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Congress of the Republic
Guatemala, C.A.

Legislative Direction
Initiative Control

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3635

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Law initiative presented by representatives Cesar Leonel Soto Arango, Jorge Mario Vasquez Velasquez and partners.

Subject:

Initiative that attempts to approve the law of international adoptions.

Process: Pass on to the Legislative Commission and Constitutional Points for their study and corresponding dictum.

Guatemala, March 19th, 2007

Licensed
Ana Isabel Antillon
Legislative Direction

Respectable Licensed Antillon:

I direct myself to you to give you the Law Initiative of INTERNATIONAL ADOPTIONS, with its respective exposition of motives, proposed by the deputies who have signed below, to be read and understood in the Honorable Completion during the next programmed session.

Thanking you for your attention, respectfully.

Project of International Adoption Law

Exposition of motives

The political constitution of the Republic of Guatemala recognizes and protects the adoption and considers of national interest the protection of abandoned and orphaned children. At the same time, the Convention concerning the Rights of the Child, ratified by Guatemala, recognizes that the child, for his complete and harmonious development of his personality, should grow up in the bosom of a family, in an environment of happiness, love and comprehension.

When family reunification is not possible or does not present itself as an option, the child should have an alternative means to be integrated in a family through the process of adoption, considering being placed in an institution of social assistance only as a temporary option. At the same time, the adoption of children into Guatemalan families should be prioritized, and it is necessary to regulate continually the international adoption so that they would provide homes to needy Guatemalan children of permanent families, so that these can be realized, taking into account the superior interest

of the child and the respect for the fundamental rights that recognize the International Right and consequently prevent the subtraction, the sale or trafficking of children.

The international adoption is a process that involves the laws of two countries: the country of descent of the child and the country of residency of the adoptive parents. To establish common dispositions that take into consideration the recognized principals by international instruments, it is necessary to adequate the legislation that regulates the international adoptions to the legal mark that establishes the ***Convention for the Protection of the Child and the collaboration in material of International Adoption*** made in the Haya in May of 1993, so that the adoption of Guatemalan children would continue without obstacles because the lack of such a legislation could put at risk the international adoptions and prohibit the abandoned and orphaned children of Guatemala the right to grow up in the bosom of a family.

Because the international adoption is more complicated than the national, as well as the process of adoption, can be done judicially or with a notary, and is found already regulated in the Civil Code and the Decree 54-77 of the Congress of the Republic, it is necessary to finish the previous process, where every doubt will be

addressed concerning the origin of the child, it will be proportioned to the parents of the child that will be adopted the necessary counsel so that they can make an informed decision, and in general to maintain the rights of the parents, biological as well as adoptive, and especially the rights of the child. It should be noted that, precisely because the current process presents certain simplicity and easiness in its development, it is considered that the same should continue applying itself to national adoptions, as a form of encouraging them, without complicating the unnecessary manner of the process, and fighting always for the superior interest of the child.

The need to maintain a channel of communication with other states is satisfied with the designation of a Central Authority, to maintain relations with the Central Authorities of other countries and proportion current information to people who are interested in adopting Guatemalan children, which implies that they count on personnel that speak and understand other languages, as well as Spanish and that has the capacity and formation necessary to relate nicely and respectfully with people and authorities from other countries. For these reasons, it is necessary to have the adequate personnel to fulfill the above functions.

The Central Authority will function under the name of INSTITUTE OF THE CHILD AND THE ADOPTIVE FAMILY (INFA), which will be an autonomous entity with the objective that it will be under the same scrutiny of the three powers of the State and will realize functions that are stated by the *Convention for the protection of the child and the collaboration in the material of international adoption*, through accredited organisms before the mentioned entity, to realize the distinct functions that imply the procedure before the adoption. These organisms will have under their control, under the immediate supervision of the Institute of the Child and the Adoptive Family, provide services of family assistance to those parents that desire to give their children in adoption, as well as instruct them concerning the legal consequences of their decision and of the rights that assist them. Also, they will be in charge of collecting the samples for the completion of the DNA test in the indicated laboratories by the central authorities of the receptor countries through the diplomatic representations, to genetically establish the relationship between the parents and the children, with the goal of casting out all doubt concerning the origin of the child and to realize psychological and social studies on the biological parents, with the goal of establishing that their intention to give their child in adoption is a voluntary decision, made with the complete understanding of the consequences and free from any pressure.

It is necessary to keep a detailed registry of the different people that intervene in each process of adoption, to protect the interests of those who have been commissioned to complete the adoption of the child. For this effect, the Registry of Adoptions will function as a department of the Institute of the Child and Adoptive Family, and each international adoption that is completed, will be registered in the above mentioned.

The care of the children during the process of adoption trusts as much in institutions as people who are not trained in it. For this reason, it has been established for the people that have under their control the care of the child in the process of international adoption, the obligation to receive training in the care of the children, infant nutrition, early stimulation and the administration of first aid, with the goal of giving to the children under their care the best attention possible. These people also will be registered in the Registry of Adoptions and will be authorized to care for children when they have received the necessary preparation.

It is established in the current law, a process previous to the initiation of an international adoption, which comprehends a series of diligences that tend to the protection of the superior interest of the child, as well as the biological and adoptive parents involved; realized these diligences, the biological parents should ratify their

consent before a competent judge, before he can be assigned to a possible adoptive family.

