CHALLENGES TO EFFECTIVE CROSS BORDER CIRCULATION OF NOTARIES

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BY

PROFESSOR JEFFREY TALPIS, DOCTOR OF LAW

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INTRODUCTION

In this brief presentation, I will address a number of problems which impact on the effective cross border circulation of a notarial acts .Some, but not all of these problems arise from the significant differences in the various families or legal traditions as to the nature of the notarial act, (which I shall discuss in Chapter 1). These differences trigger conflicts of law as to the law or laws applicable to govern the validity, probative effect , and enforceability of notarial acts .Other problems arise from the potential of the act being counterfeit or being forged or tampered with and of course the costs and delays to ensure its international currency.

In the second chapter I will discuss the problems which occur where the validity of a notarial act established in a common law jurisdiction is sought to be recognized and to be given effect in a civil law jurisdiction.

In the third chapter, I will address the problems which occur where a notarial act established in a civil law jurisdiction is sought to be recognized and enforced in a common law jurisdiction.

In the fourth chapter, I will comment on the problems concerning the veracity of the truth of the foreign public documents (legalization, Apostille, analogous rules or dispensation thereof.

In the fifth chapter I will look at what has been done nationally, regionally or by multilateral instrument to enhance effective cross border circulation of notarial acts, either within each tradition or globally...

In the sixth chapter, I will conclude with certain recommendations to further improve the situation.

CHAPTER 1: DEFINING THE NOTARIAL ACT: FUTILE SEARCH FOR A UNIFORM DEFINITION

Section 1 Civil Law Jurisdictions

A. The Authentic Instrument

The authentic act or authentic instrument is a legal concept used in the Romano-Germanic Code Napoleon legal tradition family of countries .It is one that has been drawn up by a competent public officer, authorized by the law to give authenticity to the act.

Acts that qualify as authentic acts are found in the civil codes .They include: official documents of the State, records of the courts and municipalities, public records and Notarial Acts;

They all benefit from the credibility and value of acts of the State;

The principle effects of authentic Acts:

They make proof of their contents against all persons until set aside by a judicial order by a special procedure, including certain date and are usually enforceable in their own right

B. The Authentic Notarial Act

The Notarial Act (or Deed) is the most important authentic act.

It is sometimes but not always defined in the Notarial laws.

It is an official document created, established prepared and certified by a notary, who is a lawyer or legal advisor in accordance with the law.

The fact that such an act is an authentic instrument is a consequence of the twin roles of the notary- as public officer who has been attributed a parcel of the authority of the state to confer authenticity of acts that he draws up and receives and as legal advisor who prior to their signing will have informed, warned and advised the parties to the transaction as well as to their rights and obligations resulting from the contract.

The authentic notarial Act is endowed with the strongest presumption of truth. A party attempting to counter this presumption bears a heavy burden of rebuttal as it may only be invalidated by a judicial order through a specific procedure .This probative value is justified by the specific role of the notary as an impartial legal advisor. The evidentiary force of the notarial Act is not limited to the identity of the parties and that they have indeed signed the document, but extend to the fact that the parties agreed to what was reproduced in the document, including the date, whether asserted by them or seen, heard and verified by the notary himself.

Furthermore in most civil law jurisdictions the notarial act is enforceable in its own right.

Notarial certifications of signatures, dates and identity on private signature documents are not authentic notarial acts in most civil law jurisdictions .These are private documents which are signed in the presence of the notary and authenticated by the Notary or they may already have been signed and an individual acknowledges that the signature on the private document is their own in the presence of the notary. They are essentially authenticated private documents.

However in some civil law jurisdictions (not yet part of UINL) notarial Acts also include these authenticated private documents as notarial acts and even give them the same effect as the truly authentic notarial act. Failure to properly distinguish the two functions in the legislation does not conform to the principles of UINL.

Section 2 The Notarial Act in Common Law Jurisdictions

In most common law jurisdictions there is no defined Notarial Act.

Wherever a definition is found in common law jurisdictions, the notarial act is defined exclusively by the activity of the notary in doing something and not any inherent or essential conditions thereof or its effects as the authentic act used in civil law countries. Nor is there any distinction between public acts drawn up by the Notary and authenticated private documents

The definition given by Nigel Ready, in Brooke's Notary[1], endorsed and discussed by Peter Zablud, in his recent publication on the Principles of Notarial Practice, defines the Notarial Act in the following terms:

"The act of a notary public authenticated by his signature and official seal ,certifying the due execution in hiss presence of a deed ,contract or other writing or verifying some fact or thing which the notary has certain knowledge"[2].

