

**QUESTIONNAIRE SUR LES QUESTIONS DE DROIT INTERNATIONAL PRIVÉ RELATIVES AU  
STATUT DES ENFANTS, NOTAMMENT CELLES DÉCOULANT DES CONVENTIONS DE  
MATERNITÉ DE SUBSTITUTION À CARACTÈRE INTERNATIONAL**

*établi par le Bureau Permanent*

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**QUESTIONNAIRE ON THE PRIVATE INTERNATIONAL LAW ISSUES  
SURROUNDING THE STATUS OF CHILDREN, INCLUDING ISSUES ARISING FROM  
INTERNATIONAL SURROGACY ARRANGEMENTS**

*drawn up by the Permanent Bureau*

*Document préliminaire No 3 d'avril 2013 à l'attention  
du Conseil d'avril 2014 sur les affaires générales et la politique de la Conférence*

*Preliminary Document No 3 of April 2013 for the attention  
of the Council of April 2014 on General Affairs and Policy of the Conference*

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## INTRODUCTION

This Questionnaire is addressed to Members of the Hague Conference and other interested States in fulfilment of the mandate provided by the Council on General Affairs and Policy of the Conference ("the Council") in April 2012, following consideration of Preliminary Document No 10 of March 2012.<sup>1</sup> The Council requested that the Permanent Bureau "continue the current work under the 2011 Council mandate and further prepare and distribute a Questionnaire in order to obtain more detailed information regarding the extent and nature of the private international law issues being encountered in relation to international surrogacy arrangements, as well as in relation to legal parentage or "filiation" more broadly. The Questionnaire shall seek views on the needs to be addressed and approaches to be taken. The Permanent Bureau is invited to present its final Report to the Council in 2014".<sup>2</sup>

A detailed chronology of the background to this project is available on the website of the Hague Conference < [www.hcch.net](http://www.hcch.net) >, under "The Parentage / Surrogacy Project", then "Chronology of the Project (including relevant documentation)".

This Questionnaire has **five parts**:

- **Part I** contains questions on the internal law concerning the establishment and contestation of legal parentage in Member and interested States;
- **Part II** looks to the private international law ("PIL") and co-operation rules concerning birth registration and the establishment, recognition and contestation of legal parentage;
- **Part III** addresses the particular challenges concerning International Surrogacy Arrangements<sup>3</sup> ("ISAs");
- **Part IV** considers the current bilateral or multilateral instruments in the field; and
- **Part V** asks for thoughts on possible future work in this area.

Please note that the Permanent Bureau has used the same terminology in this Questionnaire as that which was used in the **Glossary** annexed to Preliminary Document No 10 of March 2012. This Glossary is accessible on the webpage of the project, "The Parentage / Surrogacy Project", then "Chronology of the Project (including relevant documentation)" and then "2011 - 2013".

The Permanent Bureau invites responses to the Questionnaire (in either English or French) by no later than **1 August 2013** in order to allow the Permanent Bureau sufficient time to consider the responses and to prepare the final Report requested by Members for the Council of 2014. Answers should be sent by e-mail to < [secretariat@hcch.net](mailto:secretariat@hcch.net) > with the following heading and indication in the subject field: "Questionnaire - Parentage / Surrogacy - [name of Member, State or territorial unit, where applicable]".

It is acknowledged that this is a detailed Questionnaire and that, due to the legal position in some States, it may not be possible for Members and interested States to respond to all of the questions. The Permanent Bureau is extremely grateful for any information which may be provided. It is also hoped that the detailed information in the responses to this Questionnaire may be of use to Members beyond this project: for example, where consideration is being given, now or in the future, to domestic legislation in any of the areas considered below.

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<sup>1</sup> Prel. Doc. No 10 of March 2012, "A Preliminary Report on the issues arising from international surrogacy arrangements", drawn up by the Permanent Bureau. See also the earlier Prel. Doc. No 11 of March 2011, "Private international law issues surrounding the status of children, including issues arising from international surrogacy arrangements", also drawn up by the Permanent Bureau.

<sup>2</sup> Conclusions and Recommendations of the Council on General Affairs and Policy of the Conference, 17-20 April 2012, para. 21. The "2011 Council mandate" referred to therein can be found at paras 17 to 20 of the Conclusions and Recommendations of the Council on General Affairs and Policy of the Conference, 5-7 April 2011.

<sup>3</sup> See the **Glossary** annexed to Prel. Doc. No 10 of March 2012 (see note 1) for the definition of the terms used in this paper.

Please note: the Permanent Bureau intends, except where expressly asked not to do so, to place replies to this Questionnaire on the website of the Hague Conference.

**Identification**

Name of State (or territorial unit, where applicable):

**Information for follow-up purposes**

Name and title of contact person:

Name of Authority / Office:

Telephone number:

E-mail address:

## QUESTIONNAIRE

**Note: wherever possible, please provide a copy of, or a web-link to, any legislation, rules or case law mentioned in your response, along with a translation into English or French.**

### **Part I: Internal law** concerning the establishment and contestation of legal parentage

#### **A. Birth registration**

1. Please indicate which authorities in your State are responsible for registering the birth of a child:

Local governments, under the guidance of the Legal Affairs Bureaus which have jurisdiction over the area and the Civil Affairs Bureau of the Ministry of Justice.

Family Registration Act ("FRA")

Article 1

(1) Affairs concerning family registers shall be administered by the mayor of municipality.

2. Please briefly describe the procedure for birth registration in your State, indicating whether such registration is mandatory<sup>4</sup> and providing details concerning any specific rules which must be complied with (e.g., within what timeframe must a birth be registered, who can register a birth and where must the birth be registered):

i A father or mother shall make a notification of birth when his/her child had born, and if he/she neglects the obligation, he/she may be punished by a non-penal fine.

FRA

Article 135

A person who has not made a notification or application that should be made during the prescribed period without justifiable grounds shall be punished by a non-penal fine of not more than 50,000 yen.

ii A father or mother shall make a notification of birth within 14 days (if the birth took place abroad, within three months) at the place where a father or mother is present or the place of birth. Where neither a father nor mother is unable to make the notification, a person who lives with the father or mother, the doctor who attended the birth, etc. shall make the notification.

FRA

Article 25

(1) A notification shall be made at the place of the registered domicile of any one of the parties to the notification case or the place where the person(s) who makes the notification is present.

(2) A notification concerning a foreign national shall be made at the place where the person(s) who makes the notification is present.

Article 49

(1) A notification of birth shall be made within 14 days (if the birth took place abroad, within three months).

Article 51

(1) A notification of birth may be made at the place of birth.

Article 52

<sup>4</sup> See Art. 7 of the United Nations *Convention on the Rights of the Child* ("UNCRC"), 20 November 1989, which states that, "The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents."

(1) A notification of birth of a child born in wedlock shall be made by the father or mother, and where the parents were divorced before the birth of the child, it shall be made by the mother.

(2) A notification of birth of a child born out of wedlock shall be made by the mother.

(3) Where the person who should make a notification pursuant to the provisions of the preceding two paragraphs is unable to make a notification, one of the following persons shall make the notification in the following order:

First: a person who lives with the person who should make a notification; or

Second: the doctor, birthing assistant or any other person who attended the birth.

3. Please explain what proof (evidence), if any, of legal *maternity* is required by the authorities in your State in order to register a putative<sup>5</sup> legal mother:

Please tick all which apply:

- a)  Hospital birth record (stating the name of the woman who gave birth to the child)
- b)  Sworn statement by the putative legal mother stating that she gave birth to the child
- c)  Signed statement by the putative legal mother stating that she gave birth to the child
- d)  DNA test to prove a genetic link between the putative legal mother and child
- e)  Other: please explain

4. Please explain what proof (evidence), if any, of legal *paternity* is required by the authorities in your State in order to register a putative legal father:

Please tick all which apply:

- a)  Formal acknowledgement<sup>6</sup> by the putative legal father
- b)  Formal acknowledgement by the putative legal father, with the legal mother and / or the child's evidenced consent: please specify
- c)  Judicial decision (court order) establishing or confirming legal paternity
- d)  Sworn statement by the putative legal father stating that he is the genetic father
- e)  Signed statement by the putative legal father stating that he is the genetic father
- f)  Signed agreement between the legal mother and putative legal father
- g)  DNA test to prove a genetic link between the putative legal father and child
- h)  Other: please explain

a):the case for a minor child born out of wedlock

b):the case for an adult child born out of wedlock

c):the case for a child born out of wedlock whose father does not affiliate (acknowledge) him/her

plus): According to the provisions of article 772 of the Civil Code, a child born after 200 days from the formation of marriage or within 300 days of the day of the dissolution or rescission of marriage shall be presumed to be a child of his/her mother's husband, and he/she is treated as a child born in wedlock. Therefore the authority can consider legal parentage between the child and his/her mother's husband only if the term of the marriage was confirmed by family registers. A child born after the formation of marriage or within 200 days of the day of the formation of marriage is also treated in the same way under the interpretation of law.

<sup>5</sup> "Putative" means "generally considered or reputed to be" and, in this document, is taken to mean the woman or man *claiming or claimed* (where it is not the individual him or herself making the assertion) to be the legal mother or father, respectively, of the child.

<sup>6</sup> In some States, this is called a "recognition" of paternity: the term "acknowledgement" is used in this document to avoid confusion with the private international law concept of "recognition". See further **Questions 11** *et seq.* below.

## Civil Code

(Presumption of Child in Wedlock)

## Article 772

(1) A child conceived by a wife during marriage shall be presumed to be a child of her husband.

(2) A child born after 200 days from the formation of marriage or within 300 days of the day of the dissolution or rescission of marriage shall be presumed to have been conceived during marriage.

(Affiliation)

## Article 779

A father or a mother may affiliate his/her child out of wedlock.

(Affiliation of Adult Child)

## Article 782

A father or mother may not affiliate his/her adult child without that adult child's consent.

(Action for Affiliation)

## Article 787

A child, his/her lineal descendant, or the legal representative of either, may bring an action for affiliation; provided that this shall not apply if three years have passed since the day of the death of the parent.

5. What are the legal consequences in the internal law of your State of registering persons in the State records<sup>7</sup> as the parents of a child?

- a)  Those persons are the legal parents of the child for all purposes, unless and until the record is contested, and all the legal consequences which flow from legal parentage in your State will automatically follow (e.g., duty to provide maintenance, inheritance rules, naming rules, etc.):

Duty to provide maintenance, inheritance rules, etc.

- b)  Other: please explain

Above is a treatment in fact. Birth registration should be done just for notarizing a person's relationship, not for forming or inuring legal parentage.

6. Are there any penalties for failing to comply with the rules concerning birth registration in your State: for example, misrepresenting to the authorities who are / is the legal parent(s) of the child?

In case of neglect of making a notification: see Q2

A person who has made a false notification shall be punished by imprisonment or a fine for the provisions below.

## FRA

## Article 132

A person who has made a false notification with regard to matters which are not required to be entered or recorded in a family register shall be punished by imprisonment with work for not more than one year or a fine of not more than 200,000 yen. The same shall apply to a person who has made a false notification with regard to matters concerning a foreign national.

## Penal Code

<sup>7</sup> It is acknowledged that there are different methods of recording births (and therefore legal parentage) across States, as well as different rules concerning matters such as when birth certificates will be issued, what information should be contained within the certificate and their constitutive value. Where applicable, please provide information concerning the rules in your State.

## (False Entries in the Original of Notarized Deeds)

Article 157 (1) A person, who makes a false statement before a public officer and thereby causes the official to make a false entry in the original of a notarized deed, such as the registry or family registry, relating to rights or duties or to create a false record on the electromagnetic record to be used as the original of a notarized deed relating to rights or duties, shall be punished by imprisonment with work for not more than 5 years or a fine of not more than 500,000 yen.

7. Is it possible to give birth anonymously in your State?

- Yes  
 No

If so, please explain any rules which apply to such an anonymous birth and state what will appear on the child's birth record and / or birth certificate:<sup>8</sup>

**B. Establishment of legal parentage**

8. Who, upon the birth of a child, is the legal mother *by operation of law* in your State (*i.e.*, with no need for the woman to take any steps to establish her legal maternity)?

