

2. As child protection measures impinge upon the rights of parents and other holders of parental responsibility, these persons, in particular, must be given a specific right to request the examination of the ongoing appropriateness of the measures taken and their possible termination. The same applies to a child who has reached the age of twelve.

## MODEL FAMILY CODE

### PART I: PARTNERSHIPS

#### TITLE 1: GENERAL PRINCIPLES

##### Article 1.1 (Partnerships)

<sup>1</sup>Partnerships include marriages.

<sup>2</sup>Partnerships include non-marital relationships if

- (a) they have lasted more than three years,
- (b) there is a common child, or
- (c) one or each of the partners has made substantial contributions to the relationship or in the sole interests of the other partner.

##### Article 1.2 (Child of the Family)

A child of the family includes

- (a) a common child of the partners, and
- (b) a child for whose long-term welfare both partners accept responsibility.

#### TITLE 2: MARRIAGE

##### CHAPTER 1: FORMATION OF MARRIAGE

###### *Section 1: Prerequisites for Marriage*

##### Article 1.3 (General Principle)

A marriage may be entered into by two persons of the same or of a different sex before the competent authority in the recognized marriage proceeding.

##### Article 1.4 (Consent)

Marriage requires the consent of two persons to be the spouse of each other.

###### *Section 2: Marriage Impediments*

##### Article 1.5 (Age Requirement)

No marriage may be entered into by persons who have not reached the age of eighteen.

#### **Article 1.6 (Prohibited Degrees of Relationship)**

No marriage may be entered into by persons who are related lineally, including by adoption, or as siblings or half-siblings.

#### **Article 1.7 (Bigamy)**

No marriage may be entered into by persons who are already married to another person.

### CHAPTER 2: NAME

#### **Article 1.8 (Family Name)**

<sup>1</sup>The spouses to a marriage may retain their respective surnames or choose a common family name.

<sup>2</sup>The family name can be the surname used by one partner at the time of entering into the marriage, or any combination of the surnames of the two partners, not exceeding two single names.

<sup>3</sup>If the family name is the surname of only one spouse, the other spouse has the right to add his or her previously carried name to the family name.

### CHAPTER 3: DIVORCE

#### *Section 1: Requirements*

#### **Article 1.9 (General Principle)**

Divorce is granted upon either the joint application of both spouses or the unilateral application of one spouse to the marriage.

#### **Article 1.10 (Reflection Period)**

If there are minor children of the family, or if the spouses cannot agree on the divorce itself, or any of its consequences, the court may grant the divorce only if the parties or party renew the application after a period of six months.

#### **Article 1.11 (Divorce in Cases of Violation of Impediments to Marriage)**

<sup>1</sup>Where a marriage has been entered into in violation of an impediment to marriage under Articles 1.5 to 1.7, the competent authority, in addition to the spouses, may apply for divorce. Article 1.10 does not apply.

<sup>2</sup>However, in case of a violation of Article 1.5, the application by the competent authority may only be brought while one of the spouses is still a minor.

#### *Section 2: Procedure*

#### **Article 1.12 (General Principle)**

Divorce is granted either by the court or by the competent administrative body.

#### **Article 1.13 (Administrative Divorce)**

Divorce is granted by the competent administrative body provided that the spouses agree upon the divorce itself, any of its consequences as well as the administrative procedure; there are no minor children of the family; and the length of the marriage does not exceed ten years.

#### **Article 1.14 (Alternative Dispute Resolution)**

<sup>1</sup>Once an application for divorce has been made to the court, if, under the circumstances, the court deems it appropriate, it shall use its best endeavors to persuade the parties to reach agreement on the matters of divorce and its consequences.

<sup>2</sup>The court shall advise the parties as to possible alternative dispute resolution options in this regard.

### TITLE 3: PROTECTION IN PARTNERSHIPS

#### CHAPTER 1: FINANCIAL CONTRIBUTIONS IN PARTNERSHIPS

#### **Article 1.15 (General Principle)**

<sup>1</sup>Partners shall contribute to the maintenance of their joint and personal needs.

<sup>2</sup>They agree upon their respective contributions.

#### **Article 1.16 (Interim Measures)**

If one partner neglects his or her duty to maintain, the court may order, as an interim measure, that partner to make payments of maintenance to the other partner for a certain period of time, having regard to the circumstances set out in Article 1.28.

#### CHAPTER 2: FAMILY HOME AND FAMILY CHATTELS

#### **Article 1.17 (Exercise of Rights)**

A partner may not exercise any rights over the family home and family chattels without the consent of the other partner or judicial authorization.