For example in Ireland, I have not found any definition of a notarial act. However there is reference to the conduct of the notary public in his or her role in relation to the execution of a notarial act in the Code of Conduct prepared by the Faculty of Notaries Public in Ireland.

Similarly, in Australia, the Public Notaries Act (2001 governing the Society of Notaries of Victoria does not contain any definition of a notarial act.

However the Professional Conduct and Practice Rules defines the notarial act in section 2.1 as being "any instrument which has validity by virtue only of its preparation, authentication, execution or completion by a notary."

A notary in New South Wales is governed by the Public Notaries Act 1997, which regulates the practice of public notaries, does not provide any definition for the notarial act.

Similarly, in the United States Section 2-8 of the Model Notarial Act of 2010 defines Notarial Act and Notarization as any Act of certification, attestation, or administration that a Notary is empowered to do under the Act. This includes: acknowledgment (of a signature), affirmation, copy certification, jurat and oath.

However, **the** National Association of Civil Law Notaries, (NACLN), the umbrella organization for civil law notaries in the United States established a Model Civil Law Notary Act, which distinguishes the Authentic Act from the authentication of private signature documents which it calls Brevet (contrary to Civil law use of this type of Notarial Act.) It defines it to approximate to a certain extent the notarial act in Civil law jurisdictions, by presuming the contents of the act and matters incorporated therein to be correct.

[1] 12th ed. 2002,65
[2] Peter Zablud, « Psophidian Press, Australia, 2005, p 39 and following. Principles of Notarial Practice »

In Florida the enacting legislation is Chapter 118 of the Florida statutes, under the heading "International Notaries", while section ten (118.10) refers to the civil law notary and section 118.10(a) defines an authentic act, whereas as section (3) of 118.10 describes its effects which also provides that the Civil law Notary may certify private signature documents (clearly distinguishing the two types of deeds.)[3]

Although the authentic act under the Florida statute does not have all the characteristics of the notarial act in civil law jurisdictions, it defines it to approximate to a certain extent the notaral acts in civil law jurisdictions.[4]

For example, there is a rebuttable presumption of truth of its contents, whereas the truth of the contents in the civil law jurisdictions can only be attacked by an action against the Notary claiming he did not properly reproduce the terms of the agreement; one should not however underestimate the intended strength of the presumption in this context. It is as strong as a judgment, which could be overturned on appeal!

There is also an absence of the impartial role of the Latin model notary, which is an inherent feature of the deed (although not always found in the definition).

The restriction to issue the authentic deed for use in a jurisdiction with which the United States has not diplomatic relations is also particular and personally I see no reason for it, especially when at the time of signing the place where it may be produced may be unknown.

Yet , because the of the status of the Civil law Notary, the likelihood of giving legal and maybe impartial advice, the effects and the distinction given to the authentic deed from authenticated private documents, makes it pretty close to the latin Model.

The differences in the definition of Notarial act in civil and common law jurisdictions is a significant impediment to the international currency of the act as will be briefly discussed in the following chapter.

[3] Civil Law Notarial Act ,section 118.10 .11a.

[4] Alabama's enacting legislation defines the authentic Act without the presumption of truth under the Model Law and the Florida Statute (see Section 36-20-50 of the Code of Alabama 1975, title 36; Chapter 20, article 3, as amended (1).

CHAPTER 2 NOTARIAL ACTS ESTABLISHED IN A COMMON LAW JURISDICTION SOUGHT TO BE RECOGNIZED AND TO BE GIVEN EFFECT IN A CIVIL LAW JURISDICTION

The differences in the nature of the notarial act in common law jurisdictions from the authenticated notarial act in civil law jurisdictions has given rise to a number of conflicts of law. The lack of a uniform solution as to the law governing these matters impacts on the cross border circulation.

Section 1 Law(s) governing the validity of juridical acts in general

I have not found any specific conflict of law rules governing either the formal or the substantial validity of notarial acts and their effects. As a result, conflicts relating thereto will be governed by the forum's general conflict of law rules.

The capacity of a contracting party to enter into a notarial act is governed under most systems by the law governing his or her domicile, habitual residence or nationality although in some systems it depends on the nature of the act. Furthermore under some laws, the incapacity of a party under the law governing his capacity, may not be invoked where the incapable party had the requisite capacity under the law governing the capacity of the other and the act was concluded in that jurisdiction.

