

Kingdom of Cambodia
Nation Religion King



Explanatory Notes to Domestic Adoption

2016



(Logo of the Ministry of Justice)

Remarks by H.E. Ang Vong Vathana, Minister of Justice

Explanatory note on domestic adoption is another new achievement to be proud of as it happened as a result of the joint effort and cooperation of the Ministry of Justice including the leadership, specialized officials, legal advisors and UNICEF.

Ensuring best interest and protection of the child is the obligation of all of us that we need to ensure children grow and develop in a good family which is full of warmth and free of rights abuse. In contrast, if a child is placed in an inappropriate family it would affect his or her rights and interest, which, consequently, would affect the society in the future as children are the future pillars of the nation.

Upon seeing the benefits related to child placement in a family, the Ministry of Justice has prepared legal provisions on adoption in the Civil Code which was adopted in 2007 and implemented on 21 December 2011, in accordance with the law on the implementation of the civil code and it contained a number of other supplementary provisions including, but not limited to, law on non-suit civil case and law on litigation of personal status.

After the above legal provisions have been implemented, it is of the opinion of the Ministry of Justice that domestic adoption is also connected to inter-country adoption; therefore, to serve as an aid memoire for law enforcement officials to strengthen further attention in safely placing children in a family that intends to adopt, either domestic or inter-country adoption, the Ministry of Justice and UNICEF have collaborated to produce this explanatory note.

This explanatory note is a piece of work done by a working group with legal expertise and many years of experience and the writing of which is up to standard as it provides explanation and illustration of each of the points following the content of all related laws including substantive provision, procedural provision and supplementary provision, and it provides concrete and easy-to-understand examples which clearly distinguish the differences from one point to another and covers all aspects related to adoption in Cambodia.

I think this document is extremely useful for law enforcement officials, general researchers and readers to benefit from for their understanding in fulfilling their work and living in the society. Meanwhile, I wish to take the opportunity to compliment and thank the working group and UNICEF, in particular, **H.E. Madam Chan Sotheavy, Judge HIROSHI KIYOHARA** and **Mrs. So Sereyvathana** for making this great and important achievement possible.

Furthermore, this explanatory note contributes well to the implementation of the policies and recommendations of the Royal Government of Cambodia under the wise and ideal leadership of **Samdech Akak Moha Sena Padei Techo HUN SEN**, Prime Minister of the Kingdom of Cambodia, in the protection and promotion of the rights of the child.

Next, the Ministry of Justice, in collaboration with UNICEF, has determined the targets as it has prepared a plan of action to disseminate to all relevant law enforcement officials and general public to aware of which in an extensive manner across the country.

Phnom Penh, 8 December 2015

(Signature)

Ang Vongvathana

EXPLANATORY NOTES TO DOMESTIC ADOPTION

BASED ON

CIVIL CODE AND NON-LITIGATION CIVIL PROCEDURE LAW

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1. Objectives of Explanatory Notes to Domestic Adoption

This “explanatory notes” gives explanation on domestic adoption based on the Civil Code and the Law on Non-Litigation Civil Procedure.

The purpose of this “explanatory notes” is to provide guidance to those involved in the process of domestic adoption, especially judges, prosecutors, lawyers, social workers and other competent authorities, with regard to principles, requirements, proceedings, formalities, and effects of domestic adoption.

Moreover, this “explanatory notes” aims to **assure the best interest of children** and to **guarantee fundamental rights of children**, especially children who need special protection or children who currently faces difficulties, by providing these children with satisfactory development in family environment full of happiness, affection and understandings.

In accordance with the Civil Code, adoption includes two types: full adoption and simple adoption. For the reason stated above, however, this “explanatory notes” will give thorough explanation primarily about full adoption.

2. Principles of Domestic Adoption

The United Nations (UN) has a guiding principle which says as follows:

“Domestic adoption is defined as providing care to a child who is not under the care of his/her own parents.”

Other than the Civil Code, the Ministry of Social Affairs, Veterans and Youth Rehabilitation has issued the Prakas on “**Procedures to Implement the Policy on Alternative Care for Children.**” This Prakas stipulates some principles of domestic adoption as follows.

(1) Domestic adoption is the first priority for permanent solution for children (Article 28 of the Prakas) □

The phrase “**permanent solution for children**” includes permanent care by kin or guardian inside the country. Then, **Article 28** of the above-mentioned Prakas provides that domestic adoption is the first priority among the permanent solutions for children who are not under the care of their own parents.

(2) Domestic adoption shall be implemented in accordance with principles of permanency planning stipulated in Chapter 7 (Permanency Planning) of the Prakas on Procedures to Implement the Policy on Alternative Care for Children.

The phrase “**permanency planning**” refers to the effort to provide a permanent family for a child using permanent kin placements, domestic guardianship, **domestic adoption**, and inter-country adoption (Article 4 of the Prakas). Thus, domestic adoption is one type of permanency plannings which place a child under the care of a family permanently. For this reason, domestic adoption shall be implemented in accordance with principles of

permanency planning stipulated in Chapter 7 (Permanency Planning) of the above-mentioned Prakas.

In Chapter 7 stated above, **Article 24** provides that children for whom family preservation and reunification services have been exhausted, shall be referred to planning for placement with permanent families as follows:

- 1- Prior to the commencement of permanency planning, all family preservation and reunification efforts provided to that point shall be documented along with the reason for the decision to refer the case for permanency planning. The Commune Committee for Women and Children (CCWC) and the relevant City/District/Khan Office of Social Affairs, Veterans, and Youth Rehabilitation (OSVY) or Provincial/Municipal Department of Social Affairs, Veterans, and Youth Rehabilitation (DoSVY) social workers shall make a joint decision to start permanency planning.
- 2- Permanency placement is achieved when a child has been incorporated into a family and a Court has decreed legal guardianship, domestic adoption or inter-country adoption.
- 3- Permanency placement shall be done with decision from a court that biological parents' rights are terminated, or after parents give proper consent for permanency planning. Only the court can make a decision on permanency placement.
- 4- In case parents or mother or father chooses to voluntarily resign their/his or her parental rights or give consent for permanent planning, they or he/she shall first be given counseling regarding the services available, and the implications of their actions. This counseling shall be provided by a competent social worker agent who has been properly trained, and witnessed by the Commune/Sangkat chief.

Article 25 of the above-mentioned Prakas provides that **procedures to look for a permanent family for the child** shall be as follows:

- 1- In finding the new family, priority will be given to placements within the child's extended family, in the community and capital/province. If a child has extended family in a different Provincial/Municipal, the respective Provincial/Municipal DoSVY shall coordinate efforts with relevant competent authorities to place the child within the child's extended family.
- 2- If the child has no family or the family cannot be found, Provincial/Municipal DoSVY shall look for other placement families within the child's Commune/Sangkat, City/District/Khan, and Province/Municipal.
- 3- If appropriate families cannot be found within at least 4 (four) months, the Provincial/Municipal DoSVY shall forward the child's name to the Child Welfare Department for consideration of placement within the other Province/Municipal.

- 4- After Child Welfare Department has given due consideration to finding a domestic family and no appropriate family is found within 6 (six) months, the child's folder may be referred to the Inter-country Adoption Authority for inter-country adoption. This timeframe shall be reviewed annually and amended to shorten, as deemed appropriate.

Moreover, **Article 26** of the above-mentioned Prakas provides that **responsibilities for promotion of domestic placement** shall be in accordance with the following procedures:

- 1- It is the responsibility of the Child Welfare Department and Provincial/ Municipal DoSVY to promote domestic permanency placement.
- 2- The Provincial/Municipal DoSVY shall conduct on-going campaigns within their respective provinces to recruit foster families, legal guardians and potential adopters. These shall be done with participation from the City/District/Khan OSVY officers and Commune Councils, and by NGOs who do not make inter-country adoption placements. The Provincial/Municipal DoSVY shall train and certify families who come forward to take the children into their homes.
- 3- The Child Welfare Department shall seek support from development partners, make proposal to the Minister of Social Affairs, Veterans, and Youth Rehabilitation (MoSVY) for funding and technical assistance to the Provincial/Municipal DoSVY for the recruitment, training and certification of families, and shall conduct national campaigns for seeking families who agree to accept children and refer those families to the Provincial/Municipal DoSVY where the child's residence.

3. Types of Domestic Adoption

a. Full Adoption and Simple Adoption

Domestic adoption includes **full adoption** and **simple adoption**.

In accordance with the "Lexicon of Civil Law" annexed to the Civil Code, full adoption and simple adoption are defined as follows:

- (1) Full adoption is to adopt a minor under eight years of age as an adopted child, whereby the legal relationship between such adopted child and his/her natural parents shall be terminated. Full adoption shall be determined by a court.
- (2) Simple adoption is to adopt a minor or an adult as an adopted child, whereby the legal relationship between such adopted child and his/her natural parents shall not be terminated. Simple adoption shall be determined by a court.

*** Common Points**

Domestic adoption, no matter whether full adoption or simple adoption, has common points as follows:

- The formation of domestic adoption needs to have a court's decision in accordance with legal process.
- Domestic adoption creates a permanent parent-child relation between an adopted child and adoptive parents, and places the adopted child in this relation.

*** Differences**

There are some differences between full adoption and simple adoption as follows:

- In case of full adoption, an adopted child must be a minor below eight years of age. In case of simple adoption, no matter whether a minor or an adult, any person is eligible to become an adopted child if he/she is younger than adoptive parents.
- Full adoption shall terminate the legal relationship between an adopted child and his/her natural parents. Simple adoption shall not terminate the legal relationship between an adopted child and his/her natural parents.

In summary, full adoption is a scheme to provide a family composed of a father and a mother with sufficient stability for a child who is not under the care of his/her natural parents.

Full adoption will terminate the legal relationship between an adopted child and his/her natural parents. Then, the adopted child will obtain a status as a natural child of adoptive parents, and have a legal relationship with all family members of the adoptive parents.

b. Relation between Domestic Adoption and Inter-country Adoption

Full adoption and simple adoption shall be implemented in accordance with requirements, proceedings, and effects which are stipulated in detail in the Civil Code (from Article 1007 to Article 1033).

In addition, in the Kingdom of Cambodia, there is a law called "**Law on Inter-country Adoption**", which provides requirements, proceedings, and effects of inter-country adoption.

What is the relation between domestic adoption and inter-country adoption?

The Civil Code is a **general law** in private law field (Article 1 of the Civil Code), and has fundamental provisions concerning adoption. On the contrary, the Law on Inter-country Adoption is a **special law** which has special provisions applicable to inter-country adoption cases.

Concerning the relation between a general law and a special law, Article 1 of the Civil Code provides, "The provisions of the Civil Code shall apply to property-related matters and family relation, **except where otherwise provided by special laws.**"

Therefore, a **special law has priority over a general law**. This means that at first you should look at a special law and try to apply this law to a case, and then, if you find that this special law does not have a provision applicable to the case, you should go to a general law and apply a fundamental provision contained in the general law to the case.

For the reason mentioned above, at first you should try to apply the Law on Inter-country Adoption to your adoption case. If you find that the Law on Inter-country Adoption has no provisions applicable to your case, you should take a look at the Civil Code and apply it to your adoption case.

1) Scope of Inter-country Adoption (Article 3 of Law on Inter-country Adoption)

Article 3 of the Law on Inter-country Adoption provides, “This law governs the adoption of a child of Cambodian nationality, having permanent residence in the Kingdom of Cambodia, by **a married couple who permanently reside in another country**, that involves a movement of the child to and recognized by the law of that other country.”

Thus, in case where a married couple who permanently resides **in a foreign country** adopts a child of Cambodian nationality who permanently resides in Cambodia, this adoption should be categorized into an **inter-country adoption** which ought to be executed in accordance with the Law on Inter-country Adoption.

On the contrary, in case where a married couple who permanently resides **in Cambodia** adopts a child of Cambodian nationality who permanently resides in Cambodia, this adoption should be categorized into a **domestic adoption** which ought to be executed in accordance with the Civil Code.

2) What is the “permanent residence” ?

The term “**permanent residence**” or “**country of permanent residence**” stated above refers to the country in which a person resides with the intention to make such country his/her permanent residence, and of which that person is recognized by the country’s law as having the right to permanently reside in such country (**Article 4 of Law on Inter-country Adoption**).

The Civil Code has a provision concerning the definition of permanent residence (or domicile), providing that the principal place wherein a person lives shall be his/her domicile (Article 34).

However, the determination of permanent residence (or domicile) is not a problem solely happening in the Civil Code, but also a problem related to many other laws, such as the Commercial Code, the Civil Procedure Code, the Election law and so on. Thus, we should not think that a person must have a sole permanent residence (or domicile) common to all applications of these various laws. In other words, we should determine a person’s permanent residence (or domicile) depending on each legal matter in accordance with each of those various laws.

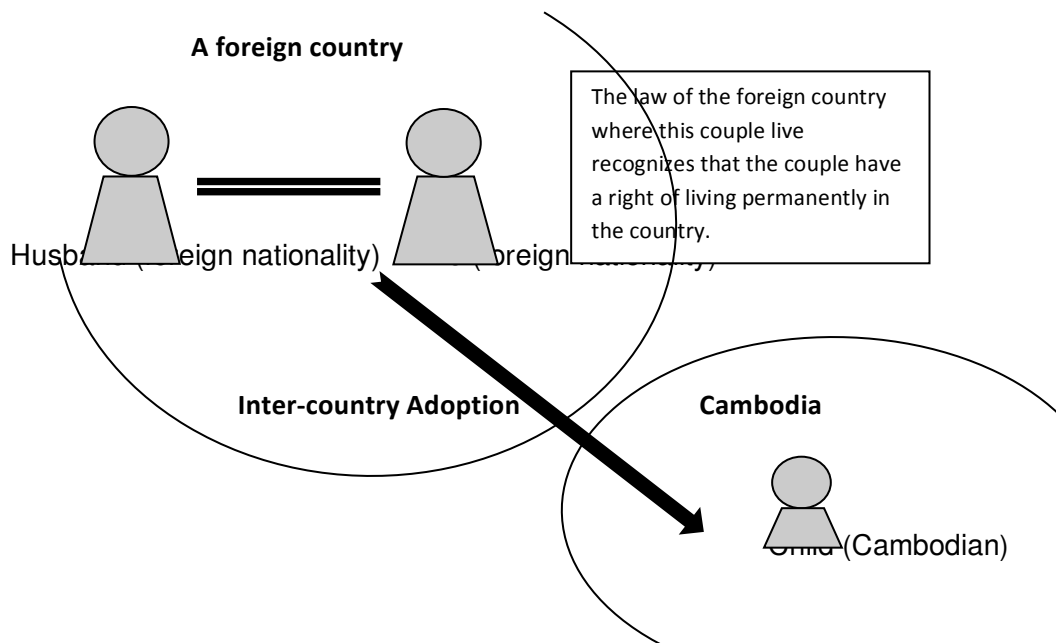
The above-mentioned **Article 4 of Law on Inter-country Adoption** is a **special provision** which stipulates the definition of “country of permanent residence” with regard to inter-country adoption. Thus, we should apply this Article 4 of Law on Inter-country Adoption in order to determine a person’s country of permanent residence with regard to legal matters related to inter-country adoption and domestic adoption. For this reason, the Civil Code’s fundamental provisions on permanent residence (i.e., Article 34

to Article 36 of the Civil Code) may not be used in order to determine a person's country of permanent residence with regard to inter-country adoption and domestic adoption.

3) Various Examples for Inter-country Adoption and Domestic Adoption

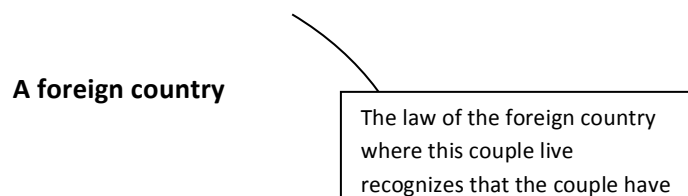
Example No.1: A couple (husband and wife) have nationality of a foreign country and live in this foreign country with their intent to take this country as their permanent residence. The law of the foreign country where this couple live recognizes that the couple have a right of living permanently in the country.

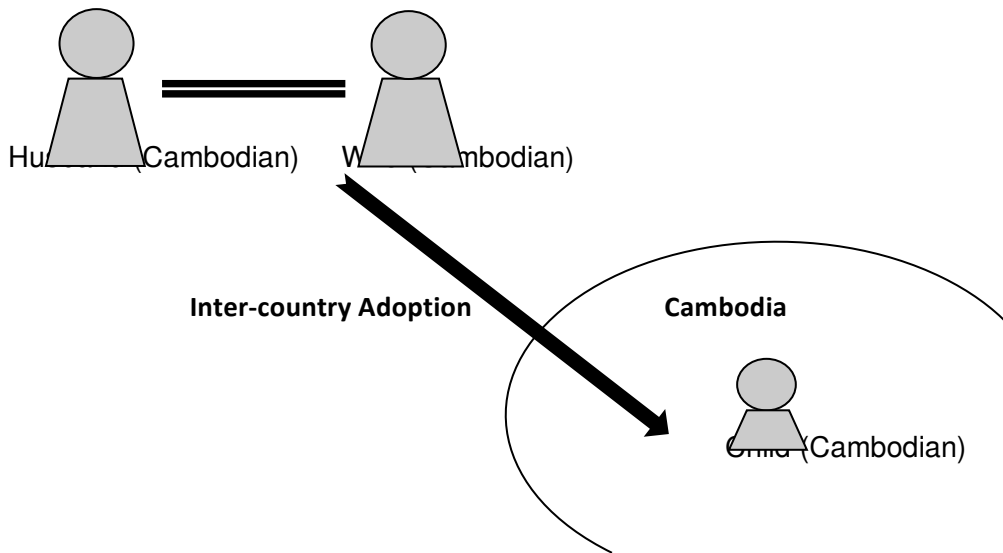
In this case stated above, if the couple (husband and wife) wants to adopt a child of Cambodian nationality whose permanent residence is located in Cambodia, then this adoption shall be an **inter-country adoption** implemented by Law on Inter-country Adoption. That is because the country of permanent residence of this couple is the foreign country.



Example No.2: A couple (husband and wife) have Cambodian nationality and live in a foreign country with their intent to take this foreign country as their permanent residence. The law of the foreign country where this couple live recognizes that the couple have a right of living permanently in the country.

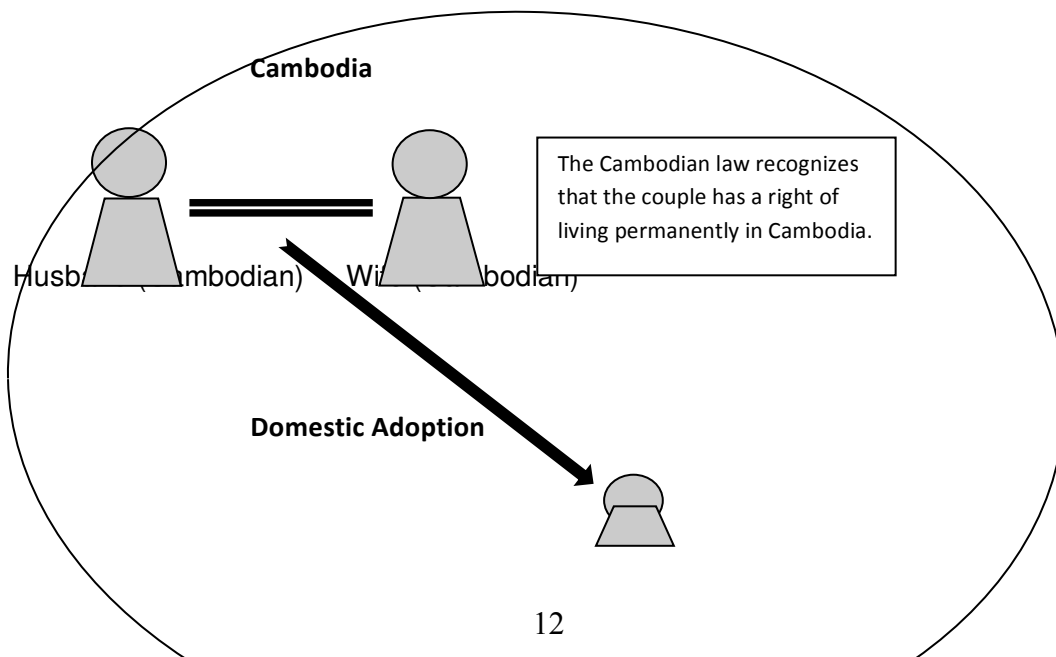
In this case stated above, if the couple (husband and wife) wants to adopt a child of Cambodian nationality whose permanent residence is located in Cambodia, then this adoption shall be an **inter-country adoption** implemented by Law on Inter-country Adoption. That is because the country of permanent residence of this couple is the foreign country.





Example No.3: A couple (husband and wife) have Cambodian nationality and live in Cambodia with their intent to take Cambodia as their permanent residence. The Cambodian law recognizes that the couple has a right of living permanently in Cambodia.

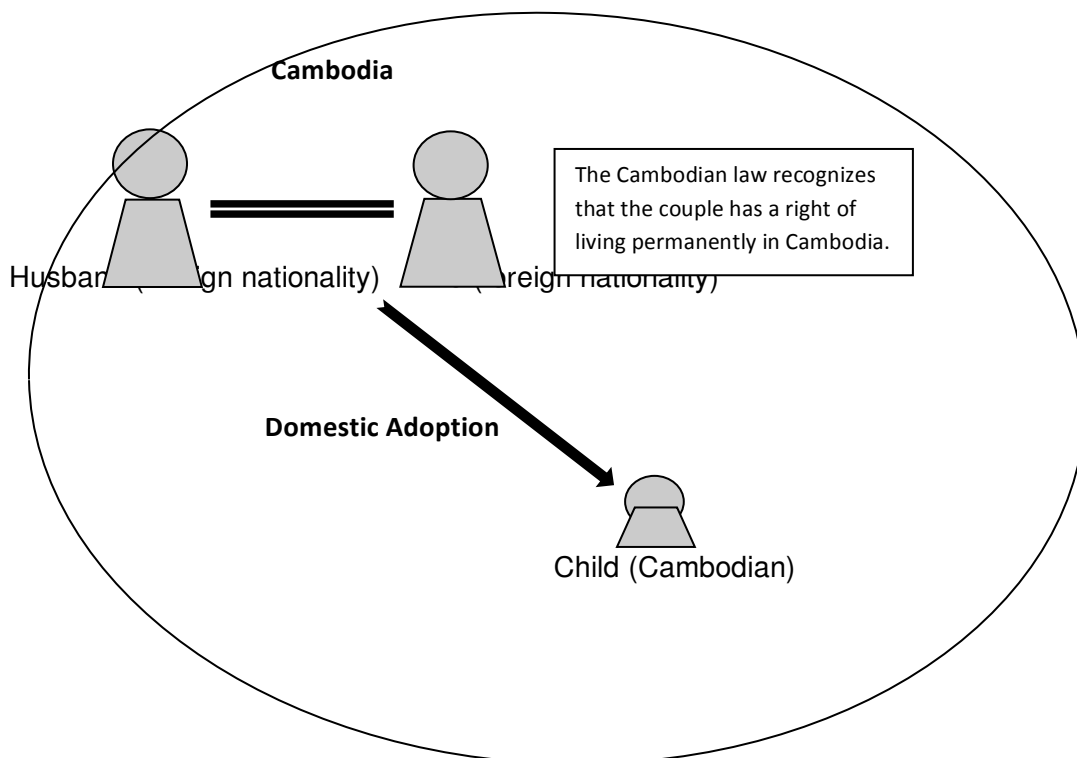
In this case stated above, if the couple (husband and wife) wants to adopt a child of Cambodian nationality whose permanent residence is located in Cambodia, then this adoption shall be a **domestic adoption** implemented by the Civil Code. That is because the country of permanent residence of this couple is Cambodia.



Child (Cambodian)

Example No.4: A couple (husband and wife) have nationality of a foreign country and live in Cambodia with their intent to take Cambodia as their permanent residence. The Cambodian law recognizes that the couple has a right of living permanently in Cambodia.

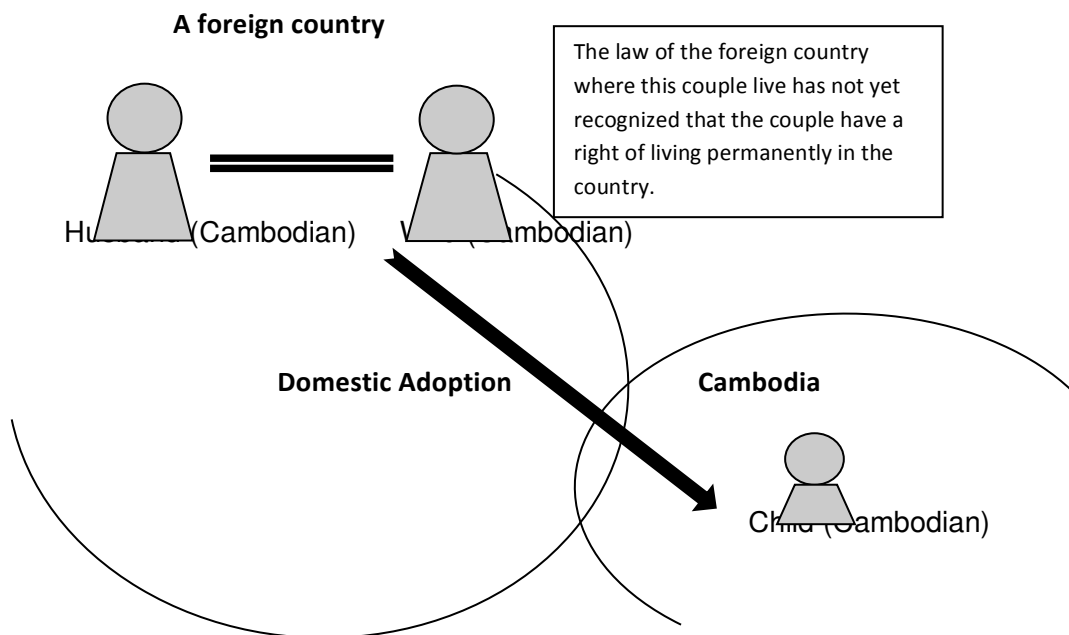
In this case stated above, if the couple (husband and wife) wants to adopt a child of Cambodian nationality whose permanent residence is located in Cambodia, then this adoption shall be a **domestic adoption** implemented by the Civil Code. That is because the country of permanent residence of this couple is Cambodia.



Example No.5: A couple (husband and wife) have Cambodian nationality and live in a foreign country with their intent to take this foreign country as their permanent residence. However, the law of the foreign country where this couple live has not yet recognized that the couple have a right of living permanently in the country.

In this case stated above, if the couple (husband and wife) wants to adopt a child of Cambodian nationality whose permanent residence is located in Cambodia, then this adoption shall not be an inter-country adoption implemented by Law on Inter-country Adoption. That is because we cannot recognize that the country of permanent residence of this couple is the foreign country. The law of the foreign country where this couple live has not yet recognized that the couple have a right of living permanently in the country. Thus, in future this couple will have to leave this foreign country and go to another country. For this reason, this couple cannot take the foreign country where they currently live as their permanent residence in relation to inter-country adoption.

Instead of inter-country adoption, they can adopt that child by means of **domestic adoption** implemented by the Civil Code. That is because we can consider that the country of permanent residence of this couple is still Cambodia which is the country of their nationality. Even though they currently live in the foreign country, they still hold Cambodian nationality and have a right of living permanently in Cambodia. Thus, we understand that in future this couple will probably return to Cambodia with their intent to take Cambodia as their permanent residence. For this reason, this couple can take Cambodia which is the country of their nationality as their permanent residence in relation to domestic adoption, although the couple currently lives in the foreign country.

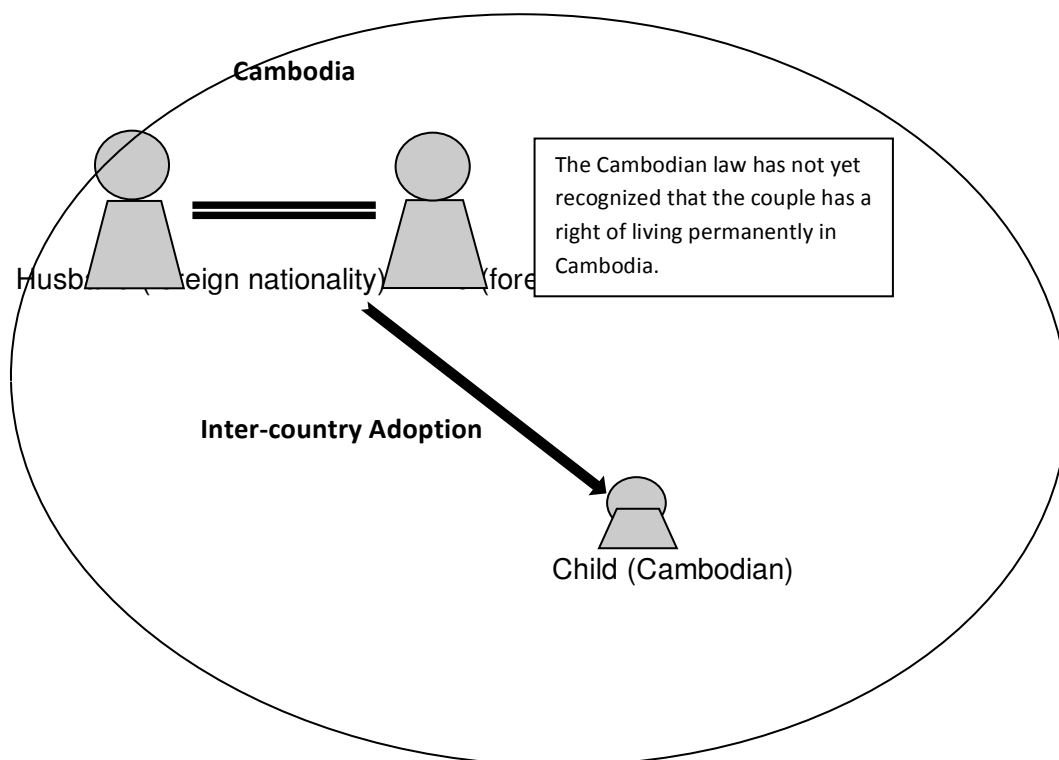


Example No.6: A couple (husband and wife) have nationality of a foreign country and live in Cambodia with their intent to take Cambodia as their permanent residence. However, the Cambodian law has not yet recognized that the couple has a right of living permanently in Cambodia.

In this case stated above, if the couple (husband and wife) wants to adopt a child of Cambodian nationality whose permanent residence is located in Cambodia, then this

adoption shall not be a domestic adoption implemented by the Civil Code. That is because we cannot recognize that the country of permanent residence of this couple is Cambodia. The Cambodian law has not yet recognized that the couple has a right of living permanently in Cambodia. Thus, in future this couple will have to leave Cambodia and go to another country. For this reason, this couple cannot take Cambodia as their permanent residence in relation to domestic adoption.

Instead of domestic adoption, they can adopt that child by means of **inter-country adoption** implemented by Law on Inter-country Adoption. That is because we can consider that the country of permanent residence of this couple is still the foreign country which is a country of their nationality. Even though they currently live in Cambodia, they still hold the foreign nationality and have a right of living permanently in this foreign country. Thus, we understand that in future this couple will probably return to the foreign country with their intent to take the country as their permanent residence. For this reason, this couple can take the foreign country which is a country of their nationality as their permanent residence in relation to inter-country adoption, although the couple currently lives in Cambodia.



C. Relation between Adoption and Non-kin Foster Care

In Cambodia, there are children under **non-kin foster care**. Especially, many foreign couples (husband and wife) who currently live in Cambodia take care of Cambodian children by means of foster care instead of adoption.

