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**Our reference**

Date 20 April 2009  
Re Adoption regulations in the Netherlands

Dear Mr./Mrs.....,

Recently I received, through the Foundation Child and Future (hereafter referred to as the accredited body), a request from:  
Mr/Mrs..... (our reference number BKA 200..... ).  
for my permission to adopt a child through you as their contact in the United States. In that regard, I kindly request your attention for the following.

I would like to point out to you the procedure that Dutch prospective adoptive parents are obliged to follow before they are allowed to adopt a child from the United States. I would also like to inform you about the rules and the principles which determine the procedures and conditions the prospective parents, the accredited body and you as their contact have to comply with.  
These rules and principles are laid down in the Dutch "Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption", hereinafter referred to as "the Act", and in the following Conventions: the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, 1993 (hereafter the Hague Convention), and the Convention on the Rights of the Child, 1989 (hereafter the Child Rights Convention).

The generally accepted principles and essential requirements for intercountry adoption are laid down in article 4 of the Hague Convention and article 21 of the Child Rights Convention. The Netherlands are Party to both Conventions. It considers the rules and principles which are laid down in the Conventions of such importance that it will apply these to adoption-procedures for those who filed an adoption application before April 1, 2008 (the date the Hague Adoption Convention entered into force for the United States). The basic principle for intercountry adoption is that at all times, the best interests of the child have to be served.

Hereafter I will give an overview of these rules and principles as implemented in Dutch domestic law, as conditions that apply to Dutch adoption cases.

Thereafter I will request your confirmation that you will commit yourself to respect these rules, principles and conditions in all the Dutch adoption cases you

are handling and will handle in the future. Without your confirmation, I cannot give my consent for Dutch adoption cases through your office. Afterwards, in further future cases, I will refer to it.

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#### **Procedure to obtain permission to adopt**

Prospective adoptive parents are obliged to follow a procedure in the Netherlands, which is based on the Act. A copy of the Act is enclosed.

The procedure contains the mandatory education of prospective adoptive parents on issues surrounding inter-country adoption and a home study of the prospective adoptive parents by the Child Care and Protection Agency. After the prospective adoptive parents have concluded their education, they receive permission from the Dutch Ministry of Justice to adopt, based on a positive report by the Agency.

#### **Investigation of the contact**

Prospective adoptive parents who wish to adopt a child from the United States are obliged to adhere to article 7a of the Act. This article states that a Dutch licensed adoption agency (accredited body) has to investigate the contact (authorities, institutions and/or persons in the country of origin of the child, in terms of the Hague Convention a non-accredited body (cf article 22 Hague Convention)) and other persons, institutions and authorities involved in the adoption procedure in the country of origin, to ascertain they operate with care and propriety, and above all integrity.

Every following adoption, even when it proceeds through a known private contact, requires approval of the Dutch Ministry of Justice before the prospective adoptive parents are allowed to adopt through that contact. The approval involves, among other things, the written consent of the prospective adoptive parents with conditions stated in a letter by the Dutch Ministry of Justice, which are based on the Act, its regulations and the principles laid down in the Act and in the Conventions.

During the adoption procedure, the contact is not allowed to involve other persons, institutions and/or authorities that were not comprised in the investigation meant in article 7 a of the Act, as far as these execute *independent* tasks. If such persons, institutions and/or authorities, according to my judgment, do perform independent tasks, they may only become involved in the adoption procedure after they - at the request of the prospective adoptive parents - have at their turn been awarded the required approval by the Dutch Ministry of Justice.

#### **Local adoption agencies**

The organisations whose services you engage locally in order to prepare for the actual adoption must also declare their agreement with the conditions stipulated in the letter of terms of conditions. A declaration of this type must therefore also be appended for these unchecked contacts in each procedure. This does not alter the fact that you will remain responsible for the entire mediation process.

#### **Principles and conditions under the Act and the Conventions**

The decision by the Dutch Ministry of Justice, whether the services offered by a private contact (accredited US body ) can be used by the prospective adoptive parents, and whether the home study report may be forwarded to this contact, is subject to principles and conditions.

The principles and conditions are based on the national Act and the Conventions.

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### Principles

A first principle of the Act states that persons, institutions and authorities involved in the adoption procedure are *not to obtain any improper financial profit*.

A second major principle of the Act is the *subsidiarity principle*. This means that inter-country adoption may only be considered as an alternative means of child's care if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin.

A third principle is that *consents* must be obtained in the following manner. The contact shall ensure that:

- the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary, and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin.
- such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing, the consents have not been induced by payment or compensation of any kind and have not been withdrawn;
- the consent of the parent(s) has been given only after the birth of the child, and
- the parent(s) has been given the possibility to reconsider her/their decision. The revocation period must be at least 60 days.

### Conditions in the Netherlands

#### *The Contact abroad*

A. When the contact is satisfied that the child is adoptable he or she shall:

- prepare a *report* of the child involved including information about its own identity, adoptability, background, social environment, family history, medical history including that of the child's family, any possible special needs of the child and the attempts which are made to have this child adopted by adoptive parents in its country of origin;
- ensure that *consents* have been obtained in accordance with the fore-mentioned principles and with the laws in the state of origin.

