Overview of Dutch Adoption Law

In The Netherlands, modern adoption legislation was first introduced in 1956, which is quite late in comparison to other European countries. Through the Act of 1956, new provisions on adoption were inserted into Book I of the Civil Code. These basic legal provisions have subsequently been amended and complemented by other laws, such as the Act on the adoption of foreign children of 8 December 1998.

Under the current status of the law, the provisions of Book I, Title 12 of the Civil Code constitute the general framework for adoption in The Netherlands. These provisions apply principally to domestic adoption, while intercountry adoptions are governed mainly by a number of particular acts (among them the Act of 8 December 1998). In practice, the number of domestic adoptions in The Netherlands is limited. Apart from adoptions by a spouse or partner of the biological parent, which happens mainly in lesbian couples, there are only about 40 cases per year in which mothers give up their babies, and some additional cases of adoption by foster families.

The Netherlands has signed and ratified the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, but they have not joined the European Convention on the Adoption of Children.

I. General Acts and Regulations Governing the Adoption Process

- A. Book I of the Civil Code (hereafter abbreviated C.C.) containing provisions on the law of family and persons, particularly Title 12 (articles 227-232) on adoption.
- B. Act of 8 December 1998 containing provisions on the reception in The Netherlands of foreign foster children for adoption (hereafter referred to as the Act on the adoption of foreign children, since this Act is the principal legal instrument governing adoption of foreign children).
- C. Act of 14 May 1998 ratifying the Hague Convention.
- D. Act of 14 May 1998 implementing the Hague Convention.
- E. Act of 3 July 2003 on the applicable law in adoption matters.
- F. Act of 21 December 1951 containing provisions on the care and education of foster children (hereafter referred to as the Act on foster children).
- G. Act of 8 August 1989 containing provision on the care of youth.
- H. Act of 19 December 1984 on Dutch nationality.

Act of 26 January 1956 on the introduction of the possibility of adoption and the modifications in that respect to the Civil Code, the Code of Civil Procedure, and the Penal Code.

This memorandum is for general informational purposes only and does not represent our legal advice as to any particular set of facts, nor does this memorandum represent any undertaking to keep recipients advised as to all relevant legal developments.

II. Substantive Conditions for Making an Adoption Order

A. Who may be adopted?

Adoption is possible only with regard to children who are under the age of 18 at the date of the first request for adoption.²

A key requirement is that the child to be adopted must no longer be under the "authority" of his or her biological parents. The loss of the biological parents' authority can in principle happen through their death, their incompetence to exercise parental authority, the removal of the child by the state and the subsequent termination of parental rights, or the parents' decision to give up their child. Although Dutch law does not contain any provisions about ceding a child, it happens that mothers give up their children for adoption when they are not able or willing to exercise authority over them.

This requirement of the lack of parental authority does not apply to adoptions by a spouse or (registered) partner of the biological parent.⁶

The Act on the adoption of foreign children applies to children born outside The Netherlands who do not possess Dutch nationality. Such foreign children are placed temporarily with a family in The Netherlands, which cares for and educates the child as the first step toward a permanent adoption.⁷

The children to be adopted cannot have reached the age of six at the time of their arrival in The Netherlands. In addition, the age difference between the child and the applicant parent may not exceed 40 years. 9

Generally, receiving a foreign foster child in The Netherlands is possible only if the Minister of Justice has given written approval in principle. Aside from particular circumstances, such approval in principle may regard only one child. 11

B. Who may adopt?

1. Civil status requirements

A request for adoption of children may be submitted either by a single person or by two persons seeking to adopt together. 12

² Article 228a C.C.

³ Article 246 C.C.

⁴ Articles 266-278 C.C.

The Council for the Protection of Children (part of the Ministry of Justice) must stay informed about all cases in which measures with regard to the authority over minors are necessary per Article 242 C.C. When the Council becomes aware that minors are not under the legally provided authority under Article 245 C.C., it must request the courts to adopt the necessary measures as to the exercise of authority over these children. *See* Article 241(1) C.C.

Article 228g C.C.

See Article 1 of the Act on the adoption of foreign children.

⁸ Article 8 of the Act on the adoption of foreign children

Article 5 (7) of the Act on the adoption of foreign children.