Article 29 of the Prakas on “Procedures to Implement the Policy on Alternative Care for Children” is a provision about non-kin foster care, which stipulates that:

“Procedures for permanent care by non-kin foster care shall be as follows;

- 1- Children placed in non-kin foster care placements for at least six months shall be targeted for permanent guardianship with the family that has cared for them.
- 2- If the condition of the child and family is appropriate, the family shall be encouraged and assisted with the legal process to enter into a permanent legal guardian ship of the minor or to adopt the child; otherwise the placement shall continue to be monitored as needed and efforts shall continue to find a permanent family for the child.”

In accordance with the above-mentioned Article 29, a non-kin foster family is not a permanent family for a child. This means that there is no legal relationship between the child and the non-kin foster family. The persons who can carry out parental authority over the child are still his/her natural parents. Therefore, the non-kin foster family does not hold the parental authority, and the child is not entitled to succession of the legacy of the non-kin foster family. In addition, the child does not have a legal right to demand supports from the non-kin foster family.

Currently, there is no clear legal procedure related to a foster family (or foster care). Thus, in order to guarantee the child’s best interest and protect the child’s fundamental rights, if foster care system is desirable, it is necessary to clarify principles and make clear rules related to foster care.

4. Full Adoption

a. Formalities for Creation of Full Adoption

Article 1007. _ Formalities for creation of full adoption

If the conditions provided in Article 1008 (Joint adoption by married couple) through Article 1012 (Criteria for determination of creation of full adoption) are fulfilled, a court may, on motion by the person(s) who will become the adoptive parent(s), create full adoption, which terminates the legal relationship with the blood-related family of the natural parents.

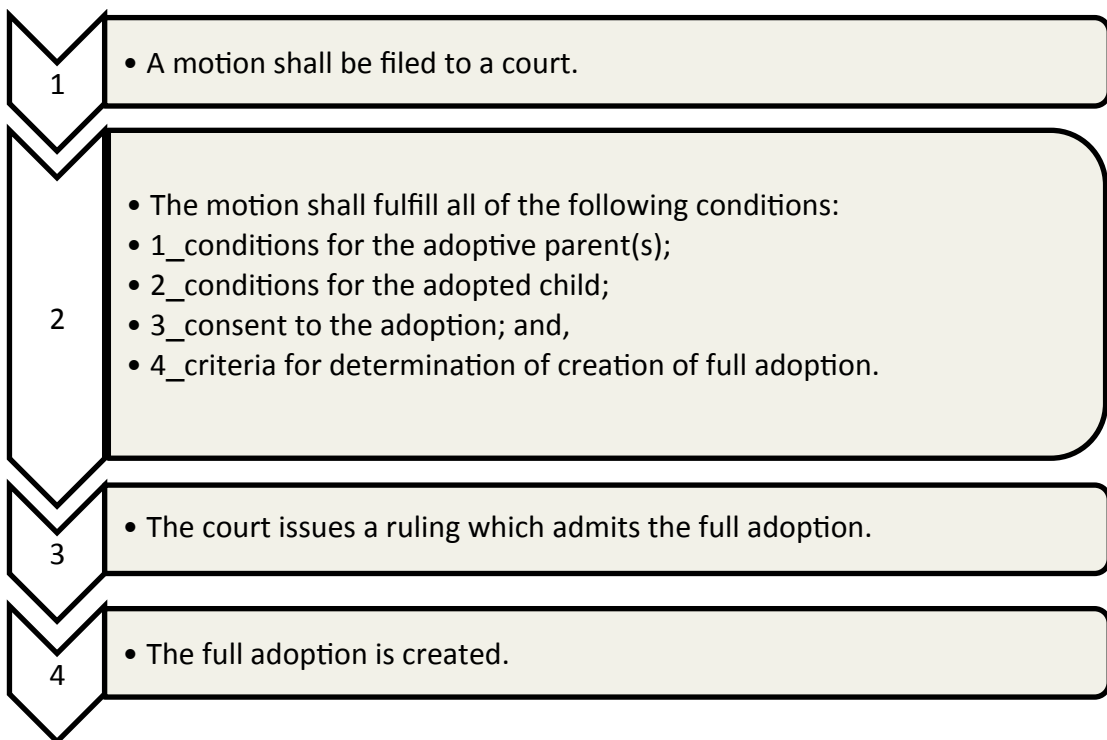
Article 1007 of the Civil Code provides that, in order to create full adoption, it is necessary to fulfill the requirements as follows:

- 1- There must be a **motion** by the person(s) who will become the adoptive parent(s).
- 2- All conditions provided in **Article 1008 through Article 1012** of the Civil Code must be fulfilled.
- 3- A court must issue a **ruling** which admits the full adoption.

Among the provisions from Article 1008 through Article 1012, each Article stipulates about the following points:

- Article 1008 and Article 1009 stipulate about **conditions for the adoptive parent(s)**.
- Article 1010 stipulates about **conditions for the adopted child**.
- Article 1011 stipulates about **consent to the adoption**.
- Article 1012 stipulates about **criteria for determination of creation of full adoption**.

Therefore, in accordance with all of the above-mentioned Articles, the flow chart for creation of full adoption is shown as below:



b. Conditions for Adoptive Parents

1) Joint Adoption by Married Couple

Article 1008._ Joint adoption by married couple

1- A person who will become an adoptive parent shall have a spouse.

2- One spouse alone may not become an adoptive parent when the other spouse does not become an adoptive parent. However, this shall not apply if one spouse becomes an adoptive parent of a natural child of the other spouse.

Article 1008 of the Civil Code provides that, in principal, a person who will become an adoptive parent must have a spouse. The purpose of full adoption is to provide a family composed of a father and a mother with sufficient stability for an unfortunate child. Thus, the Civil Code has adopted the **principle of joint adoption by married couple**. For this reason, one spouse alone may not become an adoptive parent when the other spouse does not become an adoptive parent.

a) Principle of Joint Adoption by Married Couple

A person who will become an adoptive parent must have a spouse. Thus, if a person does not have a spouse, this person may not become an adoptive parent.

Example: Mr. Vibol does not have a wife. He may not adopt a child.

One spouse alone may not become an adoptive parent when the other spouse does not become an adoptive parent.

Example: Mr. Vibol and Ms. Bopha are a married couple. They can adopt a child only if both of them jointly become adoptive parents. If Ms. Bopha does not become an adoptive parent, Mr. Vibol alone cannot adopt a child.

*** What is the meaning of “spouse” ?**

The word “spouse” refers only to a **legally-married husband or wife**. Even though a man and a woman live together as if they were a married couple, they are not legally-married husband and wife if they have no legal relationship of marriage. Thus, the man and woman cannot adopt a child.

Example: Mr. Vibol and Ms. Bopha have lived together for a very long time as if they were a married couple, but they have not registered their marriage yet. Thus, they are not legally-married husband and wife (Article 955 of the Civil Code). For this reason, Mr. Vibol and Ms. Bopha cannot adopt a child.

The Civil Code does not have any conditions with regard to the period of marriage of adoptive parents. Thus, if a couple has been married in accordance with law, this couple can fulfill the requirement of “spouse” even though the period of this couple’s marriage is not long. However, in order to provide a family composed of a father and a mother with sufficient stability for a child, the couple’s marital relation should be firm and long-lasting. From this viewpoint, a court can take into deliberation the period of marriage of adoptive parents when the court determines whether or not the full adoption by these adoptive parents is surely beneficial for the child’s interests (Article 1012 of the Civil Code).

Example: One year ago, Mr. Vibol and Ms. Bopha got married to each other, and registered their marriage. Afterwards, they have filed a motion for full adoption to a court. Even though the period of their marriage is only one year, Mr. Vibol and Ms. Bopha can fulfill the requirement of “spouse” because their marriage is legal. However, the court should take into deliberation the period of their marriage in order to make it sure that their marital relation is firm and long-lasting. Then, if the court determines that the full adoption by them is surely beneficial for the child’s interests, the court can issue a ruling which admits the full adoption.

Moreover, even though spouses live apart from each other continuously for a long time, they can fulfill the requirement of “spouse” if they still hold marital status in accordance with law. However, as explained above, in order to provide a family composed of a father and a mother with sufficient stability for a child, the couple’s marital relation should be firm and long-lasting. For this reason, in case where spouses live apart from each other continuously for a long time, a court usually cannot admit full adoption by this couple (Article 1012 of the Civil Code).

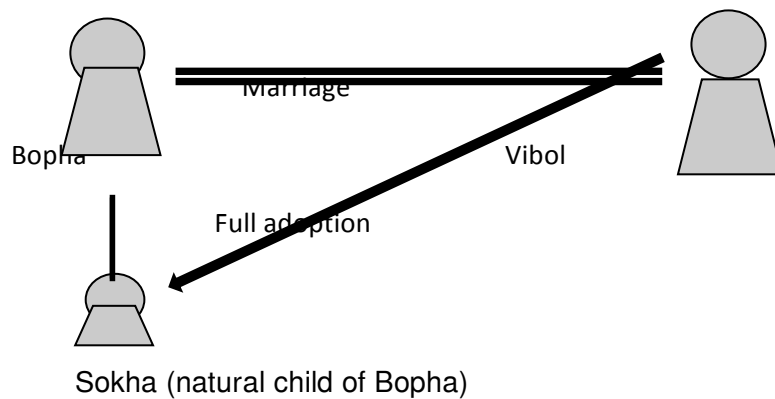
Example: Mr. Vibol and Ms. Bopha got married to each other, and registered their marriage. However, currently they have been living apart from each other continuously for one year. If Mr. Vibol and Ms. Bopha file a motion for full adoption to a court, they can fulfill the requirement of “spouse” even though they currently live apart from each other. That is because they still hold marital status in accordance with law. However, in this case, the court usually cannot issue a ruling which admits the full adoption. Article 978 of the Civil Code provides that if spouses have been living apart from each other continuously for one year or more, this can be a ground for divorce. Thus, the marital relation between Mr. Vibol and Ms. Bopha is unstable. For this reason, the court cannot

confirm that the full adoption by them is surely beneficial for the child's interests (Article 1012 of the Civil Code).

b) Exception for Principle of Joint Adoption by Married Couple

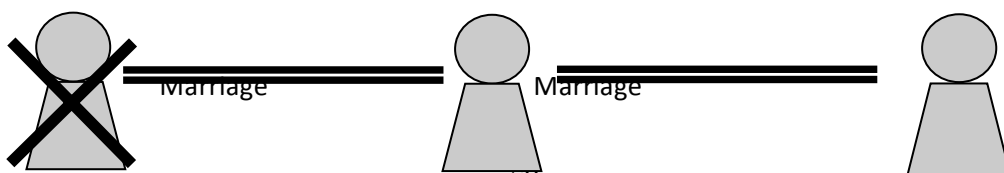
In cases where one spouse becomes an adoptive parent of a natural child of the other spouse, it is not necessary for a married couple to jointly adopt the child. This means that, in the above-mentioned cases, one spouse alone can become an adoptive parent of a natural child of the other spouse.

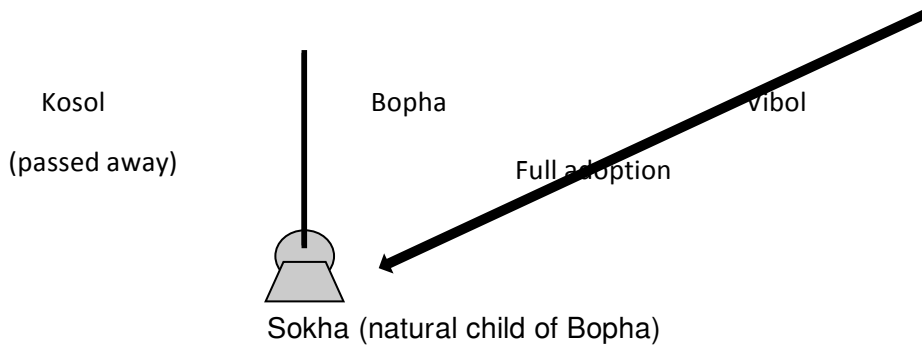
Example No.1: While Ms. Bopha was single, she gave birth to a child named Sokha. Afterwards, Ms. Bopha married Mr. Vibol. In this case, Mr. Vibol alone can adopt Sokha to become her adoptive father. Ms. Bopha does not have to adopt Sokha by joint adoption with Mr. Vibol.



Example No.2: Mr. Kosol and Ms. Bopha got married, and during their marriage, Ms. Bopha gave birth to a child named Sokha. Afterwards, Mr. Kosol who was Ms. Bopha's husband passed away. One year later, Ms. Bopha married Mr. Vibol.

In this case, Mr. Vibol alone can adopt Sokha to become her adoptive father. Ms. Bopha does not have to adopt Sokha by joint adoption with Mr. Vibol.



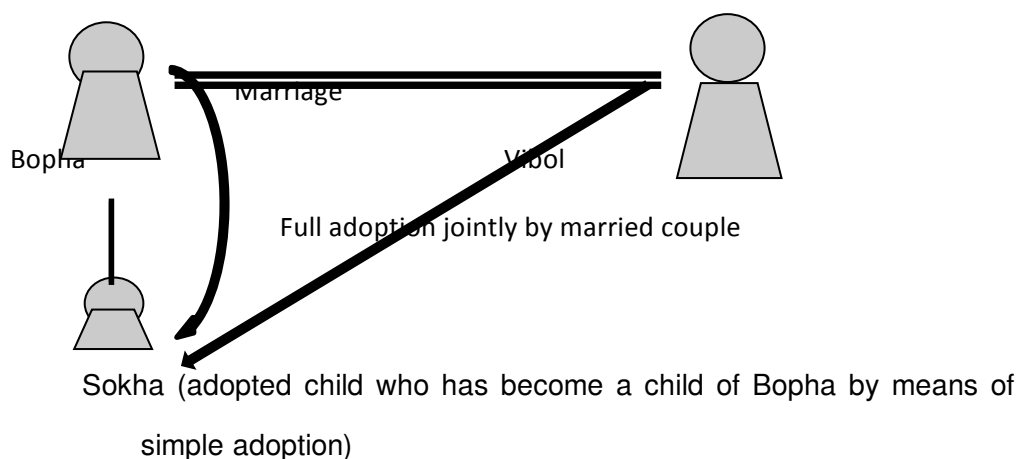


*** What is the meaning of “natural child of spouse”?**

The word “**natural child of spouse**” in the second sentence of Paragraph 2 of Article 1008 does not include the **adopted child** who has become a child of a spouse by means of **simple adoption**. Therefore, in case where one spouse becomes an adoptive parent for the adopted child who has become a child of the other spouse by means of simple adoption, both spouses must jointly file a motion for full adoption, and they have to become adoptive parents by means of full adoption.

Example: While Ms. Bopha was single, she took a child named Sokha as an adopted child. Sokha became a child of Ms. Bopha by means of simple adoption. Afterwards, Ms. Bopha married Mr. Vibol.

In this case, if Mr. Vibol wants to adopt Sokha by means of full adoption, both Mr. Vibol and Ms. Bopha must jointly file a motion for full adoption, and they have to become Sokha’s adoptive parents by means of full adoption.

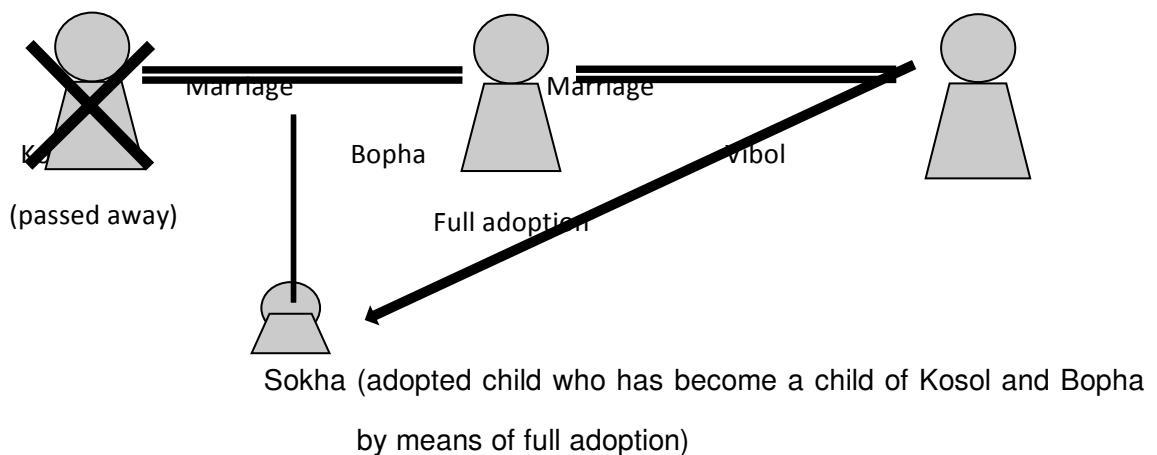


On the other hand, the above-mentioned word “**natural child of spouse**” can include the **adopted child** who has become a child of a spouse by means of **full adoption**. That is

because the adopted child acquires the same status as that of a natural child of the adoptive parents by virtue of creation of full adoption (Article 1015 of the Civil Code). Therefore, in case where one spouse becomes an adoptive parent for the adopted child who has become a child of the other spouse by means of full adoption, the joint adoption by married couple is not necessary. This means that one spouse alone can become an adoptive parent for the adopted child of the other spouse.

ឧទាហរណ៍ : Mr. Kosol and Ms. Bopha got married, and during their marriage, they took a child named Sokha as an adopted child. Sokha became a child of them by means of full adoption. Afterwards, Mr. Kosol who was Ms. Bopha’s husband passed away. One year later, Ms. Bopha married Mr. Vibol.

In this case, Mr. Vibol alone can adopt Sokha for the purpose of becoming an adoptive father of Sokha. Ms. Bopha does not have to make adoption together with Mr. Vibol.



2) Age of Adoptive Parents

Article 1009._ Age of Adoptive Parents

An adoptive parent shall be no less than 25 years of age, and at least 20 years older than the adopted child.

a) Minimum Age of Adoptive Parents

Article 1009 of the Civil Code provides that an adoptive parent must be no less than 25 years of age. Thus, the minimum age of adoptive parents is 25 years. This requires that adoptive parents have mental and physical maturity enough to provide actual and adequate care to a baby or young infant.

Each of adoptive parents must fulfill this minimum-age requirement.

Example: Mr. Vibol and Ms. Bopha are a married couple. Mr. Vibol is 30 years old, whereas Ms. Bopha is 24 years old. Currently, they cannot become adoptive parents by means of full adoption.

This minimum-age requirement is a requirement for **creation** of full adoption. Thus, **at the moment the court issues a ruling** which admits full adoption, the adoptive parents need to be no less than 25 years of age. This means that at the moment the adoptive parents file a motion to a court, they do not have to be no less than 25 years of age.

Example: Mr. Vibol and Ms. Bopha are a married couple. At the moment they filed a motion for full adoption to a court, Mr. Vibol was 30 years old, whereas Ms. Bopha was 24 years old. In this case, this filing of the motion is not against law even though Ms. Bopha was only 24 years old.

After they filed the motion, it took longer than one year for the court to proceed the procedure of full adoption, including trial period of care (Article 1013 of the Civil Code). In this case, at the moment the court makes a decision about the motion, Ms. Bopha has already attained 25 years of age. Therefore, the court can issue a ruling which admits the full adoption.

b) Minimum Difference of Age between Adoptive Parents and Adopted Child

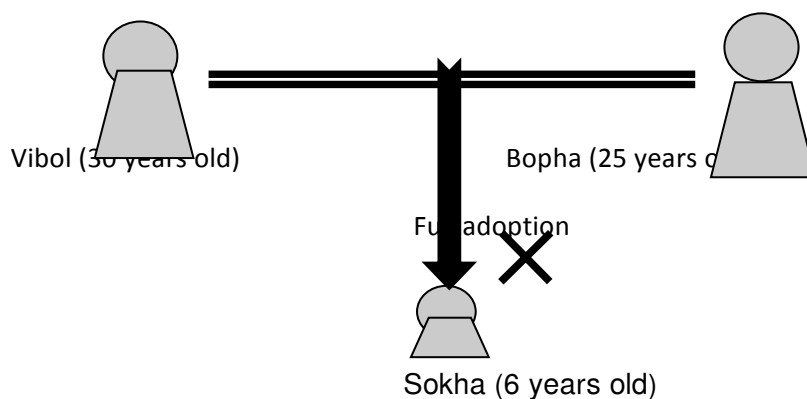
Article 1009 of the Civil Code provides that an adoptive parent must be at least 20 years older than the adopted child. Thus, the minimum difference of age between an adoptive parent and the adopted child is 20 years.

Each of adoptive parents must fulfill this requirement of minimum difference of age between an adoptive parent and the adopted child.

Example: Mr. Vibol and Ms. Bopha are a married couple. Mr. Vibol is 30 years old, whereas Ms. Bopha is 25 years old. They want to adopt a child

named Sokha and take care of her by means of full adoption. However, Sokha has already attained 6 years of age.

In this case, they cannot make this full adoption because the difference of age between Bopha and Sokha is only 19 years.



c) Maximum Age of Adoptive Parents

The Civil Code does not have any conditions about maximum age of adoptive parents. Thus, an elderly person could become an adoptive parent by means of full adoption.

However, if a married couple wants to adopt a child, but they are so old that they lack sufficient capacity to take care of the child until he/she reaches the age of majority, then the court cannot admit full adoption by this couple. That is because full adoption by such an elderly couple is not contributory to the child's interests (Article 1012 of the Civil Code).

d) Adoptive Parents' Capacity to Act

The Civil Code does not have any conditions about adoptive parents' capacity to act. Thus, a person who has a limited capacity to act, such as a person under general guardianship and a person under curatorship provided in Article 16 of the Civil Code, could become an adoptive parent by means of full adoption.

However, a person under general guardianship or a person under curatorship usually lacks sufficient capacity to take care of a child. Therefore, full adoption by a person under general guardianship or a person under curatorship is not contributory to the child's interests (Article 1012 of the Civil Code). In this case, the court cannot admit full adoption.

c. Conditions for the Adopted Child

1) Age of the Adopted Child

Article 1010. _ Age of the Adopted Child

In principle, the adopted child shall be less than 8 years of age.

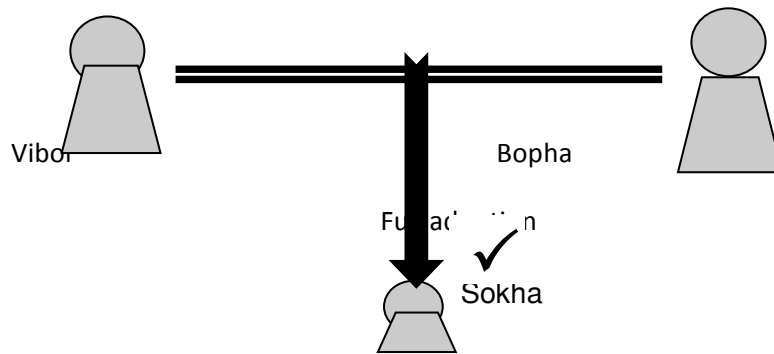
Article 1010 of the Civil Code provides that the adopted child must be less than 8 years of age. Full adoption is a system to provide parents to a young infant who needs care and support. Thus, in principle, the Civil Code limits to a child who is less than 8 years of age.

Example: A child named Sokha is 8 years old. Therefore, she cannot become an adopted child by means of full adoption.

However, if an adopted child is less than 8 years of age **at the moment when a motion for full adoption is filed** to a court, then the court can issue a ruling which admits the full adoption even though the adopted child has already attained 8 or more years of age **at the moment when the ruling is issued**. That is because, in order to create full adoption, there must be at least 6 months as the trial period of care (Article 1013 of the Civil Code). Thus, the Civil Code anticipates that there will be some cases where the court proceedings for full adoption need to take a very long time such as one year, two years, or longer. For this reason, we have to interpret that, if an adopted child is less than 8 years of age at the moment when a motion for full adoption is filed to a court, then this is sufficient to fulfill the requirement of age of the adopted child.

Example: Mr. Vibol and Ms. Bopha are a married couple. They wanted to adopt a child named Sokha and take care of her by means of full adoption. At the moment they filed a motion for full adoption to a court, Sokha was 7 years old. After filing the motion, the court proceedings for full adoption took longer than one year including the trial period of care (Article 1013 of the Civil Code).

In this case, at the moment when the court makes a decision on the motion, Sokha has already attained 8 years of age. However, the court can issue a ruling which admits the full adoption. That is because when the motion for full adoption was filed to the court, Sokha fulfilled the age requirement of the adopted child provided in Article 1010 of the Civil Code.



At the moment the motion for full adoption was filed to a court, Sokha was 7 years old. However, at the moment when the court issued the ruling, she has already attained 8 years of

2) Number of the Adopted Children

The Civil Code does not have any restriction to the number of the adopted children. Thus, adoptive parents can adopt one child or more, and take care of the child/children by means of full adoption. Moreover, a married couple who has one or more natural child/children of them can adopt another child/children and take care of the child/children by means of full adoption.

However, if a married couple has one child or more, no matter whether a natural or adopted child, who is/are subject to parental responsibility, the court should take the number of the couple's children into consideration when the court determines whether the couple has sufficient capacity to take care of another child or not. In case where the court understands that the couple does not have sufficient capacity to take care of another child, the court cannot admit full adoption. That is because the full adoption by the married couple is not contributory to the child's interests (Article 1012 of the Civil Code).

d. Consent to Adoption

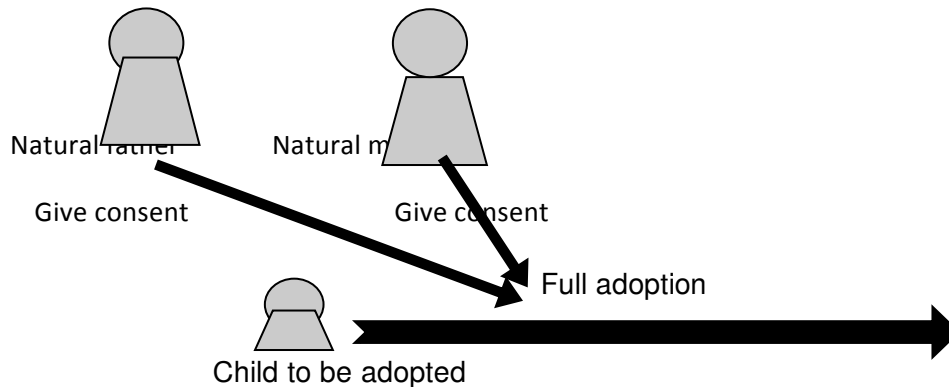
Article 1011. _ Consent of Parents

In order to create full adoption, the consent of the natural parents or guardian of the child who will be adopted shall be required. However, this shall not apply to cases where the parents are incapable of declaring their intention or where the parents have abused the child, abandoned the child in bad faith, or there is any other cause that is extremely detrimental to the interests of the child who will be adopted.

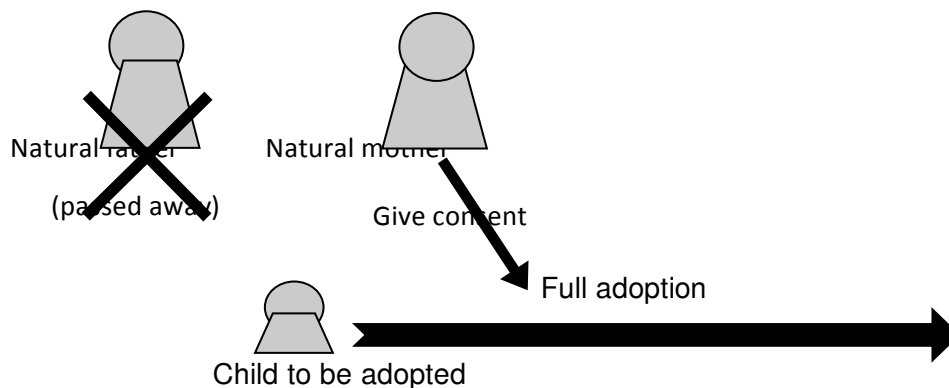
Article 1011 of the Civil Code provides that in order to create full adoption, in principle, the consent of the natural parents of the child to be adopted must be given. Full adoption terminates the relation with the natural parents, and aims to have the adopted child completely enter the family of the adoptive parents. Thus, in principle, it is necessary to obtain the consent from the natural parents who have deep relation and strong interests with the child to be adopted.

1) Consent from Natural Parents

In cases where the natural father and mother of the child to be adopted are alive, in principle, the consent should be given by both the natural father and the natural mother.



In cases where either the natural father or mother of the child to be adopted is dead, in principle, it is sufficient to obtain consent from only the remaining natural mother or father who is still alive.



a) Who is the “natural mother” ?

The word “natural mother” refers to the woman who gives birth to a child (Article 987 of the Civil Code). This means that the woman who gives birth to a child is the natural mother of the child.

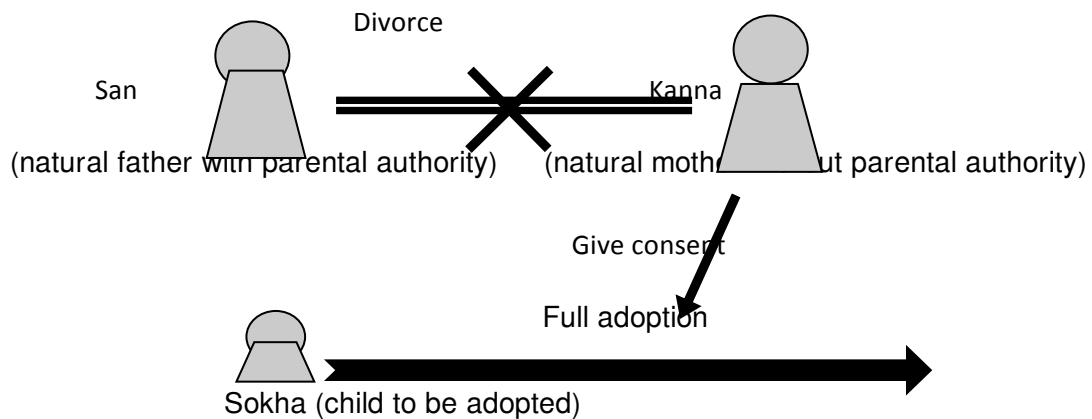
Even though the natural mother **does not have parental authority**, in principle, it is still necessary to obtain consent from the natural mother. However, if a court orders **the suspension or divestment of parental authority** of the natural mother (Article 1048 of the Civil Code), it is not necessary to obtain consent from the natural mother in accordance with the second sentence of Article 1011.

Example No.1: Mr. San and Ms. Kanna were a married couple having a child named Sokha. However, they were divorced, and agreed that Mr. San should become the parental authority holder of Sokha

(Article 1037 of the Civil Code). Afterwards, Mr. San and Sokha have been living together, but Mr. San has repeatedly abused Sokha. Ms. Kanna does not have sufficient capacity to take care of Sokha.

In this case, in order to adopt the child Sokha by means of full adoption, it is necessary to obtain consent from Ms. Kanna who is the natural mother of Sokha even though Ms. Kanna does not have parental authority. On the contrary, it is not necessary to obtain consent from Mr. San who is the natural father of Sokha in accordance with the second sentence of Article 1011.

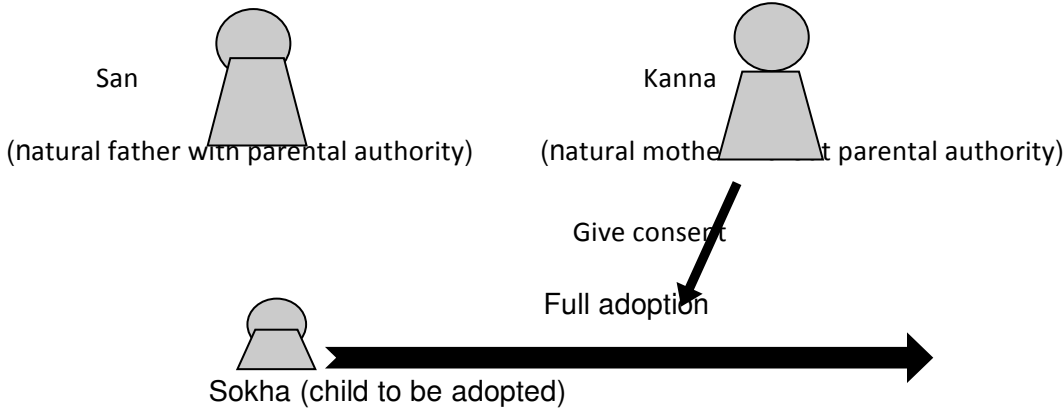
Moreover, if Ms. Kanna has sufficient capacity to take care of Sokha, and also has intention to do so, then the court cannot admit the full adoption (Article 1012 of the Civil Code). In this case, the court can change the parental authority holder from Mr. San to Ms. Kanna upon petition by Ms. Kanna (Article 1039 of the Civil Code).



