

A 590

I assent.

(L.S.)

MYRIAM SPITERI DEBONO
President

26th July, 2024

ACT No. XXVIII of 2024

AN ACT to amend the Civil Code, Cap. 16.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

Short title.

1. The short title of this Act is the Civil Code (Amendment) Act, 2024 and this Act shall be read and construed as one with the Civil Code, hereinafter referred to as the "Code".

Cap. 16.

Amendment of
article 86 of the
Code.

2. Sub-article (1) of article 86 of the Code shall be amended as follows:

(a) the first proviso thereof shall be deleted; and

(b) in the second proviso thereof the word "further" shall be deleted.

Amendment of
article 113 of
the Code.

3. Sub-article (2) of article 113 of the Code shall be amended as follows:

(a) paragraph (f) thereof shall be substituted by the

following new paragraph:

Cap. 602. "(f) "foster carer" shall have the same meaning as assigned to it in article 2 of the Minor Protection (Alternative Care) Act"; and

(b) in paragraph (h) thereof, the words "Profession Act." shall be substituted by the words "Profession Act;" and immediately after there shall be added the following new paragraph:

Cap. 495. "(i) "Adoption Service within the Directorate for Alternative Care (Children and Youth)" shall have the same meaning as assigned to it in article 2 of the Adoption Administration Act."

4. Immediately after article 114 of the Code there shall be added the following new article:

Addition of a new article to the Code.

"Agreement of open adoption.

114A. (1) When an application for an open adoption is made, the Court shall refer the case to the Adoption Service within the Directorate of Alternative Care (Children and Youth) who shall invite all parties, including the Children's Advocate, the person or entity entrusted with the care and custody of the minor, where this is not vested in the parents, the parents and the prospective adoptive parents to draw up an agreement of open adoption.

(2) The agreement of open adoption shall be presented to the Court for approval by not later than thirty (30) working days from the date when the case is referred to the Adoption Service within the Directorate of Alternative Care (Children and Youth).

(3) When no agreement is reached as referred to in sub-article (2), the Adoption Service within the Directorate of Alternative Care (Children and Youth) shall notify the Court by means of a note.

(4) In the cases referred to in sub-article (3), the Court shall refer the case to a family mediator, who shall invite all parties for a meeting within ten (10) working days:

Provided that all parties, including the person or entity entrusted with the care and custody of the minor, where this is not vested in the parents, the parents and the prospective adoptive parents shall participate during such mediation to draw up an agreement of open adoption:

Provided further that the mediator may hear the minor, where the minor has sufficient understanding, with the presumption that the minor has sufficient understanding unless proof is brought to the contrary:

Provided further that where parties disagree on the agreement of open adoption, the Court shall set a date to hear all parties and shall decide upon the agreement of open adoption in its final decree.

(5) The open adoption agreement shall be presented to the Court for approval by not later than thirty (30) working days from the date when the case is referred to a family mediator by the Court.

(6) The Court may order that any changes are made to the open adoption agreement, if it is in the best interest of the minor."

Amendment of
article 115 of
the Code.

5. Article 115 of the Code shall be amended as follows:

(a) sub-article (1) thereof shall be amended as follows:

(i) in paragraph (a) thereof the words "forty-eight years than" shall be substituted by the words "fifty (50) years older than"; and

(ii) in paragraph (b) thereof the words "attained majority." shall be substituted by the words "attained majority; or" and immediately after there shall be added the following new paragraph:

"(c) in favour of a foster carer who has fostered the person to be adopted for at least the preceding five (5) years, or three (3) years in extraordinary circumstances in accordance with article 54 of the Minor Protection (Alternative Care) Act.";

Cap. 602.

(b) sub-paragraph (iii) of paragraph (a) of sub-article (2) thereof shall be substituted by the following new sub-paragraph:

"(iii) in favour of a foster carer who has fostered the person to be adopted for at least the preceding five (5) years, or three (3) years in extraordinary circumstances in accordance with article 54 of the Minor Protection (Alternative Care) Act, if the person to be adopted consents to the adoption;"

Cap. 602.

(c) in paragraph (b) of sub-article (3) thereof immediately after the word "age" there shall be added the words "as well as the natural father, if he has acknowledged the person to be adopted as his child"; and

(d) sub-article (4) thereof shall be amended as follows:

(i) in paragraph (a) thereof immediately after the words "any person" there shall be added the words "or any other entity"; and

(ii) paragraph (b) thereof shall be deleted.

6. In sub-article (1) of article 116 of the Code the words "six weeks" shall be substituted by the words "eight (8) weeks".

Amendment of article 116 of the Code.

