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Inter-Country Adoption in Cambodia

Since 2001, many countries, including the United States, the United Kingdom, France, and Australia, have banned their citizens from adopting children from Cambodia. Weak laws and lax enforcement created a grave human trafficking problem. The Royal Government of Cambodia has since instituted reforms to prevent child trafficking and to comply with Cambodia's obligations under the *Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption*. The Convention requires the establishment of one or more Central Authorities per country to manage inter-country adoptions.

On December 3 2009, Cambodia passed its Law on Inter-Country Adoption to protect the basic rights and interests of children adopted by foreign citizens. One major change from the former adoption practice is that all inter-country adoptions must now be handled by authorized adoption agencies under the auspices of the Central Authority. Unauthorized private companies or orphanages can no longer process inter-country adoptions directly. The procedure under this new Law can be summarized as follows:

- An adoption application must be submitted to the Ministry of Social Affairs, Veterans and Youth Rehabilitation (MOSAVY), which is the Central Authority of Inter-Country Adoption in Cambodia (hereinafter "MOSAVY");
- The Ministry of Foreign Affairs and International Cooperation informs the Central Authority of the receiving country after being informed of the application by MOSAVY;
- Child matching is then conducted by MOSAVY officials;

- The Inter-Country Adoption Administration of MOSAVY sends the selected child's information and its report to the Central Authority of the receiving country and the adopters;

- If the adopters and the Central Authority of the receiving country agree, the Inter-Country Adoption Administration of the Central Authority or the competent Authorities in charge of Inter-Country Adoption or Inter-Country Adoption Agency of the receiving country schedules a visit between the adopters and the child in the presence of a MOSAVY official;

- Once the child has been selected and the adoption process receives the positive comments from the Minister at MOSAVY, the Adopters will work with their country's Central Authority or competent Authorities in charge of Inter-Country Adoption or Inter-Country Adoption Agency to submit all relevant documents via the Inter-Country Adoption Administration of MOSAVY to the Phnom Penh Court, which issues an order in each adoption case and has jurisdiction over all adoption matters in Cambodia.

- After the issuance of the adoption order and upon no appeal being filed within fifteen days following that judgment, MOSAVY will issue an Adoption Certificate as required by Art. 23 of the Hague Convention. MOSAVY officials then officiate a child and Adoption Certificate handover ceremony and coordinate with the relevant authorities to process the paperwork for the child's immigration;

- The adopters must report in writing regarding the child's situation and development to the Inter-Country Adoption Administration of MOSAVY every 6 months for the first three years and annually afterwards until the child reaches 18 years of age.

MOSAVY was appointed the Central Authority responsible for Inter-country Adoptions in Cambodia under the Law on Inter-Country Adoption. Acting in that role, MOSAVY has issued the following regulations to define the process of inter-country adoption in Cambodia:

- Announcement on the Making of Bilateral Agreements on the Number of Inter-Country Adoption Agencies, dated December 09, 2010;
- Prakas No. 1857 on the Procedures for the Process of Granting Authorization to Inter-



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ABOUT US

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Registered with the Bar Association of the Kingdom of Cambodia, our legal professionals combine international standards with local expertise.

We differentiate ourselves by coupling a deep understanding of the local business environment with international professionalism and integrity.

We facilitate business, investment and trade between Cambodia and the rest of the world through innovative and cost-effective legal services.

Superior knowledge of local protocol, local procedure, and local people is necessary for any business to succeed in Cambodia.

Conducting daily business in Cambodia, BNG Legal is up to date with the newest procedures and requirements, helping clients efficiently and successfully complete any project.

CAMBODIAN LAW BLOG

cambodianlaw.wordpress.com

BNG Legal believes expanding access to legal information is crucial to rule of law. To that end, several of our legal professionals write a blog discussing recent developments in the legal landscape.

LEGAL DATABASE

The laws and regulations in our database are based upon the Official Gazettes, law compendiums and other collections from the ministries and institutions of the Royal Government of Cambodia. These are available to the public through our partner site, www.bnglaw.net.

Country Adoption Agents, dated August 04, 2011;

- Prakas No 250 on the Organization and Functioning of Inter-Country Adoption Administration, dated January 31, 2013;

- Prakas No 194 on the Organization and Functioning of the Central Authority of Inter-Country Adoption of the Kingdom of Cambodia, dated November 5, 2013;

- Prakas No 199 on Appointment of Committee Membership of Central Authority of Inter-Country Adoption, dated November 6, 2013.