The geographic distance between the adoptive parents and the place where the adoption process is developed, obligates them to trust completely in the people and institutions that process is given to and the care of the child that is being adopted. It is necessary to establish mechanisms to avoid controversies that could occur between those adopting and the people and institutions in Guatemala. For this there has been created the Supervision of Adoptions in the Institute of the Child and Adoptive Family, where the people interested will be able to respond in complaint of aid, when they consider that the adoption is not being completed with the necessary diligence or the child in question is not receiving the care that he deserves, it will be supervised, whether it be the process in question or the care that the child should be receiving in the case. The opportunity will be given to the party who the complaint is against to give their version of the facts. If it is established that there was not a fulfillment by the professionals of the Right, a copy of the report from the supervisor will be sent to the tribunal of honor of the School of Lawyers and those who Notarize, so that it can be established if there was a violation of the Code of Professional Ethics or to the corresponding administrative authority, and if there were indicators of the commission of an offense, the action will be denounced in the Public Ministry. The

reports of such supervisions will be taken into account to decide, whether it be in the cancellation or not renewing the accreditation of whom turns out to be responsible or its destitution if that be the case.

During the time that passes in the adoption process, many drastic changes could occur, in the health of the child that is being adopted as well as the family situation of those adopting. Those changes could obligate the adoptive parents to desist from the adoption, be it during the process or even when the adoption should be concluded. It is necessary to establish the norms that regulate the importance of such situations in relationship with those adopting, as well as establishing the procedure so that the child can be adopted by another person without a major delay.

Taking into consideration that time is the worst enemy of children, who do not have families, it is necessary that the rigorous scrutiny that is done on the background of the process and the steps in the process, be done quickly, with the goal of permitting the adopted child to reunite with his adoptive family in the greatest brevity possible. For this, there have been established clear norms, easy to apply and easy to supervise, attending the principals of legality, swiftness and economic processing, without neglecting in any way the transparency and strict observance of the law.

On the other hand, the situation of the child that is currently found in the different Children's Homes and public and private Orphanages, and whose rights have been violated according to the judicial declaration, is troublesome and should take urgent measures so that these boys and girls have the option, not just to be adopted nationally, but also internationally, which in the present project, is contemplated the specific process for these cases, and be able to reconstitute their rights to a family, love and care.

Pre-project of:

Law of International Adoptions

Considering;

That every child has the right to grow in the bosom of a family, in an environment of love, comprehension and harmony and when the family of origin cannot provide it, is necessary that through the means of adoption, can be given to the child in need, the warmth of a home and the love of a permanent family.

Considering;

That the immigration is one of the characteristics of recent days, being very common for people who seek a better life would do so in other countries, looking for other opportunities that their country cannot offer at the time. At the same time, the international adoption is accepted as a more positive way of giving homes to thousands of children who have none, and for many reasons are not adopted in their country of origin.

Considering;

That the international adoption is more complicated than national adoption, because it involves legal dispositions from the country of origin of the child as well as from the residence of those adopting, for which reason it was celebrated in the city of the Haya in May of 1993, the *Convention for the Protection of the Child and the collaboration of material of International adoption*, to establish the legal marker that the legislations should adequate themselves to from the countries that contemplate the international adoption, and not doing it would impede the citizens of those countries to adopt children from countries that do not regulate the adoption according to this convention.

Considering;

That it is necessary to reinforce the legal mechanisms of control of the process of adoption, to guarantee to those who adopt Guatemalan children, that their origin has been established without a margin of doubt and that the adoption gives itself in virtue of consent, free from pressure, of whom exercises the authority of the mother country of the child that is being adopted, establishing itself the obligation to realize a DNA test, the mother as well as the child, to cast out any doubt concerning the kinship between both. Also, it become necessary to counsel the parents that are giving their child in adoption, to assure that they comprehend the consequences of their decision, informing them of the same.

Considering;

That when family reunification is not possible or does not constitute itself as an option, the child should have an alternative means to be integrated into a family through the process of adoption, considering the institutionalization in an institution of social assistance only as a temporary measure. At the same time, the adoption of children by Guatemalan families is encouraged, and is necessary to regulate adequately the international adoption that would provide homes to Guatemalan children in need of permanent families,

so that these can be realized taking into account the superior interest of the child and the respect of the fundamental rights that are recognized by the International Right and consequently, prevent subtraction, sale or trafficking of children.

Considering;

That it is necessary to create an autonomous entity that would perform the functions of the Central Authority for the effects of the *Convention for the Protection of the Child and the collaboration of material of International adoption*, whether it be the person in charge of coordinating the activities of the professionals that would intervene in the process of adoption, as well as taking necessary steps to assure that the processes are adjusted to the current law, to the Convention of the Rights of the Child, and the superior interest of the child and to assure the recognition in the country of residency of the adoptive parents, of the adoptions realized in Guatemala.

Considering;

That the norms that direct the creation, organization and functionality of the Institute of the Child and the Adoptive Family, who will be function in the mentioned entity, should be regulated to

assure that the purposes by which they have been created do not denaturalize and that since their beginning function as they should, so that the adoptions continue to be an option for the children who need a family.