7. Sub-article (2) of article 118 of the Code shall be amended as follows:

Amendment of article 118 of the Code.

(a) the word "mother" shall be substituted by the words "both parents"; and

(b) in paragraph (a) thereof the words "six weeks" shall be substituted by the words "eight (8) weeks".

8. Immediately after article 118 of the Code there shall be added the following new article:

Addition of new article to the Code.

"Placing a minor in alternative care before being given up for adoption.

Cap. 602.

118A. In all cases where the parents of a minor show their intention that the minor is given up for adoption, with the aim that such minor is eventually adopted, the Director (Child Protection) shall be notified and a social contract in accordance with article 12 of the Minor Protection (Alternative Care) Act shall be drawn up, which care plan may include a temporary placement in alternative care for the minor with the aim of allowing the parents to understand all the legal effects that result from the adoption of the minor:

Provided that where applicable, the Director (Child Protection) shall investigate whether any members of the extended family are willing to provide adequate care to the minor."

9. Sub-article (4) of article 119 of the Code shall be substituted

Amendment of article 119 of the Code.

A 594

by the following new sub-article:

"(4) If it is in the minor's best interest, the Court shall, when making the adoption decree, authorise an agreement of open adoption which has been drawn up by the parties together with the Adoption Service within the Directorate of Alternative Care (Children and Youth) or before a mediator, where the parents and, or the natural family of the minor shall maintain contact with the minor:

Provided that the Court shall ensure that the agreement of open adoption was drawn up with the consent of all parties:

Provided further that the Court shall take into consideration the views of the minor if he possesses sufficient understanding:

Provided further that an open adoption may include, but shall not be limited to physical access, contact through electronic means or any other form of correspondence:

Provided further that every open adoption agreement shall be drawn up with due consideration to the minor's best interest:

Provided further that open adoption shall give the right of access between siblings, even when one of the siblings has been adopted:

Provided further that the minor shall give his consent when he has attained the age of eleven (11) years:

Provided further that any amendments to the agreement of open adoption shall not have any effect before they are authorised by the Court."

Amendment of article 120 of the Code.

10. Sub-article (2) of article 120 of the Code shall be substituted by the following new sub-article:

"(2) Following an application for an adoption decree of a minor, the Court shall appoint a Children's Advocate to ensure that the minor is adequately represented and his best interests are safeguarded."

Addition of a new article to the Code.

11. Immediately after article 120 of the Code there shall be added the following new article:

"Children's Advocate.

120A. Without prejudice to the functions of the Children's Advocate under any other law, the Children's Advocate shall:

(a) hear the wishes and views of the minor;

(b) submit the wishes and views of the minor to the Court as relayed to him by the minor himself, or by other professionals working with the minor;

(c) give advice and explanation to the minor on the ongoing proceedings and the effects that such proceedings may have;

(d) in cases of open adoption, hear the wishes and views of the minor regarding the agreement of open adoption and submit such wishes and views, either orally or in writing during proceedings in accordance with article 114A."

12. Immediately after article 121 of the Code there shall be added the following new article:

Addition of a new article to the Code.

"Service of adoption decree.

121A. Upon an adoption decree being made, a copy shall be served upon the Central Authority:

Provided that in case of local adoptions, a copy of the adoption decree shall also be served upon the Directorate of Alternative Care (Children and Youth)."

13. In the third proviso to article 124 of the Code the words "new name." shall be substituted by the words "new name:" and immediately after there shall be added the following new proviso:

Amendment of article 124 of the Code.

"Provided further that where the person to be adopted has sufficient understanding, he may choose to retain his biological family name and assume the surname of the adopter or adoptive parents, as the case may be, in accordance with the provisions of this Code."

14. In sub-article (2) of article 125 of the Code the words "of the applicant." shall be substituted by the words "adopted in accordance with the provisions of article 124."

Amendment of article 125 of the Code.

15. Article 127A of the Code shall be amended as follows:

Amendment of article 127A of the Code.

(a) in sub-article (1) thereof the words "and, or details of the adopted person's natural family and, or adoption placement" shall be deleted; and

(b) immediately after sub-article (1) thereof there shall be added the following new sub-article:

"(1A) An adopter or an adopted person who has

A 596

attained the age of sixteen (16) years shall have the right to file a formal request to the Central Authority to request details of the adopted person's natural family and, or of the adoption placement:

Provided that such information should only be given in the presence of a professional working in the social field, who possesses the necessary skills."

Passed by the House of Representatives at Sitting No. 258 of the 15th July, 2024.

DAVID AGIUS
Deputy Speaker

ELEANOR SCERRI
Clerk of the House of Representatives