under the law, produces the effects of adoption in Québec.

Lastly, the bill amends the Youth Protection Act to define the functions of the Minister as regards intercountry adoption, to review the certification system for adoption bodies, to broaden the Minister's powers to supervise certified bodies, adding in particular the powers of inspection and inquiry, and to adjust the penalties for offences related to adoption.

LEGISLATION AMENDED BY THIS BILL:

- Civil Code of Québec (1991, chapter 64);
- Act respecting adoptions of children domiciled in the People's Republic of China (R.S.Q., chapter A-7.01);
- Code of Civil Procedure (R.S.Q., chapter C-25);
- Youth Protection Act (R.S.Q., chapter P-34.1).

Bill 11

AN ACT TO IMPLEMENT THE CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION AND TO AMEND VARIOUS LEGISLATIVE PROVISIONS IN RELATION TO ADOPTION

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

1. The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, made on 29 May 1993 at The Hague and set out in the schedule to this Act, has force of law in Québec. The Convention takes effect on (*insert the date of coming into force of this section*).

2. The Minister of Health and Social Services is the Central Authority for Québec for the purposes of the Convention.

The Minister shall perform the duties of the Central Authority, unless such duties, insofar as they are not exclusive to the Central Authority, are assigned by law to other authorities or bodies.

3. Where Québec is the State of origin, any consent to adoption referred to in article 4 of the Convention, whether general or special, shall be received by the director of youth protection.

4. The certification issued to a body in accordance with the Youth Protection Act (R.S.Q., chapter P-34.1) shall, in Québec, stand in place of the authorization required by article 12 of the Convention.

5. The report provided for in article 16 of the Convention may not be transmitted before the expiry of the period of thirty days allowed by article 557 of the Civil Code for the withdrawal of consent to adoption and no application for the return of the child is admissible after that period, notwithstanding article 558 of the Civil Code.

6. The adoption may proceed under subparagraph *c* of article 17 of the Convention only if the consents required for adoption have been given for the purposes of an adoption resulting in the dissolution of the pre-existing bond of filiation between the child and the child's family of origin.

7. A child habitually resident in Québec may not be adopted by a person habitually resident outside Québec unless that person obtains an order of the competent tribunal in Québec conferring parental authority on the person and authorizing the transfer of the child outside Québec with a view to his or her adoption.

Before granting such an order, the court shall ascertain that the rules of the Convention have been complied with and, in particular, that the agreements referred to in subparagraph *c* of article 17 have been given.

The rules of the Civil Code pertaining to orders of placement do not apply to the order referred to in the first paragraph.

8. The adopter shall transmit to the Minister the certificate issued to the adopter by the competent authority of the Contracting State where the adoption took place, within sixty days after its issue.

9. The Minister shall ensure that the certificate issued by the foreign competent authority contains the elements required under article 23 of the Convention.

The Minister may, where the Minister considers it necessary, apply to the Court of Québec for a ruling on the validity of the certificate or on the recognition of the adoption in Québec having regard to article 24 of the Convention.

Where the certificate was issued in respect of an adoption which did not result in the dissolution of the pre-existing bond of filiation between the child and the child's family of origin, the Minister shall, after ascertaining that the consents required under section 6 of this Act have been given, draw up a certificate attesting to the conversion of the adoption into an adoption dissolving the pre-existing bond of filiation. The Minister shall give a copy of the certificate to the adopter.

10. For the purposes of the Convention, any reference in a legislative provision to the concept of domicile must be understood as a reference to the concept of habitual residence.

11. The Minister of Health and Social Services is responsible for the administration of this Act.

AMENDMENTS TO THE CIVIL CODE

12. Article 109 of the Civil Code of Québec (1991, chapter 64) is amended by adding the following sentence at the end of the first paragraph: "Where necessary to obtain the information required to draw up the act of civil status, the registrar makes a summary investigation."

