

**CHAPTER 495****ADOPTION ADMINISTRATION ACT**

*To make special provision for the administration of adoption proceedings.*

1st May, 2008

ACT IV of 2008.

**PART I****INTRODUCTION AND DEFINITIONS**

**1.** The short title of this Act is the Adoption Administration Act. Short title.

**2.** In this Act, unless the context otherwise requires: Definitions.

"accredited agency" means an organisation which is accredited by the central authority, in accordance with the Hague Convention, to carry out local and, or intercountry adoption;

"adoption" means a local or an intercountry adoption made in accordance with the provisions of the Civil Code, the provisions of this Act and any regulations made thereunder; Cap. 16.

"Adoption Board" means the board established by virtue of article 3;

"Board of Appeal" means the board established by virtue of article 16 or such other administrative board or tribunal which the Minister may from time to time designate to carry out all or any of the functions as specified in this Act;

"central authority" means the Authority established by virtue of article 7;

"child" means a person under eighteen years of age;

"country of origin" in respect of intercountry adoption means the country from which a child is adopted;

"court" means the Civil Court (Voluntary Jurisdiction Section);

"Hague Convention" means the Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption;

"intercountry adoption" means an adoption effected in accordance with the provisions of the Civil Code relating to adoption, the provisions of this Act and the law of a foreign country; Cap. 16.

(i) in accordance with the Hague Convention or any other International Treaty to which Malta is a party; or

(ii) in Malta, in respect of a child not habitually resident in Malta, or in favour of any person not habitually resident in Malta;

"open adoption" means an adoption made in accordance with article 22 of this Act and article 119 of the Civil Code, whereby a Cap. 16.

child maintains contact with his parents and, or natural family;

"the Minister" means the Minister responsible for social policy;

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"social worker" shall have the meaning assigned to it by article 2 of the Social Work Profession Act.

## PART II

### ADOPTION BOARD

Establishment of  
the Adoption  
Board.

**3.** (1) There shall be a Board, known as the Adoption Board, which shall be composed of a Chairperson and a minimum of another four members. This Board shall be composed of the following:

- (a) professionals representing different disciplines; and
- (b) a person who, in the opinion of the Minister, has adequate knowledge and is proficient in the area of adoption.

(2) The Minister shall endeavour to have a person over the age of eighteen years who is adopted and a person who is or was an adoptive parent as part of the Adoption Board, and such persons may be appointed at any time during the term of office of the Adoption Board.

(3) A person shall not be qualified to be appointed or continue to hold office as a member of the Adoption Board if that person is a Judge, a Magistrate, a member of the House or of a Local Council, or a candidate for election to the House or a Local Council.

(4) The members of the Adoption Board shall be appointed by the Minister for a minimum period of two years.

(5) Any member of the Adoption Board may be removed from office by the Minister on grounds of inability to perform the functions of their office or of misbehaviour.

(6) In the event that any member of the Adoption Board vacates his office before completing his term, the member appointed in his stead shall be so appointed for the unexpired period of the original appointment.

(7) The Minister shall designate a person to act as Secretary to the Adoption Board and such person shall, as part of his duties, be responsible for the keeping of the relevant records and shall carry out such other work related to the functions of the Adoption Board as may be instructed by the Chairperson.

(8) Subject to the provisions of this Act and to any regulations made thereunder, the Adoption Board shall regulate its own procedure:

Provided that any decision of the Adoption Board shall be taken by a majority of votes; however in the case of an equality of votes, the Chairperson shall have and exercise a determining vote. The Secretary to the Board shall not vote.

(9) The Adoption Board shall meet as and when necessary, provided it meets at least once every month. In the case of a written request by the Minister or by an accredited agency, which request

shall be transmitted through the Secretary of the Board, such Board shall meet by not later than forty eight hours following the request.

(10) The Adoption Board shall have the power to consult professionals or other persons having relevant knowledge and experience in the field of adoption.

(11) The members of the Adoption Board, the Secretary to such Board and any person involved in the proceedings before the Adoption Board shall be bound by confidentiality and shall not disclose to any third party any information which may come to their knowledge during the proceedings. These persons shall also not distribute to any third party any document pertaining to the Adoption Board or any copies thereof, unless requested or duly authorised to do so by any court of law.

(12) The Adoption Board shall submit to the Minister an annual report of all its activities during the preceding calendar year by not later than the fifteenth April of each year.

