

## Overview of French Adoption Law

Most of the rules governing adoption in France are set forth in the Statute n°66-500 of 11th July, 1966. It has often been amended. The recent legislative modifications are aimed in particular at taking into account the new aspects of international adoption. The adoption provisions in French law are codified in part VIII of the Civil Code entitled “Of Adoption.”

There are two forms of adoption under French law. A plenary adoption order (“*adoption plénière*”) results in the adopter(s) and the adopted child assuming the same legal relationship as if the child had been born to the adopter(s) within marriage. An ordinary adoption order (“*adoption simple*”) results in the adopted child keeping some legal bond with his original family while being given a legal relationship with his new family.

The adoption process in France requires two successive steps: an administrative procedure, which leads to the grant of an assent (“*agrément*”) and then a judicial (court) procedure, which leads to the adoption order. Therefore, the responsibility for making adoption orders is vested both in the Head of the District Council (*Président du Conseil Général*) and his agents regarding the administrative step and in the courts with regard to the judicial procedure. Before a final adoption order is made, the child usually is placed with the future adopter(s). This temporary “placement for adoption” does not have the legal effect of a final adoption order.

As to international adoption, France has been active in the recent developments and signed the United Nations Convention on the Rights of the Child (1989), its two Protocols, and the Hague Convention (1993).

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

The main statutes governing adoption in France are:

- Statute n° 66-500 of 11th July, 1966;
- Statute n° 76-1179 of 22nd December, 1976;
- Statute n° 93-22 of 8th January, 1993;
- Statute n° 94-629 of 25th July, 1994;
- Statute n° 95-125 of 8th February, 1995;
- Statute n° 96-604 of 5th July, 1996;
- Statute n° 2004-111 of 6th February, 2001;
- Statute n° 2002-93 of 22nd January, 2002;
- Statute n° 2002-304 of 4th March, 2002;
- Statute n° 2003-516 of 18th June, 2003.

*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.*

*Domestically*, acts and regulations governing adoption are incorporated in the French Civil Code:

Title VIII: OF ADOPTION (articles 343 to 370-5)

Chapter I - Of Plenary Adoption (articles 343 to 359)

- Section I - Of the Requisites for Plenary Adoption (articles 343 to 350)
- Section II - Of the Placing for Purpose of Plenary Adoption and of the Judgment of Plenary Adoption (articles 351 to 354)
- Section III - Of the Effects of Plenary Adoption (articles 355 to 359)

Chapter II - Of Ordinary Adoption (articles 360 to 370-2)

- Section I - Of Requisites and Judgment (articles 360 to 362)
- Section II - Of the Effects of Ordinary Adoption (articles 363 to 370-2)

Chapter III - Of the Conflict of Laws relating to Adoption and of the Effects in France of Adoptions Ordered Abroad (articles 370-3 to 370-5)

From the international perspective, France has signed:

- The United Nations Convention on the Rights of the Child (signed on January 26th, 1990), the Protocol on the involvement of children in armed conflict (signed September 6th, 2000 and ratified February 5, 2003), and the Protocol on the sale of children, child prostitution and child pornography (signed September 6th, 2000 and ratified February 5, 2003); and
- The Hague Convention of 29 May 1993 on Protection and Co-operation in Respect of Intercountry Adoption (signed on April 5th, 1995 and ratified on June 30th, 1998).

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

### **A. Who may be adopted?**

Several categories of Children are eligible for adoption under French Law<sup>1</sup> including; those children whom the biological parents or the family council have validly consented to put up for adoption; wards of the State (found children, neglected children and orphans); and children declared abandoned. It is also possible to adopt foreign children.<sup>2</sup>

For children under fifteen years old, adoption normally is allowed only where the child has lived in the home of the prospective adopter(s) for at least six months. For children older than fifteen, plenary adoption is permitted (assuming all other conditions are met) “during the minority of the child and within two years following his coming of age” only if the child, before

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<sup>1</sup> Article 347 of the French Civil Code

<sup>2</sup> See below (V. Recognition of foreign adoption)

reaching 15 years of age, either (i) lived in the home of persons who did not fulfill the statutory requirements for adopting or (ii) was the subject of an ordinary adoption. Where the child is older than thirteen, he or she must personally consent to his or her plenary adoption.

#### B. Who may adopt?

With regard to the conditions concerning the adopting persons, the relevant French acts set forth requirements as to, among other things, the civil status of the applicants and their age.