Example No.2: While Ms. Kanna was single, she gave birth to a child named Sokha. Mr. San recognized the child Sokha, and they agreed that Mr. San should become the parental authority holder of Sokha (Article 1038 of the Civil Code). Afterwards, Mr. San and Sokha have been living together, but Mr. San has repeatedly abused Sokha. Ms. Kanna does not have sufficient capacity to take care of Sokha.

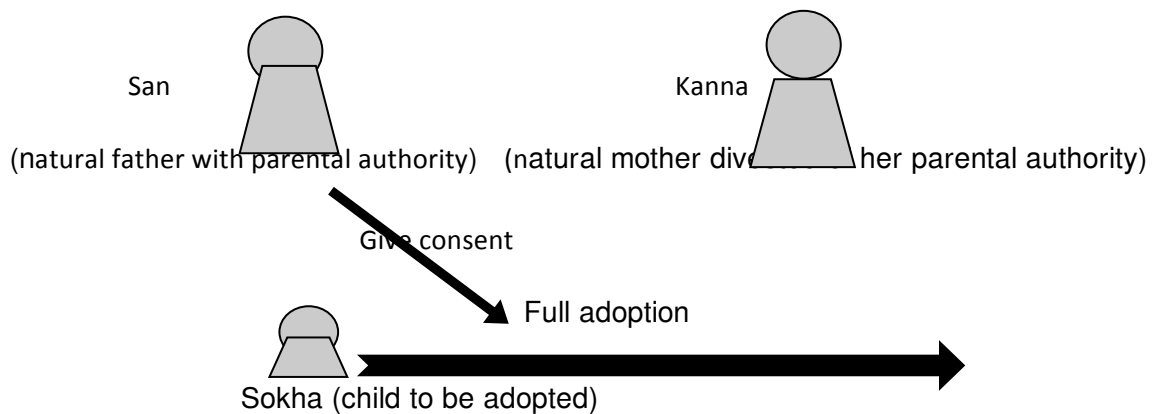
In this case, in order to adopt the child Sokha by means of full adoption, it is necessary to obtain consent from Ms. Kanna who is the natural mother of Sokha even though Ms. Kanna does not have parental authority. On the contrary, it is not necessary to obtain consent from Mr. San who is the natural father of Sokha in accordance with the second sentence of Article 1011.

Moreover, if Ms. Kanna has sufficient capacity to take care of Sokha, and also has intention to do so, then the court cannot admit the full adoption (Article 1012 of the Civil Code). In this case, the court can change the parental authority holder from Mr. San to Ms. Kanna upon petition by Ms. Kanna (Article 1039 of the Civil Code).



Example No.3: While Ms. Kanna was single, she gave birth to a child named Sokha. Mr. San recognized the child Sokha, and they agreed that Ms. Kanna should keep on being the parental authority holder of Sokha (Article 1038 of the Civil Code). Afterwards, however, Ms. Kanna repeatedly abused Sokha. For this reason, the court ordered divestment of the parental authority of Ms. Kanna upon petition by Mr. San (Article 1048 of the Civil Code). Moreover, the court designated Mr. San as the parental authority holder of Sokha (Article 1051 of the Civil Code). However, Mr. San does not have sufficient capacity to take care of Sokha.

In this case, in order to adopt the child Sokha by means of full adoption, it is necessary to obtain consent from Mr. San who is the natural father of Sokha. On the contrary, it is not necessary to obtain consent from Ms. Kanna who is the natural mother of Sokha in accordance with the second sentence of Article 1011.



b) Who is the “natural father” ?

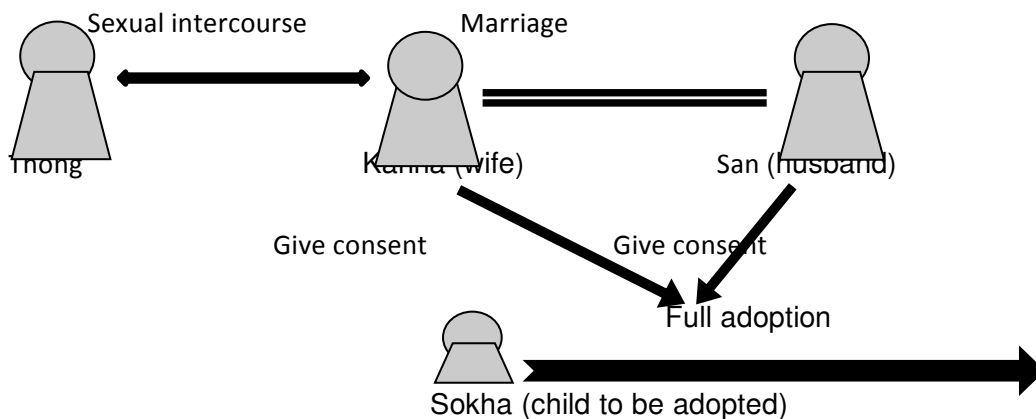
The word “natural father” refers to:

- (1) in cases where a married woman (wife) has conceived a child during the marriage, her husband shall be presumed to be the natural father of the child (Article 988 of the Civil Code); and,
- (2) in cases where an unmarried woman has conceived a child, a man who recognizes the child shall become the natural father of the child (Article 993 of the Civil Code).

Example No.1: Mr. San and Ms. Kanna got married, and registered their marriage. During the marriage, Ms. Kanna had sexual intercourse with Mr. Thong. Due to the sexual intercourse with Mr. Thong, Ms. Kanna conceived a child. She gave birth to the child, and Mr. San and Ms. Kanna named the child Sokha. Currently, the child Sokha is one year old. Mr. San and Ms. Kanna as a married couple live together with Sokha, but they have great difficulty in taking care of Sokha.

In this case, the natural father of Sokha is Mr. San. That is because Ms. Kanna conceived a child during the marriage with Mr.

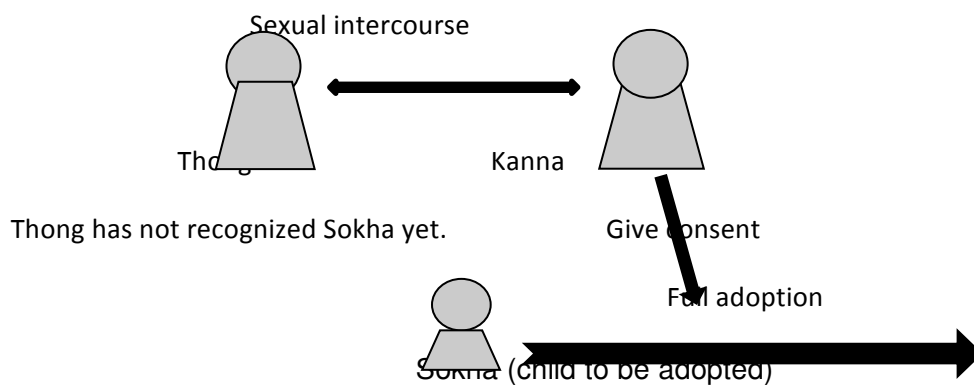
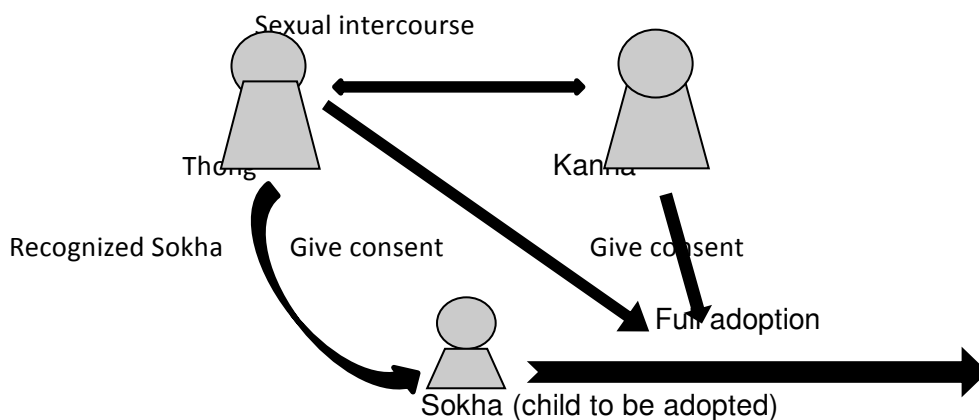
San (Article 988 of the Civil Code). Mr. San cannot file a lawsuit of denial of the paternity because the period of 6 months has already passed since he became aware of the birth of Sokha (Article 990 of the Civil Code). Thus, Mr. San shall be the natural father of Sokha, and Mr. Thong is not her natural father. Therefore, in order to adopt the child Sokha by means of full adoption, it is necessary to obtain consent from both Mr. San who is the natural father of Sokha and Ms. Kanna who is the natural mother of Sokha. It is not necessary to obtain consent from Mr. Thong.



Example No.2: While Ms. Kanna was single, Ms. Kanna had sexual intercourse with Mr. Thong, and then gave birth to a child named Sokha. Mr. Thong has recognized the child Sokha, thus he shall become the natural father of Sokha (Article 993 of the Civil Code). Therefore, in order to adopt the child Sokha by means of full adoption, it is necessary to obtain consent from both Mr. Thong who is the natural father of Sokha and Ms. Kanna who is the natural mother of Sokha.

On the contrary, in case where Mr. Thong has not recognized the child Sokha yet, this means that Mr. Thong is not the natural father of Sokha. Therefore, in order to adopt the child Sokha by means of full adoption, it is necessary and sufficient to obtain

consent from Ms. Kanna who is the natural mother of Sokha. It is not necessary to obtain consent from Mr. Thong.

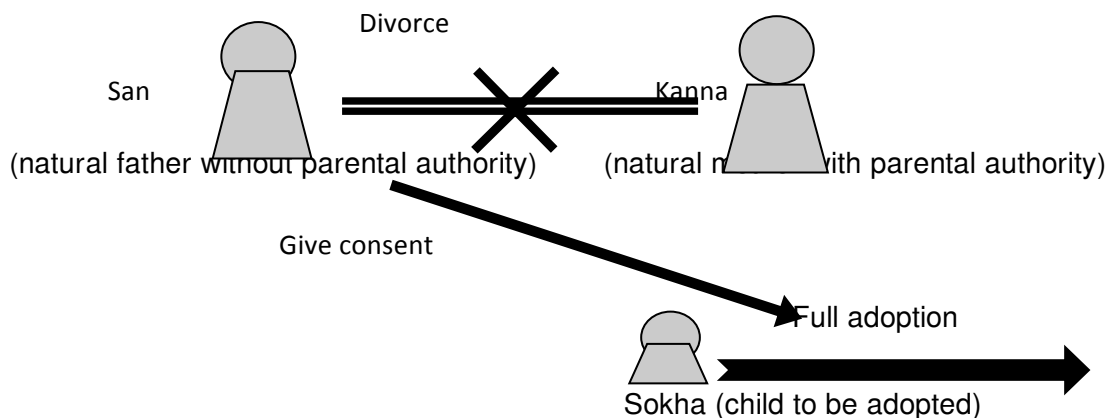


Even though the natural father **does not have parental authority**, in principle, it is still necessary to obtain consent from the natural father. However, if a court orders **the suspension or divestment of parental authority** of the natural father (Article 1048 of the Civil Code), it is not necessary to obtain consent from the natural father in accordance with the second sentence of Article 1011.

Example No.1: Mr. San and Ms. Kanna were a married couple having a child named Sokha. However, they were divorced, and agreed that Ms. Kanna should become the parental authority holder of Sokha (Article 1037 of the Civil Code). Afterwards, Ms. Kanna and Sokha have been living together, but Ms. Kanna has repeatedly abused Sokha. Mr. San does not have sufficient capacity to take care of Sokha.

In this case, in order to adopt the child Sokha by means of full adoption, it is necessary to obtain consent from Mr. San who is the natural father of Sokha even though Mr. San does not have parental authority. On the contrary, it is not necessary to obtain consent from Ms. Kanna who is the natural mother of Sokha in accordance with the second sentence of Article 1011.

Moreover, if Mr. San has sufficient capacity to take care of Sokha, and also has intention to do so, then the court cannot admit the full adoption (Article 1012 of the Civil Code). In this case, the court can change the parental authority holder from Ms. Kanna to Mr. San upon petition by Mr. San (Article 1039 of the Civil Code).

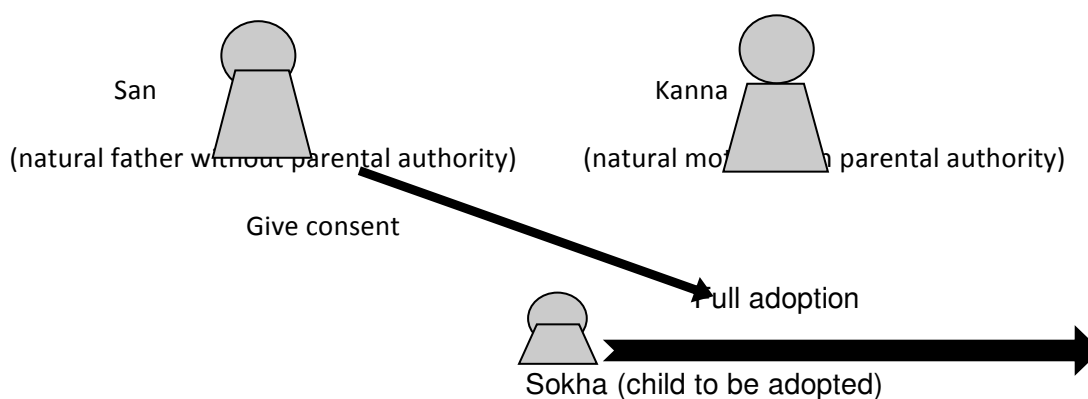


Example No.2: While Ms. Kanna was single, she gave birth to a child named Sokha. Mr. San recognized the child Sokha, and they agreed that Ms. Kanna should keep on being the parental authority holder of Sokha (Article 1038 of the Civil Code). Afterwards, however, Ms. Kanna has repeatedly abused Sokha. Mr. San does not have sufficient capacity to take care of Sokha.

In this case, in order to adopt the child Sokha by means of full adoption, it is necessary to obtain consent from Mr. San who is the natural father of Sokha even though Mr. San does not have parental authority. On the contrary, it is not necessary to obtain consent from

Ms. Kanna who is the natural mother of Sokha in accordance with the second sentence of Article 1011.

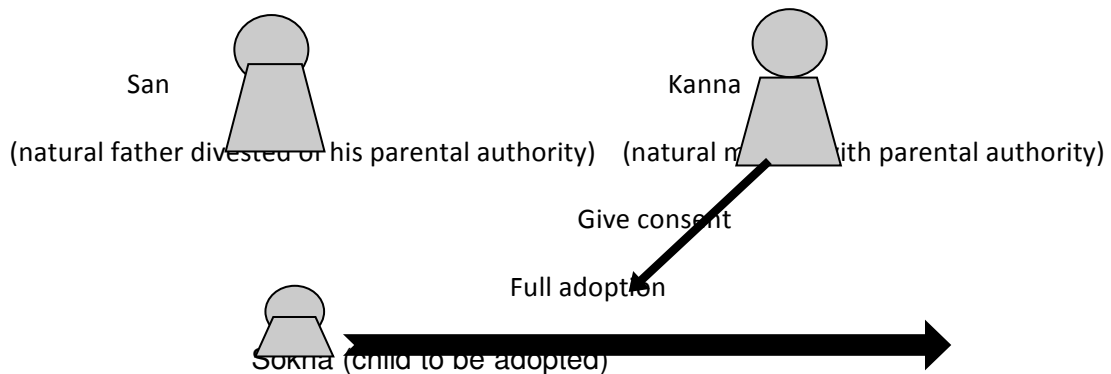
Moreover, if Mr. San has sufficient capacity to take care of Sokha, and also has intention to do so, then the court cannot admit the full adoption (Article 1012 of the Civil Code). In this case, the court can change the parental authority holder from Ms. Kanna to Mr. San upon petition by Mr. San (Article 1039 of the Civil Code).



Example No.3: While Ms. Kanna was single, she gave birth to a child named Sokha. Mr. San recognized the child Sokha, and they agreed that Mr. San should become the parental authority holder of Sokha (Article 1038 of the Civil Code). Afterwards, Mr. San and Sokha have been living together, but Mr. San repeatedly abused Sokha. For this reason, the court ordered divestment of the parental authority of Mr. San upon petition by Ms. Kanna (Article 1048 of the Civil Code). Moreover, the court designated Ms. Kanna as the parental authority holder of Sokha (Article 1051 of the Civil Code). However, Ms. Kanna does not have sufficient capacity to take care of Sokha.

In this case, in order to adopt the child Sokha by means of full adoption, it is necessary to obtain consent from Ms. Kanna who is the natural mother of Sokha. On the contrary, it is not necessary

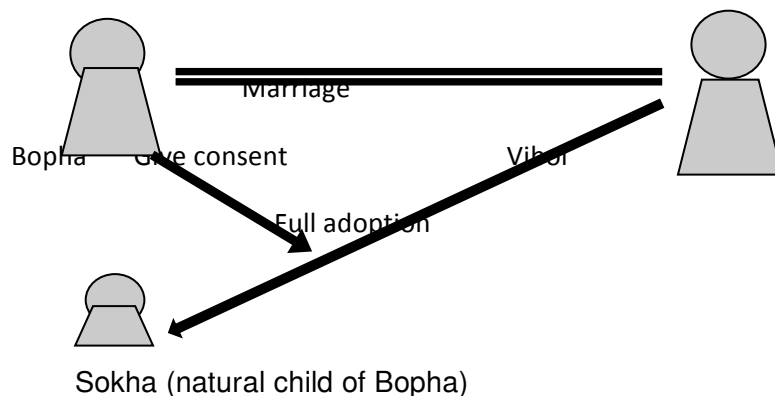
to obtain consent from Mr. San who is the natural father of Sokha in accordance with the second sentence of Article 1011.



c) Consent in Exceptional Cases to Principle of Joint Adoption by Married Couple

In cases where one spouse becomes an adoptive parent of a natural child of the other spouse, it is not necessary for a married couple to jointly adopt the child (Sentence 2, Paragraph 2, Article 1008 of the Civil Code). This means that, in the above-mentioned cases, one spouse alone can become an adoptive parent of a natural child of the other spouse by means of full adoption, and in principle, it is necessary and sufficient to obtain consent from the other spouse alone.

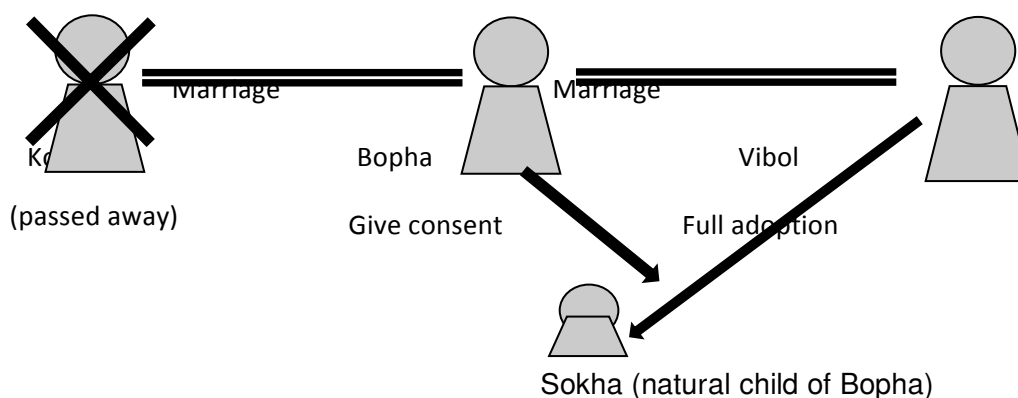
Example No.1: While Ms. Bopha was single, she gave birth to a child named Sokha. Afterwards, Ms. Bopha married Mr. Vibol. In this case, Mr. Vibol alone can adopt Sokha to become her adoptive father. However, **Mr. Vibol has to obtain consent from Ms. Bopha** with regard to the full adoption.



Example No.2: Mr. Kosol and Ms. Bopha got married, and during their marriage, Ms. Bopha gave birth to a child named Sokha.

Afterwards, Mr. Kosol who was Ms. Bopha's husband passed away. One year later, Ms. Bopha married Mr. Vibol.

In this case, Mr. Vibol alone can adopt Sokha to become her adoptive father. However, **Mr. Vibol has to obtain consent from Ms. Bopha** with regard to the full adoption.



2) Cases where Consent of Natural Parents is Unnecessary

As explained above, in order to create full adoption, in principle, the consent of the natural parents of the child to be adopted must be given. However, there are some cases where it is difficult to obtain the consent from natural parents. In addition, there are other cases where the natural parents have refused to give consent, and this refusal is detrimental to the interests of the child to be adopted, or harmful to the health, safety or morality of the child.

In these above-mentioned cases, it is not necessary to obtain the consent of the natural parents in accordance with **the second sentence of Article 1011** for the purpose of protecting the interests of the child to be adopted.

a) Cases where parents are incapable of declaring their intention

The second sentence of Article 1011 provides that in cases where the natural parents are incapable of declaring their intention, it is not necessary to obtain the consent from the natural parents. The words "cases where the parents are incapable of declaring their intention" can include the cases where the locations of the natural parents are not certain.

b) Cases where the parents have abused the child, abandoned the child in bad faith, or there is any other cause that is extremely detrimental to the interests of the child who will be adopted

The second sentence of Article 1011 also provides that it is not necessary to obtain the consent from the natural parents in the following cases:

- (1) the natural parents **have abused the child**;

(2) the natural parents **have abandoned the child in bad faith**; or,

(3) there is other cause that is extremely detrimental to the interests of the child who will be adopted.

The words “**to abandon the child in bad faith**” mean that the natural parents will not take care of their child without good reason.

The words “**other cause that is extremely detrimental to the interests of the child who will be adopted**” mean various cases in which the natural parents have refused to give consent, and this refusal is extremely detrimental to the interests of the child to be adopted, or very harmful to the health, safety or morality of the child. **For example**, the child’s physical and mental health is on the verge of crisis, but the natural parents do not pay attention to it. In this case, if the natural parents have refused to give consent, this can be the cause that is extremely detrimental to the interests of the child to be adopted.

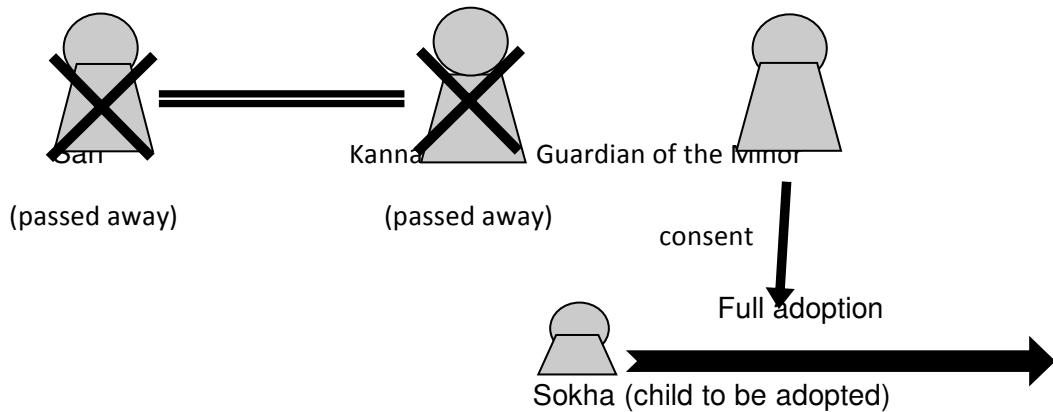
3) Consent from Guardian of the Minor

As explained above, in order to create full adoption, in principle, the consent of the natural parents of the child to be adopted must be given. However, there are some cases where both of the natural parents passed away because of disease or accident. In addition, there are other cases where the natural parents who have parental authority have been suspended or divested of their parental authority (Article 1048 of the Civil Code). In these cases, there is no one who exercises the parental authority. Therefore, **a guardian of a minor** must be designated in order to protect the minor (Article 1067 of the Civil Code).

In cases where a guardian of a minor has been designated for the minor who will be adopted, it is necessary to obtain consent from the guardian of the minor in order to create full adoption (**Article 1011** of the Civil Code).

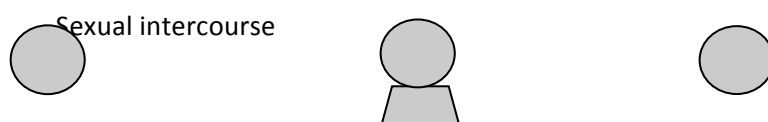
Example No.1: Mr. San and Ms. Kanna were a married couple having a child named Sokha. However, both Mr. San and Ms. Kanna passed away because of traffic accident. Afterwards, the court designated a guardian of the minor Sokha (Paragraph 2 of Article 1068 of the Civil Code).

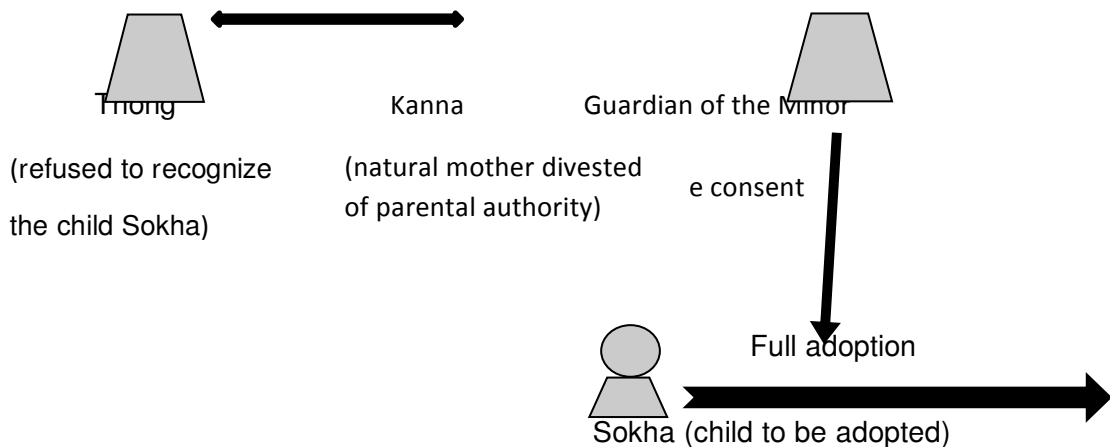
In this case, in order to adopt the child Sokha by means of full adoption, it is necessary to obtain consent from the guardian of the minor Sokha.



Example No.2: While Ms. Kanna was single, Ms. Kanna had sexual intercourse with Mr. Thong, and then gave birth to a child named Sokha. However, Ms. Sokha abandoned the child Sokha because Mr. Thong refused to recognize the child Sokha. For this reason, the court ordered the divestment of parental authority of Ms. Kanna (Article 1048 of the Civil Code). Moreover, the court designated a guardian of the minor Sokha (Paragraph 2 of Article 1052 of the Civil Code).

In this case, in order to adopt the child Sokha by means of full adoption, it is necessary to obtain consent from the guardian of the minor Sokha. On the contrary, it is not necessary to obtain consent from Mr. Thong because he is not the natural father of Sokha. Furthermore, it is not necessary to obtain consent from Ms. Kanna who is the natural mother of Sokha in accordance with the second sentence of Article 1011 of the Civil Code.





* Cases where Guardian of Minor Refuses to Give Consent

If a guardian of a minor has been designated, it is necessary to obtain consent from the guardian of the minor in order to create full adoption. However, there are some cases where it is difficult to obtain the consent from the guardian of the minor. In addition, there are other cases where the guardian of the minor has refused to give consent, and this refusal is detrimental to the interests of the minor to be adopted, or harmful to the health, safety or morality of the minor.

Even though there are such cases as mentioned above, **the second sentence of Article 1011** cannot apply to those cases. That is because the second sentence of Article 1011 shall apply to only "parents."

Therefore, if the guardian of the minor is incapable of declaring his/her intention, or if the guardian of the minor has refused to give consent without good reason, then the court can dismiss the guardian of the minor (**Article 1073** of the Civil Code). Then, the court must designate a new guardian of the minor (**Paragraph 2 of Article 1068** of the Civil Code). In this way, the consent can be obtained from the guardian of the minor.

* Cases where Natural Parents have Withdrawn their Consent

In cases where the natural parents have withdrawn their consent, in principle, the court cannot admit full adoption.

However, if the withdrawal of consent is detrimental to the interests of the child to be adopted, or harmful to the health, safety or morality of the child, then **the second sentence of Article 1011** can apply to the withdrawal. Thus, the court can admit full adoption even if there is no consent from the natural parents.

* Cases where Guardian of Minor has Withdrawn Consent

In cases where the guardian of the minor has withdrawn his/her consent, in principle, the court cannot admit full adoption.

Moreover, even though the withdrawal of consent is detrimental to the interests of the minor to be adopted, or harmful to the health, safety or morality of the minor, the second

sentence of Article 1011 cannot apply to the withdrawal. That is because the second sentence of Article 1011 shall apply to only “parents.”

However, if the guardian of the minor has withdrawn his/her consent without good reason, the court can dismiss the guardian of the minor (**Article 1073** of the Civil Code). Then, the court must designate a new guardian of the minor (**Paragraph 2 of Article 1068** of the Civil Code). In this way, the consent can be obtained from the guardian of the minor, and then the court can admit full adoption.

e. Criteria for Determination of Creation of Full Adoption

Article 1012. _ Criteria for determination of creation of full adoption

Full adoption shall be created only if it is extremely difficult or inappropriate for the natural parents to care for the child to be adopted or there are any other special circumstances, and it is found that the full adoption is specifically necessary for the interests of the child.

Article 1012 of the Civil Code provides the substantive criteria for the court to decide creation of full adoption. In order to create full adoption, it must satisfy all of the following two requirements provided in Article 1012:

(1) the court must find that:

(A) it is extremely difficult for the natural parents to care for the child to be adopted; or,

(B) it is inappropriate for the natural parents to care for the child to be adopted; or,

(C) there are any other special circumstances; and,

(2) the court must find that the full adoption is specifically necessary for the interests of the child.

Only if all of the two requirements as mentioned above are satisfied, the court can decide the creation of the full adoption.

1) What is the meaning of the phrase “it is extremely difficult for the natural parents to care for the child to be adopted” ?

The phrase “**it is extremely difficult for the natural parents to care for the child to be adopted**” as provided in Article 1012 is, for example, a case in which the natural parents are missing, or have physical or mental disorders such that it is difficult for the natural parents to care for the child.

2) What is the meaning of the phrase “it is inappropriate for the natural parents to care for the child to be adopted” ?

The phrase **“it is inappropriate for the natural parents to care for the child to be adopted”** as provided in Article 1012 is, for example, a case in which it is inappropriate for the natural parents to care for the child because the natural parents have abused or abandoned the child. Moreover, if the natural parents as parental authority holders abuse their rights or neglect their obligations, the court can find that it is inappropriate for the natural parents to care for the child.

*** Both of the natural parents must have the extreme difficulty in caring for the child to be adopted, or the unfitness to care for the child.**

Article 1012 provides that full adoption shall be created if it is extremely difficult or inappropriate for the natural parents to care for the child to be adopted. The words **“natural parents”** refer to both of the natural parents.