The formal validity of juridical acts is generally governed by the law of the jurisdiction where it was concluded, although in some legal systems it depends upon the nature of the act. Even where the act is invalid under the law applicable to this question, it may be saved by conformity to the law of another state having a close connection to it taking into account the nature of the act or the party to it.

Finally the substantial validity of juridical acts depends upon the nature of the act and the extent to which party autonomy allows for a designation thereof.

The lack of uniformity as to the choice of law rules governing these questions, and characterization of various issues that arise is of course an obstacle to effective cross- border circulation of notarial acts

I will briefly consider three specific problems which concern the validity of a notarial acts and which impact on their effective cross-border circulation.

Section 2 Law applicable to the requirement of an authentic notarial act

Where the law of a civil law jurisdiction requires an authentic notarial act, on pain of nullity, the first question is the characterization of this requirement

Firstly, in my opinion, the requirement of an authentic notarial act should not be qualified as a law of immediate application as there is no vital interest of the State at stake. We are then required to characterize the requirement under the classical method: Is it a question of formal or substantial validity? In some jurisdictions, this issue is a matter of formal validity, governed by the traditional rule of *locus regit actum*, in which case the common law notarial act, which is essentially an authenticated private signature document would be recognized even though the law of the civil law jurisdiction requires an authentic notarial act .In fact this issue can arise within civil law jurisdictions where under the law where the act was entered into it is no more than a private document authenticated by the notary.

In other jurisdictions, whether_by legislation, doctrine, or case law, the requirement of the authentic notarial act is analyzed from the role of the Notary as a public officer and legal advisor in drawing up and receiving the act ,especially when the requirement is imposed to protect parties to the act, especially the weaker party and to enhance judicial security. From this perspective the requirement of the authentic Notarial act is governed either by the law applicable to the substance of the act or if it concerns immovable property by the law of the *situs* or by the *lex auctoris*[5].

In Quebec, doctrine and courts have characterized the requirement of an authentic notarial act as a matter of formal validity, and the validating rule of article 3109 C.c.Q applies, which results in the recognition of authenticated private documents executed in common law jurisdictions, even though Quebec law requires an authentic notarial act, including marriage contracts, declarations of transmission or even hypothecs. This is not surprising given the strong, policy of validation of juridical acts and the particular situation of Quebec, the civil law island in North America, the common law sea.

Section 3 Defining an authentic notarial act in private international law

If an authentic notarial act is required, the court of a civil law jurisdiction has to decide whether or not the notarial Act established in a common law jurisdiction can be recognized as an authentic act for the purposes of private international law.

In my opinion, the court should take a cosmopolitan approach, which in any event is dictated by the principles of private international law, and subject to the presence of certain essential

[5] In Quebec, although there is authority to submit the question to the law governing the formal validity of the act, the question is still an open one., especially where it concerns the constitution of an hypothec over immovable property in Quebec .For an exhaustive treatment see C. Pamboukis, « L'acte public étranger en droit international privé » Paris, Librairie Générale de droit et de Jurisprudence, 1993.

elements characterize the act as an authentic instrument for the purposes of private international law

Clearly it is not the name given to the Act that is important. Rather it is the role and function of the person acting as "Notary".

Where the notary is a public officer, has the right to give legal advice in relation to the act being a lawyer or having a law degree, or equivalent legal formation, and where the act has an additional evidentiary effect by virtue of the authentication by the notary, the court could consider the act as an authentic notarial act for the purposes of private international law even though the requirements of the governing law or that of the *lex fori* are not strictly met.

For example, notarial Acts issued by a Notary Public pursuant to the Model Notarial Act of the NNA in the United States, who is not authorized to give legal advice, has no legal training and where the act has no add-on value should not be accepted as authentic Notarial acts in Civil law jurisdictions, even though they may very well be public acts under the law where they were established for the purpose of the Hague Apostille Convention and bear the Apostille.

In Europe the Resolution of the European Parliament of December 18, 2008, following recommendations of a commission to study the European Authentic Act, in essence denies recognition as authentic instruments of the Acts drawn up and delivered by Solicitors , including Scrivenor Notaries in England and Wales.

This approach, constituting a blanket rejection is, in my opinion, regrettable and each situation should be examined with an international outlook.

For example, in spite of certain differences in the role of the Florida Civil law notary under the Florida statute the authentic Act, should be recognized as an authentic act for the purpose of its validity as such. I refer the reader to the scholarly article written by David Willig, the President of NACLAN and a civil law Notary in Florida, who demonstrates how the authentic act under the Florida statute approximates the authentic notarial act in civil law jurisdictions[6]

This uncertainty certainly impacts on effective cross border circulation of these acts.