B. In the case of an adoption-proposal, the contact shall transmit its report on the child to the Dutch accredited body, proof that all the necessary consents have been obtained and clarify the reasons for the proposal for adoption of a child to specific prospective adoptive parents. It shall allow the accredited body a reasonable time to assess the report and the child-data and shall wait for the confirmation of the accredited body that the adoption can take place before it informs the prospective adoptive parents that the child can be collected.

#### *The Dutch accredited body involved*

The accredited body that performed the investigation verifies the data related to the identity and origin of the child, once they become available. The accredited body also subjects the way in which the child has become available for adoption, and the way in which the renunciation-procedure has taken place, to a similar verification process. It will inform the contact as soon as possible about the results of the verification. The accredited body will send the file to the Ministry of Justice which will decide whether an approval can be given. After the adoption procedures have been completed, the accredited body is entrusted with the duty

to apply for the entrance visa for the child to the Netherlands. The communication about the proposal will take place between the contact and the accredited body.

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#### *The prospective adoptive parents*

The prospective adoptive parents have to provide the accredited body with a view to the constitution of a file - with copies of all the (financial) documents that become available during the adoption procedure.

They also have to comply with the conditions mentioned in the permission to adopt, which they receive from the Dutch Ministry of Justice.

The prospective adoptive parents have to supply the Dutch Ministry of Justice with a written consent to conditions mentioned in a letter, which the Dutch Ministry of Justice sends to them *before* it approves of the contact in that individual case. Only after receipt of the written consent, the Dutch Ministry of Justice can approve of adoption through the contact by the particular prospective adoptive parents.

#### *Conditions regarding age difference*

The difference in age between the adoptive child and the adoptive parents may not exceed forty years. Only under specific circumstances an exception to this principle may be considered. The prospective adoptive parents or the accredited body involved can send a request for such an exception to the Dutch Ministry of Justice (and a copy of this request to the accredited body).

The adoptive child may not have reached the age of six years on arrival in the Netherlands.

#### *Consent and revocation period*

The revocation period of the relinquishment of the birth mother/parents can vary among the various states. For each state you work with, I consider it important that you guarantee that, irrespective of the relinquishment's stated revocation period, any birth mother can attempt to set aside an adoption until it is finalized, for which she has to be allowed a reasonable period (at least 60 days. The (final) consent of the birth mother will have in all cases to be given *after* the birth of the child.

As far as I know, according to the law of some states, a birth mother can choose to appear before court in order to confirm that that she fully understood the consequences of her consent and that she signed the consent freely and voluntarily, and that she believes the adoption is in the best interest of the child; in that case, however, she will *lose* the revocation period.

If this is the case, that is if the birth mother wishes to appear before court, this means that the child *cannot* be adopted by a Dutch couple.

I require that you mention in your report to the accredited body, the Foundation Child and Future, the moment of the (final) consent by the birth mother and the revocation period.

The declaration of consent must be included in the file. In the event that this is not possible, the official body to which the declaration of consent to adoption was issued must confirm in writing the date on which and in the presence of whom the biological parent(s) signed the declaration of consent.

#### *Counselling*

Counselling for the biological parent(s) has been offered by an independent organisation/social worker. A declaration from the biological parent(s) and a

separate declaration by the independent organisation/social worker must be appended in each case, stating that this independent counselling is offered to the biological parent(s);

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*Subsidiarity principle*

Regarding the subsidiarity principle, I consider it important, that, reasonable efforts will be made for a specific child to have it place in its own country. I require that you mention in every report of a specific child that is proposed for adoption by Dutch adoptive parents, the reason why *this* child cannot be adopted in its own country, the USA, and the efforts that have been made in this respect. The contact will provide a declaration by three adoption service providers, which have been accredited by the American Central authority and have a national coverage for their adoption services. Those adoption service providers have to declare that they have no possibilities to place a child with a United States family. Those declarations have to be accompanied with documentation of these reasonable efforts like copies of print, media, and internet information on the child and his or her availability for adoption, copies of adoption exchange or registry listing on the child, written responses to inquiries on the child, and proof that the child's background study was presented to potential U.S. prospective adoptive parents. Those declarations have to be included in the file.

Of course, it is not allowed that, prior to my final approval, Dutch prospective adoptive parents already are being given the care of an adoptive child.

*Fees*

As you agreed with the Foundation Child and Future, following completion of the adoption procedure, you must provide Foundation Child and Future with a financial statement of the actual costs incurred and a clarification if the actual costs are significantly higher than the estimated costs.

*I kindly request you to confirm to me that you are prepared to commit yourself in the Dutch adoption cases you are handling now and in the future to respect the rules, principles and conditions mentioned above and to cooperate with the Dutch Ministry of Justice and the accredited body, the Foundation Child and Future, to have the prospective adoptive parents comply with them.*

Yours sincerely,  
For the Minister of Justice,  
Head of the departement for Legal and International Affairs

B.J.Th. ter Heerdt