

## Overview of Portuguese Adoption Law

Although more common in earlier times, adoption has been practiced very little in Portugal since the 16<sup>th</sup> century. It was abolished as a legal institution in 1867 by the *Código de Seabra* and was not re-introduced until 1966.<sup>1</sup> While early adoption law had mainly served the interests of the adoptive parents in the preservation of the family name and possessions, modern law focuses on the welfare of the child.

Since 1966, Portuguese adoption law has been reformed several times. Before 1977, full adoption was not very widespread, as the requirements were extremely strict. In 1977, the *Decreto-lei* no. 496/77 reduced the age requirements for adoption, and allowed the possibility of full adoption by single persons. The 1977 amendment also provided for the adoption of children in situations where the biological parents demonstrate a manifest lack of interest in their child for at least three months.

Reforms in 1993 and 1998 further facilitated adoption and introduced a more balanced approach in considering the interests of the prospective adopters and those of the biological parents. In 1993, *Decreto-lei* no. 185/93 introduced a “care period”, the *confiança do menor*, referring to a temporary residence with the prospective adopter as an interim step to permanent adoption. The next reform by *Decreto-lei* no. 120/98 in 1998 strengthened the role of the social security agency, as opposed to the judiciary, in the adoption process.

One of the main motives of the latest reforms of August 22, 2003 (*Lei* no. 31/2003) was to shorten the adoption process. At the time, the process took three years on average, so it remains to be seen how much these reforms have shortened the process. Several other substantial changes were made with the 2003 amendments. For example, the welfare of the child is now a fundamental consideration in the process, and the age limit for adopters has been raised to 60 years.<sup>2</sup>

Portuguese law recognizes full adoption (*adopção plena*) and restricted adoption (*adopção restrita*), both of which refer to the adoption of minors. Full adoption is irrevocable and gives the adoptee legal status identical to that of a biological child. Restricted adoption is revocable.<sup>3</sup> Right to succession and maintenance are limited. Restricted adoption is not very widespread: there were 245 full adoptions and four restricted adoptions registered in 1999.<sup>4</sup> This memo will therefore focus on full adoption and point out the differences applicable to restricted adoption in a separate section at the end of the memo.

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<sup>1</sup> For an overview of the historical development, see *Pereira Coelho/de Oliverira*, CURSO DE DIREITO DA FAMÍLIA, 2nd edition, vol. 1, pages 45 ff (2001).

<sup>2</sup> See the draft bill on the government homepage, available at [http://www.portugal.gov.pt/Portal/PT/Governos/Governos\\_Constitucionais/GC15/Ministerios/MJ/Comunicacao/Outros\\_Documentos/20030415\\_MJ\\_Doc\\_Adoacao.htm](http://www.portugal.gov.pt/Portal/PT/Governos/Governos_Constitucionais/GC15/Ministerios/MJ/Comunicacao/Outros_Documentos/20030415_MJ_Doc_Adoacao.htm).

<sup>3</sup> Sec. 2002 Civil Code.

<sup>4</sup> *Pereira Coelho/de Oliverira*, CURSO DE DIREITO DA FAMÍLIA, 2nd edition, vol. 1, page 50.

*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.*

## I. General Acts and Regulations Governing the Adoption Process in Portugal

Federal law regulates adoption in Portugal. The basic legal framework is set forth in sections 1973 to 2002 of the Portuguese Civil Code (*Código Civil*), the *Decreto-lei* no. 185/93 of May 22 (as amended by *Decreto-lei* no. 120/98 of May 8,) and the Organization of the Protection of Minors Decree (*Organização Tutelar de Menores - OTM*). Procedural issues are addressed in the *Decreto-lei* no. 185/93 and the OTM.

## II. Substantive Conditions for the Making of an Adoption Order

### A. Who may be adopted

The maximum age for the adoptee is 15 years at the time of the formal adoption petition to the Court. However, children may be adopted up to the age of 18 years, if the child has not been declared an adult and is either already the child of the adopter's spouse, or has been cared for by one of the adopters prior to the age of 15.<sup>5</sup>

There is no minimum age for a child to be adopted. However, the biological mother may not consent to adoption until the child has reached the age of six weeks.<sup>6</sup>

Unless the adoptee is the spouse's child, only children who have been placed in care with the adopter are eligible for adoption.<sup>7</sup>

A child who has been adopted cannot be adopted again by anyone except the new spouse of the child's adoptive parent.<sup>8</sup>

### B. Who may adopt

#### 1. Civil status requirements

Since the 1977 reform, adoption has been open to single persons as well as couples.