In order to have time to train government officials, staff of non-governmental organizations, agencies, and partners as well as to produce legal instruments regarding the implementation of the procedures of the Law on Inter-Country Adoption, MOSAVY issued an Announcement on March 15, 2012 that delayed the date for receiving applications for inter-country adoption until January 01, 2013. On that date, Cambodia announced that it was ready to receive inter-country adoption applications. However, such applications also require the approval of the adopters' home country as well. Typically, countries will sign a bilateral agreement permitting inter-country adoptions with another country or simply recognize another member state of the Hague Convention as a country from which inter-country adoptions will be permitted. Though Cambodia is a member state to the Hague Convention, several other member states have raised objections to inter-country adoptions from Cambodia. Cambodia welcomes all applications for bilateral agreements between countries that wish to cooperate in inter-country adoption with Cambodia under MOSAVY's Announcement, dated December 09, 2010. As recently as early December 2013, a MOSAVY official stated at a workshop that the Ministry would begin receiving applications in 2014.¹ However, at present, only Italy has signed a Memorandum of Understanding on inter-country adoption with Cambodia. Several other countries are in discussions with Cambodia, but only Italy has taken concrete steps. However, a separate bilateral agreement to determine the number of Inter-Country Adoption Agencies still needs to be signed between Italy and Cambodia before the adoption applications of Italian couples are accepted.

Adoptions under the Law on Inter-Country Adoption are, therefore, currently not possible for any nation. Further, applications for inter-country adoption agencies to MoSAVY are not taken into consideration unless the receiving country and Cambodia have signed an agreement regarding the number of inter-country adoption agencies. What are the main obstacles or concerns that other nations cite for delaying signing such bilateral agreements with Cambodia? Are there

¹ *The Cambodia Daily*, "Ban on Child Adoptions to Be Lifted in 2014," December 9, 2013 (Available at: <http://www.cambodiadaily.com/news/ban-on-child-adoptions-to-be-lifted-in-2014-48637/>).

any optional adoption procedures that potential adopters may pursue if their country has not signed a bilateral agreement?

I. Main obstacles of the application of the Law on Inter-country Adoption

Under the Law on Marriage and Family (1989), adoption was performed via a private written contract between the adoptive father or mother and the child's parents or legal guardians. The adoption contract was then officially certified by the People's Committee of the Commune or Sangkat of the adopters' residence or the child's residence and registered in the civil status book.

In 2001, Sub-Decree No. 29 on Adoption of Orphans to be Reared Abroad was adopted, which changed the procedure for inter-country adoptions. Under this Sub-Decree, the adoption application was submitted by the prospective foreign adopters to MOSAVY. After the child matching process, conducted by MOSAVY officials, the Ministry submitted the application and their comments to the Council of Ministers for a final decision. If the Council approved, MOSAVY issued a Certificate of Adoption and the child was handed over to the adopters.

By accession to the *Hague Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption* in 2007 and the passage of the Law on Inter-country Adoption in 2009, Cambodia has attempted to comply with the international standards governing inter-country adoption. According to the new law, adoptions must be processed through adoption agencies accredited by the receiving countries and approved by MOSAVY.

Several countries have expressed doubts regarding the effective application of the inter-country adoption procedures stated in the new law and concerns of failure to protect the child's best interests.² For these reasons, many nations refuse to enter bilateral agreements with Cambodia. Without a bilateral agreement, MOSAVY will not examine the applications of accredited adoption agencies from receiving countries. The bilateral agreement process is summarized in the chart at the top of page 3.

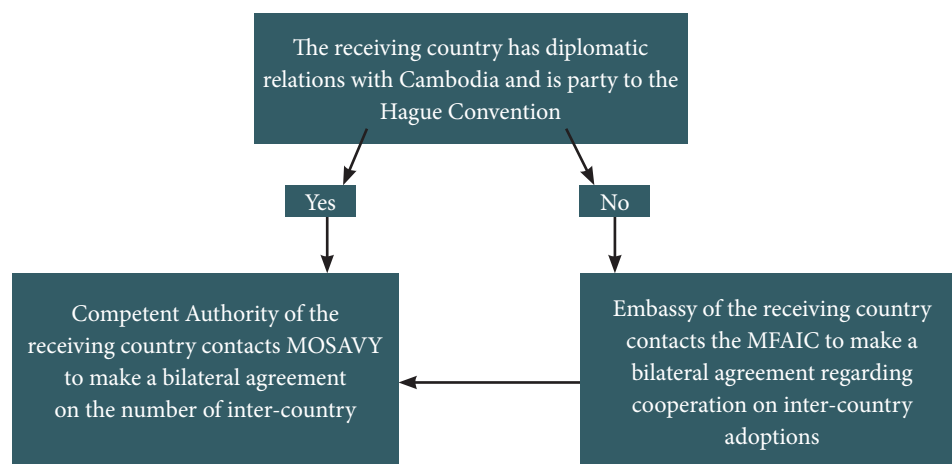
Adoption Agencies in Cambodia

Only adoption agencies accredited and approved by the competent authorities of the receiving country are allowed to provide inter-country adoption services in Cambodia.³ To receive authorization from MOSAVY in Cambodia, an agency must meet the required criteria. The agency must submit an application to MOSAVY and receive the Ministry's approval in order to operate.