Section 4 Law applicable to determine the validity of an electronic notarial act (ENA)

Certain civil law jurisdictions now admit the use of the Electronic Notarial Act (ENA), (France, and Belgium) which is a notarial act where the original is drawn up on an electronic support and signed by the parties and the notary electronically.

Aside from the issue of characterization of the requirement of the notarial act, which does not go away, new conflicts include whether an electronic medium can be used for a particular

[6] 2011, unpublished.

transaction and if so, how it may be used. Although the recognition of the validity and enforcement of electronic transactions is widespread as a result of international and regional instruments and national laws,[7] there are exceptions. For example, in Quebec, holograph wills made electronically are excluded.

The use of the ENA does not add a new dimension insofar as the choice between the law of the State of origin of the public officer and that of the forum.In absence of a specific rule, one would think the matter would be governed by the law of the state where it is has been established However the State where it is sought to be recognized and enforced might deny recognition and enforcement of the ENA .It is also conceivable that the law of a certain jurisdiction might refuse to recognize the use of an ENA because it has not established the necessary technology or for reasons of its doubts about security, but this is unlikely.

Conflicts could also arise as to the Electronic Signature of the notary, for example, concerning the requirement that the signatory's identity be certified in a particular form by a third party service provider meeting particular standards or accreditation. The State where it is sought to be recognized and enforced might impose its own standards for an Electronic Signature.

CHAPTER 3: AUTHENTIC NOTARIAL ACTS IN COMMON LAW JURISDICTIONS

The law (s) applicable to govern the effects of the authentic notarial act between the parties and third parties is governed by the general principles and create no special obstacle because of it being an authentic instrument.

However there are additional obstacles to effective cross-border circulation of the authentic notarial act resulting from its special probative value **(section 1)** and its enforceability in its own right **(section 2)**.

Section 1 Probative effect

Assuming the authentic notarial act has been established pursuant to the law of a civil law jurisdiction, conflicts will arise in both civil and common law jurisdictions as to the law applicable to determine their evidentiary effect: the law of the country where the Act has been established (*lex auctoris*) or the law where the document is produced.

Most common law jurisdictions apply the law of the state where it is produced either by imposing its own law or denying recognition of the foreign law, which usually coincides with the law of the forum. This approach has become particularly problematic for notaries in civil law jurisdictions when it is anticipated that the contract they receive may need to be recognized in a common law jurisdiction.

[7]See Thomas J. Smedinghoff, "Online Transactions: The Rules for Ensuring Enforceability in a Global Environment," (2006) The Computer &Internet Lawyer. Vol 223, no. 4, p. 6.

The application of the law of the state where it is produced amounts to a denial of recognition of the institution of the civil law notary and his or her particular role as a neutral, impartial magistrate for the transaction.

For example courts in the United States, have not bought into the idea that one person can act and give independent legal advice to all the parties, and that the resulting act has the evidentiary effect of the authentic notarial act in the civil law jurisdiction. The agreement will usually not held to be invalid but will be subject to same tests and defenses as in all contracts .This allows a party to argue that his or her interests in agreeing to the terms were not really considered and that the independent legal advice was nothing more than a transmission of information.

A situation which arises increasingly is the effect to be given to a marriage contract entered into by an authentic notarial act in a civil law jurisdiction in which the parties agreed to be governed by the matrimonial regime of separation as to property. Even though all common law jurisdictions in North America allow parties to enter into pre-nuptial marriage contracts adopting the functional equivalent of the matrimonial regime of separation as to property, their effectiveness depends on a number of factors, in particular the requirement that each party had received independent legal advice prior to signing.

Perhaps in time this will change. The most encouraging development was the Van Kipnis decision rendered on December 18, 2008 by the Court of Appeal of New York, where the court recognized as valid a marriage contract executed in France before a French Notary where the regime of separation as to property was adopted[8].

In the interim, the Notary in Civil law jurisdictions cannot ignore this situation and where it is anticipated that effect to the Act will or might be required in the United States or Canada, he or she must act accordingly to prevent disputes. They could incorporate the statute describing the particular role of the Notary and have parties acknowledge this as proof of foreign law .Alternatively, they could stipulate and assure that the parties have obtained independent legal advice, an abdication to a certain extent of his or her role

Section 2 Enforceability

Whether or not an authentic notarial act entered into in a civil law jurisdiction is enforceable in its own right is naturally governed by the law under which it was established. Absent any bilateral or multilateral treaty or instrument, enforceability of a foreign authentic notarial act will depend upon its rules for their recognition.