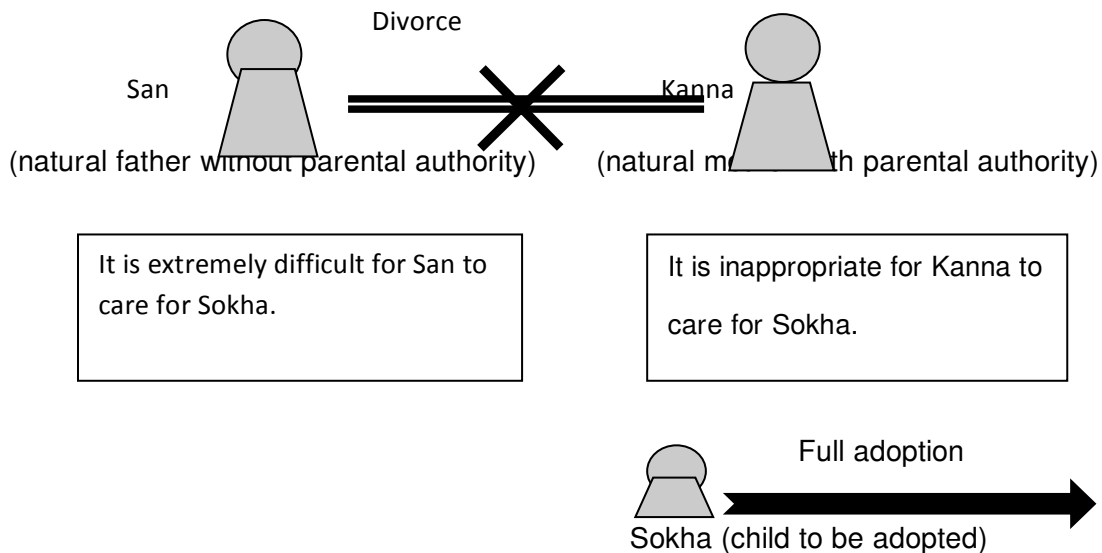
Therefore, in order to satisfy this requirement, both of the natural parents must have the extreme difficulty in caring for the child to be adopted, or the unfitness to care for the child. For this reason, in cases where one natural parent alone does not have parental authority, it is necessary that the other natural parent who has parental authority has the extreme difficulty in caring for the child or the unfitness to do so, and in addition, it is still necessary that the natural parent who does not have parental authority also has the extreme difficulty in caring for the child or the unfitness to do so.

Example No.1: Mr. San and Ms. Kanna were a married couple having a child named Sokha. However, they were divorced, and agreed that Ms. Kanna should become the parental authority holder of Sokha (Article 1037 of the Civil Code). Afterwards, Ms. Kanna and Sokha have been living together, but Ms. Kanna has repeatedly abused Sokha. Mr. San does not have sufficient capacity to take care of Sokha.

In this case, it is inappropriate for Ms. Kanna to care for Sokha even though she is the natural mother who has parental authority. In addition, it is extremely difficult for Mr. San who is the natural father without parental authority to care for Sokha, too. Therefore, the court can decide the creation of full adoption in order to adopt the child Sokha.

On the contrary, if Mr. San has sufficient capacity to take care of Sokha, and also has intention to do so, then the court cannot admit the full adoption. That is because Mr. San who is Sokha’s natural

father does not have any extreme difficulty in caring for Sokha or any unfitness to do so. In this case, the court can change the parental authority holder from Ms. Kanna to Mr. San upon petition by Mr. San (**Article 1039** of the Civil Code).

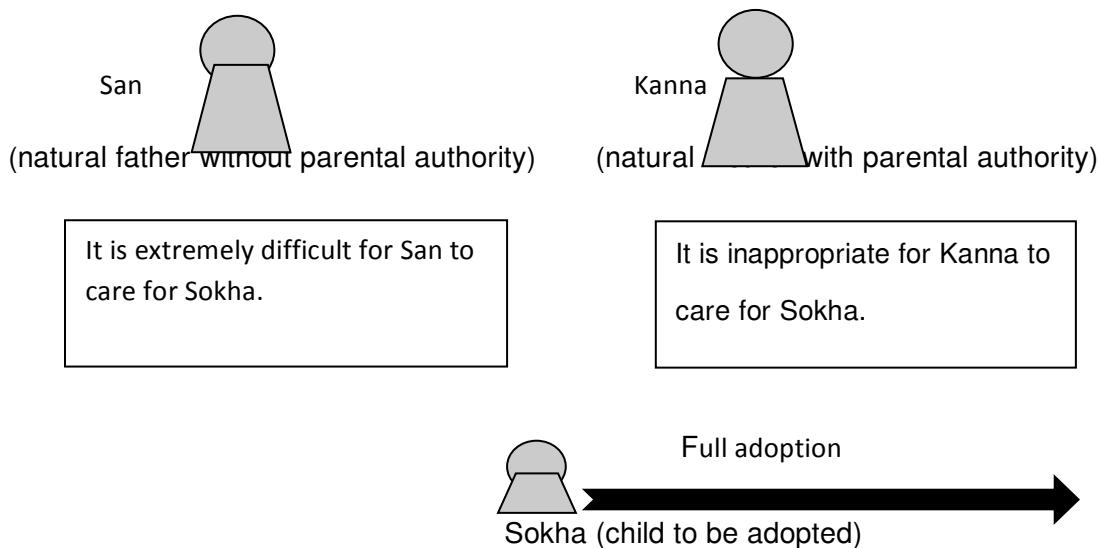


Example No.2: While Ms. Kanna was single, she gave birth to a child named Sokha. Mr. San recognized the child Sokha, and they agreed that Ms. Kanna should keep on being the parental authority holder of Sokha (Article 1038 of the Civil Code). Afterwards, however, Ms. Kanna has repeatedly abused Sokha. Mr. San does not have sufficient capacity to take care of Sokha.

In this case, it is inappropriate for Ms. Kanna to care for Sokha even though she is the natural mother who has parental authority. In addition, it is extremely difficult for Mr. San who is the natural father without parental authority to care for Sokha, too. Therefore, the court can decide the creation of full adoption in order to adopt the child Sokha.

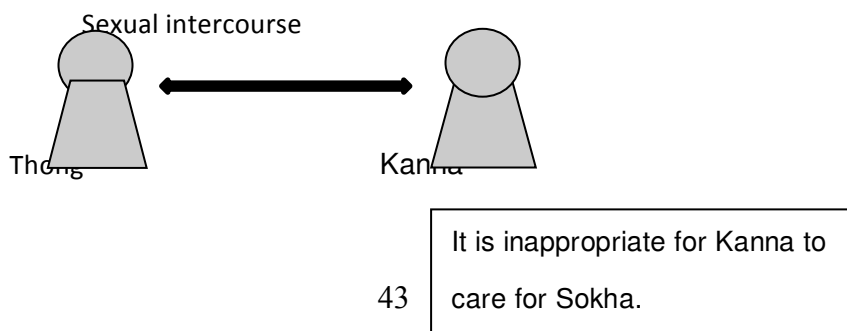
On the contrary, if Mr. San has sufficient capacity to take care of Sokha, and also has intention to do so, then the court cannot admit the full adoption. That is because Mr. San who is Sokha's natural father does not have any extreme difficulty in caring for Sokha or any

unfitness to do so. In this case, the court can change the parental authority holder from Ms. Kanna to Mr. San upon petition by Mr. San (**Article 1039** of the Civil Code).

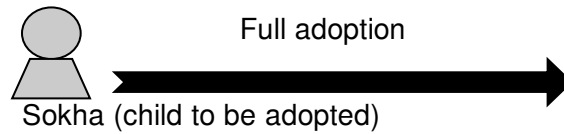


Example No.3: While Ms. Kanna was single, Ms. Kanna had sexual intercourse with Mr. Thong, and then gave birth to a child named Sokha. Mr. Thong has not recognized the child Sokha yet. Ms. Kanna who is Sokha's natural mother with parental authority has been living together with Sokha, but Ms. Kanna has repeatedly abused Sokha.

In this case, it is inappropriate for Ms. Kanna to care for Sokha even though she is the natural mother who has parental authority. In addition, Mr. Thong is not the natural father of Sokha because he has not recognized the child Sokha yet. Thus, the court does not have to deliberate whether or not it is extremely difficult or inappropriate for Mr. Thong to care for Sokha. For these reasons, the court can decide the creation of full adoption in order to adopt the child Sokha.



Thong has not recognized Sokha yet.

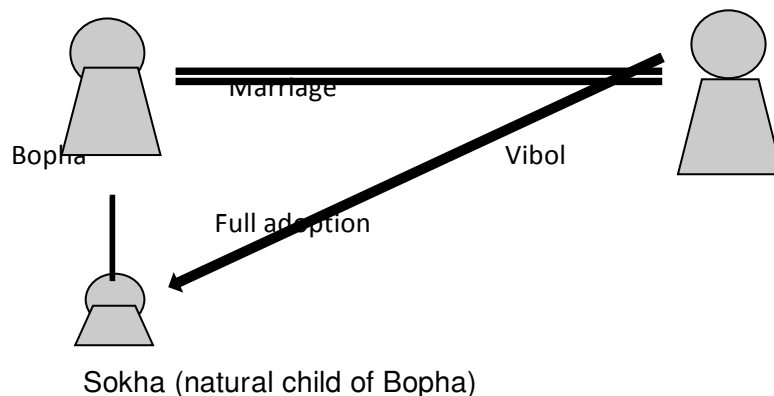


3) What is the meaning of the phrase “there are any other special circumstances” ?

The phrase “**there are any other special circumstances**” as provided in Article 1012 is a case in which the court finds that the creation of full adoption would be beneficial to the interests of the child, other than cases where it is extremely difficult or inappropriate for the natural parents to care for the child to be adopted.

Example: While Ms. Bopha was single, she gave birth to a child named Sokha. There is no man who has recognized the child Sokha, thus she has no natural father. Ms. Bopha as Sokha’s natural mother with parental authority lived together with Sokha, and took care of Sokha properly. Afterwards, Ms. Bopha married Mr. Vibol.

In this case, Mr. Vibol alone can adopt Sokha to become her adoptive father by means of full adoption (**Sentence 2, Paragraph 2 of Article 1008** of the Civil Code). Moreover, even though Ms. Bopha does not have any extreme difficulty in caring for Sokha or any unfitness to do so, the court still can find that **there are any other special circumstances** as provided in Article 1012. That is because if Mr. Vibol who is the husband of Ms. Bopha would become Sokha’s adoptive father, and Mr. Vibol and Ms. Bopha would be able to jointly take care of Sokha as her joint parental authority holders, then it would be beneficial to the interests of the child Sokha. Therefore, the court can decide that Mr. Vibol should become Sokha’s adoptive father by means of full adoption.



4) What is the meaning of the phrase “the full adoption is specifically necessary for the interests of the child” ?

The phrase “**the full adoption is specifically necessary for the interests of the child**” as provided in Article 1012 is a case in which the court finds that for the benefit of the child,

it is necessary to terminate family relationship with the natural parents and to create full adoption by the adoptive parents.

In order to fulfill this requirement, the court needs to surely believe that the full adoption would guarantee the interests of the child by specifically emphasizing that the full adoption would provide the child with a family having stability and harmony of life. That is because the full adoption must certainly meet the happiness and best interest of the child.

Therefore, in order to guarantee the best interest of the child, the court has to consider a variety of information as follows (**Article 28 of the Prakas on Procedures to Implement the Policy on Alternative Care for Children**):

- Personal history of the adoptive parents;
- Emotional stability and good relationship between the adoptive parents;
- The adoptive parents have a suitable housing and safe neighborhood to provide the child with access to adequate education and health care;
- The adoptive parents have ability to provide material and emotional support for the child;
- The adoptive parents have genuine desire to raise the adopted child the same as their natural child; and,
- Feelings of other children (if any) who live in the same family.

In addition to the information as listed above, the court also has to consider the circumstances of the adoptive parents during the **trial period of care** provided in **Article 1013** of the Civil Code so as to guarantee the best interest of the child.

f. Trial Period of Care

Article 1013. _ Trial period of care

In order to create full adoption, the court shall take into consideration the circumstances of the persons to be adoptive parents providing care and custody of the child to be adopted for a period of, in principle, no less than 6 months.

Article 1013 of the Civil Code provides a certain period of trial care so as to practically deliberate the following points:

- (1) Do the adoptive parents have sufficient capacity to take care of the child?;
- (2) Can the adoptive parents establish good relationship with the child?; and,
- (3) Will the adoptive parents and the adopted child get along well together?

The court must take into consideration the circumstances of the adoptive parents' care and custody of the adopted child, and then determine whether or not the full adoption would meet the interests of the child.

In order to create full adoption, there must be a period of no less than 6 months for trial care. Therefore, the court cannot decide the creation of full adoption without the trial care for at least 6 months.

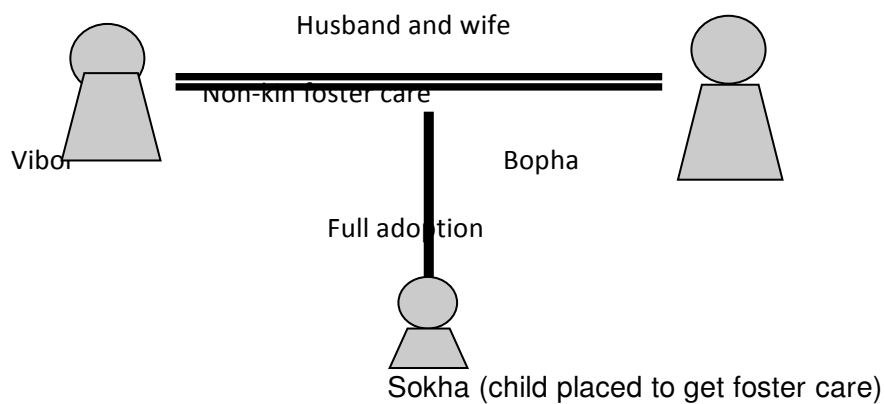
*** Period of Trial Care**

In principle, the period of trial care must be **at least 6 months** after the adoptive parents filed a motion for full adoption to a court. The court can, if necessary and appropriate, set a definite period of trial care longer than 6 months in order to evaluate whether or not the full adoption would meet the interests of the child.

However, if there has already been a record showing the circumstances of the adoptive parents' care and custody of the adopted child in advance, and the court can obtain this record as resources for determination, then the court can use this record. In this case, the court can calculate the trial period of care by starting from the date when the adoptive parents had begun to provide the care and custody of the adopted child.

Example: Mr. Vibol and Ms. Bopha are a married couple and have been taking care of a child named Sokha by means of non-kin foster care (**Article 29 of the Prakas on Procedures to Implement the Policy on Alternative Care for Children**). Sokha has already been placed to get this foster care for 6 months. Afterwards, Mr. Vibol and Ms. Bopha have filed a motion to adopt the child Sokha in order to become the adoptive parents of Sokha by means of full adoption.

In this case, Mr. Vibol and Ms. Bopha had already taken care of the child Sokha in advance before they filed the motion for full adoption. Thus, if there has already been a record showing the circumstances of Mr. Vibol and Ms. Bopha's care and custody of Sokha, and the court can obtain this record as resources for determination, then the court can use this record. In this case, the court can calculate the trial period of care by starting from the date when Mr. Vibol and Ms. Bopha had begun to provide the care and custody of Sokha by means of foster care.



g. Court Procedure for Full Adoption

[Law on Non-Litigation Civil Procedure]

Article 3. _ Scope of this law

1- Among the matters which a court is granted authority to decide by the Civil Code, the court shall make the decision in accordance with the provisions of this law with regard to the matters listed in each section of the table annexed to this law, unless otherwise provided specifically by other laws.

2- The decision provided in Paragraph 1 shall be rendered by means of a ruling.

3- Unless there are special provisions in this law, the provisions of the Code of Civil Procedure concerning a ruling shall apply *mutatis mutandis* to the ruling provided in Paragraph 2.

(Item No.7 of Section 4 of the Annexed Table)

The matter to be decided is a motion for creation of full adoption in accordance with Article1007 (Formalities for creation of full adoption).

Article 1007 of the Civil Code provides that, in order to create full adoption, it is necessary to fulfill the requirements as follows:

- (1) There must be a **motion** by the person(s) who will become the adoptive parent(s);
and,
- (2) A court must issue a **ruling** which admits the full adoption.

The court procedure for full adoption must follow the provisions in the **Law on Non-Litigation Civil Procedure**. **Article 3** of this law stipulates the scope of this law, and provides that the court shall make a decision in accordance with the provisions of this law with regard to the matters listed in each section of the table annexed to this law. Then, Item No.7 of Section 4 of the Annexed Table indicates a motion for creation of full adoption in accordance with Article1007 (Formalities for creation of full adoption) of the Civil Code. Therefore, it is no doubt that the Law on Non-Litigation Civil Procedure applies to the court procedure for full adoption.

In addition, unless there are special provisions in this law, the provisions of the **Code of Civil Procedure** concerning a ruling shall apply *mutatis mutandis* to a ruling on full adoption (Paragraph 3 of Article 3 of the Law on Non-Litigation Civil Procedure).

1) **Filing a Motion**

a) **Persons who can file a motion**

The persons who will become the adoptive parents can file a motion for creation of full adoption to a court (Article 1007 of the Civil Code). None other than the persons who will become the adoptive parents can file the motion. Moreover, the court cannot issue a

ruling which admits full adoption upon the court's own authority (i.e., without a motion by the persons who will become the adoptive parents).

In cases where a married couple must jointly adopt a child (Article 1008 of the Civil Code), both the husband and wife have to jointly file a motion as **joint movants**.

Example: Mr. Vibol and Ms. Bopha are a married couple. They can adopt a child only if both of them will become the adoptive parents. Therefore, they must jointly file a motion to a court. In this case, they are called **joint movants**.

In cases where a married couple must jointly adopt a child, but one spouse alone has filed a motion, the court has to issue a ruling which **dismisses** the motion because the motion does not follow Article 1008 of the Civil Code.

* **Discontinuance of Motion**

The movant can discontinue his/her motion until a ruling on full adoption becomes final and binding (Article 217 of the Code of Civil Procedure). If the motion is discontinued, the court must bring its procedure to an end.

Even though a married couple must jointly adopt a child, and both spouses have jointly filed a motion as joint movants, one spouse alone can discontinue his/her part of the motion. In this case, the other spouse's part of the motion still remains, but this remaining part goes against Article 1008 (Joint adoption by married couple) of the Civil Code. Thus, the court has to issue a ruling which dismisses the other spouse's part of the motion.

Example: Mr. Vibol and Ms. Bopha are a married couple. In order to create full adoption, they jointly filed a motion to a court. Afterwards, however, Mr. Vibol alone has discontinued his part of the motion because he lost his passion to adopt a child.

In this case, the court procedure related to Mr. Vibol should be terminated. On the contrary, Ms. Bopha's part of the motion still remains. However, Ms. Bopha's part of the motion goes against Article 1008 (Joint adoption by married couple) of the Civil Code. Thus, the court has to issue a ruling which dismisses Ms. Bopha's part of the motion.

b) **Formality of Filing a Motion**

【 Law on Non-Litigation Civil Procedure 】

Article 26. _ Formality of filing a motion and matters written in the motion

1- A motion can be filed orally or in writing unless otherwise provided specifically in this law or other laws.

2- The following matters shall be written in the motion:

a- the names and addresses of the movants, and the names and addresses of their statutory representatives; and,

b- the contents of the ruling or other actions of the court which are sought by the movant, and the facts as the grounds of the motion.

3- In order to file a motion orally, the movant shall state each of the matters listed in Paragraph 2 in front of a court clerk. In this case, the court clerk shall enter the movant's statement in the protocol, and sign it. This protocol shall be deemed to be a motion.

4- If there is documentary evidence, the movant shall attach its original document or a certified copy thereof to the written motion, or submit these documents to the court when the movant files the motion orally.

Article 26 of this law provides that a motion can be filed orally or in writing. Thus, a motion for creation of full adoption also can be filed orally or in writing.

The following matters shall be written in a motion for creation of full adoption:

- (1) the names and addresses of the movants;
- (2) the contents of the ruling; and,
- (3) the facts as the grounds of the motion.

*** Contents of the Ruling**

The words "**contents of the ruling**" is a demand that the court should issue a ruling which admits full adoption between the movants and the child to be adopted. Thus, **for example**, the movants Mr. Vibol and Ms. Bopha must write in their motion that the movants demand the court issue a ruling which states, "The child named Sokha shall become a child of the movant Mr. Vibol and the movant Ms. Bopha by means of full adoption."

*** Facts as the Grounds of the Motion**

The words "**facts as the grounds of the motion**" must include a variety of information as follows:

- In cases of joint adoption by a married couple, the facts showing that the movant has a spouse and has filed the motion jointly with the spouse (**Article 1008** of the Civil Code);
- In cases where one spouse becomes the adoptive parent of a natural child of the other spouse, the facts showing this situation (**Sentence 2, Paragraph 2 of Article 1008** of the Civil Code);
- The facts showing that an adoptive parent is no less than 25 years of age, and at least 20 years older than the adopted child (**Article 1009** of the Civil Code);
- The facts showing that the adopted child is less than 8 years of age (**Article 1010** of the Civil Code);
- In cases where the natural parents or guardian of the child who will be adopted have given consent, the facts showing this situation (**Sentence 1 of Article 1011** of the Civil Code);
- In cases where the natural parents of the child who will be adopted have not yet given consent, the facts showing the situation as follows:
 - the parents are incapable of declaring their intention; or,
 - the parents have abused the child, abandoned the child in bad faith, or there is any other cause that is extremely detrimental to the interests of the child who will be adopted (**Sentence 2 of Article 1011** of the Civil Code);
- The facts showing that it is extremely difficult or inappropriate for the natural parents to care for the child to be adopted or there are any other special circumstances (**Article 1012** of the Civil Code);
- The facts showing that the full adoption is specifically necessary for the interests of the child (**Article 1012** of the Civil Code);
- In cases where the movants have been taking care of the child to be adopted, the facts showing this situation, including the date when they began to take care and custody of the child and the circumstances of the movants providing care and custody of the child (**Article 1013** of the Civil Code).

In addition to those facts listed above, the movants must give the following information in accordance with **Article 28 of the Prakas on Procedures to Implement the Policy on Alternative Care for Children**:

- Personal history of the adoptive parents;
- Emotional stability and good relationship between the adoptive parents;
- The adoptive parents have a suitable housing and safe neighborhood to provide the child with access to adequate education and health care;
- The adoptive parents have ability to provide material and emotional support for the child;
- The adoptive parents have genuine desire to raise the adopted child the same as their natural child; and,
- Feelings of other children (if any) who live in the same family.

*** Documentary Evidence**

If there is **documentary evidence**, the movant shall attach its original document or a certified copy thereof to the written motion, or submit these documents to the court when the movant files the motion orally.

c) Fees and Costs

【 Law on Non-Litigation Civil Procedure 】

Article 22. _ Burden of fees and costs

1- When a motion is filed in accordance with the procedure of cases provided in this law, a fee of 5,000 riel shall be paid to the court.

2- Article 62 (Court costs other than filing fees) and Article 63 (Party's costs) of the Code of Civil Procedure shall apply *mutatis mutandis* to costs other than the filing fee described in Paragraph 1 unless otherwise provided specifically in this law.

3- The fee and costs described in Paragraphs 1 and 2 shall be borne by the movant unless otherwise provided specifically in this law with regard to who shall owe the burden of the fee and costs.

4- In cases where a prosecutor has filed a motion or cases which a court has initiated by its own authority, the fee and costs described in Paragraphs 1 and 2 shall be borne by the national treasury.

5- Paragraph 3 of Article 64 (Apportionment of burden and compensation for costs) of the Code of Civil Procedure shall apply *mutatis mutandis* to cases where there are multiple persons who shall jointly owe the burden of the fee and costs.

6- In cases where the movant shall pay the filing fee described in Paragraph 1, if the movant does not pay such filing fee, then the court shall specify a reasonable period and order that the fee be paid within that period. In this case, if the movant still does not pay the fee, the court shall, via the issuance of a ruling, dismiss the motion.

7- A *Chomtoah* appeal may be filed against a ruling described in Paragraph 6 which dismisses the motion.

8- When a *Chomtoah* appeal is filed in accordance with Article 39 (*Chomtoah* appeal) of this law, a fee of 5,000 riel shall be paid to the court. The provisions of the above-mentioned Paragraph 6 shall apply *mutatis mutandis* to cases where the *Chomtoah* appellant does not pay such filing fee.

*** Fees for Filing a Motion**

According to **Article 22** of the above-mentioned law, when a motion for full adoption is filed, a fee of **5,000 riel** must be paid to the court. This filing fee should be borne by the movant. In cases where a married couple must jointly file the motion (Article 1008 of the Civil Code), these two joint movants should bear the filing fee equally (Article 64, Paragraph 3 of the Code of Civil Procedure).

If the movant does not pay the filing fee, the court must specify a reasonable period and order that the fee be paid within that period. In this case, if the movant still does not pay the fee, the court must, via the issuance of a ruling, dismiss the motion. The movant may file a *Chomtoah* appeal against the above-mentioned ruling which dismisses the motion.

*** Court Costs other than Filing Fees**

Other than the filling fees, the movant must pay the amounts of costs determined by the court as set forth below:

- an amount which is necessary for the court to investigate the evidence, serve documents, and conduct any other act during the procedure for full adoption; and
- an amount equivalent to necessary travel and lodging costs for a judge and a court clerk if the investigation of evidence, investigation of facts, or other act needs to be carried out outside of the courtroom (Article 62 of the Code of Civil Procedure).

With regard to acts incurring costs as mentioned above, the court must require the movant to pay such costs in advance. If the movant does not make such payment, the court may refrain from conducting the acts incurring such costs.

Moreover, the movant must pay the costs as described below:

- costs incurred in producing documents such as motions and similar materials, and costs incurred in submitting such documents to the court; and,
- travel costs, per diem allowances, and lodging costs incurred for the movant and his/her representative to appear at court (Article 63 of the Code of Civil Procedure).

d) Court with Jurisdiction

【 Law on Non-Litigation Civil Procedure 】

Article 4. _ Court with jurisdiction

1- The cases described in Paragraph 1 of Article 3 (Scope of this law) shall fall under jurisdiction of the court of first instance which is provided in the table annexed to this law.

2- The jurisdiction of a court provided in Paragraph 1 shall be determined at the time of the filing of the motion.

(Item No.7 of Section 4 of the Annexed Table)

The matter to be decided is a motion for creation of full adoption in accordance with Article1007 (Formalities for creation of full adoption).

The court with jurisdiction is a court which has jurisdiction over the domicile of the person who will become an adoptive parent.

According to **Article 4** of the law mentioned above, the court with jurisdiction of a full adoption case is a **court of first instance** which has jurisdiction over the **domicile of the person who will become an adoptive parent** (Item No.7 of Section 4 of the Table annexed

to this law). The domicile of the person who will become an adoptive parent must be determined at the time of the filing of the motion.

Example: Mr. Vibol and Ms. Bopha are a married couple living in Siem Reap Province. They want to adopt a child by means of full adoption.

In this case, the domicile of the persons who will become adoptive parents is Siem Reap Province. Therefore, Mr. Vibol and Ms. Bopha have to jointly file a motion to the Siem Reap Court of First Instance.

2) Examination Proceedings

【 Law on Non-Litigation Civil Procedure 】

Article 27. Investigation of facts and examination of evidence by court's authority

1- The court may base its ruling on any fact that has not been alleged by either the movant or the opposing party.

2- The court shall, if necessary, investigate facts and examine evidence by its own authority.

In order to issue a ruling on the motion for full adoption, the court must investigate facts and examine evidence by its own authority (Paragraph 2 of **Article 27** of the Law on Non-Litigation Civil Procedure).

*** Facts which the Court must Investigate**

In a full adoption case, the court has to investigate various facts as stated below:

- In cases of joint adoption by a married couple, the facts showing that the movant has a spouse and has filed the motion jointly with the spouse (**Article 1008** of the Civil Code);
- In cases where one spouse becomes the adoptive parent of a natural child of the other spouse, the facts showing this situation (**Sentence 2, Paragraph 2 of Article 1008** of the Civil Code);
- The facts showing that an adoptive parent is no less than 25 years of age, and at least 20 years older than the adopted child (**Article 1009** of the Civil Code);
- The facts showing that the adopted child is less than 8 years of age (**Article 1010** of the Civil Code);
- In cases where the natural parents or guardian of the child who will be adopted have given consent, the facts showing this situation (**Sentence 1 of Article 1011** of the Civil Code);
- In cases where the natural parents of the child who will be adopted have not yet given consent, the facts showing the situation as follows:
 - the parents are incapable of declaring their intention; or,

- the parents have abused the child, abandoned the child in bad faith, or there is any other cause that is extremely detrimental to the interests of the child who will be adopted (**Sentence 2 of Article 1011** of the Civil Code);
- The facts showing that it is extremely difficult or inappropriate for the natural parents to care for the child to be adopted or there are any other special circumstances (**Article 1012** of the Civil Code); and,
- The facts showing that the full adoption is specifically necessary for the interests of the child (**Article 1012** of the Civil Code).

*** Documentary Evidence which the Court must examine**

In order to confirm each of the facts listed above, the court has to examine various documentary evidence which the movant must submit to the court. Such documents are:

- Documents showing personal history of the movant which contains information about his/her age and spouse (**Articles 1008 and 1009** of the Civil Code, and **Article 28** of the Prakas on Procedures to Implement the Policy on Alternative Care for Children);
- Documents showing personal history of the adopted child which contains information about his/her age (**Article 1010** of the Civil Code);
- Documents verifying that the natural parents or guardian of the child who will be adopted have given consent (**Sentence 1 of Article 1011** of the Civil Code);
- In cases where the natural parents of the child who will be adopted have not yet given consent, documents verifying the situation as follows:
 - the parents are incapable of declaring their intention; or,
 - the parents have abused the child, abandoned the child in bad faith, or there is any other cause that is extremely detrimental to the interests of the child who will be adopted (**Sentence 2 of Article 1011** of the Civil Code);
- Documents showing that it is extremely difficult or inappropriate for the natural parents to care for the child to be adopted or there are any other special circumstances (**Article 1012** of the Civil Code);
- Documents showing that the full adoption is specifically necessary for the interests of the child (**Article 1012** of the Civil Code). According to **Article 28** of the Prakas on Procedures to Implement the Policy on Alternative Care for Children, the following documents shall be submitted:
 - Documents showing emotional stability and good relationship between the adoptive parents;
 - Documents verifying that the adoptive parents have a suitable housing and safe neighborhood to provide the child with access to adequate education and health care;
 - Documents verifying that the adoptive parents have ability to provide material and emotional support for the child;
 - Documents stating that the adoptive parents will treat the adopted child the same as their natural child and provide support, love, education and inheritance as well as perform the same role and responsibility as with their natural child;

- Documents showing the feelings of other children (if any) who live in the same family;
- Reports (if any) made by the Provincial/Municipal DoSVY personnel on the qualification of the adoptive family; and,
- Records showing the circumstances of the adoptive parents' care and custody of the adopted child during the trial period of care (**Article 1013** of the Civil Code).

*** Various Persons whom the Court must Examine**

In order to confirm each of the facts listed above, the court has to examine various persons as follows:

- (1) **the movants**
- (2) **the natural parents of the child to be adopted** (if any)
- (3) **the guardian for the minor who will be adopted** (if any)
- (4) **the person who exercises parental authority on behalf of parental authority holders over the child to be adopted** (if any) (Articles 1066 and 1103 of the Civil Code)

Article 1066 (Substituted exercise of parental authority) of the Civil Code provides that the parental authority holder of an unmarried minor who has a child shall exercise parental authority over such child in place of the minor.

If an unmarried minor gives birth to a child, parental authority over this child cannot be granted to the minor because the minor herself is currently under the custody of her own parents, and also because she does not have sufficient capacity to act. In order to resolve this problem, Article 1066 of the Civil Code provides that the parental authority holder of this minor must exercise parental authority over her child. This substituted-exercise of parental authority will terminate when the minor becomes an adult. In most cases, when a minor gives birth to a child, the child's grandparents will become persons who hold parental authority over such child in place of the minor.

For this reason, in a full adoption case where a child of an unmarried minor will be adopted, the court has to examine the persons who hold parental authority over such child in place of the minor.