**Article 1.18 (Right of Occupancy)**

Each partner has the right not to be evicted or excluded from the family home by the other partner except with leave of the court.

## TITLE 4: FINANCIAL CONSEQUENCES UPON DISSOLUTION OF PARTNERSHIPS

### CHAPTER 1: GENERAL PRINCIPLES

**Article 1.19 (Interests of Children)**

When granting financial relief, primary regard is to be given to the interests of any minor child of the family.

**Article 1.20 (Principle of Self-Sufficiency)**

The parties shall be placed in a position to become self-sufficient as soon as possible.

### CHAPTER 2: PARTNERSHIP-RELATED BENEFITS AND DETRIMENTS

*Section 1: Financial Relief***Article 1.21 (Adjustment)**

Upon the dissolution of a partnership, partnership-related benefits and detriments are adjusted by financial relief.

*Section 2: Measuring Benefits***Article 1.22 (Scope of Benefits)**

<sup>1</sup>Benefits include

- (a) property acquired by each partner during the partnership, and
- (b) pension rights of each partner accumulated during the partnership.

<sup>2</sup>Benefits do not include separate property.

**Article 1.23 (Separate Property)**

Separate property includes

- (a) property owned before the partnership,
- (b) inheritance,
- (c) gifts,
- (d) damages for pain and suffering,
- (e) property of a purely personal character, and
- (f) income and proceeds from separate property.

*Section 3: Measuring Detriments***Article 1.24 (Maintenance of Standard of Living)**

Detriments are held to exist where one partner is unable to maintain, by his or her own means, the standard of living enjoyed during the partnership after its dissolution, notwithstanding separate property.

**Article 1.25 (Pension Scheme Contributions)**

In assessing detriments, regard is also to be had to the possibility of each partner to build up a sustainable pension scheme after the dissolution of the partnership.

*Section 4: Partnership-Relatedness***Article 1.26 (Presumption)**

There is a presumption that benefits and detriments are partnership-related if one partner has abstained or abstains, wholly or in part, from gainful employment in order to

- (a) care for a child of the family,
- (b) care for the household,
- (c) care for the other partner,
- (d) care for a third person in fulfillment of a moral obligation of the other partner or of both partners, or
- (e) contribute to the other partner's business or profession.

*Section 5: Division of Benefits and Detriments***Article 1.27 (Equal Division)**

Partnership-related benefits are to be equally divided and detriments equally borne between the partners upon dissolution of the partnership.

**Article 1.28 (Exceptions)**

The court may depart from the principle of equal division in order to take into account

- (a) the interests of a minor child of the family,
- (b) the future care for a minor child of the family by one of the partners,
- (c) the future care for persons in the interest of the other partner,
- (d) the length of the partnership,
- (e) financial and non-financial contributions to the partnership,
- (f) contributions to the other partner's property, business or profession,
- (g) enhanced earning capacity,

- (h) income, earning capacity, property, and future assets,
- (i) age, mental and physical health,
- (j) financial misconduct, or
- (k) domestic violence.

## CHAPTER 3: EQUITABLE ADJUSTMENT

### *Section 1: Compensation Principle*

#### **Article 1.29 (Contributions)**

If there are no partnership-related benefits and detriments, financial relief may still be granted to compensate for extraordinary contributions in the interest of the other partner or for bearing a disproportionate share of the costs of the partnership.

#### **Article 1.30 (Extent of Financial Relief)**

Financial relief is to reflect the amount of such contributions, but may also reflect any fruits obtained as a result thereof.

### *Section 2: Post-Partnership Solidarity*

#### **Article 1.31 (Long-Term Partnerships)**

In all other cases, financial relief may only be granted in exceptional cases after a long-term partnership.

#### **Article 1.32 (Extent of Financial Relief)**

Financial relief is limited to the extent necessary to allow the other partner reasonable time to adjust to the new circumstances.

## CHAPTER 4: MANNER OF FINANCIAL RELIEF

#### **Article 1.33 (Transfer of Property)**

In granting financial relief, any property belonging to both or one of the partners, including separate property but except for purely personal property, may be transferred to one of the partners, as the court deems just and equitable.

#### **Article 1.34 (Pension Rights)**

Pension rights may be transferred from one partner to the other, or may be split as they accrue in the future.

#### **Article 1.35 (Family Home and Family Chattels)**

In attributing the family home and the family chattels, primary regard is to be had to the interests of a minor child of the family, and whether one partner is dependent upon the use of these for business or other purposes.

#### **Article 1.36 (Business Assets)**

Business assets should be allocated in such a way so as not to destroy an economic entity.