Article 2 of the Act on the adoption of foreign children

Article 3 (2) of the Act on the adoption of foreign children.

Generally, a single person wishing to adopt a child must have cared for and educated the child for the preceding three years. When a child is adopted by the new partner of one of the child's biological parents, that new partner must have been living with the biological parent for at least three years immediately preceding the request for adoption, and must have cared for and educated the child for at least one year. The one-year term for care and education does not apply to lesbian couples who have been living together for at least three years immediately preceding the adoption request; in this regard, female partners of biological mothers are treated differently than male partners.

In cases where two persons seek to jointly adopt a child, it is not relevant whether they are married or not, but they must have been living together for at least three years immediately preceding the request for adoption, and they must have cared for and raised the child for at least one year. It does not matter whether these are same-sex couples or not. Nonetheless, persons who on the basis of Article 41 of the Civil Code are not allowed to marry (*i.e.*, persons who are related biologically or on the basis of legal family ties, either in ascending or descending order or as siblings) are not allowed to adopt together. Also, grandparents may not adopt their grandchildren.

In The Netherlands, adoption of foreign children is open to two persons of a different sex who are married. The civil status requirements are thus more restrictive for intercountry adoption than for domestic adoption. Intercountry adoption is also open to single persons alone. In practice, however, since most foreign countries prefer adoption by married couples, the possibilities for single persons to adopt foreign children are limited.

2. Age requirements

In cases of domestic adoption, each of the applicant adoptive parent(s) must be at least 18 years older than the child. 16

The Minister of Justice will refuse a request for approval in principle, necessary for intercountry adoption, if one of the applicant parents has reached the age of 42 at the date of the submission of the request. Upon request, the Minister may grant a deviation from this rule if he considers it appropriate because of particular circumstances. However, such deviation is not possible if both parents have reached the age of 44 at the time of the submission of their request for approval in principle.¹⁷ The Minister of Justice will also refuse a request for approval in principle if the age difference between the child and one of the applicant parents exceeds 40 years, unless the Minister considers the approval appropriate because of particular circumstances. The approval in principle lapses at the moment when one of the applicant parents reaches the age of 46 and must thus be granted before such date -- which implies in practice that it must be requested at the latest before the oldest parent reaches the age of 45.¹⁸

¹² See Article 227 (1) C.C.

¹³ Article 227 C.C.

¹⁴ Article 228b C.C.

¹⁵ Article 1 of the Act on the adoption of foreign children.

¹⁶ Article 228 (1)c C.C.

Article 5 (5)b of the Act on the adoption of foreign children.

Article 3 of the Act on the adoption of foreign children.

3. Other requirements

The different consents necessary for a domestic adoption are explained below in section III.B. In addition, the law requires that, where the biological mother of the child is underage, she must have reached the age of 16 at the date of the request for adoption.¹⁹

Before being approved to adopt, applicant adoptive parents must attend information sessions organized by the VIA, the government's office for advice and information on adoption. They also must undergo a family investigation (including a medical investigation) by the Dutch Council for the Protection of Children. As regards domestic adoption, these requirements are not stipulated in the law, but they are based on general practice and inspired by the provisions for intercountry adoption.²⁰

In cases of intercountry adoption, potential adoptive parents must receive written approval in principle from the Minister of Justice to adopt a foreign child.²¹ Prior to the granting of such approval, the applicant adoptive parents must attend the information sessions described above. In addition, they are subject to family and medical investigations by the Dutch Council for the Protection of Children.²² The Minister will refuse such approval if he considers that the applicant parents are not capable of caring for and educating the child.²³

In addition to other conditions mentioned elsewhere in this memorandum, when the child arrives in The Netherlands, the applicant adoptive parents must submit a medical declaration regarding the foreign child and must indicate to what extent they have made use of the intermediary services of an adoption agency.²⁴

C. Adoption authorities

The Dutch civil courts oversee the domestic adoption process. The Minister of Justice grants approval for foreign adoptions. The Dutch Council for the Protection of Children conducts investigations of the adoptive family in both foreign and domestic adoptions.