Within the European Union, in virtue of article 57 of Regulation 44-2001 of the Council, authentic instruments benefit from the cross border recognition foreign decisions.

[8] *Van Kipinis* v. *Van Kipnis* (2008) 900 N.E.2d 977,Court of Appeal of New York

In other cases it is unlikely that courts in common law jurisdictions will enforce foreign notarial acts which are enforceable in their own right[9].

CHAPTER 4 THE VERACITY OR THE TRUTH OF THE FOREIGN PUBLIC DOCUMENTS (LEGALIZATION, APOSTILLE, ANALOGOUS FORMALITIES OR DISPENSATION THEREOF

The traditional process for evidence of the truth of foreign public documents is the legalisation process. This is an internationally recognised procedure for certifying the authenticity of official signatures and/or official seal applied to a public document .It operates by means of an unbroken chain of verifying signatures, commencing with that of the first signatory to the document and ending with the signature of the diplomatic or consular representative of the country in which the document is to be produced and acted upon.

In any event bilateral or multilateral conventions exist dispensing the legalisation formality and national laws could dispense the requirement for legalisation for in-coming Public documents (as in Quebec);

Fifty two years ago it was recognized that while legalisation no longer met the demands of actual practice because of its complexity and delays, it did have a relatively important function in the matter of evidence in certifying the truth of the signature and of the quality in which the public officer signing the document and/or the identity of the seal and stamp. The challenge was then to replace legalisation with another procedure, which would guarantee the effects of the legalisation.

A very simple alternative was chosen in one of, if not the most successful Hague Convention, that of 5 October, 1961, Abolishing the Requirement of Legalisation for Foreign Public Documents, which greatly simplifies the traditional and often lengthy and cumbersome legalisation process by introduction of a single control: the issuance of an Apostille by a Competent Authority in the State of execution.

Of all the Hague Conventions, the Apostille Convention has attracted the highest number of ratifications and accessions (102 States to date).

The Convention applies if and when all of the following conditions are fulfilled:

- The State in which the document was issued is party to the Convention;
- The State in which the document is to be used is party to the Convention;
- The law of the State in which the document was issued considers it to be a public document;

[9] There was no consensus to accept a similar rule in the failed negotiation of the Hague's attempt in the 1990's to negotiate a global Convention on jurisdiction and recognition of foreign judgments in patrimonial matters.

- The State in which the document is to be used requires an Apostille in order to recognize it as a foreign public document.
- The Convention (Article 1) deems the following to be public documents:
  - Documents emanating from an authority of a state or an official connected with the courts or tribunals of the state, including those emanating from a public prosecutor or clerk of a court;
  - Administrative documents;
  - Notarial acts and;
  - Official certificates which are placed on documents signed by persons in their private capacity, such as official certificates recording the registration of a document or the fact that it was in existence on a certain date and official and Notarial authentification of signatures.

Reference to Notarial acts in paragraph c of article 1 obviously includes Notarial acts in civil law jurisdictions, which was the probable intent, but could also include certain Notarial acts under the law of a common law Contracting State if the law of the State where they were issued considers them to be public acts

In any event certain authenticated private documents may still qualify as public documents under paragraph (d) by virtue of the official and Notarial certifications of the signature and identity of the party and an Apostille may be affixed to the declaration or attestation.

Furthermore, the Convention in its present form allows for the issuance of an Apostille for documents established or recorded electronically and there are an increasing number of States, using or planning to use the Electronic Apostille Projet (e-APP). As part of the project all Contracting States are encouraged of issuing e-Apostilles using digital certificates.

Whether or not the Paper Notarial Act (PNA) or the electronic notarial Act (ENA) is used, the Apostille only certifies the authenticity of the signature and the capacity of the person who signed the public document, and where appropriate, the identity of the seal or stamp which the public document bears

The Apostille does not certify the content of the document for which it was issued, and does not provide an absolute guaranty that there has not been a substitution of pages or removal of pages where the Apostille has been issued on a (PNA) nor does it certify the formal and substantial validity of the underlying document.

In any event neither the legalisation of a foreign public document nor the Apostille certifies the content of the act or its validity, conflicts of law arise to govern these questions to be discussed in the following section.