#### **Article 1.37 (Periodic Payments)**

<sup>1</sup>If there is not enough property for redistribution at the time of dissolution of the partnership, financial relief may be made by future periodic payments.

<sup>2</sup>Except in the case of post-partnership solidarity according to Article 1.31, future periodic payments are not subject to variation.

## CHAPTER 5: PARTNERSHIP AGREEMENTS

#### **Article 1.38 (Right to Agree)**

The partners may, at any time, regulate the financial consequences of the dissolution of their partnership by an agreement in writing.

#### **Article 1.39 (Significance of Agreement)**

The court gives due regard to the agreement of the parties, as long as the overall result of the agreement seems just and reasonable in light of the foregoing provisions.

## PART II: DOMESTIC VIOLENCE

#### **Article 2.1 (General Principle)**

<sup>1</sup>In case of domestic violence, the aggrieved person can apply to the court for a protection order.

<sup>2</sup>Domestic violence includes all acts of physical and psychological violence.

<sup>3</sup>In principle, such an order may not exceed two years.

#### **Article 2.2 (Measures)**

In particular, the court may order that the respondent

(a) leave, remain away and refrain from entering the dwelling of the aggrieved person,

(b) refrain from approaching the aggrieved person,

(c) refrain from establishing contact with the aggrieved person in any way, and

(d) refrain from being in certain locations.

## PART III: PARENTS AND CHILDREN

### TITLE 1: GENERAL PRINCIPLES

#### Article 3.1 (Best Interests of the Child)

In all matters concerning parents and children, paramount regard is to be had to the best interests of the child.

#### Article 3.2 (Views of the Child)

Consideration is always to be given to the views expressed by the child, taking into account his or her age and maturity.

#### Article 3.3 (Child's Right to be Heard and to Consent)

<sup>1</sup>Above the age of five, the child must be heard in all matters concerning him or her.

<sup>2</sup>Above the age of twelve, no action may be taken or decisions made against the wishes of the child.

<sup>3</sup>Above the age of fifteen, the child has the right to make independent decisions in all matters of a purely personal nature.

### TITLE 2: LEGAL PARENTAGE

#### CHAPTER 1: INITIAL ATTRIBUTION OF PARENTAGE

#### Article 3.4 (Parentage by Birth)

Legal parent is the woman who gives birth to the child.

#### Article 3.5 (Parentage by Intention)

Legal parent is the person who, with the consent of the birth mother, intentionally assumes parentage for the child.

## CHAPTER 2: CHALLENGING PARENTAGE

#### Article 3.6 (Challenge for Mistake)

<sup>1</sup>The person who has mistakenly presumed that he or she is the genetic parent of the child may challenge his or her parentage.

<sup>2</sup>The challenge must be lodged within one year of becoming aware of the error.

#### Article 3.7 (Challenge by the Child)

<sup>1</sup>The child may challenge the legal parentage established under Articles 3.4 or 3.5.

<sup>2</sup>Above the age of twelve, the child's personal consent is required.

<sup>3</sup>The challenge must be lodged within one year of becoming aware of the possible lack of genetic parentage.

<sup>4</sup>If the parentage has not been challenged during the minority of the child, the child may lodge a challenge within three years of the child reaching the age of majority, or within one year of becoming aware of the possible lack of genetic parentage, whichever is later.

#### Article 3.8 (Challenge by Genetic Parent)

<sup>1</sup>The person who alleges that he or she is the genetic parent of the child may, during the child's minority, challenge the parentage of legal parents established under Articles 3.4 or 3.5 and have his or her own parentage established by adjudication under Article 3.10.

<sup>2</sup>The challenge must be lodged within six months of the birth of the child.

<sup>3</sup>A later challenge is only admissible where there is no active family relationship between the child and the legal parent challenged. In this case, the challenge must be lodged within one year of becoming aware of both the possible genetic parentage and the lack of an active family relationship.

Above the age of twelve, the child's personal consent is required.

<sup>4</sup>No challenge may be lodged by an intentional donor of genetic material.

#### Article 3.9 (Challenge by Birth Mother or Other Legal Parent)

<sup>1</sup>Despite having given her consent, the birth mother may, until the child reaches the age of fifteen, challenge the parentage of the legal parent established under Article 3.5 if there is no active family relationship between the child and the legal parent challenged.

<sup>2</sup>Under the same circumstances, the legal parent established under Article 3.5 or 3.10 may challenge the parentage of the birth mother.

<sup>3</sup>The challenge must be lodged within one year of becoming aware of the lack of an active family relationship.

<sup>4</sup>Above the age of twelve, the child's personal consent is required.