According to the Civil Code, a couple who wishes to adopt jointly may do so only if they are married. In 2001, Art. 7 of *Lei No. 7/2001* of May 11 extended this right to unmarried cohabiters, but only for opposite sex couples.

#### 2. Age requirements

Couples married for at least four years, not being separated either by law or in fact, may adopt jointly if both spouses are over 25 years of age. Single persons may adopt if they are over 30 years of age, or over 25 years of age if the adoptee is the spouse's child.<sup>9</sup>

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<sup>5</sup> Sec. 1980 (2) Civil Code.

<sup>6</sup> Sec. 1982 (3) 1 Civil Code.

<sup>7</sup> Sec. 1980 (1) Civil Code.

<sup>8</sup> Sec. 1975 Civil Code.

<sup>9</sup> Sec. 1979 (1), (2) Civil Code.

The maximum age for adopters is 60 years at the time they take the child into care (*confiança*). The age difference between adopter and adoptee should be no more than 50 years.<sup>10</sup> However, neither requirement applies if the adoptee is the spouse's child.<sup>11</sup> Furthermore, the age difference may be more than 50 years in exceptional cases, in particular if the adopter already has children who are more than 50 years younger than the adopter.<sup>12</sup>

### 3. Religious / racial / other requirements

There are no legal rules as to race or religion.

There are no restrictions as to citizenship of the adopters (see below Section V.).

### C. Adoption authorities

While only the Family and Minors Court (*Tribunal de Família e Menores*) may declare the legal act of adoption, the preparatory work and several mandatory steps on the way to the adoption declaration rest mainly with the local social security agency (*organismo de segurança social*).

When they know of any children suitable for adoption, private and public institutions are to report to the local social security agencies.<sup>13</sup> Applications for adoption are made to the social security agency in the prospective adopter's residential area.<sup>14</sup> The adopter applicant must provide detailed information on his or her personal circumstances, health, suitability for the education of minors, financial situation and reasons for applying.<sup>15</sup> Within six months, the social security agency has to decide on the application.<sup>16</sup> If the application is rejected, the applicant may appeal to the family court within 20 days.<sup>17</sup>

Unless the adoptee is the child of the adopter's spouse, the next step in the adoption process is a mandatory period of "care for the purpose of future adoption" (*confiança com vista a future adopção*). "Care" in this context means a temporary residence with the prospective adopter as an interim step to permanent adoption. The decision on care is made by the social security agency (administrative care) or by the family and minors court (judicial care).

In cases of administrative care (*confiança administrativa*), the social security agency decides on the care and places the child with the adopter. If the child is already living with the adopter, the agency confirms that the minor may stay in his or her care. Before the formal decision on the care is taken, the social security agency must hear from the legal representative of the child and persons with personal custody (legally or factual), all of whom have the right to veto the care placement. Furthermore, if proceedings on guardianship are pending, the social

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<sup>10</sup> Sec. 1979 (3) 1 Civil Code.

<sup>11</sup> Sec. 1979 (5) Civil Code.

<sup>12</sup> Sec. 1979 (4) Civil Code.

<sup>13</sup> Sec. 3 Decreto-lei no. 185/93.

<sup>14</sup> Sec. 5 (1) Decreto-lei no. 185/93.

<sup>15</sup> Sec. 6 (2) Decreto-lei no. 185/93; questionnaires are available at the homepage of the Social Security Agency, <http://195.245.197.196/left.asp?03.06.01.02.02>.

<sup>16</sup> Sec. 6 Decreto-lei no. 185/93.