13. The said Code is amended by inserting the following article after article 132 :

“**132.1.** Where a child domiciled outside Québec is adopted by a person domiciled in Québec, the registrar of civil status draws up the act of birth on the basis of the judgment rendered in Québec, the decision judicially recognized in Québec or any other act notified to the registrar which, under the law, produces the effects of adoption in Québec.

The clerk of the court notifies the judgment to the registrar of civil status as soon as it becomes *res judicata* and, where applicable, attaches the decision or the act thereto.

The clerk of the court also notifies to the registrar of civil status any certificate the clerk issues under the Act respecting adoptions of children domiciled in the People’s Republic of China.

The Minister of Health and Social Services notifies to the registrar of civil status the certificate issued by the foreign competent authority and transmitted to the Minister pursuant to the Act to implement the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, unless the certificate was notified with the judgment. Where applicable, the Minister also notifies the certificate drawn up by the Minister under section 9 of that Act attesting to the conversion of the adoption.”

14. Articles 564 and 565 of the said Code are replaced by the following articles :

“**564.** The adoption arrangements are made by a body certified by the Minister of Health and Social Services pursuant to the Youth Protection Act, unless an order of the Minister published in the *Gazette officielle du Québec* provides otherwise.

“**565.** The adoption of a child domiciled outside Québec must be granted abroad or granted by judicial decision in Québec. A judgment granted in Québec is preceded by an order of placement. A decision granted abroad must be recognized by the court in Québec, unless the adoption has been certified by the competent authority of the State where it took place as having been made in accordance with the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.”

15. Article 568 of the said Code is amended

(1) by adding “for the purposes of an adoption resulting in the dissolution of the pre-existing bond of filiation between the child and the child’s family of origin” after “given” at the end of the first paragraph ;

(2) by adding the following sentence at the end of the second paragraph : “Where the placement of a child is made within the framework of the

Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, the court verifies that the conditions provided therein have been complied with.”

16. The said Code is amended by inserting the following article after article 573 :

“**573.1.** Where the court, within the framework of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, grants an adoption in Québec of a child habitually residing outside Québec, it issues the certificate provided for in the Convention as soon as the adoption judgment becomes *res judicata*.”

17. Article 574 of the said Code is amended

(1) by replacing “an adoption judgment rendered” in the first paragraph by “a decision granting an adoption made”;

(2) by replacing “à l’admissibilité” in the French text of the first paragraph by “l’admissibilité”;

(3) by adding “and that the consents have been given for the purposes of an adoption resulting in the dissolution of the pre-existing bond of filiation between the child and the child’s family of origin” after “observed” at the end of the first paragraph;

(4) by replacing “the adoption judgment has been rendered” in the second paragraph by “the decision granting the adoption has been made”.

18. Article 575 of the said Code is amended by replacing “an adoption judgment rendered” in the second paragraph by “a decision granting an adoption made”.

19. Article 581 of the said Code is replaced by the following article :

“**581.** The recognition of a decision granting an adoption produces the same effects as an adoption judgment rendered in Québec from the time the decision granting the adoption was pronounced outside Québec.

The recognition by operation of law of an adoption as provided for in the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption produces the same effects as an adoption judgment rendered in Québec from the time the decision granting the adoption is pronounced, subject to section 9 of the Act to implement the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.”

AMENDMENTS TO THE CODE OF CIVIL PROCEDURE

20. The heading of Section V of Chapter VI of Title IV of Book V of the Code of Civil Procedure (R.S.Q., chapter C-25) is replaced by the following heading :

“RECOGNITION OF DECISIONS MADE OUTSIDE QUÉBEC”.

21. Article 825.6 of the said Code is amended

(1) by replacing “judgment of adoption rendered” in the first paragraph by “decision granting an adoption made”;

(2) by replacing “judgment of adoption” in the second paragraph by “decision granting the adoption”.

