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ADOPTION IN SWITZERLAND

Introduction

The purpose of an adoption is to establish a legal parent-child relationship between the adoptive parents and the child regardless of biological descent.

Depending on the presence or absence of a link to a foreign state, a distinction must be made between local adoption in Switzerland and intercountry adoption.

Local Adoption

The Swiss Civil Code (ZGB) recognizes three forms of local adoption, which are the joint, stepchild, and single adoption, and further distinguishes between the adoption of minors and adults.

A local adoption requires both the adoptive parents and the adoptee to be Swiss residents. Responsibility for the adoption process lies with the central authority of the canton of residence.

Adoption of a Minor

The adoption of a minor requires the adoptive parents to have provided them with care and education for the minimum of one year and their presumed ability to do so until the child comes of age. Based on the overall circumstances, the establishment of a parent-child relationship must be expected to serve the best interests of the child (art. 264 ZGB).

Joint Adoption

Spouses may jointly adopt a child on the condition of them having lived in a common household for a minimum of 3 years and both being at least 28 years of age (art. 264a ZGB). Additionally, the age difference between the child and the adoptive parents may not exceed 45 years. Exceptions can be made in favor of the best interests of the child (art. 264d ZGB).

If the child is capable of judgement (which is generally assumed to be the case as of the age of 12), the adoption requires his consent. This also applies to the child's current parents, whose relationship with the child is to be terminated (art. 265 ff. ZGB).

Under current law, the joint adoption is only open to spouses. Unmarried couples (both homo- and heterosexual) are excluded from this form of adoption.

Stepchild Adoption

An individual may adopt the child of his or her partner if they are living in a state of de facto cohabitation while having shared a household for a minimum of three years. Whether the couple is married or living in a registered partnership or not is irrelevant (art. 264c ZGB), which makes this form of adoption accessible to both same-sex and unmarried heterosexual couples as well.

As in the case of joint adoption, consent of the renouncing parent as well as the child is necessary, given that the latter is capable of judgement. The maximum age difference of 45 years between the adoptee and the adoptive parents is also applicable.

Single Adoption

Although single adoption is an exception, it is a possibility for anyone who is neither married nor in a registered partnership (art. 264b ZGB).

Concerning the acceptable age difference and the required consent of both the child and the current parents, the aforementioned conditions apply.

Adoption of an Adult

An adult may be adopted under the precondition of the provision of care and education for the duration of a year or more by the adoptive parents while the adoptee was a minor or if the adoptee is in need of long-term care for physical, mental or psychological reasons (art. 266 ZGB).

Excluding the consent of the current parents, the general requirements for the adoption of minors are applicable.

Effects of Adoption

Once the adoption process is completed, the child is considered as a legal child of the adoptive parents, while the parent-child relationship to the previous parents is terminated, with the exception of the relationship between a stepchild and the partner of the adoptive parent in case of a stepchild adoption (art. 267 ZGB).

With the adoption, the child receives the surname of the adoptive parents. In the case of married parents who do not share a common last name, the child is given the name chosen for the children by the parents at the time of marriage. In the case

of unmarried parents, it is up to the parents to decide which of their maiden names the child shall have (art. 267a in connection with 270a ZGB).

Intercountry Adoption

International adoption is defined as the adoption of a child from a foreign country. Since Switzerland is among the member states of the Hague Convention on Adoption (Hague Adoption Convention), which has introduced regulations aiming at the protection of children, the adoption procedure differs depending on the membership status of the country of origin of the child. If the latter is also a member, the rules of the Hague Convention outline the required procedure.

In the case of non-member states, adoptions are generally possible as well. However, the adoption procedure is dictated by the rules of this state, which results in a wide variety of different requirements and processes in different nations.

Procedure

It is to distinguish between the reception procedure and the actual adoption procedure.

The reception procedure includes the assessment of the aptitude of the adoptive parents and issuing the appropriate certificate, as well as giving consent to the placement of the adoptee.

The adoption procedure legally establishes the parent-child relationship between the child and the adoptive parents. While the reception procedure must be initiated with the Central Authority (CCA) in the adoptive parent's canton of residence, the adoption can also be carried out abroad if certain circumstances are met.

Adoption Issued Abroad

If the adoption is granted in the child's country of origin and said country is a contracting state of the Hague Convention on Adoption, the decision is generally automatically recognized in Switzerland (article 23 et. Seq. Hague Convention).

If the country of origin of the adoptee is not among the signatory states, the foreign adoption decision is not automatically recognized in Switzerland, but rather granted in accordance with the regulations of the Switzerland's Federal Code on Private International Law (IPRG). According to this law, a foreign adoption decision is recognized in Switzerland if at least one of the adoptive parents is a citizen of the state issuing the adoption or if the parents are residents of the state in question (article 78 IPRG).

If the foreign adoption cannot be recognized in Switzerland, the adoptive parents must apply for an entry permit for the child into Switzerland and, after completing the probationary year, (re-)submit an adoption application to the competent authorities of their canton of residence. Upon entry, a guardian will be appointed for the child.

Legal Advice

Adoption is a challenging and time-consuming undertaking. It is therefore recommended to seek advice and legal counsel at an early stage. We will be glad to answer your questions and support you during the procedure.