Example: A minor Kanna is 15 years old and has given birth to a child named Sokha. Kanna is not married. In this case, Kanna's parents who are grandparents of Sokha should become the persons who exercise parental authority over Sokha in place of Kanna (Articles 1066 of the Civil Code).

Therefore, in the full adoption case where Sokha will be adopted, the court must examine Kanna's parents as well as Kanna herself who is the natural mother of Sokha.

In addition, **Article 1103** (Substituted exercise of parental authority held by minor under guardianship) of the Civil Code provides that the guardian of a minor shall exercise parental authority over the child of said minor in place of the minor. This means that the guardian of a minor is supposed to play a role as a parent of the minor, and that if the minor has his/her own child, the guardian also should play a role as a parent of this child.

For this reason, in a full adoption case where a child of a minor under guardianship will be adopted, the court has to examine the guardian of the minor.

Example: A minor Kanna is 15 years old and has given birth to a child named Sokha. Because Kanna's parents had already passed away, a guardian has been designated for Kanna.

In this case, the guardian for Kanna should exercise parental authority over Sokha in place of Kanna (Articles 1103 of the Civil Code).

Therefore, in the full adoption case where Sokha will be adopted, the court must examine Kanna's guardian as well as Kanna herself who is the natural mother of Sokha.

a) **Oral Arguments and Examination by Court's Authority**

【 Law on Non-Litigation Civil Procedure 】

Article 28. _ Oral arguments and examination by court's authority

1- In order to issue a ruling on the cases described in Paragraph 1 of Article 3 (Scope of this law) of this law, the court does not have to convene oral arguments.

2- In cases where oral arguments should not be convened, the court may examine the movant, the opposing party, or any other persons whom the court considers it necessary to examine. In this case, the court may permit observation by a person whom the court considers to be appropriate.

Paragraph 1 of Article 28 of this law provides that in order to issue a ruling on a full adoption case, the court does not have to convene oral arguments. In most full adoption cases, it is absolutely necessary to protect privacy of the parties, but it is not strongly necessary to adhere to the principles of the adversarial system. Therefore, in order to issue a ruling, the court does not have to convene oral arguments which guarantee the openness to the public and the principles of the adversarial system.

For this reason, the court can determine whether or not oral arguments should be convened. However, in most full adoption cases, the court usually will not convene oral arguments.

* Examination

Paragraph 2 of Article 28 of this law provides that in cases where oral arguments should not be convened, the court may examine the parties in order to give them a chance to participate in the court's proceedings.

"**Examination**" described in Paragraph 2 of Article 28 is a court's proceeding where the court collect information about existence or non-existence of a fact from the movant, the opposing party, or any other persons whom the court considers it necessary to examine. In this examination proceeding, the movant, the opposing party, or any other persons whom the court considers it necessary to examine, can separately make their own assertion orally or in writing. There is no specific formality or method for the examination. Moreover, it is not required for both parties to attend the examination.

In a full adoption case, the court needs to examine the following persons:

- the movants;
- the natural parents of the child to be adopted (if any);
- the guardian for the minor who will be adopted (if any);
- the person who exercises parental authority on behalf of parental authority holders over the child to be adopted (if any) (Articles 1066 and 1103 of the Civil Code).

Especially, when the natural parents of the child who will be adopted have not yet given consent, the court needs to examine the natural parents **face to face** in order to confirm the following facts:

- the parents are incapable of declaring their intention; or,
- the parents have abused the child, abandoned the child in bad faith, or there is any other cause that is extremely detrimental to the interests of the child who will be adopted (**Sentence 2 of Article 1011** of the Civil Code).

However, if the person whom the court considers it necessary to examine does not appear at court without reasonable excuse, or if such person refuses to give statement without reasonable excuse, then the court can issue a ruling on the full adoption case without examining the person.

b) Duty to Appear at Court

【 Law on Non-Litigation Civil Procedure 】

Article 29. _ Duty to appear at court

- 1- The court may designate the day for the proceedings and summon the movant, the opposing party, or any other persons whom the court considers to be necessary.
- 2- Should a person summoned by the court in accordance with Paragraph 1 fail to appear at court without justifiable grounds, the court may punish such person with a civil fine of not more than 1,000,000 riel.

In accordance with **Article 29** of this law, the court can designate the day for the proceedings and summon the movant, the opposing party, or any other persons whom the court considers to be necessary. The purpose of these proceedings is to have the movant or the opposing party make their own assertion orally or in writing, or to collect information about existence or non-existence of a fact from the movant, the opposing party or any other persons whom the court considers to be necessary.,

If a person summoned by the court fails to appear at court without justifiable grounds, the court can punish the person with a civil fine of not more than 1,000,000 riel (Paragraph 2 of Article 29 of this law) □

c) **Participation in the Proceedings by an Interested Person**

【 Law on Non-Litigation Civil Procedure 】

Article 31._ Participation in the proceedings by an interested person

1- The court may, if considered to be appropriate, order any person other than the movant or the opposing party among the interested persons provided in Article 15 (Interested persons) of this law to participate in the proceedings.

2- The person described in Paragraph 1 may participate in the proceedings by obtaining permission from the court.

In accordance with **Article 31** of this law, any person other than the movant or the opposing party can be allowed to participate in the proceedings as if he/she were a party to the case, by an order of the court (Paragraph 1) or by his/her filing of a motion for the court's permission (Paragraph 2).

In a full adoption case, the phrase "**any person other than the movant or the opposing party**" means, for example, the natural parents of the child to be adopted. That is because the natural parents are persons interested in the result of the court's ruling.

Especially, when the movant argues that it is not necessary to obtain the consent of the natural parents to creation of full adoption in accordance with **the second sentence of Article 1011** of the Civil Code, the court should guarantee the natural parents' chance to make their assertion about existence or non-existence of the following requirements provided in the second sentence of Article 1011:

- the parents are incapable of declaring their intention; or,
- the parents have abused the child, abandoned the child in bad faith, or there is any other cause that is extremely detrimental to the interests of the child who will be adopted.

Through the participation in the proceedings by the natural parents as if they were the parties to the case, the court can clearly understand the true circumstances concerning the full adoption case, and properly make consideration and determination of all issues.

3) **Rulings**

* **What is the meaning of the word "Rulings"?**

Among the decisions of a court, there are two types as follows:

- (1) a judgment; and,
- (2) a ruling.

The ruling is a decision of a court or a judge which can be issued with or without convening oral arguments (Article 179, Paragraph 2 of the Code of Civil Procedure).

a) **Forms of Decisions**

【 Law on Non-Litigation Civil Procedure 】

Article 35._ Forms of decisions

A ruling described in Paragraph 2 of Article 3 (Scope of this law) of this law shall be rendered in writing which includes the grounds for the decision and the main text of the decision, and the judge(s) shall sign such written ruling.

In accordance with **Article 35** of this law, the court must render a ruling on the motion for full adoption.

If the court acknowledges that the motion for full adoption meets all conditions described below, the court should issue a **ruling which admits the full adoption**:

- 1_ conditions for the adoptive parent(s) (Articles 1008 and 1009 of the Civil Code);
- 2_ conditions for the adopted child (Article 1010 of the Civil Code);
- 3_ consent to the adoption (Article 1011 of the Civil Code); and,
- 4_ criteria for determination of creation of full adoption (Article 1012 of the Civil Code).

On the contrary, if the court acknowledges that the motion for full adoption does not meet any of the conditions described above, the court should issue a **ruling which dismisses the full adoption**.

*** Written Rulings**

A ruling on a motion for full adoption must be rendered in writing which includes the grounds for the decision and the main text of the decision, and the judge(s) must sign the written ruling.

The written ruling should include the grounds for the decision for the purpose of guaranteeing impartiality in the judge's decision. Moreover, the written ruling should clearly show the grounds for the decision, which would be helpful for the party when the party files a *Chomtoah* appeal.

*** Main Text of the Decision in a Ruling which Admits Full Adoption**

In cases where the court admits full adoption, the written ruling must include the main text of the decision which declares, for example, “The child named Sokha shall become a child of the movant Mr. Vibol and the movant Ms. Bopha by means of full adoption.”

b) **Notice of Ruling**

【 Law on Non-Litigation Civil Procedure 】

Article 36. _ Notice of ruling

The notice of a ruling described in Paragraph 2 of Article 3 (Scope of this law) of this law shall be given to a person who shall receive the ruling. Such notice of the ruling shall be given by means of service or delivery of a true copy of the written ruling.

In accordance with **Article 36** of this law, when the court issues a ruling on a motion for full adoption, the court must give notice of the ruling to a person who is supposed to receive the ruling.

*** Who is the “person who shall receive the ruling” ?**

In a full adoption case, the “**person who shall receive the ruling**” described in **Article 36** of this law is a person such as:

(1) in cases where the court issues a ruling which admits full adoption, the “**person who shall receive the ruling**” is:

- **the movants** who will become the adoptive parents;
- **the child who will become an adopted child**; however, the child usually lacks the capacity (Article 14 of the Civil Code). Thus, the court must give notice of the ruling to a statutory agent for the child, such as his/her parental authority holder or guardian for the minor;
- **the natural parents** (if any) of the child who will become an adopted child; in principle, the court must give notice of the ruling to the natural parents because they are strongly interested in the result of the ruling which admits the full adoption. However, if the natural parents are not known or are disappearing, the court does not have to give notice of the ruling to the natural parents.

(2) in cases where the court issues a ruling which dismisses the motion, the “**person who shall receive the ruling**” is:

- only **the movants**.

*** Methods to Give Notice**

The notice of a ruling does not need to be given by means of the **service** such as delivery by hand of a court clerk. In addition to the service, the notice can be given by means of, for example, delivery through mail service system.

c) **Finality of a Ruling and its Effect**

【 Law on Non-Litigation Civil Procedure 】

Article 37. _ Finality of a ruling and its effect

1- A ruling described in Paragraph 2 of Article 3 (Scope of this law) of this law shall not become final and binding prior to the expiration of the period in which a *Chomtoah* appeal against the ruling may be filed in accordance with Article 40 (Period for a *Chomtoah* appeal) of this law.

2- The finality of a ruling provided in Paragraph 1 is stayed by the filing of a *Chomtoah* appeal against the ruling within the period referred to in Paragraph 1.

3- A ruling provided in Paragraph 1 shall come into effect only when it has become final and binding.

In accordance with **Article 37** of this law, a ruling on the motion for full adoption shall become final and binding at the expiration of the period in which a *Chomtoah* appeal against the ruling may be filed (Paragraph 1), or at the moment when the court of *Chomtoah* appeal, i.e., the appellate court, has rendered a ruling on the *Chomtoah* appeal (Paragraph 2).

For this reason, even though the notice of a ruling on the motion for full adoption has been given to the movant and so on, the ruling does not come into effect prior to the expiration of the period in which a *Chomtoah* appeal against the ruling may be filed. Moreover, if a *Chomtoah* appeal is filed, the ruling on the motion for full adoption does not come into effect until the appellate court renders a ruling on the *Chomtoah* appeal.

4) ***Chomtoah* appeal**

a) ***Chomtoah* appeal**

【 Law on Non-Litigation Civil Procedure 】

Article 39. _ *Chomtoah* appeal

1- Unless otherwise provided by this law, a ruling described in Paragraph 2 of Article 3 (Scope of this law) of this law on the cases provided in Paragraph 1 of the same Article 3 may be *Chomtoah* appealed by a person whose right or legal status is affected adversely by the ruling.

2- In cases where a ruling can be rendered only upon the motion by the party, a ruling which dismisses the motion may be *Chomtoah* appealed merely by the movant.

In accordance with **Article 39** of this law, a ruling on the motion for full adoption can be *Chomtoah* appealed by a person whose right or legal status is affected adversely by the ruling.

* **Who is the “person whose right or legal status is affected adversely by the ruling” ?**

In a full adoption case, the **“person whose right or legal status is affected adversely by the ruling”** described in Article 39 refers to each of the following persons:

(1) in cases where the court issues a ruling which admits full adoption, the **“person whose right or legal status is affected adversely by the ruling”** is:

- **the child who will become an adopted child**; however, the child usually lacks the capacity (Article 14 of the Civil Code). Thus, on behalf of the child who will become an adopted child, a *Chomtoah* appeal can be filed by a statutory agent for the child, such as his/her parental authority holder or guardian for the minor (Paragraph 2 of Article 17 of Law on Non-Litigation Civil Procedure);
- **the natural parents** (if any) of the child who will become an adopted child;
- **the guardian for the minor** who will be adopted (if any); and,
- **the person who exercises parental authority on behalf of parental authority holders** over the child to be adopted (if any) (Articles 1066 and 1103 of the Civil Code).

(2) in cases where the court issues a ruling which dismisses the motion, the **“person whose right or legal status is affected adversely by the ruling”** is:

- only **the movant** i.e., a person who will become an adoptive parent (**Paragraph 2 of Article 39** of the Law on Non-Litigation Civil Procedure). In cases where a married couple must jointly adopt a child, if only one spouse files a *Chomtoah* appeal against the ruling which dismisses the motion for full adoption, then the court of the *Chomtoah* appeal must dismiss the *Chomtoah* appeal. That is because, in this case, the other spouse does not file a *Chomtoah* appeal, which means that he/she no longer wants to adopt the child. Thus, the *Chomtoah* appeal filed by the one spouse goes against Article 1008 (Joint adoption by married couple) of the Civil Code. For this reason, the court of the *Chomtoah* appeal must issue a ruling which dismisses the *Chomtoah* appeal filed by the one spouse.

Example: Mr. Vibol and Ms. Bopha are a married couple. In order to create full adoption, they jointly filed a motion to a court. Afterwards, however, the court rendered a ruling which dismissed their motion. Mr. Vibol alone filed a *Chomtoah* appeal against the ruling which dismissed the motion. On the contrary, Ms. Bopha did not file a *Chomtoah* appeal against the ruling which dismissed the motion because she lost her passion to adopt a child.

In this case, the court of the *Chomtoah* appeal, i.e., the appellate court, must issue a ruling which dismisses the *Chomtoah* appeal filed by Mr. Vibol. That is because the *Chomtoah* appeal filed by Mr. Vibol alone

goes against Article 1008 (Joint adoption by married couple) of the Civil Code.

*** Filing Fees for a *Chomtoah* Appeal**

When a *Chomtoah* appeal is filed in accordance with Article 39 (*Chomtoah* appeal) of this law, the *Chomtoah* appellant must pay a fee of **5,000 riel** to the court (**Paragraph 8 of Article 22** of this law).

If the *Chomtoah* appellant does not pay the filing fee, the court must specify a reasonable period and order that the fee be paid within that period. In this case, if the *Chomtoah* appellant still does not pay the fee, the court must, via the issuance of a ruling, dismiss the *Chomtoah* appeal (**Paragraphs 8 and 6 of Article 22** of this law).

b) Period for a *Chomtoah* appeal

【 Law on Non-Litigation Civil Procedure 】

Article 40._ Period for a *Chomtoah* appeal

1- In cases where a person who may file a *Chomtoah* appeal has received the notice of a ruling, he/she may file a *Chomtoah* appeal within two weeks of the day of receipt of the notice of the ruling.

2- In cases where a person who may file a *Chomtoah* appeal is not one of the persons who are supposed to receive the notice of a ruling in accordance with Article 36 (Notice of ruling) of this law, he/she may file a *Chomtoah* appeal within two weeks of the day when the movant received the notice of the ruling.

3- With regard to a case which has been initiated by the court's authority, the period described in Paragraph 2 shall be calculated commencing from the day of receipt of the notice of the ruling by the person who last received the notice.

4- The period described in Paragraphs 1 and 2 may not be extended.

Article 40 of this law provides the period for a *Chomtoah* appeal. Within this period, a person who may file a *Chomtoah* appeal has to file a *Chomtoah* appeal. The period for a *Chomtoah* appeal cannot be extended (Paragraph 4).

*** Period for a *Chomtoah* appeal by each one of "persons who may file a *Chomtoah* appeal"**

The phrase "**persons who may file a *Chomtoah* appeal**" described in **Article 40** of this law is defined by Article 39 (*Chomtoah* appeal) of the same law.

As explained by Article 39, in a full adoption case, the "**person who may file a *Chomtoah* appeal**" refers to each of the following persons. Moreover, the period for a *Chomtoah* appeal by each one of "persons who may file a *Chomtoah* appeal" is provided in **Article 40** as follows:

(1) in cases where the court issues a ruling which admits full adoption, the “**person who may file a *Chomtoah* appeal**” is:

- **the child who will become an adopted child**; the period for a *Chomtoah* appeal by the child is two weeks of the day when the child received the notice of the ruling (Paragraph 1 of Article 40 of this law). That is because the court must give notice of the ruling to the child who will become an adopted child (Article 36 of this law). However, the child usually lacks the capacity (Article 14 of the Civil Code). Thus, the court must give notice of the ruling to a statutory agent for the child, such as his/her parental authority holder or guardian for the minor. For this reason, in practice, the period for a *Chomtoah* appeal by the child is two weeks of the day when the child’s statutory agent received the notice of the ruling;
- **the natural parents** (if any) of the child who will become an adopted child; the period for a *Chomtoah* appeal by the natural parent is two weeks of the day when he/she received the notice of the ruling (Paragraph 1 of Article 40 of this law). That is because the court must give notice of the ruling to the natural parents (Article 36 of this law). However, if the natural parents are not known or are disappearing, the court does not have to give notice of the ruling to the natural parents. In this case, the period for a *Chomtoah* appeal by the natural parent is two weeks of the day when the movant received the notice of the ruling (Paragraph 2 of Article 40 of this law);
- **the guardian for the minor** who will be adopted (if any); the period for a *Chomtoah* appeal by the guardian for the minor is two weeks of the day when the movant received the notice of the ruling (Paragraph 2 of Article 40 of this law). That is because the guardian for the minor is not a person who is supposed to receive the notice of the ruling in accordance with Article 36 (Notice of ruling) of this law; and,
- **the person who exercises parental authority on behalf of parental authority holders** over the child to be adopted (if any) (Articles 1066 and 1103 of the Civil Code); the period for a *Chomtoah* appeal by such person is two weeks of the day when the movant received the notice of the ruling (Paragraph 2 of Article 40 of this law). That is because the person who exercises parental authority on behalf of parental authority holders is not a person who is supposed to receive the notice of the ruling in accordance with Article 36 (Notice of ruling) of this law.

(2) in cases where the court issues a ruling which dismisses the motion, the “**person who may file a *Chomtoah* appeal**” is:

- only **the movant** i.e., a person who will become an adoptive parent (**Paragraph 2 of Article 39** of the Law on Non-Litigation Civil Procedure). The period for a *Chomtoah* appeal by the movant is two weeks of the day when he/she received the notice of the ruling (Paragraph 1 of Article 40 of this law). That is because the court must give notice of the ruling to the movant (Article 36 of this law).

c) **Proceedings of the *Chomtoah* Appellate Court**

【 Law on Non-Litigation Civil Procedure 】

Article 42. _ Proceedings of the *Chomtoah* appellate court

Unless otherwise provided in this Chapter 7 of this law, provisions of Chapter 5 (Examination Proceedings) of this law as well as provisions of Chapter 4 (*Chomtoah* Appeal) of Book 3 (Appeal) of the Code of Civil Procedure shall apply *mutatis mutandis* to the proceedings of a *Chomtoah* appellate court.

Article 42 of this law provides that the proceedings of a *Chomtoah* appellate court must be carried out in accordance with provisions of Chapter 5 (Examination Proceedings) of this law as well as provisions of Chapter 4 (*Chomtoah* Appeal) of Book 3 (Appeal) of the Code of Civil Procedure.

5) Preservative Disposition

**a) Suspension of Parental Authority before a Ruling Creating Full Adoption
Comes into Effect**

【 Law on Non-Litigation Civil Procedure 】

Article 48. _ Suspension of parental authority before a ruling creating full adoption comes into effect

1- In cases where a movant files a motion for a ruling creating full adoption in accordance with Article 1007 (Formalities for creation of full adoption) of the Civil Code, if necessary to protect the interests of the child to be adopted, the court may, upon a motion by such movant, suspend the exercise of the authority by the parental authority holder or the guardian for the minor to be adopted until a ruling on the motion for creation of full adoption comes into effect. In this case, if there is no other person who has parental authority or who exercises the authority of the guardian for the minor, the court shall select a person who exercises the authority on behalf of the parental authority holder or the guardian for the minor.

2- The court may, at any time, replace the selected person who exercises the authority on behalf of the parental authority holder or the guardian for the minor.

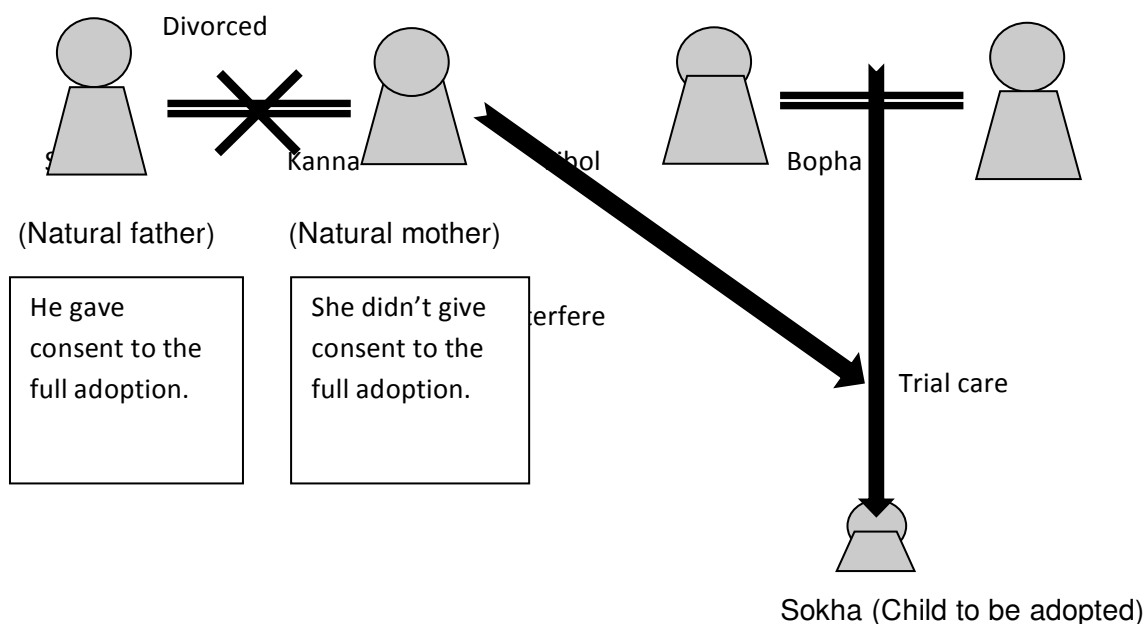
Article 48 of this law provides that in cases where a movant files a motion for full adoption, the court may, upon a motion by such movant, suspend the exercise of the authority by the parental authority holder or the guardian for the minor to be adopted before the court issues a ruling on the motion for full adoption.

Example No.1: Mr. San and Ms. Kanna were a married couple having a child named Sokha. However, they were divorced, and agreed that Ms. Kanna should become the parental authority holder of Sokha (Article 1037 of the Civil Code). Afterwards, Ms. Kanna and Sokha have been living together, but Ms. Kanna has repeatedly abused Sokha. Mr. San does not have sufficient capacity to take care of Sokha.

Mr. Vibol and Ms. Bopha are another married couple, who would like to take care of the child Sokha by means of full adoption. Mr. San, the natural father of Sokha, already gave consent to the full adoption. However, Ms. Kanna, the natural mother of Sokha, refused to give consent to the full adoption.

Then, Mr. Vibol and Ms. Bopha filed a motion for full adoption to a court. In accordance with **Article 1013** (Trial period of care) of the Civil Code, Mr. Vibol and Ms. Bopha began trying to take care of the child Sokha, and have been taking custody of Sokha properly. However, during the trial period of care, Ms. Kanna, the natural mother of Sokha, sometimes came to Mr. Vibol and Ms. Bopha, and told them to immediately return Sokha to Ms. Kanna. Moreover, Ms. Kanna continuously has interfered with the trial care of Sokha by Mr. Vibol and Ms. Bopha on the ground that she can take custody of Sokha as her parental authority holder.

In this case, before the court issues a ruling on the motion for full adoption, Mr. Vibol and Ms. Bopha can file to the court a motion for suspension of the exercise of the authority by Ms. Kanna who is the parental authority holder of Sokha. Upon this motion, if considered necessary to protect the interests of Sokha, the court can decide to suspend the exercise of the parental authority by Ms. Kanna until a ruling on the motion for creation of full adoption comes into effect.



*** Selection of a person who exercises the authority on behalf of the parental authority holder or the guardian for the minor**

In cases where the court has suspended the exercise of the authority by the parental authority holder or the guardian for the minor to be adopted, if there is no other person who has parental authority or who exercises the authority of the guardian for the minor, the court must select a person who exercises the authority on behalf of the parental authority holder or the guardian for the minor.

In the **Example No.1** described above, the court must select a person who exercises the parental authority on behalf of Ms. Kanna because the court has suspended the exercise of the authority by Ms. Kanna who is the parental authority holder of Sokha, and there is no other person who has parental authority. Thus, the court can appoint Mr. San (i.e., the natural father of Sokha) as the person who exercises the parental authority on behalf of Ms. Kanna in order to make him receive the notice of a ruling creating full adoption as Sokha's statutory agent.

However, if the court has suspended the exercise of the authority by one of the parental authority holders or the guardians for the minor, and there is still another person who has parental authority or who exercises the authority of the guardian for the minor, then the court does not have to select a person who exercises the authority on behalf of the parental authority holder or the guardian for the minor.

Example No.2: Mr. San and Ms. Kanna are a married couple, but have been living apart from each other continuously for two years. They have a child named Sokha. Sokha lives together with Ms. Kanna, her natural mother, but Ms. Kanna has repeatedly abused Sokha. Mr. San does not have sufficient capacity to take care of Sokha.

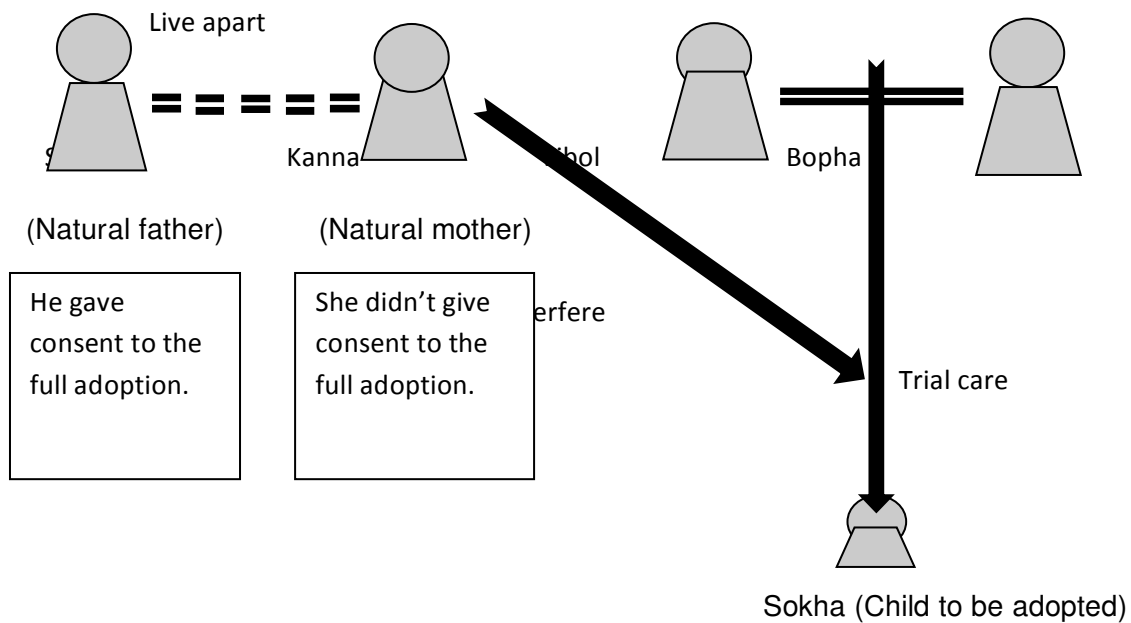
Mr. Vibol and Ms. Bopha are another married couple, who would like to take care of the child Sokha by means of full adoption. Mr. San, the natural father of Sokha, already gave consent to the full adoption. However, Ms. Kanna, the natural mother of Sokha, refused to give consent to the full adoption.

Then, Mr. Vibol and Ms. Bopha filed a motion for full adoption to a court. In accordance with **Article 1013** (Trial period of care) of the Civil Code, Mr. Vibol and Ms. Bopha began trying to take care of the child Sokha, and have been taking custody of Sokha properly. However, during the trial period of care, Ms. Kanna, the natural mother of Sokha, sometimes came to Mr. Vibol and Ms. Bopha, and told them to immediately return Sokha to Ms. Kanna. Moreover, Ms. Kanna continuously has interfered with the trial care of Sokha by Mr. Vibol and Ms. Bopha on the ground that she can take custody of Sokha as her parental authority holder.

In this case, before the court issues a ruling on the motion for full adoption, Mr. Vibol and Ms. Bopha can file to the court a motion for suspension of the exercise of the authority by Ms. Kanna who is the parental authority holder of Sokha. Upon this motion, if considered necessary to protect the interests of Sokha, the court can decide to suspend the exercise of the parental authority by Ms. Kanna until a ruling on the motion for creation of full adoption comes into effect.

However, even though the court has decided to suspend the exercise of the parental authority by Ms. Kanna, there is still another parental authority holder of Sokha, who is Mr. San (i.e., the natural father of Sokha). Because Mr. San and Ms. Kanna are not yet divorced, they still remain in their marriage ties, and both of them hold the parental authority over their child Sokha (Article 1036 of the Civil Code). For this reason, if the court understands that Mr. San, the natural father of Sokha, does not have any problems in exercising his parental authority, for example, receiving

the notice of a ruling creating full adoption as Sokha's statutory agent, then the court does not have to select a person who exercises the parental authority on behalf of Ms. Kanna.



b) Procedure of Preservative Disposition

【 Law on Non-Litigation Civil Procedure 】

Article 43._ Procedure of preservative disposition

1- In cases where a motion is filed in compliance with this law, the court may, upon a motion or by the court's authority, issue a ruling which orders provisional attachment, provisional disposition, appointment of property administrator, or any other necessary preservative disposition, with or without the posting of security, in accordance with this law.

2- The court shall order the preservative disposition described in Paragraph 1 by establishing a *prima facie* showing.

3- In filing a motion for the preservative disposition described in Paragraph 1, the movant shall clarify the preservative disposition sought in the motion, and specify the grounds for such preservative disposition.

4- The movant described in Paragraph 3 shall make a *prima facie* showing of the grounds for his/her motion for preservative disposition, notwithstanding the provisions of Paragraph 2 of Article 27 (Investigation of facts and examination of evidence by court's authority) of this law.

5- If considered necessary, the court may investigate facts and examine evidence by the court's authority.

6- The notice of a ruling on the preservative disposition described in Paragraph 1 shall be

given to a person who shall receive the ruling. Such ruling on the preservative disposition described in Paragraph 1 shall come into effect immediately at the time of the giving of the notice.

7- The effect and enforcement of the preservative disposition described in Paragraph 1 shall be governed by the provisions of the Code of Civil Procedure concerning the effect and enforcement of provisional attachment and provisional disposition.

8- Provisions of Article 545 (Necessity of ruling of provisional attachment), Article 546 (Subject matters of ruling of provisional attachment), Article 547 (Money for release from provisional attachment), Article 548 (Necessity of ruling of provisional disposition) and Article 549 (Method of provisional disposition) of the Code of Civil Procedure shall apply *mutatis mutandis* to the preservative disposition described in Paragraph 1, and provisions of Article 71 (Method of providing security and substitution of security) of the Code of Civil Procedure shall apply *mutatis mutandis* to the security described in Paragraph 1.