AMENDMENTS TO THE YOUTH PROTECTION ACT

22. Division VII of Chapter IV of the Youth Protection Act (R.S.Q., chapter P-34.1) is replaced by the following division :

“DIVISION VII

“ADOPTION

“§1. — *Provisions relating to the adoption of a child domiciled in Québec*

“**71.** Where the director considers that adoption is the measure most likely to ensure that children’s rights are respected, the director shall take all reasonable means to facilitate their adoption, in particular,

(1) by examining applications for adoption as the need arises ;

(2) by receiving the general consents required for adoption ;

(3) by taking charge of children entrusted to the director for adoption ;

(4) where necessary, by having children judicially declared eligible for adoption ; and

(5) by seeing to the placement of children.

“**71.1.** As soon as an order of placement is granted and where requested by the adopter, the director shall give the adopter a summary of the child’s antecedents.

As well, where requested by the parents, the director shall give them a summary of the adopter’s antecedents.

A child 14 years of age or over is entitled to receive, on request, a summary of his or her antecedents.

“71.2. Every summary must preserve the parents’ or the adopter’s anonymity and be in conformity with the standards prescribed by regulation.

“71.3. An institution operating a child and youth protection centre may, in the cases and in accordance with the criteria and conditions prescribed by regulation, grant financial assistance to facilitate the adoption of a child.

“§2. — Provisions relating to the adoption of a child domiciled outside Québec by a person domiciled in Québec

“71.4. The Minister shall exercise the following responsibilities :

(1) counsel adopters and certified bodies, particularly by informing them of the services available to them ;

(2) intervene in all cases of adoption of a child domiciled outside Québec, in accordance with the applicable legislative provisions or when required by the competent authorities of the State of origin ; and

(3) retain the files respecting the adoption of children domiciled outside Québec and grant requests for research into family and medical antecedents and requests for reunions, to the extent provided for in the Civil Code and in cooperation with the persons exercising authority in matters of adoption in Québec and abroad.

“71.5. When the arrangements for the adoption of children domiciled outside Québec are made by a certified body, it shall receive the applications and transmit a copy to the Minister.

The applications must contain the information specified in the form furnished by the Minister and be accompanied by any documents the Minister may require.

“71.6. The Government may, by regulation, prescribe the terms and conditions of the adoption process.

Where a ministerial order is made under article 564 of the Civil Code, the order shall specify any special terms and conditions that apply to the adoption process.

“71.7. A psychosocial assessment of persons wishing to adopt a child domiciled outside Québec shall be made by the director of youth protection or by any person acting under section 33. It shall deal in particular with the capacity of the adopters to meet the physical, psychological and social needs of the child.

Where the adoption is to be granted outside Québec in a State that is not a State Party to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, the assessment may be made by a member of the Ordre des psychologues du Québec or the Ordre des travailleurs sociaux du Québec, chosen by the adopter from a list of names supplied by the order concerned and transmitted to the Minister.

The assessment shall be made, at the expense of the adopter, on the basis of criteria agreed between the two professional orders, the directors of youth protection and the Minister. Additional criteria shall be established for cases involving an older child, a child with special needs or siblings, and the assessment must deal specifically with the adopter's capacity to ensure the integration of the child or children into their new environment. The Minister shall see to the dissemination of the assessment criteria.

“71.8. Where a child domiciled outside Québec is to be adopted, the adopter or the body may not proceed with the adoption process unless the Minister issues a written attestation to the effect that the Minister has no grounds for objection, in accordance with the Regulation respecting the selection of foreign nationals (R.R.Q., 1981, chapter M-23.1, r.2).

“71.9. Where the adoption of a child domiciled outside Québec is to be granted in Québec, the director shall take charge of the child and see to the child's placement. The director shall intervene in accordance with the terms and conditions determined by regulation.

In urgent or seriously problematic circumstances, the situation of a child who is the subject of a motion for recognition of the decision granting an adoption made abroad may be referred to the director by the court or by any person acting in the child's interest. The director shall take charge of the situation of the child and see that the necessary measures provided by law for the child's protection are carried out.

“71.10. The Minister may, in accordance with the applicable legislative provisions, enter into an agreement with another government or with any of its departments or bodies concerning the adoption of children domiciled outside Québec.

