

**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*

**QUESTIONNAIRE SUR LES QUESTIONS DE DROIT INTERNATIONAL PRIVÉ RELATIVES  
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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): **Russian Federation**

**Information for follow-up purposes**

Name and title of contact person: Elizaveta Pomyaksheva, expert

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## 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:

Pursuant to Federal law No. 143-FZ of 15.11.1997 "On the Acts of Civil Status" (hereinafter referred to as "Federal law No. 143-FZ"), state registration of births within the Russian Federation is made by civil records bodies or local government authorities of rural settlements, if they are vested with such authorities pursuant to the law of a constituent of the Russian Federation (hereinafter referred to as "Civil Records bodies").

State registration of births of the Russian Federation citizens, who reside outside the Russian Federation, is carried out by consular institutions of the Russian Federation outside the Russian Federation.

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):

The procedure for state registration of births (hereinafter referred to as "birth registration") is established by Federal law No. 143-FZ.

Registration of birth is mandatory within the Russian Federation.

The following shall be the grounds of state registration of births:

a birth document of the prescribed form issued by the healthcare institution irrespective of its legal form of incorporation (hereinafter referred to as "healthcare organization"), in which the childbirth took place;

a birth document of the prescribed form issued by the healthcare organization, a physician whereof provided medical care in the childbirth or to which a mother has applied after childbirth, or by a person engaged in private medical practice (hereinafter referred to as "physician in private practice") in the event of delivery outside a healthcare organization;

a childbirth statement of a person present during the delivery in the event of delivery outside a healthcare organization and without medical care.

Birth registration is performed by the Civil Records office at the childbirth location or at the place of residence of parents (one of the parents).

A childbirth statement shall be made orally or in writing the latest within one month after the childbirth. If it is impossible for the parents to make a childbirth statement personally, the childbirth statement may be made by a relative of either parent or by another person authorized by the parents (one of the parents) or by an official of healthcare organization or an official of another organization, in which the mother was during the delivery or the child is kept.

In witness of the birth registration fact, the Civil Records office issues a birth certificate.

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<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."

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 Pursuant to clause of article 48 of the Russian Federation Family Code (hereinafter referred to as the "Code"), the descent of the child by his mother (the motherhood) shall be established on the ground of the documents, confirming the mother's giving birth to the child in a healthcare institution, and in the event of the child's being born outside a healthcare institution - on the ground of medical documents, witness testimony, or on the ground of other evidence.

The effective form of medical birth certificate issued by a healthcare organization for confirming the fact of childbirth (form No. 103/y-08) is approved by order No. 782H of the Ministry of Healthcare and Social Development of the Russian Federation dated 26.12.2008 "On Approval and Procedure for Keeping Medical Documentation Evidencing Births and Deaths" (registered by Ministry of Justice of Russia on 30.12.2008, registration No. 13055).

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 Pursuant to clause 2 of article 48 of the Code, if the child was born to married persons in wedlock, and also within three hundred days from the moment of the marriage dissolution, marriage being recognized as annulled, or from the moment of death of the spouse of the child's mother, the mother's spouse (ex-spouse) shall be recognized as the child's father, unless otherwise is proved (Article 52 of the present Code). The fatherhood of the spouse of the child's mother shall be certified with an entry on their marriage.

The fatherhood of the person, who is not married to the child's mother, shall be established by way of filing a joint application by the father and by the mother of the child with the Civil Records office; in the event of mother's death, of recognizing her as legally incapable or of the impossibility to identify the place of her stay, or in case of her being deprived of the parenthood - by an application of the child's father, with the consent of the guardianship and custody body, and in the absence of such a consent - by the court judgment.

<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.

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.):
- b)  Other: please explain
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?
- No, there are not.
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>

The law of the Russian Federation does not provide for the possibility of anonymous childbirth. However, article 19.1 of Federal law No. 143-FZ establishes a special procedure for state registration of the birth of a child abandoned by his mother, who has not presented her identification document at the healthcare institution, in which the delivery has occurred or to which the mother has applied after delivery.

