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Via email :

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Hon. Jeffrey Bullock, Co-Chair

Hon. Jay Ashcroft, Co-Chair

National Association of Secretaries of State
Business Service Committee

444 North Capitol St., NW, Suite 401

Washington, D.C. 20001

RE: Request for State Issuance of Electronic Apostilles (e-APP)

Dear Secretaries Bullock and Ashcroft:

The American College of Trust and Estate Counsel ("ACTEC") is a professional organization of approximately 2,500 lawyers from throughout the United States. Fellows of ACTEC are elected to membership by their peers on the basis of professional reputation and ability in the fields of trusts and estates and on the basis of having made substantial contributions to those fields through lecturing, writing, teaching, and bar activities. Fellows of ACTEC have extensive experience in providing advice to taxpayers on matters of personal income tax, transfer tax, and retirement plan rules, and providing advice to IRA and retirement plan administrators on plan administration. ACTEC offers technical comments about the law and its effective administration but does not take positions on matters of policy or political objectives.

ACTEC is pleased to support the implementation of the electronic apostille mechanism by the U.S. states. The implementation of the electronic apostille mechanism by each state does not require any legislation or act of the Governor. It lies strictly in the hands of the Secretary of State of each U.S. state to pursue this initiative.

An apostille is a certification of a document's authenticity. It is often an essential requirement for official documents to be used in a cross-border context. This clearly affects the constituents of each state. The Apostille Convention (formerly known as the *Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents*), is an international treaty drafted by the Hague Conference on Private International Law (HCCH). The basic purpose of the Convention is to abolish the traditional requirement of legalization, replacing the often long and costly legalization process with the issuance of a single Apostille certificate by a Competent Authority in the place where the document originates. The United States, together with 119 other countries, is a party to the Apostille Convention.

Executive Director
DEBORAH O. MCKINNON

Implementing both e-Apostilles and e-Registers, have been a positive change for the adopting countries and states because they enable business to be done much more efficiently (incl. during the ongoing pandemic). For more information on this, we enclose a publication from HCCH entitled: "Background Note on the e-APP", also found at this link: <https://assets.hcch.net/docs/764f82b4-a8d6-4073-8e1b-4db0f12c880e.pdf>

ACTEC hopes you will recommend to the Secretaries of State to approve the implementation of this mechanism in their states. Having the availability of electronic apostilles will dramatically improve services relating to international matters of interest to our constituents in the context of property, succession, birth, marriage, divorce and other cross-border activities. Firstly, the availability of electronic apostilles and e-registries will result in enhanced document security by preventing the misfiling or destruction of certified documents and enabling ease of approving the fact of apostille issuance. Secondly, it will eliminate mailing delays and losses associated with obtaining and sending paper apostilles. Thirdly, it will eliminate mailing delays/losses in sending authenticated documents to receiving countries. In addition, experience in the 41 countries that have implemented the e-APP, since its inception in 2006, has borne out the benefits of the programme.

ACTEC sees the merit in implementing electronic apostilles, which would be a tremendous benefit to each state and those dealing with each state. It requires no legislative action. The filing fees will cover all related costs, and the security measures will be addressed by selecting software that has already been vetted by other countries around the world. Accordingly, on behalf of ACTEC, we urge NASS to encourage the Secretaries of State to adopt both components of the e-APP (e-Apostilles and e-Registers for apostilles).

Because of the growing number of states that have enacted electronic and/or online notarization laws since 2016, we are now requesting that NASS endorse a policy of active e-APP implementation.

If you or members of NASS staff would like to discuss the contents of this letter with the ACTEC Fellows who created it, please contact Leigh-Alexandra Basha (202) 756-8338, lbasha@mwe.com or Gerard Brew GBrew@McCarter.com who worked on this initiative, or Deborah McKinnon, ACTEC Executive Director, at (202) 684-8460 or domckinnon@actec.org.

Very truly yours,



Ann Burns
President of ACTEC



Background Note on the e-APP

I. Introduction

- 1 The electronic Apostille Programme (e-APP) was launched in 2006 to promote and assist in the implementation of technology under the *Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* (Apostille Convention). It is designed to ensure the continued effective operation of the Convention through the issuance of electronic Apostilles (e-Apostilles) and the operation of electronic registers of Apostilles that can be accessed online by recipients to verify an Apostille they have received (e-Registers).
- 2 As of July 2021, the Apostille Convention has 120 Contracting Parties of which 21 issue e-Apostilles and 41 have implemented an e-Register. In addition, there are a number of Contracting Parties which are actively developing one or both elements.
- 3 This document is intended to provide a brief history and overview of the e-APP, providing context for those unfamiliar with the programme.