**4. (1)** The functions of the Adoption Board shall include:

Functions of the Adoption Board.

- (a) examining Home Study Reports drawn up by a social worker of an accredited agency;
- (b) determining eligibility and suitability or otherwise of a prospective adoptive parent;
- (c) ensuring that the placement will be in the best interest of the child to be adopted;
- (d) making recommendations to the court and, or to the central authority regarding a prospective adoptive parent;
- (e) making recommendations to accredited agencies and, or the Minister on training programmes and counselling sessions for prospective adoptive parents;
- (f) making recommendations to the Minister on the parameters to be established for the organisation of counselling sessions;
- (g) making recommendations to the Minister for the more effective implementation of Title III of Book First of the Civil Code, the provisions of this Act and any regulations made thereunder.

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(2) The Adoption Board shall have access to all documentation deemed relevant to the adoption procedure and it shall be unlawful for any person to hinder it in the carrying out of any of its functions.

**5. (1)** The Adoption Board shall send a copy of its decision, containing its recommendations, by registered mail to the prospective adoptive parent and to the accredited agency. The prospective adoptive parent shall have the right to appeal in accordance with article 6.

Recommendations by the Adoption Board.

(2) Without prejudice to article 6, the Adoption Board shall give its final recommendations to the court regarding the eligibility and suitability or otherwise of the prospective adoptive parents.

(3) In the case of intercountry adoptions, the recommendations of the Adoption Board shall be submitted to the central authority for its written approval prior to proceeding with the intercountry adoption. After the intercountry adoption has been authorised by the foreign competent authority, a prospective adoptive parent shall file an application to the court requesting recognition of the intercountry adoption for all intents and purposes of the law. In reaching its decision the court shall take into consideration any recommendations of the Adoption Board.

Right of appeal from decisions of Adoption Board.

**6.** (1) A prospective adoptive parent may appeal from a decision delivered by the Adoption Board, by filing an application in front of the Board of Appeal by not later than twenty days from the date of service of the decision by registered mail.

(2) Any recommendations made by the Adoption Board shall not be forwarded to the court:

- (a) prior to the decision of the Board of Appeal; or
- (b) prior to the lapse of the twenty days referred to in article 6 if no appeal has been filed in front of the Board of Appeal.

### PART III

#### CENTRAL AUTHORITY

Establishment of the central authority. Cap. 16.

**7.** (1) There shall be a central authority designated by the Minister to perform and fulfil the functions, duties and responsibilities set out by Title III of Book First of the Civil Code, the Hague Convention, the provisions of this Act and any regulations issued thereunder.

(2) The central authority may delegate to an accredited agency any of its functions, duties and responsibilities which are not regulatory and which do not involve the granting, refusal or revocation of accreditation. The accredited agency shall be responsible to exercise such functions, duties and, or responsibilities in accordance with the provisions of this Act.

(3) The central authority shall keep a register, to be known as "the Reunion and Information Register", with the contact details of persons over the age of eighteen years who have been a party to adoption proceedings or who are relatives by consanguinity up to the third degree inclusively, of a person who was a party to adoption proceedings, and who request to be included in this register by filling in the form approved and provided for by the central authority. No information found in this Register shall be given to any person without the prior written consent of the person whose details are requested.

Monitoring of inter-country adoption.

**8.** The central authority shall monitor all proceedings for an intercountry adoption which shall only be processed upon the approval in writing of the central authority in accordance with this Act.

Receipt of applications for accreditation.

**9.** (1) The central authority shall be the authority responsible for the receipt of applications for accreditation from organisations

that apply to carry out local and, or intercountry adoptions. The central authority shall have the power to grant, refuse or revoke accreditation in conformity with the Hague Convention, the provisions of this Act and any regulations made thereunder.

(2) The central authority shall be responsible to establish criteria for the granting, refusal or revocation of accreditation.

#### PART IV ACCREDITATION

**10.** (1) Any organisation may apply to the central authority for accreditation in the form approved and provided for by such authority, in order to be able to carry out local and, or intercountry adoption.

Application for granting of accreditation.

(2) The central authority may at any time during the processing of an application, require an organisation to provide any documents and information deemed necessary in order to ascertain whether accreditation should be granted.

**11.** The central authority may accredit an organisation if it is satisfied that the organisation:

Accreditation of an organisation.