“71.11. The Minister may, in accordance with the applicable legislative provisions, after consulting the Minister of International Relations and subject to observance of international commitments applicable to Québec, take various supervisory measures relating to the adoption of children domiciled outside Québec, which may go as far as the suspension of adoptions involving a State or a territorial unit if the circumstances so warrant.

“71.12. The persons and the courts having responsibilities under the law in matters of adoption of children domiciled outside Québec may exchange, communicate or obtain confidential information concerning the adoption,

family and medical antecedents or reunions, to the extent necessary for the exercise of those responsibilities.

“71.13. The Minister may, for the purposes of research into family and medical antecedents or reunions, obtain information from public bodies to locate the parties concerned.

“71.14. The Minister shall give the adopter a summary of the child’s antecedents on request.

The Minister shall also give the parents a summary of the adopter’s antecedents on request.

A child 14 years of age or over is entitled to receive, on request, a summary of his or her antecedents.

“71.15. Every summary must preserve the parents’ or the adopter’s anonymity and be in conformity with the standards prescribed by regulation.

“§3. — Certification

“71.16. The Minister may grant certification to a body whose mission is to defend children’s rights, promote their interests and improve their living conditions, so that it may make arrangements on behalf of adopters domiciled in Québec for the adoption of children domiciled outside Québec.

“71.17. A body applying for certification must be a legal person established under a statute of Québec for non-profit purposes and be directed and managed by persons who, by their ethical standards, training and experience, are qualified to work in the field of intercountry adoption. In addition, the body must demonstrate its ability to fulfil its mission effectively.

The Minister shall, by an order published in the *Gazette officielle du Québec*, determine the qualifications required of a body applying for certification or renewal of certification, and of the persons directing and managing the body, the requirements and terms and conditions the body and those persons must comply with as well as the documents, information and reports they must furnish.

“71.18. The Minister may grant certification if the Minister considers it warranted in the public interest and in the interests of children and after considering such factors as

(1) the number of certifications necessary to meet the needs in the State concerned; and

(2) the situation in the State concerned and the guarantees given to the children, their parents and the future adopters.

The Minister may, in addition, impose any condition, restriction or prohibition the Minister considers necessary, and may at any time modify them or impose new conditions, restrictions or prohibitions.

“71.19. The certification shall indicate the place for which it is issued, its period of validity and any conditions, restrictions or prohibitions attached. The certification may not be transferred.

“71.20. The certification shall be issued for an initial two-year period. It may be renewed for a three-year period and thereafter for the same period on the conditions determined by this Act and by an order of the Minister published in the *Gazette officielle du Québec*.

The Minister may issue or renew certification for a shorter period where the Minister considers that the circumstances so warrant.

Upon renewal of certification, the Minister may consider the factors mentioned in section 71.18 and modify any condition, restriction or prohibition imposed on the certification holder. The Minister may, at any time, modify the conditions, restrictions or prohibitions or impose new ones.

“71.21. The Minister shall, by an order published in the *Gazette officielle du Québec*, determine the conditions, responsibilities and obligations that a certified body must comply with to maintain certification, and the documents, information and reports it must furnish.

“71.22. A certification holder wishing to terminate activities in the place for which the certification was issued must first notify the Minister in writing and comply with the conditions determined by the Minister.

“71.23. The Minister may suspend, revoke or refuse to renew certification

(1) if the body no longer meets the requirements for certification or has failed to comply with a condition, restriction or prohibition specified in the certification ;

(2) if the Minister considers it warranted in the public interest, in the interests of children or owing to urgent circumstances ;

(3) if the Minister considers it necessary, in view of the situation in the State concerned to suspend, revoke or refuse to renew the certification ;

(4) if the competent authorities of the place for which the certification is issued no longer authorize adoption or, where applicable, have withdrawn the authorization they had granted to the body ;

(5) if the Minister considers that the body is not complying with this Act or a regulation or a ministerial order under this Act; or

(6) if the body or any of its officers, managers or directors has been convicted of an offence under a ministerial order made under the second paragraph of section 71.17 or under section 71.21 or of an offence under any of sections 135.1, 135.1.1 and 135.1.2.

