

I assent.

(L.S.)

EDWARD FENECH ADAMI
President

1st February, 2008

ACT No. IV of 2008

AN ACT to make special provision for the administration of adoption proceedings and to make consequential amendments to the Civil Code

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same as follows:

PART I

INTRODUCTION AND DEFINITIONS

Short title
and
commencement.

1. (1) The short title of this Act is the Adoption Administration Act, 2008.

(2) This Act shall come into force on the first day of May, 2008.

Definitions.

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

“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;

“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:

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

“the Minister” means the Minister responsible for social policy;

“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.
Cap. 468.

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.

(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.

Recommendations
by the Adoption
Board.

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.

(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

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.

Establishment of the central authority.

(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.

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.

Monitoring of intercountry adoption.

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.

Receipt of applications for accreditation.

(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.

Accreditation
of an organisation.

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

Accreditation
Certificate.

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.

(2) The certificate referred to in sub-article (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.

Refusal of an
application.

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.

(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 sub-article (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.

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

(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 paragraphs (b), (c) or (d) of subarticle (1), 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 sub-article (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.

15. (1) During the month of January of every year the central authority shall publish in the Gazette: Publication 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 paragraphs (a) and (b) of sub-article (1) shall also be communicated by the central authority to the Permanent Bureau of the Hague Conference.

PART V

BOARD OF APPEAL

Establishment
of 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 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.

Cap. 12.

(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.

(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.

Powers of
the Board of
Appeal.

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

(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.

(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.

(8) In cases falling under the jurisdiction of the Board of Appeal in accordance with sub-article (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 sub-article (4) of this article;

(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.

(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.

(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

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

Hindrance.

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

Adoption by unauthorised persons or organisations.

(2) Any conviction under sub-article (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 euros and ninety three cents (232.93) but not more than two thousand and three hundred and twenty-nine euros 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 accredited agencies, including any applicable fees, and for the 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

AMENDMENTS TO THE CIVIL CODE, CAP. 16

Amendment
of article 113
of the principal
law.

29. Article 113 of the Civil Code, hereinafter in this Part referred to as “the principal law”, shall be amended as follows:

(a) sub-article (1) thereof shall be deleted and substituted with the following:

“(1) For the purposes of this Title and of any regulations made thereunder a person shall be deemed to make or participate in arrangements for the adoption of a person if he enters into or makes any agreement or arrangement for, or for facilitating, the adoption of a person by any other person.”.

(b) in paragraph (b) of sub-article (2) thereof for the words “effected under this Code” there shall be substituted the words “effected under this Code and in accordance with the provisions of the Adoption Administration Act” and for the words “includes an overseas adoption” there shall be substituted the words “includes an intercountry adoption” and immediately thereafter there shall be inserted the following new paragraph:

“(c) “Adoption Board” shall have the same meaning assigned to it by article 2 of the Adoption Administration Act;”

(c) paragraph (c) shall be renumbered as paragraph (d) and immediately thereafter there shall be inserted the following new paragraphs:

“(e) “family mediator” means a mediator as specified in the Civil Court (Family Section), the Civil Court (General Jurisdiction) and the Court of Magistrates (Gozo) (Superior Jurisdiction) (Family Section) Regulations;

(f) “foster carer” shall have the meaning assigned to it by article 2 of the Foster Care Act;

Cap. 491.

(g) “intercountry adoption” shall have the meaning assigned to it by article 2 of the Adoption Administration Act;

(h) “social worker” shall have the meaning assigned to it by article 2 of the Social Work Profession Act.”;

Cap. 468.

(d) paragraph (d) shall be deleted;

(e) immediately after sub-article (2) there shall be inserted the following new sub-article:

“(3) For the purposes of this Title, unless the context otherwise requires:

(a) “accredited agency” shall have the same meaning assigned to it by article 2 of the Adoption Administration Act;

(b) “Board of Appeal” shall have the same meaning assigned to it by article 2 of the Adoption Administration Act;

(c) “central authority” shall have the same meaning assigned to it by article 2 of the Adoption Administration Act;

(d) “child” means a person under eighteen years of age;

(e) “country of origin” in respect of intercountry adoption shall mean the country from which a child is adopted;

(f) “Hague Convention” means the Convention on Protection of Children and Co-Operation In Respect of Intercountry Adoption;

(g) “open adoption” shall have the same meaning assigned to it by article 2 of the Adoption Administration Act.”.

