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Ordinance on Adoption (Adoption Ordinance, AdoptO)

of 29 June 2011 (Status as of 1 January 2012)

The Swiss Federal Council,

on the basis of Articles 269c paragraph 3 and 316 paragraph 2 of the Civil Code¹ and Articles 15 paragraph 3 and 26 of the Federal Act of 22 June 2001²

on the Hague Convention on Adoption and on Measures to Protect Children in International Adoption Cases (HCAA),

ordains:

Section 1 General Provisions

Art. 1 Subject matter and scope of application

¹ This Ordinance regulates:

- a. the procedure for placing children for adoption;
- b. accreditation for adoption mediation and the supervision thereof;
- c. the fees of the Confederation for international adoption cases.

² The provisions of federal law and cantonal law on child protection are reserved.

Art. 2 Competent authorities

¹ The Federal Office of Justice (FOJ) is responsible for:

- a. fulfilling the duties under Article 2 HCAA as Central Authority of the Confederation;
- b. granting accreditation for adoption mediation and supervising the same;
- c. issuing directives on child protection and on preventing abuses in international adoptions and in adoption mediation cases;
- d. issuing directives or recommendations for the purpose of coordinating adoption matters;

AS 2011 3637

¹ SR 210

² SR 211.221.31

- e. representing Switzerland in its dealings with foreign adoption authorities and encouraging cooperation with such authorities;
- f. providing advice and information to the cantonal authorities, in particular on the procedure in countries of origin.

² The cantonal authority under Article 316 paragraph 1^{bis} of the Civil Code (cantonal authority) is responsible for:

- a. fulfilling the duties under Article 3 HCAA as the Cantonal Central Authority;
- b. the authorisation procedure for placing children for adoption;
- c. supporting and supervising the foster relationship until adoption;
- d. investigations and reports for the FOJ, in particular with regard to the accreditation of adoption agencies (Art. 12), statistical information and the costs of adoption procedures.

³ The canton may delegate its responsibilities under paragraph 2 to another canton or an intercantonal authority.

Art. 3 Best interests of the child

Adoption and placement for adoption may only take place if it is expected, given the entire circumstances, that they are in the best interests of the child.

Section 2 Placing Children for Adoption

Art. 4 Authorisation

Any person who is habitually resident in Switzerland and who wishes a child to be placed with him or her for adoption or who wishes to adopt a child from abroad requires authorisation from the cantonal authority.

Art. 5 Suitability for adoption

¹ The cantonal authority establishes whether the future adoptive parents are suitable with regard to the best interests and needs of the child to be placed.

² A person is suitable if:

- a. the entire circumstances, and in particular the motives of the future adoptive parents, lead to the expectation that the adoption will be in the best interests of the child;
- b. the best interests of other children of the future adoptive parents are not put at risk;
- c. there are no legal obstacles to the adoption;

- d. the future adoptive parents:
1. offer a guarantee in terms of their personality, health, available time, financial circumstances and educational suitability as well as their living conditions for the good care, upbringing and education of the child,
 2. are prepared to accept the child as he or she is, to respect his or her origins, and to familiarise the child in a suitable way according to his or her needs with the country where he or she was habitually resident before placement (country of origin),
 3. have not been convicted of an offence that is incompatible with adoption,
 4. have prepared sufficiently for the adoption, and in particular have attended suitable preparatory or informative events recommended by the cantonal authority,
 5. have declared in writing that they will cooperate in the preparation of post-adoption reports for the attention of the country of origin,
 6. have acknowledged their maintenance obligation contained in Article 20 HCAA.

³ Stricter requirements must be imposed on the suitability of the future adoptive parents when placing a child over 4 years of age or a child with health issues or of two or more children are placed at the same time or there are already two or more children in the family.

⁴ Parents may not be deemed suitable if the age difference between the child to be placed and the future adoptive parents amounts to more than 45 years. By way of exception, the parents may nevertheless be deemed suitable, particularly if an intimate relationship already exists between the future adoptive parents and the child to be placed.

⁵ The cantonal authority appoints a person to assess the case who is professionally qualified in social work or psychology and who has professional experience in child protection or adoption matters.

⁶ In order to confirm compliance with paragraph 2 letter d number 3, the cantonal authority requests an extract from the register of criminal convictions information system (VOSTRA). In the case of foreign nationals, it requests an extract from the register of criminal convictions in their country of origin or an equivalent document. If criminal proceedings are pending in connection with an offence which is incompatible with adoption, the cantonal authority suspends the assessment of suitability until the criminal proceedings have been finally concluded.

