

국제공증인협회 2012년도 아시아지역위원회 서울 정기회의 The 2nd Asian Affairs Commission Conference of UINL

1. 개 요

○ 국제공증인협회(UINL) 산하에는 아메리카(CAA), 아프리카(CAAF), 유럽(CAE) 지역으로 구분한 대륙별 위원회를 두고 있는바, 아시아지역위원회(CAAs)는 그동안 아시아 지역 회원국이 일본, 중국, 인도네시아 등 3개 국에 한정되어 구성되지 못하다가, 한국이 2010년도에 회원국 승인을 받으면서 동 위원회가 구성됨.

※ 2010. 7. 일본에서 일본공증인연합회와 UINL 공동주최로 아시아 지역 9개 국가 공증인들이 제1회 공증인 포럼을 개최, 한국의 회원국 가입을 앞둔 상태에서 CAAs 구성에 대한 추진을 논의한 결과, 2010. 10. 모로코 UINL 정기총회에서 한국의 회원가입과 위원회 구성이 의결됨.

○ 이번 UINL(국제공증인협회) 산하 CAAs(아시아지역위원회) 정기회의는 2011. 9. 인도네시아 자카르타에서 개최된 제1회 정기회의에 이은 제2차 정기회의로서, 회원국 간 협의에 따라 각 회원국 순번제 위원장 직 수행 및 회의 개최국 순환방침에 따라 한국에서 회의를 주최.

※ 회의 개최 순서는 2010년도 일본에서의 사전 회의에 이어, 2011년도 인도네시아, 2012년도 중국 순이었으나, 중국 내부 사정상 2013년도 개최예정이었던 한국에서 우선 개최하는 것으로 결정되면서 시간 및 예산 관계상 정회원 위주 회의를 개최함.

※ 특히 몽골은 그동안 회원국 가입을 신청한 예비회원으로 참여해 오다, 2012. 10.

18. 알제리에서 개최된 UINL 정기총회에서 정회원국 승인을 받고, 자동으로 CAAs 정회원국으로 가입된 상태. 현재 CAAs 정회원국은 총 5개 국(일본, 인도네시아, 중국, 한국, 몽골).

○ 회의 일정 : 2012. 11. 26.(월)~11. 27.(화)

※ 11. 28.(수)과 29일(목) 서울 시내 투어 및 공증사무소 견학 등 실시

○ 회의 장소 : 롯데호텔 2층 에메랄드 룸

○ 회의 주제 : ① 각 국 공증제도 현황 프리젠테이션

② 제1주제 토론 : 각 국 공증시스템의 효율화에 관하여

※ 공증직역 확대 및 접근성 확장 부분

③ 제2주제 토론 : 노약자, 미성년자, 장애인등 사회적 약자에 대한 공증인의 역할

○ 이번 회의에는 제1차 회의에 이어 Jean-Paul DECORPS 회장(국적 프랑스)이 직접 CAAs 회의에 참석, 아시아 지역 회원국을 격려하고, 회의의 격을 높여주었음.

○ 특히 이번 회의는 한국에서의 최초 공증제도 관련 국제회의 개최라는 점에서 의의가 크고, 성공적인 회의 개최에 힘입어 대한공증인협회 김진환 협회장이 회원국 만장일치로 신임 CAAs 위원장에 위촉되는 등 한국 공증제도의 위상을 대내외에 드높임.

○ 이하에서는 2012년도 아시아지역위원회 서울 정기회의의 주요 자료 원문을 게재함.

※ 자료는 회의의 주요 일정, 개회식 인사말, 각 국 공증제도 현황보고 및 주제토론별 발표문을 중심으로 게재하며, 회원국 발표문은 문서로 제출한 회원국 중심으로 게재함.

II. 회의 주요 일정

○ 11. 26. (월) / 롯데호텔 36층 샤롯데스위트 룸

- 17:00~17:50 참가국 대표자 사전 미팅
- 18:00~18:30 등록
- 18:30~21:00 환영리셉션

○ 11. 27. (화) / 롯데호텔 2층 에메랄드 룸

- 09:00 ~ 09:40 CAAs 2012 정기회의 개회식
- 09:40 ~ 10:00 CAAs 회의 안건 상정 및 논의
- 10:00 ~ 10:45 각 회원국 2012/2013 공증 현황 프리젠테이션
* 일본, 인도네시아, 중국 발표
- 10:45 ~ 11:15 Coffee-tea break
- 11:15 ~ 12:00 각 회원국 2012/2013 공증 현황 프리젠테이션
* 한국, 몽골 발표 및 UINL 집행부 총평
- 12:00 ~ 13:30 점심 식사 및 휴식
- 13:30 ~ 15:00 주제 토론(제1주제) / 가안
* 각 국 공증시스템의 효율화에 관하여 - 공증 직역 확대 및 접근성 확장
- 15:00 ~ 15:30 Coffee-tea break
- 15:30 ~ 17:00 주제 토론(제2주제) / 가안
* 노인, 미성년자, 장애인 등 사회적 약자를 위한 공증인의 역할에 관하여
- 17:00 ~ 17:30 차기 회의 일정 등 논의
* 개최지 및 주최국 선정, 회의 순환방안, 옵서버 초대범위, 통역 및 회의 진행에 관련된 전반적인 사항
- 17:40 ~ 17:50 총평 및 폐회
* 각 회원국 및 UINL 집행부 별 총평 청취
* 대한공증인협회장 폐회 선언
- 17:50 ~ 18:30 자유 시간(해산 후 휴식 및 회의장 정리)
- 18:30 ~ 19:00 이동
- 19:00 ~ 20:20 저녁 식사(한국의 집)
- 20:30 ~ 21:30 공연 관람(한국의 집)
- 21:30 ~ 호텔 이동 후 해산

○ 11. 28. (수) : 자유일정 또는 서울 시내 관광(비원, 경복궁, 청와대 등)

○ 11. 29. (목) : 몽골공증인협회 견학 실시 / 법무법인 광장 및 서울공증인합동사무소

III. 개회식 인사말

1. 개식사 / 김진환 대한공증인협회장

국문

존경하는 장-폴 드꼬르 국제공증인협회(UINL) 회장님, 권재진 법무부 장관을 대리한 황윤성 법무실장님, 협회 아시아지역위원회(CAAs) 5개 국 대표와 참가자 여러분, 그리고 내외귀빈 여러분!

오늘 대한민국 서울에서 국제공증인협회(UINL) 아시아지역 위원회(CAAs)의 2012년 정기회의를 개최하게 된 것을 여러분들과 함께 기쁘게 생각합니다.

잘 아시는 것처럼, 국제공증인협회는 세계공증인의 기능과 공증업무를 촉진, 조정, 발전시키고 공증인 협회간 긴밀한 협력을 도모하기 위하여 1948년 설립된 국제단체로서, UN의 경제사회 이사회에서 특별부문 자문적 지위를 가지고 있습니다.

오늘 열린 아시아지역위원회는 아직 역사가 일천하지만, 아시아 공증인의 역할, 교육·윤리와 사회적 책임, 공증에 관한 접근성, 공증영역의 개발 등 각종 현안에 대한 주제토론을 통하여 상호 이해를 높이고 교류·협력을 증진함으로써 아시아지역 회원국의 공증제도를 선진화·국제화 하는데 기여할 것으로 확신합니다.

존경하는 아시아공증인여러분!

21세기 아시아는 새롭게 변모하고 있습니다.

이제 세계는 아시아의 역할과 위상을 주시하는 시대가 도래 하였습니다.

인도의 시인 타골이 동방의 등불이라고 불려준 대한민국도 1950년 한국전쟁의 잿더미에서 일어나 ‘한강의 기적’이라는 경제성장을 이루고 있습니다.

지난해 G-20정상회의의 의장국으로 서울에서 세계경제의 글로벌 스탠다드를 논의한 바 있고, 올해에는 세계 7번째로 1인당 국민소득 2만 달러 인구 5,000만 명의 20-50 선진국 클럽에 가입하였습니다.

100년의 역사를 가지고 있는 한국의 근대적 공증제도는 많은 중요거래의 공적인증을 통하여 한국 경제발전을 촉진하였고 ‘법의 지배’를 국민의 의식속에 뿌리 내리는데 지대한 공헌을 해왔습니다.

아시아 각국에서도 한국과 마찬가지로 공증은 분쟁을 방지하고 실체적 진실을 확인하여 신뢰사회와 법치주의 실현에 기여해오고 있는 것으로 알고 있습니다.

이번 회의에서 각 회원국은 공증제도 운영 현황을 서로 교환하고, 공증의 직역 확대 및 접근성 제고 등 시스템 효율화에 관하여 토론하며, 노인·미성년자·장애인 등 사회적 약자를 위한 공증인의 역할에 대하여 진지한 논의가 있을 것으로 기대합니다.

이번 회의가 풍성한 결실을 맺어 아시아 공증제도 발전의 토대가 되고, 각국의 참가자 여러분들이 한국에 머무시는 동안 즐거운 추억을 쌓으시기를 기원하면서 개식인사를 마치겠습니다.

감사합니다.

영문

Dear President DeCorps from the International Union of Notaries, Mr. Yoon-Sung Hwang, Deputy Minister of Legal Affairs from the Ministry of Justice, representatives of the five (5) member countries under the Asian Affairs Commission, and distinguished guests!

This morning, I am truly delighted that the Second Conference of the Asian Affairs Commission of the International Union of Notaries is taking place in Seoul, Korea.

As all of you already know very well, the International Union of Notaries is an international, non-governmental organization established in 1948. It aims to promote, co-ordinate, and develop the function and activities of notaries throughout the world. The Union also plans to facilitate cooperation among each country's notary association. The Union has obtained special status in the consultation category at the United Nations Economic and Social Council.

Today's Conference has a short history. However, it strengthens mutual understanding among the Asian member countries, and promotes exchange and coordination among them through various discussions regarding the role, education, ethics, and social responsibility of Asian notaries, as well as accessibility to the notarization system, and development of notary public systems. I am sure that the Conference will contribute to the advancement and globalization of the Asian member countries' notarization systems.

Dear fellow Asian notaries!

Asia in the 21st century is changing day by day. The world is now focusing on Asia's role and status these days.

South Korea, which the Indian poet, Tagore, once called the "Lamp of the East," recovered from the ashes of the Korean War in the 1950s and has achieved highly accelerated economic growth, known as Miracle on the Han River.

Last year, South Korea hosted the G-20 Summit in Seoul and led the discussions about the global standard of the world economy. This year, Korea became the 7th member of the “20-50 Club,” which means developed countries having \$20,000 per capita income and 50 million population.

Korea’s notarization system is now one hundred years old, and has provided authentication services for major transactions and has promoted the economic development of our country. Our notarization system has tremendously contributed to educating people to the importance of “Rule of Law”. Similar to Korea, in other Asian countries, the notarization system prevents disputes, assists in fact finding and helps to establish a trustworthy society and the Rule of Law in each country.

At this Conference, each member country will exchange information on its own notarization system and discuss the expansion of the scope of notary system, and people's accessibility to them. Moreover, at this conference, we will discuss the role of the notary publics for socially disadvantaged groups, such as old people, minors, and disabled persons.

I hope that this Conference will be productive and fruitful so that it may help the further development of the Asian notarization system. I also hope that all of you will have a wonderful time in Korea. Enjoy the Conference and enjoy Seoul.

Thank you very much.

2. 환영사 / 권재진 법무부장관

존경하는 김진환 대한공증인협회 회장님, 그리고 각국 대표단 여러분, 반갑습니다.

먼저, 2012년 국제공증인협회 아시아지역위원회 정기회의를 개최하게 된 것을 매우 뜻깊게 생각하며, 진심으로 축하의 말씀을 드립니다.