Considering;

That it is necessary the supervision of the procedures of the process of adoption as well as the temporary care that the children receive while they are in the process, to assure that those processes are being completed conforming to the highest standards of professional ethics and that the children are receiving optimal care, providing to the parents of the child as well as those who are adopting, the mechanisms so that they can express the offenses that they have against the individuals or institutions that intervene in the process, with the goal of resolving the problems that present themselves and contribute to so that the adoption can be finalized. At the same time, it is necessary to regulate what is relative to the situation that is originated when those adopting, for whatever reason, are not able to continue with the adoption, or once adopted, it becomes impossible for them to take care of the child, to permit that the child be adopting again, without delays that would only have a negative effect on the child. Also, necessary norms should be established to prevent inadequate material benefits in relation with the

adoption and impede every practice against the objectives of the current law.

As a result:

Which are founded in what is stated in articles 47, 50, 51 and 54 of the Political Constitution of the Republic and in exercise of the articles 172 clause) and 157 of the Political Constitution,

Decrees:

The following

LAW OF INTERNATIONAL ADOPTIONS

CHAPTER I

Ambit of Application of the Law

Article 1.-Ambit of Application of the Law. The norms of the present law will be applied only when it concerns international adoption, and will only be realized when the ones adopting the Guatemalan boy, girl or adolescent have a habitual residency in another country.

Article 2.-Jurisdiction and Competency. Are competent to be resolved conforming to the norms of the current law, the Judges of First Instance of Family of the department of the Republic of Guatemala where the process of adoption is rooted.

Article 3.-Extension of the Competency. The Family Judge before whom the process of adoption is presented for effects to designate a social worker or receive the consent for the adoption, will be competent to know the process mentioned of adoption and resolve it definitely if it were the case, even though the biological parents or the child are found in another department of the Republic.

Article 4.- Affiliation for Adoption. The norms of the current law are only applied to those cases where a connection of affiliation has been established between the one adopting and the adopted, that put an end in a definitive way to the kinship between the child being adopted and his family of origin.

Article 5.-Age of who is being adopted. The norms of the current law will be applied always when procedure of the process of adoption is finalized before the adopted child turns 18 years old.

Chapter II

Central Authority and Accredited Organisms

Article 6.-Designation of Central Authority.

Institute of the Child and Adoptive Family, that which functions as an autonomous entity, decentralized, of public right, with judicial personality, whose finality is to give fulfillment to the established functions for the Central Authority by the *Convention for the Protection of the Child and the collaboration of material of International adoption*, which is denominated “**Institute of the Child and Adoptive Family**” and for the effects of this law, are also denominated “**The Institute**” or by the initials “**INFA**”, and will have its residence in Guatemala City, and establishing offices in all of the departments of the Republic. For the effects of the verification of the adequate fulfillment of the international legislation and the formulation of political accords, it will be supervised by the three organisms of the State, in the manner listed in what is referred to in the annual report of this institute.

Article 7.-Organization. The sectors of the Institute are:

- a) The Board of Directors;
- b) The Management; and,

- c) The directors of each department.

Article 8.-Attributes of the Board of Directors. The Board of Directors is the supreme authority of the Institute and, consequently, the general direction of the activities corresponds to it.

Article 9.-Integration of the Board of Directors. The members of the Board of Directors will hold their position for a period of seven years, and the same should be integrated by seven official members and seven substitutes, designated in the following way:

- a. One official and one substitute for the Secretary of Social Wellbeing of the Presidency of the Republic;
- b. One official and one substitute for the Attorney General of the Nation;
- c. One official and one substitute for the Judicial Organism;
- d. One official and one substitute for the School of Lawyers and Notaries of Guatemala;
- e. One official and one substitute for the School of Physicians and Surgeons of Guatemala;
- f. One official and one substitute for the Attorney General of Human Rights.-

Article 10.-Requirements to become a member of the Board of Directors.-

To become a member of the Board of Directors for the Institute of the Child and the Adoptive Family requires:

- a) To be a natural Guatemalan, older than 35 years of age, of the secular state and an exercising citizen;
- b) To have an academic grade of Licensed or its equivalent, given be a University in Guatemala;
- c) Possess honorability and independence of recognized criteria;
- d) To have at least 8 years of professional graduation;
- e) In equality of conditions, will give preference to those who are adoptive fathers or mothers.

Article 11.-Attributes of the Board of Directors. All of the members of the Board of Directors have equality in rights and obligations, except the president, who will preside over the sessions, maintain frequent contact with the management for the purpose of facilitating their labors and those of the Board of Directors, and consequently, collect each month the additional remuneration that is indicated by the general budget of the spending of the Institution.

Article 12.-Designation of the President. The position of the president will be exercised during one year in a rotating form, in the order of descending age,

for each one of the official members of the Board of Directors, beginning with the oldest; assuming that the substitute take the place of the official before he has become president, will occupy the position that would have corresponded to the official that replaces him and in any case the substitute that replaces who would be the president, will have the right to occupy such a position.

Article 13.-Absence of Official. In the case of the temporary or accidental absence of the official, including the president, his functions should be taken over by the respective substitute for the rest of the corresponding legal period and the people or entities in charge of naming who will proceed should limit themselves to designate a new substitute, who will stay in that position for the remainder of the corresponding period of whom he will be replacing.