Activities by adoption agencies are regulated only with regard to intercountry adoptions. Pursuant to the Act on the adoption of foreign children, any intermediary activities (or "mediation") by adoption agencies require a license from the Minister of Justice. Such "mediation" includes activities to realize, or to provide support to, the placing of a foreign child with applicant adoptive parents. Licenses are granted for three years, and may be extended for five years at a time under articles 16a and 17 of the Act. The Minister of Justice can revoke a license if it was granted on the basis of incorrect information; if the license holder does not meet the basic requirements or certain other applicable rules; or where the license holder has not provided "mediation" services for at least two years.

¹⁹ Article 228 (1)e C.C.

In practice, applicants applying for an approval in principle for the adoption of foreign children may indicate that they also are interested in adopting a child from The Netherlands.

Article 2 of the Act on the adoption of foreign children

Article 5 (1) and (2) of the Act.

²³ Article 5 (5)a of the Act.

Articles 8b and 8c of the Act on the adoption of foreign children.

The Act on the adoption of foreign children describes the role of license holders.²⁵ Their main role is to; maintain contacts with and send the necessary information to the Dutch and foreign institutions on behalf of parents; obtain the necessary documents and otherwise assist the applicant adoptive parents in complying with the procedures abroad; control and assist the applicant adoptive parents with the transfer of the foreign child to The Netherlands; and provide assistance to the adoptive parents after a foreign child has joined the family.

Upon request, the Minister may grant a license to any legal person possessing full legal capacity and having a registered office in The Netherlands, provided that the following basic requirements are fulfilled:²⁶

- The applicant license holder focuses on hosting/adoption of foreign children in the interest of the children concerned.
- The activities of the applicant license holder are not profit-driven.
- The management (board) of the applicant license holder consists of a minimum of three persons, and operates to ensure the interests of the applicant adoptive parents.
- The organization of the applicant license holder is sufficient to ensure a scrupulous and efficient execution of its activities.
- The applicant license holder is prepared to co-operate with other license holders, in particular to provide general information to applicant adoptive parents.

A procedure for complaints against license holders is set forth at Article 24a of the Act.

The Act provides in article 7a that, where applicant adoptive parents want to opt for a free adoption (also referred to as "self-doing"), *i.e.*, to make use of alternative contact persons abroad, the Minister of Justice must give its approval. The Minister of Justice has thus far taken the position that free adoption is not possible in countries that are members of the Hague Convention.²⁷ However, recently, in a judgment of January 14, 2004, the highest administrative court ("Raad van State") held that adoption mediation services in member states can also be provided by bodies other than the accredited adoption agencies (license holders), provided they fulfill certain criteria, and that the country of origin has made a declaration in that respect to the depository of the Convention, providing information about the names and addresses of such names and agencies.²⁸ In practice, these alternative contacts, who conduct "partial mediation," are screened by the recognized license holders, who then provide written advice to the Minister of Justice.

In the case of a domestic adoption, when a child is not under the legally prescribed authority of his or her parents, ²⁹ the Council for the Protection of Children must request the court

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See Articles 17a, 17b and 17c of the Act on adoption of foreign children.

Other rules applying to agency "mediation" activities can be found *inter alia* in Articles 20-23 of the Act.

See also Article 17c of the Act on the adoption of foreign children.

²⁸ Case No. 200303119/1, X v. Secretary of Justice, of 14 January 2004.

²⁹ Article 245 C.C.

to adopt the necessary measures to exercise authority over the child.³⁰ A minor who is no longer under the authority of his or her parents must be placed under guardianship, which requires a court decision.³¹ This will often be the guardianship of an institution in the Dutch childcare system,³² which is then responsible for placing the child in a foster family for possible permanent adoption.

When a child is no longer under parental authority and a guardian has been appointed, the biological parents are not involved in the placement of the child. However, the decision to place a child may take place prior to the loss of parental authority. For example, when a mother decides to give up her baby, she does not immediately lose parental authority. In practice, after the Council for the Protection of Children is informed of such a case, it requests the court to adopt temporary measures with regard to the exercise of authority. More particularly, the child is first placed under the temporary control of a family guardianship institution, which will then temporarily place the child in a foster family (usually for three months) in order to allow the biological mother to further reflect on her choice. Subsequently, if the mother maintains her decision to give up the child, the child will be placed in a family of applicant adoptive parents (which can subsequently obtain guardianship over the child by court order). The mother is thus involved to some extent in the placement process.