아울러 바쁘신 가운데도 이 자리를 빛내주신 장 폴 드코르(Jean-Paul Decorps) 국제공증인협회 회장님,

타다이꼬 미야자와(Tadahiko Miyazawa) 일본 공증인협회 회장님, 양퀸 추오(Yanqin Zuo) 중국 공증인협회 부회장님,

오토공바이야르 쿨템(Otgonbayar Chultem) 몽골 공증인협회 회장님, 파르디안(Fardian) 인도네시아 공증인협회 분과위원장님을 비롯한 각국 대표단 여러분들께 감사의 말씀을 드립니다.

1948년 전세계 공증제도의 발전과 국제적 협력을 목표로 설립된 국제공증인협회는 그동안 많은 발전을 거듭해 왔습니다.

설립 당시 19개에 불과하였던 회원국은 G20 국가 중 15개 국을 비롯한 총 83개 회원국으로 증가하였고, UN의 경제사회이사회에서 ‘특별부문에 관한 자문적 지위’를 부여받을 정도로 세계적 권위를 인정받는 대표적인 비정부기구가 되었습니다.

이처럼 국제공증인협회가 대단한 성장과 위업을 이룬 것은 전세계 공증인 여러분들이 각자의 위치에서 긍지와 책임감을 가지고 본연의 업무에 묵묵히 정진한 결과라고 생각합니다.

존경하는 각국 대표단 여러분!

대한민국이 2010년 10월 모로코에서 개최된 정기총회에서 국제공증인협회 정식 회원국이 되면서 아시아지역위원회가 출범하였고,

몽골이 2012년 10월 알제리에서 개최된 정기총회에서 정식회원국이 되면서 아시아지역위원회 회원국은 5개 국으로 늘어났습니다.

아울러 올해는 1912년 대한민국에 근대 공증 제도가 도입된 지 100년을 맞이하는 해이기도 합니다.

이러한 뜻 깊은 해에 대한민국에서 제2회 아시아지역위원회 정기회의를 개최하게 된 것을 매우 기쁘게 생각합니다.

하지만, 대한민국에서 공증에 대한 국민들의 인식과 신뢰는 아직 기대에 미치지 못하고 있는 것이 현실입니다.

2004년 218만 건이었던 공정증서 작성과 사서증서 인증건수는 2011년 176만 건으로 줄어

들었습니다.

법무부는 공증에 대한 인식과 신뢰를 높이기 위해 2010년 2월 공증인법을 전면 개정하여 공증인 자격을 강화하고, 정년제와 전자공증을 도입하였으며, 금년 7월에는 강제집행의 권원이 되는 공정증서의 범위를 부동산 인도 등으로 확대하는 등 공증의 예방사법 기능 활성화를 위해 최선을 다하고 있습니다.

공증인 여러분!

오늘 여러분들은 각국 공증시스템의 효율화, 노인·미성년자·장애인 등 사회적 약자를 위한 공증인의 역할, 공증인들의 국제협력 증진 등을 논의하게 위해 이 자리에 모였습니다.

전세계 공증 제도의 발전과 공증인들의 협력을 도모하고, 공증제도의 사각지대에 있는 약자들에게도 충분한 공증서비스가 제공되는 실질적인 방안이 도출되기를 진심으로 기대합니다.

다시 한번 이 뜻깊은 행사를 축하드리며, 여러분들의 무궁한 발전을 기원합니다.

감사합니다.

3. 축사 / Mr. Adrian Djuani CAAs 위원장(인도네시아)

Honorable President of the UINL, Mr. Jean-Paul DECORPS;

Honorable members of the Steering Committee of UINL;

Honorable President and delegates of Asian countries which have joined the Asian Commission of UINL and countries which will join as members of UINL namely Japan, China, Korea, Cambodia, Laos, Mongolia, Thailand, and Vietnam

Peace and prosperity to all of us,

Please, allow me to represent the President of the CAAs of UINL, Mr. Adrian Djuaini, President of Indonesian Notary Association to deliver the opening message for the delegates.

Let us praise and thank God the Almighty for it is due to His grace and blessing that we are able to gather this morning to attend the Asian Affairs Commission (CAAs) of UINL Meeting which held on the 26th and 27th of November 2012 and warmest regards from us, all members and Executive Board of the Indonesian Notary Association.

First of all, Mr. Adrian Djuaini apologize for being unable to attend this meeting because as the Chairperson of the Indonesian Notary Association, he is now preparing an agenda of the organization, Pre-Congress event to be held on the 6th, 7th, and 8th of December 2012 in Pekanbaru, Riau Province. Therefore the Indonesian Notary Association will be represented by a delegate consisting of Mr. Fardian, Ms Isyana Wisnuwardhani Sadjarwo, and Mr. Neddy Farmanto.

After the first Asian Commission of UINL in Jakarta on the 26th of September 2011, there have been a lot of things experienced by the Indonesian Notary Association as specified in Mr. Adrian Djuaini, President of Indonesian Notary Association letter dated the 23rd of November 2012, including the suspension of the election of the General Chairperson of the Indonesian Notary Association for 2012-2015 period in the 21st Congress of the Indonesian Notary Association due to money politics scandal committed by one of the candidate of General Chairperson who paid money for the votes of the members in order to be elected as the General Chairperson. The aforementioned condition is so unacceptable that the process of election of the General Chairperson is suspended until the violation can be proved.

Let me convey our highest gratitude and appreciation to the Korean Notary Association for hosting this meeting and to the President of UINL and all staff for their support for this international event. Hopefully this meeting may produce decisions, conclusions, and ideas that

may be beneficial for Notaries, particularly Notaries of Asian Commission to perform their professional duties. I also expect that we can be acquainted with other delegates and exchange information on matters related to the functions and roles of Notaries in our respective countries which will eventually strengthen the bond of brotherhood and solidarity among the participants in particular and among organizations of Notaries in Asia, Europe, America, and Africa in general.

In this occasion, please allow me to convey our deepest apology for being inactive in performing the working programs of Asian Commission of UINL due to unfavorable internal condition of my organization recently.

At present, the Law on Profession of Notary which is a positive law of our State related to Profession of Notary is being revised by the House of Representatives of the Republic of Indonesia. We have proposed several provisions to be amended, particularly with regard to the extension of the authority of Indonesian notaries which currently are only authorized to draw up deeds other than land deeds, to include the authority to draw up land deeds. We will provide further clarification in Report of the Indonesian Notary Association. In line with our struggle to amend and propose matters we believe will improve legal certainty, we invite fellow Notaries members of the Asian Commission of UINL to support us by giving statements that we can use as references at the discussion on the amendment to the Law on Profession of Notary

In conclusion od there were two issues, namely:

1. The struggle of the Indonesian Notary Association to fight money politics to uphold the dignity and honor of the organization and to push the government to give acknowledgment and support to the Indonesian Notary Association which is temporarily being managed by the Collective Collegiate Leadership; and
2. The struggle of the Indonesian Notary Association to be granted additional authority to draw up deeds related to land,

We, the Indonesian Notary Association, invite the support of UINL and Asian Affair Commission to send a letter/statement to the Minister of Law and Human Rights of the Republic of Indonesia to support the struggle of the Indonesian Notary Association with regard to the organization's affairs, the money politics issue to win the election of the General Chairperson, and the issue of revision of Law on Profession of Notary.

Finally, I expect this meeting can run smoothly and successfully. We wish all of you every success with the Asian Affairs Commission (CAAs) of UINL Meeting, may the Almighty God always give His grace and blessings to all of us, Amen.

Regards,

4. 축사 / Mr. Duan Zhengkun 중국공증인협회장

Respected President Jean-Paul DECORPS, Mr. President Kim Zin-Hwan and representatives, ladies and gentlemen,

It is my great honor to come to Seoul to attend the 2nd Ordinary Session of the Asian Affairs Commission of International Union of Notaries. Hereby I would like to extend my great gratitude to Korean Notaries Association for its painstakingly organizing of this conference.

Asian countries, especially East Asian and South Eastern Asian countries have similar historical and cultural backgrounds. However, due to the varieties in modern historical evolution, they have various legal cultures and systems and extremely diversified legal status. With increasingly accelerated globalization and integration, in particular, the rapid economic rise of Asian countries makes it more and more important to strengthen communications and exchanges amid legal and notary circles of these countries. Their successful experience and advantageous practice in notary systems are good for our reference and study. The establishment of the Asian Affairs Commission of the Union makes it feasible to have regular exchanges and cooperation amid the notary circles of its Asian members.

At the working conference, representatives summed up the latest status and development of notary circles in their countries, and discussed topics on the efficiency of notary system and assistances of notaries to disadvantaged groups etc. I benefited greatly from their enlightened speeches. And I suggest that members of the CAAs should have an in-depth access and knowledge of other member countries' notary systems through further mutual visits, connections, communications on latest legislation information and translation of relevant notary documents, thus offering better notary and legal services for economic exchanges with relevant countries. That would surely give great promotion to the notarial undertakings itself too.

At last, I would like to re-extend my heartfelt thanks to the Korean Notaries Association, the Organizing Committee of the Conference, and its President Mr. Kim Zin-Hwan. Thank you very much!

IV. 2011/2013 각 국 공증제도 현황 보고서

1. 일 본

Summary report on the Agenda

1. Current Notarization Status in Japan

As of 10th October 2012, Japan National Notaries Association(JNNA) holds 500 member notaries. Japanese notaries perform their notarial duties at 289 offices all over the country.

Of all the 500 notaries, 107 notaries have their offices in the Jurisdiction of Tokyo Legal Affairs Bureau.

In 2011, JNNA member notaries dealt with totally about 1,730,000 cases or transactions. Of all cases or transactions, about 176,000 cases were notarial deeds including wills and various contracts such as guardianship contract, loan for consumption, lease contract and agreement of divorce and subsequent payments. About 132,000 cases were authentication of private documents, about 85,000 were notarization of articles of incorporation of companies, associations and foundations.

2. Activation and Enrichment of international activities of JNNA

JNNA was admitted in 1977 to one of the member notaries associations of International Notaries Union (UINL). Member notaries of JNNA have assumed offices of UINL like Vice President, Permanent Councillor and General Councilor.

Since JNNA became member of UINL, we have actively participated in activities of UINL and we are sure we have made great contributions to the activities of UINL.

In the various duties of notaries in Japan, the number of cases of authentication of private documents to be submitted abroad is continuously increasing and in recent years opportunities of exchange not only with UINL but also with overseas notaries associations especially in Asia region such as member associations of UINL, China, Korea, Indonesia and Mongolia are also increasing.

Furthermore, against that economy and social systems are globalized in the world, we are facing undue attacks to notarial system of Latin type so, we have to continue to assert the merit of our system by emphasizing the economic usefulness of our system and stressing the merit of our system from the standpoint of the protection of the weak and disadvantaged people.

The number of inquiries by other countries on Japanese notary system, Japanese notaries, and Japanese law and so on is also increasing.

We, JNNA, held the first Asian Notarial Forum in Tokyo inviting 7 countries under the co-sponsorship of UINL. After the Forum the resolution of establishing continental commission, the Commission of Asian Affairs(CAAs) was approved by the general meeting of UINL. CAAs held the first annual meeting in Jakarta last year and now the second meeting is held at Seoul.

So, we, JNNA, intend to participate the meetings of CAAs every year actively.

Recently we, JNNA, prepared brochures in English, renewed and updated our homepage and prepared homepage in Chinese and Korean.

We endeavor to achieve the enrichment of international activities.

2. 중 국

Development Situation of Notarization of China in 2012

I. Basic Situation Concerning Developing a Group of Trained Notaries

At present, China (excluding Hong Kong, Macao and Taiwan) has 3,015 notarial institutions, with a total of 12,294 practicing notaries. The development of a group of trained notaries is therefore progressing nicely.