- (a) has sufficient experience and expertise in dealing with child and family matters; and
- (b) has an adequate number of staff who are trained to carry out local and, or intercountry adoption; and
- (c) has the administrative and legal competency to carry out the functions appertaining to adoption procedures; and
- (d) complies with the accreditation criteria specified in the Hague Convention.

**12.** (1) Upon granting accreditation to an organisation the central authority shall issue an Accreditation Certificate which shall be valid for a period of two years from date of issue.

Accreditation Certificate.

(2) The certificate referred to in subarticle (1) may be renewed by the central authority if the accredited agency applies for renewal by not later than two months prior to the expiration of its accreditation and renewal shall only be granted if the accredited agency is still in compliance with articles 10 and 11. The decision of the central authority on the renewal of the accreditation certificate shall be served on the accredited agency, by registered mail, within thirty days from the application for renewal.

**13.** (1) The central authority shall have the right to refuse an application for accreditation if it deems the organisation not fit to carry out adoption services. The refusal together with the reasons therefor shall be served in writing, by registered mail, to the organisation applying for accreditation within three months from the date of application.

Refusal of an application.

(2) The organisation shall have the right to request a reversal of the decision of the central authority by filing an application in front

of the Board of Appeal within twenty days from the date of service as specified in subarticle (1).

(3) The organisation shall have the right to re-apply to the central authority for accreditation if the reason for the refusal no longer subsists.

Revocation of accreditation.

**14.** (1) The central authority shall have the right to revoke accreditation of an agency at any time, if the agency:

- (a) files a request in writing for revocation;
- (b) ceases to comply with the criteria of eligibility for accreditation;
- (c) is no longer deemed suitable to provide adoption services;
- (d) is in breach of the conditions for accreditation in accordance with the provisions of this Act.

(2) The central authority shall serve the agency, by registered mail, with the written revocation together with the reasons therefor and such revocation shall have effect from date of service.

(3) If the accreditation is revoked on any of the grounds mentioned in subarticle (1)(b), (c) or (d), the agency shall have the right to file an application in front of the Board of Appeal, requesting a reversal of the decision of the central authority, within twenty days of the service specified in subarticle (2).

(4) If an appeal is filed in accordance with subarticle (3), the agency may request the Board of Appeal to suspend the decision of the central authority until the final decision.

(5) If the accreditation of an agency is revoked, the Accreditation Certificate and all the records and documentation relating to the pre-adoption and adoption services shall become the property of the central authority. The central authority may appoint another accredited agency to have custody of such records and documentation, continue to monitor the prospective adoptive parents, and to carry out all the functions that belonged to the agency whose accreditation was revoked, according to article 22.

Publication in the Gazette.

**15.** (1) During the month of January of every year the central authority shall publish in the Gazette:

- (a) a list of accredited agencies specifying their full name, registered address and other relevant contact details;
- (b) a list of agencies whose accreditation has been revoked throughout the previous calendar year; and
- (c) any changes in the conditions required for accreditation or renewal.

(2) The lists in subarticle (1)(a) and (b) shall also be communicated by the central authority to the Permanent Bureau of the Hague Conference.

## PART V BOARD OF APPEAL

**16.** (1) There shall be a Board of Appeal consisting of a Chairperson and two other members. One of these shall be a person

Establishment of Board of Appeal.

who has held a warrant to practise the profession of advocate for at least seven years.

(2) The members of the Board of Appeal shall be appointed by the Minister for a period of three years, and may be removed from office by the Minister on grounds of proved inability to perform the functions of their office or of proved misbehaviour.

(3) A member of the Board of Appeal may be challenged or may abstain for any of the reasons for which a judge may be challenged or may abstain in accordance with article 734 of the Code of Organization and Civil Procedure. In any such case, the Minister shall appoint another person to sit as a member on the Board of Appeal in substitution of the said member for the duration of the appeal in question.

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(4) A person shall not be qualified to be appointed or continue to hold office as a member of the Board of Appeal if that person is a Judge, a Magistrate, a member of the House or of a Local Council, or a candidate for election to the House or a Local Council.

**17.** (1) The Board of Appeal shall be competent to:

Powers of the Board of Appeal.

- (a) review decisions of the Adoption Board upon an appeal filed in accordance with article 6;
- (b) review decisions of the central authority upon an appeal filed in accordance with articles 13 and 14;
- (c) hear and decide an appeal filed in accordance with the provisions of this Act and any regulations made thereunder;
- (d) undertake any other function as the Minister may designate by regulations made by virtue of this Act.