² *The Cambodia Daily*, "Cambodia Not Ready for Inter-Country Adoptions," November 1, 2013 (Available at: <http://www.cambodiadaily.com/archive/cambodia-not-ready-for-inter-country-adoptions-46465/>).

³ Article 47 of the Law on Inter-Country Adoption and Article 2 of Prakas No. 1857.

Process for Bilateral Adoption Agreements



Criteria for Adoption Agencies in Cambodia:⁴

The adoption agency must meet the required criteria below in order to receive approval from MOSAVY. An agency must:

- Be accredited and approved by the competent authority of the receiving country to operate inter-country adoption services in Cambodia;
- Pursue only non-profit objectives and fulfill the conditions noted in the legal provisions concerning non-profit legal persons, association or NGOs, or other relevant legal provisions pertinent to the characteristics of such agencies;
- Be directed and staffed by persons of outstanding ethical and moral standards who have the training and experience to work in the field of inter-country adoption;
- Not operate any orphanage or nurture orphaned infants and children in Cambodia.

Adoption Agency Application Process at MOSAVY

⁵An adoption agency meeting the above criteria must submit an application to be licensed as an inter-country adoption agency to MOSAVY for final approval. The Law on Inter-Country Adoption provides the list of documents required for an agency's application to MOSAVY and the application process is contained in Prakas No 1857 on the Procedure on the Granting Authorization to Inter-Country Adoption Agency:

1. Completed application form signed by the agency's director. A tax stamp of 5000 Riel (~\$1.25) must also be affixed to the application form;
2. A copy of the agency's authorization certified by the Central Authority or relevant authority of the agency's home country;

3. A copy of the agency's accreditation letter by

⁴ Articles 48 and 49 of the Law on Inter-Country Adoption and Articles 4 and 5 of Prakas No 1857.

⁵ Article 50 of the Law on Inter-Country Adoption and Article 6 of Prakas No 1857.

the Central Authority or relevant authority of the agency's country;

4. Letter of the Central Authority or relevant authority of the agency's country permitting the agency to process inter-country adoptions in Cambodia;
5. Statute and internal regulation of the agency;
6. Dossier on the background, activities and services of the agency as well as a list of employees and their qualifications;
7. Agency's latest financial report;
8. Curriculum vitae of the members of the agency's board of directors with a photo (4x6cm) attached;
9. Curriculum vitae of one or two of the agency's representatives in Cambodia with a photo (4x6cm) attached;
10. Proof that each representative as stipulated above has no criminal record in his/her state of origin, and in the state of his/her last residence, if different;
11. A copy of agreement with MOSAVY regarding providing humanitarian aid or support to orphanages in Cambodia;
12. Bilateral agreement regarding inter-country adoption cooperation between the Ministry of Foreign Affairs and the agency's country, if this country is not the party of the Hague Convention; and
13. Any such other requirements which MOSAVY deems necessary in the best interests of children as set forth in its authorization procedures.

All documents must be in English or French and translated into Khmer.

According to the Law, MOSAVY will grant or deny approval to the applicant inter-country adoption agency within sixty days from receipt of the application. If the agency is approved, the

authorization is valid for two years and may be renewed.

Given the concerns of receiving countries regarding signing bilateral agreements with Cambodia, the delay of the application of the Law on Inter-Country Adoption persists, leaving some prospective adoptive parents living in Cambodia in legal limbo regarding whether or not they will be able to adopt.

In very rare cases, some prospective adoptive parents, who reside in Cambodia, are able to adopt a Cambodian child through the national adoption process stipulated in the Cambodian Civil Code. After receiving their adoption judgment in Cambodia, these parents must then petition their home country's government to recognize the Cambodian judgment under their home country's adoption law or citizenship/immigration law. Given the risk that most countries will not recognize the adoption judgment of a Cambodian court, prospective adoptive parents are strongly advised to make absolutely certain that their home country will recognize the Cambodian adoption judgment and permit the child to be legally adopted according to the laws of the home country.