- a)  The woman who gives birth to the child  
 b)  The genetic mother (*i.e.*, the woman whose gamete (egg) created the child)  
 c)  There is no legal mother *by operation of law*: please explain  
 d)  Other: please explain

9. Who, upon the birth of a child, is the legal father *by operation of law* in your State (*i.e.*, with no need for the man to take any steps to establish his legal paternity)?

- a)  The husband of the woman who gave birth is *presumed* to be the legal father  
 b)  The male partner of the woman who gave birth is *presumed* to be the legal father – please provide any conditions (*e.g.*, the couple must be cohabiting, etc.)  
 c)  The genetic father (*i.e.*, the man whose gamete (sperm) created the child)  
 d)  There is no legal father *by operation of law*: please explain  
 e)  Other: please explain

If legal presumptions operate in your State, please specify in what circumstances, if any, it is possible to “rebut” these presumptions:

10. a) Is it possible in your State for a non-contentious (*i.e.*, unchallenged) application to be made to the relevant State authorities for a decision (sometimes called a “declaration”) establishing or confirming the legal parentage of a child?

- Yes – go to **Question 10 b**).  
 No – go to **Question 11**.

b) Please explain to which State authorities such an application should be made:

- i.  The authority responsible for birth registration (see **Question 1** above)  
 ii.  The judicial authorities (*i.e.*, the courts): please specify  
 iii.  Other State administrative authorities: please specify

<sup>8</sup> In this document, the “birth record” is taken to mean the information concerning the child’s birth (including legal parentage) which is stored in the records of the relevant State authority (usually a registry). In contrast, the “birth certificate” is taken to mean the *extract* from this birth record which is usually given to the legal parent(s) to keep. In some States it may be that the information contained within the birth record is comprehensive (*e.g.*, if the child has been adopted, the birth record will identify the birth parent(s)), whereas the birth certificate may provide only a limited part of this information. See also *ibid*.

iv.  Other: please explain

c) Please explain who may bring such an application:

- i.  Only the individuals currently considered to be the legal mother and / or father and / or the child
- ii.  Any person claiming to be the legal mother and / or father of a child
- iii.  Any person determined by the State authorities to have sufficient interest to bring a claim: please explain how the authorities determine this question:
- iv.  Any person
- v.  Other: please explain

d) Is there a timeframe within which such an application must be made?

- Yes, please specify:
- No
- In certain situations: please explain

11. Is it possible in your State for a putative legal father to "voluntarily acknowledge"<sup>9</sup> his legal paternity (if his legal paternity has not arisen by operation of law – see **Question 9** above)?

- Yes
- No

If so, please explain (1) if there are any restrictions placed upon who may undertake such an acknowledgement (*e.g.*, it must be the genetic father, the man must be over a certain age, etc.), (2) the procedure for undertaking such an acknowledgement, and (3) whether the consent(s) of the mother and / or child are required:

(1) It must be the genetic father (If a man who is not the genetic father undertakes voluntary acknowledgement, that acknowledgement is deemed invalid.). (2) A person who intends to acknowledge parentage of a child shall make a notification to local governments. (3) An adult child's consent is required when his/her father affiliates him/her. See article 782 of the Civil Code. A mother's consent is required when a father affiliates his unborn child. See article 783 (1) of the Civil Code.

See the Civil Code,  
(Affiliation)

Article 779 A father or a mother may affiliate his/her child out of wedlock.

(Competency for Affiliation)

Article 780 A father or a mother does not require the consent of a legal representative for affiliation, even if he/she is a minor or an adult ward.

(Method of Affiliation)

Article 781 (1) Affiliation shall be made through notification pursuant to the provisions of the Family Registration Act.

(2) Affiliation may also be made by will.

(Affiliation of Adult Child)

Article 782 A father or mother may not affiliate his/her adult child without that adult child's consent.

(Affiliation of Unborn Child or Child who has Died)

Article 783 (1) A father may also affiliate his unborn child. In this case, the mother's consent shall be obtained.

(2) If a child has died, a father or mother may still give affiliation, limited to the case where that child had a lineal descendant. In this case, if that lineal descendant is an adult, his/her consent shall be obtained.

<sup>9</sup> See note 6 above.

(Effect of Affiliation)

Article 784 Affiliation has retroactive effect from the time of birth; provided that this shall not prejudice a right already acquired by a third party.

(Prohibition of Rescission of Affiliation)

Article 785 A father or a mother who has given affiliation may not rescind that affiliation.

(Assertion of Opposing Facts against Affiliation)

Article 786 A child or any other interested person may assert opposing facts against an affiliation.

FRA

Article 60

A person who intends to acknowledge parentage of a child shall make a notification to that effect, stating the following matters in a written notification:

(i) where the father acknowledges paternity, the name and registered domicile of the mother;

(ii) where the person acknowledges parentage of a child who has died, the date of death of the child, as well as the name, date of birth, and registered domicile of the child's lineal descendant.

In particular, please state whether it is possible for an individual to acknowledge legal paternity to representatives of your State authorities in another country (*e.g.*, usually to the consulate or embassy in that State). Please explain the procedure and whether there are any conditions which must be fulfilled:

It is possible only for a Japanese national located in a foreign country. A foreign national located in a foreign country who intends to acknowledge parentage of a Japanese child shall post a notification to the local government where the child is registered. Its procedure is stipulated by FRA article 40-42.

FRA

Article 40

A Japanese national who is located in a foreign country may make a notification to the Japanese ambassador, minister or consul stationed in that country, in accordance with the provisions of this Act.

Article 41

(1) When a Japanese national who is located in a foreign country has had an instrument made with regard to a notification case, he/she shall submit a transcript of such instrument to the Japanese ambassador, minister or consul stationed in that country within three months.

(2) If there is no ambassador, minister or consul stationed in that country, the Japanese national shall send a transcript of the instrument to the mayor of municipality of the place of his/her registered domicile within three months.

Article 42

When the ambassador, minister or consul has received a document pursuant to the provisions of the preceding two Articles, he/she shall send it to the mayor of municipality of the place of the registered domicile of the person concerned via the Minister of Foreign Affairs without delay.

12. Is it possible in your State for a putative legal mother to "voluntarily acknowledge" her legal maternity?

Yes

No

Not applicable – legal maternity always arises by operation of law (see **Question 8** above).

If so, please explain (1) if there are any restrictions placed upon who may undertake such an acknowledgement (e.g., it must be the genetic mother, the woman must be over a certain age, etc.), (2) the procedure for undertaking such an acknowledgement, and (3) whether the consent(s) of any others is / are required:

(1) It must be the woman who gives birth to the child (Legal maternity is proved by the fact of the delivery at the instant of childbirth, so usually there is no need of using voluntary acknowledgement.) (2) See: Q11 (3) An adult child's consent is required when his/her mother affiliates him/her. See article 782 of the Civil Code.

In particular, please state whether it is possible for an individual to acknowledge legal maternity to representatives of your State authorities in another country (e.g., usually to the consulate or embassy in that State). Please explain the procedure and whether there are any conditions which must be fulfilled:

See: Q11

13. Please explain the legal consequences in your State of a "voluntary acknowledgement" of legal parentage:

- a)  Once the acknowledgement is authenticated by the State authorities, the author of the acknowledgement is considered a legal parent of the child for all purposes
- b)  The acknowledgement is merely a declaration by the author that he / she is a legal parent and says nothing of the State's acceptance of that issue
- c)  Other: please specify

14. Is it possible for legal parentage to be established by agreement between the putative parents?

- Yes
- No

If so, please explain the procedure which must be undertaken and specify any restrictions which operate:

15. Is it possible in your State for two persons of the same-sex to be the legal parents of a child?

- Yes
- No

If so, please explain the legal mechanisms available in your State which enable this. Please tick all which apply and provide a brief explanation of the rule(s) and procedure. This may arise by:

- a)  Operation of law:
- b)  Order of the court or other State authorities:
- c)  Adoption:
- d)  Other:

**C. Establishment of legal parentage where assisted reproductive technology ("ART")<sup>10</sup> has been used<sup>11</sup>**

<sup>10</sup> In this document, "assisted reproductive technology" ("ART") is used in a broad sense to refer to any method used to achieve conception which involves artificial or partially artificial means and which is undertaken by a medical / health clinic or institution: e.g., two of the most common methods are artificial insemination and in-vitro fertilisation. Donated gametes (egg and sperm) may be used but will not always be necessary. In this document, ART does not refer to "do-it-yourself" or "DIY" methods of non-procreative conception: i.e., where medical third parties are not involved in the procedure.

16. Is ART permitted in your State?

- Yes, all forms of ART are permitted
- Yes, but there are certain restrictions on the services available and who may access these services: please specify Although there is no legal regulation for ART at this time, the academic society regulates ART voluntarily.
- No, all forms of ART are completely prohibited – **please go to Section D.**
- Other: please explain

17. Is there regulation of the use of ART in your State?

- Yes, legislation regulates the use of ART: please briefly explain
- Yes, there are rules or “codes of practice” concerning the use of ART which emanate from the medical regulatory bodies: please briefly explain
- No, there are no rules at all – **go to Question 19**
- Other: please explain Although there is no legal regulation for ART, the academic society regulates ART voluntarily. For example, it prohibits its members from surrogate pregnancy and embryo donation, and it adopts the registration system about AID(Artificial Insemination by Donor). In order to avoid inaccurate answers, Japan doesn't answer Question 21-23.

18. If ART is regulated in your State, please state whether the legislation or rules specify the following matters (please tick all which apply and provide a brief explanation, where applicable):

- a)  Who may access ART services (e.g., relationship status; age or health requirements; nationality / residency requirements, etc.):
- b)  Who may perform ART services:
- c)  The regulation of medical or other institutions which perform ART services (e.g., the licensing of clinics or hospitals):
- d)  Which ART services may be performed:
- e)  Whether egg donation is permitted and, if so, under which conditions:
- f)  Whether sperm donation is permitted and, if so, under which conditions:
- g)  The costs of ART (including the amount paid to any gamete donors):
- h)  The anonymity of gamete donors:
- i)  The right of the child to know his / her genetic or birth origins:
- j)  The legal parentage of any child born as a result of ART (see also **Questions 19 to 22** below)
- k)  Other: please explain

19. Please explain the consequences of ART for legal *maternity* arising by operation of law:

- a)  The woman giving birth to the child will always be considered the legal mother of the child, irrespective of any ART which has led to the birth
- b)  Other: please specify

Please explain whether the above position results from legislation, rules, case law or other source(s) of law: The Supreme Court of Japan provides that the woman who gave birth to the child became the mother in the case of using surrogacy. This rule is thought to be applicable to the case of ART.

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<sup>11</sup> Please note: surrogacy arrangements are dealt with separately in **Section D** below.

20. Please explain the consequences of ART for legal *paternity* arising *by operation of law*:

Please tick all boxes which apply:

- a)  The husband of the woman giving birth following ART is the legal father of the child born: please state whether it is necessary for him to have formally consented to the treatment:
- b)  The male partner of the woman giving birth following ART is the legal father of the child born: please state whether it is necessary for him to have formally consented to the treatment:
- c)  The genetic father will always be the legal father:
- d)  Other: please explain The husband of the woman giving birth the child is thought to be the legal father of the child born by using ART, because in most cases, it is not clear whether the child was born by using ART or by procreation without using ART.

Please explain whether the above position results from legislation, rules, case law or other source(s) of law: There is no special legislation for the legal paternity of a child born as a result of ART. The above position results from the existing legislation scheme, or the de facto presumption, assuming that a child was born by natural reproduction without using ART.

21. Please explain whether gamete donors are, in any situations, considered the legal parent(s) of a child born as a result of ART:

22. If your State permits same-sex couples to access ART services, please specify the consequences concerning legal parentage for any child born to a same-sex couple who have used ART to conceive a child:

23. Is information available concerning how many ART procedures are undertaken in your State each year and how many children are born as a result?