In such case the birth shall be registered on application of the healthcare organization, in which the child is kept or on application of the guardianship and custody body at the place of location of the child the latest within seven days from the date of his abandonment by the mother.

The information on the surname, name and patronymic of the child abandoned the mother, who has not presented her identification document at the healthcare organization, in which the delivery has occurred, or to which the mother has applied after delivery, shall be recorded in the entry of birth of the child as directed by the body or organization defined in clause 1 of this article. The information on the parents of the child abandoned the mother, who has not presented her identification document at the healthcare organization, in which the delivery has occurred, or to which the mother has applied after delivery, is not recorded in the entry of the birth of such a child.

Since the certificate of state registration of a civil status is filled out in accordance with the child birth entry, the parents' details are not specified in the birth certificate of such a child, and the respective lines are left blank.

## **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)?

<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.

<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.*

- 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 Pursuant to clause of article 48 of the Russian Federation Family Code (hereinafter referred to as the "Code"), the descent of the child by his mother (the motherhood) shall be established on the ground of the documents, confirming the mother's giving birth to the child in a healthcare institution, and in the event of the child's being born outside a healthcare institution - on the ground of medical documents, witness testimony, or on the ground of other evidence.
- 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
- 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 Pursuant to clause 3 of article 48 of the Code, the fatherhood of the person, who is not married to the child's mother, shall be established by way of filing a joint application by the father and by the mother of the child with the Civil Records office; in the event of mother's death, of recognizing her as legally incapable or of the impossibility to identify the place of her stay, or in case of her being deprived of the parenthood - by an application of the child's father, with the consent of the guardianship and custody body, and in the absence of such a consent - by the court judgment

Pursuant to article 49 of the Code, if the child is born of the unmarried parents and if no joint application of the parents or of the child's father is filed, the child's descent from the particular person (the fatherhood) shall be established in a judicial procedure by application of one of the parents, of the guardian (the custodian) of the child, or by application of the person, on whom the child is dependent, and also by application of the child himself upon his coming of full age. The court shall take into account any evidence, which reliably confirms the child's descent from the particular person.

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:

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:

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:

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.*,

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

usually to the consulate or embassy in that State). Please explain the procedure and whether there are any conditions which must be fulfilled:

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>**

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 Any use of assisted reproductive technologies - infertility treatment methods, upon application whereof some or all stages of conception and early development of embryo occur outside mother's organism (including with the use of donor and (or) cryopreserved germ cells, tissues of genital organs or embryos, as well as surrogacy) is regulated by order No. 107H of the Ministry of Healthcare of Russia dated 30 August 2012 "On the

<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.

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

Procedure for the Use of Assisted Reproductive Technologies, Contraindications and Restrictions to their Application”.

- 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 The use of ART is regulated by order No. 107H of the Ministry of Healthcare of Russia dated 30 August 2012 “On the Procedure for the Use of Assisted Reproductive Technologies, Contraindications and Restrictions to their Application”.

Article 55 of Federal law No. 323-FZ of 21.11.2011 "On the Fundamentals of Citizens' Health Protection in the Russian Federation" gives the definition of assisted reproductive technologies, determines the group of persons entitled to use such technologies, and those who are entitled to be germ cell donors.

Federal law No. 323-FZ of 21.11.2011 "On the Fundamentals of Citizens' Health Protection in the Russian Federation".