Article 43 of this law provides the procedure of preservative disposition. The suspension of parental authority described in **Article 48** (Suspension of parental authority before a ruling creating full adoption comes into effect) is one of preservative dispositions provided in this law. Thus, Article 43 should apply to the procedure of issuing a ruling on the motion for suspension of parental authority described in Article 48.

* **Court with Jurisdiction**

The court which resolves the merits of a case also should have jurisdiction over the preservative disposition. In cases where the merits of a case are pending in a *Chomtoah* appellate court, the court having jurisdiction over the preservative disposition must be the same *Chomtoah* appellate court.

Therefore, the movant for full adoption must file a motion for suspension of parental authority described in Article 48 of this law to the court which resolves the full adoption case. If the ruling on the motion for full adoption is *Chomtoah* appealed, the movant for full adoption must file a motion for suspension of parental authority described in Article 48 of this law to the *Chomtoah* appellate court.

* **Filling Fees for Preservative Disposition**

The movant does not need to pay any fees in filling a motion for preservative disposition described in Article 43 of this law.

c) ***Chomtoah* Appeal**

【 Law on Non-Litigation Civil Procedure 】

Article 44. _ Appeal

1- The movant for the preservative disposition described in Paragraph 1 of Article 43 (Procedure of preservative disposition) of this law may file a *Chomtoah* appeal against the

ruling which dismisses the motion.

2- A person who may file a *Chomtoah* appeal against the ruling which admits the motion on merits, may file a *Chomtoah* appeal against the preservative disposition described in Paragraph 1 of Article 43 (Procedure of preservative disposition) of this law.

3- In cases where a *Chomtoah* appeal has been filed in accordance with the provision of Paragraph 2, if it is established by a *prima facie* showing that clear circumstances constituting grounds for cancelling the preservative disposition exist and that there is a risk that enforcement of the preservative disposition would cause irreparable damages, then the court of the *Chomtoah* appeal may, upon motion, order the following dispositions:

(A) a stay of enforcement of the preservative disposition, with or without the posting of security, until the ruling on the *Chomtoah* appeal comes into effect; or

(B) a cancellation of the enforcement of preservative disposition which has been already made, with the posting of security, until the ruling on the *Chomtoah* appeal comes into effect.

4- While the case record is kept in the original court, such original court also may order the dispositions described in Paragraph 3.

5- Provisions of Article 40 (Period for a *Chomtoah* appeal) and Article 41 (Subsequent completion of act concerning a *Chomtoah* appeal after the period for a *Chomtoah* appeal) of this law shall apply *mutatis mutandis* to a *Chomtoah* appeal described in this Article. Provisions of Paragraphs 4 and 5 of Article 43 (Procedure of preservative disposition) of this law shall apply *mutatis mutandis* to a *prima facie* showing described in Paragraph 3, and provisions of Article 71 (Method of providing security and substitution of security) of the Code of Civil Procedure shall apply *mutatis mutandis* to the security described in Paragraph 3 of this Article.

6- Provisions of Article 555 (Ruling ordering restitution) of the Code of Civil Procedure shall apply *mutatis mutandis* to a ruling which cancels the ruling on preservative disposition described in Paragraph 1 of Article 43 (Procedure of preservative disposition) in a *Chomtoah* appeal filed in accordance with Paragraph 2 of this Article.

Article 44 of this law provides a *Chomtoah* appeal against the ruling on a motion for preservative disposition.

The preservative disposition described in Paragraph 1 of Article 43 (Procedure of preservative disposition) must be carried out by a court's ruling, and the ruling comes into effect immediately at the time when the notice of the ruling has been given to a person who is supposed to receive the ruling (Paragraph 6 of Article 43).

The ruling on a motion for preservative disposition can be *Chomtoah* appealed (Paragraphs 1 and 2 of Article 44).

However, even though the ruling which admits preservative disposition has been *Chomtoah* appealed, such *Chomtoah* appeal does not automatically stay the effect of the

preservative disposition. In order to stay the effect of the preservative disposition or cancel the preservative disposition, while the *Chomtoah* appeal is pending in the *Chomtoah* appellate court, it is necessary to obtain a court's special decision from the *Chomtoah* appellate court in accordance with Paragraph 3 of Article 44.

*** Filling Fees for a *Chomtoah* Appeal**

The appellant does not need to pay any fees in filling a *Chomtoah* appeal described in Article 44 of this law.

h. Effect of Full Adoption

1) Termination of Legal Relationship with Natural Parents

Article 1014. _ Termination of legal relationship with natural parents

The legal relationship between an adopted child and his/her natural parents and relatives by blood shall be terminated upon full adoption. However, this shall not apply to the legal relationship with the other parent and his/her relatives by blood prescribed in the second sentence of Paragraph 2 of Article 1008 (Joint adoption by married couple) of the Civil Code.

Article 1014 of the Civil Code provides that the legal relationship between an adopted child and his/her natural parents must be terminated by creation of full adoption.

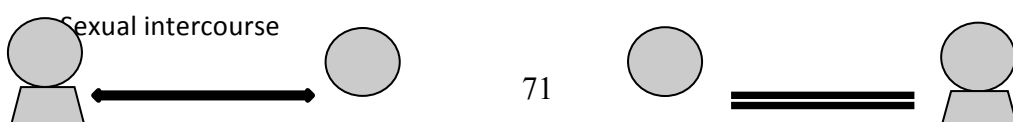
The scheme of full adoption aims to take care of an adopted child in a stable family as if the adopted child were their natural child. Thus, the adopted child must be completely in the custody of the adoptive parents.

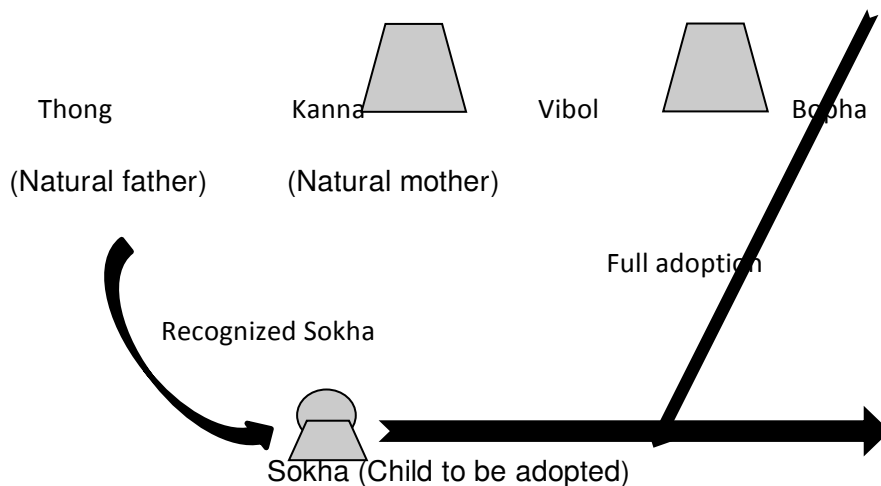
It should be prohibited for the natural parents of an adopted child to make improper interference or hindrance with the adoption by demanding the return of the child or the meeting with the child. Moreover, it is necessary to deter the natural parents from selfishly demanding support from the adopted child after he/she becomes an adult.

For these reasons mentioned above, Article 1014 provides that the legal relationship between an adopted child and his/her natural parents and relatives by blood shall be terminated by creation of full adoption.

Example: While Ms. Kanna was single, Ms. Kanna had sexual intercourse with Mr. Thong, and then gave birth to a child named Sokha. Mr. Thong has recognized the child Sokha, thus he becomes the natural father of Sokha (Article 993 of the Civil Code). However, both Mr. Thong and Ms. Kanna do not have sufficient capacity to take care of Sokha.

Mr. Vibol and Ms. Bopha are a married couple, who would like to take care of the child Sokha by means of full adoption. Both Mr. Thong and Ms. Kanna, the natural parents of Sokha, gave consent to the full adoption. Then, Mr. Vibol and Ms. Bopha filed a motion for full adoption to a court. The court has issued a ruling which admits the full adoption by Mr. Vibol and Ms. Bopha. The ruling has become final and binding.





In this case, the **parent-child relationship** between the child Sokha and her natural parents must be terminated by the creation of full adoption. This means that the **mother-child relationship** between the child Sokha and her natural mother Kanna must be terminated. With regard to the **father-child relationship** between the child Sokha and her natural father Thong which was created by recognition of Sokha by Mr. Thong, it also must be terminated.

Moreover, the **legal relationship** between the child Sokha and the relatives by blood of Mr. Thong must be terminated by the creation of full adoption. In addition, the **legal relationship** between the child Sokha and the relatives by blood of Ms. Kanna also must be terminated. The termination of those legal relationships between the child Sokha and her natural parents and relatives by blood results in various effects as mentioned below:

(1) Rights and obligations of the parent who does not live with the minor child (Article 1040)

After the creation of full adoption, Mr. Thong and Ms. Kanna do not have the rights and obligations of the parent who does not live with the minor child which are provided by Article 1040 of the Civil Code. Thus, Mr. Thong and Ms. Kanna do not have the right to meet and socialize with the child Sokha. Moreover, they do not have the obligation to share the cost for the care of the child Sokha.

(2) Right to demand report of condition of minor child (Article 1041)

After the creation of full adoption, Mr. Thong and Ms. Kanna do not have the right to demand report of condition of minor child which is provided by Article 1041 of the Civil Code. Thus, Mr. Thong and Ms. Kanna cannot demand Mr. Vibol and Ms. Bopha make report of condition of the child Sokha.

(3) Right to demand consultation on important matters relating to the minor child (Article 1042)

After the creation of full adoption, Mr. Thong and Ms. Kanna do not have the right to demand consultation on important matters relating to the minor child which is

provided by Article 1042 of the Civil Code. Thus, Mr. Thong and Ms. Kanna cannot demand Mr. Vibol and Ms. Bopha come to consult with themselves on the following matters relating to the child Sokha:

- (A) education beyond compulsory education;
- (B) changing the location of the residence of the minor child to another province;
- (C) the minor child's occupation or business;
- (D) medical treatment affecting the minor child's life;
- (E) disposition of significant property of the minor child; and,
- (F) other important matters relating to the care of and property of the minor child.

(4) Obligation to provide support and right to demand support (Article 1140)

After the creation of full adoption, Mr. Thong and Ms. Kanna as well as their relatives by blood do not have the obligation to provide support for the child Sokha. Thus, Sokha does not have the right to demand support from Mr. Thong and Ms. Kanna as well as their relatives by blood.

Furthermore, Sokha also does not have the obligation to provide support for Mr. Thong and Ms. Kanna as well as their relatives by blood. Thus, when Sokha becomes an adult, Mr. Thong and Ms. Kanna as well as their relatives by blood cannot demand support from Sokha.

(5) Right to succession to the inherited property (Article 1147)

After the creation of full adoption, the child Sokha does not have the right to succession to the inherited property of Mr. Thong and Ms. Kanna as well as their relatives by blood.

Furthermore, Mr. Thong and Ms. Kanna as well as their relatives by blood also do not have the right to succession to the inherited property of Sokha when she dies in future.

*** No retroactive effect of the termination of the legal relationship with the natural parents**

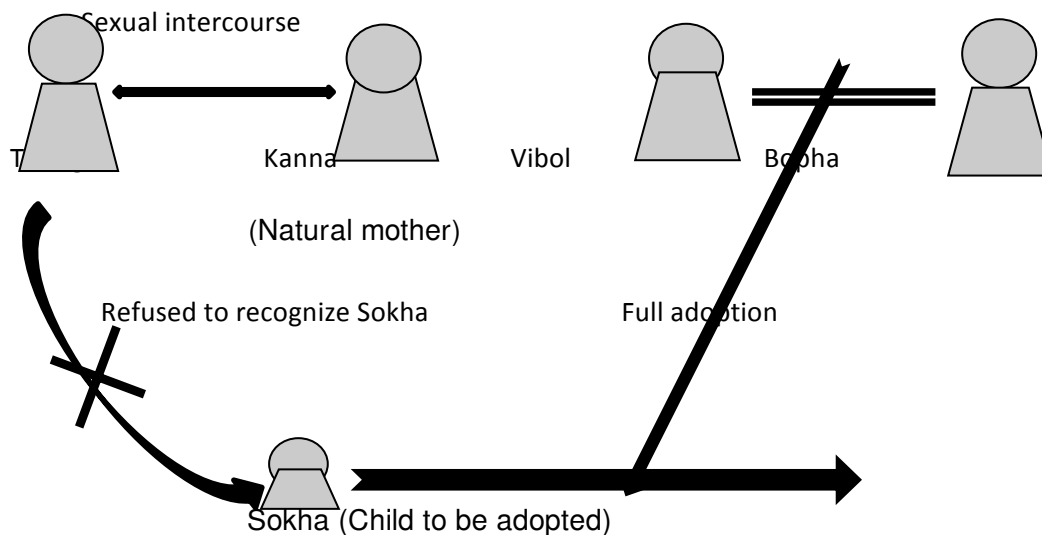
The termination of the legal relationship with the natural parents in accordance with Article 1014 does not have retroactive effect.

*** Recognition of the Child after Full Adoption**

After the creation of full adoption, the biological father of the adopted child can no longer recognize the child.

Example: While Ms. Kanna was single, Ms. Kanna had sexual intercourse with Mr. Thong, and then gave birth to a child named Sokha. Mr. Thong refused to recognize the child Sokha. Ms. Kanna does not have sufficient capacity to take care of Sokha.

Mr. Vibol and Ms. Bopha are a married couple, who would like to take care of the child Sokha by means of full adoption. Ms. Kanna, the natural mother of Sokha, gave consent to the full adoption. Then, Mr. Vibol and Ms. Bopha filed a motion for full adoption to a court. The court has issued a ruling which admits the full adoption by Mr. Vibol and Ms. Bopha. The ruling has become final and binding.



In this case, after the creation of full adoption, Mr. Thong can no longer recognize the child Sokha even though he has changed his mind and currently wants to recognize the child Sokha.

*** Prohibition of Marriage between Relatives by Blood (Article 951)**

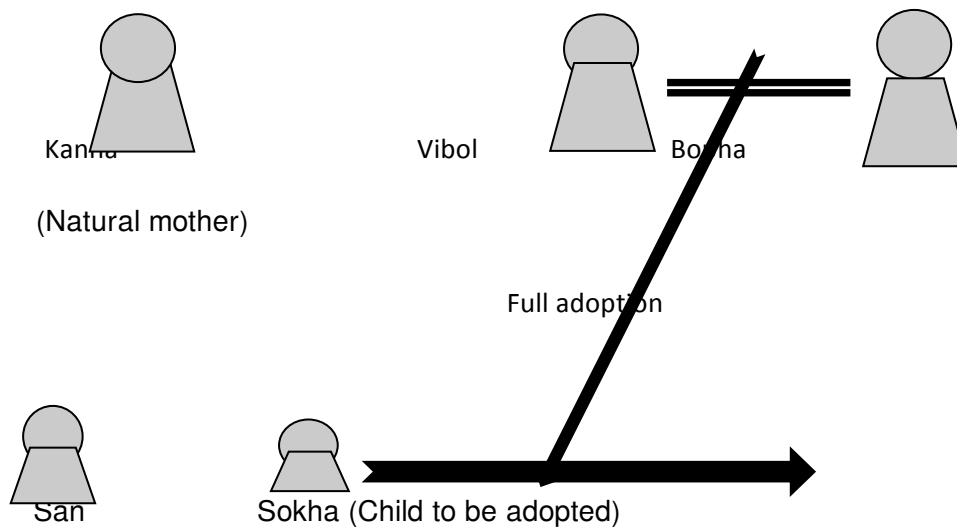
Article 951 of the Civil Code provides that no marriage may be effected between lineal relatives by blood, nor between collateral relatives by blood up to and including the third degree of relationship (Paragraph 1). This provision of Paragraph 1 applies to an adopted child even after the legal relationship was terminated in accordance with Article 1014 (Termination of legal relationship with natural parents) of the Civil Code (Paragraph 2 of Article 951).

Even though the legal relationship between an adopted child and his/her natural parents must be terminated by creation of full adoption, their biological relationship is not extinguished. Thus, the prohibition of marriage between close relatives is still applicable. For this reason, no marriage is admissible between an adopted child and his/her lineal relative by blood prior to full adoption, nor between an adopted child and his/her collateral relative by blood up to the third degree of relationship prior to full adoption (Paragraph 2 of Article 951).

Example: Ms. Kanna is single, but gave birth to two children, her 8-year-old son named San and her 2-year-old daughter named Sokha. Neither San's father nor Sokha's father

is not known. Ms. Kanna does not have sufficient capacity to take care of these two children of hers.

Mr. Vibol and Ms. Bopha are a married couple, who would like to take care of the child Sokha by means of full adoption. Ms. Kanna, the natural mother of Sokha, gave consent to the full adoption. Then, Mr. Vibol and Ms. Bopha filed a motion for full adoption to a court. The court has issued a ruling which admits the full adoption by Mr. Vibol and Ms. Bopha. The ruling has become final and binding.



In this case, the mother-child relationship between the child Sokha and her natural mother Kanna must be terminated by the creation of full adoption. Moreover, the legal relationship between the child Sokha and the relatives by blood of Ms. Kanna also must be terminated. Thus, the legal relationship between the child Sokha and her brother San must be terminated.

However, even after the creation of full adoption, the marriage between Sokha and San should be prohibited (Paragraph 2 of Article 951). That is because they used to be the brother and sister, the second-degree collateral relatives by blood, before the creation of full adoption. Therefore, the marriage between Sokha and San should be inadmissible.

*** In cases where one spouse adopts the child who is a natural child of the other spouse**

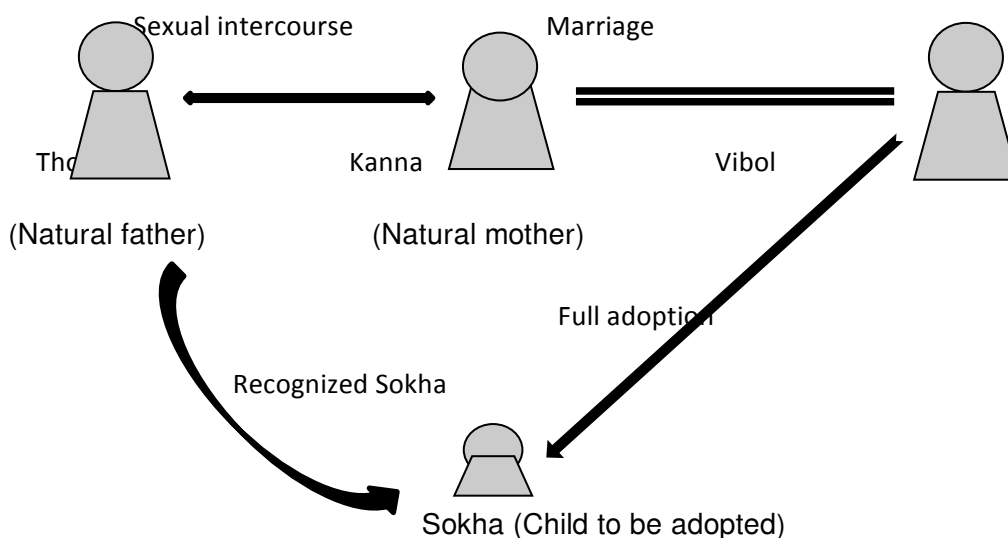
The second sentence of Article 1014 of the Civil Code provides that in cases where one spouse adopts the child who is a natural child of the other spouse, the legal relationship between the adopted child and such other spouse who is the child's natural parent and the spouse's relatives by blood should not be terminated upon full adoption.

In cases where one spouse adopts the child who is a natural child of the other spouse, joint adoption by a married couple is not necessary. It is sufficient to adopt the child by one spouse (The second sentence of Paragraph 2 of Article 1008).

Moreover, in the cases mentioned above, it is not necessary to terminate the parent-child relationship between the adopted child and such other spouse who is the child's natural parent. Even after the creation of full adoption, such other spouse still can take care of the adopted child as his/her natural parent.

Example: While Ms. Kanna was single, Ms. Kanna had sexual intercourse with Mr. Thong, and then gave birth to a child named Sokha. Mr. Thong has recognized the child Sokha, thus he becomes the natural father of Sokha (Article 993 of the Civil Code). They agreed that Ms. Kanna should keep on being the parental authority holder of Sokha (Article 1038 of the Civil Code).

Afterwards, Ms. Kanna married Mr. Vibol. As the husband of Ms. Kanna, Mr. Vibol would like to take care of the child Sokha by means of full adoption. Both Mr. Thong and Ms. Kanna, the natural parents of Sokha, gave consent to the full adoption. Then, Mr. Vibol filed a motion for full adoption to a court. The court has issued a ruling which admits the full adoption by Mr. Vibol. The ruling has become final and binding.



In this case, even though the full adoption has been established, the **mother-child relationship** between the child Sokha and Ms. Kanna, the natural mother of Sokha, should not be terminated. Moreover, the **legal relationship** between the child Sokha and Kanna's

relatives by blood also should not be terminated (The **second sentence** of Article 1014 of the Civil Code). Thus, after the creation of full adoption, Ms. Kanna still can take care of Sokha as her natural mother. The child Sokha should be subject to joint parental authority of Ms. Kanna, her natural mother, and Mr. Vibol, her adoptive father (Paragraph 3 of Article 1015 of the Civil Code).

On the contrary, with regard to the **father-child relationship** between the child Sokha and her natural father Thong which was created by Mr. Thong's recognition of the child Sokha, such father-child relationship should be terminated upon the full adoption. Moreover, the **legal relationship** between the child Sokha and Thong's relatives by blood also should be terminated (The **first sentence** of Article 1014 of the Civil Code).

2) Other Effect of Full Adoption

Article 1015. _ Effect of full adoption

1- Upon the creation full adoption, the adopted child shall acquire the same status as that of a natural child of the adoptive parent(s), and shall have the same rights and duties as a natural child in relation to the adoptive parent(s).

2- The adopted child may use the surname of the adoptive parent(s) or the child's own surname prior to adoption.

3- The adopted child shall be subject to parental authority of the adoptive parent(s). However, in cases where one spouse adopts the child who is a natural child of the other spouse, the adopted child shall be subject to joint parental authority of the natural parent and the adoptive parent.

Article 1015 of the Civil Code provides that the adopted child should acquire the same status as that of a natural child of the adoptive parent(s), and should have the same rights and duties as a natural child. Full adoption is the system which aims to warmly take care of the adopted child by the adoptive parents, thus the status of the adopted child should be guaranteed in the same way as that of a natural child of the adoptive parents (**Paragraph 1** of Article 1015).

For this reason, like a natural child, the adopted child has a right to demand support and a right to succession from the adoptive parents. In addition, the adopted child can use the surname of the adoptive parents or the child's own surname prior to adoption (**Paragraph 2** of Article 1015).

While the adoptive child is a minor, he/she must be subject to parental authority of the adoptive parents (**Paragraph 3** of Article 1015). In a full adoption case, the legal relationship between an adopted child and his/her natural parents must be terminated by creation of full adoption, thus there is no one other than the adoptive parents who can become the parents of the adopted child. Therefore, **Article 1015** of the Civil Code clearly provides that the parental authority holders of the adopted child are the adoptive parents.

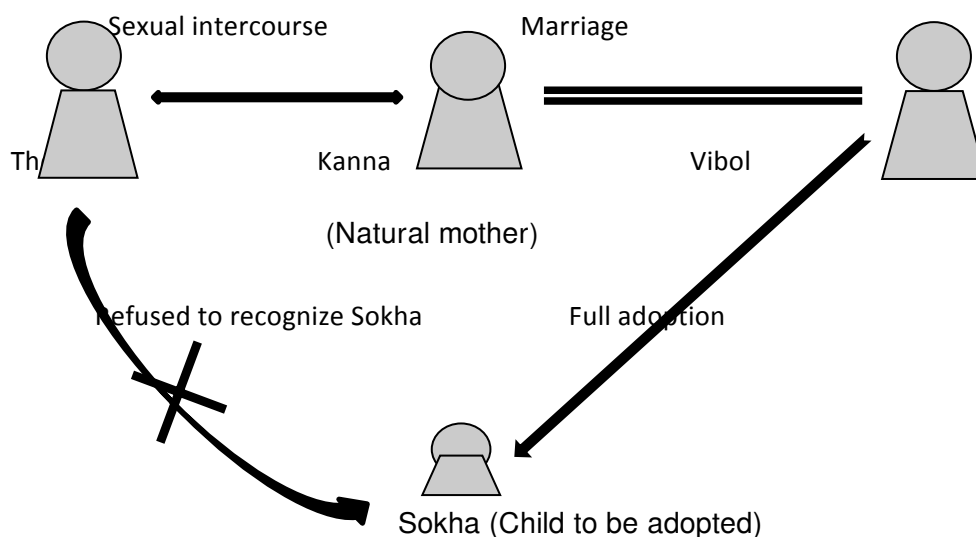
*** In cases where one spouse adopts the child who is a natural child of the other spouse**

The **second sentence of Paragraph 3** of Article 1015 provides that in cases where one spouse adopts the child who is a natural child of the other spouse, the adopted child must be subject to joint parental authority of the natural parent and the adoptive parent.

In cases where one spouse adopts the child who is a natural child of the other spouse, the legal relationship between the adopted child and such other spouse who is the child's natural parent and the spouse's relatives by blood should not be terminated upon full adoption (The second sentence of Article 1014). Thus, even after the creation of full adoption, such other spouse still can take care of the adopted child as his/her natural parent. For this reason, the adopted child must be subject to joint parental authority of one spouse (i.e., the adoptive parent) and the other spouse (i.e., the natural parent) (The second sentence of Paragraph 3 of Article 1015).

Example: While Ms. Kanna was single, Ms. Kanna had sexual intercourse with Mr. Thong, and then gave birth to a child named Sokha. Mr. Thong refused to recognize the child Sokha. Thus, Ms. Kanna kept on taking care of Sokha as the parental authority holder of Sokha (Article 1038 of the Civil Code).

Afterwards, Ms. Kanna married Mr. Vibol. As the husband of Ms. Kanna, Mr. Vibol would like to take care of the child Sokha by means of full adoption. Ms. Kanna, the natural mother of Sokha, gave consent to the full adoption. Then, Mr. Vibol filed a motion for full adoption to a court. The court has issued a ruling which admits the full adoption by Mr. Vibol. The ruling has become final and binding.



In this case, even though the full adoption has been established, the mother-child relationship between the child Sokha and Ms. Kanna, the natural mother of Sokha, should not be terminated. Moreover, the legal relationship between the child Sokha and Kanna's

relatives by blood also should not be terminated (The second sentence of Article 1014 of the Civil Code). Thus, after the creation of full adoption, Ms. Kanna still can take care of Sokha as her natural mother. The child Sokha should be subject to **joint parental authority** of Ms. Kanna, her natural mother, and Mr. Vibol, her adoptive father (**The second sentence of Paragraph 3 of Article 1015** of the Civil Code).

*** Establishment of Legal Relationship by Full Adoption (Article 940)**

Article 940 of the Civil Code provides that from the time of adoption, the relationship between an adopted child and an adoptive parent (and his/her relatives by blood) shall be deemed to be the same as that between relatives by blood. This means that the legal parent-child relationship must be established between an adopted child and an adoptive parent. Moreover, the legal relationship must be established between the adopted child and the relatives of the adoptive parent in the same way as the legal relationship between a natural child of the adoptive parent and the relatives of the adoptive parent.

Due to the establishment of the above-mentioned legal relationships by full adoption, the following various effect comes out:

(1) Right to Succession

After the creation of full adoption, the adopted child and his/her adoptive parents have rights to succession to each other. Moreover, the adopted child and the relatives by blood of the adoptive parents also have rights to succession to each other. In succession, children of the decedent shall have equal shares of the succession regardless of whether they are natural or adopted (**Paragraph 2 of Article 1156** of the Civil Code).

(2) Right to Demand Support and Duty to Provide Support

After the creation of full adoption, the adopted child and his/her adoptive parents have rights to demand support and duties to provide support. Moreover, the adopted child and the relatives by blood of the adoptive parents also have rights to demand support and duties to provide support (**Article 1140** of the Civil Code).

*** Divorce of Adoptive Parents after Full Adoption**

Even though the adoptive parents get divorced after the creation of full adoption, the effect of full adoption should not be extinguished. That is because joint adoption by a married couple prescribed in Article 1008 of the Civil Code is a condition only for creation of full adoption, thus it is not a condition of continuance of full adoption.

Therefore, even if the adoptive parents get divorced after the creation of full adoption, they still continue to be the parents of the adopted child. However, if the adopted child is still a minor, they have to determine through mutual consultation which of them is to become the parental authority holder of the minor child (Article 1037 of the Civil Code).

i. Dissolution of Full Adoption

1) Conditions of Dissolution of Full Adoption

Article 1016. _ Dissolution of full adoption

1- The court may, upon a complaint by the adopted child, his/her natural parents or a public prosecutor, dissolve the adoptive relationship, if both of the following items are satisfied and the court finds it especially necessary for the interests of the adopted child:

(a) the adoptive parents have abused, or abandoned in bad faith, the adopted child or there are any other grounds that are extremely detrimental to the interests of the adopted child; and,

(b) the natural parent(s) are capable of providing reasonable care for the child.

2- Dissolution of adoption shall only be made pursuant to the provision of the preceding paragraph.

Article 1016 of the Civil Code provides the dissolution of full adoption.

Full adoption aims to provide care for the adopted child as if he/she were a natural child of the adoptive parents, thus in principle, the dissolution of full adoption is not allowed. However, in cases where the continuance of the adoptive relationship is extremely detrimental to the interests of the adopted child, and where the natural parent(s) are capable of providing sufficient care for the child, the provision of Article 1016 allows the dissolution of full adoption as an exceptional case.

*** Method of Dissolution of Full Adoption**

In a full adoption case, the Civil Code allows the dissolution of full adoption by means of **a court's judgment (Paragraph 2** of Article 1016).

Thus, it is not permissible to dissolve full adoption by agreement between the adopted child and the adoptive parents. Moreover, even if both the adoptive parents and the natural parents agree to the dissolution of full adoption, the court cannot admit the dissolution.

*** Who can file a complaint to demand dissolution of full adoption?**

Only **the adopted child, his/her natural parents or a public prosecutor** can file a complaint to demand dissolution of full adoption (**Paragraph 1** of Article 1016).

Therefore, the adoptive parents cannot file a complaint to demand dissolution of full adoption.

The word "**natural parent**" in Article 1016 refers to a person who used to have parent-child relationship with the adopted child prior to the creation of full adoption. Thus, a father who did not recognize the adopted child before the creation of full adoption cannot file a complaint to demand dissolution of full adoption. That is because he did not have the

legal parent-child relationship with the adopted child, and he is not a “natural parent” in Article 1016.

Even though the provision of Article 1016 mentions “natural parents”, it is not necessary for both of the natural parents to jointly file a complaint to demand dissolution of full adoption. Thus, each of the natural parents alone can file a complaint to demand dissolution of full adoption.

*** Who should be named as the defendants of the lawsuit for dissolution of full adoption?**

The lawsuit for dissolution of full adoption should be filed against **both of the adoptive parents**. That is because the Civil Code adopts the principle of joint adoption by a married couple (Article 1008). Therefore, it is not permissible to file a complaint to demand dissolution of full adoption against one of the adoptive parents alone.

*** Conditions of Dissolution of Full Adoption**

In order to admit the dissolution of full adoption, all of the following three conditions must be satisfied (**Paragraph 1** of Article 1016):

- 1- the adoptive parents have abused, or abandoned in bad faith, the adopted child or there are any other grounds that are extremely detrimental to the interests of the adopted child;
- 2- the natural parent(s) are capable of providing reasonable care for the child; and,
- 3- the court finds the dissolution of full adoption especially necessary for the interests of the adopted child.

In cases where the above-mentioned **condition No.1** and **condition No.2** are satisfied, the court usually can understand that the dissolution of full adoption will be especially necessary for the interests of the adopted child (the above-mentioned **condition No.3**).

However, if there is a solution other than the dissolution of full adoption, and such solution is appropriate for the interests of the adopted child, then the court cannot find the dissolution of full adoption especially necessary for the interests of the adopted child.