- Yes: please provide a copy of, or a link to, the information
- No
- Other: please explain

#### **D. Surrogacy arrangements**

##### ***Regulation of surrogacy***

24. Does your State permit surrogacy arrangements?

- a)  Yes, *all* forms of surrogacy arrangements are permitted:
  - i.  As a result of express legislation or rules: please specify
  - ii.  By default, because surrogacy is unregulated in internal law.  
Go to **Question 26**.
- b)  No, any form of surrogacy is expressly prohibited by law: please specify, including any sanctions for breach of this prohibition:  
  
Go to **Question 26**.
- c)  It depends upon the nature of surrogacy arrangement (*e.g.*, commercial surrogacy arrangements are prohibited): please specify
- d)  Other: please specify Although there is no legal regulation for ART, the academic society regulates ART among the members of it.

Please provide any clarification, where necessary:

25. If your State has legislation or rules permitting certain or all forms of surrogacy arrangements:

a) Are the parties to the surrogacy arrangement required to obtain State approval of the arrangement *prior* to conception?

- Yes, pre-approval by the relevant State authorities is required. Please explain the procedure:
- No, pre-approval is not required – the rules only regulate legal parentage following the birth of the child. Please explain the procedure:
- Other: please specify

b) Please state whether the following aspects of the surrogacy arrangement are regulated in the rules / legislation:

Please tick all which apply:

- i.  Who may be intending parents<sup>12</sup> to an arrangement, including:
- a.  Nationality, domicile or residency requirements:<sup>13</sup>  
please specify
- b.  Marital or other relationship status:
- c.  Age requirements:
- d.  Health requirements:
- e.  Psycho-social requirements:
- f.  Other:
- ii.  Who may be a surrogate mother, including:
- a.  Nationality, domicile or residency requirements:<sup>14</sup>  
please specify:
- b.  Marital or other relationship status:
- c.  Age requirements:
- d.  Health requirements:
- e.  Psycho-social requirements:
- f.  The surrogate mother must already have her own children:
- g.  Other:
- iii.  Which types of surrogacy arrangements are permitted, *e.g.*, traditional and / or gestational,<sup>15</sup> etc.: please specify
- iv.  Which medical institutions or clinics may facilitate a surrogacy arrangement (where medical intervention is necessary for the type of surrogacy arrangement being undertaken) and the level of financial remuneration which may be paid for these services: please specify
- v.  Which other bodies or persons may facilitate a surrogacy arrangement (*e.g.*, by acting as an intermediary and undertaking tasks such as

<sup>12</sup> Please note that, for simplicity, this document always refers to intending parents in the plural form. However, it is understood that, in some States and in certain circumstances, single persons may enter into a surrogacy arrangement. Please specify this, where relevant, in any response.

<sup>13</sup> See **Parts II** and **III** below for questions concerning the private international law rules regarding legal parentage and international surrogacy arrangements, respectively.

<sup>14</sup> See **Parts II** and **III** below for questions on the private international law rules concerning legal parentage and international surrogacy arrangements, respectively.

<sup>15</sup> See the **Glossary** for the definition of the terms used in this paper.

advertising for surrogate mothers, “matching” surrogate mothers with intending parents, organising certain aspects of the arrangements for the intending parents, etc.) and whether such bodies or persons may receive financial compensation for their services: please specify

- vi.  Whether financial remuneration can be paid to the surrogate mother:
    - a.  No financial remuneration at all is permitted
    - b.  Only reasonable expenses may be paid: in which case please state whether the legislation or rules define what are such “reasonable expenses”:
    - c.  Compensation beyond reasonable expenses is permitted: please specify what exactly is permitted:
  - vii.  Whether the surrogacy arrangement is contractually enforceable: please specify
  - viii.  Who may make decisions concerning the pregnancy (*e.g.*, whether an abortion should be undertaken in certain situations, what medical treatment should be undertaken if problems arise, etc.): please specify
  - ix.  The legal parentage of the child following his / her birth (see further **Questions 26 to 30** below):
  - x.  Other: please specify
- c) Please explain any legal consequences, both criminal (*e.g.*, penal sanctions) and civil (*e.g.*, for the legal parentage of the child), if the requirements set down in the legislation or rules are not complied with:
- d) Please provide any additional information you think necessary concerning the nature of the regulation of surrogacy in your State:

### **Surrogacy and legal parentage**

26. Upon the birth of a child following a surrogacy arrangement, who is / are the legal parent(s) *by operation of law* (*i.e.*, without any further steps being taken by any individuals) according to the internal law of your State?

Please explain, including whether this results from legislation, case law or other source(s) of law:

A woman who gives birth to a child is naturally thought to be the mother of the child by interpretation. The Supreme Court of Japan provides that the woman who gave birth to the child became the mother in the case of using surrogacy.

27. Where necessary, are there any legal mechanisms in your State to enable intending parents to establish their legal parentage?

Please tick all which apply:

- a)  Yes, prior to the birth the intending parents can seek a court order declaring that they will be the parents of the child born to a surrogacy arrangement (a “pre-birth order”).

Please specify any legal requirements to obtain such an order (including any nationality / domicile / residency requirements) and state whether this position arises from legislation, case law or other source(s) of law:

- b)  Yes, *following* the birth the intending parents can seek a court order transferring legal parentage to them (in some States, known as a "parental order" or "parentage order").

Please specify any legal requirements to obtain such a transfer of legal parentage (including any nationality / domicile / residency requirements) and state whether this position arises from legislation, case law or other source(s) of law:

- c)  No
- d)  Other: please specify
- e)  Such mechanisms are unnecessary – the surrogacy contract is sufficient to establish the legal parentage of the intending parents.
- f)  Such mechanisms are unnecessary – the intending parents will be the legal parents upon the birth of the child by operation of law: see the response to **Question 26** above.

28. Where a surrogacy arrangement has been undertaken in your State, will the fact of the surrogacy arrangement be visible on the child's birth record and / or certificate?

- Yes: please describe exactly what will be on the record and / or certificate
- No: please explain

A surrogate mother should be recorded as a mother of the child.

29. Is information available concerning how many surrogacy arrangements take place in your State each year and how many children are born as a result?

- Yes: please provide a copy of, or a link to, the information
- No
- Other: please explain

30. Are you aware of any illegal practices in your State concerning surrogacy arrangements?

- Yes – please state the practices of which you are aware and, if possible, how frequently they are occurring:
- No
- Other: please explain Although there is no legal regulation for ART, the academic society regulates ART among the members of it.

#### **E. Contestation of legal parentage**

31. Which authority(ies) in your State may determine a dispute concerning legal parentage?

- a)  The authority responsible for birth registration (see **Question 1** above)
- b)  The judicial authorities (*i.e.*, the courts): please specify courts
- c)  Other State administrative authorities: please specify
- d)  Other: please explain

32. Who may bring an action to challenge legal parentage?

- a)  Only the individuals currently considered to be the legal mother and / or father and / or the child

- b)  Any person claiming to be the legal mother and / or father of a child
- c)  Any person determined by the State authorities to have sufficient interest to bring a claim: please explain how the authorities determine this question  
Courts determine whether a party has sufficient interest to bring a claim.
- d)  Any person
- e)  Other: please explain
33. Is there a timeframe within which legal parentage must be challenged (*i.e.*, after which time, any challenge to legal parentage is effectively barred)?
- Yes, please specify:
- No
- In certain situations: please explain If a legal father wants to rebut the presumption of the child in wedlock, he shall bring an action within one year of knowing of the child's birth.
34. On what grounds may legal *maternity* be challenged before the authorities in your State?
- a)  Only on the basis that the "mother" did not, in fact, give birth to the child
- b)  Only on the basis that the "mother" is not, in fact, the genetic mother of the child (*i.e.*, the woman from whom the gamete (egg) came)
- c)  Other: please explain
35. On what grounds may legal *paternity* be challenged before the authorities in your State?
- a)  Only on the basis that the "father" is not, in fact, the genetic father of the child (*i.e.*, the man from whom the gamete (sperm) came)
- b)  Other: please explain
36. What are the legal consequences of a successful challenge concerning legal parentage?
- a)  The decision of the State authorities concerning legal parentage is binding *erga omnes* (*i.e.*, on all persons, for all purposes)
- b)  The decision of the State authorities will only be binding for limited, specific purposes: please explain
- c)  It depends upon the context in which the challenge has been made (*e.g.*, if in the context of a maintenance claim, it will be binding only as concerns the payment of maintenance): please explain
- d)  Other: please explain
37. What happens to a child's birth record and / or birth certificate when legal parentage is successfully challenged?
- a)  The birth record and / or certificate is revised and the old record and / or certificate will be permanently deleted
- b)  The birth record and / or certificate is amended but the original record and / or certificate is retained
- c)  Other: please explain

#### **F. The acquisition of nationality by children**

38. How may a child acquire the nationality of your State?

Please tick all which apply:

- a)  By birth within the territory of the State

- b)  By "descent", where one or both of his / her *legal* parents is / are a national of the State: please explain which law, in this context, will apply to the question of who is / are the child's *legal* parents for the purposes of determining nationality:

A child shall be a Japanese citizen if the father or mother is a Japanese citizen at the time of birth. Japanese law will apply regarding the parent-child relationship.

Nationality Act

(Acquisition of Nationality by Birth)

Article 2 A child shall be a Japanese citizen in the following cases:

(i) If the father or mother is a Japanese citizen at the time of birth

(ii)(iii)....

- c)  By "descent", where one or both of his / her *genetic* parents is / are a national of the State: please explain how the genetic link must be evidenced:
- d)  If the child would otherwise be "stateless" (*i.e.*, without the nationality of any other State):<sup>16</sup> please specify

If a child is born in Japan and both of the parents are unknown or are without nationality, the child shall be a Japanese citizen.

Nationality Act

(Acquisition of Nationality by Birth)

Article 2 A child shall be a Japanese citizen in the following cases:

(i)(ii) .....

(iii) If born in Japan and both of the parents are unknown or are without nationality.

- e)  Other: please specify

In cases where a child acknowledged by Japanese father is under 20 years of age, Japanese nationality may be acquired through notification to the Minister of Justice.

Nationality Act

(Acquisition of Nationality by Acknowledged Children)

Article 3

(1) In cases where a child acknowledged by the father or mother is under twenty years of age (excluding a child who was once a Japanese citizen) and the acknowledging father or mother was a Japanese citizen at the time of the birth of the child, Japanese nationality may be acquired through notification to the Minister of Justice if that father or mother is currently a Japanese citizen or was so at the time of death.

(2) The person making notification provided for in the provision set forth in the preceding paragraph shall acquire Japanese nationality at the time of the notification.

## G. Legal developments

39. Please state whether the law in your State concerning the matters covered in **Part I** above (*i.e.*, birth registration, establishment and contestation of legal parentage, ART, surrogacy and nationality concerning children) has changed in the past five years, or whether any initiatives are underway (*e.g.*, in government, before parliament or before the courts) to change the law in future:

<sup>16</sup> As to which, see note 4 above, citing Art. 7 of the UNCRC.

40. Please provide any other information you consider relevant concerning cases (reported, or otherwise) or other developments which have occurred in your State in relation to the Questions appearing in **Part I** above.

**Part II: Private international law ("PIL") and co-operation rules** concerning birth registration and the establishment, recognition and contestation of legal parentage

**A. PIL and co-operation rules concerning birth registration**

41. Please explain when the relevant authorities in your State will assume (international) jurisdiction to register the birth of a child:

- a)  Only when the child is born on the territory of the State
- b)  When at least one of the putative *legal* parents is a national of the State, regardless of the place of birth of the child
- c)  When at least one of the putative *genetic* parents is a national of the State, regardless of the place of birth of the child
- d)  When the child is considered a national of the State,<sup>17</sup> regardless of the place of birth of the child
- e)  Other, please specify:

42. When registering a child's birth, which law will the relevant authorities apply to the question of who is / are the legal parent(s) of the child *by operation of law*?<sup>18</sup>

- a)  The *lex fori* (*i.e.*, the internal law of your State) is always applied by the relevant authorities
- b)  If the situation has foreign elements (*e.g.*, the putative parent(s) or child are foreign nationals, or the child was born overseas, etc.), foreign law may, or must, be applied to this question. Please specify the applicable law rules:

See article 28 and 29 of the Act on General Rules for Application of Laws  
(Formation of Parent-Child Relationship with Child Born in Wedlock)

Article 28 (1) If a child shall be treated as a child born in wedlock under the national law of either the husband or wife at the time of the child's birth, the child shall be deemed to be a child born in wedlock.