A child under the control of a family guardianship institution may also be placed in a foster family (normally with the consent of the biological parents).³⁴ In exceptional cases, such a situation may also lead to adoption of the child by the foster family.

In cases of intercountry adoption, the applicants must demonstrate, at the time of the arrival of the child, that the authorities abroad agree with the fact that the child is to live with the applicants in The Netherlands and that the biological parents have ceded the child fully.³⁵

D. Standard applied for the making of an adoption order

A request for adoption can be granted only if the adoption is in the evident interest of the child.³⁶ That interest must be "certain" at the time of the request for adoption. Finally, it must be reasonably established that the biological parents are no longer able or willing to exercise their role as parents.

"voogdij-instelling." See Article 302 C.C.

³⁴ See Articles 258 (3) and 261 (1) C.C.

Article 227(3) of the Civil Code.

³⁰ Article 241 (1) C.C.

³¹ Article 295 C.C.

See also Articles 241 (2) and (3) C.C. regarding temporary guardianship, and see Articles 254 et seq. C.C. regarding family guardianship.

Articles 8d and 8e of the Act on the adoption of foreign children.

For abandoned and orphaned children, the Youth Care Act provides that the "placing institution" must assess which type of care is most appropriate for the child in question.³⁷ Generally, the Youth Care Act distinguishes between the following types of assistance to children:³⁸

- Foster care, in which a foster family hosts and provides related assistance to foster children:
- Residential care, in which a child is placed in an institution offering day and night care;
- Semi-residential care, in which a child regularly stays during part of the day in an institution; and
- Other types of temporary care.

III. Adoption Procedure

A. Who makes the adoption order?

A domestic adoption must be ordered by court decision by the Dutch civil courts.³⁹

In cases of intercountry adoption, where there has been no adoption order in the state of origin, or where an adoption order issued in the state of origin is not recognized in The Netherlands, it is necessary to have a Dutch court decide on the adoption.

Where an adoption order issued in the state of origin of the child is recognized in The Netherlands, it is not necessary to have an additional decision by a Dutch court. However, in cases where an adoption granted in the state of origin does not have the effect of terminating the pre-existing legal relationship with the biological parents, it can be converted into an adoption having such effects through a Dutch court decision.

B. Consents required for making of adoption order

If the child has reached the age of 12 years at the date of the request for adoption, he or she has the right to object to the granting of the request during the hearing. This is also true when the child has not reached the age of 12 years, but nevertheless is deemed to be able to reasonably assess his or her interests in the case.⁴⁰

The child's biological parents may object to the adoption.⁴¹ However, article 228(2) Civil Code provides that such objections do not have to be taken into consideration where (a) the child and the biological parent have not (or have hardly) lived in family context; (b) the biological parent has abused his or her authority over the child or has grossly neglected the care and education of the child; or (c) the biological parent has been condemned irrevocably for any

³⁷ Articles 27 et seq.

Article 1 (2) of the Youth Care Act.

³⁹ Article 227 Civil Code.

⁴⁰ Article 228 (1)a C.C.

⁴¹ Article 228 (1)d C.C.

criminal offence against the child, as provided for in Titles XIII to XV and XVIII to XX of the second book of the Penal Code.

The court will then assess whether the necessary conditions, such as the absence of objections to the particular adoption, are fulfilled. The court will also assess whether the necessary consents have been given at the time of its decision. This implies in practice that the biological parents can 'revoke' their consent until the actual adoption order is finalized. Once adoption has been ordered, adoption can be revoked only on request of, and in the interest of, the adopted child.

In cases of intercountry adoption, the applicant parents must demonstrate, by means of records, that the biological parent(s) have given up the child for adoption in a satisfactory manner.⁴²

C. Interim orders

Domestic adoption is possible only after a child has been cared for and educated for a specified period (either one or three years, depending on the particular circumstances⁴³) by the applicant adoptive parents. During that period, the child is viewed as a "foster child."

In cases of intercountry adoption, the requirement of one or three years' placement in the host will only be relevant to the extent that no adoption order has been issued abroad, in which case an adoption order by a Dutch court remains necessary.