<sup>17</sup> Sec. 7 Decreto-lei no. 185/93.

security agency or the office of the district attorney (*ministério público*) must file a petition with the competent court, which in turn has to decide whether the care placement is in the interest of the child.<sup>18</sup>

The family and minors court in the minor's residential area<sup>19</sup> may order judicial care (*confiança judicial*) in five different situations listed in the Civil Code: (i) if the parents are unknown or deceased; (ii) if the parents have given prior consent to adoption (see below); (iii) if the parents have abandoned the child; (iv) if the parents constitute a serious danger to the child (including if that danger results from mental illness of one or more parent); or (v) if the parents have shown a manifest lack of interest in their child for at least three months.<sup>20</sup> The proposed adopter has standing to apply for such a court decision only if he or she has already been recognized by the social security agency as a suitable adopter (or if the agency has failed to reach a decision on the issue within six months), and the child is under the proposed adopter's care.<sup>21</sup> In determining whether to order judicial care, the court will provide to the child's parents (if they have not given prior consent to adoption), guardian, or relatives (according to Sec. 1981 Civil Code) as well as the office of the district attorney an opportunity to be heard.

The pre-adoption period begins after the care period has been established. During a period not to exceed six months, the social security agency closely monitors the adoptee and proposed adopter(s).<sup>22</sup> Afterward, the agency has 30 days to write a pre-adoption report (*inquérito*), which will be presented to the court.<sup>23</sup> The report includes information on the personality and health of the proposed adopter(s) and adoptee, as well as the adopter's suitability for the education of minors, financial situation and reasons for wanting to adopt.<sup>24</sup>

#### D. Standard applied before making an adoption order

The law defines the standard for issuing an adoption order in Section 1974 (1) of the Portuguese Civil Code:

“Adoption aims to realize the superior interest of the child and will be approved if it shows real advantages for the adoptee; is founded on legitimate reasons; does not involve unfair sacrifice for other children of the adopter; and it is reasonable to expect that a bond between adoptee and adopter will be established that is similar to filiation.”<sup>25</sup>

Filiation is the close relationship, or bond, between an individual and the individual's progenitors. Before the court issues the adoption order, the child must have lived with the adopter for a sufficient period of time for the court to determine whether such a bond has been

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<sup>18</sup> Sec. 8 (3) Decreto-lei no. 185/93.

<sup>19</sup> Sec. 146 OTM.

<sup>20</sup> Sec. 1978 (1) Civil Code.

<sup>21</sup> Sec. 1978 (6) Civil Code).

<sup>22</sup> Sec. 9 (1) Decreto-lei no. 185/93.

<sup>23</sup> Sec. 9 (2) Decreto-lei no. 185/93.

<sup>24</sup> Sec. 1973 (2) Civil Code and Sec. 9 (1) Decreto-lei no. 185/93.

<sup>25</sup> Translation by Gesa Meyer.

established.<sup>26</sup> There is no fixed period of time prescribed by law. The length depends on the specific circumstances of each case.<sup>27</sup>

### III. Adoption Procedure

#### A. Who makes the adoption order

The legal act changing the legal status of parent and child is made by the competent family and minors court (*Tribunal de Família e Menores*)<sup>28</sup> on application for such an order by the couple or person who wishes to adopt.<sup>29</sup>

The adopter has to submit all available facts to prove that the conditions set forth in Section 1974(1) of the Portuguese Civil Code (see above) are fulfilled and that a bond similar to filiation has been established. The Court requests that the social security agency submit the pre-adoption report (*inquérito*) in case the applicant has not done so.<sup>30</sup>

The court will issue the final adoption order only after completing all compulsory measures and any other measures that it considers appropriate.<sup>31</sup>

#### B. Consents required for the making of an adoption order

##### 1. Consent requirements

Consent requirements are listed in Section 1981 of the Civil Code. Children over 12 years must consent to the adoption order.<sup>32</sup> In addition, the spouse of the adopter must consent unless the spouses are legally separated.<sup>33</sup>

The parents of the child must consent, even if they are minors and/or they are not exercising custody, unless the child has been placed in judicial care (*confiança judicial*) or has been subjected to some other measure for the purpose of adoption (*medida de promoção e protecção de confiança com vista a future adopção*).<sup>34</sup> The biological mother may not consent before the child has reached the age of six weeks.

The parents' consent may be, under certain circumstances, waived and replaced by the consent of the child's ascendants or relatives of the collateral line up to the third degree, or by the consent of the child's guardian. However, this is permitted only if the child is under the relative or guardian's care and no judicial care order has been issued. The waiver and replacement of consent is permitted: (i) if the parents have abandoned the child; (ii) if the parents constitute a serious danger to the child (including danger resulting from the mental illness of one

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<sup>26</sup> Sec. 1974 (2) Civil Code.