(2) In order to carry out its duties, the Board of Appeal shall have access to all documentation pertaining to the adoption procedure and it shall be unlawful for any person to hinder it in the carrying out of its functions.

(3) The Board of Appeal shall have such powers as are, by the Code of Organization and Civil Procedure, vested in the Civil Court, First Hall.

Cap. 12.

(4) Without prejudice to subarticle (3), in the exercise of its functions, the Board of Appeal may summon any person to give evidence and produce the necessary documentation. For this purpose the Chairperson shall have the power to administer the oath.

(5) The Board of Appeal shall decide an application for appeal by not later than four months from the date of the filing of the application, unless in the opinion of the Chairperson a longer period is necessary for a valid reason which must be stated and registered in the proceedings of the case.

(6) A decision by the Adoption Board or by the central

authority shall have immediate effect unless the Board of Appeal decides to suspend it until it has given the final judgement.

(7) The decision of the Board of Appeal, together with the reasons therefor, shall be sent by registered mail to the applicants, the Adoption Board and the central authority, by not later than three working days from the date of such decision.

Cap. 12.

(8) In cases falling under the jurisdiction of the Board of Appeal in accordance with subarticle (1), there shall be a right of appeal on a point of law. Such appeal shall be made by an application to the Court of Appeal constituted in accordance with article 41(6) of the Code of Organization and Civil Procedure. Such application shall be filed by not later than twenty days from the date of the decision of the Board of Appeal.

## PART VI

### ACCREDITED AGENCIES

Arrangements for adoption.

**18.** An organisation shall be deemed to make arrangements for the adoption of a child if it enters into any agreement or makes any arrangements for facilitating the adoption of a child.

Policies and procedures.

**19.** An accredited agency shall develop, update and execute written policies, procedures and manuals which shall be subject to approval by the central authority. These written policies, procedures and manuals shall include training and assessment procedures, and matching of prospective adoptive parents with children, in cases of local adoptions.

Information to prospective adoptive parents.

**20.** Before commencing the adoption process, the accredited agency shall:

- (a) inform prospective adoptive parents of its objectives, powers and activities;
- (b) make available a copy of its Accreditation Certificate to prospective adoptive parents as proof of its accreditation;
- (c) inform prospective adoptive parents of any legal requirements;
- (d) explain the written agreement that prospective adoptive parents must sign, with regard to the services that will be provided to them and the applicable fees.

Keeping of registers.

**21.** An accredited agency shall maintain one or more registers listing:

- (a) the prospective adoptive parents registered with it; and
- (b) the adoptions carried out by it, indicating the children who have been adopted by persons previously registered with it as prospective adoptive parents.

Functions of accredited agencies.

**22.** (1) An accredited agency shall be responsible to:

- (a) provide a service according to the standards, criteria and procedures established by the central authority;
- (b) receive and process applications from persons who

would like to adopt a child;

- (c) provide training to prospective adoptive parents;
- (d) draw up a report, to be known as the "Home Study Report", on the situation of the prospective adoptive parent, including any recommendations on whether such prospective adoptive parent should be allowed to adopt and the reasons therefor;
- (e) assess the suitability or otherwise of prospective adoptive parents;
- (f) ensure that any adoption placement will be in the best interest of the person to be adopted;
- (g) draw up agreements of open adoption and reviews thereof in accordance with subarticle (4);
- (h) draw up reports, to be known as "Post Adoption Reports" on the situation of the adoptive parents and the adopted child in accordance with the provisions of this Act;
- (i) grant the central authority access to any records and documentation dealing with the adoption procedure of any child and to any reports on an adoptive parent or a prospective adoptive parent, including the Home Study Reports and Post Adoption Reports;
- (j) grant the central authority access to its financial accounts and audits;
- (k) report to the central authority at the end of every calendar year on the performance of its functions;
- (l) comply with any other duties and obligations as specified by the central authority or as a result of regular monitoring of the operations of the accredited agency by the central authority;
- (m) act in accordance with Title III of Book First of the Civil Code, the Hague Convention and the provisions of this Act. Cap.16.

(2) In order to draw up the Home Study Report and the Post Adoption Reports, the social worker authorised by the accredited agency shall carry out the necessary home visits. These visits may be unannounced and the prospective adoptive parents shall not refuse entry, shall co-operate with the social worker and shall provide correct information to the best of their knowledge.