##### 1. Civil status requirements

Adoption may be petitioned by jointly by married couples living together (not judicially separated), or singly, by either a single person or a married person alone. However, where the proposed adopter is married and not judicially separated, his or her spouse's consent is required unless the spouse is incapable of expressing his or her intention (for instance if he or she is in a coma).<sup>3</sup>

##### 2. Age and duration requirements

Spouses seeking to adopt must have been married for more than two years, unless both are older than 28 years. This age requirement is not imposed in the case of adoption of the spouse's child. A single person must be over 28 years of age.<sup>4</sup>

The adopters must be 15 years older than the child whom they propose to adopt. In cases in which the child is a spouse's child, the required difference of age is only 10 years. However, the court may, with good reason, make an adoption order in which the difference in age is smaller than the requirements.<sup>5</sup>

##### 3. Religious/ racial/ requirements

There are no requirements regarding race or religion.

#### C. Adoption authorities

The Head of the District Council ("*Président du Conseil Général du département*"), an elected local authority, together with his internal agents, in particular the Childhood Social Service ("*service de l'aide sociale à l'enfance*") and the Assent Commission ("*Commission d'agrément*"), are in charge of the administrative procedure, while the District Court ("*Tribunal de Grande Instance*") is in charge of the judicial aspects of the adoption process.

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<sup>3</sup> Articles 343 and 343-1 of the French Civil Code

<sup>4</sup> Articles 343-1, 343-2 and 343 of the French Civil Code

<sup>5</sup> Article 344 of the French Civil Code

D. Standard applied before making an adoption order

Through the administrative procedure, the fitness and ability of the applicant to adopt a child are assessed under a variety of criteria, *inter alia*, psychological, financial, social, educational and family situation.

The general standard applied by the District Court is the “best interest of the child.”

When the child is over 13 years, he or she must consent to the adoption.

### III. Adoption Procedure

A. Who makes the Adoption Order?

There are two successive steps in the adoption process in France: an administrative procedure and a judicial one. The administrative step enables the applicant to obtain an assent (“*agrément*”). This assent is required in order for the prospective adopters to be put in contact with a child likely to be adopted. Then, an adoption order may be granted by a District Court.

1. Administrative Procedure

The assent procedure aims at assessing the coherence and feasibility of the proposed adoption. Applicants do not have a right to adopt or to receive assent.

The request for adoption must be addressed to the Head of the District Council (“*Président du Conseil Général du département*”) of the District in which the applicant intending to adopt a child resides.

The Childhood Social Service (“*service de l’aide sociale à l’enfance*”) informs applicants, *inter alia*, on psychological and legal aspects of adoption, on the number of wards, and the number of persons who received an assent.

With the application, the applicant must provide:

- a copy of his or her birth certificate and family file (“*livret de famille*”) if the applicant has children;
- a copy of his or her police record (*bulletin n°3 du casier judiciaire*);
- a medical certificate attesting that his or her health and the health of those persons living in his or her home are compatible with welcoming the adopted child; and
- any document attesting to his or her financial means.

Then, the applicant must go through interviews conducted by agents of the District Council that are aimed at assessing the proposed adoption under financial, social, educational and family-related criteria.

Once the investigation is completed, the Assent Committee (“*commission d’agrément*”) gives its opinion regarding the applicant’s adoption proposal.

Within nine months of the registration of the application, the applicant is notified of the grant or refusal of the assent. The decision will set forth the number of children, if any, that the applicant may simultaneously adopt, and may include a statement providing some characteristics of the children to be adopted, such as age. If the grant of the assent is refused to the applicant, he can appeal the decision before an administrative court.

The assent is effective for a five-year period, and it remains valid if the applicant moves to another location in France, subject to a registration to the Head of the District Council ("*Conseil Général*").

## 2. Judicial procedure

The applicant must bring his request for a formal adoption order to the local District Court of the district in which he resides. Such request can be brought as soon as the child subject to adoption is placed with the applicant. However, if the request is for plenary adoption,<sup>6</sup> the Court can examine the request only after the expiration of a six-month period in which the child is temporarily placed with the applicant.

The request is made through the service of a lawyer. However, if the child is younger than 15 years when placed with his new family, the request may be sent directly to the *Procureur de la République* (a judge who intervenes on behalf of the State) who will transfer it to the Court.

The Court must examine the request. The legal conditions applying to the applicant and to the adopted child are verified. The validity of the necessary assents is also verified. The Court proceeds to a general inquiry and has a power of investigation to assess whether adoption is in the best interest of the child. The Childhood Social Service can also communicate information provided by the applicant during the administrative procedure to the Court. The *Procureur de la République* can also conduct investigations that she or he thinks may be necessary.

The Court may grant an adoption court order or refuse to grant it. The Court may also pronounce an order for ordinary adoption even if the applicant requested an order for plenary adoption.

The court judgment can be appealed within 15 days of receipt, by the applicant, the *Procureur de la République*, or a third party who was notified the decision.