Article 14.-Naming of new Board of Directors. The members of the Board of Directors that would substitute those who finish their period should name within three months prior the expiring of the same and their naming should be notified to the Board of Directors as soon as the designation has been made and no later than two weeks before the Board of Directors finalizes its period.

Article 15.-Absence of designation of new members of the Board of Directors. If official or substitute members are not designated, or if either of these does not fulfill the legal conditions, the exiting members of the Board of Directors should choose without wasting time by the majority represented by a minimum of five votes, the people that they esteem convenient, always when they fulfill the demands of this law.

Article 16.-Performance of functions of the Board of Directors. The members of the Board of Directors, officials or substitutes, should perform their actions in the following manner:

- a) With absolute independence of the interests of order of political party and any other outside things that take away from the finality of the institute;
- b) Their decisions are taken by simple majority, except if the law establishes a greater number of votes;
- c) They will be responsible penal, civil and administratively for the acts that correspond to their conduct.

Article 17.-Inability to move and causes for revoking. The members of the Board of Directors are unable to move during their period of service, except if they were to present their expressed resignation before the Board of Directors or if they do the following:

- a) Do not assist the sessions that are celebrated during a period of 15 days, whether they be ordinary or extraordinary;
- b) Have not performed their functions for whatever motive, justified or not, during six consecutive months;
- c) Realize activities that are not compatible with the goals of the Institute, including inappropriate conduct or dishonesty in relation to the children and adolescents.

Article 18.-Report of the President of the Board of Directors. One month prior to finalizing their management as the president of the Board of Directors of the Institute, who will occupy such a position, will report to the presidents of the three powers of the State, concerning the activities realized by the Institute, indicating statistics according to the registries of the same, the efforts realized to optimize the resources of the Institute as well as the performance of the officials and employees, and recommendations that arise to better the service that is provided by the Institute.

Article 19.-Approval of the Report. The president in Ministry Counsel, in view of the Congress and the Supreme Court of Justice, will obtain the report during the month after it is received and will proceed to approve it or disapprove it, reasoning its conclusion, explaining why the actions of the Institute are in accord with the superior interest of the child and the international instruments are applicable for the same effect.

If it were disapproved by two of the three organisms, the presiding president will be removed from his/her position immediately, being passed to the substitute to occupy the job; if this disapproval were to occur during the final period as a member of the Board of Directors, this member will not be designated to another successive period.

Article 20.-Reelection of the members of the Board of Directors. The members of the Board of Directors will be reelected by the same accredited organism or governmental entity, or by other who possesses the faculties of designation.

Article 21.-Functions of the Institute of the Child and Adoptive Family. The Institute of the Child and Adoptive Family will have in their charge

the following functions, which will be controlled by the corresponding department:

- a) provide information about the legislation of Guatemala in the material of adoption and other general information, such as statistics and forms in Spanish and in English;
- b) Share information with other Central Authorities concerning the norms that regulate the international adoption in Guatemala and in the measure possible, reduce obstacles for the application of the norms that are facilitated;
- c) Take appropriate actions to prevent inadequate material benefits in relation to an adoption, understanding themselves as such, bribing, corruption and the illegal extortion;
- d) Receive, be it by themselves or through accrediting organisms, the applications of parents that wish to give their children in adoption and promote the counsel and orientation in the material of adoption, as with children older than 12 years of age, when he/she is given in adoption;
- e) Receive the applications of Directors and or legal Representatives of the Public and Private children's homes, that would have within their population, boys and girls who judicially have

declared that their rights have been violated, for the placement of families that can adopt him/her;

- f) Supervise the recollection of samples for the practice of the DNA test between mothers and children and bring a control of the results in coordination with the central authorities of other countries through their diplomatic representation;
- g) Receive personally or through accredited organisms, the applications of people residing outside of the country that wish to adopt one or more Guatemalan children;
- h) Accredite the organisms that are involved in the process of adoption, according to their special professional preparation, as well as entities of social assistance and particular individuals that give assistance to mothers in conflict with their pregnancy and to the parents of children at risk of abandonment and those particular individuals or legal representatives that temporarily care for those children, while a permanent family is found for them through the process of adoption;
- i) Respond to the applications of information motivated by particular situations of an adoption, formulated by other central authorities, by public authorities or by accredited organisms;

- j) Extend the certificate of adoptability of the boys, girls and adolescents whose biological parents have given their consent for the adoption and have fulfilled the necessary requirements to declare them adoptable;
- k) Extend the certificate of adoptability of the boys, girls and adolescents whose rights have been violated according to a JUDICIAL DECLARATION, in those cases that exists the corresponding application by the Director of the Children's Home or Public or Private Orphanage, after having met the requirements that the current law establishes or the rules of the Institute;
- l) Approve and send the report of the child who will be adopted to the central authority of the country of habitual residence of the adoptive parents;
- m) Conduct investigations in the case of complaints in the process of adoption, to assure that they are being followed conforming to the highest standards of professional ethics, and at the same time, provide the parents of the child as well as those adopting him/her, the mechanisms so that they can express the complaints that they have against the individuals or institutions that are involved in the process, with the goal of resolving the problems that present themselves and to assist so that the adoption can be finalized without obstacles;

- n) Establish the necessary controls concerning the personnel of the Institute of the Child and the Adoptive Family, to prevent inadequate material benefits in relation to the adoption and to impede every practice that is contrary to the objectives to the current law.