<sup>27</sup> *Pereira Coelho/de Oliverira, supra* note 1 at page 52.

<sup>28</sup> Sec. 146 (c) OTM e Sec. 82 of the Law on the Organization and Functioning of the Courts.

<sup>29</sup> Sec. 168 OTM.

<sup>30</sup> Sec. 169 OTM.

<sup>31</sup> Sec. 172 (1) OTM.

<sup>32</sup> Sec. 1981 (1) a Civil Code.

<sup>33</sup> Sec. 1981 (1) b Civil Code.

<sup>34</sup> Sec. 1981 (1) c Civil Code.

or more parent); or (iii) if the parents have shown a manifest lack of interest in their child for at least three months.<sup>35</sup>

If the parents of the adoptee are deceased, the child's ascendants or relatives of the collateral line up to the third degree must give their consent if the child is under their charge or lives with them.<sup>36</sup>

The form and timing of consent are set forth in Section 1982 of the Civil Code. Consent must refer unequivocally to full adoption and must be given in person before a judge, who must then inform the person declaring consent as to the meaning and effect of the consent. Consent may be given prior to and independent of a pending adoption process. The future adopter does not have to be identified for prior consent to be valid.

Prior consent may be declared before any court competent for family matters, regardless of the domicile of the minor or the consenting person. The consenting person, the office of the district attorney (*ministério público*) and the social security agencies have standing to apply for such a declaration. On application, the judge is obliged to set immediately the earliest possible date for the granting of consent. As soon as adoption proceedings are pending, the case will be linked to the adoption process.<sup>37</sup>

Prior consent lapses if the child has not been adopted, placed in care, or subjected to some other "measure of promotion and protection of care" (*medida de promoção e protecção de confiança*) within three years.<sup>38</sup>

## 2. Circumstances in which consent is not required

A court may waive consent if the person concerned is mentally incapacitated or if, for any other reason, there are great difficulties in giving the person a hearing. Furthermore, consent may be waived if those who should provide consent (in place of the parents) are themselves unsuitable for taking care of the child (cases are listed specifically) or if the parental authority of the parents has been withdrawn.<sup>39</sup>

## 3. Mandatory hearings

Before the adoption order is issued, the court must provide any children of the adopter who are older than 12 years the opportunity to be heard. Furthermore, ascendants/elder siblings of a deceased biological parent must be given the opportunity to be heard, if possible, if the new spouse of the surviving biological parent wants to adopt his or her stepchild.<sup>40</sup>

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<sup>35</sup> Sec. 1981 (2) Civil Code.

<sup>36</sup> Sec. 1981 (1) d Civil Code.

<sup>37</sup> Sec. 162 OTM.

<sup>38</sup> Sec. 1983 Civil Code.

<sup>39</sup> Sec. 1981 (3) a to c Civil Code.

<sup>40</sup> Sec. 1984 Civil Code.

The court, assisted by the office of the district attorney, will also provide the adoptee (age and maturity permitting)<sup>41</sup> and the office of the district attorney with the opportunity to be heard.<sup>42</sup>

C. Interim orders

Under Portuguese law, there technically are no interim orders relating to adoption; an adoption will be either fully declared or denied. The court may, however, order provisional care (*guarda provisória*) as soon as an application for judicial care (*confiança judicial*) has been made.<sup>43</sup>

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

The adoption process and the respective preliminary procedures, including administrative procedures, are held in secret.<sup>44</sup> The court may only allow access to the files if the applicant has compelling reasons and a legitimate interest. The office of the district attorney must be heard before access may be granted.<sup>45</sup> Any breach of the secrecy of the process constitutes a criminal offense and may be punishable by imprisonment of up to one year or up to 120 daily rates.<sup>46</sup>

The identity of the prospective adopter may not be revealed to the biological parents of the adoptee, unless the adoptee expressly declares that he or she does not oppose such disclosure. The biological parents may, by express declaration, oppose the disclosure of their identity to the adopter.<sup>47</sup>

The adoption is registered at the civil registry. A new birth entry is made which does not state the adoptee's original filiation. Birth certificates are produced on the basis of this new entry.<sup>48</sup> The possibility of origin tracing is limited to just a few exceptional situations.