(2) If a husband has died before his child's birth, the husband's national law at the time of his death shall be deemed to be the husband's national law set forth in the preceding paragraph.

(Formation of Parent-Child Relationship with Child Born Out of Wedlock)

Article 29 (1) In the case of a child born out of wedlock, the formation of a parent-child relationship with regard to the father and the child shall be governed by the father's national law at the time of the child's birth, and with regard to the mother and the child by the mother's national law at said time. In this case, when establishing a parent-child relationship by acknowledgment of parentage of a child, if obtaining the acceptance or consent from the child or a third party is required for acknowledgement under the child's national law at the time of the acknowledgement, such requirement shall also be satisfied.

<sup>17</sup> As to which, see **Question 38** above.

<sup>18</sup> Please note that the applicable law rules identified in your response to this Question may be the same as the rules you identify in **Question 45** below.

(2) Acknowledgement of parentage of a child shall be governed by the law designated in the first sentence of the preceding paragraph, or by the national law of the acknowledging person or of the child at the time of the acknowledgement. In this case, if the acknowledging person's national law is to govern, the second sentence of the preceding paragraph shall apply *mutatis mutandis*.

(3) If a father has died before his child's birth, the father's national law at the time of his death shall be deemed to be the father's national law set forth in paragraph (1). If the person referred to in the preceding paragraph has died before the acknowledgment, the person's national law at the time of his/her death shall be deemed to be the person's national law set forth in said paragraph.

c)  Other: please specify

43. Have your State authorities ever encountered difficulties resulting from a child's birth being registered in two (or more) States (*e.g.*, the child is registered in your State as the State of birth, and in the State of the parents' nationality and the registers conflict)?

Yes: please explain the circumstances of the case(s) and the difficulties which arose:

No

44. Are there any bilateral or multilateral<sup>19</sup> agreements in force between your State and any other State such that:

a. When a child's birth is registered which involves foreign elements (*e.g.*, one or more foreign national parents), this information is communicated to the authorities in the other relevant State?

Yes: please specify

There are no formal agreements but this may happen in practice: please explain

No

b. When there are changes to a child's legal parentage *subsequent to* birth registration as a result of steps taken in your State (*e.g.*, due to a subsequent voluntary acknowledgement of paternity in your State, or a contestation of legal parentage, etc.), this information is communicated to the relevant authorities in the State of the child's birth (where this is not your State)?

Yes: please specify

There are no formal agreements but this may happen in practice: please explain

No

## **B. PIL rules concerning the establishment of legal parentage**

### ***By operation of law or agreement***

45. Does your State have rules specifying which law is applicable to the establishment of legal parentage by operation of law?<sup>20</sup>

<sup>19</sup> *E.g.*, the *Conventions on the international exchange of information relating to civil status* of 4 September 1958 and of 12 September 1997 or the *Convention on the recognition and updating of civil status booklet*, 5 September 1990, all adopted under the aegis of the International Commission on Civil Status (< [www.ciecl.org](http://www.ciecl.org) >).

<sup>20</sup> Please note that the applicable law rules identified in your response to this Question may be the same as the rules you identified in **Question 42** above.

- Yes: please specify Based on the article 28 and 29 of the Act on General Rules for Application of Laws. See; Q42 b.
- No: the *lex fori* (i.e., the internal law of the State) will always be applied where a question of legal parentage arises

46. Does your State have rules specifying which law is applicable to the establishment of legal parentage by agreement?

- Yes: please specify
- No: the *lex fori* (i.e., the internal law of the State) will always be applied where a question of legal parentage arises
- Not applicable: it is not possible to establish legal parentage by agreement

**By voluntary acknowledgement**

47. Please explain in which circumstances your State authorities will consider they have (international) jurisdiction to accept a voluntary acknowledgement of legal parentage by a putative parent:

Please tick all which apply:

- a)  When the child is (habitually) resident in your State: please specify
- b)  When the child is a national of your State
- c)  When the individual acknowledging the child is (habitually) resident in your State: please specify

A foreign national can make a notification if he/she acknowledges a child in Japan.

- d)  When the individual acknowledging the child is a national of your State
- e)  Other: please specify

Please specify whether these criteria (i.e., the (habitual) residence / nationality of the individual(s) – depending upon the boxes ticked above) have to be fulfilled:

- i.  At the time of the child's birth
- ii.  At the time of the acknowledgement, or
- iii.  At another time: please specify

48. Which law will be applied to determine: a) the formal validity of the acknowledgement; and b) the substantive validity of the acknowledgement, i.e., whether it validly establishes legal parentage?

Please tick all which apply:

- a) For the formal validity of the acknowledgement:
- i.  The *lex fori* (i.e., the internal law of your State)
- ii.  The law of the State of the child's nationality
- iii.  The law of the State of the (habitual) residence of the child: please specify
- iv.  The law of the State of the putative parent's nationality
- v.  The law of the State of the putative parent's (habitual) residence: please specify
- vi.  Other: please specify
- b) For the substantive validity of the acknowledgement:
- i.  The *lex fori* (i.e., the internal law of your State)
- ii.  The law of the State of the child's nationality
- iii.  The law of the State of the (habitual) residence of the child: please specify
- iv.  The law of the State of the putative parent's nationality
- v.  The law of the State of the putative parent's (habitual) residence:

- please specify  
vi.  Other: please specify

Please state whether, in relation to a) and / or b), one or more of these laws will be applied (possibly in a "cascade"), with a view to favouring the establishment of legal parentage:

Please specify, in relation to a) and b), whether these criteria (*i.e.*, the (habitual) residence / nationality of the individual(s) – depending upon the boxes ticked above) have to be fulfilled: (1) at the time of the child's birth; (2) at the time of the acknowledgement; or (3) at another time (in which case, please specify):

- a)  
b) (1) and (2)

### **C. PIL rules concerning the recognition of legal parentage established abroad**

#### ***Birth certificates***

49. Please explain when, if ever, a birth certificate drawn up in another State will be recognised in your State *as validly establishing the legal parentage of those persons recorded within it (i.e., the recognition of the content of the certificate)*.<sup>21</sup>

Please explain in your answer:

- a) which authorities are responsible for determining whether the foreign birth certificate will be recognised;  
b) the procedure which must be undertaken for recognition;  
c) any conditions for recognition (*e.g.*, the birth certificate must be authenticated by way of legalisation or apostille<sup>22</sup>); and  
d) any grounds of *non*-recognition.

When a birth certificate drawn up in another State is attached to a notification of birth, the competent local government is responsible to examine the birth certificate. There is no special procedure to examine such certificate, but the local government can ask a legal opinion from the Legal Affairs Bureau in charge. Public policy is a ground for the non-recognition of a foreign birth certificate.

If public policy ("*ordre public*") is a ground for the non-recognition of a foreign birth certificate, please explain, with reference to case law where applicable, the interpretation of this concept in your State in this context:

The Supreme Court of Japan provides that the woman who gave birth to the child became the mother in the case of using surrogacy, and this rule is based on public policy in Japan.

#### ***Voluntary acknowledgements***

50. Please explain when, if ever, a voluntary acknowledgement undertaken in another State will be recognised in your State *as validly establishing the legal parentage of the author of the acknowledgement (i.e., the recognition of the content of the acknowledgement)*.<sup>23</sup>

Please explain in your answer:

- a) which authorities are responsible for determining whether the foreign acknowledgement will be recognised;  
b) the procedure which must be undertaken for recognition;

<sup>21</sup> It is understood that, from time to time, this issue may arise in the course of other proceedings (*e.g.*, proceedings concerning succession or maintenance).

<sup>22</sup> See, in this regard, the *Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents*, available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under "Apostille Section".

<sup>23</sup> It is understood that, from time to time, this issue may arise in the course of other proceedings (*e.g.*, proceedings concerning succession or maintenance).

- c) any conditions for recognition; and
- d) any grounds of *non*-recognition.

When a certificate of voluntary acknowledgement drawn up in another State is attached to a notification of acknowledgement, the competent local government is responsible to examine the certificate. There is no special procedure to examine such certificate, but the local government can ask a legal opinion from the Legal Affairs Bureau in charge. Public policy is a ground for the non-recognition of a foreign acknowledgement.

If public policy ("*ordre public*") is a ground for the non-recognition of a foreign acknowledgment of parentage, please explain, with reference to case law where applicable, the interpretation of this concept in your State in this context:

### **Decisions of judicial authorities**

51. Please explain when a decision of the relevant judicial authority of another State establishing a child's legal parentage (*i.e.*, a court judgment or order) will be recognised in your State as validly establishing legal parentage.<sup>24</sup>

Please explain in your answer:

- a) which authorities are responsible for determining whether the foreign decision will be recognised;
- b) the procedure which must be undertaken for recognition;
- c) any conditions for recognition; and
- d) any grounds of *non*-recognition.

a) Usually the decision of the judicial authorities of another State is recognized automatically if it meets some conditions (please see answer to the question c ) below). There are no needs of special procedures and authorities for the recognition.

b) See a).

c) Normally the conditions for recognition are all of the following requirements: (1) the jurisdiction of the foreign court is recognized under the laws or regulations or conventions or treaties; (2) the defeated defendant has received a service of summons or order necessary for the commencement of the suit, or has appeared without receiving such service; (3) the content of the judgment and the court proceedings are not contrary to public policy in Japan: and (4) a mutual guarantee exists.

d) See c). Lack of one or more of the requirements above constitutes grounds for non-recognition of foreign judgment.

If public policy ("*ordre public*") is a ground for the non-recognition of a foreign decision, please explain, with reference to case law where applicable, the interpretation of this concept in your State in this context:

The Supreme Court of Japan decided that the decision of the foreign court which established legal parentage for the people that the Civil Code of Japan didn't admit legal parentage for them was contrary to public policy.

52. Please specify the *effects* of the recognition of the legal parentage established abroad (see **Questions 49** to **51** above) and which law(s) govern(s) these effects:

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<sup>24</sup> *Ibid.*

#### **D. PIL rules concerning the contestation of legal parentage**

53. Please explain when the relevant State authorities (which you identified in **Question 31** above) have (international) jurisdiction to determine a dispute concerning a child's legal parentage:

- a)  When the child whose parentage is disputed is (habitually) resident in your State: please specify
- b)  When the child whose parentage is disputed is a national of your State
- c)  When a putative parent disputing legal parentage is (habitually) resident in your State: please specify
- d)  When a putative parent disputing legal parentage is a national of your State
- e)  Other: please specify

Please specify whether these criteria (*i.e.*, the (habitual) residence / nationality of the individual(s) – depending upon the boxes ticked above) have to be fulfilled:

- i.  At the time of the child's birth
- ii.  At the time the relevant State authorities are seized with the dispute, or
- iii.  At another time: please specify

54. In the context of a contestation of legal parentage, which law will the authorities apply to the question of who is / are the legal parent(s) of a child?

Please tick all which apply:

- a)  The *lex fori* (*i.e.*, the internal law of your State)
- b)  The law of the State of the child's nationality
- c)  The law of the State of the (habitual) residence of the child:  
please specify
- d)  The law of the State of the putative parent's nationality
- e)  The law of the State of the putative parent's (habitual) residence:  
please specify
- f)  Other: please specify

Please state whether one or more of these laws will be applied (possibly in a "cascade"), with a view to favouring the establishment of legal parentage: See; Q42 b.