The Minister must grant a prior approval in principle.⁴⁵ Subsequently, the authorities of the country of origin must authorize the adoption. The child's arrival in The Netherlands marks the final occasion to verify whether the necessary conditions have been fulfilled.⁴⁶

D. Secrecy and anonymity of adoption procedure; possibility of origin tracing

There are no provisions in the general legal framework regarding secrecy in domestic adoption procedures.⁴⁷

In 1994, the Dutch High Court ("Hoge Raad") issued an important decision (Valkenhorst II), ⁴⁸ which granted adopted children better access to their adoption documents. The High Court decided that Valkenhorst, an institution whose purpose was to care for and assist non-married mothers, had to provide adoption documentation (including information on the biological father) to a child whose biological mother had resided in Valkenhorst, despite the fact

See Article 8d of the Act on adoption of foreign children.

Except in the case of adoption by a woman living with the biological mother of the child.

See the Act on foster children. In practice, the placement of children in foster families can be based upon a variety of factors, some of which may be temporary in nature. Consequently, foster care as such is not necessarily aimed at adoption in every case.

Article 2 on the Act on the adoption of foreign children.

⁴⁶ Article 8 of the Act.

Note that court sessions are in principle public.

NJ 1994/608, Hoge Raad, 15 April 1994, nr. 15307 (Mrs. Martens, Mijnssen, Korthals Altes, Swens-Donner; A-G Koopmans, m.nt. WH-S), RcdW 1994, 94.

that the mother had not given consent for the provision of such access.⁴⁹ The rights of the children as to origin tracing thus generally prevail over the right to keep such information confidential.

In cases of foreign adoption, adoption agencies ("license holders") have a duty to gather as much information as possible with regard to the origin and the background of the child, and to keep a file for each case for at least 30 years after the child's arrival in The Netherlands.⁵⁰

At the request of the foreign child, the adoptive parents, the legal representative, or the relevant adoption agency must provide, as soon as possible, access to and copies of the adoption documents in their possession, but only if the child has reached the age of 12 or, if younger, are considered able to reasonably assess their interests in this respect.⁵¹

Aside from the authorities involved in the adoption or those dealing with child protection, the adoption agency will not provide any information on the adoption to third parties other than those mentioned in the preceding paragraph, unless the child has reached the age of 16 and gives his or her consent thereto. Where a child has reached 16 but is considered unable to reasonably assess his or her interests, the consent of the adoptive parents or the legal representative is required. ⁵²

IV. Legal Effect of an Adoption

The adoption is effective from the date the judgment is no longer subject to appeal (generally three months⁵³). The effect of an adoption is the creation of a legal family relationship between the adopted child and the adoptive parents and their relatives. This implies also that the child obtains legal successor rights vis-à-vis his or her adoptive parents and their relatives.

At the same time, the legal family relationship between the child and the biological parents ceases to exist. However, where the new partner of one of the biological parents adopts the child, the legal family relationship between that biological parent and the child continues to exist.

If, at the time of the adoption decision, the child has contact with the biological parent, the court may decide that the child and the parent are entitled to maintain contacts with each other.

To the extent that at least one of the adoptive parents is a Dutch citizen, the adopted child obtains, in principle, Dutch citizenship, provided the child was a minor on the date of the adoption order. This applies to adoption orders issued in The Netherlands, The Netherlands

See Articles 5, 5a, 5b and 5c of the Act of the Dutch nationality.

Article 17e of the Act on the adoption of foreign children.

In practice, the identity of the biological mother is often known. However, where the adopted child is not even aware of his or her mother's identity, he or she can verify this with the Council for the Protection of Children. Based on the Valkenhorst II case law, the Council will principally be obliged to reveal such information.

When an adoption mediation is terminated prematurely, the adoption agency sends back the original documents to the authorities that provided them according to Article 17b of the Act on the adoption of foreign children.

Article 17d of the Act on the adoption of foreign children.

However, once an appeal has been brought, the appeal process may take longer depending on the circumstances, local rules, procedural issues, and schedule of the presiding court.

Antilles or Aruba, in states that are party to the Hague Convention, and in other states, provided the adoption order meets the criteria for recognition in The Netherlands (as set out in Articles 6 and 7 of the Act on the applicable law in adoption matters). Where the adoption does not lead to the termination of the pre-existing family relations between the child and his or her biological parents, it must be converted into an adoption having such effects through a Dutch court decision.