Amendment
of article
114 of the
principal law.

30. Article 114 of the principal law shall be amended as follows:

(a) in sub-article (1) thereof, for the words “made on the application of a person of either sex.” there shall be substituted the words “following a recommendation made by the Adoption Board, made on the application of a person of either sex.”;

(b) in sub-article (2) thereof, for the words “of not less than five years” there shall be substituted the words “of not less than three years” and in the proviso thereto, for the words “have been married for less than five years.” there shall be substituted the words “have been married for less than three years and the court shall not be bound to request or review the recommendation of the Adoption Board.”;

(c) immediately after sub-article (4) there shall be inserted the following new sub-article:

“(5) In the case of a person who has attained the age of eighteen years and who is to be adopted in accordance with article 115(2)(a), no recommendation shall be required from the Adoption Board and no social worker and, or children’s advocate shall be appointed.”.

Amendment
of article
115 of the
principal law.

31. Article 115 of the principal law shall be amended as follows:

(a) paragraph (a) of sub-article (1) thereof shall be deleted and substituted with the following new paragraph:

“(a) has attained the age of twenty eight years and is at least twenty one years older but not more than forty-five years older than the person to be adopted:

Provided that if the applicant or applicants request the court for authorisation to adopt siblings, the restriction mentioned in this paragraph shall be deemed to be satisfied if there is the required age difference at least with regards to one of the children, and if the adoption will be in the best interests of all the siblings involved; or”;

(b) paragraph (a) of sub-article (2) thereof shall be deleted and substituted with the following:

“(a) in respect of a person who has attained the age of eighteen years except:

(i) in favour of a sole applicant who is the mother or the father of the person to be adopted; or

(ii) in favour of the parent and the spouse, if the person to be adopted has lived with such parent and spouse for at least five consecutive years and consents to the adoption; or

(iii) in favour of a foster carer who has fostered the person to be adopted for at least the previous five consecutive years, if the person to be adopted consents to the adoption;”;

(c) paragraph (b) of sub-article (2) thereof shall be deleted and paragraphs (c) and (d) shall be renumbered as paragraphs (b) and (c) respectively;

(d) in paragraph (a) of sub-article (3) thereof, for the words “and is alive;” there shall be substituted the words “and is alive, even if the parent has not yet attained eighteen years of age;”;

(e) in paragraph (b) of sub-article (3) thereof, for the words “if she is alive;” there shall be substituted the words “if she is alive, even if she has not attained eighteen years of age;”;

(f) paragraph (d) of sub-article (3) shall be deleted and substituted with the following:

“(d) when the person to be adopted has attained the age of eleven years, except with his consent and after having been assisted by a children’s advocate.”;

(g) sub-article (4) thereof shall be amended as follows:

(i) for paragraph (a) thereof there shall be substituted the following new paragraph:

“(a) hear any person who has been entrusted with the care and custody of the child to be adopted;”;

(ii) paragraphs (a) and (b) shall be renumbered as paragraphs (b) and (c) respectively;

(iii) in paragraph (b) thereof, as renumbered, for the words “to be adopted as his child or if the court is satisfied that he has contributed towards his maintenance or has shown” there shall be substituted the words “to be adopted as his child and if the court is satisfied that he has contributed towards his maintenance and has shown”;

(iv) in paragraph (c) thereof, as renumbered, for the words “as the case may be.” there shall be substituted the words “as the case may be;” and immediately thereafter, there shall be inserted the following:

“(d) hear the child’s advocate and, or social worker appointed by the court to protect the best interests of the child and to secure his representation.”.

Amendment
of article
116 of the
principal law.