#### **E. "Cross-border reproductive care"<sup>25</sup> and the consequences for legal parentage**

55. If persons resident in your State access ART services in another State, are there any specific PIL rules concerning the establishment of the legal parentage of the child born as a result (*e.g.*, the law of the State in which the ART service was obtained will apply to the question of the child's legal parentage)?

- Yes: please explain
- No
- Other: please explain

56. Are you aware of any cases, other than international surrogacy cases (see **Part III** below), where difficulties concerning the establishment or recognition of a child's legal parentage have arisen as a result of individuals resident in your State accessing ART

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<sup>25</sup> In this paper, "cross-border reproductive care" is taken to mean when person(s) who wish to access ART services cross a border to do so, for whatever reason (often it is linked with the restrictive rules in their "home" jurisdiction, lower costs or better success rates abroad).

services in another country, or individuals resident abroad accessing ART services in your State?

- Yes: please provide details  
 No

#### **F. Legal developments and practical challenges**

57. Please state whether the law in your State concerning the matters covered in **Part II** above (*i.e.*, the PIL and co-operation rules concerning birth registration and the establishment, recognition and contestation of legal parentage) has changed in the past five years, or whether any initiatives are underway (*e.g.*, in government, before Parliament or before the courts) to change the law in future:

58. Other than cases involving international surrogacy arrangements (as to which see **Part III** below), are there any other cases of which you are aware where difficulties have arisen in your State in relation to establishing, contesting, or recognising a child's legal parentage as a result of the cross-border movement of the child and / or his / her putative parents?

(Some possible examples can be found at Part IV (b) of Prel. Doc. No 11 of March 2011.)

Please provide as much detail as possible concerning the situation which arose and the difficulties encountered:

**Part III: The particular challenges concerning International Surrogacy Arrangements<sup>26</sup> ("ISAs")**

*This Part asks for information regarding the experience of State authorities with ISAs. It is divided into two sections:<sup>27</sup>*

- **Section A** asks a number of questions concerning "**Incoming cases**" of ISA: *i.e.*, those cases in which your State was the State of residence of the intending parents, and the State to which it was sought to bring child(ren), born to a surrogate abroad, to live.
- **Section B** continues with questions concerning "**Outgoing cases**" of ISA: *i.e.*, those cases where your State was the State in which the surrogate mother gave birth and from which the child(ren) needed to leave to travel to the State of residence of the intending parents in order to live with them in that State.

#### **A. Incoming cases**<sup>28</sup>

<sup>26</sup> See the **Glossary** for the definition of the terms used in this paper.

<sup>27</sup> Please note: it is understood that, in relation to both "Incoming" and "Outgoing" cases, there may be more than two States involved in a particular case: *e.g.*, the surrogate may be resident in a different State to the State in which she travelled (or, in some cases, was trafficked) to give birth; in other cases, a gamete donor may be resident in a third State etc. Please explain any such elements in your responses to the questions in this part.

<sup>28</sup> *I.e.*, those cases where your State was the State of residence of the intending parent(s), and the State to which it was sought to bring the child(ren), born to a surrogate abroad, to live.

- This Section is inapplicable – there have been no “Incoming cases” of ISA in this State. Go to Section B.**

***Basic empirical data***

59. Do you have any information concerning:

- a) The number of **Incoming cases** of ISA which have required the assistance of your State authorities in recent years?

- Yes – please provide any figures available:

Pre-2009

2009

2010

2011

2012

2013 (so far)

- No information is available

- b) How many children have been born to surrogate mothers in another State as a result of ISAs involving intending parents resident in your State?

- Yes – please provide any figures available:

Pre-2009

2009

2010

2011

2012

2013 (so far)

- No information is available

If you have provided any figures above, please comment upon whether you consider that these figures reflect the true number of Incoming cases of ISA involving your State<sup>29</sup> and, further, please provide a general comment concerning the prevalence of Incoming cases of ISAs and whether such cases have increased in the past five years:

If you have not provided figures above, are you able to provide any comment concerning the prevalence of Incoming cases of ISAs involving your State and / or whether this has increased in the past five years:

60. Please list all the States in which intending parents resident in your State have engaged a surrogate mother (*i.e.*, entered into an ISA), insofar as you are aware:

***The procedure for Incoming cases of ISA***

61. Please explain the procedure, including any immigration and legal processes, which intending parents resident in your State need to undertake (before leaving your

<sup>29</sup> Since it is recognised that there may be many cases which do not come to the attention of the State authorities.

State, before returning to your State or upon return to your State, as applicable) in order to:

- a) Enter your State with a child born abroad as a result of an ISA:
- b) Reside permanently in your State with the child:
- c) Have their legal parentage recognised (or established) under the law of your State (*if* this is possible):

With regard to a) and b), the procedures will differ depending on the nationality of the intending parents and the nationality of the child born in a foreign country as a result of an ISA.

(Cases of foreign nationality)

- a) If the person seeking entry into Japan is a foreign national, as provided for in Article 6 of the Immigration Control Act, such foreign national is required to have a valid passport (or a refugee travel document or a travel document issued by a Japanese consular officer, etc.) with a visa issued by a Japanese consular officer, etc., and is required to apply to an immigration inspector at the port of entry or departure where he or she intends to land in order to receive permission for landing. However, a visa issued by a Japanese consular officer, etc. is not required for the passport of a foreign national where, owing to an international agreement or a notification given by the Japanese government to a foreign government or for the passport of a foreign national who has received permission for re-entry (including foreign nationals deemed to have received permission for re-entry) or for the refugee travel document of a foreign national who has been issued with such a document.

Moreover, unless the immigration inspector deems the foreign national to have met all of the conditions for landing given in the items of paragraph (1) of Article 7 of the Immigration Control Act, the foreign national shall not be issued with the above-mentioned permission for landing.

In addition, a foreign national who seeks entry into Japan is required himself/herself to prove that he or she meets the above-mentioned conditions for landing.

Furthermore, such foreign national is required to provide personal identification information except in cases where the foreign national comes under the foreign nationals provided for in the laws and regulations as being exempt such as a special permanent resident or a foreign national under the age of 16.

- b) Where a foreign national, who is residing in Japan with a status of residence, wishes to change his or her status of residence to that of a permanent resident, such foreign national is required to file an application for permission for permanent residence with the Minister of Justice in accordance with Article 22 of the Immigration Control Act. In the event of an application for permission for permanent residence being made by a foreign national who is currently residing in Japan with a status of residence, the Minister of Justice may grant such permission only in cases where such foreign national conforms to each of the items of paragraph (2) of Article 22 of the Immigration Control Act, and moreover, the Minister deems the residence of such foreign national to be in accordance with the interests of Japan.

(Cases of Japanese nationality)

- a) In cases where the person seeking to enter Japan is a Japanese national, as provided for in Article 61 of the Immigration Control Act, he or she is required to be in possession of a valid passport (where the person does not have a valid passport in his or her possession, a document proving that he or she has Japanese nationality) and to receive confirmation of return to Japan from an immigration inspector at the port of entry or departure where he or she intends to land.

Please include an estimate of the time it may take to complete each stage of this process:

- a)
- b)
- c)

(Cases of foreign nationality)

- a) In cases where an application for landing permission is made at the above-mentioned port of entry or departure, an examination will be conducted by an immigration inspector and, in general, the procedures will be concluded on the same day.

In cases where the foreign national seeks to land in Japan with a status of residence other than that of "Temporary Visitor", if the foreign national has filed an application in advance pursuant to Article 7-2 of the Immigration Control Act, an examination will be conducted to determine whether such foreign national meets the conditions for landing pertaining to the activities which he or she intends to conduct in Japan, and as a result of the examination if the foreign national is deemed to meet the conditions, the Immigration Control Act provides that a certificate to such effect (certificate of eligibility) may be issued; with the standard processing time for such procedures taking about one to three months.

- b) The standard processing time pertaining to permission for permanent residence is about four months.

(Cases of Japanese nationality)

- a) Confirmation of return to Japan at the above-mentioned port of entry or departure is conducted by an immigration inspector and, in general, the procedures will be concluded on the same day.

If the answer to this question varies depending upon the factors set out below, please provide a brief explanation, including the impact the particular factor has on the procedure which must be undertaken and any timeframes.

Please tick all which apply:

- i.  The country in which the child was born: please explain
- ii.  The particular document(s) produced by the intending parents to establish their legal parentage (*e.g.*, a birth certificate, voluntary acknowledgement, court decision, etc.): please explain
- iii.  Whether the child(ren) is / are genetically related to one or both of the intending parents: please explain
- iv.  The nationality of the intending parents: please explain
- v.  Any other factor: please explain

As mentioned above, this will depend on "iv. The nationality of the intending parents" and "v. Any other factors (the nationality of the child born in a foreign country as a result of an ISA)" .

<Immigration Control and Refugee Recognition Act>

Article 6 (1) Any foreign national (except for a crew member; hereinafter the same shall apply in this Section) who seeks to land in Japan shall possess a valid passport with a visa issued by a Japanese consular officer. However, a visa is not required for the passport of a foreign national for whom a visa issued by a Japanese consular officer is deemed unnecessary pursuant to an international agreement or through notification to that effect from the Japanese Government to a foreign government or for the passport of a foreign national for whom re-entry permission pursuant to the provisions of Article 26 has been granted or for whom a refugee travel document has been issued pursuant to the provisions of Article 61-2-12.

- Article 7 (1) When the application set forth in paragraph (2) of the preceding Article is made, an immigration inspector shall conduct an examination of the said foreign national as to whether or not he or she conforms to each of the following conditions for landing in Japan (With respect to a foreign national who has received re-entry permission pursuant to the provisions of Article 26, paragraph (1) or a refugee travel document pursuant to the provisions of Article 61-2-12, paragraph (1), only the conditions listed in the following items (i) and (iv) are to be applied.)
- (i) The passport possessed by the foreign national and the visa affixed thereto, if such is required, must be valid.
  - (ii) The activities stated in the application to be engaged in while in Japan must not be false, and must fall under any of the activities listed in the right-hand column of Appended Table I (activities listed in the right-hand column of item (ii) "Technical Intern Training" of Appended Table I (2) shall be excluded; with respect to the activities listed in the right-hand column of Appended Table I (5) (limited to the part pertaining to d.), the proposed activities must be activities designated by the Minister of Justice in a public notice), or the activities of a person with a status or position listed in the right-hand column of Appended Table II (the position listed in the right-hand column under "Permanent Resident" shall be excluded; with respect to the position listed under "Long-Term Resident," a proposed position must be a position designated by the Minister of Justice in a public notice), and with respect to those who intend to engage in the activities listed in the right-hand column of Appended Table I (2) and (4) and in the right-hand column of Appended Table I (5) (limited to the part pertaining to b.), the activities shall conform to the conditions provided for by Ordinance of the Ministry of Justice which shall be provided for in consideration of factors including but not limited to the effects on Japanese industry and public welfare.
  - (iii) The period of stay stated in the application must conform to the provisions of the Ordinance of the Ministry of Justice pursuant to the provisions of Article 2-2, paragraph (3).
  - (iv) The foreign national must not fall under any of the items of Article 5, paragraph (1) (in the case of a foreign national for whom the provisions of Article 5-2 have been applied, in the case that, based on the specific grounds prescribed in the same Article, the foreign national falls under Article 5, paragraph (1), items (iv), (v), (vii), (ix) or (ix)-2, said foreign national must not fall under any of the items of the same paragraph based on grounds other than said specified grounds; the same shall apply hereinafter).
- (2) The foreign national subject to the examination set forth in the preceding paragraph shall prove that he or she conforms to the conditions for landing prescribed therein. In this case, a foreign national who seeks to engage in an activity listed in the right-hand column of (5) of Appended Table I (only the parts pertaining to (a) to (c)) shall use the certificate as provided for in the following Article to prove that he or she conforms to the conditions listed in item (ii) of the same paragraph.
- (3) The Minister of Justice shall consult with the heads of the relevant administrative organs in prescribing the Ordinance of the Ministry of Justice set forth in paragraph (1), item (ii).
- (4) Notwithstanding the provisions of paragraph (1), if a foreign national who an immigration inspector acknowledges does not fall under any item of paragraph (3) of the preceding Article fails to provide personal identification information pursuant to the provisions of the same paragraph, the inspector shall deliver the foreign national to a special inquiry officer for a hearing pursuant to the provisions of Article 10.
- Article 7-2 (1) Upon advance application by a foreign national intending to land in Japan (except for those who intend to engage in the activities listed in the right-hand column corresponding to "Temporary Visitor" specified in Appended Table I (3)), the Minister of Justice, pursuant to the provisions of an Ordinance of the

Ministry of Justice, may issue a certificate of eligibility stating that the foreign national concerned conforms to the conditions set forth in Article 7, paragraph (1), item (ii).