(3) The Home Study Report shall be forwarded to the Adoption Board for it to issue the final recommendation to the court. This report shall be valid for a period of two years, following which a new Home Study Report shall be required.

Cap. 16. (4) In the case of a child who has attained eleven years of age, and if it is in his best interest, the accredited agency shall draw up an agreement of open adoption, either directly or through a family mediator, after hearing the child and obtaining the consent of the parents and the prospective adoptive parents. When the agreement is drawn up and signed, the accredited agency shall seek the approval of the Adoption Board. Such agreement shall not be enforceable without the authorisation of the court in accordance with article 119 of the Civil Code.

(5) The accredited agency shall also be responsible to draw up any reviews to the agreement of open adoption and to seek the approval of the Adoption Board for such reviews.

Post Adoption Reports.

**23.** (1) All adoptions shall be subject to Post Adoption Reports and the adoptive parents shall co-operate with the social worker in order for the report to be drawn up.

(2) In the case of a local adoption the Post Adoption Reports shall be drawn up for a period as specified by the accredited agency which in any case shall not exceed two years from the date of adoption.

(3) In the case of an intercountry adoption, the Post Adoption Reports shall be drawn up for a specified period in accordance with the requirements of the country of origin and forwarded to the relevant authority in the country of origin, according to its requirements.

Matching.

**24.** In the case of local adoptions, an accredited agency shall make all reasonable efforts to match prospective adoptive parents with children who need an adoption placement. The accredited agency shall ensure that the matching shall be in the best interests of the child to be adopted and that all social workers who are assigned to carry out duties of matching with regard to the adoption proceedings are adequately trained to carry out this function.

## PART VII

### OFFENCES

Hindrance.

**25.** Any person who, in any way hinders or obstructs the Adoption Board, the Board of Appeal, the central authority or an accredited agency in the performance of any of their functions shall be guilty of an offence and shall on conviction be liable to imprisonment for a term of not less than six months and not exceeding one year or to a fine (*multa*) of not less than one thousand and one hundred and sixty-four euro and sixty nine cents (1,164.69) but not more than two thousand and three hundred and twenty-nine euro and thirty seven cents (2,329.37) or to both such fine and imprisonment.

Adoption by unauthorised persons or organisations.

**26.** (1) Any person or organisation that makes arrangements for the adoption of a child without the authorisation of the central authority shall be guilty of an offence and shall on conviction be liable to imprisonment for a term of not less than six months and not exceeding one year or to a fine (*multa*) of not less than one thousand and one hundred and sixty-four euro and sixty nine cents

(1,164.69) but not more than two thousand and three hundred and twenty-nine euro and thirty seven cents (2,329.37) or to both.

(2) Any conviction under subarticle (1) shall be notified by the Registrar of Courts to the court that made the adoption decree, and such court shall take any measures it considers expedient in the best interests of the child, including the revocation of the adoption decree if circumstances so warrant.

**27.** Without prejudice to article 25 or any specific penalty provided for under any other law, any person who acts in breach of any provision of this Act or any regulations made thereunder, shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) of not less than two hundred and thirty two euro and ninety three cents (232.93) but not more than two thousand and three hundred and twenty-nine euro and thirty seven cents (2,329.37).

Other offences.

#### PART VIII

#### REGULATIONS

**28.** The Minister may make regulations:

Regulations.

- (a) for the accreditation, monitoring and control of refusal or revocation of such accreditation;
- (b) to establish procedures to be followed by the Adoption Board and, or the central authority;
- (c) to lay down the rules on the powers of and the procedures to be followed by the Board of Appeal;
- (d) for any incidental and supplementary matter which the Minister considers expedient to provide for, for the effective implementation of the provisions of this Act;
- (e) to establish penalties for breach of the provisions of this Act.

#### PART IX\*

#### APPLICABILITY

**29.†** The provision of this Act shall be applicable to adoption procedures initiated following the entry into force of this Act.

Applicability.

\*this Part was originally numbered Part X.

†this article was originally numbered article 45.

Also note that the provisions of this article also apply to the consequential amendments made by this Act to articles 113, 114, 115, 116, 117, 119, 120, 121, 122, 124, 127A, 128, 128A, 128B, 128C, 128D, 128E, 128F, 129 and 130 of the Civil Code (Cap. 16).