II. General Development Situation of Notarization of China in 2012

1. Providing Important Legal Services for Economic and Social Development.

In 2012, notarial institutions provided high-quality and efficient notary legal services for advancing structural adjustments and promoting transformation of the pattern of economic growth, as well as for national and local key projects. They provided on-site supervision during major projects in the areas of government procurement, construction, and water management; provided notary services for financial institutions in the areas of financial credit, mortgages, and secure loans, thereby effectively mitigating financial risk; and guaranteed the security of transactions including buying and selling (and leasing) real estate, contracting, transferring technology, undertaking construction work, taking out loans, and storing goods.

2. Increasing Assistance for Developing Notarization in the Western Region and Providing Targeted Intellectual and Financial Support for the Notary Industry in Tibet

At the end of last year, the 18th Workshop on Notary Work in the Western Region was held in Nanning, Guangxi Autonomous Region. Notaries from 11 provinces engaged in a discussion on the topic of “how notaries can play a part in innovative social management” and shared their experiences to good effect.

In July this year, a delegation dispatched by China Notary Association (CNA) traveled to Tibet

to carry out special inspection and assistance activities. While in Tibet, they embarked on a 2,000 kilometer trip to inspect notary work in Lhasa, Lhoka, Shigatse, and Nyingchi in order to gain a comprehensive understanding of the overall situation of notary work in Tibet and notarial institutions at the primary-level. The CNA also organized for donations totaling 500,000 Yuan to be given to the notary industry in Tibet from notarial institutions from provinces and municipalities including Beijing, Hubei, Jiangsu, and Tianjin, so that the industry can provide high-quality and efficient notary services for the leapfrog economic development of Tibet.

3. Strengthening the Professional Committee and Working Committee's Capabilities

Over the past year, the CNA stepped up its support to the professional committee and the working committee and, in order to guarantee their smooth development, established and improved their working mechanisms and the systems for guaranteeing their funding; the assistant director of the CNA was put in charge of overseeing their work; and their staff numbers and structures were adjusted. The 141 committee members from all levels of management and notarial institutions of the professional committee and the working committee have carried out a great deal of fruitful work including formulating the Notary Quality Evaluation Criteria, drafting the Records of Inquiries and Consultation on Notice Formats for Main Notary Affairs, and carrying out preliminary discussions on the Guidelines for Handling and Protecting Electronic Evidence and Notarizations.

4. Giving Play to the Advantages of Female and Young Notaries

The Chinese notary industry has traditionally shown concern for society and promoted public good. In July of this year, nine female notaries from the working committee traveled to the village of Wuxia in Tangchuan County, Qinghai Province to offer assistance to 90 poverty-stricken mothers. Along the way they visited three primary-level notary offices operating in difficult conditions and donated money to 17 female notaries from poor backgrounds working in 17 notary offices and donated computers to three notary offices.

In order to further strengthen the development of a group of young qualified notaries and promote exchanges and interactions with young notaries, the young notaries working committee successfully held a speech contest attended by notaries from 28 provinces, autonomous regions

and municipalities.

5. Stepping Up the Notary Industry's Public Relations Work

In order to expand the notary industry's social influence, from 2011 the CNA decided to organize an annual award for the most outstanding article submitted to China Notary magazine as well as organizing a Notary Work of Fiction Workshop and the First Workshop on Literary and Artistic Creations on Notarization and the Rule of Law. The fictional work Notary has been serialized in China Notary magazine for the past 10 years and received great praise from members and garnered a tremendous response from the notary community.

6. Making Training More Standardized

A total of five notary pre-service training courses were held in the first half of this year involving 667 trainees. During the training, the CNA drew on its training experience over the past several years to further enhance the quality and effectiveness of its teaching. The CNA particularly emphasized the importance of professional ethics and disciplinary education, upheld the principles of combining service and management as well as laying equal stress on professional education and the overall quality of education, and strove to raise the professional quality and abilities of notaries.

III. Outlook for 2013

Before long, the CNA will hold its Seventh National Congress, at which the Association's new leadership will be revealed. Following the sustained development of China's economy, the comprehensive implementation of the strategy of ruling the country in accordance with law, and increased understanding and awareness of the law among citizens, demand for notary legal services is increasing throughout society. This is both an opportunity and challenge to notary work. In the new year, the Chinese notary industry will increase investment and forge ahead with standardizing the development of the notary industry's systems, raising the theoretical level of its policies, and deepening study of notary theory to provide efficient and convenient notary services for aiding economic development and the people.

3. 한 국

국문

한국의 2012/2013 공증제도 현황 (KOREAN)

A. 협회 임원 및 회원 등 변동 현황

1. 임원 개선

○ 2012. 3. 26. 개최된 협회 2012년도 대의원 정기총회에서 임기 2년의 신임 협회장에
법무법인 충정 김진환 대표변호사 겸 공증인이 선출됨.

○ 2012/2014 상임 집행부 임원 명단

* 부협회장 : ① 박국수 (수석)

② 김종환

③ 유원규

④ 김주덕

* 상임이사 : ① 안원모 (총무)

② 박광빈 (국제)

③ 김건수 (기획)

④ 이춘성 (회원)

⑤ 남상우 (법제)

⑥ 이봉상 (재무)

2. 회원 현황

○ 2010년부터 시행중인 공증인 정원 및 정년 제도 시행으로 협회 회원 수 계속 감소중
에 있고, 향후 몇 년간 공증인 정원 수에 일치될 때까지 감소 예정.

* 정원 : 총 276개소

- 전국적으로 임명공증인 86명, 인가공증인 190개소

○ 2012. 11. 15. 현재 회원 현황

Type Year	Appointed Notaries	Authorized Notary Publics	TOTAL
2012. 11. 15.	48	319	367
2011. 12. 31.	40	339	379
2010. 12. 31.	38	355	393
2009. 12. 31.	33	361	394
2008. 12. 31.	33	353	386
2007. 12. 31.	1	338	369

○ 2012. 11. 15. 현재 각 지역별 공증인 현황

지 역	임명공증인	인가공증인		공증사무소 합 계
		사무소	공증담당변호사	
서울	15	157	798	191
의정부	1	13	46	14
인천	0	20	60	22
수원	7	36	120	45
춘천	2	3	10	4
대전	3	8	26	11
청주	3	7	28	10
대구	3	20	80	23
부산	3	17	77	21
울산	2	7	26	9
창원	4	8	28	12
광주	3	15	54	18
전주	1	6	18	6
제주	1	2	5	3
합 계	48 (13.08%)	319 (86.92%)	1,376	367 (100%)

○ 연도별 공증업무 처리 건수 변동 현황

※ 매년 12월 31일 기준 / 단위, 건

Type Year	Notarial Deed Preparation	Articles of Incorporation Certification	Corporate Minutes Certification	Deed Signed by a Private Person
2011	873,252	8,556	438,766	891,413
2010	760,336	10,985	396,193	823,075
2009	684,944	33,035	498,386	785,977
2008	779,806	51,851	543,118	909,435
2007	799,089	55,156	553,276	1,084,259
2006	691,710	52,186	533,277	1,018,542
2005	690,330	54,004	505,817	1,087,973
2004	1,022,003	47,721	492,795	911,697
2003	2,095,568	57,780	567,896	855,869

* 공증제도가 중요거래의 증거를 보전하여 분쟁을 예방하고, 권리자의 권리실행을 위한 사실을 증명해주는 제도로서 예방 사법 기능을 수행하지만, 일반 국민들에게 아직은 공증제도의 필요성에 대한 인식 부족 또는 상호간 신뢰 부족에 기인하여 공증업무 처리 건수 현황에 큰 변동이 없는 상태

B. 공증 법령 변경 사항

1. 공증인 정년제도 시행

- 2009. 2. 6. 개정된 공증인법에 따른 공증인 및 공증담당변호사의 정년 제도가 2012. 2. 7. 부터 시행중에 있음.
- 정년은 2017년까지는 80세, 2018년부터는 75세가 적용되며, 생년월일을 기준으로 1. 1.부터 6. 30. 출생 공증인은 정년에 해당하는 해의 6. 30.자로, 7. 1.부터 12. 31. 출생 공증인은 정년에 해당하는 해의 12. 31.자로 당연퇴직함.
- 개정법에서는 당초 정년이 75세로 규정되었으나, 정년제 도입 · 시행과 동시에 상당수 공증인의 일시 퇴직 현상이 발생하고, 그로 인해 많은 공증사무소가 폐쇄되어 각 공증사무소에서 보관해 오던 방대한 양의 공증 서류의 보관 또는 이관 문제가 발생하게 되는 등 기존에 정년제 적용을 받지 않았던 공증인의 기득권을 일시에 박탈하는 위헌적인 상황이 발생한다는 이유로, 현행법과 같이 공증인 정년 제도를 2012년부터 시행하되, 정년을 75세로 정한 것을 한시적으로 2017년까지는 80세로 하는 경과규정 도입을 골자로 한 공증인법 개정안이 2011. 12. 31.자로 국회를 통과하여

2012. 1. 17.부터 시행되고 있음.

2. 집행증서 범위 확대 공증인법 개정안 국회 계류중

○ 한국 공증인법상, 현재 금전·어음 등 일정한 수량의 지급을 목적으로 하는 경우만 이용할 수 있는 집행증서를 건물이나 토지 등의 인도를 구하는 경우에도 이용할 수 있게 하면서 사회적 약자를 보다 철저히 보호하도록 개선하는 것을 주요 골자로 하는 공증인법 개정안을 마련, 현재 국회에 제출, 법안심의 계류중임.

* 집행증서 : 공정증서 중 채무자의 강제집행 승낙에 따라 집행권원이 되는 증서

○ 개정안에서는 임차건물 반환에 관한 집행증서는, 임대차 종료로 임차건물을 반환하기 전 3개월 이내에만 작성할 수 있도록 하여 장기 임대차의 경우 임차인의 불안정한 지위로 인하여 임대인의 일방적 요구에 따라 집행증서가 작성될 우려를 최소화하고, 아울러 임대인이 상환할 보증금 등 금원 반환도 함께 이뤄질 수 있도록 집행증서에 그 내용을 반드시 포함하도록 하여 양 당사자가 공정하게 집행권원을 가질 수 있도록 규정하고 있음.

○ 개정안은 이밖에도, 촉탁인이 공증인 앞에서 증서의 내용이 진실함을 선서하고 공증인이 그 선서사실을 인증하는 선서인증제도를 둔 다른 선진국의 경우와 유사하게 거짓 선서를 하고 문서에 선서인증을 받은 경우 300만 원 이하의 과태료를 부과할 수 있도록 하여 문서내용의 진실성이 보장되도록 하면서, 다만 거짓 선서를 한 후에도 법정에서 오류를 시정한 경우에는 과태료를 감경하거나 면제하도록 하여 관련 사건의 재판과정에서 법관이 실제적 진실을 발견하는 데 장애가 되지 않도록 하는 것을 주요 골자로 하고 있음.

* 선서인증 : 촉탁인이 공증인 앞에서 사서증서에 적힌 내용이 진실함을 선서하고 그 사서증서에 대한 인증을 받는 공증방법

3. 현재 제도로입 후 향후 시행을 앞둔 공증 업무

(1) 후견계약의 공증제도 도입

○ 성년후견 및 한정후견, 특정후견제도 도입을 주요 골자로 한 민법 개정안이 2013. 7. 1.부터 시행을 앞두고 있는바, 동 개정 법률에서는 질병, 장애, 노령, 그 밖의 사유로 인한 정신적 제약으로 사무를 처리할 능력이 부족한 상황에 있거나 부족한

게 될 상황에 대비하여 자신의 재산관리 및 신상보호에 관한 사무의 전부 또는 일부를 다른 자에게 위탁하고 그 위탁사무에 관하여 대리권을 수여하는 것을 내용으로 하는 후견계약을 체결할 수 있도록 하고, 후견계약은 반드시 공증인 작성의 공정증서로 체결하도록 규정함.