- (2) The application for issuance of a certificate of eligibility as set forth in the preceding paragraph may be made by a staff member of the organization wishing to accept the foreign national concerned, or by some other agent, as provided by Ordinance of the Ministry of Justice.

Article 22 (1) Any foreign national who wishes to change his/her status of residence to that of "Permanent Resident" shall apply to the Minister of Justice for permission for permanent residence in accordance with the procedures provided for by Ordinance of the Ministry of Justice.

- (2) When an application as set forth in the preceding paragraph has been submitted, the Minister of Justice may grant permission only when he/she finds that the foreign national conforms to the following items and that his/her permanent residence will be in accordance with the interests of Japan. However, the following items do not have to be conformed to in the case of spouses and children of Japanese nationals, of residents with permanent residence status or of special permanent residents.

- (i) The foreign national's behavior and conduct must be good.  
 (ii) The foreign national must have sufficient assets or skills to make an independent living
- (3) When the permission set forth in the preceding paragraph has been granted, if the foreign national has his/her passport in his/her possession, the Minister of Justice shall have an immigration inspector repeal the status of residence and period of stay entered in the foreign national's passport and affix a seal of verification for permanent residence in his/her passport. If the foreign national does not have his/her passport in his/her possession, the Minister of Justice shall have the immigration inspector issue to the foreign national a certificate of status of residence with permission for permanent residence. In this case, the permission will become effective as of the time the seal of verification is affixed or the certificate is issued.

Article 61 Any Japanese national (except for crew members) who returns to Japan from an area outside of Japan shall possess a valid passport (a document that certifies Japanese nationality if he/she is unable to possess a valid passport) and shall receive confirmation of his/her return to Japan from an immigration inspector in accordance with the procedures provided by Ordinance of the Ministry of Justice, at the port of entry or departure at which such person lands.

<Ordinance for Enforcement of the Immigration Control and Refugee Recognition Act>

Article 54 (1) The confirmation of return to Japan prescribed in Article 61 of the Immigration Control Act shall be done by affixing the seal of verification for return to Japan pursuant to Appended Form 72 in the passport of the Japanese national concerned; provided, however, that this confirmation shall be made by issuing a certificate of return to Japan pursuant to Appended Form 73 with respect to a person who does not possess a passport.

62. Have your State authorities engaged in cross-border administrative or judicial co-operation with the authorities in any other State in order to resolve an ISA case?

- Yes – please specify:
- a) Which authorities in each State were involved:  
 b) The nature of the co-operation:  
 c) Whether the co-operation resulted from legislation, guidelines or practice:  
 d) The result:

No

63. In your experience, which documents are generally produced to your State authorities to substantiate the claim of the intending parents to an ISA to legal parentage?

Please tick all which apply:

- a)  A birth certificate from the State of birth, including the name(s) of the intending parents: please state from which countries these birth certificates originate and any other details necessary:
- b)  An amended birth certificate from the State of birth, including the name(s) of the intending parents: please state from which countries these amended certificates originate and any other details necessary:
- c)  A pre-birth court order from the State of birth: please state from which countries these orders originate and any other detail necessary:
- d)  A post-birth court order from the State of birth (*i.e.*, transfer of parentage): please state from which countries these orders originate and any other details necessary:
- e)  An adoption order from the State of birth: please state from which countries these orders originate and any other details necessary, including whether use of the 1993 Convention<sup>30</sup> was attempted by either State<sup>31</sup>:
- f)  Other: please specify

If possible, please state (using the relevant letter) which of the above documents your authorities are presented with most frequently in these cases:

64. In general, what is the outcome of these cases in your State for the child:

Please tick all which apply and provide as much detail as possible:

- a)  The child is able to travel to your State and reside there with the intending parents *and* the intending parents are recognised as the legal parents of the child.

Please explain how this is achieved:

- b)  The child is able to travel to your State and reside there with the intending parents *but* one or both of the intending parents is not able to be recognised as the child's legal parents: please explain
- c)  The child is not able to travel to your State and has to remain in the State of his / her birth: please explain why and what has happened to the children in such cases
- d)  Other: please explain

If possible, please state which of the four outcomes above occurs most frequently in your State:

### ***The challenges encountered***

65. In general, which of your State authorities are involved in assisting those who encounter difficulties as a result of Incoming cases of ISA?

Please tick all which apply and provide information concerning their particular role:

- a)  The embassies / consulates in the State of the child's birth
- b)  The immigration authorities
- c)  The judicial authorities (*i.e.*, the courts): please specify which
- d)  The Ministry of Justice (or equivalent)
- e)  The Ministry of Foreign Affairs (or equivalent)

<sup>30</sup> Full title: the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (hereinafter, "1993 Convention"). For further information, please see < [www.hcch.net](http://www.hcch.net) >, under "Intercountry Adoption Section".

<sup>31</sup> See the Conclusions and Recommendations of the Special Commission meeting on the practical operation of the 1993 Convention (17-25 June 2010), which concluded that use of the 1993 Convention in cases of international surrogacy arrangements was "inappropriate", paras 25-26.

- f)  The Ministry of Health (or equivalent)
- g)  The Ministry of Social Affairs (or equivalent)
- h)  Other: please explain

66. Please explain any legal problems your State has encountered in relation to Incoming cases of ISA.

*Please tick all boxes which apply and provide explanations, including the other country(ies) involved in the ISA. Where reported cases are referred to please provide the full text of the judgment, including a translation into English or French where possible.*

Problems relating to:

- a)  The child being able to leave his / her State of birth:
- b)  The child being able to enter your State:
- c)  The child being able to reside in your State:
- d)  The child's nationality:
- e)  The child's legal parentage:
- f)  The behaviour of any party(ies) which is criminal according to international legal standards or according to the domestic rules of the countries involved (e.g., trafficking, sale of children, exploitation of women, etc.):
- g)  The treatment of the surrogate mother in any State (e.g., whether her consent was free and informed, concerning the financial payments made to her, the medical care provided, etc.): please specify
- h)  The breakdown of the ISA: e.g., due to either of the parties reneging on the agreement, for example, due to the child's disability or ill health, the wish of the surrogate mother to keep the child, the relationship breakdown of the intending parents or the clinic using the wrong gametes or another reason, etc.: please explain
- i)  Other: please explain

Please provide any further information you consider relevant concerning the above problems:

67. Using the categories set out below, please provide any available information concerning the costs intending parents resident in your State have paid for an ISA. If, in your experience, costs have varied significantly depending upon the country in which the surrogate mother resided or gave birth, please specify per country.

Please tick all which apply and provide any known figures and a description of to whom the money was paid and for what service:

- a)  Medical costs:
- b)  Legal costs:
- c)  Fees or other costs paid to an intermediary: e.g., a surrogacy agency:
- d)  Expenses and / or other costs paid to the surrogate mother:
- e)  Other: please explain

### **Areas of concern**

68. Do any of the following areas give your State authorities cause for concern in these cases?

In each case, where possible, please specify your particular concerns in the field provided:

- a)  The uncertainty of the legal status of children born to ISAs, in particular in terms of their legal parentage:
- b)  The nationality of children born to ISAs:

- c)  The right of children born to ISAs to know their (genetic and birth) origins:
- d)  The surrogate mother's free and informed consent to the surrogacy arrangement:
- e)  The psychological impact of an ISA on the surrogate mother:
- f)  The medical or other care provided to the surrogate mother:
- g)  The financial aspects of ISAs:
- h)  The competency and / or conduct of the intermediaries involved (lawyers, agencies, etc.):
- i)  The (mis)-information provided to intending parents or surrogate mothers:
- j)  The eligibility and / or suitability of the intending parents to care for the child (e.g., in terms of age, criminal records, psycho-social suitability, etc.):
- k)  Contractual matters: e.g., issues surrounding the enforceability of the surrogacy agreement or the capacity of any of the parties to enter into the agreement:
- l)  Other:

Please state (using the letters above) which of the concerns you have identified above are the most troubling:

### **Legal developments**

69. Does your State have any legislation, rules or guidance which has been specifically enacted or drawn up for intending parents resident in your State engaging in ISAs?

- Yes: please explain
- No

If your State is contemplating any such legislation, rules or guidance in future, please provide further information:

70. Please provide any other information you consider relevant concerning your State's experience of Incoming cases of ISA:

### **B. Outgoing cases**<sup>32</sup>

**This Section is inapplicable – there have been no “Outgoing cases” of ISA in this State. Go to Part IV.**

### **Basic empirical data**

71. Do you have any information concerning:

a) The number of **Outgoing cases** of ISA which have required the assistance of your State authorities in recent years?

- Yes – please provide any figures available:
  - Pre-2009
  - 2009
  - 2010
  - 2011
  - 2012
  - 2013 (so far)

- No information is available

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<sup>32</sup> *I.e.*, those cases where your State is the State in which the surrogate mother gives birth and from which the child has to leave to travel to the place of residence of his / her intending parents.

b) How many children have been born to surrogate mothers in your State as a result of ISAs involving intending parents resident in another State?

Yes – please provide any figures available:

Pre-2009

2009

2010

2011

2012

2013 (so far)

No information is available

If you have provided any figures above, please comment upon whether you consider that these figures reflect the true number of Outgoing cases of ISA involving your State<sup>33</sup> and, further, please provide a general comment concerning the prevalence of Outgoing cases of ISAs and whether such cases have increased in the past five years:

If you have not provided figures above, are you able to provide any comment concerning the prevalence of Outgoing Cases of ISAs involving your State and / or whether this has increased in the past five years?

72. Please list any States in which intending parents, engaging a surrogate mother in your State by way of ISA, have been resident:

### ***The procedure for Outgoing cases of ISA***

73. In general, which of your State authorities are involved in assisting those who undertake an ISA with a surrogate mother in your State?

Please tick all which apply and provide information concerning their particular role:

- a)  The immigration authorities: please specify
- b)  The judicial authorities (*i.e.*, the courts): please specify which
- c)  The Ministry of Justice (or equivalent)
- d)  The Ministry of Foreign Affairs (or equivalent)
- e)  The Ministry of Health (or equivalent)
- f)  The Ministry of Social Affairs (or equivalent)
- g)  Other: please explain

74. Do foreign-resident intending parents require a visa or any other immigration document(s), or do they have to meet any other conditions, to *enter* your State to be able to undertake the necessary meetings and medical procedures to enter into an ISA in your State?

Please tick all which apply:

- Yes, they have to meet the following conditions – please specify:
- Yes, they have to obtain a visa or other immigration document(s) – please specify what type of document is required, the conditions for obtaining it and the procedure:
- No
- It depends upon the State of residence or nationality of the intending parents: please specify

(Cases of foreign nationality)

<sup>33</sup> Since it is recognised that there may be many cases which do not come to the attention of the State authorities.

If the person seeking entry into Japan is a foreign national, as provided for in Article 6 of the Immigration Control Act, such foreign national is required to have a valid passport (or a refugee travel document or a travel document issued by a Japanese consular officer, etc.) with a visa issued by a Japanese consular officer, etc., and is required to apply to an immigration inspector at the port of entry or departure where he or she intends to land in order to receive permission for landing. However, a visa issued by a Japanese consular officer, etc. is not required for the passport of a foreign national where, owing to an international agreement or a notification given by the Japanese government to a foreign government or for the passport of a foreign national who has received permission for re-entry (including foreign nationals deemed to have received permission for re-entry) or for the refugee travel document of a foreign national who has been issued with such a document.