One exception applies in the case of marriage impediments between relatives in accordance with Sections 1602 to 1604 of the Civil Code.<sup>49</sup> The original filiation is always stated on certificates used in preparation of marriages.<sup>50</sup>

Secondly, the adoptee may expressly request file extracts that state his original filiation. However, this is subject to the right of the biological parents to secrecy regarding their identity.<sup>51</sup>

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<sup>41</sup> Sec. 170 (2) OTM.

<sup>42</sup> Sec. 172 (1) OTM.

<sup>43</sup> Sec. 166 OTM.

<sup>44</sup> Sec. 173 B (1) OTM.

<sup>45</sup> Sec. 173 B (2) OTM.

<sup>46</sup> Sec. 173 B (3) OTM.

<sup>47</sup> Sec. 1985 Civil Code.

<sup>48</sup> Sec. 213 (2) Civil Registry Code.

<sup>49</sup> See Sec. 1986 Civil Code.

<sup>50</sup> Sec. 213 (2) Civil Registry Code.

<sup>51</sup> Sec. 213 (3) Civil Registry Code.

Finally, the adoptee, his descendents, heirs and even ascendants may request full extracts of the registry, again subject to the right to secrecy of the biological parents regarding their identity.<sup>52</sup>

The law therefore protects the adoptee's right to secrecy more so than the biological parents' right. The new identity of the adoptee may not be revealed to the biological parents unless the adoptee declares that he does not oppose such disclosure. If the adoptee remains silent in this respect, the identity may not be revealed. The identity of the biological parents is not revealed if they oppose disclosure. If, however, they remain silent, their identity may be revealed to the adoptee.<sup>53</sup>

#### **IV. Legal Effect of an Adoption**

In the words of the Civil Code (Section 1586),

“Adoption is the bond that, similar to biological filiation but independent of ties of blood, is legally established between two people in accordance with Section 1973 ff.”<sup>54</sup>

According to Section 1973, full adoption has the effect that the adoptee is regarded as if he or she were the biological child of the adopter. Family ties with previous relatives are completely dissolved,<sup>55</sup> unless adopted by a relative.<sup>56</sup> The adoptee receives the family name of the new parents in accordance with civil law provisions.<sup>57</sup> Normally, the child will keep his or her first name. On application of the adopter, the court may, in exceptional cases, change the adoptee's first name, if the change safeguards the adoptee's interests, and if the change promotes the child's integration into the new family.<sup>58</sup>

Full adoption is irrevocable, even if adopter and adoptee both want revocation.<sup>59</sup> However, the order may be repealed (*revisão*) in certain limited cases, all of which concern the validity of the required consents. Specifically, the order may be repealed: (i) if the adopter or biological parents did not provide the mandatory consent; (ii) if parents' consent was waived wrongfully; (iii) if the adopter's consent was based on an excusable and essential misunderstanding relating to the person of the adoptee (such that the adopter would not have adopted the child)<sup>60</sup>; (iv) if the adopter or biological parents were coerced to consent; or (v) if the mandatory consent of the adoptee was not taken. However, the possibility of repeal is excluded if it would considerably and adversely affect the interests of the adoptee (unless compelling reasons submitted by the adopter demand repeal in any event).<sup>61</sup>

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<sup>52</sup> Sec. 214 Civil Registry Code

<sup>53</sup> *Pereira Coelho/de Oliverira*, Curso de Direito da Família, 2nd edition, vol. 1, page 62.

<sup>54</sup> Translation by Gesa Meyer.

<sup>55</sup> Sec. 1986 (1) Civil Code.

<sup>56</sup> Sec. 1986 (2) Civil Code.

<sup>57</sup> Sec. 1988 (1) Civil Code.

<sup>58</sup> Sec. 1988 (2) Civil Code.

<sup>59</sup> Sec. 1989 Civil Code.

<sup>60</sup> Sec. 1990 (1) Civil Code.

<sup>61</sup> Sec. 1990 (3) Civil Code.



A request for the repeal of an adoption order may be made only by: (i) a person whose consent was not taken but should have been; (ii) a person whose consent was wrongfully taken; or (iii) an adoptee who has not given mandatory consent. Where the adoptee seeks repeal, his or her request for repeal can be made only within six months after attaining majority.<sup>62</sup>

## V. Recognition of Foreign Adoptions

In order to prevent international child trafficking and to guarantee the creation of a stable relationship between adopter and the adoptee child, the law strictly limits adoptions of children resident in Portugal by persons resident abroad.