- 또한 임의후견감독인의 선임 전 후견계약 종료시에는 본인 또는 임의후견인이 공증인의 인증을 받은 서면으로 후견계약의 의사표시를 철회하도록 하는 제도가 신설되어, 현재 후견계약의 공증 업무에 수반되는 각종 서식 및 공증인 수수료 등 공증실무에 관한 후속 법규를 마련중에 있음.

(2) 자기신탁 제도 공증 도입

- 2012. 7. 26.부터 시행중인 개정 신탁법에서는, 자기신탁제도를 도입하면서 자기신탁이 채무면탈 등의 목적으로 악용되지 않도록 자기신탁시 공정증서 작성 의무를 부과, 효력발생 요건으로 하고, 위탁자의 채권자 등이 부당하게 설정된 자기신탁의 종료를 법원에 청구할 수 있도록 하는 등의 제한규정을 두고 있음.
- 즉, 자산유동화 등에 활용될 수 있도록 자신을 수탁자로 정한 위탁자의 선언으로도 신탁을 설정할 수 있도록 하되, 그 남용을 방지하기 위하여 이에 따른 신탁의 설정은 공정증서를 작성하는 방법으로만 하도록 하고, 신탁을 해지할 수 있는 권한을 유보할 수 없도록 하고 있음.
- 다만, 은행, 보험 등 겸영금융투자업자인 신탁업자의 경우 일반 민사신탁과 달리 별도 금융감독을 받고 있고, 현재도 투자자예탁금을 자기신탁하고 있으므로 개정 신탁법에 따른 공정증서 작성의무를 면제하는 자본시장과 금융투자업에 관한 법률의 일부 개정이 추진되고 있음.

(3) 국제결혼 중개계약 체결시 공증인의 인증 제도 도입

- 2012. 8. 2.부터 시행중인 결혼중개업의 관리에 관한 법률에서는, 국제결혼중개업자는 계약을 체결한 이용자와 결혼중개의 상대방으로부터 혼인경력, 건강상태, 직업, 성폭행과 같은 범죄경력 등의 신상정보를 받아 각각 해당 국가 공증인의 인증을 받은 다음 각 신상정보(증빙서류 포함)를 상대방과 이용자에게 서면으로 제공하여야 한다는 규정이 신설됨.

Current Status of the Korean Notarization System in the Years of 2011 & 2012

A. Membership Status of the Korean Notaries Association

1. Board Members

- On March 26, 2012, at the General Assembly, Mr. Kim, Zin Hwan was elected as the new President of the Korean Notaries Association for a period of two (2) years.
- List of the Board Members for the years between 2012 and 2014
 - * Vice Presidents: Mr. Park, Kook Soo (Senior)
Mr. Kim, Jong Whan
Mr. Ryou, Won Kyou
Mr. Kim, Choo-Deok
 - * Executive Directors: Mr. Ahn, Won-Mo (General Affairs)
Mr. Park, Kwang Bin (International Relations)
Mr. Kim, Goun Soo (Planning)
Mr. Lee, Chun Sung (Legislation)
Mr. Nam, Sang Woo (Legislation)
Mr. Lee, Bong Sang (Financial Affairs)

2. General Members

- Since the introduction of the retirement age and the restriction on the number of the notary publics in 2010, the number of the Association's general members has been decreasing. The number is expected to continue to decrease for the next few years until it reaches the newly prescribed restriction in the number of the notary publics.
- * Number limit: a total of 276 offices
 - 86 appointed notaries and 190 authorized notary public offices

• The Number of the General Members as of November 15, 2012

Type Year	Appointed Notaries	Authorized Notary Publics	TOTAL
11. 15. 2012	48	319	367
12. 31. 2011	40	339	379
12. 31. 2010	38	355	393
12. 31. 2009	33	361	394
12. 31. 2008	33	353	386
12. 31. 2007	31	338	369

• The Number of Notary Publics by Region as of November 15, 2012

Region	Appointed Notaries	Authorized Notary Public		Total
		Office	Attorneys	
Seoul	15	157	798	191
Uijeongbu	1	13	46	14
Incheon	0	20	60	22
Suwon	7	36	120	45
Chuncheon	2	3	10	4
Daejeon	3	8	26	11
Cheongju	3	7	28	10
Daegu	3	20	80	23
Busan	3	17	77	21
Ulsan	2	7	26	9
Changwon	4	8	28	12
Gwangju	3	15	54	18
Jeonju	1	6	18	6
Jeju	1	2	5	3
Total	48 (13.08%)	319 (86.92%)	1,376	367 (100%)

• The Number of the Notary Public Cases Processed per Year

※ As of Dec. 31 of each year/ unit : case

Type Year	Notarial Deed Preparation	Articles of Incorporation Certification	Corporate Minutes Certification	Deed Signed by a Private Person
2011	873,252	8,556	438,766	891,413
2010	760,336	10,985	396,193	823,075
2009	684,944	33,035	498,386	785,977
2008	779,806	51,851	543,118	909,435
2007	799,089	55,156	553,276	1,084,259
2006	691,710	52,186	533,277	1,018,542
2005	690,330	54,004	505,817	1,087,973
2004	1,022,003	47,721	492,795	911,697
2003	2,095,568	57,780	567,896	855,869

B. Changes of the Notary Public Laws

1. Introduction of the Notary Public's Retirement Age

- Pursuant to the Notary Public Act amended on February 6, 2009, the new retirement age was introduced for the notary publics which has come into force on February 7, 2012.
- Originally, the retirement age was changed to seventy-five (75). However, the change caused an unexpected and substantial decrease in the number of practicing notary publics due to retirement, which simultaneously caused closures of many notary public offices. This was thought to have caused a direct depreciation in the quality and the quantity of works that were capable of being handled by the remaining practicing notary publics. In addition, such a retirement system infringed the vested rights of the notary publics who had not been not under the age-limit system beforehand, and as such, the infringement was deemed unconstitutional.
- Thus, the National Assembly passed the new law on December 31, 2011, which has come into force on January 17, 2012. The new law determined that the retirement age for the notary publics should be enforced from 2012, provided that the retirement age for the existing practitioners remains 80 until 2017 so as to protect the vested rights to practice of

the existing cohort of practitioners.

- Under the new arrangements, the age of eighty (80) will continue to be the recognized retirement age until 2017; thereafter, the age of seventy-five (75) is the new statutorily-prescribed retirement age from 2018.
- The notaries whose date of birth falls between January 1st and June 30th are mandated to retire on June 30 of the year of his/her retirement age, and the notaries whose date of birth falls between July 1st and December 31st are mandated to retire on December 31 of the year of his/her retirement age.

2. Pending Legislation with respect to the Notary Public Laws

(1) Certificate of Execution

- According to the current Notary Public Act, the certificate of execution may be used for the purpose of payment of cash or promissory notes. According to the amended legislation pending in the National Assembly, such certificates of execution may be used for real property transactions for the purpose of protecting the socially disadvantaged.
- Here, the certificate of execution is a notary public's documentation which will form the basis of exercising the compulsory execution pursuant to the debtor's approval. For example, according to the amended legislation, the certificate of execution for a leased building may be prepared within three (3) months prior to the expiration of the lease agreement. This amendment minimizes the risk that, in case of a long-term lease, a socially disadvantaged tenant may be forced to sign a certificate of execution by the landlord's unilateral demand.
- In addition, the certificate of execution should include a provision regarding return of the security deposit to a tenant so that both parties may equally have his/her own execution rights.

(2) Penalty Payments

- The amended legislation prescribes for a penalty payment for the maximum of

3,000,000 KRW (c.2,770 USD) for making false oaths and obtaining an authentication for such false oath. It is hoped that the introduction of such penalty payments will dissuade any attempts to make false oaths, thereby improving the authentic nature of the documents sworn.

- Such a provision is comparable to other countries which operate oath authentication systems requiring clients to take an oath to the effect that the contents in a deed being sworn are true and genuine in the form that is to be authenticated by the notary public.
- If a client wishes to correct any previous false oath he/she took in court, the amount of the penalty payments may be reduced, or even entirely exempted, thereby allowing the judges in relevant cases to discover the truth, without having to intimidate the clients with the prospect of heavy penalties.

3. Notary Public Services Expected to be Enforced

(1) Notary Public System for Guardianship Agreement

- The amendment of the Civil Act with respect to implementing the adult guardianship, limited guardianship and specific guardianship is effective as of July 1, 2013. Such amendments will allow a person to execute a guardianship agreement for his own financial management or personal affairs if he is not or will not be capable of handling such matters due to diseases, disabilities, old ages, or any other reason. Such guardianship agreements should be executed via authentication by a notary public.
- The amendments also state that, at the time of termination of a guardianship agreement before its expiration, a person or his guardian should revoke such guardianship in writing which will be confirmed and authenticated by a notary public. The matters of the relevant regulations with respect to forms and fees for such guardianship notary services are currently being considered by the Korean Assembly.

(2) Notary Public Service for Self-Trust System

- Under the amended Trust Act effective on July 26, 2012, the self-trust system is implemented. A notary public documentation for self-trust should be prepared as a

requirement for its validity so that such self-trust may not be misused for avoidance of obligations. There is a further limitation provision for self-trust in that a creditor to a trustor may ask the court to terminate the unfairly created self-trust.

- For the purpose of utilizing the self-trust in liquidating assets, a person may create a trust by declaring himself as a trustee, provided that such a self-trust is created only by preparing a notary public documentation and that a right to terminate the trust cannot be postponed.
- A trust business as financial investment institution, such as a bank or insurance company, is separately supervised, as different from other civil trust businesses, and is already engaging in self-trust activity with investors' deposit money. Therefore, a partial amendment of the Financial Investment Services and Capital Markets exempting such financial investment institutions from the obligation to prepare a notary public documentation required by the amended Trust Act is currently being pursued.

(3) Introducing the notaries' authentication system to international marriage brokerage agreements

- According to the Act on Management of Marriage Brokers effective on August 2, 2012, a broker for international marriages should obtain from both parties of a marriage certain details of personal information - such as, previous marriage records, medical records, proof of occupation, and criminal records including sexual assault, and obtain a notary public's authentication for any such information from the relative party's home countries; and, once authenticated, provide the said personal information to the other party with substantiating evidence.

4. 몽 골

BRIEF INFORMATION ABOUT THE WORK OF THE CHAMBER OF NOTARIES OF MONGOLIA

One. Work for renewal and enhancement of legislative environment of the notary organization in Mongolia

The new Law on Notary was enacted on 10th February 2011.

This law determines principles of notarial activities and the legal status of a notary public. To become a notary interested lawyers must meet a number of criteria, pass the qualification exams, and only successful ones may become a notary public. First, according to the present regulations a citizen of Mongolia who graduated a university with a diploma of a lawyer upon 2 years of work is eligible to take the professional exams. If the candidate passes these exams, he receives from the Ministry of Justice a certificate of a lawyer. Secondly, this certified person must pass the qualification exams for appointment as a notary and receive a license of notary public from the Minister of Justice of Mongolia. The qualification procedure of a notary is resembling that of other legal profession like judge, public prosecutor and advocate.

After enactment of the law the Ministry of Justice and Home Affairs and the Chamber of Notaries of Mongolia (CNM) have approved the Action Plan for Implementation of the Law on Notary and fully renewed the legal environment of the notary organization in our country. According to this plan 20 legal acts were approved. It includes 6 ordinances of the Minister of Justice and Home Affairs, 7 resolutions of the Meeting of All Members of the CNM and 7 decisions of the Management Board of the CNM.