Moreover, unless the immigration inspector deems the foreign national to have met all of the conditions for landing given in the items of paragraph (1) of Article 7 of the Immigration Control Act, the foreign national shall not be issued with the above-mentioned permission for landing.

In addition, a foreign national who seeks entry into Japan is required himself/herself to prove that he or she meets the above-mentioned conditions for landing.

Furthermore, such foreign national is required to provide personal identification information except in cases where the foreign national comes under the foreign nationals provided for in the laws and regulations as being exempt such as a special permanent resident or a foreign national under the age of 16.

(Cases of Japanese nationality)

In cases where the person seeking to enter Japan is a Japanese national, as provided for in Article 61 of the Immigration Control Act, he or she is required to be in possession of a valid passport (where the person does not have a valid passport in his or her possession, a document proving that he or she has Japanese nationality) .

<Immigration Control and Refugee Recognition Act>

Article 6 (1) Any foreign national (except for a crew member; hereinafter the same shall apply in this Section) who seeks to land in Japan shall possess a valid passport with a visa issued by a Japanese consular officer. However, a visa is not required for the passport of a foreign national for whom a visa issued by a Japanese consular officer is deemed unnecessary pursuant to an international agreement or through notification to that effect from the Japanese Government to a foreign government or for the passport of a foreign national for whom re-entry permission pursuant to the provisions of Article 26 has been granted or for whom a refugee travel document has been issued pursuant to the provisions of Article 61-2-12.

Article 7 (1) When the application set forth in paragraph (2) of the preceding Article is made, an immigration inspector shall conduct an examination of the said foreign national as to whether or not he or she conforms to each of the following conditions for landing in Japan (With respect to a foreign national who has received re-entry permission pursuant to the provisions of Article 26, paragraph (1) or a refugee travel document pursuant to the provisions of Article 61-2-12, paragraph (1), only the conditions listed in the following items (i) and (iv) are to be applied.).

- (i) The passport possessed by the foreign national and the visa affixed thereto, if such is required, must be valid.
- (ii) The activities stated in the application to be engaged in while in Japan must not be false, and must fall under any of the activities listed in the right-hand column of Appended Table I (activities listed in the right -hand column of item (ii) "Technical Intern Training" of Appended Table I (2) shall be excluded; with respect to the activities listed in the right-hand column of Appended Table I (5) (limited to

the part pertaining to d.), the proposed activities must be activities designated by the Minister of Justice in a public notice), or the activities of a person with a status or position listed in the right-hand column of Appended Table II (the position listed in the right-hand column under "Permanent Resident" shall be excluded; with respect to the position listed under "Long-Term Resident," a proposed position must be a position designated by the Minister of Justice in a public notice), and with respect to those who intend to engage in the activities listed in the right-hand column of Appended Table I (2) and (4) and in the right-hand column of Appended Table I (5) (limited to the part pertaining to b.), the activities shall conform to the conditions provided for by Ordinance of the Ministry of Justice which shall be provided for in consideration of factors including but not limited to the effects on Japanese industry and public welfare.

- (iii) The period of stay stated in the application must conform to the provisions of the Ordinance of the Ministry of Justice pursuant to the provisions of Article 2-2, paragraph (3).
- (iv) The foreign national must not fall under any of the items of Article 5, paragraph (1) (in the case of a foreign national for whom the provisions of Article 5-2 have been applied, in the case that, based on the specific grounds prescribed in the same Article, the foreign national falls under Article 5, paragraph (1), items (iv), (v), (vii), (ix) or (ix)-2, said foreign national must not fall under any of the items of the same paragraph based on grounds other than said specified grounds; the same shall apply hereinafter).
- (2) The foreign national subject to the examination set forth in the preceding paragraph shall prove that he or she conforms to the conditions for landing prescribed therein. In this case, a foreign national who seeks to engage in an activity listed in the right-hand column of (5) of Appended Table I (only the parts pertaining to (a) to (c)) shall use the certificate as provided for in the following Article to prove that he or she conforms to the conditions listed in item (ii) of the same paragraph.
- (3) The Minister of Justice shall consult with the heads of the relevant administrative organs in prescribing the Ordinance of the Ministry of Justice set forth in paragraph (1), item (ii).
- (4) Notwithstanding the provisions of paragraph (1), if a foreign national who an immigration inspector acknowledges does not fall under any item of paragraph (3) of the preceding Article fails to provide personal identification information pursuant to the provisions of the same paragraph, the inspector shall deliver the foreign national to a special inquiry officer for a hearing pursuant to the provisions of Article 10.

Article 61 Any Japanese national (except for crew members) who returns to Japan from an area outside of Japan shall possess a valid passport (a document that certifies Japanese nationality if he/she is unable to possess a valid passport) and shall receive confirmation of his/her return to Japan from an immigration inspector in accordance with the procedures provided by Ordinance of the Ministry of Justice, at the port of entry or departure at which such person lands.

<Ordinance for Enforcement of the Immigration Control and Refugee Recognition Act>

Article 54 (1) The confirmation of return to Japan prescribed in Article 61 of the Immigration Control Act shall be done by affixing the seal of verification for return to Japan pursuant to Appended Form 72 in the passport of the Japanese national concerned; provided, however, that this confirmation shall be made by issuing a certificate of return to Japan pursuant to Appended Form 73 with respect to a person who does not possess a passport.

- 75. Is the law of the State of the habitual residence of the intending parents taken into account in any way when considering whether intending parents are permitted to

undertake an ISA in your State (e.g., where this law forbids surrogacy arrangements).<sup>34</sup>

- Yes – please explain how this law is taken into account:  
 No  
 It depends upon the State of residence or nationality of the intending parents: please explain

76. How do foreign-resident intending parents, who are party to an ISA, obtain legal parentage for a child born to a surrogacy arrangement in your State?

*Your response to this question will likely depend upon your answer to **Questions 26 to 27** above.*

Please tick all which apply:

- a)  They will be the legal parents by operation of law and therefore their names will be placed immediately on the child's birth certificate: please explain  
 b)  They can obtain an amended birth certificate: please explain  
 c)  They can obtain a *pre*-birth court order confirming their legal parentage: please explain any conditions for obtaining such an order  
 d)  They can obtain a *post*-birth court order (i.e., a transfer of parentage): please explain any conditions for obtaining such an order  
 e)  They can adopt the child: please explain, including whether use of the 1993 Convention has been attempted in this regard<sup>35</sup>  
 f)  Other: please specify

Please explain the procedure for any of the options ticked above and any specific requirements which apply to *foreign*-resident intending parents:

Please further specify whether the surrogate mother's consent, and her husband or partner's consent where applicable, is required for any of these procedures and the consequences if this consent is not forthcoming at the relevant time:

77. Please explain the procedure, including any immigration and legal processes, which foreign-resident intending parents need to undertake in order to *leave* your State with a child born to a surrogacy arrangement:

The procedures will differ depending on the nationality of the intending parents and the nationality of the child born as a result of an ISA.

(Cases of foreign nationality)

In cases where the person seeking to depart from Japan is a foreign national, as provided for in Article 25 of the Immigration Control Act, he or she is required to receive confirmation of departure from an immigration inspector at the port of entry or departure from which he or she is to depart.

In addition, the foreign national is not permitted to depart from Japan unless he or she has received confirmation of departure.

<sup>34</sup> E.g., see clause 34(19) of the *Indian Assisted Reproductive Technologies (Regulation) Bill 2010* still pending, explained in Prel. Doc. No 10 of March 2012 (note 1) at para. 45. In addition, the recent Indian visa requirements now impose on foreign nationals visiting India to undertake a surrogacy arrangement, a condition to similar effect: i.e., that the intending parents must have a letter from the embassy of their State of residence indicating that the State recognises surrogacy and that the child born will be permitted to enter this State. See also the Ukrainian Draft Law No 0989 (former No 8282) on the restrictions pertaining to the use of assisted reproductive technology (rejected by the Parliament of Ukraine on 21 March 2013). This bill also envisaged, in particular, restrictions on the use of surrogacy arrangements for nationals of those States where surrogacy is prohibited by law.

<sup>35</sup> See note 31 above concerning the 2010 Special Commission meeting on the practical operation of the 1993 Convention which concluded that use of the 1993 Convention in cases of international surrogacy arrangements was "inappropriate".

## (Cases of Japanese nationality)

In cases where the person seeking to depart from Japan is Japanese, as provided for in Article 60 of the Immigration Control Act, he or she is required to have a valid passport in his or her possession and to receive confirmation of departure from Japan from an immigration inspector at the port of entry or departure from which he or she is to depart.

Please state the time it may take to complete this process:

Confirmation of departure is conducted by an immigration inspector at the port of entry or departure and, in general, the procedures will be concluded on the same day.

If the answer to this question varies depending upon the factors set out below, please provide a brief explanation, including the impact the particular factor has on the procedure which must be undertaken and any timeframes.

Please tick all which apply:

- a)  The country in which the intending parents live: please explain
- b)  The particular document(s) produced by the intending parents to establish legal parentage (e.g., a birth certificate, voluntary acknowledgement, court decision, etc.): please explain
- c)  Whether the child(ren) is / are genetically related to one or both of the intending parents: please explain
- d)  The nationality of the intending parents: please explain
- e)  Any other factor: please explain

As mentioned above, this will depend on “d. The nationality of the intending parents” and “e. Any other factors (the nationality of the child born as a result of an ISA)” .

## &lt;Immigration Control and Refugee Recognition Act&gt;

Article 25 (1) Any foreign national (except for crew members, but including those departing with re-entry permission pursuant to the provisions of Article 26; the same shall apply in the following Article) who is to depart from Japan with the intention of proceeding to an area outside of Japan shall receive confirmation of departure from an immigration inspector in accordance with the procedures provided for by Ordinance of the Ministry of Justice at the port of entry or departure from which he/she departs Japan.

(2) The foreign national set forth in the preceding paragraph shall not depart from Japan unless he/she has received confirmation of departure.

Article 60 (1) Any Japanese national (except for crew members) who departs from Japan with the intention of proceeding to an area outside of Japan shall possess a valid passport and shall receive confirmation of departure from an immigration inspector in accordance with the procedures provided by Ordinance of the Ministry of Justice, at the port of entry or departure from which such person departs.

(2) The Japanese national set forth in the preceding paragraph shall not depart from Japan unless he/she has received confirmation of departure from Japan.

## &lt;Ordinance for Enforcement of the Immigration Control and Refugee Recognition Act&gt;

Article 27 (1) Any foreign national who wishes to receive confirmation of departure pursuant to the provisions of Article 25, paragraph (1) of the Immigration Control Act shall submit to an immigration inspector a document pursuant to Appended Form 37-18 (Appended Form 37-19 in the case of a foreign national who has received re-entry permission pursuant to the provisions of Article 26, paragraph

- (1) of the Immigration Control Act or a refugee travel document pursuant to the provisions of Article 61-2-12, paragraph (1) of the Immigration Control Act).
- (2) When any of the persons listed in the following items carries out the procedures set forth in the preceding paragraph, he/she shall submit to an immigration inspector a document as provided for respectively in those items at the port of entry or departure from which he/she departs:
- (i) A person for whom a period for departure has been designated pursuant to the provisions of Article 22-4, paragraph (6) of the Immigration Control Act: certificate of designation of the period for departure, etc.
  - (ii) A person who has been given a departure order pursuant to the provisions of Article 55-3, paragraph (1) of the Immigration Control Act: written departure order.
- (3) Confirmation of departure as prescribed in Article 25, paragraph (1) of the Immigration Control Act shall be made by affixing a seal of verification of departure pursuant to Appended Form 38 in the foreign national's passport (including re-entry permit); provided, however, that with respect to a person who has been issued an emergency landing permit, a landing permit due to distress, or a landing permit for temporary refuge, this confirmation shall be made by collecting the permit concerned.
- (4) When the foreign national set forth in paragraph (1) falls under all of the following items, an immigration inspector may record the foreign national's name, nationality, date of birth, sex, date of departure, and the port of entry or departure from which the foreign national departs Japan on a file to be used as a record and as a substitute for the seal of verification of departure and may make such record available on a computer prescribed in Article 7, paragraph (4). In this case, notwithstanding the provisions of the preceding paragraph, the immigration inspector shall not be required to affix the seal of verification set forth in the same paragraph:
- (i) The foreign national has received a desired registration.
  - (ii) The foreign national has provided his/her fingerprints in an electromagnetic form at the time of confirmation of departure.
- (5) The provisions of Article 5, paragraph (8) shall apply mutatis mutandis to cases where fingerprints are provided pursuant to the provisions of item (ii) of the preceding paragraph.