II. History

- 4 In 2003, the Special Commission on the practical operation of the Apostille, Evidence and Service Conventions recognised that “the spirit and letter of the Conventions do not constitute an obstacle to the usage of modern technology and that their application and operation can be further improved by relying on such technologies.”¹ These findings were subsequently endorsed by the First International Forum on e-Notarization and e-Apostilles,² the first meeting of what has become the International Forum on the e-APP.
- 5 With this support, the HCCH and the National Notary Association of the United States of America (NNA) launched the electronic Apostille Pilot Programme in April 2006 at the Special Commission on General Affairs and Policy of the HCCH, now the Council on General Affairs and Policy (CGAP).³ Following the success of the programme, the use of the word “pilot” was discontinued in 2012.
- 6 The International Forum on the e-APP continues to meet and discuss best practices and experiences. There have been 11 meetings of the Forum with a 12th scheduled for October 2021. At the 10th meeting, convened in The Hague in 2016, Conclusions & Recommendations from previous meetings were compiled into a single omnibus.⁴ Any developments on the e-APP continue to be reported to and overseen by CGAP, alongside other developments in the Apostille portfolio.
- 7 In light of discussions at the 11th meeting of the Forum, held in 2019, CGAP mandated the establishment of an Experts’ Group on the use of new technologies in implementing the e-APP.⁵ This development confirmed the integral role of the e-APP in the practical operation of the Apostille Convention.

¹ See C&R No 4 of 2003 SC.

² See C&R No 1 of the First (Las Vegas) Forum.

³ See Prel. Doc. No 10 of March 2006 for the attention of the Special Commission of April 2006 on General Affairs and Policy of the Conference.

⁴ Available on the HCCH website at < www.hcch.net > under “Apostille” then “Previous e-APP Meetings”.

⁵ See C&R No 9 of the Eleventh (Fortaleza) Forum.

III. Overview

A. e-Apostilles

- 8 An e-Apostille is an Article 3(1) Certificate issued in electronic form. It is signed by electronic signature with a digital certificate. e-Apostilles may be issued on electronic documents or on paper documents that have been scanned into electronic form.
- 9 As public documents are increasingly executed electronically, the e-Apostille provides a mechanism to authenticate them in their original form. By offering a solution for apostillising electronic public documents, e-Apostilles ensure security, efficiency, and ease of transmission.
- 10 The formalities required under the Convention remain the same for e-Apostilles as they are for paper Apostilles. This includes certifying the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears.⁶ The e-Apostille must be issued by a Competent Authority of the State from which the document emanates,⁷ must be attached to the underlying public document – though the method of attachment will evidently be different than on a paper Apostille – and must follow the model annexed to the Convention.⁸
- 11 e-Apostilles must be accepted by all other Contracting Parties, if validly issued.⁹ That is, an e-Apostille may not be refused on the sole ground that it was issued in electronic form. This does not, however, compel States of destination to accept an underlying public document in electronic form.
- 12 Previously, in understanding the different systems used for e-Apostilles, a classification of dynamic and static has been used.¹⁰ Under the dynamic system, the electronic file containing the e-Apostille and the electronic public document is transmitted electronically from the State of origin to the State of destination. The e-Apostille can then be verified separately in the e-Register of the Competent Authority. The dynamic system is used in the majority of Contracting Parties that issue e-Apostilles. Under the static system, the electronic file containing the e-Apostille and the electronic public document is stored in a repository of the Competent Authority (usually, its e-Register) and is not transmitted. The file can then be viewed by the applicant and / or recipient by accessing the Competent Authority's repository.

B. e-Register

- 13 An e-Register is an Article 7(1) register maintained in a publicly accessible, electronic form. This allows any interested person to verify their Apostille online. While many Contracting Parties maintain an electronic register, the publicly accessible element is what determines its classification as an e-Register. An e-Register may include the details of both paper Apostilles and e-Apostilles.
- 14 An e-Register must record the information listed in Article 7:
- a. the number and date of the certificate; and
 - b. the name of the person signing the public document and the capacity in which they have acted, or in the case of unsigned documents, the name of the authority which has affixed the seal or stamp.

This is the minimum amount of information that must be available to be verified by a user.

⁶ Art. 3(1).

⁷ Art. 3(1).

⁸ Art. 4(1).

⁹ Art. 3(1).

¹⁰ See C&R Nos 7 and 8 of the Tenth (The Hague) Forum.

- 15 While the uniform resource locator (URL) of an e-Register is public, only the recipient of an Apostille has the information required to access and use the e-Register to verify an Apostille. In some cases, quick response (QR) codes are used rather than a public URL.
- 16 Previously, the PB used three categories for the different models of e-Register.¹¹ As technology has improved, allowing for the development of more robust systems, this has been phased out.

IV. Implementing the e-APP

- 17 The e-APP was neither intended nor designed to favour any specific technology and Contracting Parties retain discretion as to if and how they implement the e-Apostille and e-Register components. This has resulted in a variety of software being used and developed.
- 18 Participation in the e-APP does not require a formal agreement nor does it require a binding commitment to the programme. There is also no requirement to have the PB approve or otherwise endorse the implementation of the e-APP before it becomes operational.
- 19 Contracting Parties participate in and sponsor promotional activities, including hosting meetings of the e-APP Forum. They also regularly share practical experience and, in some cases, provide bilateral technical support. This active engagement from Contracting Parties and their authorities has proven essential to the continuing success of the e-APP.

¹¹ See C&R No 28 of the Tenth (The Hague) Forum.