II. Best practices while waiting for the full implementation of the Law on Inter-country Adoption

According to international adoption statistics issued by The Australian Inter-country Adoption Network (AICAN) , Cambodian children have been adopted in recent years despite the suspension of the inter-country adoption process by Cambodian authorities in response to international pressure. Please see the table below for more details.

The following section will briefly analyze Italy's adoption procedures and also look at the Cambodian law(s) and regulation(s) governing

such adoptions. Italy deserves special attention, given the high number of adoptions and the fact that it is the only country that has taken concrete steps toward a bi-lateral agreement with Cambodia regarding inter-country adoptions.

A. Summary of Italian Inter-Country Adoption Procedure

The Italian Commission for Inter-country Adoption has outlined seven steps for inter-country adoptions.⁶

1. An Italian court issues a Declaration of Availability and passes the applicant's request to the competent social services authority.
2. The social services authority issues a report assessing the applicant's adoption request and sends the report back to the court.
3. The court issues a Decree of Suitability and sends it to the Commission for Inter-Country Adoption and an accredited agency for selecting a suitable child.
4. Selection of a suitable child is performed cooperatively by the accredited agency in Italy and a counterpart agency in the child's country of origin.
5. Child matching with the adoptive parent applicants and a meeting between the child and prospective adoptive parents, accompanied by officials from the Inter-Country Adoption Agency, takes place. Following the meeting, the required paperwork is processed in the child's country of origin. In the case of children from Cambodia, the adoption petition must be filed with and decided upon by a Cambodian court.
6. The child enters Italy after the Commission for Inter-Country Adoption have certified determination that the adoption conforms to the

⁶ Source: <http://www.commissioneadozioni.it/en/for-an-adoptive-family/the-path-of-adoption.aspx>.

RECEIVING COUNTRY	'12	'11	'10	'09	'08	'07	'06	'05	'04	'03	'02	'01	'00	TOTAL
Australia					11	14	5	4	1					35
Canada	3	2					10	10	14	23				62
Finland			3	2	1	3								9
France	3	7	2	19					6					37
Germany				2			1	2	2					7
Ireland			3											3
Italy		42	85	50	188	163	147	76	43	29	14			837
Spain				1	1	1	1							4
Sweden				1		1								2
UK									18	40	6			64
US										124	254	407	402	1187
Total	6	51	93	75	201	182	164	92	84	216	274	407	402	2247

Source: Australian Inter-Country Adoption Network (Full table available at: <http://www.aican.org/statistics.php?region=0&type=birth>)

provisions of the Hague Convention.

7. An Italian court issues an order to record the adoption decision in the registries regarding civil status. Once this record is made, the child officially becomes an Italian citizen and a legally-recognized member his or her adoptive family.

However, Article 36 of Law No. 184 on a Child's Right to a Family (1983, amended in 2001) provides that adoption or pre-adoptive placement declared in a country that has neither ratified the Convention nor signed any bilateral agreement may be declared valid in Italy if:

- a) The foreign child's state of abandonment or the biological parents' consent to an adoption that will result in the child acquiring the status of legitimate son or daughter of the adoptive parents and the termination of any legal relationship between the child and his/her family of origin has been ascertained; (In Cambodia, this determination is made by a court.)
- b) The prospective adoptive parents have been declared eligible under Article 30 and adoption procedures have been carried out through the Commission referred to in Article 38 and an accredited agency; (2nd and 3rd step in the Italian inter-country adoption process above.)
- c) The requirements set out in the Decree of Eligibility have been met;
- d) The authorization provided for in Article 39 (1) (h) has been granted. (6th step in the Italian inter-country adoption process above.)

According to Law No. 184, an inter-country adoption takes place between the Italian adoptive parents and the Cambodian child when the prospective adoptive parents are eligible to adopt a child following the Italian law and the child is adopted according to the adoption procedures in their country of origin. In Cambodia, the national adoption procedures set out in the Cambodian

Civil Code can fulfil this requirement despite the fact that the Cambodian Law on Inter-Country Adoption is not yet recognized by Italy.

The next section briefly discusses the national adoption procedure in Cambodia.

B. National Adoptions in Cambodia

The New Civil Code of Cambodia took effect on 21 December 2011. The Civil Code provisions governing adoptions apply to adoptions processed after 21 December 2011.

The Civil Code governs two types of national adoptions, which are termed full adoption and simple adoption. The Code itself does not define the term "national adoption". However, as the Civil Code contains the general principles of private law, it applies to all family relations, except where otherwise provided by law.⁷

Though the Law on Inter-Country Adoption provides in Article 3 that it "governs the adoption of a child of Cambodian nationality, having permanent residence in Cambodia, by a married couple who permanently reside in another country, that involves a movement of the child to that other country in which the child is recognized by the country's laws," this provision does not apply to the adoptions between Italy and Cambodia discussed above for the simple reason that no country yet has a bi-lateral agreement in place with Cambodia that would permit adoptions under the Law on Inter-Country Adoption. Therefore, the adoption procedures in the Civil Code currently apply in cases where the receiving country will recognize adoptions from Cambodia.