Example: After the creation of full adoption, the adoptive parents got divorced. Even though they got divorced, the effect of full adoption should not be extinguished. Thus, they still continue to be the parents of the adopted child.

When they got divorced, they determined through mutual consultation that the adoptive mother was to become the parental authority holder of the minor child (Article 1037 of the Civil Code). Then, the adoptive mother and the adopted child have been living together, but the adopted mother has abused the adopted child. Currently, the natural parents of the adopted child are capable of providing reasonable care for the adopted child.

In this case, the **condition No.1** and **condition No.2** for the dissolution of full adoption can be satisfied.

However, if the adoptive father is capable of providing sufficient care for the adopted child, the court can change the parental authority holder from the adoptive mother to the adoptive father (**Article 1039** of the Civil Code). This change of the parental authority holder could resolve the problem between the adoptive mother and the adopted child. Therefore, the court cannot find that the dissolution of full adoption would be especially necessary for the interests of the adopted child.

For the reason mentioned above, the **condition No.3** for the dissolution of full adoption cannot be satisfied. Thus, the court cannot admit the dissolution of full adoption.

2) Court Procedure for Dissolution of Full Adoption

【 Law on Personal Status Litigation Procedure 】

Article 3. _ Scope of this law

This law shall apply to the personal status litigations which are listed as below:

A- Litigation demanding confirmation of nullity of marriage in accordance with the provision of Article 958 (Nullity of marriage) of the Civil Code;

B- Litigation demanding cancellation of marriage in accordance with the provisions from Article 959 (Cancellation of marriage) to Article 963 (Cancellation of marriage on the ground of fraud or threat) of the Civil Code;

C- Litigation demanding divorce in accordance with the provision of Article 978 (Grounds for divorce) of the Civil Code;

D- Litigation denying father-child relationship in accordance with the provisions of Article 990 (Litigation denying father-child relationship by a person to be presumed a father) and Article 991 (Litigation denying father-child relationship by a child) of the Civil Code;

E- Litigation demanding recognition of a child in accordance with the provision of Article 1001 (Litigation demanding recognition of a child) of the Civil Code;

F- Litigation demanding confirmation of non-existence of parent-child relationship in accordance with the provision of Article 1002 (Litigation demanding confirmation of non-existence of parent-child relationship) of the Civil Code;

G- Litigation demanding confirmation of existence of mother-child relationship in accordance with the provisions of Article 1004 (Litigation demanding confirmation of existence of mother-child relationship by a child) and Article 1005 (Litigation demanding confirmation of existence of mother-child relationship by a mother) of the Civil Code;

H- Litigation demanding dissolution of full adoption in accordance with the provision of

Article 1016 (Dissolution of full adoption) of the Civil Code;

I- Litigation demanding dissolution of simple adoption in accordance with the provision of Article 1031 (Grounds for dissolution) of the Civil Code;

J- Other litigations demanding the creation or the confirmation of existence or non-existence, of a personal status relationship.

Article 3 of the **Law on Personal Status Litigation Procedure** provides that this law must apply to litigation demanding dissolution of full adoption (Item H of Article 3).

The Law on Personal Status Litigation Procedure has a purpose of providing **special rules** of the Code of Civil Procedure with regard to the procedure of personal status litigation (Article 1 of this law).

*** What is the meaning of the phrase “Personal Status Litigation”?**

The personal status litigation refers to litigations demanding the creation or the confirmation of existence or non-existence, of a personal status relationship, i.e., a legal relationship between persons, such as marriage and parent-child relationship.

*** The Law on Personal Status Litigation Procedure is a special law to the Code of Civil Procedure.**

The personal status litigation should be governed by the Code of Civil Procedure which aims to clarify or confirm the rights of persons or the legal relationship between persons.

However, in the personal status litigation, the subject matter to be decided is a legal relationship between persons (i.e., personal status), and such legal relationship is closely related to public interests. Thus, the personal status litigation needs a **special law** to the Code of Civil Procedure, which provides some special rules applicable to the procedure of personal status litigation.

For the reason mentioned above, the Law on Personal Status Litigation Procedure is a special law to the Code of Civil Procedure. Thus, at first you should look at the Law on Personal Status Litigation Procedure and try to apply this law to the personal status litigation including the litigation demanding dissolution of full adoption. Then, if you find that this special law does not have a provision applicable to the personal status litigation, you should go to the Code of Civil Procedure and apply a fundamental provision contained in the Code of Civil Procedure to the personal status litigation.

*** Court with Jurisdiction**

Article 5 of the **Law on Personal Status Litigation Procedure** provides that the personal status litigation shall be subject to the exclusive jurisdiction of the court of first instance with jurisdiction over the location of the domicile of the person whose status is related to the action.

Therefore, in the litigation demanding dissolution of full adoption, the court with jurisdiction to resolve this action is the court of first instance which has jurisdiction over the location of the domicile of the adoptive parents or the court of first instance which has jurisdiction over the location of the domicile of the adopted child.

*** Oral arguments should not be open to the public.**

Article 16 of the **Law on Personal Status Litigation Procedure** provides that oral arguments shall be held in a court which is not open to the public.

Therefore, in the litigation demanding dissolution of full adoption, oral arguments must be held in a court which is not open to the public.

*** The court must render a judgment.**

In order to make a decision on the complaint demanding dissolution of full adoption, the court must render a judgment.

3) Effect of Dissolution of Full Adoption

Article 1017. _ Effect of dissolution of full adoption

The same legal relationship that was terminated by the full adoption shall arise between an adopted child and his/her natural parents and their relatives by blood from the time of dissolution of full adoption.

Article 1017 of the Civil Code provides the effect of dissolution of full adoption. This article says that when the full adoption is dissolved, the legal relationship that was terminated by the full adoption must automatically arise between the adopted child and his/her natural parents. In addition, the legal relationship that was terminated by the full adoption must automatically arise between the adopted child and the relatives by blood of his/her natural parents, too.

*** End of legal relationship between the adopted child and the adoptive parents by dissolution of full adoption (Article 942)**

Article 942 of the Civil Code provides that the legal relationship of an adopted child, his/her spouse, any of his/her lineal descendants and their spouses with an adoptive parent and his/her relatives by blood shall come to an end by dissolution of adoptive relation.

The legal relationship between the adopted child and the adoptive parents is considered to be the same as the relationship between the child and the natural parents. However, the relationship between the adopted child and the adoptive parents is merely a relationship created by law. Thus, the relationship between the adopted child and the adoptive parents should be extinguished by the dissolution of full adoption.

The dissolution of full adoption does not only extinguish the legal relationship between the adopted child and the adoptive parents, but also extinguishes the legal relationship between the adopted child and the relatives by blood of the adoptive parents.

Moreover, the dissolution of full adoption extinguishes the legal relationships as stated below:

- (1) If the adopted child would have a spouse, the legal relationship between such spouse and the adoptive parents should be extinguished. In addition, the legal relationship between such spouse and the relatives by blood of the adoptive parents should be extinguished, too.
- (2) If the adopted child would have a lineal descendant such as a child or grandchild of the adopted child, the legal relationship between such lineal descendant and the adoptive parents should be extinguished. In addition, the legal relationship between such lineal descendant and the relatives by blood of the adoptive parents should be extinguished, too.
- (3) If a lineal descendant of the adopted child would have a spouse, the legal relationship between such spouse and the adoptive parents should be extinguished. In addition, the legal relationship between such spouse and the relatives by blood of the adoptive parents should be extinguished, too.

*** Surname of the Adopted Child after Dissolution of Full Adoption**

After the dissolution of full adoption, the adopted child can restore his/her surname to that prior to adoption, or can use the surname of the adoptive parents. This is the same as the dissolution of simple adoption prescribed in Paragraph 2 of Article 1032 of the Civil Code.

Thus, if the surname of the adopted child has been changed upon full adoption, the adopted child can restore his/her surname to that prior to adoption, or can use the surname of the adoptive parents. In this way, the adopted child has the options regarding his/her surname.

*** No Retroactive Effect of Dissolution of Full Adoption**

By virtue of dissolution of full adoption, the whole effect of the full adoption must terminate as of that time onward. This is the same as the dissolution of simple adoption prescribed in Paragraph 1 of Article 1032 of the Civil Code.

Thus, the dissolution of full adoption does not have any retroactive effect. This is called the non-retroactive effect of dissolution of adoption.

*** Recognition of the Adopted Child after Dissolution of Full Adoption**

After the creation of full adoption, the father of the adopted child can no longer recognize such child.

However, if the full adoption has been dissolved, the father of the adopted child can recognize such child in accordance with **Article 993** of the Civil Code.

j. Registration of Full Adoption and Confidentiality

Article 1018._ Registration of full adoption and confidentiality

Upon the creation of full adoption, a new birth registration shall be prepared for the adopted child. However, no reference to the adoption shall be written in the birth certificate, a certified copy of the birth certificate, or an abstract of the birth registration.

Article 1018 of the Civil Code provides the registration of full adoption and confidentiality.

In cases where full adoption is a safeguard for an unfortunate child, showing the fact of the full adoption could be a violation of the child’s privacy, and also cause adverse effect on the growth of the child. Moreover, such showing could lead to unexpected intervention by the natural parents, which could disturb the peace of the adopted child and his/her adoptive family, or could destroy the stable environment necessary for the child’s sound growth.

Therefore, Article 1018 provides that a personal status registration and birth certificate of the adopted child which is prepared upon creation of full adoption must not mention the names of the natural parents or the fact of full adoption, and must describe on its face that the adoptive parents are the natural parents of the adopted child.

k. Right of the Adopted Child to Know Origin

Article 1019._ Right of the adopted child to know origin

When the child adopted by means of full adoption has attained majority, such child may request the court that maintains records of the full adoption to disclose information relating thereto to the extent necessary. However, this shall not apply if the objective of the request is improper. The mode of maintenance of records of full adoption and the method of requests for disclosure shall be determined by the court’s rules.

Article 1019 of the Civil Code provides the right of the adopted child to know his/her origin. This article acknowledges the right to request the court to disclose its records relating to the full adoption in cases where such disclosure is necessary for the treatment of diseases of the adopted child who has attained majority, the marriage of such child, or any other proper objectives.

When the adopted child who has attained majority requests the court to disclose its records relating to the full adoption, the child does not need to obtain consent from his/her natural parents.

*** Method of Requests for Disclosure**

The procedure of requests for disclosure of the court records relating to the full adoption is provided in the **Law on Non-Litigation Civil Procedure**. In the Table annexed to this law, Item No.8 of Section 4 mentions the requests for disclosure of the court records relating to the full adoption in accordance with Article 1019 (Right of the adopted child to know origin). Thus, the provisions of the Law on Non-Litigation Civil Procedure must apply to the procedure of requests for disclosure of the court records relating to the full adoption (Article 3 of this law).

5. Simple Adoption

a. Formalities for Creation of Simple Adoption

Article 1020. _ Motion for simple adoption

1- A person aged 25 years or more, together with a person to become an adopted child, may file a motion to the court for creation of simple adoption. However, the person to become an adopted child may not be an ascendant or senior of the person to become an adoptive parent.

2- In cases where a person to become an adopted child is a minor, the parental authority holder or guardian of such minor shall file the motion described in Paragraph 1 in the capacity of the minor's statutory agent.

Article 1020 of the Civil Code aims to establish the system of simple adoption in Cambodia which eases the strict conditions of full adoption putting an adopted child into the exclusive custody of the adoptive parents and terminating the whole legal relationship between the adopted child and his/her natural parents.

Therefore, in cases where an adopted child does not wish to be detached totally from his/her natural parents and put him/herself into the whole custody of the adoptive parents, the system of simple adoption can be used under the supervision of a court in order to establish some effect of legal family relationship such as succession and family supports.

In order to create simple adoption, it is necessary to fulfill the requirements as follows:

1- There must be a **motion** by the person(s) who will become the adoptive parent(s), together with a person to become an adopted child.

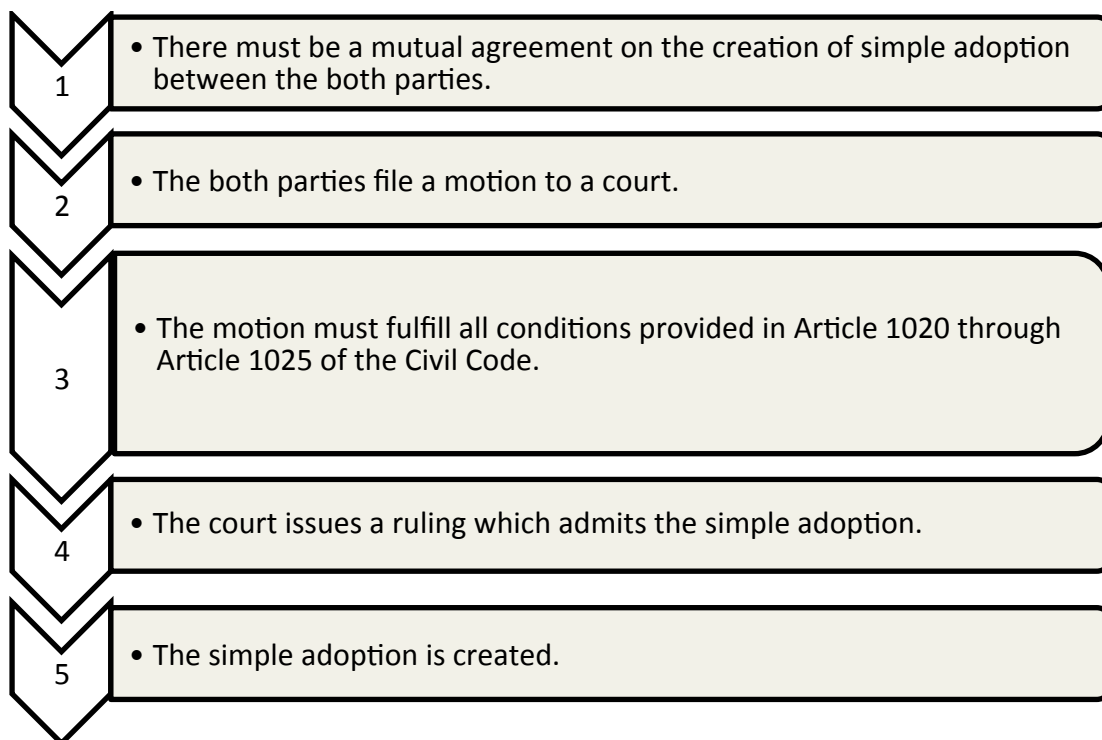
2- All conditions provided in **Article 1020 through Article 1025** of the Civil Code must be fulfilled.

3- A court must issue a **ruling** which admits the simple adoption.

When a person who will become the adoptive parent files a motion for simple adoption together with a person to become an adopted child, there must be a mutual agreement on the creation of simple adoption between the person who will become the adoptive parent

and the person to become an adopted child. Thus, we can say that simple adoption is an **adoption based on the agreement**. This means that simple adoption must be established upon the mutual agreement on the adoption between the both parties.

Therefore, the flow chart for creation of simple adoption is shown as below:



*** In cases where the person to become an adopted child is a minor**

In cases where the person to become an adopted child is a minor, the parental authority holder or guardian of such minor must file a motion for simple adoption in the capacity of the minor's statutory agent (Paragraph 2 of Article 1020).

b. Conditions for Adoptive Parents

1) Conditions for Adoptive Parents

Paragraph 1 of Article 1020 (Motion for simple adoption) provides that a person aged 25 years or more, together with a person to become an adopted child, may file a motion to the court for creation of simple adoption.

Thus, simple adoption has the age limitation of the adoptive parent as **25 years or more**. A person aged 25 years or more can become an adoptive parent no matter whether such person has a spouse or not.

2) Cases where the person to become an adoptive parent has a spouse

Article 1021._ The case where the person to become an adoptive parent has a spouse

If a person with a spouse wishes to adopt a minor, the motion prescribed in Article 1020 (Motion for simple adoption) shall be filed together with the spouse. However, this shall not apply in cases where he/she adopts a child of his/her spouse or his/her spouse is incapable of declaring her/his intention.

Article 1021 of the Civil Code requires the joint adoption by a married couple in cases where a person with a spouse wishes to adopt a minor. Adopting a minor is surely a significant matter for both of the spouses. Moreover, when they adopt a minor, they have to maintain the stability of their family and guarantee a good environment for taking care of the minor. For these reasons, this article requires the joint adoption by a married couple.

However, in cases where a person with a spouse adopts a child of his/her spouse or where his/her spouse is insane, or where his/her spouse is incapable of declaring her/his own intention because the spouse's location is unknown, such person alone can adopt a minor without the joint filing of the motion.

c. Conditions for the Adopted Child

The Civil Code does not have any conditions regarding the age of an adopted child. Therefore, in principle, any person can become an adopted child no matter whether such person is a minor or an adult. This means that adopting an adult is permissible.

However, the **second sentence of Paragraph 1 of Article 1020** (Motion for simple adoption) provides that the person to become an adopted child may not be an ascendant or senior of the person to become an adoptive parent. Thus, the Civil Code prohibits any person from adopting his/her ascendant or senior.

d. Consent to Adoption

1) Consent to Simple Adoption

Simple adoption is an adoption based on the agreement. This means that simple adoption must be established upon the mutual agreement on the adoption between the person to become an adoptive parent and the person to become an adopted child.

For this reason, in principle, it is **not necessary to obtain consent** to the simple adoption from any third party.

2) Cases where the person to become an adoptive parent has a spouse

Article 1022._ Consent of spouse

If a person with a spouse files a motion for simple adoption, the consent of such spouse shall be obtained. However, this shall not apply in the cases where the motion under Article 1020 (Motion for simple adoption) is filed together with the spouse or the spouse is incapable of declaring his/her intention.

Article 1022 of the Civil Code provides that if a person with a spouse files a motion for simple adoption, the consent of such spouse must be obtained. This is because in cases where a person with a spouse adopts another person by means of simple adoption, such adoption can significantly affect the succession, family support, family name, family's daily life, and so on.

The case under Article 1022 of the Civil Code is different from the case where a person with a spouse adopts a **minor** in accordance with Article 1021 (The case where the person to become an adoptive parent has a spouse). If a person with a spouse adopts an **adult**, the joint adoption by a married couple is not required. That is because one spouse alone can adopt the adult by means of simple adoption with the consent of his/her spouse.

*** In cases where the consent of spouse is not necessary**

In cases where a married couple files a motion jointly or where the spouse is incapable of declaring his/her intention, the consent of the spouse is not necessary (The **second sentence** of Article 1022).

3) Cases where the person to become an adopted child is a minor

In cases where a person to become an adopted child is a minor, the parental authority holder or guardian of such minor must file a motion for simple adoption in the capacity of the minor's statutory agent (Paragraph 2 of Article 1020).

However, if such minor has attained the **age of 15 years**, it is necessary to obtain consent from the minor in order to create simple adoption (**Paragraph 3 of Article 1024**).

e. Criteria for Determination of Creation of Simple Adoption

1) Criteria for Determination of Creation of Simple Adoption

Article 1023. _ Criteria for determination of creation of simple adoption

1- The court may admit the creation of an adoption only if the court confirms that the parties truly have the intention to establish a parent-child relationship.

2- The court shall not admit the creation of an adoption if the court finds that the adoption is being abused for heterosexual or homosexual marriage or any other unjust purpose.

Article 1023 of the Civil Code provides the criteria for determination of creation of simple adoption.

Simple adoption will establish a legal parent-child relationship. Thus, in order to create simple adoption, Article 1023 requires that the parties truly have the intention to establish a parent-child relationship (**Paragraph 1** of Article 1023).

In addition, Article 1023 prohibits the parties from abusing the system of simple adoption for any immoral purposes, such as a camouflage of a parent-child relationship or a homosexual marriage (**Paragraph 2** of Article 1023).

2) Cases where the person to become an adopted child is a minor

Article 1024. _ In cases where the person to become an adopted child is a minor

1- In cases where the person to become an adopted child is a minor, the court may admit the creation of an adoption only if the court finds that such adoption is especially necessary for the benefit of the minor.

2- In cases where the person to become an adopted child is a minor whose natural parents have divorced, the court shall hear the opinion of the parent without parental authority in making its decision under Paragraph 1.

3- If the minor has attained the age of 15 years, it is necessary to obtain consent from the minor in order to create the adoption. Even if the minor is less than 15 years old but can express his/her intention, the court shall hear the minor's opinion in making its decision under Paragraph 1.

Article 1024 of the Civil Code provides that in adopting a minor, the court may admit the creation of simple adoption only if the court finds that such simple adoption is especially necessary for the benefit of the minor (**Paragraph 1** of Article 1024). Thus, the court must make a determination on whether or not the simple adoption will be beneficial to the minor to be adopted.

*** In cases where the natural parents of the adopted child have divorced**

Paragraph 2 of Article 1024 provides that in cases where the person to become an adopted child is a minor whose natural parents have divorced, the court shall hear the opinion of the parent without parental authority in making its decision on whether or not the adoption will be beneficial to the minor to be adopted.

When a divorce between the father and mother occurs, the father and mother must determine through mutual consultation which of them is to become the parental authority holder of the minor child (Article 1037). And if such minor child is to become an adopted child, his/her parental authority holder must file a motion for simple adoption in the capacity of the minor's statutory agent (Paragraph 2 of Article 1020).

However, simple adoption sometimes can be used for the purpose of disturbing the parent without parental authority from meeting and socializing with his/her minor child. Thus, even though it is not necessary to obtain consent from the parent without parental authority, the court needs to hear the opinion of the parent without parental authority (**Paragraph 2** of Article 1024).

*** The court must respect the child's intention regarding adoption.**

Paragraph 3 of Article 1024 provides that if the minor has attained the age of 15 years, it is necessary to obtain consent from the minor in order to create the adoption (The first sentence). In addition, Paragraph 3 of Article 1024 provides that even if the minor is less than 15 years old but can express his/her intention, the court must hear the minor's

opinion in making its decision on whether or not the adoption will be beneficial to the minor to be adopted (The second sentence).

Paragraph 3 of Article 1024 is a provision requiring the court to respect the child's intention regarding adoption in order to guarantee the child's right to express his/her opinion.

3) **Adoption between Guardian and the Person under Guardianship**

Article 1025._ Adoption between guardian and the person under guardianship

In cases where a guardian of a minor files a motion to adopt the minor under his/her own guardianship or where a general guardian files a motion to adopt the person under his/her own general guardianship, the court may admit the creation of such adoption only if the care of the person under guardianship and management of the person's property is being carried out properly. The same shall apply in the cases where the guardianship has ceased but the account of administration of the property has not been completed.

Article 1025 of the Civil Code provides an adoption between a guardian and the person under guardianship.

In cases where a guardian files a motion to adopt the person under his/her own guardianship, no matter whether guardianship for a minor or general guardianship, there can be a case in which the guardian abuses his/her superior status which has authority to administer property and take care of the person under guardianship.

For this reason, Article 1025 provides that the court must consider the fiduciary relationship between a guardian and the person under guardianship, and can admit the creation of adoption only if the court confirms that there is no unlawfulness or other problem in such fiduciary relationship.

f. Court Procedure for Simple Adoption

【 Law on Non-Litigation Civil Procedure 】

Article 3._ Scope of this law

1- Among the matters which a court is granted authority to decide by the Civil Code, the court shall make the decision in accordance with the provisions of this law with regard to the matters listed in each section of the table annexed to this law, unless otherwise provided specifically by other laws.

2- The decision provided in Paragraph 1 shall be rendered by means of a ruling.

3- Unless there are special provisions in this law, the provisions of the Code of Civil Procedure concerning a ruling shall apply *mutatis mutandis* to the ruling provided in Paragraph 2.

(Item No.9 of Section 4 of the Annexed Table)

The matter to be decided is a motion for creation of simple adoption in accordance with Article 1020 (Motion for simple adoption).

Article 1020 of the Civil Code provides that, in order to create simple adoption, it is necessary to fulfill the requirements as follows:

- (1) There must be a **motion** by the person(s) who will become the adoptive parent(s), together with a person to become an adopted child; and,
- (2) A court must issue a **ruling** which admits the simple adoption.

The court procedure for simple adoption must follow the provisions in the **Law on Non-Litigation Civil Procedure**. **Article 3** of this law stipulates the scope of this law, and provides that the court shall make a decision in accordance with the provisions of this law with regard to the matters listed in each section of the table annexed to this law. Then, Item No.9 of Section 4 of the Annexed Table indicates a motion for creation of simple adoption in accordance with Article 1020 (Motion for simple adoption) of the Civil Code. Therefore, it is no doubt that the Law on Non-Litigation Civil Procedure applies to the court procedure for simple adoption.

In addition, unless there are special provisions in this law, the provisions of the **Code of Civil Procedure** concerning a ruling shall apply *mutatis mutandis* to a ruling on simple adoption (Paragraph 3 of Article 3 of the Law on Non-Litigation Civil Procedure).

1) **Filing a Motion**

a) **Persons who can file a motion**

The person(s) to become the adoptive parent(s) and the person to become an adopted child must jointly file a motion for creation of simple adoption to a court (Article 1020 of the Civil Code). None other than those parties can file the motion. Moreover, the court cannot issue a ruling which admits simple adoption upon the court's own authority (i.e., without a motion by the parties).

In cases where a person to become an adopted child is a minor, the parental authority holder or guardian of such minor must file a motion for simple adoption in the capacity of the minor's statutory agent (Paragraph 2 of Article 1020 of the Civil Code).

If the person to become an adoptive parent or the person to become an adopted child alone has filed a motion for simple adoption, the court has to issue a ruling which **dismisses** the motion because the motion does not follow Article 1020 of the Civil Code.

*** In cases where the person to become an adoptive parent has a spouse**

If a person with a spouse wishes to adopt a minor, such person must file a motion for simple adoption together with the spouse (Article 1021 of the Civil Code). Thus, the married couple must jointly file the motion together with the minor to become an adopted child (Article 1020 of the Civil Code).

In cases where a married couple must jointly adopt a child, but one spouse alone has filed a motion, the court has to issue a ruling which **dismisses** the motion because the motion does not follow Article 1021 of the Civil Code.

*** Discontinuance of Motion**

The movant can discontinue his/her motion until a ruling on simple adoption becomes final and binding (Article 217 of the Code of Civil Procedure). If the motion is discontinued, the court must bring its procedure to an end.

Even though the person to become the adoptive parent and the person to become an adopted child must jointly file a motion (Article 1020 of the Civil Code), one party alone can discontinue his/her part of the motion. In this case, the other party's part of the motion still remains, but this remaining part goes against Article 1020 of the Civil Code. Thus, the court has to issue a ruling which dismisses the other party's part of the motion.

b) Formality of Filing a Motion

【 Law on Non-Litigation Civil Procedure 】

Article 26. _ Formality of filing a motion and matters written in the motion

1- A motion can be filed orally or in writing unless otherwise provided specifically in this law or other laws.

2- The following matters shall be written in the motion:

a- the names and addresses of the movants, and the names and addresses of their statutory representatives; and,

b- the contents of the ruling or other actions of the court which are sought by the movant, and the facts as the grounds of the motion.

3- In order to file a motion orally, the movant shall state each of the matters listed in Paragraph 2 in front of a court clerk. In this case, the court clerk shall enter the movant's statement in the protocol, and sign it. This protocol shall be deemed to be a motion.

4- If there is documentary evidence, the movant shall attach its original document or a certified copy thereof to the written motion, or submit these documents to the court when the movant files the motion orally.

Article 26 of this law provides that a motion can be filed orally or in writing. Thus, a motion for creation of simple adoption also can be filed orally or in writing.

The following matters shall be written in a motion for creation of simple adoption:

- (1) the names and addresses of the movants;
- (2) the contents of the ruling; and,
- (3) the facts as the grounds of the motion.

* **Contents of the Ruling**

The words “**contents of the ruling**” is a demand that the court should issue a ruling which admits simple adoption between the person to become the adoptive parent and the person to become an adopted child.

For example, the movants Mr. Vibol and Sokha must write in their motion that the movants demand the court issue a ruling which states, “The movant (child) named Sokha shall become a child of the movant Mr. Vibol by means of simple adoption.”

* **Documentary Evidence**

If there is **documentary evidence**, the movant shall attach its original document or a certified copy thereof to the written motion, or submit these documents to the court when the movant files the motion orally.

c) Fees and Costs

【 Law on Non-Litigation Civil Procedure 】

Article 22. _ Burden of fees and costs

1- When a motion is filed in accordance with the procedure of cases provided in this law, a fee of 5,000 riel shall be paid to the court.

2- Article 62 (Court costs other than filing fees) and Article 63 (Party’s costs) of the Code of Civil Procedure shall apply *mutatis mutandis* to costs other than the filing fee described in Paragraph 1 unless otherwise provided specifically in this law.

3- The fee and costs described in Paragraphs 1 and 2 shall be borne by the movant unless otherwise provided specifically in this law with regard to who shall owe the burden of the fee and costs.

4- In cases where a prosecutor has filed a motion or cases which a court has initiated by its own authority, the fee and costs described in Paragraphs 1 and 2 shall be borne by the national treasury.

5- Paragraph 3 of Article 64 (Apportionment of burden and compensation for costs) of the Code of Civil Procedure shall apply *mutatis mutandis* to cases where there are multiple persons who shall jointly owe the burden of the fee and costs.

6- In cases where the movant shall pay the filing fee described in Paragraph 1, if the

movant does not pay such filing fee, then the court shall specify a reasonable period and order that the fee be paid within that period. In this case, if the movant still does not pay the fee, the court shall, via the issuance of a ruling, dismiss the motion.

7- A *Chomtoah* appeal may be filed against a ruling described in Paragraph 6 which dismisses the motion.

8- When a *Chomtoah* appeal is filed in accordance with Article 39 (*Chomtoah* appeal) of this law, a fee of 5,000 riel shall be paid to the court. The provisions of the above-mentioned Paragraph 6 shall apply *mutatis mutandis* to cases where the *Chomtoah* appellant does not pay such filing fee.

* Fees for Filing a Motion

According to **Article 22** of the above-mentioned law, when a motion for simple adoption is filed, a fee of **5,000 riel** must be paid to the court. This filing fee should be borne by the movant.

In a simple adoption case, the person(s) to become the adoptive parent(s) and the person to become an adopted child must jointly file a motion (Article 1020 of the Civil Code). Thus, both of the joint movants should bear the filing fee equally (Article 64, Paragraph 3 of the Code of Civil Procedure).

If the movant does not pay the filing fee, the court must specify a reasonable period and order that the fee be paid within that period. In this case, if the movant still does not pay the fee, the court must, via the issuance of a ruling, dismiss the motion. The movant may file a *Chomtoah* appeal against the above-mentioned ruling which dismisses the motion.

* Court Costs other than Filing Fees

Other than the filling fees, the movant must pay the amounts of costs determined by the court as set forth below:

- an amount which is necessary for the court to investigate the evidence, serve documents, and conduct any other act during the procedure for simple adoption; and
- an amount equivalent to necessary travel and lodging costs for a judge and a court clerk if the investigation of evidence, investigation of facts, or other act needs to be carried out outside of the courtroom (Article 62 of the Code of Civil Procedure).

With regard to acts incurring costs as mentioned above, the court must require the movant to pay such costs in advance. If the movant does not make such payment, the court may refrain from conducting the acts incurring such costs.

Moreover, the movant must pay the costs as described below:

- costs incurred in producing documents such as motions and similar materials, and costs incurred in submitting such documents to the court; and,

- travel costs, per diem allowances, and lodging costs incurred for the movant and his/her representative to appear at court (Article 63 of the Code of Civil Procedure).

d) Court with Jurisdiction

【 Law on Non-Litigation Civil Procedure 】

Article 4._ Court with jurisdiction

1- The cases described in Paragraph 1 of Article 3 (Scope of this law) shall fall under jurisdiction of the court of first instance which is provided in the table annexed to this law.

2- The jurisdiction of a court provided in Paragraph 1 shall be determined at the time of the filing of the motion.

(Item No.9 of Section 4 of the Annexed Table)

The matter to be decided is a motion for creation of simple adoption in accordance with Article 1020 (Motion for simple adoption).