Two. Cooperation with organizations of similar profile

The CNM has announced the Year 2012 as a year of training, research and advocacy and is organizing its work in accordance with a definite plan.

Our Chamber pays much attention to organization of domestic training activities among

notaries. For instance the Chamber co-works closely with the Law School of the Mongolian State University (MSU), the General Department of State Registration, the Department of Proprietary Right Registration, the Civil Registration Department, the Department of Vehicle Registration, the Department of Securities, the court research institution, the General Department of Customs, the Regulatory Committee on Finance and other organizations work of which is co-related with the CNM. Main focus of these activities is suggestions and requirements of our notaries, necessity to provide quick and unhindered services to the clients. For gaining single understanding of relevant charters and regulations there are organized meetings with the management of state institutions and non-governmental organizations; our notaries are participating in scientific conferences, training courses and seminars; and they are reaching collectively acceptable decisions on definite issues.

The cooperation with the Department of Civil Law of the MSU is focused on increasing the theoretical knowledge and practical skills of notaries and involves professors and researchers of this department in the research and training works defined by our Chamber.

Three. Improvement of professional knowledge and skills of notaries

- The representative of the UINL Dr. Marylise Hebrard, the Director of the Sino-French Center of Notarial and Judicial Retraining and Exchange in Shanghai, China, arrived on our invitation to Mongolia on 3-4 October 2011 and held a training course for all our notaries on the topic "Intellectual Property Law and Notary Activities". In result of this training our notaries upgraded their knowledge and received new insight on the issue.
- In occasion of the anniversary of the notary organization of Mongolia the CNM organized on 16th October 2011 the public discussion on the issue "Problems of Current Work of Notaries Public, Ways of Their Solution". During this discussion its participants presented and discussed various contradictory aspects of our legislation, problems met in our daily practice; and reached a common understanding of the problem.
- Pursuant to the Law on Notary notarial services are provided by professional notaries appointed by the Minister of Justice; in soum (a lowest provincial unit) without a notary his functions are executed by the head of the Governor's Office of this soum and in other country - by the consular officer of a diplomatic mission of Mongolia in this country. For purpose of single implementation of the law a compilation of legal acts "Notary Public" has

been compiled out of laws which regulate notary activities, international treaties and conventions to which Mongolia is a party, and resolutions of the High Court of Mongolia which contain interpretation of the legislation on notary. These legal acts provide comments on the Law on Notary enacted in 2011, and determine the rights and duties of notaries and acting notaries.

- In occasion of establishment of a notary organization in Mongolia the Management Board of the CNM decided to celebrate the Day of Notary Public on second Saturday of October of every year. On that day the notary services are provided to people free of charge.

Four. Work for development of foreign relations and cooperation

Today Mongolia is in the beginning of rapid economic development. For example, in the mining sector of Mongolia we expect a capital investment the total size of which amounts to third place in the world. The mean of legal protection of economic growth are notarial acts. Therefore the CNM pays much attention to bringing knowledge and professional skills of its members-notaries up to the required level and international standards. In relation with that the Minister of Justice and Home Affairs on Mongolia Mr. Ts.Nyamdorj, the President of the International Union of Notaries (UINL) Mr. Jean-Paul Decorps and the President of the CNM Mrs. Ch.Otgonbayar signed the Cooperation Agreement on 2nd April 2012.

Pursuant to this agreement and with the assistance of Mr. Michel Merlotti, the President of International Notarial Cooperation Commission (INCC) of the UINL, there were organized following activities:

- On invitation of the Estonian Notary Chamber representatives of the CNM visited Tallinn, Estonia, between 13th and 17th May 2012 and studied their experience of introduction and maintenance of E-notary system. Accordingly, upon return, the possibility of establishment of such a system in Mongolia was discussed and some preparatory actions taken.
- The training for all notaries of Mongolia on issues of developmental trends of notaries public of European countries, professional ethics and notarial acts is planned on 2-7 November 2012. The training is delivered by two professional trainers from Switzerland and financed by the Swiss Cooperation Agency.
- Two notaries public are going to attend the training for young notaries organized in the World Notarial University (WNU) in Rome, Italy, on 19-23 November 2012. This activity is

implemented in close cooperation with Dr. Giuseppe Ramondelli, a delegate for Asia and Oceania of the INCC of the UINL and the director of the WNU.

Also with support of the UINL the CNM has prepared and done the next:

- The delegation of representatives of the Chamber of Notaries of P.R.C. headed by Mr. Hongjun Ma, a head of the Law School of China University of Political Science and Law, officially visited our country on 25th July 2012 and organized a seminar on notarial acts of our two countries. During this seminar our members discussed the possibility of exchange of work experience and cooperation in the future. As a result, the Cooperation Agreement was signed with this law school which acted on behalf of the Chamber of Notaries of P.R.C.
- It is planned that the delegation of the CNM will visit France at the end of December 2012 on an invitation of the Chamber of Notaries of France. They plan to acquaint with the organization of notary offices, workplaces of French notaries, notarial archive, retraining system of notaries and development of E-notary in France. At the end of the visit, if possible, the head of our delegation will raise the issue of conclusion of cooperation agreement with their French colleagues.
- In 2013 the CNM is planning to deepen the international cooperation established before and organize various activities in conjunction with its foreign partners.

Five. Role of notary public for socially disadvantaged groups

The CNM co-works actively with the relevant state ministries and agencies on issues of socially disadvantaged groups. The new government cabinet is preparing a set of decisions related to social benefits of old, disabled and disadvantaged people. It is planned that this work will be finalized by spring next year, and number of various decisions and law amendments will be approved.

In conformity with the Fees and Expenses of Notarial Service, approved by the Ordinance of Minister of Justice and Home Affairs of 05 July 2011, for witnessing various actions of pensioners, disabled persons and children related to provision of services related to their pension, allowances and social benefits a notary shall charge from them a minimal service fee. In comparison with the legally chargeable fees for a similar type of transactions, in some cases, this minimal fee is 5 times less than usual.

Six. Future actions and planned work

1. The CNM must organize the implementation of the new legislation on notary public in strict and implicit correlation with the law.
2. In relation with becoming a member of the UINL the CNM shall undertake jointly with regional and other countries organization of various seminars and trainings designed for further enhancement of the professional knowledge and professional skills of our notaries, study the work experience of notaries public of other countries and introduce progressive methods of their work in own practice in Mongolia.
3. The CNM plans the work on advocacy of its social functions, activities of a notary and a positive role of this institution in a social life of the country; and closer cooperation with other organizations which are co-related with the Chamber by their functions and operation.

5. 인도네시아

NATIONAL REPORT ON THE INDONESIAN NOTARY ASSOCIATION FOR ASIAN AFFAIRS COMMISSION

1. Current Status of Notary for the year 2012 and 2013

1.1. Number of Notaries

At present, there are more than 12,000 notaries throughout Indonesia unequally spread in 33 provinces. Most notaries are in Java Island namely in West Java Province (+/- 3,680 notaries), Special Capital City Region of Jakarta (+/- 850 notaries), Banten (+/- 930 notaries), Central Java (+/- 3,200 notaries), Yogyakarta Special Region (+/- 350 notaries), and East Java (+/- 3,150 notaries).

1.2. Quality of Indonesian Notaries

In order to update the knowledge on notarial or legal matters, the Indonesian Notary Association has provided short trainings, refreshment courses, and briefings for its members, among other things trainings on auction, sharia banking, capital market, deeds of cooperatives, etc. related to the performance of duties of Profession of Notary including the method to settle/resolve various legal issues encountered in daily Notary practices.

2. Efficiency of each member country's notary system

2.1. expansion of jurisdiction of notary and its accessibility

Jurisdiction of notary :

- Under Law Number 30 Year 2004 concerning Profession of Notary, the jurisdiction of Notary

covers one Province but she/he must be domiciled in a regency/municipality. Therefore, Notaries are only authorized to draw up deeds in their jurisdiction (in one province).

Access to Notary Services :

- Notaries are only authorized to draw up deeds other than land deeds. Land deeds are drawn up by Land Deed Officials. Therefore, in the framework of amendment to Law on Notary Profession which is being under discussion by the House of Representatives of the Republic of Indonesia, the Indonesian Notary Association is struggling for the granting of authority to Notaries to draw up land deeds.
- Upon fulfillment of certain requirements, Notaries can serve as Tender Officials, Land Deed Officials, Cooperatives Deed Officials.

2.2. Notarization system

- Any deed is drawn up in the form of minutes (for archives) and copies (for the parties).
- The archives are in the form of hard copy creating difficulty in terms of their depository because they require relatively large space.

3. Role of notary for the socially disadvantaged groups

1. Article 37 of Law Number 30 Year 2004 concerning Profession of Notary provides for the provision of Notary Service to socially disadvantage groups. The article reads as follows: Notaries shall be obligated to provide legal services in the field of notary for free to socially disadvantaged groups.
2. The Indonesian Notary Association has Member Welfare Division whose program includes providing social assistance for victims of natural disasters for both members of the Indonesian Notary Association and the public affected by the natural disaster such as the donation for the victims of the 2009 West Sumatra Earthquake, victims of flood in Wasior - Papua, Tsunami in Mentawai Island - West Sumatra, and eruption of Merapi volcano disaster in Yogyakarta Special Region in 2010. The Indonesian Notary Association has established cooperation with several hospitals to give discounts for examination and general check up fees for its members.

V. 제1주제 토론 발표문

- 각 국 공증시스템의 효율화에 관하여(공증지역 확대 및 접근성 확장 부분) -

1. 일 본

Summary Report on the Agenda

Topic #1: Efficiency of each member country's notarization system

- Expansion of notarization region and its accessibility in Japan -

1. A brief history of expansion of notarization region in Japan

- (1) When the Japanese notary system started with the Notary Rule of 1886, the notary's authority was limited to the preparation of notarial deeds.
- (2) With the promulgation of the Notary Act in 1909 the notary's authority was expanded to the authentication of private documents and the assignment of an officially-attested date.
- (3) The Notary Act has since been amended several times to achieve its current form. In the meantime the notary's authority was gradually expanded as follows:
 - (i) In 1938 the authentication of articles of incorporation at the time of company's establishment was added to the notary's authority.
 - (ii) In 1996 the system of sworn statements (affidavits) for the attestation of private documents was established.
 - (iii) In 2000 an additional authority was given for electronic notarization including electronic authentication of private documents and assignment of an electronic officially-attested date.
 - (iv) In 2002 the former was extended to the electronic authentication of articles of incorporation at the time of company's establishment.

(4) Aside from amendments of the Notary Act itself, enforcements or amendments of other laws have substantially expanded the notarization region as follows:

- (i) In 1992 the amended Act on Land and Building Leases came into effect, which prescribes that contracts with the objective of establishing fixed-term land lease rights for business purposes shall be made by a notarial deed.
- (ii) In 2000 the Act on Voluntary Guardianship Contract came into effect, which prescribes that voluntary guardianship contracts shall be made by a notarial deed.

2. An outlook on accessibility to notarization region in Japan

(1) The number of notaries nationwide is 500 as of October 10, 2012.

The number seems to be rather low as compared with those of other countries. But all Japanese notaries are working on full-time basis and during the year of 2011 they prepared notarial deeds on total 176,000 juristic acts, authenticated total 132,000 private documents, authenticated total 85,000 articles of incorporation at the time of company' s establishment, etc.

(2) Of all the 500 notaries, at present 107 have their offices in the jurisdiction of Tokyo Legal Affairs Bureau.