Article 53 (1) The confirmation of departure prescribed in Article 60, paragraph (1) of the Immigration Control Act shall be done by affixing the seal of verification for departure pursuant to Appended Form 38 in the passport of the Japanese national concerned.

- (2) When a Japanese national who wishes to receive the confirmation of departure set forth in the preceding paragraph falls under all of the following items, an immigration inspector may record the Japanese national's name, date of birth, sex, date of departure, and the port of entry or departure from which the Japanese national departs in a file to be used as a record, as a substitute for the seal of verification for departure and make such record available via a computer as prescribed in Article 7, paragraph (4). In this case, notwithstanding the provisions of the preceding paragraph, the immigration inspector shall not be required to affix the seal of verification set forth in the same paragraph:
- (i) The Japanese national is registered pursuant to the provisions of Article 54-2, paragraph (1).
  - (ii) The Japanese national has provided his/her fingerprints in an electromagnetic form at the time of confirmation of departure.
- (3) The provisions of Article 5, paragraph (8) shall apply mutatis mutandis to cases where fingerprints are provided pursuant to the provisions of item (ii) of the preceding paragraph.

78. Have your State authorities engaged in cross-border administrative or judicial co-operation with authorities in any other State in order to resolve an ISA case?

- Yes – please specify:
- a) Which authorities in each State were involved:
  - b) The nature of the co-operation:
  - c) Whether the co-operation resulted from legislation, guidelines or practice:
  - d) The result:
- No

79. In general, what is the outcome of these cases in your State for the child?

Please tick all which apply:

- a)  The child is able to leave your State, travel to the State of residence of the intending parents, reside there with the intending parents *and* the intending parents are recognised as the legal parent(s) of the child.  
Please explain how this is achieved:
- b)  The child is able to leave your State, travel to the State of residence of the intending parents, reside there with the intending parents *but* one or both of the intending parents are not able to be recognised as the child's legal parents: please explain
- c)  The child is able to leave your State but is not able to travel to the State of residence of the intending parents and has to remain in your State: please explain what has happened to the children in such cases
- d)  The child is not able to leave your State: please explain why and what has happened to the children in such cases
- e)  Other: please explain

As answered in Question 77, a person seeking to depart from Japan is required to receive confirmation of departure from an immigration inspector.

If possible, please state which of the five outcomes above occurs most frequently in your State:

### ***The challenges encountered***

80. Please explain any legal problems your State has encountered in relation to Outgoing cases of ISA.

*Please tick all boxes which apply and provide explanations, including the other country(ies) involved. Where reported cases are referred to please provide the full text of the judgment, including a translation into English or French where possible.*

Problems relating to:

- a)  The child being able to leave your State:
- b)  The child being able to enter the State in which his / her intending parents are resident:
- c)  The child being able to reside in the State in which his / her intending parents are resident:
- d)  The child's nationality:
- e)  The child's legal parentage:
- f)  The behaviour of any party(ies) which is criminal according to international legal standards or according to the domestic rules of the countries involved (e.g., trafficking, sale of children, exploitation of women, etc.):
- g)  The treatment of the surrogate mother in any State (e.g., whether her consent was free and informed, concerning the financial payments made to her, the medical care provided, etc.): please specify
- h)  The breakdown of the ISA: e.g., due to either of the parties reneging on the agreement, for example, due to the child's disability or ill health, the wish of the surrogate mother to keep the child, the relationship breakdown of the

- intending parents or the clinic using the wrong gametes or another reason, etc.: please explain
- i)  Other: please explain

Please provide any further information you consider relevant concerning these legal problems:

81. Using the categories set out below, please provide any information you have concerning the costs intending parents resident abroad have paid for an ISA in your State. If, in your experience, costs have varied significantly depending upon the country in which the intending parents resided, please specify per country.

Please tick all which apply and provide any known figures and a description of to whom the money was paid and for what service:

- a)  Medical costs:  
 b)  Legal costs:  
 c)  Fees or other costs paid to an intermediary: *e.g.*, a surrogacy agency:  
 d)  Expenses and / or other costs paid to the surrogate mother:  
 e)  Other: please explain

### **Areas of concern**

82. Do any of the following areas give your State authorities cause for concern in these cases?

In each case, where possible, please specify your concerns in the field provided:

- a)  The uncertainty of the legal status of children born to ISAs, in particular in terms of their legal parentage:  
 b)  The nationality of children born to ISAs:  
 c)  The right of children born to ISAs to know their (genetic and birth) origins:  
 d)  The surrogate mother's free and informed consent to the surrogacy arrangement:  
 e)  The psychological impact of an ISA on the surrogate mother:  
 f)  The medical or other care provided to the surrogate mother:  
 g)  The financial aspects of ISAs:  
 h)  The competency and / or conduct of the intermediaries involved (lawyers, agencies, etc.):  
 i)  The (mis)-information provided to intending parents or surrogate mothers:  
 j)  The eligibility and / or suitability of the intending parents to care for the child (*e.g.*, in terms of age, criminal records, psycho-social suitability, etc.):  
 k)  Contractual matters: *e.g.*, issues surrounding the enforceability of the surrogacy agreement or the capacity of any of the parties to enter into the agreement:  
 l)  Other:

Please state (using the letters above) which of the concerns you have identified above are the most troubling:

### **Legal developments**

83. Does your State have any legislation, rules or guidance which has been specifically enacted or drawn up for intending parents or surrogate mothers engaging in ISAs in your State?

- Yes: please explain  
 No

If your State is contemplating any such legislation, rules or guidance in future, please provide further information:

84. Please provide any other information you consider relevant concerning your State's experience of Outgoing cases of ISA:

**Part IV: Current bilateral or multilateral instruments** in the field

85. Please list any bilateral, regional or multilateral instruments which currently, or may in future, bind your State concerning:

- a) Any matters related to the establishment, recognition or contestation of the legal parentage of children;
- b) Any matters specifically related to surrogacy arrangements;

Please provide any detail you consider necessary:

**Part V: Thoughts on possible future work**

86. What, if any, are the **needs** you consider ought to be addressed by any possible future global work in this area?

Please specify:

87. Please provide your thoughts concerning the **approach** that should be taken in relation to any possible future regulation of any of the matters mentioned in this Questionnaire.

*In this response, you may wish to consider and comment upon the thoughts set out in Section VIII of Preliminary Document No 11 of March 2011 and Section IV of Preliminary Document No 10 of March 2012.*

*You may also wish to comment upon the **nature** of any possible future regulation: e.g., whether a binding instrument should be considered or whether approaches such as a model law, non-binding principles or guidance, etc. would meet the needs you identified in **Question 86** above.*

88. If the Hague Conference were to develop a global instrument on the private international law issues surrounding the status of children (in particular, the cross-border recognition of legal parentage), which of the following general features *may* be desirable to include in such an instrument?

Please tick all which apply (and please note that these features are not mutually exclusive and necessarily overlap):

***The child's legal status***

- a)  Harmonisation of the private international law rules relating to the establishment, recognition and contestation of legal parentage: please comment
- b)  Recognition *by operation of law* of child(ren)'s legal parentage established in one State Party, in compliance with the instrument's rules, in all other States Parties: please comment

### **Safeguards**

- c)  The establishment of safeguards (minimum standards) to ensure that any procedures for the establishment, recognition and contestation of legal parentage take place with respect for the fundamental rights and welfare of all parties involved, in particular the child(ren) concerned: please comment

### **Co-operation**

- d)  The establishment of a system for co-ordination, communication and co-operation between States in relation to the establishment, recognition and contestation of legal parentage. Such a system may include a clear division of responsibilities between States, as well as the establishment of defined channels for communication between the relevant authorities.

Please comment, including in relation to whether you see a need for the establishment of "central authorities" within such a system:

### **Other**

- e)  Other: please specify

89. If the Hague Conference were to develop a global instrument specifically on international surrogacy arrangements,<sup>36</sup> which of the following general features *may* be desirable to include in such an instrument?

Please tick all which apply (and please note that these features are not mutually exclusive and necessarily overlap):

### **The child's legal status**

- a)  Harmonisation of the private international law rules relating to the establishment, recognition and contestation of legal parentage, limited to legal parentage arising following a surrogacy arrangement: please comment
- b)  Recognition *by operation of law* of child(ren)'s legal parentage established in one State Party following a surrogacy arrangement, in compliance with the instrument's rules, in all other States Parties: please comment
- c)  Provisions concerning the child(ren)'s nationality: please comment

### **Safeguards**

- d)  The establishment of safeguards (minimum standards) to ensure that such arrangements take place with respect for the fundamental rights and welfare of all parties involved, *i.e.*, the child(ren) to be born, the surrogate mother and intending parents: please comment, including in relation to which elements you consider there ought to be such minimum standards (*e.g.*, the surrogate mother's free and informed consent, the child's right to know his / her origins, etc.)

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<sup>36</sup> See **Part III** of the Questionnaire above.

- e)  Safeguards (minimum standards) specifically in relation to the intermediaries involved in such arrangements (e.g., surrogacy agencies, lawyers, etc.). These standards may be combined with a system of licensing and supervision to ensure compliance: please comment
- f)  Safeguards (minimum standards) specifically in relation to medical institutions undertaking the procedures connected with international surrogacy arrangements: please comment

### **Co-operation**

- g)  The establishment of a system for co-ordination, communication and co-operation between States in relation to such arrangements. This may include a clear division of responsibilities between States, for example, such that: (a) the competent authorities of the State of the habitual residence of the intending parents would be responsible for determining that the intending parents are eligible to enter into the arrangement, and that any child born as a result will be permitted to enter and reside in their State;<sup>37</sup> and (b) the competent authorities of the State in which the surrogate mother habitually resides would be responsible for determining that the surrogate mother is eligible and suitable to enter into the arrangement and that the child will be entitled to leave this State following his / her birth. The co-operation system could also include the creation of defined procedures which must be complied with by the parties to such arrangements.

Please comment, including in relation to whether you see a need for the establishment of "central authorities" within such a system:

### **Other**

- h)  Provisions concerning the financial aspects of international surrogacy arrangements: please comment
- i)  Other: please specify

90. What priority would you give working towards a future instrument on the private international law issues concerning the status of children (in particular, the cross-border recognition of legal parentage) generally?

- a)  High priority / urgent
- b)  Medium priority – desirable but not urgent
- c)  Low priority – possibly desirable but other projects should take priority
- d)  No priority – no further work should be done in this field
- e)  Other: please specify

91. What priority would you give working towards a future instrument specifically on the challenges occurring as a result of international surrogacy arrangements?

- a)  High priority / urgent
- b)  Medium priority – desirable but not urgent
- c)  Low priority – possibly desirable but other projects should take priority
- d)  No priority – no further work should be done in this field
- f)  Other: please specify

92. Please provide any other comment(s) you may have concerning the possible future global regulation of matters contained within this Questionnaire:

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<sup>37</sup> Following the trend in some States in which international surrogacy arrangements are regularly entered into to take into account the legal position in the State of the habitual residence of the intending parent(s) before permitting the surrogacy arrangement to proceed: see note 34 above.

**Thank you for your time: this information will greatly assist the work of the Permanent Bureau.**