Article 55. Application of assisted reproductive technologies

1. Assisted reproductive technologies present infertility treatment methods, upon application whereof some or all stages of conception and early development of embryo occur outside mother's organism (including with the use of donor and (or) cryopreserved germ cells, tissues of genital organs or embryos, as well as surrogacy).
2. The procedure for the use of assisted reproductive technologies, contraindications and restrictions to their application shall be approved by the authorized federal executive authority.
3. A man and a woman, being either married or unmarried are entitled to use assisted reproductive technologies upon availability of mutual informed voluntary consent to medical intervention. A single woman is also entitled to use assisted reproductive technologies upon availability of her informed voluntary consent to medical intervention.
4. Upon the use of assisted reproductive technologies no selection of future child's sex is allowed, except for the cases of possible inheritance of gender-related diseases.
5. The citizens are entitled to cryopreservation and storage of their germ cells, tissues of genital organs or embryos at their own expense or for account of other funds stipulated by the law of the Russian Federation.
6. Germ cells, tissues of genital organs or human embryos cannot be used for industrial purposes.
7. The citizens aged from eighteen to thirty five, physically and mentally healthy, who have passed medical and genetic examination, may be donors of germ cells.
8. Upon the use of donor germ cells and embryos the citizens are entitled to obtain information on the results of medical, medical and genetic examination of the donor, on his race and ethnicity, and on his appearance.
9. Surrogacy means bearing and delivery of a child (including premature delivery) under a contract to be signed between the surrogate mother (the woman bearing the fetus after transfer of donor embryo) and the prospective parents, whose germ cells have been used for fertilization, or the single woman, who is unable to carry and deliver a child due to medical reasons.
10. A woman aged from twenty to thirty five, having at least one healthy child of her own, who has obtained a medical certificate of good health, who has given written informed voluntary consent to medical intervention may be a surrogate mother. A married woman, whose marriage is registered according to the procedure established by the law of the Russian Federation, may be a surrogate mother only upon written consent of her spouse. A surrogate mother cannot be simultaneously the ovule donor.

The procedure for application of assisted reproductive technologies is regulated by order No. 107H of the Ministry of Healthcare of Russia dated 30.08.2012 "On the Procedure for the Use of Assisted Reproductive Technologies, Contraindications and Restrictions to their Application".

- No, there are no rules at all – **go to Question 19**  
 Other: please explain

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: Women, aged from 18 till 35, physically and mentally healthy, fulfilled medically-genetic investigation can be egg donors. Voluntary women's consent is obligatory. Egg donors can be anonymous or certain. Use of donor oocytes is regulated by clauses 54-61 of order No. 107H of the Ministry of Healthcare of Russia dated 30.08.2012.  
 f)  Whether sperm donation is permitted and, if so, under which conditions: Men, aged from 18 till 35, physically and mentally healthy, fulfilled medically-genetic investigation can be sperm donors. Sperm donors can be anonymous or certain. donation can be fulfilled onle with man's consent and after passing clinical? laboratorial and medical-genetic investigation. Use of donor sperm is regulated by clauses 62-69 of order No. 107H of the Ministry of Healthcare of Russia dated 30.08.2012.  
 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 In Russia there is no maternity arising by operation of law.

Please explain whether the above position results from legislation, rules, case law or other source(s) of law: Pursuant to clause of article 48 of the Russian Federation Family Code (hereinafter referred to as the "Code"), the descent of the child by his mother (the motherhood) shall be established on the ground of the documents, confirming the mother's giving birth to the child in a healthcare institution, and in the event of the child's being born outside a healthcare institution - on the ground of medical documents, witness testimony, or on the ground of other evidence.

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

Please explain whether the above position results from legislation, rules, case law or other source(s) of law:

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 Use of surrogacy is regulated by clauses 77-83 of order No. 107H of the Ministry of Healthcare of Russia dated 30.08.2012.  
Indications for the use of surrogacy are as follows: ametria (congenital or acquired); deformity of uterine cavity or cervix due to congenital malformation or in the result of diseases; endometrium pathology (synechia, obliteration of uterine cavity, endometrium atrophy); diseases (conditions) included into the List of contraindications (appendix No. 2 to order No. 107H of the Ministry of Healthcare of Russia dated 30.08.2012); failed repeated IVF attempts (3 and more) in the event of multiple receipt of good quality embryos, the transfer whereof fails to result in pregnancy; refractory pregnancy loss (3 and more spontaneous miscarriages in the medical history).
- 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