It may give an impression that Japanese notaries are rather concentrated on urban areas and relatively scarce in rural areas. But considering that more than 10 percent of Japanese population live in that jurisdiction and more than 30 percent of head offices of big businesses are located there, the allocation of Japanese notaries is not unnatural.

Furthermore, as the same jurisdiction includes the Ogasawara Islands in the Pacific Ocean about 1,000 kilometers away from mainland Tokyo, the Tokyo District Notaries Association has dispatched notaries twice a year to open the mobile notary office there in order to render assistance for people living in the remote islands.

3. Recent proposals on the expansion of notarization region in Japan

The expansion of notarization region has long been desired by Japanese notaries. Some of the recent proposals on the expansion are as follows:

- (1) A law professor and ex-notary (Taichi Kajimura) proposes in his book published in August, 2012 that a divorce by agreement should be confirmed by a notary before its notice to the family registration office.

The background of this proposal is the amendment of the Civil Code in June 2011. Before the amendment the Civil Code simply prescribed that if parents divorce by agreement, the matter of who will have custody over their child and any other necessary matters regarding custody shall be determined by that agreement. But after the amendment the Code more specifically prescribes that if parents divorce by agreement, the matter of who will have custody over their child, the visitation of father or mother to the child and other communications with the child, the allotment of expenses needed for the child custody, as well as any other matters regarding custody shall be determined by that agreement; in this case, the benefit of the child shall be considered with utmost priority.

As the family registration officials are generally not experts on custodial rights and duties, the assistance by notaries for divorcing parents is expected to promote the benefit of the child.

Considering that the average cases of divorce by agreement are about 250,000 per year, the potential demand for the notary's assistance is expected to be very large.

- (2) Other recent proposals on the expansion of notarization region are as follows:

- (i) Expansion of the scope of executive force of notarial deeds to the delivery of a specific building or movable assets
- (ii) Introduction of the notarization system for certifying registration cause of real estate

2. 중 국

Topic 1: Efficiency of China's notarization system (expansion and its accessibility of the notarization region)

Different from other countries of the civil law system, in China, a notary office is the center of notarization and notaries carry out notarial businesses and issue notarial certificates on behalf of the notary office; accordingly the liability of notarization shall be borne by the notary office itself.

In line with the Regulation on the Practice of Notary Offices issued by the Ministry of Justice, which came into effect on March 1, 2006, the notary offices shall be established by the principle of coordinated planning and rational distribution with controlled quantity and approval from the department of justice of the provinces, autonomous regions and municipalities.

The notary office can be set up in the counties, cities without or with district, municipalities or districts under the municipalities; and the cities with districts and municipalities can set up one or more notary offices. The notary office is not set up by the administrative division. The department of justice of the autonomous regions and municipalities shall make a plan for establishment of the notary offices in line with the establishment principle with consideration to the local economic and social development, population, traffic conditions and actual requirements on the notarization and adjust the plan according to changes of the local conditions and notarization requirements.

The establishment plan of notary offices shall include the basis of the plan, setup and distribution of notary offices, division of notarization region, total quantity of notary offices and regional distribution.

The practice area of notary offices shall be approved by the department of justice of the provinces, autonomous regions and municipalities when the office is approved for establishment or changes. The establishment plan and adjustment of the notary offices shall be approved by the Ministry of Justice.

In line with provisions of Article 13-15 of the Rules for Notarization Procedures, the notarization region refers to the area defined by the department of justice of provinces.

autonomous regions and municipalities in line with Article 25 of the Notarization Law and Article 10 of the Regulation on the Practice of Notary Office and the local notary office establishment plan. The practice area is approved and verified by the department of justice when the notary office is established or applying for changes. The notary office shall accept the notarization application within the defined practice area.

The notarization application shall be handled by the notary office of the client's residence, habitual residence, place of act or place of event. The notarization of real estate shall be handled by the notary office where the real estate is located; the foregoing provisions shall apply to the notarization concerning entrustment, statement, and donation or last will of the real estate.

When two or more clients apply for the notarization of the same item, the application can be submitted to the notary office of the place of act, place of event or the residence or habitual residence of one client.

When a client submits an application of notarization to two or more notary offices, the first notary office which accepts the application shall be responsible for the notarization.

3. 한 국

국문

공증 시스템의 효율화에 관하여

- 공증 직역 확대 및 접근성 확장에 관하여 -

1. 한국에서의 공증업무 확대에 대한 간략한 역사

(1) 조선시대(1392년~1910년)부터 유사한 제도 존재

- 토지 및 노비 매매 관련 매매계약서의 공적 증명제도 : 입안(立案)
- 경국대전(Principle legal statute of the Choseon Dyansty) : 매매 후 100일 내에 지방 관청에 신고하여 확인을 받는 절차(매도인, 매수인, 증인 참석)
- 수수료인 작지(作紙)도 부과

(2) 근대적인 공증제도 도입 : 1912년부터 일본 구 공증인법을 준용

- 사무감독기관 : 법원

(3) 1961. 9. 23. 법률 제723호 공증인법 제정

- 사무감독기관 : 법무부로 이관, 극히 제한적인 임명
- 1961년 당시

연 도	전체 인구수	공증인 수(사무소)	1인당 GNP
1961	2,500만 명	10명	82달러
2012	5,000만 명	367개소	20,000달러

(4) 1970. 12. 31. 간이절차에 의한 민사분쟁사건 특례법 (법률 제2254호)

- 일본 공증인법에서 분화되어 다른 방향으로 발전하는 결정적 계기
- “합동법률사무소” 제도 창설(변호사조합체 : 3인 이상, 그 중 1인은 10년 이상 경력자)
- 공증업무취급 자격 부여 : 2인의 공동 서명
- 어음수표 공증제도 (어음에 공증을 하고 집행력을 부여하는 공정증서) 창설
- 법인 의사록에 대한 인증제도 창설

☞ [결과] 공증사무의 전국적 확산

- 공증인 사무소의 증가 (1970년 10개소 → 1982년 84개소)
- 공증 취급 건수의 폭발적 증가 (1970년 22만 건 → 1982년 257만 건)

(5) 1982. 12. 31. 변호사법 개정(법률 제3594호)

- 법무법인 제도 창설 (법인 : 5인 이상 : 그 중 2인은 경력 15년 이상)
- 법무법인에게 자동적으로 공증사무취급 인가부여 (구성원 변호사가 공증사무 수행 : 1인 서명) - 미국식 법무법인 제도 활성화라는 정책적 수단

(6) 1993. 3. 10. 변호사법 개정(법률 제4544호)

- 합동법률사무소 조항을 흡수
- 합동법률사무소 구성원 2인 공동 서명 → 1인 단독 서명으로

(7) 1998. 12. 28. 공증인법 개정(법률 제5590호)

- 국적요건 삭제, 대한공증협회 설립근거 규정 신설

(8) 2005. 1. 27. 변호사법 개정(법률 제7357호)

- 법무법인에서 공증업무를 담당하는 변호사의 자격 : 5년 이상 경력자로 제한

(9) 2009. 2. 6. 공증인법 전면개정(법률 제9416호)

- 근거 법률 일원화
- 임명공증인 (appointed)과 인가공증인 (Accredited)
- 종래 법무법인의 자동적 공증업무 취급 → 법무부 장관의 인가(자동적 인가 제도 폐지)
- 공증담당변호사 지정제도 (법무법인 : 10년 이상 경력자 ; 이들만 공증사무 수행)
- 정년제도 도입 : 과거의 종신직에서 → 75세로
- 대한공증인협회 강제가입 의무화

(10) 선서인증제도 도입 (affidavit 유사 제도)

- 2009년 개정 공증인법 (법률 제9416호) 도입
- 2011년 개정으로 300만원 이하의 과태료 부과 신설

(11) 전자공증제도 도입

- 상업등기법 (2007. 8. 3.): 회사등기 신청을 전자적으로 할 수 있도록 규정
- 공증인법 개정 (2009년 법률 제9416호): 등기신청서에 첨부하는 정관을 전자적으로 공증할 수 있는 근거 창설
- 2010. 8. 7. 부터 시행됨 : 실제로는 아직 극히 활용도가 낮음
- 대면성의 유지와 virtual transaction과의 조화가 문제임

(12) 기타 법률에서의 공증제도 사용 현황

가. 성년, 임의 후견제도에 따른 후견계약의 체결과 해지는 공정증서로 하도록 규정함
(민법에 포함: 2013. 7. 1. 이후 시행 예정)

민법 제959조의 14 【후견계약의 의의와 체결방법 등】 ① 후견계약은 질병, 장애, 노령, 그 밖의 사유로 인한 정신적 제약으로 사무를 처리할 능력이 부족한 상황에 있거나 부족하게 될 상황에 대비하여 자신의 재산관리 및 신상보호에 관한 사무의 전부 또는 일부를 다른 자에게 위탁하고 그 위탁사무에 관하여 대리권을 수여하는 것을 내용으로 한다.

② 후견계약은 공정증서로 체결하여야 한다.

③ 후견계약은 가정법원이 임의후견감독인을 선임한 때부터 효력이 발생한다.

민법 제959조의 18 【후견계약의 종료】 ① 임의후견감독인의 선임 전에는 본인 또는 임의후견인은 언제든지 공증인의 인증을 받은 서면으로 후견계약의 의사 표시를 철회할 수 있다.

나. 외국인과의 결혼 중개시 신상정보의 공증문서작성, 손해배상책임에 대한 공정증서에 의한 합의

결혼중개업의 관리에 관한 법률 제10조의2 【신상정보 제공】 ① 국제결혼중개업자는 제10조제1항에 따라 계약을 체결한 이용자와 결혼중개의 상대방(이하 “상대방”이라 한다)으로부터 다음 각 호의 신상정보를 받아 각각 해당 국가 공증인의 인증을 받은 다음 각 호의 신상정보(증빙서류를 포함한다)를 상대방과 이용자에게 서면으로 제공하여야 한다. 다만, 이용자 또는 상대방이 외국에서 공증인의 인증을 받은 경우 (한국) 영사관으로부터 확인을 받거나 「외국공문서에 대한 인증의 요구를 폐지하는 협약」(아포스티유협약)에서 정하는 바에 따른 확인을 받아야 한다.

1. 혼인경력
2. 건강상태(AIDS, 성병 감염 및 정신질환 여부를 포함한다)
3. 직업
4. 성폭력, 가정폭력, 아동학대, 성매매 알선 및 강요 관련 범죄경력과 최근 10년 이내의 금고 이상의 형에 해당하는 범죄경력
5. 그 밖에 상대국의 법령에서 정하고 있는 사항

결혼중개업의 관리에 관한 법률 시행령 제7조 【보증보험금 지급】 ① 결혼중개와 관련하여 손해를 입은 이용자는 결혼중개업자가 손해배상을 하지 아니한 경우에는 보증보험금의 지급을 청구할 수 있다.

② 이용자는 제1항에 따라 지급을 청구하려면 이용자와 결혼중개업자 간의 손해배상합의서(공정증서이어야 한다), 화해조서 또는 확정된 법원의 판결문 사본, 그 밖에 이에 준하는 효력이 있는 서류를 시장·군수·구청장에게 제출하여야 한다.

다. 자동차매매업자의 손해배상책임 인정시 손해배상합의서

자동차관리법 시행령 제13조의2 ① 자동차매매업자는 다음 각 호에 해당하는 금액을 보장하는 보증보험에 가입하거나 해당 금액을 공탁하여야 한다.