## CHAPTER 3: ADJUDICATION OF PARENTAGE

### Article 3.10 (Parentage by Adjudication)

<sup>1</sup>Legal parent is the person determined by judicial adjudication to be the genetic parent of the child.

<sup>2</sup>A request for adjudication may be brought by

- (a) the child, or
- (b) the person alleging to be the genetic parent of the child.

<sup>3</sup>If parentage under Article 3.4 or 3.5 exists, adjudication may only be initiated together with a challenge under Article 3.7 or 3.8.

## CHAPTER 4: ADOPTION

### Section 1: Prerequisites for Adoption

#### Article 3.11 (General Principle)

A minor child may be adopted by two persons jointly or by one person alone.

#### Article 3.12 (Age and Age Difference)

<sup>1</sup>At the time of adoption, the adopter must have reached the age of twenty-five.

<sup>2</sup>The age difference between the adopter and the child must be at least eighteen, and not more than forty years.

#### Article 3.13 (Consent of Legal Parents and Holders of Parental Responsibility)

<sup>1</sup>Legal parents and current holders of parental responsibility must consent to the adoption.

<sup>2</sup>The consent may be dispensed with if it cannot be obtained or is refused if such refusal endangers the best interests of the child.

#### Article 3.14 (Consent of the Child)

Above the age of twelve, the child must personally consent to his or her adoption.

#### Article 3.15 (Adoption Order)

Upon the application of the adopter, the competent authority pronounces the adoption if this is in the best interests of the child.

### Section 2: Consequences of Adoption

#### Article 3.16 (Parentage by Adoption)

<sup>1</sup>The adopter becomes the legal parent of the child.

<sup>2</sup>Legal familial ties to any previous legal parent and his or her respective relatives cease to exist.

#### Article 3.17 (Child's Right to Know Origins)

Upon reaching the age of fifteen, an adopted child has the right to access all information concerning his or her origins.

### Section 3: Revocation of Adoption

#### Article 3.18 (Child's Right to Revocation)

<sup>1</sup>The adoption may be revoked by the competent authority upon the application of the child.

<sup>2</sup>The application must be lodged within three years of the child reaching the age of majority, or within one year of becoming aware of the adoption, whichever is later.

#### Article 3.19 (Consequences of Revocation)

<sup>1</sup>Upon revocation of the adoption, legal familial ties between the adopter and the child and their respective relatives cease to exist.

<sup>2</sup>Legal familial ties that ceased to exist as a result of the adoption revive as a result of the revocation.

## TITLE 3: NAME OF THE CHILD

#### Article 3.20 (Initial Attribution)

<sup>1</sup>Legal parents with parental responsibility choose the surname of the child at birth.

<sup>2</sup>They may choose the surname borne by one legal parent or any combination of the surnames of the two parents, not exceeding two single names.

#### Article 3.21 (Change of Name)

Legal parents with parental responsibility may change the surname of the child until the child reaches the age of five if

- (a) the surname of the legal parent whose name the child bears changes,
- (b) the person whose name the child bears is no longer a legal parent, or
- (c) another person's legal parentage has been established.

#### **Article 3.22 (Addition of Other Name)**

<sup>1</sup>If the child has lived, over an extended period of time, with persons bearing a different surname, he or she has the right to add this surname to his or her own surname.

<sup>2</sup>Above the age of twelve, the child must personally consent to the addition of the other name.

#### **Article 3.23 (Child's Right to Change Name)**

<sup>1</sup>Upon reaching the age of majority, the child has the right to change his or her surname.

<sup>2</sup>The child may choose any surname borne by a legal parent at the time he or she reaches majority or any combination of the surnames in accordance with Article 3.20(2).

<sup>3</sup>The application must be lodged within three years of the child reaching the age of majority or within one year of becoming aware of reasons which would justify a change of name under Article 3.21(b) and (c), whichever is later.

### **TITLE 4: PARENTAL RESPONSIBILITY**

#### **CHAPTER 1: GENERAL PRINCIPLES**

##### **Article 3.24 (Subject)**

A minor child is subject to parental responsibility.

##### **Article 3.25 (Autonomy of the Child)**

Parental responsibility is aimed at promoting the increasing autonomy of the child.

##### **Article 3.26 (Cooperation)**

<sup>1</sup>Holders of parental responsibility cooperate to enhance the best interests of the child.

<sup>2</sup>In case of conflict, the competent authority shall use its best endeavours to persuade the parties to reach agreement.

<sup>3</sup>The competent authority shall advise the parties as to possible alternative dispute resolution options in this regard.

#### **CHAPTER 2: ATTRIBUTION**

##### **Article 3.27 (Parental Responsibility of Legal Parents)**

Any legal parent of a child is vested with parental responsibility.