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

Both the biological father and biological mother must consent to the adoption, so long as their parentage has been established. When one of them is dead, unable to give his consent, or has lost his or her rights of parental authority, the consent of the other suffices. When the parentage of a child is established with regard to only one parent, that parent shall give the consent to adoption. When both parents are dead, unable to give their consent, or have lost their rights of parental authority, the consent is given by the family council ("*conseil de famille*") after

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<sup>6</sup> See below (IV. Legal effects of an adoption)

receiving the counsel of the person who actually takes care of the child. The same procedure applies where the parentage of the child is not established.<sup>7</sup>

For children who are wards of the State and whose parents have not consented to the adoption, the family council -- a public authority in charge of the guardianship over wards -- must give its consent to an adoption.

When the child is over 13 years, he or she must personally consent to the adoption.<sup>8</sup>

Consent is given before the chief clerk of the local court ("*tribunal d'instance*") of the jurisdiction where the concerned person resides, before a notary ("*notaire*"), or before French consular or diplomatic agents.<sup>9</sup>

Except where there exists a bond of relationship by blood or by marriage up to the sixth degree inclusive between the adopter and the adoptee, the consent to adoption of children under two years old is valid only if the child was actually entrusted to the Childhood Social Service or to another body authorized for adoption.<sup>10</sup>

The Court may grant an adoption order if it determines that consent has been unjustifiably or abusively refused.<sup>11</sup>

Consent of the parents may be revoked within 2 months.<sup>12</sup>

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

Two kinds of adoption -- plenary adoption ("*adoption plénière*") and ordinary adoption ("*adoption simple*") -- exist under French law, each with its own legal effect.

In a Plenary adoption, the adopted child assumes the same relationship as if he had been born to the adoptive parent(s) within marriage. Any legal bond with his original family will be treated as if it had never existed.

Upon the entry of the adoption order, the original parents or guardian lose all parental rights over the child and are freed from all duties. These rights and duties are transferred to the adoptive parents. The adopted child bears the family name of his adoptive parents and automatically gets their nationality. A plenary adoption order is irrevocable.

##### **1. Ordinary adoption**

In this form of adoption, the adopted child becomes a member of his new family but some legal bonds remain with his or her original family.

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<sup>7</sup> Articles 348, 348-1 and 348-2 of the French Civil Code

<sup>8</sup> Articles 345 and 360 of the French Civil Code

<sup>9</sup> Article 348-3 of the French Civil Code

<sup>10</sup> Article 348-5 of the French Civil Code

<sup>11</sup> Article 348-6 of the French Civil Code

<sup>12</sup> Article 348-3 of the French Civil Code

The child bears the family name of his or her original family in addition to the name of the adopting family. The child also retains inheritance rights in his or her original family as well as his or her adopting family. The child does not automatically receive the nationality of his adopters. Ordinary adoption orders can be revoked only for serious reasons and require a new judgment to do so.<sup>13</sup>

Ordinary adoption is the only form of adoption available when the child is over 15 years old, except if, before reaching 15, the child was placed with a family whose members did not fulfill the legal conditions to adopt.

## **V. Recognition of Foreign Adoptions**

International adoption has become increasingly popular in France in recent decades. About 30,000 foreign children were adopted in France in the last 15 years.

France ratified the Hague Convention on Protection and Co-operation in Respect of Intercountry Adoption (the “Hague Convention”) in 1998. Therefore, the procedure regarding international adoption depends on whether countries from which adopted children originated have ratified the Hague Convention.

In order to provide security and certainty to the process of international adoption, French authorities established the Mission for international adoption (“*La Mission de l’adoption internationale*”).

*Mission de l'Adoption Internationale*  
244 Bd Saint Germain  
75303 PARIS 07 SP  
Téléphone : 01 43 17 90 90  
(from 9h30 to 12h30 and from 14h30 to 17h30)  
Fax : 01 43 17 93 44  
Internet: [www.diplomatie.gouv.fr/mai](http://www.diplomatie.gouv.fr/mai)

This Mission is a governmental association in charge of gathering and providing information as to the proposed international adoption; treating international adoption applications in accordance with the Hague Convention; granting visas to foreign children after checking the compliance with French and foreign regulations; and duly authorizing and controlling French adoption associations.

## **VI. Resources**

Fédération Enfance & Familles d'Adoption, association nationale des familles adoptives  
Enfance et Famille d'Adoption, 221 rue La Fayette 75010 PARIS  
Tel: 01.40.05.57.70 Fax: 01.40.05.57.79; Présidente: Mme Janice Peyré  
E-mail: [secretariat.federation@adoptionefa.com](mailto:secretariat.federation@adoptionefa.com)  
Internet website : <http://www.adoptionefa.com>

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<sup>13</sup> Article 345 of the French Civil Code

The MAI website (see above) provides the names and whereabouts of all authorized organizations and main actors of adoption in France.