32. Article 116 of the principal law shall be amended as follows:

(a) in sub-article (1) thereof, for the words “attained the age of six weeks.” there shall be substituted the words “attained the age of six weeks;”, and immediately thereafter there shall be inserted the following new proviso:

“Provided that, prior to the making of the adoption decree, the applicant or applicants may request the court to grant temporary care and custody of the child to be adopted.”.

(b) sub-article (2) thereof shall be deleted and substituted with the following:

“(2) During the three month period specified in sub-article (1), the accredited agency responsible for the adoption placement shall take any measures it deems expedient to ensure that the placement with the applicant or applicants is in the best interests of the child and if the placement is not deemed to be in the best interests of the child, the accredited agency shall ask the Adoption Board to seek authorisation from the court for the removal of the child from the placement.

Amendment
of article
117 of the
principal law.

33. (1) Paragraph (a) of sub-article (1) of article 117 of the principal law shall be deleted and substituted with the following:

“(a) in the case of a dispensation with any such consent, that:

(i) the person who is required to give his consent is incapable of giving such consent; or

(ii) the parent cannot be found or has abandoned, neglected or persistently ill-treated, or has persistently either neglected or refused to contribute to the maintenance of the person to be adopted or had demanded or attempted to obtain any payment or other reward for or in consideration of the grant of the consent required in connection with the adoption; or

(iii) either of the parents are unreasonably withholding their consent; or

(iv) either of the parents may be deprived of parental authority over the child to be adopted in accordance with article 154 (1); or

(v) the child to be adopted is not in the care and custody of either of the parents and the Adoption Board declares that there is no reasonable hope that the child may be reunited with his mother and, or father; or

(vi) the parent or parents have unjustifiably, not had contact with the child to be adopted for at least eighteen months; or

(vii) it is in the best interests of the child to be adopted for such consent to be dispensed with.”.

(2) Immediately following subarticle (3) of article 117 of the principal law there shall be inserted the following new subarticle (4):

“(4) The Court may dispense with any consent or hearing required for adoption following a request by a children’s advocate on behalf of a child who has attained eleven years of age and who would like to be adopted.”.

34. Article 119 of the principal law shall be amended as follows:

Amendment
of article
119 of the
principal law.

(a) in paragraph (c) of sub-article (1) thereof for the words “the court may sanction.” there shall be substituted the words “the court may sanction;” and immediately thereafter there shall be inserted the following:

“(d) that due consideration has been given to the recommendations of the Adoption Board.”;

(b) immediately after sub-article (3) there shall be inserted the following new sub-article:

“(4) In the case of a child who has attained eleven years of age and if it is in his best interest, the court may, in making the adoption decree, authorise an agreement of open adoption which has been approved by the Adoption Board, whereby the parents and, or the natural family shall maintain contact with the child:

Provided that the court shall ensure that an agreement of open adoption was entered into after the child and the parties had given their consent thereto:

Provided further that any amendments to the agreement of open adoption shall not have any effect before they are authorised by the Court.

Amendment
of article
120 of the
principal law.

35. Article 120 of the principal law shall be amended as follows:

(a) the present article shall be enumerated as subarticle (1);
and

(b) immediately after subarticle (1) as re-numbered, there shall be inserted the following new subarticle:

“(2) Upon an application for an adoption decree of a person to be adopted, the court may on its own motion or on the application of an interested person, including the child to be adopted, appoint a child’s advocate and, or a social worker to ensure that the child is adequately represented and his best interests safeguarded.”.

Amendment
of article
121 of the
principal law.

36. In paragraph (c) of article 121 of the principal law for the words “render an account thereof to the adopter.” there shall be substituted the words “render an account thereof to the adopter;” and immediately thereafter there shall be inserted the following:

“(d) the parents shall, in the case of an open adoption, retain the right to maintain contact with the person in respect of whom the adoption decree is made;

(e) the court shall inform the competent authorities that the adoption decree has terminated the care order if an adoption decree has been made in favour of a child who is under a care order issued by virtue of the Children and Young Persons (Care Orders) Act .”.

Cap. 285.

37. Article 122 of the principal law shall be amended as follows:

Amendment of article 122 of the principal law.