Restrictions refer to residence only, not to nationality. Foreigners resident in Portugal can adopt children (Portuguese or foreign) under the same conditions as Portuguese adopters resident in Portugal.<sup>63</sup> The relevant law for the new family relationship will, however, be the law of the adopter's nationality (according to the applicable conflicts of laws rules).<sup>64</sup> Portuguese courts will therefore, where necessary, apply foreign law. Furthermore, if the respective foreign law requires the consent of the adoptee, this requirement must be fulfilled.<sup>65</sup>

Under the so-called principle of subsidiarity, a child may not be placed for adoption abroad if adoption is possible in Portugal.<sup>66</sup> Placements abroad must be issued by a court<sup>67</sup> and may be granted only if: (i) all consents in accordance with Portuguese law are given; (ii) the foreign competent authority considers the adopter suitable according to foreign law; (iii) a pre-adoption period long enough for the evaluation of the establishment of a family bond is provided for; and (iv) there is an indication that the proposed future adoption will provide real advantages for the adoptee, is legitimately motivated, and will establish a bond similar to filiation.<sup>68</sup>

Under the statutory scheme, a prospective foreign adopter must apply for adoption to the Portuguese central adoption agency through his or her national central adoption agency (*autoridade central*).<sup>69</sup> Because the Portuguese central adoption agency has not yet been established, however, this procedure exists only in the statutes at this time. When it becomes established, the Portuguese central adoption agency will be responsible for monitoring the development of the relationship between the proposed adopter and child during the pre-adoption period.<sup>70</sup> If there is no pre-adoption period in the foreign country, the adopter will have to spend sufficient time in Portugal to satisfy this requirement.<sup>71</sup> The office of the district attorney has standing to apply for the repeal of a foreign adoption order.<sup>72</sup>

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<sup>62</sup> Sec. 1991 Civil Code.

<sup>63</sup> According to information provided by the Ministry of Social Security and Labor, Directory General of Solidarity and Social Security (Direcção-Geral da Solidariedade e Segurança Social).

<sup>64</sup> Art. 60 (1) Civil Code.

<sup>65</sup> Art. 61 Civil Code.

<sup>66</sup> Sec. 15 (1) *Decreto-lei* 185/93.

<sup>67</sup> Sec. 14 *Decreto-lei* 185/93.

<sup>68</sup> Sec. 15 *Decreto-lei* 185/93.

<sup>69</sup> Sec. 17 *Decreto-lei* 185/93.

<sup>70</sup> Sec. 20 (1) *Decreto-lei* 185/93.

<sup>71</sup> Sec. 20 (2) *Decreto-lei* 185/93.

<sup>72</sup> Sec. 22 *Decreto-lei* 185/93.

Prospective adopters resident in Portugal of children resident abroad have to apply for adoption at their local social security agency. If the local agency considers the candidate to be suitable for international adoption, it will forward the application to the Portuguese central adoption agency (when it is established) which will then contact the relevant foreign adoption authority.<sup>73</sup> The local social security agency will inform the office of the district attorney of the beginning of the pre-adoption period and will inform the central authority of the development of the relationship between adopter and child.<sup>74</sup> If the adoption order has been made abroad, the central authority shall apply for repeal if the order was made without the adopter's application.<sup>75</sup>

Children fully adopted by Portuguese nationals automatically acquire Portuguese nationality.<sup>76</sup>

Portugal became a Member of the Hague Convention of May 29, 1993 on the Protection of Children and Co-operation in Respect of Intercountry Adoption ("Hague Convention") in July 1, 2004. Portugal has ratified the European Convention on the Adoption of Children of 1968.

## **VI. Restricted Adoptions**

To the extent they differ, the requirements for restricted adoptions are far easier to comply with than those for full adoptions. Only the differences will be outlined in this section. Unless mentioned otherwise, the rules for full adoption apply.