Article 22.-Departments of the Institute of the Child and Adoptive Family. The Institute will be organized by departments, which will be the following:

- d) Department of orientation and certification of adoptability;
- e) Department of accreditation of organisms;
- f) Department of supervision of processes of adoption;
- g) Department of supervision of temporary care of children in process of adoption;
- h) Department of Registry of Processes of Adoption;
- i) Department of treasury and finances;
- j) Department of information

Article 23.-Directors of the departments of the Institute of the Child and Adoptive Family. The directors will fulfill the following requirements:

- a) Be a natural Guatemalan, of the secular state and exercising citizen;
- b) Have an academic grade of Licensed, given by a university in Guatemala;
- c) Possess honorability and independence of recognized criteria;
- d) Have at least 15 years of professional graduation;
- e) In equal conditions, will give preference to who are adoptive fathers and mothers.-

Article 24.-Accredited Organisms. Are entities that perform one or more of the functions related to international adoption, by delegation of the Institute of the Child and Adoptive Family, through the procedure of corresponding accreditation.

Article 25.-Functions that accredited organisms can exercise:

- a) Meet, conserve, or share information relating to the situation of the child and of the future adoptive parents, in the measure necessary to be able to realize the adoption;
- b) Facilitate, follow and activate the procedure of adoption;
- c) Provide medical and humanitarian assistance to women in conflict with their pregnancy and parents of children at risk of abandonment or in the process of adoption;

- d) Promote the development of the counseling services in material of adoption and for the follow up of the adoptions;
- e) Share general reports of evaluation about the experiences in material of international adoption;
- f) Give information with respect to the processes of adoption under its care, to the Central Authority and to the accredited organisms of other countries;
- g) Provide temporary care to boys, girls and adolescents whose parents or caretakers have given over, as well as boys, girls or adolescents whose rights have been violated, according to a judicial declaration, while the procedures of adoption are being processed.

Article 26.-Requirements to become an accredited organism. To become an accredited organism by the Institute requires:

- a) Are only non-for profit
- b) Are directed and administered by qualified individuals by whose moral integrity and by whose formation or experience can act in the environment of international adoption;
- c) Is submitted to the control of the Institute in its composition, functionality and financial situation.

Article 27.-Individuals and Entities that can be accredited organisms. The physical or judicial individuals who desire to be accredited by the Institute should present an application of accreditation and prove that they have experience in the performance of the functions that they wish to realize, that count on a local, with an adequate team and equipment, with the personnel necessary to realize their functions, and do not have a legal impediment to perform any one of the following functions:

- a) The natural or judicial persons that wish to facilitate, follow and activate the **procedure of adoption;**
- b) The judicial persons that administer **temporary children's homes that give care to the children**, given over by their parents or by a judicial order to be included in programs of adoption; at the same time, the **natural persons that give temporary care** to the children who are in the process of adoption, while it is in process;
- c) The judicial persons that administer **centers of social assistance**, to provide assistance to women in conflict with their pregnancy and to parents whose children are at risk of abandonment or in the process of adoption;
- d) The natural or judicial persons that provide **professional services of social work and psychological**, to give

counsel and orientation to biological parents that wish to give their children in adoption, with the goal that they would make an informed decision;

- e) **The clinical laboratories** that provide services of the taking and sending of DNA samples and of the analysis to detect illnesses, to the biological mothers as well as the children being given in adoption;
- f) **The medical centers, hospitals, pediatric clinics and health centers** that perform surgical interventions, control and monitoring of the health and growth of the children given in adoption;
- g) **The translators of Mayan languages, as well as other foreign languages,** to translate documents and diligences where their intervention would be necessary in the adoption process;

Article 28.-Registry of Accredited Organisms.-The Instituted of the Child and Adoptive Family will keep a registry of the accredited organisms, the length of time for which their functions have been authorized and will extend to each one of them a certificate of authorization to act as accredited organisms.-

Article 29.-The Registry for International Adoptions.-Will function as a department of the Institute of the Child and Adoptive Family and will keep a detailed registry of the distinct people who are involved in each process of adoption, to protect them from the interests of those who have been commissioned to complete the adoption of the child, with a foundation in the advisory that will be sent, within 15 days after the establishment of the process of adoption, that the accredited organism will send who is in charge of the same.

Article 30.-Initial Advisory of the Process of International Adoption.-Such an advisory will contain at a minimum the following information:

- a) Number of process-if it were performed judicially-and date that it was initiated;
- b) Complete name of the people adopting and their legal representative, if they were acting through a mandatory;
- c) Complete name of the adopted child and dates of the birth inscription in the Civil Registry;
- d) Complete name of the biological parents and who is exercising the authority of the mother country or the guardian of the same;

- e) Complete name and address of the particular person or institution of social assistance that has in its control the temporary care of the adopted child;
- f) If there were notary diligences, the certified number of the Notary will be indicated, their postal address, telephone number, fax number, and email address;
- g) Pictures of the parents of the child and of their parents, of five centimeters by five centimeters, frontal, in color with a clear background, that will be attached to the first page of the advisory, in the upper right-hand corner;
- h) Signature and stamp of the director of the accredited organism who is in charge of the process of adoption.

When afterwards there would be changes in the information provided, they should inform the Registry of International Adoptions within 5 days after the following change in question.

