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PRACTICE DIRECTION 1 OF 2018: APPLICATION FOR LETTERS OF ADOPTION AND LEGAL GUARDIANSHIP ORDERS

This Practice Direction is made following consultation between the Supreme Court and the Crown Law Office to ensure that applicants for Letters of Adoption and Legal Guardianship Orders are aware of the Court's requirements before making such applications, that the Court is provided with all of the information that it requires to consider such applications and the efficient determination of such applications by the Court.

All applications filed in the Supreme Court Registry pursuant to section 16 of the *Maintenance of Illegitimate Children Act* and section 6 of the *Guardianship Act* must follow the following procedure:

1. The applicants must submit an application letter addressed to the Registrar of the Supreme Court and a completed Checklist (in the form attached) with the listed accompanying original documents. The Registrar may change the form of Checklist from time to time.

2. The application is to also be accompanied by an affidavit of the applicants that must contain the following:
   - 2.1 Name, residential address, age, nationality and occupation of the applicants;
   - 2.2 Name, date of birth and nationality of the child to be adopted;
   - 2.3 Relationship of the applicants to the natural mother/parents and their nationality;
   - 2.4 Date when applicants first took the child and period they have cared for the child;
   - 2.5 Religion of the applicants and religion in which the applicants intend to raise the child;
   - 2.6 Place where the applicants intend to raise the child;
   - 2.7 That in respect of the proposed adoption, there has been no payment to the natural mother/parents; and
   - 2.8 Any name change requested in respect of the child if required.

3. In respect of an application for Letters of Adoption, there must be filed an affidavit from the natural mother (unless she is unknown, her whereabouts are unknown or has passed away) consenting to the application and confirming her understanding that the effect of such an order is to permanently deprive her of all parental rights over the subject child.

4. In respect of an application for a Legal Guardianship Order, there must be filed an affidavit from the natural parents (unless their whereabouts are unknown or they have passed away) consenting to the application and confirming their understanding of the effect of a Legal Guardianship Order.

5. For applicants who are permanently residing in Tonga and intend to raise the child in Tonga, the application and affidavit must be accompanied by the following:

   - 5.1 Letters in support from two responsible people in Tonga who have personal knowledge of the applicants and their suitability to raise the child; and

   - 5.2 The applicants' criminal record from the Tonga Police.

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6. For applicants who are permanently residing overseas and intend to raise the child overseas they must provide the following;

   6.1 A social worker's report from their country of residence on their suitability to raise the child including a home report;

   6.2 The applicants' criminal record from the Tonga Police (if they are/were Tongan nationals) and from the country of residence; and

   6.3 In the case of applications for a Legal Guardianship Order evidence from the relevant authority in the country of residence that the Order will allow the child entry and permanent residence in that country.

7. Original birth certificate of the child to be adopted.

8. Photo ID and original marriage certificate of the applicants.

9. Applications will **only** be accepted for filing when all the requirements above are provided unless the applicants have been granted a waiver of any of the requirements upon application to the Court.

10. The Court will usually order a Guardian ad Litem's report to be prepared in each case. The Guardian ad Litem shall be expected to prepare and file the report within 28 days from the date upon which the Order is made requesting it.

11. The Court shall fix a date for hearing upon receiving the report from the Guardian ad Litem. Applications will generally be heard on one day a month on a date that is allocated by the Court. Requests for applications to be dealt with on an urgent basis will only be considered if special circumstances exist and applications should be made by the applicants to the Court and not through the Guardian ad Litem.

12. The application will be heard in Chambers and the following people are expected to attend:
    a. Applicants and their lawyer (if any);
    b. Natural mother/parents;
    c. Subject child;
    d. Guardian ad Litem;

13. This Practice Direction takes effect from 1 October 2018 and Practice Direction 3 of 1992 is revoked as from that date.

NUKU'ALOFA: 17 August 2018

SUPREME COURT TONGA

O. G. Paulsen
LORD CHIEF JUSTICE

IN THE SUPREME COURT OF TONGA

APPLICATION FOR LETTERS OF ADOPTION AND
LEGAL GUARDIANSHIP ORDER CHECKLIST

NOTICE:
This Checklist is to be completed by the Applicants or their lawyer and MUST be filed together with the application for Letters of Adoption or for Legal Guardianship Order.

Tick and fill in where appropriate

- ☐ Application Letter

- ☐ Affidavit by the Applicants

  Address: _____
  Phone Number: _____
  Email Address: _____

- ☐ Affidavit of consent by the Natural Parent/s

  Address: _____
  Phone Number: _____
  Email Address: _____

- ☐ Original birth certificate/s of the child/ren

- ☐ Photo ID of the applicants

- ☐ Marriage certificate of the applicants

- ☐ Court Order granting a waiver of any of these requirements *(where applicable)*

For applicants who are permanently residing in Tonga and intend to raise the child in Tonga:

- ☐ Letters of support from two responsible people who have personal knowledge of the applicant's suitability to raise the child

- ☐ Both the Applicants criminal record from Tonga Police

For applicants who are permanently residing overseas and intend to raise the child overseas:

- ☐ Social worker's report from country of residence including a home report
- ☐ Both the Applicant's criminal record from country of residence
- ☐ Both the Applicant's criminal record from Tonga Police (if they are/were Tongan nationals)
- ☐ Evidence from evidence from the relevant authority in their country of residence that the adoption or guardianship order will allow the child entry and permanent residence in that country

OFFICE USE ONLY:

FA _____/_____ Filed: _____

Checklist Checked: **YES** **NO**

Accepted for filing by: _____

Receipt Number: _____ Amount Paid: _____

Comments:

_____

_____

_____

Signature: _____ Date: _____