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: The surrogate mother is examined pursuant to clauses 11-13 and 15 of order No. 107H of the Ministry of Healthcare of Russia dated 30.08.2012. Contraindications to transfer of embryos to the surrogate mother are her having any diseases (conditions) included into the List of contraindications (appendix No. 2 to order No. 107H of the Ministry of Healthcare of Russia dated 30.08.2012).
- 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: A married woman, whose marriage is registered according to the procedure established by the law of the Russian Federation, may be a surrogate mother only upon written consent of her spouse.
- c.  Age requirements: A woman aged from twenty to thirty five
- d.  Health requirements: who has obtained a medical certificate of good health
- e.  Psycho-social requirements:

<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.

- f.  The surrogate mother must already have her own children: having at least one healthy child of her own
- g.  Other: A woman who has given written informed voluntary consent to medical intervention may be a surrogate mother. A surrogate mother cannot be simultaneously the ovule donor.
- 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 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?

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

Please explain, including whether this results from legislation, case law or other source(s) of law: Pursuant to the Code and Federal law No. 143-FZ, the persons participating in the surrogacy program and having given their consent in writing to implantation of embryo in another woman for the purpose of its bearing, may be recorded as parents of the child only upon consent of the woman, who has delivered the child (surrogate mother).

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

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

### **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 District courts of Russian Federation
- 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
- d)  Any person
- e)  Other: please explain Pursuant to clause 1 of article 52 of the Code, the entry on the parents into the Register of Births may be disputed only in the judicial procedure, upon a claim of the person who has been recorded as the father or as the mother of the child, or of the person, who is actually the father or the mother of the said child, and also of the child himself upon his coming of full age, of the guardian (custodian) of the child, or of the guardian of the parent, who is found by the court to be legally incapable.

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

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: Pursuant to Federal law No. 62-FZ of 31 May 2002 "On Citizenship of the Russian Federation" (hereinafter referred to as "Federal law No.62), article 12: The child acquires the citizenship of the Russian Federation by birth, if on the date of the child's birth: both parents or single parent possess the citizenship of the Russian Federation (irrespective of the place of the child's birth); one of parents possesses the citizenship of the Russian Federation and the other is stateless or declared missing or his/her whereabouts are unknown, (irrespective of the place of the child's birth);

In the result of admission to citizenship (article 14 of Federal law No. 62)

There shall be admitted to citizenship of the Russian Federation in the simplified manner the children and a disabled person who are foreign citizens or stateless persons: a child, one of whose parents is a citizen of the Russian Federation - on the application of such parent and upon consent of the other parent to the child's becoming a citizen of the Russian Federation. Such consent shall not be required if the child resides in the territory of the Russian Federation; a child, whose single parent is a citizen of the Russian Federation - on the application of such parent;

Upon admission of his/her parent (parents) to the citizenship of the Russian Federation (articles 24, 25 of Federal law No. 62)

A child shall acquire the citizenship of the Russian Federation if his/her both parents or a single parent acquire the citizenship of the Russian Federation.

Where either parent possessing another citizenship acquires the citizenship of the Russian Federation, their child residing in the territory of the Russian Federation may acquire the citizenship of the Russian Federation upon the application by the parent who acquires the citizenship of the Russian Federation.

Where either parent possessing another citizenship acquires the citizenship of the Russian Federation, their child residing outside the Russian Federation may acquire the citizenship of the Russian Federation upon application by both parents.

Where either parent possessing another citizenship acquires the citizenship of the Russian Federation and the other parent is a stateless person, their child may acquire the citizenship of the Russian Federation upon the application of by the parent who acquires the citizenship of the Russian Federation.