CHAPTER 5 ENHANCING CROSS- BORDER CIRCULATION OF NOTARIAL ACTS

Section 1 Between Common law jurisdictions

Within the United States, the Model Notary Act, 2010 Act has some good rules in Chapter 11 enhancing recognition of Notarial Acts in a foreign jurisdiction.

I do not know whether or not any proposals have been made by the World Organization of Notaries, but it is certainly a subject worth pursuing.

Section 2 Within the European community

It has been proposed by the European Parliament, and Council of the European Union, in 2010 to eliminate the requirement of the Exequatur of judgments of a member country, in particular because such a procedure remains an obstacle to the cross- border circulation of judicial decisions, as result of the delays and costs. What is particularly interesting is that the proposition also applies to the enforcement in one Member State of enforceable authentic instruments executed in another. All that is required is that the Act meets the conditions which are necessary for it being authentic in the country of origin of a member State

Section 3 The project of the UINL to enhance circulation of Civil law Notarial acts between its member States (Secure Notarial Seal - SNS or the Stamp Project)

At its meeting in Algeria on October 19, 2112, the General Assembly of the member states of the UINL approved a pilot Stamp Project .The project seeks to provide guaranty that the original of a notarial act (such as a power of attorney in brevet form) or a copy of the original minute thereof has not been tampered with by removal, substitution or addition of pages and thereby eliminate the cross-border circulation of false notarial acts or copies thereof.

A few clarifications are in order as to the scope of application of the SNS:

The UINL stamp or seal is limited to paper notarial acts (PMA) or copies thereof Therefore it is of no use where an electronic Apostille (e-APP) is in place.

The most recent version limits its use to accessory notarial acts, without any clear definition of the concept.

The SNS does not provide any additional guaranty that the act is valid and effective under the applicable law(s) to these questions.

Nor does the SNS replace the requirement of Legalization or the Apostille in States where the Convention is in force. In these cases, one can assume that the stamps will already be affixed on the act prior to obtaining the Apostille or legalization. The UINL seal compliments the Apostille in that it says something about the quality/integrity of the underlying document, not about its author /origin (which remains the purpose of the Apostille

I have the following comments:

1. If the circulation of false (counterfeit) or forged tampered notarial acts is really a problem then the Stamp project does provide some additional security;

   Article 3 of the Hague Apostille Convention provides that the only formality that may be required to certify the authenticity of the signature, the capacity in which the person has acted ,and where appropriate the identity of the seal or the stamp which it bears is the addition of the Apostille certificate. Since the seal is not an additional formality relating to the origin of the Act and its author it would appear not to be in violation of the Convention. However, since the seal requires some digitalization of the paper document the seal is indeed an additional formality and might be in violation of article 3 if imposed by the law of a Contracting or Adhering State

   Therefore in my opinion, where the law of a contracting or adhering State allows the Notarial organization to oblige notaries to use of Notarial Seal, this would seem to be in violation of article 3, if not in law at least in the spirit of the Convention.

2. Given the limit of the stamp project to Paper notarial acts, States where the Convention is in force should be encouraged to use the electronic apostille (e-APP) or some equivalent, seeing that the integrity of the act is thereby guaranteed.

3. In States where the Apostille is not in force, the Stamp project does offer a certain degree of security although the use of a Stamp appears to be a relic of the past...

CHAPTER 6 CONCLUSIONS AND RECOMMENDATIONS

Section 1 Comprehensive multilateral Convention on Notarial Acts (Hague)

This solution is obviously more difficult (definition of Notarial act, consensus, etc), but has the advantage of an exhaustive treaty for Notarial Acts of all countries. A comprehensive convention could have the effect of providing security to the effectiveness of notarial acts from one tradition in the jurisdiction of the other.

As particular recommendations the Convention should provide an international definition for notarial acts and recognition of the authentic notarial acts and other authentic instruments as being quasi- judgments.

Section 2 Improving the truth of the document and avoiding, fraud, time and costs

Notarial organizations who are parties to the Apostille Convention: should become competent authorities, and adopt the E-APP.

Section 3 System of Model Laws

One could imagine adopting a Model Act and once adopted by a member State, it is considered binding; The Model Act could act as the autonomous system providing for security not only for matters related to the truthfulness of the document, but could even extend to recognition of effects.

This approach would be along the lines of UNCITRAL Model Laws: for example one could imagine adopting a Model Act and once adopted by a member State, it is then binding;

There are many facets of cross-border circulation of notarial acts and it is in the interest of the public, that laws are in place to ensure that cross border circulation is both, rapid and secure.