Article 31.-Copy of the Advisory-The copy of the advisory, with the stamp that it has been received from the Registry of International Adoptions, will be the document that would accredit all of the parties involved in the diligences of adoption.-

Article 32.-Final Advisory for the Process of International Adoption.-Within the 15 days following the inscription of the adoption in the corresponding Civil Registry, the accredited organism in charge of the process of adoption will send a new advisory to the Registry of International Adoptions indicating:

- a) Number, place and date of the constitutive document of the adoption and authorized notary;
- b) Name of those adopting and home address or where they will have their habitual residence for the adopted child, the telephone number and email address;
- c) Photocopy of the passport of the adopted child.

Article 33.-Initial Budget of the Institute of the Child and Adoptive Family.-For the beginning of its activities, the Institute will receive a sum of ten million quetzals that will be designated to the initial organization of the Institute, including the payment of salaries and necessary services for its functioning.

Article 34.-Private Funds.-Are private funds from the Institute that come from the following concepts:

- a) Annual fee for accreditation of judicial persons as an organism of services related to the adoption;
- b) Annual fee for accreditation of particular persons as an organism of services related to the adoption;
- c) One fee for the inscription of each process of adoption;
- d) One fee for each case, for services of supervision of the processes of adoption;
- e) One fee for each case for services of supervision of the temporary care of children in the process of adoption;
- f) Fine for lack of presentation of advisories, from the beginning of the adoption process as well as the end.

Article 35.-Tariff of the Institute. The Board of Directors of the Institute will annually emit within the first week of its beginning, that will be established the amounts that will ascend as well as the services provided by the Institute, such as costs, spending and fees that are authorized that can be received by natural and judicial persons that intervene in the processes of adoption.

Article 36.-Budget and Report of the Treasury. The department of the Treasury of the Institute will prepare a budget project for the next year and an annual report to the Board

of Directors, of the purchasing and income of the Institute, of those who will provide a copy to each one of the accredited organisms before the Institute.

THIRD CHAPTER

FIRST LEVEL BEFORE THE PROCESS OF INTERNATIONAL ADOPTION

Article 37.-Initial Procedure. The people who wish to give their children in adoption, should direct themselves to an accredited organism to provide social assistance to mothers in conflict with their pregnancy and parents of children at risk of abandonment, where they will proceed to respond to a written questionnaire, where they will provide personal information and will express the reasons why they choose international adoption as a means of giving their child to a permanent family, accrediting that they have determined that it is in the best interest of the child after exhausting all of the possibilities of a national adoption.

In addition, they should present the following documents:

- a) the identification of residency;

- b) Birth certificates, of the parents as well as the child that they wish to adopt;
- c) Certification of the registry of identification of residency of the parents;
- d) Report of the birth issued by the doctor or midwife that attended the birth or a copy certified by the Civil Registry.

In the case of dealing with the boys, girls or adolescents whose rights have been violated, according to a judicial declaration, the application will be completed by the Director of the temporary children's home where he/she is living, giving the certification of the Judicial Declaration of the violation of Rights, birth certificate of the boy, girl or adolescent, and accreditation of which they are operating.

Article 38.-Evaluations. The numbered documents received, the parents and the child will be evaluated by the following professionals, who will work with the organisms accredited by the Institute:

- a) A doctor, who will relate the medical history of the parents and predecessors, will order an analysis and laboratory exams necessary to establish the state of health and

will supervise the DNA tests for the corresponding analysis to the laboratories that the central authorities from the other countries would indicate through the diplomatic representations.

- b) A social worker that will inform the parents of the consequences of giving their consent, in virtue of the adoption, of the rupture of the judicial links between the child and his family of origin when it relates to adoptions of children older than ten years of age, these will also be heard and will be counseled and informed of the consequences of the adoption and will accept the opinion with respect to this; the social worker will give his/her opinion in regards to the socio-economic of the parents and their motivations for giving their child in adoption
- c) A psychologist to establish that the decision to give their child in adoption is a decision free of pressure and that the parents have the mental capacity to make a decision and they have made the decision free of pressure and voluntarily.

Article 39.-Reports of the Evaluations.-In the report that is provided by each one of the professionals mentioned, will be inserted a frontal photograph and in color, of the parents as well as the child and will give copies of the documents that accredit the identity of the parents in the birth certificate of the child and the results of the evaluations will be sent to the accredited organism to provide services of social assistance where they were remitted, as well as the Institute of the Child and Adoptive Family in a period of no more than five days. In the case of dealing with the boys, girls or adolescents whose rights have been violated, according to a judicial declaration, the report will be turned to the boy, girl or adolescent, only and the DNA exam will not be necessary.

Article 40.-Protection and Care of the Child.-The protection and care of the child can be given to an accredited organism to care for children in the process of adoption, making it known in a signed act by those people who would be involved in the diligence, of such protection, designated to the judicial or physical person who is giving over the child.

The accredited organism that receives the child, should send an advisory to the Institute of the turning in of the child, with a copy of the documents of identification

of the child and of his/her parents and their recent pictures and fingerprints of the feet and hands of the child.