(a) in subarticle (1) thereof, for the words “in respect of a person” to the words “person has undertaken” there shall be substituted the words “, any judgement, decree or order for the payment of maintenance in force with respect to that person, and any agreement whereby the parent of that person has undertaken”;

(b) in subarticle (2) thereof, the words “with respect to that person unless the adoption decree was made on the application of the mother of that person alone” shall be deleted.

38. Article 124 of the principal law shall be amended as follows:

Amendment of article 124 of the principal law.

(a) immediately after the words “shall assume the surname of the adopter:” there shall be inserted the following new proviso:

“Provided that where the adoption decree is made in favour of two spouses, the person in respect of whom the adoption decree is made shall assume the surname of the adoptive father, to which may be added the surname of the adoptive mother.”; and

(b) in the proviso thereto for the words “Provided that” there shall be substituted the words “Provided further that” and for the words “below the age of four years” there shall be substituted the words “below the age of three years”.

39. Immediately after article 127 of the principal law there shall be inserted the following new article:

Addition of new article 127A to the principal law.

“Right to information.

127A. (1) An adopter or an adopted person who has attained eighteen years of age may apply to the court for a copy of the relevant adoption decree and, or details of the adopted person’s natural family and, or adoption placement.

(2) An adopted person who has attained eighteen years of age shall have the right to apply to the court for authorisation to obtain a copy of his original birth certificate from the Public Registry.

(3) Prior to giving an order related to sub-articles (1) and (2), the court shall hear the applicant and any other person it deems fit in the circumstances.”.

Amendment
of article
128 of the
principal law.

40. In sub-article (2) of article 128 of the principal law, for the words “on conviction by the Court of Magistrates, be liable to imprisonment for a term not exceeding six months or to a fine (*multa*) not exceeding one hundred liri or to both,” there shall be substituted the words “on conviction, be liable to imprisonment for a term of not less than six months but not exceeding one year or to a fine (*multa*) of not less than one thousand and one hundred and sixty-four euros and sixty nine cents (1,164.69) but not more than two thousand and three hundred and twenty-nine euros and thirty seven cents (2,329.37) or to both,” and for the words “until other arrangements can be made for him.” there shall be substituted the words “until other arrangements can be made for him. The person convicted of an offence in terms of this article shall also be liable to reimburse any amount which was paid to him.”.

Addition
of new articles
128A to 128F
to the principal law.

41. Immediately after article 128 there shall be inserted the following new articles:

“Prohibition
of
publication.

128A. (1) No person shall, without the approval in writing of an accredited agency, publish or cause to be published in any newspaper, periodical or any other printed matter or by means of broadcasting, television, public exhibition or by any other means or medium, any advertisement, news item or other matter indicated, whether or not in relation to a particular child, born or unborn, that:

(a) a child may be adopted;

(b) a person intends to adopt a child; or

(c) a person intends or is willing to make arrangements with a view to the adoption of a child.

(2) Unless authorised by the court, no person shall publish or cause to be published in any newspaper, periodical, any other printed matter or by means of broadcasting or television, public exhibition or by any other means or medium, anything related to an application for the adoption of a child or to adoption proceedings including:

(a) the name of the applicant or applicants;

(b) the name of the person who is or will be adopted;

(c) the name of the father, mother, curator or tutor of the child who is or will be adopted; or

(d) any matter likely to enable any of the persons mentioned in paragraphs (a), (b) and (c) of this sub-article to be identified.

(3) Any person who contravenes the provisions of this article shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term of not less than three months but not exceeding six months or to a fine (*multa*) of not less than one thousand and one hundred and sixty-four euros and sixty nine cents (1,164.69) but not more than two thousand and three hundred and twenty-nine euros and thirty seven cents (2,329.37) or to both.

False
statements.

128B. (1) Notwithstanding the provisions of any other law, any person who knowingly makes a false statement, whether orally or in writing, for the purposes of or in connection with an adoption, shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term of not less than three months but not exceeding six months or to a fine (*multa*) of not less than five hundred and eighty two euros and thirty four cents (582.34) but not more than one thousand and one hundred and sixty-four euros and sixty nine cents (1,164.69), or to both.