Where either parent acquiring the citizenship of the Russian Federation is a stateless person and the other parent possesses another citizenship, their child may

acquire the citizenship of the Russian Federation upon the application by both parents.

- 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 One of parents possesses the citizenship of the Russian Federation and the other is a foreign citizen, provided that the child was born in the territory of the Russian Federation or if the child would otherwise become stateless; both parents or a single parent residing in the territory of the Russian Federation are foreign citizens or stateless persons, provided that the child was born in the territory of the Russian Federation and the State, whose citizens the parents or a single parent are, does not grant the citizenship to the child.
- e)  Other: please specify A child found in the territory of the Russian Federation, whose parents are unknown, shall become a citizen of the Russian Federation if his/her parents do not turn up within six months after the child was found.

Upon adoption (article 26 of Federal law No. 62)

1. A child who is a citizen of the Russian Federation, upon being adopted by foreign citizens or a foreign citizen shall retain the citizenship of the Russian Federation. The citizenship of the Russian Federation of a child adopted by a foreign citizen or foreign citizens may be terminated under the general procedure on the basis of an application by both adoptive parents or the single adoptive parent provided that the child will not become a stateless person.
2. A child adopted by a citizen of the Russian Federation or spouses who are citizens of the Russian Federation or spouses one of whom is a citizen of the Russian Federation and the other one is a stateless person, shall acquire the citizenship of the Russian Federation from the day of his/her adoption, irrespective of the child's place of residence, on the basis of an application by the adoptive parent who is a citizen of the Russian Federation.
3. A child adopted by the spouses, one of whom is a citizen of the Russian Federation and the other one possesses another citizenship, may acquire the citizenship of the Russian Federation under the simplified procedure on the basis of an application by both adoptive parents irrespective of the child's place of residence.
4. In the case specified in part three of this article, in the absence of an application from both adoptive parents within one year of the day of adoption, the child shall acquire the citizenship of the Russian Federation from the day of adoption, provided that he/she and his/her adoptive parents reside in the territory of the Russian Federation.

Upon establishing guardianship or custody (article 27 of Federal law No. 62)

1. Children and incapable persons under guardianship or custody of a citizen of the Russian Federation shall acquire the citizenship of the Russian Federation under the simplified procedure upon an application by the guardian or custodian.
2. A child or incapable person who is under the State care in an upbringing or medical treatment institution, social protection institution or another similar institution of the Russian Federation shall acquire the citizenship of the Russian Federation under the simplified procedure upon an application by the director of the institution where the child or incapable person is held.
3. A child or incapable person under guardianship or custody of a foreign citizen acquiring the citizenship of the Russian Federation may acquire the citizenship of the Russian Federation simultaneously with the mentioned person upon his/her application.
4. A child or incapable person who is a citizen of the Russian Federation and is under guardianship or custody of a foreign citizen shall retain the citizenship of the Russian Federation.

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

Upon considering the issue of the child's citizenship, his/her genetic relation to the parents is not being proved. The persons specified in his/her birth certificate are the child's parents.

### **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:

Presently the draft federal law "On Introduction of Changes into the Federal Law "On Citizenship of the Russian Federation" has been submitted to the Government of the Russian Federation, intended for harmonization with the provisions of Federal law No. 48-FZ of 24 April 2008 "On Guardianship and Custody", Family Code of the Russian Federation and Civil Code of the Russian Federation.

Pursuant to part four of article 9 of Federal law No. 62-FZ of 31 May 2002 "On Citizenship of the Russian Federation", the decision on the change of a child's citizenship may be taken without the consent of his/her parents, only if they are deprived of their parental rights.

At the same time pursuant to article 13 of Federal law "On Guardianship and Custody", the guardianship or custody may be of temporary nature and may be appointed by application of parents, when they are unable to perform their parental duties for valid reasons, or by application of the child himself.

