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## **Ordinance on Adoption (Adoption Ordinance, AdoptO)**

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

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*The Swiss Federal Council,*

on the basis of Articles 269c paragraph 3 and 316 paragraph 2 of the Civil Code<sup>1</sup> and Articles 15 paragraph 3 and 26 of the Federal Act of 22 June 2001<sup>2</sup>

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

<sup>1</sup> 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.

<sup>2</sup> The provisions of federal law and cantonal law on child protection are reserved.

**Art. 2**            Competent authorities

<sup>1</sup> 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;

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<sup>1</sup> SR 210

<sup>2</sup> 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.

<sup>2</sup> The cantonal authority under Article 316 paragraph 1<sup>bis</sup> 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.

<sup>3</sup> 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

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> 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

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

<sup>2</sup> 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.

<sup>3</sup> 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

<sup>1</sup> 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.

<sup>2</sup> The cantonal authority may request further documents.

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

<sup>4</sup> 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.

<sup>5</sup> 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.

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

#### **Art. 8** Cantonal migration authority

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

<sup>2</sup> 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.

<sup>3</sup> 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

<sup>1</sup> 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.

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

<sup>3</sup> The cantonal authority informs the child protection authority<sup>3</sup> 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

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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

<sup>1</sup> 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.

<sup>2</sup> 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 Code<sup>4</sup>.

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

<sup>1</sup> 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.

<sup>3</sup> Until 31.12.2012 "guardianship authority".

<sup>4</sup> SR 311.0