The Minister may decide that the revocation or suspension of certification or the refusal to renew certification will only take effect on the expiry of a period determined by the Minister during which the body may continue its activities so as to complete the adoption processes it has begun.

The Minister may also, where the Minister considers it expedient, complete the adoption processes begun by a certified body.

“71.24. The Minister may, instead of suspending, revoking or refusing to renew a body’s certification, order the body to take the necessary corrective measures within the time the Minister specifies.

If the body fails to comply with the Minister’s order within the specified time, the Minister may suspend, revoke or refuse to renew the certification.

“71.25. Except in urgent cases, the Minister shall, before refusing to issue certification or before suspending, revoking or refusing to renew certification, notify the body in writing as prescribed by section 5 of the Act respecting administrative justice (chapter J-3) and allow the body at least 10 days to present observations.

“71.26. Any body whose certification has been suspended or revoked or has not been renewed may appeal to the court by motion within 30 days after receiving the decision to be appealed. The decision may be overturned if the grounds of law or fact invoked therein are manifestly erroneous or if there is a serious procedural irregularity.

The motion shall be heard and decided by preference and the judgment is final.

The appeal does not suspend execution of the Minister’s decision, unless the court decides otherwise.

The judgment of the court must be in writing and give reasons. The clerk shall transmit a copy of the judgment to each of the parties.

“71.27. A certified body must send the Minister the file respecting the adoption of a child domiciled outside Québec

(1) upon ceasing its activities or if its certification is revoked or not renewed; or

(2) within two years after the arrival of the child in Québec or withdrawal from the adoption process.

The Minister may, in the situations and on the conditions the Minister determines, authorize a body to consult a file it has sent to the Minister.

“§4. — *Inspections and inquiries*

“**71.28.** A person authorized in writing by the Minister to make an inspection may at any reasonable time enter any premises in which the person has grounds to believe that operations or activities for which certification is required by this Act are carried on, in order to ascertain whether this Act, the regulations and any ministerial order, and the laws and regulations governing the adoption of a child domiciled outside Québec, are being complied with.

That person may, during an inspection,

(1) examine and make a copy of any document relating to operations and activities for which certification is required under this Act; and

(2) require any information relating to the application of this Act or any law governing the adoption of a child domiciled outside Québec, and the production of any document connected therewith.

Any person having custody, possession or control of such documents shall, on request, make them available to the person making the inspection.

A person making an inspection shall, if so required, produce a certificate signed by the Minister attesting to the person’s capacity.

“**72.** No person may, in any manner whatsoever, hinder an inspector performing inspection duties, mislead the inspector through concealment or false statements or refuse to provide a document or information the inspector is entitled to obtain under this Act, a regulation or a ministerial order.

“**72.1.** An inspector may not be prosecuted for any act done in good faith in the performance of inspection duties.

“**72.2.** The Minister may entrust a person with making an inquiry into any matter in connection with the administration or operation of a certified body.

“**72.3.** The person so designated has, for the purposes of the inquiry, the powers and immunity of a commissioner appointed under the Act respecting public inquiry commissions (chapter C-37), except the power to impose imprisonment.

“72.4. Where an inquiry is so ordered, the Minister may suspend the powers of the certification holder and appoint an administrator to exercise those powers for the duration of the inquiry.”

23. Sections 131.1 and 131.2 of the said Act are repealed.

24. Section 132 of the said Act is amended

(1) by replacing “72.3.1” in subparagraph *g* of the first paragraph by “71.9”;

(2) by adding the following subparagraph after subparagraph *g* of the first paragraph :

“(h) to determine in what cases and on what terms and conditions a person must undergo training prior to adopting a child domiciled outside Québec, and determine the persons qualified to give that training and the criteria applicable thereto.”

25. The said Act is amended by inserting the following section after section 135 :

“135.0.1. Every person who contravenes section 72 is guilty of an offence and is liable to a fine of \$1,000 to \$6,000 and, in the case of a second or subsequent conviction, to a fine of \$3,000 to \$18,000.”