(2) A person who knowingly gives false information in the application for the entry of a person's details in the Reunion and Information Register shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding five hundred and eighty two euros and thirty four cents (582.34).

Impersonation
or
false
representation.

128C. Notwithstanding the provisions of any other law, a person who impersonates or falsely represents himself to be an adopted child, parent, adopter, relative, person whose consent to the adoption of a child is required at law, or other person having an interest in an adopted child, shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term of not less than three months but not exceeding six months or to a fine (*multa*) of not less than five

hundred and eighty two euros and thirty four cents (582.34) but not more than one thousand and one hundred and sixty four euros and sixty nine cents (1,164.69), or to both.

Forged documents.

128D. If in any adoption proceedings a person files a document purporting to indicate the consent to the adoption or the revocation thereof, where the signature is forged or obtained by fraud or duress, such person shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term of not less than six months but not exceeding one year or to a fine (*multa*) of not less than one thousand and one hundred and sixty four euros and sixty nine cents (1,164.69) but not more than two thousand and three hundred and twenty nine euros and thirty seven cents (2,329.37), or to both.

Use of force.

128E. A person who uses or threatens to use any force or restraint or injures or threatens to injure, or causes or threatens to cause anything to the detriment of a parent of a child with the intention of:

(a) inducing a parent to offer or refrain from offering the child for adoption;

(b) influencing a parent on whether or not to consent to the adoption,

shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term of not less than three months but not exceeding six months or to a fine (*multa*) of not less than one thousand and one hundred and sixty four euros and sixty nine cents (1,164.69) but not more than two thousand and three hundred and twenty nine euros and thirty seven cents (2,329.37), or to both.

Removal of child.

128F. A parent who consents to the adoption of his child and proceeds to remove the child from the care and custody of the prospective adopter or adopters without the authority of the court, shall be guilty of an offence, and shall on conviction be liable to imprisonment for a term of not less than two months but not exceeding four months or to a fine (*multa*) of not less than five hundred and eighty two euros and thirty four cents (582.34) but not more than one thousand and one hundred and sixty four euros and sixty nine cents (1,164.69), or to both.”.

42. Article 129 of the principal law shall be amended as follows: Amendment of article 129 of the principal law.

(a) paragraph (d) thereof shall be deleted;

(b) paragraphs (e) and (f) shall be re-numbered as (d) and (e); and

(c) in paragraph (e) thereof as renumbered, the words “,which penalties shall not exceed imprisonment for a term of six months” shall be deleted.

43. Article 130 of the principal law shall be amended as follows: Amendment of article 130 of the principal law.

(a) in the marginal note thereof, for the word “overseas” there shall be substituted the word “intercountry”;

(b) in sub-article (1) thereof, for the words “where an overseas adoption is to be treated” there shall be substituted the words “where an intercountry adoption is to be treated”;

(c) in sub-article (2) thereof, for the words “whereby the overseas adoption was effected” there shall be substituted the words “whereby the intercountry adoption was effected”;

(d) in sub-article (3) thereof, for the words “in respect of an overseas adoption” there shall be substituted the words “in respect of an intercountry adoption”;

(e) in paragraph (a) of sub-article (3) thereof, for the words “such overseas adoption” there shall be substituted the words “such intercountry adoption”;

(f) in paragraph (b) of sub-article (3) thereof, for the words “relating to the overseas adoption to be made” there shall be substituted “relating to the intercountry adoption to be made”;

(g) in paragraph (d) of sub-article (3) thereof, for the words “that an overseas adoption shall cease” there shall be substituted the words “that an intercountry adoption shall cease”.

44. In article 130A of the principal law for the words “where an overseas adoption is regulated” there shall be substituted the words “where an intercountry adoption is regulated” and for the words “in respect of such an overseas adoption” there shall be substituted the words “in respect of such an intercountry adoption”. Amendment of article 130A of the principal law.

PART X

Transitory
provision.

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

Passed by the House of Representatives at Sitting No. 613 of 29th January, 2008.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives