

CHAPTER IV

ACCESSION TO THE CONVENTION ON THE INTERNATIONAL WILL

Accession Procedure

The Convention is open to accession by any state. A Contracting State may extend the Convention to all or any of the territories for whose international relations it is responsible or, when the state comprises several territorial units with different systems of law, to all or any of those units. The instruments of accession and notices declaring any such extensions must be deposited with the Government of the United States of America, the Depositary. Such instruments of accession or notices take effect six months after being deposited. (Articles X, XIII, XIV).

A number of actions fall to be taken as a consequence of such a decision to accede or extend. These, however, do not include the question of entering reservations: for none is allowed (Article XVIII). These actions require :-

- (a) a decision as to the mechanism whereby the rules relating to an international will in the Annex to the Convention are to be introduced into municipal law (Article I: see p. 50.)
- (b) the introduction of such rules within six months of accession or extension (Article I.1.);
- (c) transmission of the texts of such rules to the Depositary Government (Article I.4);
- (d) a decision as to which persons are to be designated as authorised to act in connection with such wills (see pp. 35-37) and whether such persons should include diplomatic agents or consular officers abroad (Article II.1);

- (e) notification of persons designated to the
Depositary Government (Article II.2).

Legislative provisions

For most Commonwealth countries, municipal legislation will be required to give effect to the Convention. In States comprising several legal systems, such legislation will be required for each unit. In principle, this could take one of two forms:

- (a) the enactment by statute that the provisions of the Convention and its Annex are to have effect as municipal law, reproducing those provisions as a Schedule to the statute;
- (b) the restatement in legislation of the rules contained in the Convention and its Annex as detailed statutory provisions.

The only Commonwealth jurisdictions which have legislated in relation to the Convention to date are certain Canadian Provinces. The device used has been the former (e.g. The Succession Law Reform Act, 1977 of Ontario). Except in relation to the designation of authorised persons, the provisions of the Convention with its Annex are capable of taking effect without further elaboration by statute. This approach is the one adopted in this Chapter and the Ontario Statute has been used in the preparation of the draft Bill which follows.

Consideration was given, however, to the question whether a further set of provisions was required to give full effect to the Convention. For the Convention and the Annex in three places make specific, if indirect, reference to the law of the legislating state, referred to as "the law under which the authorised person was designated." Whilst this term might be seen as sufficient to constitute a choice of law rule under which the internal law would become applicable, it would be open to the legislating state to deal with some or all the matters

concerned in the legislation which provided for the designation of authorised officers. If this approach were adopted there would need to be, therefore, a decision whether -

- (i) a testator should be authorised in the legislation to direct another to sign his will on his behalf, notably in circumstances where he is personally unable to do so (Annex, Article 5.2).
- (ii) there should be any rule in the legislation, including any mandatory rule, about the safekeeping of international wills (Article VII and Annex, Article 8);
- (iii) any provision should be made in the legislation concerning the conditions requisite to acting as a witness or an interpreter (Article V).

The draft Bill proceeds on the assumption that if any doubt arises that the internal law in relation to signatures, safekeeping, interpreters and witnesses applies, this should be resolved by the courts. These matters are not, therefore, dealt with in the model Bill.

Some notes relating to local adaptation are appended.

DRAFT INTERNATIONAL WILLS ACT, 198-

An Act to give effect to the Convention providing a Uniform Law on the Form of an International Will concluded in Washington on 26th October, 1973; and for purposes connected therewith.

BE IT ENACTED etc.

Short Title 1. This Act may be cited as the International
 Wills Act, 198-

Interpretation 2. For the purposes of this Act, the expression -

"Convention" means the Convention providing a Uniform Law on the Form of an International Will, including the Annex thereto, set out in the Schedule;

"international will" means a will made in accordance with the Annex to the Convention;

"legal practitioner" means any person registered under the [Act] as a person entitled to practice law in [the State].

Convention to 3. The Convention has the force of law in [the State].
have the force
of law

4. (1) A legal practitioner in [the State] is a person authorised, for the purposes of the Convention, to act in connection with international wills.

(2) A diplomatic agent or consular officer of [the State] received by any State outside [the State] is a person authorised, for the purposes of the Convention, to act in connection with any international will made in that State by a national of [the State], unless by the law of that

State the diplomatic agent or consular officer is prohibited from so acting.

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| Savings | 5. | Nothing in this Act affects the validity of a will which is valid by virtue of any other rules of law in force in [the State]. |
| Application of the Act | 6. | This Act applies in relation to any international will made after, but not in relation to any such will made before, the commencement of this Act. |
| Commencement of the Act | 7. | This Act comes into force on[]. |

SCHEDULE
[Convention text]

Notes

(i) Should this legislation and that relating to formal validity (Chapter II) both be required, the two drafts Bills may be combined into a single Wills (Formal Validity) Act, with two Parts. An extended long title combining the existing long titles would be required. A single interpretation clause could be provided by combining these in the draft or alternatively the separate interpretation clauses could be retained for each Part. The substance of the Formal Validity Draft could appear as Part I and that relating to International Wills in Part II. References to "this Act" in this draft Bill would normally require replacement by "this Part". The commencement provisions would require power to bring the different Parts into operation on different dates should that prove necessary on account of the different provisions relating to commencement in the two Conventions.

(ii) References to the legislating state are necessary where [The State] appears. The commencement date or, if this is to be fixed by subsequent order or proclamation, the appropriate provision, should be inserted in cl.7.

(iii) Appropriate provisions in respect of legal practitioners would be required in cl.2 and 4(1), depending upon the decision as to appropriate agency and upon local legislative forms. If alternative

or additional persons, such as officers of trust departments, are to be designated, these should be included in cl.4(1).

(iv) If it is not desired that diplomatic and consular officers should be authorised for the purposes of the Convention, cl.4(2) should be deleted. In the case of Commonwealth States comprising two or more systems of law, it will be necessary if this provision is included to make clear how the choice of law issue in certain matters is to be resolved (see pp. 50-51).

(v) The Convention text will require to be reproduced in the Schedule.