Art. 6 Certificate of suitability

¹ If the requirements of Article 5 are fulfilled, the cantonal authority certifies suitability for adoption in a ruling.

² The certificate in particular specifies the country of origin and the minimum and maximum age of the child to be placed. It states whether children with health issues may be placed.

³ It remains valid for a maximum of 3 years and may be made subject to requirements and conditions. It may be renewed.

Art. 7 Authorisation

¹ If the requirements of Article 5 are fulfilled, authorisation may be granted for the placement of a specific child provided the following documents are submitted:

- a. the certificate of suitability of the future adoptive parents;
- b. a medical report on the child's health as well as a report on child's life story to date;
- c. the child's consent insofar as it may be expected due to his or her age and abilities;
- d. the consent of the child's parents to adoption or a declaration from the competent authority in the child's country of origin that such consent has been validly given or an explanation as to why it cannot be given;
- e. a declaration under the law of the child's country of origin from the competent authority that the child may be placed with future adoptive parents in Switzerland.

² The cantonal authority may request further documents.

³ If the documents are not written in an official Swiss language, a translation may be requested or arranged.

⁴ The authorisation contains in particular details of the name and the date and place of birth of the child. It may be made subject to requirements and conditions.

⁵ In the case of international adoptions, the cantonal authority decides before the entry of the child whether authorisation is to be granted. In justified exceptional cases, it may agree to entry before it decides on whether to grant authorisation, in particular if it is impossible or unreasonable to meet the demand that the documents under paragraph 1 letters b–e be submitted before entry.

⁶ In the case of children born in Switzerland the cantonal authority decides before placement on whether to grant authorisation.

Art. 8 Cantonal migration authority

¹ The cantonal authority submits the certificate of suitability or the authorisation to place a foreign child to the cantonal migration authority.

² The cantonal migration authority decides whether to authorise the issue of a visa or to guarantee a residence permit for the child. It notifies the cantonal authority of its decision.

³ The cantonal migration authority or, with its consent, the Swiss representation in the child's country of origin may issue the visa or the residence permit only if the documents under Article 7 paragraph 1 letters b–e have been submitted and the cantonal authority has granted authorisation or by way of exception, has agreed to entry before making a decision on authorisation.

Art. 9 Obligation to notify

¹ The future adoptive parents must immediately notify the cantonal authority of any substantial changes in conditions, in particular relationship or household or of any change of address.

² They must notify the cantonal authority within ten days of the child's entry.

³ The cantonal authority informs the child protection authority³ with a view to appointing a welfare advocate (Art. 17 HCAA) or a guardian (Art. 18 HCAA) and if applicable the cantonal migration authority.

Art. 10 Supervision

¹ The cantonal authority satisfies itself that the authorisation requirements are being met. It appoints a suitable person to visit the future adoptive family as often as necessary, but at least twice a year. This person assesses how the child is being cared for and submits a report to the cantonal authority.

² If shortcomings are identified, the cantonal authority requests the future adoptive parents to take immediate measures to remedy these, and to report back to it on the implementation of the measures.

³ If the authorisation requirements are not met, the cantonal authority revokes the authorisation or the certificate of suitability where these exist. It notifies the competent child protection authority and, if necessary, the cantonal migration authority.

⁴ If the child is in Switzerland, the cantonal authority arranges new accommodation for the child or requests the competent child protection authority to do so.

Art. 11 Sanctions

¹ Where a person breaches obligations arising from this Section or a ruling issued on the basis thereof, the cantonal authority may impose a disciplinary fine not exceeding 2000 francs.

² If a disciplinary fine is imposed, the cantonal authority may in cases of wilful repetition give notice that a penalty may be imposed for contempt of official orders under Article 292 of the Criminal Code⁴.

Section 3 Adoption Mediation**Art. 12** Accreditation obligation

¹ Any person who wishes to offer services in Switzerland in matching children released for adoption and future adoptive parents, and in particular any person who wishes to advise on the possibility of adopting a minor child (an adoption agency), requires accreditation from the FOJ.

³ Until 31.12.2012 "guardianship authority".
⁴ SR 311.0

² Public legal entities and charitable private legal entities may be granted accreditation provided the natural persons that are responsible on their behalf for adoption mediation meet the accreditation requirements.