The court with jurisdiction is a court which has jurisdiction over the domicile of the person who will become an adopted child.

According to **Article 4** of the law mentioned above, the court with jurisdiction of a simple adoption case is a **court of first instance** which has jurisdiction over the **domicile of the person who will become an adopted child** (Item No.9 of Section 4 of the Table annexed to this law). The domicile of the person who will become an adopted child must be determined at the time of the filing of the motion.

2) Examination Proceedings

【 Law on Non-Litigation Civil Procedure 】

Article 27._ Investigation of facts and examination of evidence by court’s authority

1- The court may base its ruling on any fact that has not been alleged by either the movant or the opposing party.

2- The court shall, if necessary, investigate facts and examine evidence by its own authority.

In order to issue a ruling on the motion for simple adoption, the court must investigate facts and examine evidence by its own authority (Paragraph 2 of **Article 27** of the Law on Non-Litigation Civil Procedure).

a) Oral Arguments and Examination by Court’s Authority

【 Law on Non-Litigation Civil Procedure 】

Article 28._ Oral arguments and examination by court’s authority

1- In order to issue a ruling on the cases described in Paragraph 1 of Article 3 (Scope of this

law) of this law, the court does not have to convene oral arguments.

2- In cases where oral arguments should not be convened, the court may examine the movant, the opposing party, or any other persons whom the court considers it necessary to examine. In this case, the court may permit observation by a person whom the court considers to be appropriate.

Paragraph 1 of Article 28 of this law provides that in order to issue a ruling on a simple adoption case, the court does not have to convene oral arguments. In most simple adoption cases, it is absolutely necessary to protect privacy of the parties, but it is not strongly necessary to adhere to the principles of the adversarial system. Therefore, in order to issue a ruling, the court does not have to convene oral arguments which guarantee the openness to the public and the principles of the adversarial system.

For this reason, the court can determine whether or not oral arguments should be convened. However, in most simple adoption cases, the court usually will not convene oral arguments.

*** Examination**

Paragraph 2 of Article 28 of this law provides that in cases where oral arguments should not be convened, the court may examine the parties in order to give them a chance to participate in the court's proceedings.

"**Examination**" described in Paragraph 2 of Article 28 is a court's proceeding where the court collect information about existence or non-existence of a fact from the movant, the opposing party, or any other persons whom the court considers it necessary to examine. In this examination proceeding, the movant, the opposing party, or any other persons whom the court considers it necessary to examine, can separately make their own assertion orally or in writing. There is no specific formality or method for the examination. Moreover, it is not required for both parties to attend the examination.

*** In cases where the natural parents of the adopted child have divorced**

In cases where the person to become an adopted child is a minor whose natural parents have divorced, the court shall hear the opinion of **the parent without parental authority** in making its decision on whether or not the adoption will be beneficial to the minor to be adopted (Paragraph 2 of Article 1024 of the Civil Code).

However, if the parent without parental authority does not appear at court without reasonable excuse, or if such parent refuses to give statement without reasonable excuse, then the court can issue a ruling on the simple adoption case without examining the parent.

*** The court must hear the opinion of a minor to be adopted.**

In cases where the person to become an adopted child is a minor, if such minor has attained the age of 15 years, it is necessary to obtain consent from the minor in order to create simple adoption. In addition, even if the minor is less than 15 years old but can

express his/her intention, the court must hear the minor's opinion in making its decision on whether or not the adoption will be beneficial to the minor to be adopted (Paragraph 3 of Article 1024 of the Civil Code).

b) **Duty to Appear at Court**

【 Law on Non-Litigation Civil Procedure 】

Article 29. _ Duty to appear at court

1- The court may designate the day for the proceedings and summon the movant, the opposing party, or any other persons whom the court considers to be necessary.

2- Should a person summoned by the court in accordance with Paragraph 1 fail to appear at court without justifiable grounds, the court may punish such person with a civil fine of not more than 1,000,000 riel.

In accordance with **Article 29** of this law, the court can designate the day for the proceedings and summon the movant, the opposing party, or any other persons whom the court considers to be necessary. The purpose of these proceedings is to have the movant or the opposing party make their own assertion orally or in writing, or to collect information about existence or non-existence of a fact from the movant, the opposing party or any other persons whom the court considers to be necessary.,

If a person summoned by the court fails to appear at court without justifiable grounds, the court can punish the person with a civil fine of not more than 1,000,000 riel (Paragraph 2 of Article 29 of this law) □

c) **Participation in the Proceedings by an Interested Person**

【 Law on Non-Litigation Civil Procedure 】

Article 31. _ Participation in the proceedings by an interested person

1- The court may, if considered to be appropriate, order any person other than the movant or the opposing party among the interested persons provided in Article 15 (Interested persons) of this law to participate in the proceedings.

2- The person described in Paragraph 1 may participate in the proceedings by obtaining permission from the court.

In accordance with **Article 31** of this law, any person other than the movant or the opposing party can be allowed to participate in the proceedings as if he/she were a party to the case, by an order of the court (Paragraph 1 of Article 31) or by his/her filing of a motion for the court's permission (Paragraph 2 of Article 31).

3) **Rulings**

*** What is the meaning of the word "Rulings"?**

Among the decisions of a court, there are two types as follows:

(1) a judgment; and,

(2) a ruling.

The ruling is a decision of a court or a judge which can be issued with or without convening oral arguments (Article 179, Paragraph 2 of the Code of Civil Procedure).

a) **Forms of Decisions**

【 Law on Non-Litigation Civil Procedure 】

Article 35._ Forms of decisions

A ruling described in Paragraph 2 of Article 3 (Scope of this law) of this law shall be rendered in writing which includes the grounds for the decision and the main text of the decision, and the judge(s) shall sign such written ruling.

In accordance with **Article 35** of this law, the court must render a ruling on the motion for simple adoption.

If the court acknowledges that the motion for simple adoption meets all conditions, the court should issue a **ruling which admits the simple adoption**.

On the contrary, if the court acknowledges that the motion for simple adoption does not meet any of the conditions described in the Civil Code, the court should issue a **ruling which dismisses the motion**.

*** Written Rulings**

A ruling on a motion for simple adoption must be rendered in writing which includes the grounds for the decision and the main text of the decision, and the judge(s) must sign the written ruling.

The written ruling should include the grounds for the decision for the purpose of guaranteeing impartiality in the judge's decision. Moreover, the written ruling should clearly show the grounds for the decision, which would be helpful for the party when the party files a *Chomtoah* appeal.

*** Main Text of the Decision in a Ruling which Admits Simple Adoption**

In cases where the court admits simple adoption, the written ruling must include the main text of the decision which declares, for example, "The movant (child) named Sokha shall become a child of the movant Mr. Vibol by means of simple adoption."

b) **Notice of Ruling**

【 Law on Non-Litigation Civil Procedure 】

Article 36._ Notice of ruling

The notice of a ruling described in Paragraph 2 of Article 3 (Scope of this law) of this law

shall be given to a person who shall receive the ruling. Such notice of the ruling shall be given by means of service or delivery of a true copy of the written ruling.

In accordance with **Article 36** of this law, when the court issues a ruling on a motion for simple adoption, the court must give notice of the ruling to a person who is supposed to receive the ruling.

*** Methods to Give Notice**

The notice of a ruling does not need to be given by means of the **service** such as delivery by hand of a court clerk. In addition to the service, the notice can be given by means of, for example, delivery through mail service system.

c) Finality of a Ruling and its Effect

【 Law on Non-Litigation Civil Procedure 】

Article 37._ Finality of a ruling and its effect

1- A ruling described in Paragraph 2 of Article 3 (Scope of this law) of this law shall not become final and binding prior to the expiration of the period in which a *Chomtoah* appeal against the ruling may be filed in accordance with Article 40 (Period for a *Chomtoah* appeal) of this law.

2- The finality of a ruling provided in Paragraph 1 is stayed by the filing of a *Chomtoah* appeal against the ruling within the period referred to in Paragraph 1.

3- A ruling provided in Paragraph 1 shall come into effect only when it has become final and binding.

In accordance with **Article 37** of this law, a ruling on the motion for simple adoption shall become final and binding at the expiration of the period in which a *Chomtoah* appeal against the ruling may be filed (Paragraph 1), or at the moment when the court of *Chomtoah* appeal, i.e., the appellate court, has rendered a ruling on the *Chomtoah* appeal (Paragraph 2).

For this reason, even though the notice of a ruling on the motion for simple adoption has been given to the movant and so on, the ruling does not come into effect prior to the expiration of the period in which a *Chomtoah* appeal against the ruling may be filed. Moreover, if a *Chomtoah* appeal is filed, the ruling on the motion for simple adoption does not come into effect until the appellate court renders a ruling on the *Chomtoah* appeal.

4) *Chomtoah* appeal

a) *Chomtoah* appeal

【 Law on Non-Litigation Civil Procedure 】

Article 39. _ *Chomtoah* appeal

1- Unless otherwise provided by this law, a ruling described in Paragraph 2 of Article 3 (Scope of this law) of this law on the cases provided in Paragraph 1 of the same Article 3 may be *Chomtoah* appealed by a person whose right or legal status is affected adversely by the ruling.

2- In cases where a ruling can be rendered only upon the motion by the party, a ruling which dismisses the motion may be *Chomtoah* appealed merely by the movant.

In accordance with **Article 39** of this law, a ruling on the motion for simple adoption can be *Chomtoah* appealed by a person whose right or legal status is affected adversely by the ruling.

*** Filing Fees for a *Chomtoah* Appeal**

When a *Chomtoah* appeal is filed in accordance with Article 39 (*Chomtoah* appeal) of this law, the *Chomtoah* appellant must pay a fee of **5,000 riel** to the court (**Paragraph 8 of Article 22** of the Law on Non-Litigation Civil Procedure).

If the *Chomtoah* appellant does not pay the filing fee, the court must specify a reasonable period and order that the fee be paid within that period. In this case, if the *Chomtoah* appellant still does not pay the fee, the court must, via the issuance of a ruling, dismiss the *Chomtoah* appeal (**Paragraphs 8 and 6 of Article 22** of the Law on Non-Litigation Civil Procedure).

b) Period for a *Chomtoah* appeal

【 Law on Non-Litigation Civil Procedure 】

Article 40. _ Period for a *Chomtoah* appeal

1- In cases where a person who may file a *Chomtoah* appeal has received the notice of a ruling, he/she may file a *Chomtoah* appeal within two weeks of the day of receipt of the notice of the ruling.

2- In cases where a person who may file a *Chomtoah* appeal is not one of the persons who are supposed to receive the notice of a ruling in accordance with Article 36 (Notice of ruling) of this law, he/she may file a *Chomtoah* appeal within two weeks of the day when the movant received the notice of the ruling.

3- With regard to a case which has been initiated by the court's authority, the period described in Paragraph 2 shall be calculated commencing from the day of receipt of the notice of the ruling by the person who last received the notice.

4- The period described in Paragraphs 1 and 2 may not be extended.

Article 40 of this law provides the period for a *Chomtoah* appeal. Within this period, a person who may file a *Chomtoah* appeal has to file a *Chomtoah* appeal. The period for a *Chomtoah* appeal cannot be extended (Paragraph 4 of Article 40 of the Law on Non-Litigation Civil Procedure).

c) Proceedings of the *Chomtoah* Appellate Court

【 Law on Non-Litigation Civil Procedure 】

Article 42._ Proceedings of the *Chomtoah* appellate court

Unless otherwise provided in this Chapter 7 of this law, provisions of Chapter 5 (Examination Proceedings) of this law as well as provisions of Chapter 4 (*Chomtoah* Appeal) of Book 3 (Appeal) of the Code of Civil Procedure shall apply *mutatis mutandis* to the proceedings of a *Chomtoah* appellate court.

Article 42 of this law provides that the proceedings of a *Chomtoah* appellate court must be carried out in accordance with provisions of Chapter 5 (Examination Proceedings) of this law as well as provisions of Chapter 4 (*Chomtoah* Appeal) of Book 3 (Appeal) of the Code of Civil Procedure.

g. Effect of Simple Adoption

1) Effect of Simple Adoption on Relationship between Child and Natural Parents

Article 1026._ Effect of simple adoption on legal relationship between the adopted child and the natural parents

1- Notwithstanding the creation of simple adoption, the legal relationship between the adopted child and his/her natural parents shall continue, and the adopted child and his/her natural parents shall have the right to inherit from each other.

2- The adopted child and his/her natural parents shall have the right to demand support from the other and the duty to support the other.

Article 1026 of the Civil Code provides the effect of simple adoption on legal relationship between the adopted child and his/her natural parents. In accordance with **Paragraph 1** of this article, even after the creation of simple adoption, the legal relationship between the adopted child and his/her natural parents must continue,

Therefore, this article admits the rights and duties of the adopted child regarding succession and family support to his/her natural parents.

2) Effect of Simple Adoption on Relationship with Adoptive Parents

Article 1027._ Effect of adoption on relationship with adoptive parents

1- Provisions of Paragraph 1 of Article 1015 (Effect of full adoption) shall apply *mutatis mutandis* to simple adoption.

2- The adopted child may use the surname of the adoptive parent(s) or the child's own surname prior to adoption.

3- If the adopted child is a minor, he/she shall be subject to joint parental authority of the adoptive parents. However, in cases where one spouse adopts the child who is a natural child of the other spouse, the adopted child shall be subject to joint parental authority of the natural parent and the adoptive parent.

Article 1027 of the Civil Code provides the effect of simple adoption on relationship with the adoptive parents.

Paragraph 1 of this article provides that the provisions of Article 1015 regarding effect of full adoption must apply *mutatis mutandis* to the effect of simple adoption on relationship between the adopted child and his/her adoptive parents. Thus, the adopted child must acquire the same status as that of a natural child of the adoptive parents, and must have the same rights and duties as a natural child in relation to the adoptive parents.

For this reason, like a natural child, the adopted child has a right to demand support and a right to succession from the adoptive parents. In addition, the adopted child can use the surname of the adoptive parents or the child's own surname prior to adoption (**Paragraph 2** of Article 1027).

*** Parental Authority over the Adopted Minor**

Paragraph 3 of Article 1027 provides that if the adopted child is a minor, he/she shall be subject to parental authority of the adoptive parents or the adoptive father or the adoptive mother.

In simple adoption, there co-exist both the relationship between the adopted child and his/her natural parents and the relationship between the adopted child and his/her adoptive parents. Thus, we need to determine whether the natural parents or the adoptive parents should become the parental authority holders of the minor child. Because the adoption of a minor child aims to take care of such minor child directly by the adoptive parents, the adoptive parents should become the parental authority holders of the minor child. Therefore, **Article 1035** of the Civil Code also explicitly provides that the adoptive parents must become the parental authority holders of the adopted minor.

*** In cases where one spouse adopts the child who is a natural child of the other spouse**

The second sentence of Paragraph 3 of Article 1027 provides that in cases where one spouse adopts the child who is a natural child of the other spouse, the adopted child should be subject to joint parental authority of the adoptive parent and such other spouse, i.e., the natural parent.

* Establishment of Legal Relationship by Simple Adoption (Article 940)

Article 940 of the Civil Code provides that from the time of adoption, the relationship between an adopted child and an adoptive parent (and his/her relatives by blood) shall be deemed to be the same as that between relatives by blood. This means that the legal parent-child relationship must be established between an adopted child and an adoptive parent. Moreover, the legal relationship must be established between the adopted child and the relatives of the adoptive parent in the same way as the legal relationship between a natural child of the adoptive parent and the relatives of the adoptive parent.

Due to the establishment of the above-mentioned legal relationships by simple adoption, the following various effect comes out:

(1) Right to Succession

After the creation of simple adoption, the adopted child and his/her adoptive parents have rights to succession to each other. Moreover, the adopted child and the relatives by blood of the adoptive parents also have rights to succession to each other. In succession, children of the decedent shall have equal shares of the succession regardless of whether they are natural or adopted (**Paragraph 2 of Article 1156** of the Civil Code).

(2) Right to Demand Support and Duty to Provide Support

After the creation of simple adoption, the adopted child and his/her adoptive parents have rights to demand support and duties to provide support. Moreover, the adopted child and the relatives by blood of the adoptive parents also have rights to demand support and duties to provide support (**Article 1140** of the Civil Code).

h. Dissolution of Simple Adoption

In simple adoption, the Civil Code admits the following two methods of dissolution of adoption:

- (1) Dissolution of simple adoption **by agreement** between the parties; or
- (2) Dissolution of simple adoption **by litigation** if there is no agreement between the parties.

1) Dissolution of Simple Adoption by Agreement

a) Motion for Dissolution of Simple Adoption

Article 1028. _ Motion for dissolution of simple adoption

1- If the parties to adoption have agreed to dissolve such adoption, they may file a motion to a court for dissolution.

2- In cases where the adopted child is a minor, the motion under Paragraph 1 shall be filed by the adoptive parents and the person who is to become the minor's statutory agent after dissolution of the adoption. However, if the adopted child has attained the age of 15 years,

his/her consent shall be obtained. If the adopted child has not attained the age of 15 years but can express his/her intention, the court shall hear his/her opinion.

3- In cases under Paragraph 2, if the natural parents of the adopted child are divorced, they shall, through consultation, determine which of them is to become the parental authority holder after the dissolution of the adoption.

4- If the consultation under Paragraph 3 does not reach an agreement, or if such consultation cannot be held, the court shall determine who is to become the parental authority holder, taking into account the interests of the child.

With regard to dissolution of simple adoption by agreement between the parties, **Article 1028** of the Civil Code requires not only the agreement between the parties, but also a motion filed to a court and the court's ruling (**Paragraph 1** of Article 1028 of the Civil Code).

*** In cases where the adopted child is a minor**

In cases where the adopted child is a minor, a motion for dissolution of simple adoption must be filed by the adoptive parents and the person who is to become the minor's statutory agent after dissolution of the adoption. If the adopted child has attained the age of 15 years, his/her consent must be obtained from the viewpoint of respecting the child's intention. If the adopted child has not attained the age of 15 years but can express his/her intention, the court shall hear his/her opinion (**Paragraph 2** of Article 1028).

In addition, **Paragraphs 3 and 4** of Article 1028 provides that if the natural parents of the adopted child are divorced, they must, through consultation, determine which of them is to be the parental authority holder, and that if such consultation does not reach an agreement, the court must determine who is to become the parental authority holder, taking into account the interests of the child.

b) Dissolution of adoption between the adopted minor and the married couple who has jointly adopted such minor

Article 1029. _ Dissolution of adoption between the adopted minor and the married couple who has jointly adopted such minor

In cases where the adoptive parents are a married couple who has jointly adopted a minor child, in order to dissolve the adoption of such minor child, the married couple shall jointly file a motion as prescribed in Paragraph 1 of Article 1028 (Motion for dissolution of simple adoption). However, this shall not apply if either the husband or the wife is incapable of declaring his/her intention.

Article 1029 of the Civil Code provides the dissolution of adoption between the adopted minor and the married couple who has jointly adopted such minor.

If a person with a spouse wishes to adopt a minor, in principle, a motion for simple adoption must be filed together with the spouse (Article 1021). Thus, Article 1029 also

requires such married couple to jointly file a motion for dissolution of the adoption (**The first sentence**).

However, in cases where if one of the adoptive parents is incapable of declaring his/her intention, the other adoptive parent alone can file a motion for dissolution of the adoption (**The second sentence** of Article 1029).

c) **Criteria for Determination of Dissolution of Simple Adoption**

Article 1030. _ Criteria for determination of dissolution of simple adoption

If a motion is filed in accordance with Paragraph 1 of Article 1028 (Motion for dissolution of simple adoption), the court may admit the dissolution of the adoption only if the court confirms that both parties truly wish to dissolve the parent-child relationship.

Article 1030 of the Civil Code provides the criteria for determination of dissolution of simple adoption.

With regard to dissolution of simple adoption by agreement between the parties, Article 1030 requires the court to confirm that both parties truly wish to dissolve the parent-child relationship, in order to guarantee that such dissolution agreement was made voluntarily, not compulsorily.

d) **Court Procedure**

【 Law on Non-Litigation Civil Procedure 】

Article 3. _ Scope of this law

1- Among the matters which a court is granted authority to decide by the Civil Code, the court shall make the decision in accordance with the provisions of this law with regard to the matters listed in each section of the table annexed to this law, unless otherwise provided specifically by other laws.

2- The decision provided in Paragraph 1 shall be rendered by means of a ruling.

3- Unless there are special provisions in this law, the provisions of the Code of Civil Procedure concerning a ruling shall apply *mutatis mutandis* to the ruling provided in Paragraph 2.

(Item No.10 of Section 4 of the Annexed Table)

The matter to be decided is a motion for dissolution of adoption by agreement in accordance with Paragraph 1 of Article 1028 (Motion for dissolution of simple adoption).

Article 1028 of the Civil Code provides that, in order to dissolve simple adoption by agreement, it is necessary to fulfill the requirements as follows:

- (1) There must be a **motion** by both parties to the simple adoption; and,

(2) A court must issue a **ruling** which admits the dissolution of the adoption.

The court procedure for simple adoption must follow the provisions in the **Law on Non-Litigation Civil Procedure. Article 3** of this law stipulates the scope of this law, and provides that the court shall make a decision in accordance with the provisions of this law with regard to the matters listed in each section of the table annexed to this law. Then, Item No.10 of Section 4 of the Annexed Table indicates a motion for dissolution of adoption by agreement in accordance with Paragraph 1 of Article1028 (Motion for dissolution of simple adoption) of the Civil Code. Therefore, it is no doubt that the Law on Non-Litigation Civil Procedure applies to the court procedure for dissolution of simple adoption.

In addition, unless there are special provisions in this law, the provisions of the **Code of Civil Procedure** concerning a ruling shall apply *mutatis mutandis* to a ruling on dissolution of simple adoption (Paragraph 3 of Article 3 of the Law on Non-Litigation Civil Procedure).

2) **Dissolution of Simple Adoption without Agreement**

a) **Litigation Demanding Dissolution of Simple Adoption**

If both parties to simple adoption cannot reach an agreement on dissolution of the adoption, either of the parties can file a complaint demanding the dissolution of the adoption in accordance with **Article 1031** of the Civil Code as explained below.

b) **Grounds for Dissolution of Adoption by Litigation**

Article 1031._ Grounds for dissolution of adoption

1- Either of the parties to adoption may, in the following cases only, file a complaint demanding the dissolution of the adoption:

A. if he/she has been abandoned in bad faith by the other party;

B. if it is not clear whether the other party is dead or alive for not less than one year; or

C. if there is any other material ground making it difficult to continue the adoptive relation.

2- So long as the adopted child is a minor, the adoptive parents may not file a complaint under Paragraph 1 against the adopted child.

3- If the adopted child is a minor, the provisions of Paragraphs 2 to 4 of Article1028 (Motion for dissolution of simple adoption) of the Civil Code shall apply *mutatis mutandis* to any action filed by the adopted child against the adoptive parents in accordance with Paragraph 1 of this Article.

Article 1031 of the Civil Code provides the grounds for dissolution of adoption by litigation.

The grounds for dissolution of adoption are listed as follows:

(1) if one party has been abandoned in bad faith by the other party;

- (2) if it is not clear whether the other party is dead or alive for not less than one year; or
- (3) if there is any other material ground making it difficult to continue the adoptive relation, such as domestic violence, abusive or insulting behavior, or other bad acts which cause irreparable damages to the fiduciary relationship between the adopted child and the adoptive parent.

*** In cases where the adopted child is a minor**

Paragraph 2 of Article 1031 of the Civil Code provides that so long as the adopted child is a minor, the adoptive parents **may not file a complaint** demanding the dissolution of simple adoption against the adopted child.

*** In cases where the adopted minor wishes to file a complaint demanding dissolution of simple adoption**

In cases where the adopted minor wishes to file a complaint demanding dissolution of simple adoption against the adoptive parents, **Paragraph 3** of Article 1031 of the Civil Code provides that the provisions of Paragraphs 2 to 4 of Article 1028 (Motion for dissolution of simple adoption) of the Civil Code must apply *mutatis mutandis* to such complaint filed by the adopted child.

Therefore, in this case, the complaint demanding dissolution of simple adoption must be filed by the person who is to become the adopted minor's statutory agent after dissolution of the adoption. If the adopted child has attained the age of 15 years, his/her consent must be obtained from the viewpoint of respecting the child's intention. If the adopted child has not attained the age of 15 years but can express his/her intention, the court shall hear his/her opinion (**Paragraph 2 of Article 1028 of the Civil Code**).

In addition, **Paragraphs 3 and 4 of Article 1028** provides that if the natural parents of the adopted child are divorced, they must, through consultation, determine which of them is to be the parental authority holder, and that if such consultation does not reach an agreement, the court must determine who is to become the parental authority holder, taking into account the interests of the child.

c) Court Procedure

<p>【 Law on Personal Status Litigation Procedure 】</p> <p>Article 3. _ Scope of this law</p> <p>This law shall apply to the personal status litigations which are listed as below:</p> <p>A- Litigation demanding confirmation of nullity of marriage in accordance with the provision of Article 958 (Nullity of marriage) of the Civil Code;</p> <p>B- Litigation demanding cancellation of marriage in accordance with the provisions from Article 959 (Cancellation of marriage) to Article 963 (Cancellation of marriage on the ground of fraud or threat) of the Civil Code;</p>
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C- Litigation demanding divorce in accordance with the provision of Article 978 (Grounds for divorce) of the Civil Code;

D- Litigation denying father-child relationship in accordance with the provisions of Article 990 (Litigation denying father-child relationship by a person to be presumed a father) and Article 991 (Litigation denying father-child relationship by a child) of the Civil Code;

E- Litigation demanding recognition of a child in accordance with the provision of Article 1001 (Litigation demanding recognition of a child) of the Civil Code;

F- Litigation demanding confirmation of non-existence of parent-child relationship in accordance with the provision of Article 1002 (Litigation demanding confirmation of non-existence of parent-child relationship) of the Civil Code;

G- Litigation demanding confirmation of existence of mother-child relationship in accordance with the provisions of Article 1004 (Litigation demanding confirmation of existence of mother-child relationship by a child) and Article 1005 (Litigation demanding confirmation of existence of mother-child relationship by a mother) of the Civil Code;

H- Litigation demanding dissolution of full adoption in accordance with the provision of Article 1016 (Dissolution of full adoption) of the Civil Code;

I- Litigation demanding dissolution of simple adoption in accordance with the provision of Article 1031 (Grounds for dissolution) of the Civil Code;

J- Other litigations demanding the creation or the confirmation of existence or non-existence, of a personal status relationship.

Article 3 of the **Law on Personal Status Litigation Procedure** provides that this law must apply to litigation demanding dissolution of simple adoption (Item I of Article 3).

The Law on Personal Status Litigation Procedure has a purpose of providing **special rules** of the Code of Civil Procedure with regard to the procedure of personal status litigation (Article 1 of this law).

*** What is the meaning of the phrase “Personal Status Litigation”?**

The personal status litigation refers to litigations demanding the creation or the confirmation of existence or non-existence, of a personal status relationship, i.e., a legal relationship between persons, such as marriage and parent-child relationship.

*** The Law on Personal Status Litigation Procedure is a special law to the Code of Civil Procedure.**

The personal status litigation should be governed by the Code of Civil Procedure which aims to clarify or confirm the rights of persons or the legal relationship between persons.

However, in the personal status litigation, the subject matter to be decided is a legal relationship between persons (i.e., personal status), and such legal relationship is closely related to public interests. Thus, the personal status litigation needs a **special law** to the

Code of Civil Procedure, which provides some special rules applicable to the procedure of personal status litigation.

For the reason mentioned above, the Law on Personal Status Litigation Procedure is a special law to the Code of Civil Procedure. Thus, at first you should look at the Law on Personal Status Litigation Procedure and try to apply this law to the personal status litigation including the litigation demanding dissolution of simple adoption. Then, if you find that this special law does not have a provision applicable to the personal status litigation, you should go to the Code of Civil Procedure and apply a fundamental provision contained in the Code of Civil Procedure to the personal status litigation.

*** Court with Jurisdiction**

Article 5 of the **Law on Personal Status Litigation Procedure** provides that the personal status litigation shall be subject to the exclusive jurisdiction of the court of first instance with jurisdiction over the location of the domicile of the person whose status is related to the action.

Therefore, in the litigation demanding dissolution of simple adoption, the court with jurisdiction to resolve this action is the court of first instance which has jurisdiction over the location of the domicile of the adoptive parents or the court of first instance which has jurisdiction over the location of the domicile of the adopted child.

*** Oral arguments should not be open to the public.**

Article 16 of the **Law on Personal Status Litigation Procedure** provides that oral arguments shall be held in a court which is not open to the public.

Therefore, in the litigation demanding dissolution of simple adoption, oral arguments must be held in a court which is not open to the public.

*** The court must render a judgment.**

In order to make a decision on the complaint demanding dissolution of simple adoption, the court must render a judgment.

3) Effect of Dissolution of Simple Adoption

Article 1032. _ Effect of dissolution of simple adoption

1- Upon dissolution of simple adoption, the whole effect of the adoption shall be extinguished as of that time onward.

2- After dissolution of the adoption, the adopted child may restore his/her surname to that prior to adoption, or may use the surname of the adoptive parent(s).

Article 1032 of the Civil Code provides the effect of dissolution of simple adoption.

Paragraph 1 of this article provides the **non-retroactive effect** of dissolution of adoption, which means that upon dissolution of simple adoption, the whole effect of the adoption shall be extinguished as of that time onward.

With regard to the surname of the adopted child, if his/her surname has been changed upon the adoption, the adopted child can restore his/her surname to that prior to adoption, or can use the surname of the adoptive parent(s). The adopted child has the options regarding his/her surname (**Paragraph 2** of Article 1032).

*** End of legal relationship between the adopted child and the adoptive parents by dissolution of simple adoption (Article 942)**

Article 942 of the Civil Code provides that the legal relationship of an adopted child, his/her spouse, any of his/her lineal descendants and their spouses with an adoptive parent and his/her relatives by blood shall come to an end by dissolution of adoptive relation.

The legal relationship between the adopted child and the adoptive parents is considered to be the same as the relationship between the child and the natural parents. However, the relationship between the adopted child and the adoptive parents is merely a relationship created by law. Thus, the relationship between the adopted child and the adoptive parents should be extinguished by the dissolution of simple adoption.

The dissolution of simple adoption does not only extinguish the legal relationship between the adopted child and the adoptive parents, but also extinguishes the legal relationship between the adopted child and the relatives by blood of the adoptive parents.

Moreover, the dissolution of simple adoption extinguishes the legal relationships as stated below:

- (1) If the adopted child would have a spouse, the legal relationship between such spouse and the adoptive parents should be extinguished. In addition, the legal relationship between such spouse and the relatives by blood of the adoptive parents should be extinguished, too.
- (2) If the adopted child would have a lineal descendant such as a child or grandchild of the adopted child, the legal relationship between such lineal descendant and the adoptive parents should be extinguished. In addition, the legal relationship between such lineal descendant and the relatives by blood of the adoptive parents should be extinguished, too.
- (3) If a lineal descendant of the adopted child would have a spouse, the legal relationship between such spouse and the adoptive parents should be extinguished. In addition, the legal relationship between such spouse and the relatives by blood of the adoptive parents should be extinguished, too.

i. Registration of Simple Adoption and Civil Status Book

Article 1033. _ Registration of simple adoption and civil status book

If simple adoption is created, such creation of simple adoption shall be noted in the margin of the original civil status book of the adopted child.

Article 1033 of the Civil Code provides the registration of simple adoption and civil status book.

In full adoption, since it cannot be expected that the natural parents take care of their child properly, the child should be put into the whole custody and care of the adoptive parents. That is why the Civil Code requires that a personal status registration and birth certificate of the adopted child describe on its face that the adopted child is a natural child of the adoptive parents (Article 1018).

On the contrary, simple adoption does not terminate the legal relationship with the natural parents of the adopted child. Thus, it is not necessary to conceal the fact of the adoption.

For this reason, Article 1033 provides that if simple adoption is created, such creation of simple adoption must be noted in the margin of the original civil status book of the adopted child.