26. Section 135.1 of the said Act is replaced by the following section :

“135.1. Whether the placement or the adoption takes place in Québec or elsewhere and whether or not the child is domiciled in Québec, no person may

(a) give, receive or offer or agree to give or receive, directly or indirectly, a payment or a benefit either for giving or obtaining a consent to adoption, for finding a placement or contributing to a placement with a view to adoption or for obtaining the adoption of a child ;

(b) contrary to this Act or to any other legislative provision relating to the adoption of a child, place or contribute to the placement of a child with a view to the child’s adoption or contribute to the child’s adoption ;

(c) contrary to this Act or to any other legislative provision relating to the adoption of a child, adopt a child.”

27. Section 135.1.1 of the said Act is amended

(1) by striking out “by a third person” in the third line ;

(2) by replacing “72.3 and 72.3.2” in the fourth line by “71.7 and 71.8”.

28. Section 135.1.3 of the said Act is replaced by the following section :

“**135.1.3.** Every person who contravenes a provision of any of sections 135.1, 135.1.1 and 135.1.2 is guilty of an offence and is liable

(a) to a fine of \$10,000 to \$100,000 in the case of a natural person or to a fine of \$25,000 to \$200,000 in the case of a legal person, for a contravention of paragraph *a* or *b* of section 135.1 or a contravention of section 135.1.1 or 135.1.2;

(b) to a fine of \$2,500 to \$7,000 for a contravention of paragraph *c* of section 135.1.”

29. Section 135.2 of the said Act is amended by replacing “and 135.1 to” by “and”.

30. The said Act is amended by inserting the following section after section 135.2 :

“**135.2.1.** Every person who assists another person in committing an offence under any of sections 135.1, 135.1.1 and 135.1.2 or who, by encouragement, advice or consent, or by an authorization or an order, induces another person to commit such an offence, is guilty of an offence. The same applies to any person who attempts to commit an offence under any of those sections.

A person convicted of an offence under this section is liable to the same penalty as that prescribed for the offence the person assisted in committing or induced or attempted to commit.”

AMENDMENT TO THE ACT RESPECTING ADOPTIONS OF CHILDREN DOMICILED IN THE PEOPLE’S REPUBLIC OF CHINA

31. Section 6 of the Act respecting adoptions of children domiciled in the People’s Republic of China (R.S.Q., chapter A-7.01) is amended

(1) by replacing “entre” in the French text by “entrera” ;

(2) by adding “or when adoptions between China and Québec become subject to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption” at the end.

MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS

32. Permanent certifications issued under Division VII of Chapter IV of the Youth Protection Act remain valid until (*insert the date corresponding to the first day of the 19th month following the date of coming into force of section 71.20 of that Act enacted by section 22*).

33. An adoption process in respect of a child domiciled outside Québec undertaken by an adopter and authorized by the Minister in writing before the coming into force of section 14 may be continued by the adopter.

34. An adoption process in respect of a child domiciled outside Québec which the Minister agreed, in writing, to undertake on behalf of the adopter before the coming into force of section 14 may be continued by the Minister.

35. The Government may, by regulation, prescribe transitional measures for the purposes of this Act.

Such a regulation must be made not later than (*insert the date occurring one year after the date of coming into force of this section*) and may, if it so provides, be applicable from a date not prior to (*insert the date of coming into force of this section*).

36. This Act comes into force on the date or dates to be fixed by the Government.

SCHEDULE

CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION (*Concluded 29 May 1993*)

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 I

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.

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
- (c) have determined that the child is or will be authorized 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;

(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 authorized 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.

(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 authorized 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.

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

(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 ;
 - (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.

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 authorized 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.

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.

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.

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.

In witness whereof the undersigned, being duly authorized thereto, have signed this Convention.

Done at The Hague, on the 29th day of May 1993, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Seventeenth Session and to each of the other States which participated in that Session.