##### **Article 3.28 (Parental Responsibility of Third Parties)**

The competent authority can vest parental responsibility in a third party, in addition to or instead of legal parents,

(a) if the child has lived with that third party for more than three years and the third party requests parental responsibility, or

(b) as a measure of child protection.

##### **Article 3.29 (Transfer of Parental Responsibility)**

<sup>1</sup>If holders of parental responsibility do not live together and cannot cooperate, the competent authority transfers parental responsibility as the best interests of the child require.

<sup>2</sup>The request to the competent authority may be made by any holder of parental responsibility or by the child above the age of twelve.

##### **Article 3.30 (Re-Transfer of Parental Responsibility)**

<sup>1</sup>Under changed circumstances, the competent authority re-transfers parental responsibility to a former holder of parental responsibility if the best interests of the child so require.

<sup>2</sup>The request to the competent authority may be made by the former holder of parental responsibility.

#### **CHAPTER 3: CONTENT**

##### **Article 3.31 (Care for the Child)**

<sup>1</sup>Parental responsibility comprises the duty and the right to care for and raise a minor child.

<sup>2</sup>Care and upbringing include the care and responsibility for the mental and corporal well-being of the child and fostering the development of his or her personality.

##### **Article 3.32 (Integrity of the Child)**

No child may be subjected to corporal punishment, emotional abuse or other degrading treatment.

##### **Article 3.33 (Administration of the Child's Property)**

<sup>1</sup>Parental responsibility comprises the duty and the right to administer the child's property.

<sup>2</sup>A child who has reached the age of fifteen has the right to administer his or her own earnings.

<sup>3</sup>For significant financial transactions, the authorisation of the competent authority is required.

**Article 3.34 (Legal Representation of the Child)**

<sup>1</sup>Parental responsibility comprises the duty and the right to legally represent the child.

<sup>2</sup>Holders of parental responsibility are excluded from legally representing the child where there is a potential conflict of interest.

<sup>3</sup>For legal representation in significant matters, the authorisation of the competent authority is required.

## CHAPTER 4: EXERCISE

**Article 3.35 (Joint Exercise)**

Several holders of parental responsibility exercise parental responsibility jointly.

**Article 3.36 (Decision-Making in Daily Matters)**

The holder of parental responsibility with whom the child is currently living has the right to act alone with respect to the daily matters of the child.

**Article 3.37 (Important Decisions)**

<sup>1</sup>Several holders of parental responsibility must make important decisions jointly.

<sup>2</sup>Where the holders of parental responsibility cannot agree on an important matter, the competent authority, upon the application of a holder of parental responsibility or the child who has reached the age of twelve, transfers the decision-making power for this matter, or makes a decision itself, as the best interests of the child require.

<sup>3</sup>In urgent cases, a holder of parental responsibility may act alone and must inform the other holders as soon as possible thereafter.

## TITLE 5: CONTACT

**Article 3.38 (Contact Between Child and Other Persons)**

<sup>1</sup>The child and current and former holders of parental responsibility have a right to maintain contact with each other unless this is contrary to the best interests of the child.

<sup>2</sup>The child has a right to maintain contact with third persons with whom he or she has a close personal relationship if the best interests of the child so require.

**Article 3.39 (Right to Information)**

Current and former holders of parental responsibility have the right to be informed about all personal matters concerning the child unless this is contrary to the best interests of the child.

## TITLE 6: CHILD SUPPORT

**Article 3.40 (General Principle)**

<sup>1</sup>Legal parents must provide for the support of their minor children, including, up until the child has reached the age of three, costs for a personal caregiver.

<sup>2</sup>The duty to support applies equally to any holder of parental responsibility who is not a legal parent of the child.

**Article 3.41 (Support After Majority)**

If, after reaching the age of majority, the child has not yet completed his or her education, the duty to support persists until, at the latest, the child has reached the age of twenty-four.

## TITLE 7: CHILD PROTECTION

**Article 3.42 (General Principle)**

If the best interests of the child are endangered, the competent authority takes the appropriate measures to protect the child.

**Article 3.43 (Measures)**

In particular, the competent authority may

- (a) give instructions and directions,
- (b) appoint a tutor,
- (c) remove the child from his or her current residence,
- (d) divest parental responsibility from current holders, and
- (e) vest parental responsibility in former holders of parental responsibility or third parties.

**Article 3.44 (Termination of Measures)**

<sup>1</sup>The competent authority terminates child protection measures if the best interests of the child are no longer endangered.

<sup>2</sup>Any current or former holder of parental responsibility and the child, who has reached the age of twelve, may request the competent authority to terminate a child protection measure.