- The minimum age for the adopter is 25 years, regardless of civil status.<sup>77</sup> The maximum age is 60 but unlike the age requirements for full adoption, an age difference of more than 50 years is immaterial.<sup>78</sup>
- The legal effect of restricted adoption is limited. The adoptee is not regarded in law as a child of the adopter. Original filiation and the adoptive relationship coexist. Unless specified by law, all rights and duties of the adoptee toward his original family persist.<sup>79</sup>
- The adoptee does not receive the adopter's family name. The court may, on application of the adopter, change the family name of the adoptee by combining the family name of his biological family and that of the adopter.<sup>80</sup>
- The adopter has the exclusive parental authority (together, of course, with his spouse if the adoptee is the spouse's child).<sup>81</sup> The adopter acquires all parental rights and duties,

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<sup>73</sup> Sec. 23 and 24 *Decreto-lei* 185/93.

<sup>74</sup> Sec. 25 *Decreto-lei* 185/93.

<sup>75</sup> Sec. 26 *Decreto-lei* 185/93.

<sup>76</sup> Sec. 5 *Lei da Nacionalidade*.

<sup>77</sup> Sec. 1992 (1) Civil Code.

<sup>78</sup> Sec. 1992 (2) Civil Code.

<sup>79</sup> Sec. 1994 Civil Code.

<sup>80</sup> Sec. 1995 Civil Code.

<sup>81</sup> Sec. 1997 Civil Code.

subject only to the limitation that the court defines the extent to which the adopter may use the child's own assets for the child's maintenance.<sup>82</sup>

- Within 30 days after adoption, the adopter must present an inventory of the adoptee's assets to the court. Additionally, the adopter has to present accounts at any time upon request of the court.<sup>83</sup>
- Generally, the adoptee and the adopter are not legally regarded as each other's heirs.<sup>84</sup> They do inherit, however, if the adopter has no spouse, descendants or ascendants, or if the adoptee has no spouse, descendants, ascendants, siblings or other eligible relatives.<sup>85</sup>
- The adoptee is only obliged to support the adopter financially if no spouse, descendants or ascendants of the adopter are capable of doing so.<sup>86</sup> The adoptee is, however, entitled to claim financial support from the adopter. The adopter is primarily liable for the support of the adoptee, even before the biological parents.<sup>87</sup>
- Restricted adoption is revocable. Both the adopter and adoptee have standing to apply for revocation if conditions that would justify disinheritance are fulfilled.<sup>88</sup> As long as the adoptee is still a minor, the biological parents, the office of the district attorney, or persons who have taken care of the child before the adoption also have standing to seek revocation if the adopter does not fulfill his or her parental duties or if it transpires that, for whatever reason, the adoption is detrimental to the education or interests of the adoptee.<sup>89</sup>

Upon application, a restricted adoption may be converted to a full adoption if all conditions for full adoption are met.<sup>90</sup>

## VII. Resources

There are very few Internet resources on Portuguese adoption law. The most useful we found were:

- The Ministry of Social Security and Labor (*Ministério da Segurança Social e do Trabalho*, [www.msst.gov.pt](http://www.msst.gov.pt)) offers basic information in Portuguese and application forms which are available for downloading.<sup>91</sup>
- The Ministry of Justice ([www.mj.gov.pt](http://www.mj.gov.pt)) provides details of the 2003 reform of adoption law.<sup>92</sup>

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<sup>82</sup> Sec. 1997 and 1998 Civil Code.

<sup>83</sup> Sec. 2002 and 2002 A Civil Code.

<sup>84</sup> Sec. 1996 Civil Code.

<sup>85</sup> Sec. 1999 Civil Code.

<sup>86</sup> Sec. 2000 (1) Civil Code.

<sup>87</sup> Sec. 2000 (2) Civil Code.

<sup>88</sup> Sec. 2002 B Civil Code.

<sup>89</sup> Sec. 2002 C Civil Code.

<sup>90</sup> Sec. 1977 (2) Civil Code.

<sup>91</sup> <http://195.245.197.196/left.asp?03.06.01.02.02>

- The Lesbian Gay Bisexual and Transgender interest group (<http://lgbtlegal.planetaclix.pt>) provides the basic legislation on adoption.<sup>93</sup>

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<sup>92</sup> [http://www.mj.gov.pt/default.asp?c=00000004&d=00003064:00000001:00000002&r=00010&b=.](http://www.mj.gov.pt/default.asp?c=00000004&d=00003064:00000001:00000002&r=00010&b=)

<sup>93</sup> <http://lgbtlegal.planetaclix.pt/leges/adop.htm>.