Article 41.-Consent for the Adoption. After the physical, psychological and socio-economic evaluations, the parents that wish to give their child in adoption will present themselves to the Institute of the Child and Adoptive Family, to give their consent for the adoption of their child in the department of Orientation of the Institute. In the case of dealing with the boys, girls or adolescents whose rights have been violated according to a judicial declaration, the consent will be given by the Director or Legal Representative of the Temporary Children's Home where he/she is found.

Article 42.-Rafication before the Judge.-When the child has been assigned to an adoptive family, his/her parents or director of the Children's Home will ratify their consent before the corresponding Family Judge, manifesting in an expressed, irrevocable and written way, their consent for the adoption.

The judge, within the next three days, will dictate a resolution declaring the child in question, in a condition of adoptability.

Article 43.-Certificate of Adoptability.-Upon being notified of the judicial resolution that declares the adoptability of the child, the Institute of the Child and Adoptive Family will issue a certification that will state:

- a) That the parents of the minor in question have been adequately counseled and informed of the consequences of their consent, in particular in relation to the rupture, in virtue of the adoption, of the judicial bond between the child and his/her family of origin;
- b) That the parents have given their consent freely, in the form legally foreseen and that the consent has been given in writing;
- c) That the consent has not been obtained through a pay or compensation of any class and that such consent has not been revoked;
- d) That the consent of the parents has been given only after the birth of the child.

Article 44.-Adoptions of Children over the age of ten years.-In the certificate of adoptability of children over the age of ten years will also state that they have been heard and adequately counseled and informed of the consequences of the adoption.

Article 45.-Report of the Child that will be Adopted. The accredited organism that is handling the process of adoption will prepare a report with the good view of the Institute of the Child and Adoptive Family, where it will be stated:

- a) Information concerning the identity of the child, his/her adoptability, his/her social means, his/her personal and family evolution, his/her medical history and that of his/her family, if they were known, as well as particular needs;
- b) Indication that they have taken an account of the educational conditions of the child, as well as his/her ethnic, religious and cultural origin;
- c) Indication that they have obtained the foreseen consents in articles 41 and 42.

Article 46.-Sending of the Report of the Child. The Institute of the Child and Adoptive Family will send the report concerning the child to the Central Authority of the country of reception and to the accredited organism that will complete the adoption process, the proof that they have obtained the required consents, the certificate of adoptability, accompanied by copies of the medical, psychological and socio-economic evaluations of

the mother and child, of the results of the DNA test, the consent of the parents for the adoption and of their ratification before the judge.

Article 47.-Authorization to Adopt.-The people who are foreign residents that wish to adopt a Guatemalan child who is a Guatemalan resident, should accredit the authorization that their country has extended so that the child, once he/she has been adopted, can enter and permanently reside in that country, extending itself to include a commitment of the issuing of the visa or migratory status for the arrival to the receptor country.

CHAPTER IV

REQUIREMENTS FOR THE ADOPTION

Article 48.-Adoption for two people.-The adoption of Guatemalan children is permitted to families comprised of the union of a one man and one woman. The exceptional cases will be evaluated and passed by the central authority, attending itself in any case to the superior interest of the child.-

Article 49.-Application for Adoption.-The person who has a habitual foreign residence and wishes to adopt a Guatemalan child, should present to the Family Judge or Notary of choice, an application accompanied by the following documents:

- a) Birth certificate of the child who will be adopted;
- b) Birth certificate of the parents of the child;
- c) Certificate of the identification of residency of the parents of the child;
- d) Legalized photocopies of the certificates of identification of residency of the parents of the child, or of their passport if they are foreigners;
- e) Report on the adopted child, in good view of the Institute of the Child and Adoptive Family;
- f) Legalized photocopy of the passport;
- g) Birth certificate;
- h) Marriage certificate;
- i) Police background check;
- j) Medical certificate of good health;
- k) Letter from the place of work that proves their earnings;
- l) Social study of the individuals adopting completed by a social worker in their home, with a favorable opinion of their

- ability to meet economic and moral obligations of the adoption;
- m) Certificate of recommendation to adopt, or its equivalent, that accredit that the authorities of their country of residence has given authorization for the international adoption;
 - n) Expressed acceptance of the obligation of sending annually to the Institute of the Child and Adoptive Family, until the adoptive child has turned 18 years of age, a report of the conditions where the child is found, accompanied by six pictures of him/her in different areas of his/her daily life and a medical certification of his/her health condition.

Article 50.-Process of Adoption.-The process of adoption can take place in the judicial route conforming to what is established in the Civil Code, as well as in the notary route conforming to the norms of the Law of the Notary Process of the Diligences of Voluntary Jurisdiction, Decree 54-77 of the Congress of the Republic maintaining both processing routes equally valid judicially and should meet the same requirements.

Article 51.-Representation of the Parents. The parents, natural as well as adoptive can act through a special judicial mandatory

with representation, who should accept the mandate in a mandatory act.

CHAPTER V

INTERRUPTION OF THE ADOPTION

Article 52.-Interruption in the adoption process. Supposing that the foreign residents who are adopting a child were to unilaterally desist to adopt that child in particular, they should send a written communication to the accredited organism that is handling the process as well as to the Institute of the Child and Adoptive Family, who after evaluating the communication, will communicate it to the corresponding authorities of existing bad faith or negligence on their part, analyzing the subject in light of the superior interest of the child.