1. 법인인 경우: 2천만원 이상
2. 법인이 아닌 경우: 1천만원 이상

⑤ 자동차매수인이 손해배상금으로 보증보험금·공탁금을 지급받으려는 경우에는 그 자동차매수인과 자동차매매업자 간의 손해배상합의서(공정증서에 한한다)·화해조서 또는 법원의 확정된 판결문 사본, 그 밖에 이에 준하는 효력이 있는 서류를 첨부하여 보증보험회사 또는 공탁기관에 손해배상금의 지급을 청구하여야 한다.

라. 법원에 공탁된 공탁물 수령시 반대급부의 확인 근거

공탁법 제10조 【반대급부】 공탁물을 수령할 자가 반대급부를 하여야 하는 경우에는 공탁자의 서면 또는 판결문, 공정증서, 그 밖의 관공서에서 작성한 공문서 등에 의하여 그 반대급부가 있었음을 증명하지 아니하면 공탁물을 수령하지 못한다.

마. 국가유공자 보상금의 유족간 협의 수령시 지정수령자 확인

국가유공자 등 예우 및 지원에 관한 법률 시행령 제24조의2【협의에 의한 보상금 수급자의 지정】 유족 간의 협의에 의하여 보상금을 지급받으려는 사람은 같은 순위인 유족 모두의 협의를 거쳐 같은 순위 유족 모두의 인감증명서를 첨부하여 제출하여야 한다.

다만, 외국에 거주 중인 같은 순위 유족이 있는 등 보상금수급자 지정서를 제출할 수 없는 부득이한 사정이 있는 경우에는 보상금수급자로 지정한 사실을 나타내는 「공증인법」에 따른 공정증서를 제출하는 것으로 보상금수급자 지정서의 제출을 갈음할 수 있다.

보훈보상대상자 지원에 관한 법률 시행령 제14조【협의에 의한 보상금 수급자의 지정】
도 같은 취지임

바. 국세징수에 있어서 우선권 있는 채권의 확인

- 국세기본법 제5조에 의하면 국세가 원칙적으로 최우선적 지위에 있지만 다음에 해당하는 것은 국세보다 더 우선권을 부여함.
- 국세의 납부기한으로부터 1년전에 설정한 전세권, 질권 또는 저당권의 목적물인 재산의 매각으로 인하여 생긴 금액중에서 국세와 가산금을 징수하는 경우 그 전세권, 질권 또는 저당권에 의하여 담보된 채권
- 이러한 채권에 해당하는 것은 공정증서로 증명하도록 함 (국세징수법 제6조)
- 채권자가 그 권리를 행사하고자 할 때에는 전세권, 질권 또는 저당권이 국세 납부기한으로부터 1년 전에 설정된 사실을 대통령령의 정하는 공정증서로써 증명하여야 한다.

사. 부동산등기에 있어서 인감증명의 대응

부동산등기규칙 제54조 ① 인감증명을 제출하여야 하는 자가 법인 또는 외국회사인 때에는 등기소의 증명을 얻은 그 대표자의 인감증명을 제출하여야 한다.

④ 외국인인 경우에는 인감증명법에 의한 인감증명 또는 본국의 관공서가 발행한 인감증명을 제출하여야 한다. 다만, 본국에 인감증명 제도가 없고 또한 인감증명법에 의한 인감증명을 받을 수 없는 자는 위임장이나 서면에 한 서명에 관하여 본인이 직접 작성하였다는 취지의 본국 관공서의 증명이나 이에 관한 공정증서를 제출하여야 한다.

(13) 기존 공증 대상의 축소(2009. 5. 28. 법률 제9750호 공증인법 개정 및 법률 제9746호 상법 개정)

- 자본금 10억원 미만의 주식회사, 법인에 대한 의사록 인증, 설립정관에 대한 인증제도 폐지 (사실상 동 영역에서는 80% 이상 공증 수요 감소)

2. 한국에서의 공증 업무 확대에 대한 전망

(1) 2012. 10. 31. 기준 공증사무소의 수 (367개소)

구 분	임명공증인	인가공증인
사무소	48	319
담당공증인(변호사)	48	1376

(2) 2011년도 사건 처리 건수

공정증서	정관인증	의사록 인증	사서증서 인증	합 계
873,252	8,556	438,766	891,413	2,211,987

(3) 서울 지역 검찰청 산하 공증사무소의 수(2011년 기준)

구 분	인구 수	공증사무소	관여 변호사
전 국	5,000만 명	367	1376
서 울	1,000만 명	172 (15+157)	798
비 율	20%	46.8%	58%

- 서울 역시 인구와 경제력 집중으로 인하여 자연스러운 현상임.
- 최근 지방의 취약지역에도 공증사무소 개설 움직임이 있음.

3. 공증직역 확대를 위한 최근의 제안들

(1) 집행증서의 범위 확대 (현재 국회에 개정안이 상정되어 통과되기를 기다리고 있음) 2013년부터 시행할 수 있을 것으로 기대함

- executive force of notarial deeds to the delivery of a specific building movable assets
- 공증인법 제56조의 3 (to be amended: draft) (건물·토지·특정동산의 인도 등에 관한 법률행위의 공증 등)

- ① 공증인은 건물이나 토지 또는 대통령령으로 정하는 동산의 인도 또는 반환을 목적으로 하는 청구에 대하여 강제집행을 승낙하는 취지를 기재한 공정증서를 작성할 수 있다. 다만, 임차건물의 인도 또는 반환에 관한 공정증서는 임대인과 임차인 사이의 임대차 관계 종료를 원인으로 임차건물을 인도 또는 반환하기 전 3개월 이내에 작성되는 경우로서 그 증서에 임차인에 대한 금원 지급에 대해서도 강제집행을 승낙하는 취지의 합의내용이 포함되어 있는 경우에만 작성할 수 있다.
- ② 제1항에 따른 공정증서 작성을 촉탁할 때에는 어느 한 당사자가 다른 당사자를 대리하거나 어느 한 대리인이 당사자 쌍방을 대리하지 못한다.
- ③ 제1항에 따른 공정증서는 「민사집행법」 제56조에도 불구하고 강제집행의 집행권원으로 본다.
- ④ 제3항에 따라 집행권원으로 보는 증서에 대한 집행문은 그 증서를 보존하는 공증인이 그 공증인의 사무소가 있는 곳을 관할하는 지방법원 단독판사의 허가를 받아 부여한다. 이 경우 지방법원 단독판사는 허가 여부를 결정하기 위하여 필요하면 당사자 본인이나 그 대리인을 심문할 수 있다.

(2) 협의 이혼시 이혼의사 진정성 확인, 자녀양육, 면접교섭, 재산분할 조건등에 대한 공증인의 관여 추진

- 한국에서는 협의 이혼시 가정법원 단독판사가 관여: 협의 이혼의사 확인
- 이혼의사의 진정성에만 집중; 자녀양육 사항, 면접교섭, 양육비 지급보장 등은 다소 부족한 관심으로 인하여 자녀들의 복리 보장에 미흡함
- 공증인의 관여로 보다 자유로운 분위기하에서 책임있는 합의도출 가능
- 연간 전국 협의이혼 건수 : 2011년 91,000건

(3) 부동산등기원인증서의 공증 추진

- 연간 소유권 이전등기 건수 : 3,000,000건 수준
- 부동산 관련 소송 건수 : 30,000건 수준 (약 1%가 소송 대상)
- 이미 100여편 이상의 논문에서 학계에서는 필요성을 인정
- 한국 민법상 물권변동의 형식주의 (소유권 이전에 반드시 등기가 효력요건)
- but 등기의 공신력이 없음 (거래 후 많은 부동산 소송의 원인)
- 현재는 부동산 중개인 및 법무사만 거쳐서 거래가 종료되고 등기됨
- (법률 전문가의 관여 전혀 없음)

- 한국에 특유한 법무사 제도와의 절충 필요
- 공증하도록 할 경우 거래 비용의 증가 흡수 장치 필요

(4) 공증문서의 통합적 집중 보관 or 전자적 보관

- 각 사무소마다 개별적으로 창고 설치 보관(내화창고)
- 통상 10년 내지 25년간 보관
- 서류보관을 위하여 개별 사무소에서 과도한 면적을 할애 - 중심지역에서의 임차 비용 증가 - 공증수수료는 장기적으로 이를 cover하기 어려움

영문

Topic # 1: Efficiency of Each Member Country's Notarization System: Expansion of Notarization Work Scope and its Accessibility in Korea

1. Brief History regarding Expansion of Notarization Work Scope in Korea

(1) Chosun Dynasty (A.D.1392 ~ 1910)

- Public certification system for land or slave sales agreement was established.
- According to the Constitution of the Chosun Dynasty, a sale of land or slave should be reported to a local government within 100 days after such sale. For such reporting procedure, a seller, a buyer, and a witness have to attend the procedure.
- A fee is imposed on such sales agreement report.

(2) Introducing the modern notarization system: the old Japanese Notary Act applied in Korea from 1912.

- Supervisory Office: courts

(3) Korea's Notary Act was enacted on September 23, 1961 (Law No. 723)

- Supervisory Office: the Department of Justice, extremely limited appointments of notary publics to 10
- Statistics Comparison between 1961 and 2012

Year	Population	Number of Notaries	GNP per person
1961	25 million	10 notaries	\$82
2012	50 million	367 notary offices	\$20,000

(4) The Act on the Special Treatment concerning Civil Disputes Case pursuant to the Simplified Procedures was enacted on December 31, 1970 (Law No. 2254)

- Crucial moment to depart from the Japanese Notary System and to turn to a different direction;
- "Joint law and notary office" system was established; Such system means an

association of more than three (3) attorneys and one of the attorneys therein should have more than 10 years' experience.

- Granted the license for notary practice : signatures of more than two (2) persons are required for each notarization
- Notarization system for promissory notes : a notarial deed to authenticate promissory notes and to grant execution power thereto
- Corporate minutes certification system was newly introduced.

☞ [Outcome] Nation-wide expansion of notary services

- Increase of the number of notary offices (10 in 1970 → 84 in 1982)
- Tremendous increase of notary cases (220,000 in 1970 → 2,570,000 in 1982)

(5) Amendment of the Attorney Act on December 31, 1982 (Law No. 3594)

- The “law firm” system was founded: more than 5 attorneys are required to open a law firm and two of them should have more than 15 years' experiences.
- The law firm may automatically perform the notary practice (A partner of a firm may perform the notary service as only one signatory is required for such work.) This amendment is a policy to adopt and utilize the American law firm system in Korea

(6) Amendment of the Attorney Act on March 10, 1993 (Law Mo. 4544)

- The provision regarding “joint law and notary offices” was incorporated to Attorney Act.
- Joint signature requirement for the notary practice was changed to one person signature requirement.

(7) Amendment of the Notary Act on December 28, 1998 (Law No. 5590)

- The Korean citizenship requirement for notary was abolished.
- The basis for foundation of the Korean Notaries Association were established.

(8) Amendment of the Attorney Act on January 27, 2005 (Law No. 7357)

- Requirement for an attorney of a law firm who is in charge of the notary services: more than five (5) years' experiences
- More strict requirement for law firm to avoid treating notary practice lightly.

(9) Complete Amendment of the Notary Act on February 6, 2009 (Law No. 9416)

- Unified the Notary Provision of Notary Act and Attorney Act.
- Distinguished between “appointed notaries” and “authorized notaries” (law firm notary)
- Abolished law firms’ automatic license for notary practice, law firms should obtain the separate approval from the Minister of the Department of Justice
- Reinforce Designating system in charge of notary practice (In case of a law firm, only attorneys with 10 years’ experiences are eligible.)
- Age-limit system introduced : retirement age of 75
- Impose Mandatory obligation to join the Korean Notaries Association

(10) Introducing the authentication of statement under oath system (similar to the affidavit system)

- Introduced by the amended Notary Act in 2009 (Law No. 9416)
- The 2011 amendment introduced penalty less than 3,000,000 KRW for swearing a false oath or obtaining an authentication for such false oath.