Art. 13 Accreditation requirements

¹ Any person who applies for accreditation as an adoption agency must:

- a. be able to prove that they have suitable experience of their activities and professional qualifications in social work, psychology or comparable specialist fields;
- b. be familiar with and comply with Swiss and international adoption law as well as the law of the countries of origin of the children;
- c. uphold the best interests of the child and comply with the basic ethical rules for the field of adoption;
- d. have detailed knowledge of the cultural and social conditions in the countries of origin of the children;
- e. disclose their relationships with its agents and their working methods in the children's countries of origin and in Switzerland;
- f. guarantee that adoptive parents are informed, advised, supervised and supported before and after the adoption;
- g. disclose the planned mediation fee and payment terms in Switzerland and abroad;
- h. be domiciled in Switzerland.

² Private legal entities must also submit their articles of incorporation and disclose the identity of the members of their management bodies.

³ The FOJ may require additional information to be provided.

Art. 14 Granting accreditation

Accreditation to mediate in adoption cases is granted for a limited period of a maximum of 5 years. The accreditation document must in particular name the countries of origin for which accreditation has been granted.

Art. 15 Notification of substantial changes

Adoption agencies must notify the FOJ immediately of any changes that affect the accreditation requirements.

Art. 16 Proposing a child for adoption

The adoption agency may propose a specific child to the future adoptive parents only if the requirements for the placement of the child are fulfilled. In particular, a certificate of suitability must be issued and the cantonal authority must be informed.

Art. 17 Information and advice

¹ The adoption agency must pass on to the future adoptive parents and the cantonal authority all information in its possession on the child and his or her biological parents.

² It must advise the future adoptive parents of any difficulties that the intended placement of a child may entail.

Art. 18 Payment

The adoption agency has the right to appropriate remuneration for its activities and costs.

Art. 19 Case management

¹ The adoption agency must keep a separate case file for every adoptive child.

² On request, it must hand over such files to the cantonal authority or to the FOJ.

³ It must store the files safely and on conclusion of its activities at the latest hand them over for safekeeping to the cantonal authority competent at the time of adoption.

Art. 20 Reporting and obligation to provide information

The adoption agency must submit a report to the FOJ annually on its activities and provide the FOJ and the cantonal authority with information on request. The FOJ may issue guidelines on the content and form of the annual report.

Art. 21 Cooperation

The adoption agency must cooperate with the competent authorities in Switzerland and abroad.

Art. 22 Duty of confidentiality

¹ The adoption agency and its auxiliary staff must treat as confidential any information that they obtain in the exercise of their activities.

² The duty of confidentiality does not terminate on completion of their mediation activities.

Art. 23 Sanctions

¹ The FOJ revokes accreditation if the adoption agency:

- a. no longer meets the requirements for granting accreditation;
- b. repeatedly or seriously breaches its obligations.

² It may impose a disciplinary fine not exceeding 5000 francs on any person who carries out mediation activities without accreditation.

Section 4 Fees for International Adoptions

Art. 24 Scope of application of the General Fees Ordinance

Unless this Ordinance specifically provides otherwise, the provisions of the General Fees Ordinance of 8 September 2004⁵ apply.

Art. 25 Obligation to pay fees

The following services provided by the FOJ are subject to a fee:

- a. the provision of information as well as the acceptance, examination and transmission of communications, reports and decisions of the responsible cantonal and foreign central authorities as well as of other state agencies or adoption agencies;
- b. the taking of all the measures required to arrange to departure of the child from the country of origin or his or her entry into the receiving state and his or her permanent residency together with accommodation there;
- c. the issue of an entry document in accordance with Article 10 HCAA.

Art. 26 Calculation of the fee

¹ The fee for services under Article 25 letters a and b is based on the time worked and, inclusive of outlays, amounts to between 200 and 1000 francs.

² The fee for issuing an entry document under Article 10 HCAA is governed by the Ordinance of 29 November 2006⁶ on the Fees charged by Swiss Diplomatic and Consular Representations.

Art. 27 Reduction or waiver of fee

In response to a written request, the FOJ may reduce or waive the fee in terms of Article 26 paragraph 1, in particular in view of the financial circumstances of the person liable to pay or for other good cause.

Section 5 Final Provisions

Art. 28 Repeal and amendment of current legislation

The repeal and amendment of the current legislation is regulated in the Annex.

Art. 29 Commencement

This Ordinance comes into force on 1 January 2012.

⁵ SR 172.041.1

⁶ SR 191.11

Annex
(Art. 28)

Repeal and amendment of current legislation

I

The following ordinances are repealed:

1. Ordinance of 29 November 2002⁷ on Fees for Services relating to International Adoptions;
2. Ordinance of 29 November 2002⁸ on Placements with a view to Adoption.

II

The following ordinances are amended as follows:

...⁹

⁷ [AS 2002 4158, 2006 3385]

⁸ [AS 2002 4160]

⁹ The amendments may be consulted under AS 2011 3637.