The below table is a comparison of the requirements and procedures for full national adoption versus simple national adoption.

Between the two options, only the full national adoption terminates the legal relationship between

⁷ Article 1 of the Civil Code.

Full National Adoption	Simple National Adoption
Requirements for Full National Adoption: 1. The adoptee must be less than 8 years old; 2. The adopter must not be less than 25 years old; 3. The adopter must not be less than 20 years older than adoptee; 4. The adopter must have a spouse and file jointly for adoption with the spouse; 5. The relationship between an adoptee and his/her natural parents and their blood relative is terminated by the adoption; 6. A new birth certificate will be issued. 7. Procedure: Court decision.	1. No limit on the age of the adoptee; 2. The adopter must not be less than 25 years old; 3. The adopter must be older than the adoptee; 4. The adopter can be single. However, if he or she has a spouse, the consent of the spouse is needed; 5. The relationship between an adoptee and his or her natural parents and their blood relatives is not terminated by the adoption; 6. No new birth certificate is issued. 7. Procedure: Court decision.

the child and his/her natural parents, which is generally a requirement of a receiving country's adoption law or citizenship/immigration law.

Conclusion

The desire to adopt a child is motivated by many considerations including the intention to provide an orphan with a loving family and a better future. Adoption is a life-altering event for both the child being adopted and the adoptive parents and is an important means of improving the lives of children around the world. Legal systems around the world recognize the value of providing better lives for many children though adoption and provide adoption laws and procedures to facilitate adoptions while protecting the best interests of the children being adopted.

The Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption governs the international adoption procedure for many nations. However, due to the lack of bi-lateral agreements with other nations, Cambodia's Law on Inter-Country Adoptions remains ineffective. In rare cases, inter-country adoption may be possible between Cambodia and another country under the provisions of Cambodia's Civil Code and the laws of the receiving country.

Given the risks involved with inter-country adoptions from Cambodia, we strongly recommend that prospective adoptive parents who desire to adopt a child s consult with a legal professional regarding the requirements and procedures of adoption in Cambodia and in their home country before proceeding with any adoption process.

Additions to Our Team

MR. JOSEPH LOVELL

Partner, Head of Banking & Finance Practice

Joseph Lovell, a Partner at BNG Legal, is Head of the China Desk and the Banking & Finance Practice Group. He is a member of the US state bars of New York, Hawaii and Texas. Joseph holds Juris Doctor and Master of Arts (Asian Studies) degrees from the University of Hawaii at Manoa and a Bachelor of Science degree in Chinese Language Studies from Georgetown University. He also studied international law at National Chengchih University's Graduate School of International Law & Diplomacy (Taiwan).

Joseph has more than two decades of Asia-focused legal, business and investment experience. Before joining BNG Legal, he served as, among other roles, COO and General Counsel for an emerging markets private equity fund management company, Senior Counsel at a South East Asia regional law firm, Managing Director/General Counsel for

a financial group with offices in New York and Beijing, Corporate Counsel for a Beijing-based London AIM-listed private equity firm, senior consultant at PricewaterhouseCoopers (Taipei), and Managing Attorney for a China-focused law practice in Honolulu.

Joseph's expertise includes crossborder investments, private equity, mergers & acquisitions, corporate law & governance, and business operations. He has worked on projects in numerous sectors including technology, media, telecoms, manufacturing, finance, oil & gas, mining, green tech, food & beverages, and pharmaceuticals in Asia (Greater China, Cambodia, Thailand, Vietnam, Myanmar and Mongolia), North America and Europe.

Joseph is fluent in English and Mandarin Chinese and has a working knowledge of French, Min Nan Chinese (Fukienese), Khmer and Thai.

MS. SOCHEATA SAO

Legal Advisor

Ms. Socheata Sao is a Legal Advisor in the Litigation & Dispute Resolution Practice Group. Socheata holds an LL.M. in International Commercial Law from the University of Kent in the United Kingdom. Before that she studied law in the Bachelor of Law program at the Royal University of Law and Economics and Business Economics at the National University of Management. She also has a bachelor's degree in Business Administration from ICN Business School, France.

Before leaving for the United Kingdom, Socheata was a legal intern in the Office of the Co-Prosecutor at the Extraordinary Chamber in the Courts of Cambodia.

Socheata speaks Khmer, English and some French.

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