A. Revocation and cancellation

An adoption continues to have effect, even if it would appear that the court has made an incorrect assessment as to whether the necessary conditions for adoption were fulfilled. However, an adoption can be revoked by a court decision or by request of the adopted child. Such request can be granted only if the revocation is in the evident best interest of the child, if the court is convinced of the reasonableness of the revocation, and if the request has been submitted, at the earliest, two years after the child has reached the age of majority and no later than five years after this date. Revocation of an adoption implies that the legal family relationship between the adopted child and the adoptive parents, as well as their relatives, ceases to exist. At the same time, the legal family relationship between the child and the biological parents, which was disrupted through the adoption, is revived.

V. Recognition of Foreign Adoptions

An adoption that was ordered in a state that is party to the Hague Convention is recognized in The Netherlands. Provided that the foreign adoption has the effect not only of creating legal family ties between the child and his or her adoptive parents but also of terminating the child's legal relationship with the biological parents, no further adoption order is required in The Netherlands. Where an adoption order does not have the effect of terminating the pre-existing legal relationship with the biological parents, it can be converted into an adoption having such effects through a Dutch court order.

An adoption ordered in a state that is not a party to the Hague Convention is automatically recognized in The Netherlands if the order was issued by a competent authority located in a foreign state where both the child and/or the adoptive parents resided at the time of the adoption request and of the adoption order. The only exceptions to this rule are where the order was not preceded by an appropriate investigation or procedure; where the adoption order issued was not recognized in the foreign state in which either the parents or the child resided (assuming they resided in different states); or where recognition would obviously contravene the public interest.

An adoption order issued by a competent authority located in a foreign state that is not a party to the Hague Convention will receive different treatment if the child resided there at the time of the adoption request and order, while the adoptive parents resided in The Netherlands. Such adoption orders will be recognized if the provisions of the Act on the adoption of foreign children have been respected; if the recognition is in the obvious interest of the child; if the order was preceded by an appropriate investigation or procedure; and if recognition would not obviously contravene the public interest.

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⁵⁵ Article 231 (2) C.C.

⁵⁶ Article 231 and 232 C.C.

VI. Resources

- A. Relevant websites
 - Adoption
 - http://www.adoptie.nl
 - http://wetten.overheid.nl
 - http://www.adoptietrefpunt.nl
 - http://www.justitie.nl/publicaties/index.asp?
 - link=5 http://www.justitie.nl/english/Publications/index.asp?link=4)
 - Foster Children, Protection of Children, etc.
 - http://www.kinderbescherming.nl
 - http://www.pleegzorg.nl
 - http://www.afstandsmoeders.nl

B. National Adoption Agencies ("License Holders")57

- Stichting Afrika (Country: Ethiopia), Postbus 175, NL-7240 AD Lochem, Phone: + 31 (0)573 252270, www.stichtingafrika.nl
- Stichting FLASH (Countries: Haïti and Rumenia), Postbus 1340,
 NL-6501 BH Nijmegen, Phone: + 31 (0)24 3603090, www.stichtingflash.nl
- Stichting HOGAR (Country: Colombia), Verdronkenoord 65, NL 1811 BC Alkmaar, Phone: + 31 (0)527 270077, /www.stichting-hogar.net
- Vereniging Wereldkinderen (Countries: Ethiopia, Senegal, South-Afrika, China, Philippines, India, Nepal, Thailand, Brazil, Colombia, Peru), Riouwstraat 191,
 NL-2585 HT Den Haag, Phone: + 31 (0)70 3506699, www.wereldkinderen.nl
- Stichting Kind en Toekomst (Countries: Sri Lanka, Guatemala, Poland, Russia, China, Nigeria), Varsseveldseweg 2a, NL-7025 GB Halle, Phone: + 31 (0)314 - 632080, www.kindentoekomst.nl
- Stichting Meiling (Countries: China, India, Suriname, Taiwan), p.a. Douwestrjitte 17, NL-8625 JC Oppenhuizen, www.meiling.nl

For free adoption (not through the recognized adoption agencies), see also http://www.zelfdoenersinadoptie.nl.