In this connection the draft law proposes adjustment of part six of article 14 of the Federal law "On Citizenship of the Russian Federation" by introduction of the conditions for admission of the child under guardianship to the Russian citizenship. As a result, the possibility will be excluded to admit to the Russian Federation citizenship a child, having parents (single parent), who are not deprived of parental rights, whose parental rights are not restricted, who are not found by the court to be missing or incapable or impaired.

Furthermore, Federal law No. 49-FZ of 24 April 2008 "On Introduction of Changes into Certain Legislative Acts of Russian Federation in Connection with Adoption of the "On Guardianship and Custody" has excluded the term "state care" contained in article 147 of the Russian Federation Family Code.

Simultaneously article 155.1 of the Family Code provides for placement of the children without parental care under the custody of educational organizations, healthcare organizations, the organizations rendering social services or non-profit organizations, if the specified activities do not conflict with the purposes for which they have are established.

With consideration of the stated changes the draft law proposes a new wording of part two of article 27 of Federal law "On Citizenship of the Russian Federation", which will fully comply with the specified legislative acts as regards the persons under guardianship.

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.

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**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:
  - 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

<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.

<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.ciec1.org](http://www.ciec1.org) >).

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>

- 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

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  
 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

<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.

- 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)

### **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.

a) It depends on the authority, where the documents are presented (e.g. Civil Records Bodies or notary)

c) If another State is the member of the Convention abolishing the requirement of legalisation for foreign public documents, birth certificate must be authenticated by way of apostille.

If another State is the member of the Convention and between Russian Federation and this State an agreement abolishing legalisation is concluded. there is no need for an apostille, onle translation is needed.

If another State is not the member of the Convention, and there is no agreement-consular legalization must take place.

<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".

d) Documents that are intended for use in States-members of the Convention abolishing the requirement of legalisation for foreign public documents; are not intended for export abroad; are not subject to legalization because of participation of Russia and another State in agreement concerning abolishment of legalization; are contrary to Russian legislation and are able to inflict harm to the interests of Russian Federation; do not contain compulsory essential elements (number, signature, date, seal); do not contain certifying inscription of Ministry of Justice of Russian Federation (for documents certified, issued, testified by notary of Russian Federation).

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:

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

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.

In the event of availability of respective international treaties.

- a) Authority, which is determined in the international treaty.  
The procedure and conditions for recognition are determined by international treaty.

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<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).

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

According to Civil Procedure Code (CPC) of Russian Federation (article 409) decisions of the relevant court of another State may be recognised in Russian Federation if it is prescribed by international treaty.

According to article 412 of CPC refusal in compulsory execution of another State's court decision may be permitted, if:

- 1) the decision, made in accordance with foreign law, did not enter in force or is not subject to execution;
- 2) party, against which the decision was made, was not able to participate in the judicial process because this party had not been in the proper time and in the proper way informed about time and place of the examination of the case;
- 3) the examination of the case relates to exclusive jurisdiction of courts of Russian Federation;
- 4) the decision, made upon the dispute between the same parties, on the same subject, on the same grounds entered in force in Russian Federation, or in the production of the court of Russian Federation was initiated a case between the same parties, on the same subject, on the same grounds before initiating proceedings in another State's court;
- 5) execution of a decision may cause damage to the sovereignty of Russian Federation, threatens the security of Russian Federation or contrary to public policy.

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:

According to Russian law public policy means established by the State fundamental standards of economical and social community organization, principal foundations of law and order, determined in Constitution of Russian Federation and in the federal legislation of Russian Federation.

The legislation does not set a list of violations of public order, the qualification of certain circumstances as such, should be carried out in the course of a particular case.

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:

#### **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 seised 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:

**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 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?

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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).

(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>**

**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?

<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.

- 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 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):

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

- a)
- b)
- c)

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:

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

- 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

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

<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.

- 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)
- 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>

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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.

**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

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)

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

- 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

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:

<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".

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:

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

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

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

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.)
- 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***

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

<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.

- 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:

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