Article 53.-Interruption of the adoption process already finalized. In the case where the people with foreign residence and have adopted a child, were to unilaterally desist bringing the child to their country of residence should avoid written communication to the accrediting organism that is in charge of the case, as well as the Institute of the Child and Adoptive Family.-

Article 54.-Omission of giving an advisory of interruption. In the case that the adoptive parents omitted giving an advisory that the process of adoption has been interrupted, or that they do not wish to bring the adopted child to their country of residence, they should give it to the accrediting organism that is in charge of the adoption process.

Article 55.-Loss of Rights. In the case where the adoptive parents interrupt the adoption process or deny bringing the adopted child to their country of residence, they will lose all rights to complain to the accrediting organism to realize the adoption, and to who is in charge of the temporary care of the child.

Article 56.-New adoption in case of interruption. The child whose process of adoption has been interrupted can be assigned to another family as soon as the advisory of the interruption has been received by the Institute.

Article 57.-New adoption in case of abandonment. The people that have adopted a child and decide not to bring him/her to their country of residence, as well as the advisory of interruption, should refer a mandate to a Guatemalan lawyer so that in his name and representation, the child can be given in adoption to other people.

Article 58.-Unwillingness of the adoptive parents to collaborate. Not issuing a mandate nor personally appearing to give in adoption the child adopted by him/her, the person adopting will be obligated to pay maintenance, education, clothing, medical attention and hospitality of the adopted child their unwillingness to pay it will be considered a crime of denying the economic assistance. Being able to ask for the extradition of the one responsible to proceed against the actions that the law contemplates.

CHAPTER VI

SPENDING AND PERMITTED FEES

Article 59.-The spending, costs and professional fees. The payments that are made for an adoption will be subject to the following dispositions:

- a) Nobody can obtain inadequate material benefits, as a consequence of an intervention relating to an international adoption;

- b) They will only be able to reclaim and pay costs and spending, including the reasonable professional fees of the people that are involved in the adoption;
- c) The directors, administrators and employees of organisms that are involved in the adoption cannot receive disproportioned remunerations in relation to the services provided.

Article 60.-Fees to people related with the adoption process.-The people who provide services related to the adoption processes will celebrate a contract of services with the accrediting organism that requires its services and its remuneration will be made according to the norms of article 59 of this law.

CHAPTER VII

PROBLEMS AND SOLUTIONS IN RELATION TO THE PROCESS OF ADOPTION AND TEMPORARY CARE OF THE CHILDREN

Article 61.-Office of Supervision of Adoptions.-As a department of the Institute of the Child and Adoptive Family, will function the

Center of Supervision of the Processes of Adoption so that the parents of the minor as well as the adoptive parents that feel offended by the way that the accrediting organisms or public and private institutions have intervened in the adoption of their child, can express their motives of offense that they would have.

Article 62.-Procedure of Complaints. The complaints will proceed in the following way:

- a) the people that wish to file a complaint should present it in writing before the corresponding Office of Supervision, indicating the motive of offense and providing the facts that identify the process, as well as the people are considered responsible and their direction of work;
- b) to such individuals, an appointment will be scheduled with a collective board during the ten days following the reception of the complaint, with the goal of finding a harmonious solution to the problem in question; if the individual does not appear at the appointment, they will have the affirmations of the person filing the complaint;
- c) If the collective board does not reach a verdict, the Office of Supervision, whether it be the Processes of Adoption or Temporary Care

will commission a supervisor to examine the motives of the offense and prove the veracity of the affirmations of both parties, who should surrender their report in a maximum of 15 days;

- d) The Board of Directors of the Institute, in view of the report of the supervisor and what was manifested in the offense, will commission to another accrediting entity so that they can complete the adoption process and send a copy of what was done to the Department of Accreditation so they can take the report into consideration to decide the cancellation or extension of their accreditation.

TRANSITORY DISPOSITIONS

Article 63.-Processes being processed. The adoption processes whose first action has been verified before the validity of the current law, will continued to be processed conforming to the valid process on that date. At the same time, they will conserve the same process, the applications that demonstrate by the adoptive parents, that the competent authority of their country extended the authorization to adopt, before the date of entry in total validity of the current law.

Article 64.-Reforms in the present law. This law can be reformed by the Congress of the Republic and requires for its reform a two thirds vote of deputies that are in Congress.

Article 65.-Designation of the first Board of Directors. The Congress of the Republic will designate the official and substitute members of the Board of Directors of the Institute of the Child and Adoptive Family who will remain in their position for a period of six months that are not able to be extended and only will have faculties to organize the functionality of the Institute, seeking the rent of adequate furniture, to hire personnel and acquire the suites, furnishings and computer programs necessary for such an effect.-

Article 66.-Transference of Funds. As soon as the provisional board of directors are designated, it will be given to the president of the same the initial assignation to realize the responsibilities numbered in article 34 being personally responsible the official integrants of the Board of Directors, as well as the substitutes that replace them, of the management of funds, in conformity with the applicable laws for the effect.

Article 67.-Validity of the current law. To fulfill the organization of the Institute in an orderly and peaceable way, the current law

will enter in vigor only in relation to the organization of the Institute of the Child and Adoptive Family, the first of October, two thousand seven and the rest of the same, six months later.

Given in the Palace of the Legislative Organism, in the City of Guatemala, _____ days of the month of _____ two thousand seven.-