(11) Introducing the authentication of electronic documents

- The Commercial Registration Act (August 3, 2007): Registration for a corporation may be electronically applied.
- The amended Notary Act (2009; Law No. 9416) created legal basis for electronic authentication of the articles of corporation attached to the registration application of the company.
- This amendment became effective as of August 7, 2010, however, has not been substantially utilized, yet.
- The issue- how to preserve face to face nature in a virtual notarization has not been resolved.

(12) Utilizing the notary system in other laws

- A. The execution and termination of adult guardianship and voluntary guardianship agreements should be carried out with a notarial deed. (This provision is included in the Civil Act and will be effective as of July 1, 2013)

Article 959-14 of the Civil Act [Meaning and execution, etc. of a guardianship agreement]

- ① A guardianship agreement provides that a person delegates the whole or part of his own financial management or personal affairs and grants the power of attorney to a guardian if such person is not or will not be capable of handling such matters due to psychological limitation caused by diseases, disabilities, old ages, or any other reason.
- ② A guardianship agreement should be executed as a notarial deed prepared by a notary.
- ③ A guardianship agreement becomes effective from the date when the relevant family court assigns a voluntary guardian supervisor.

Article 959-18 of the Civil Act [Termination of a guardianship agreement]

- ① A person or his voluntary guardian may cancel or revoke the guardianship agreement in writing confirmed by a notary at any time before a voluntary guardianship supervisor is assigned.

B. In brokering international marriages, preparation of a notary documentation concerning personal information to secure proper applicants, agreements by notarial deeds regarding for damages against marriage broker.

Article 10-2 of the Act on the Management of Marriage Brokerage Business [Provision of Personal Information]

- ① A broker for an international marriage shall obtain personal information hereunder from a client who executes a marriage brokerage agreement pursuant to Article 10-1 and from the other party of such marriage brokerage ("the other party"), and provide each party's personal information hereunder with substantiating documents in writing to the other party after obtaining each country's notary authentication for such information. If a client or the other party already obtains notary authentication for his own record from his country, such record shall be certified from the Korean Consulate or certified by any other manner according to [the Agreement to abolish certification requirement for foreign documents (Apostille Agreement)]:
 - 1. Previous marriage record
 - 2. Medical record (including AIDS, venereal diseases, mental disease)

3. Proof of occupation
4. Criminal record regarding sexual assault, domestic violence, child abuse, prostitution brokerage or enforcement and other crimes sentenced to jail for the last 10 years
5. Any other record prescribed by laws of each party's country

Article 7 of the Enforcement Decree of the Act on the Management of Marriage Brokerage Business [Payment of guaranty insurance money]

- ① A person who was damaged with respect to the marriage brokerage may ask for the payment of guaranty insurance money if the marriage broker does not compensate for such damage.
- ② If a person intends to ask for the payment, pursuant to Clause ①, he should submit to the head of Si/Gun/Gu the agreement on the compensation for the damages between himself and a broker (a notarial deed), a conciliation protocol, a copy of final and conclusive judgment by a court, or other documents having similar effect.

C. Motor vehicle dealer's agreement on the compensation for the damages on lemon car.

Article 13-2 of the Enforcement Decree of the Motor Vehicle Management Act

- ① A motor vehicle dealer shall purchase a guaranty insurance or deposit money falling under following sub-paragraphs:
 1. In case of a corporate body: not less than 20 million KRW
 2. In case of a non-corporate body: not less than 10 million KRW
- ⑤ Where a purchaser of a motor vehicle intends to be compensated for his/her damages by a guaranty insurance or deposit money, he/she shall make a claim for the payment of damages to a guaranty insurance company or deposit office, along with an agreement on the compensation for the damages between the purchaser and dealer of a motor vehicle (limited to a notarial deed), a conciliation protocol, a copy of final and conclusive judgment by a court, or other documents having similar effect.

- D. Proof of fulfillment of counter- payment for the pre-condition of collecting deposited goods in court deposit office.

Article 10 of the Deposit Act [Counter- Payment]

Where any person who is entitled to collect the deposited goods in court deposit office shall pay counter-payment for the deposit, he/she shall be prohibited from collecting the deposited goods if he/she fails to attest his/her counter- payment for the deposit by means of depositor's written statement, written judgment, official document, or other documents prepared by a notary.

- E. Confirmation for the selection of recipient by agreement among the bereaved family for the persons distinguished during public services.

Article 24-2 of the Enforcement Decree of the Act on the Honorable Treatment and Support of Persons, etc. of Distinguished Services to the State [Designation of Compensation Recipient by Agreement]

Where a person intends to receive the compensation by agreement between the bereaved family members, he/she shall submit a compensation recipient designation letter, along with the certificates of personal seal impression of all of the bereaved family members with the same order. If there is any inevitable reason for not submitting a compensation recipient designation letter due to a bereaved family member who resides in a foreign country, etc. the designated compensation recipient may submit a notarial deed confirming such designation according to the Notary Act in lieu of the compensation recipient designation letter.

Article 14 of the Enforcement Decree of the Act on Support for the Veteran Compensation Recipients [Designation of the Compensation Recipient by Agreement] has the same provision.

- F. Confirmation of priority claim in preference to the national taxes

- According to Article 35 of the Framework Act of National Taxes, national taxes shall be collected in preference to other public charges or obligations, provided that this shall not apply to the obligations falling under the following sub-paragraphs: in cases of a sale of the property which is the subject matter of the right of lease on

deposit basis, of the pledge right or of the mortgage has been established one (1) year before the national tax due date, if any national tax and additional dues are collected from the proceeds of such sale, the obligation secured by the right of lease on deposit basis, the pledge right or the mortgage.

Such obligation shall be confirmed by a notarial deed. (Article 6 of the National Tax Collection Act)

Where a creditor intends to exercise a right to such obligation, he/she shall prove that the right of lease, the pledge right, or the mortgage was established 1 year before the national tax due date by a notarial deed designated by the Presidential Decree.

G. Substitute for the personal seal impression for registration of real estate

Article 54 of the Regulations on the Registration of Real Estate

① Where a corporate body or foreign company shall submit the certificate of personal seal impression, it shall submit the certificate of personal impression of its representative with the certification of the registry office.

④ In case of a foreign person, he/she shall submit the certificate of personal seal impression prepared pursuant to the Certification of Seal Imprint Act or issued by the administrative authority of his/her home country. If such foreign person cannot obtain the certificate of personal seal impression prepared pursuant to the Certification of Seal Imprint Act and his/her home country does not have the personal seal impression system, he/she shall submit the certificate of his/her home country's administrative authority or its notarial deed confirming that he/she is the signatory of the sign in any relevant writing or power of attorney.

(13) Reduction of the Practice Scope for the Notary [the Amendment of the Notary Act on May 28, 2009(Law No. 9750) and of the Commercial Act (Law No. 9746)]

- The corporate minutes and articles of incorporation certification systems for a corporation having the capital of less than 1 billion KRW were abolished. As a result, more than 80% of the demand for such notary work was decreased.

2. Expansion of Notary Practice Scope in Korea

(1) Number of Notary Offices as of October 31, 2012 (367)

	Appointed Notary	Aauthorized Notary
Notary Public Offices	48	319
Attorney in Charge of Notary Public Services	48	1376

(2) Number of Notary Cases for the Year of 2011

Notarial Deed Preparation	Articles of Incorporation Certification	Corporate Minutes Certification	Deed Signed by Private Person Certification	Total
873,252	8,556	438,766	891,413	2,211,987

(3) Number of Notary Offices in Seoul for the Year of 2011

	Population	Notary Public Offices	Attorney in Charge
Nationwide	50 million	367	1376
Seoul	10 million	172 (15+157)	798
Rate	20%	46.8%	58%

- Due to centralization of population and economic power, more than half of the Korean notary are performing services in Seoul.
- Recently, there are some movement to open notary offices for rural areas.

3. Recent development for Expansion of notary practice scope and its accessibility.

(1) Expanding the scope of the judicial certificate of compulsory execution (pending in the National Assembly)

- Expected to become effective in 2013
- Pending Legislation which will be included in the Notary Act: notary service for legal actions with respect to delivery of land, building, and chattel
 - ① A notary may prepare a notarial deed stating that the compulsory execution is approved for the claims for delivery or return of a building, land, or other chattels

designated by the Presidential Decree. With respect to the notarial deed concerning delivery or return of a leased building, such deed may be prepared only within three (3) months before return of the leased building caused by termination of such lease between a landlord and tenant, provided that it states that the compulsory execution is approved for return of the security deposit the tenant is entitled to.

- ② In cases of commissioning to prepare a notarial deed according to Clause ①, a party shall not represent the other party concerned, and an agent shall not represent both parties concerned.
- ③ Notwithstanding Article 56 of the Civil Execution Act, a notarial deed prescribed in Clause ① shall be deemed as source of title for compulsory execution.
- ④ An execution clause for a deed as source of title according to Clause ③ shall be granted upon approval of the judge of the district court having jurisdiction over the place where the notary office preserving such deed is located. In such case, the judge may examine a party concerned or his/her agent in upon necessity to determine such approval.

(2) To explore more opportunity by notaries : No. 1

In the procedure of divorce by agreement: confirmation of intent to divorce and agreement concerning child custody, visitation, and property distribution, etc.

- In case of a divorce by agreement, a judge of the family court is handling the divorce case, and confirming both parties' intents to divorce. Such system focuses only on the parties' intent to divorce, and other issues concerned, such as child custody/visitation and child support are not sufficiently resolved in courts.
- If a notary is involved in a divorce procedure, both parties may agree to every issue under more comfortable circumstances with the assistance of the notary.
- Number of the nationwide divorce by agreement cases in 2011: 91,000 case.

(3) To explore more opportunity by notaries : No. 2

Notary practice for deeds as basis for real property registration

- Number of the registration cases for real property ownership transfer: about 3 million per year;
- Number of the litigation cases concerning real property: about 30,000 per year (about 1%

of the registration cases thereabove)

- More than 100 research dissertations concerning real property ownership issues have asserted the necessity of the notary service for real property transaction.
- Under the formalism theory of Korean Civil code, to transfer the ownership of real property, the registration is a requirement for validity in transferring the ownership. However, the registration itself does not guarantee per-se legitimacy of the title. So there are many litigations in real property transaction after the transactions are completed.
- The real property transactions are currently being completed and registered only through a real estate agent and judicial scrivener without going through attorneys' legal services.
- It is necessary to compromise on the judicial scrivener system, a unique system in Korea and Japan. If a notarial deed is required, the transaction fees will increase, and an appropriate measure to adjust such increase is necessary.

(4) Joint preservation or electronic preservation of the notary documents

- Every notary office has its own fireproof repository to preserve the notary documents. Such documents are usually preserved for 10 to 25 years. In order to secure such fireproof repository, each notary office should lease an exspace and pay for additional rent for such space. The current service fee charged by a notary is not enough to cover such additional rents.

VI. 제2주제 토론 발표문

- 노약자, 미성년자, 장애인등 사회적 약자에 대한 공증인의 역할 -

1. 일 본

The role of the notary for the socially disadvantaged groups

Main role of notary is preventive justice.

By ensuring clear evidence on private right and duties, notaries can contribute to prevent the occurrence of the dispute.

In other words, to ensure the legal effect of the various contracts is the important mission as notary.

Although the protection of the socially disadvantaged is a major subject of welfare and social policy of the country, there is a legal framework in which a notary is involved to protect the socially vulnerable.

In Japan, the population over the age of 65 were more than 30 million people in September of this year. Now one person of four is elderly .

And the number of dementia who dependent others among elderly people reaches about 3 million in 2012.

To take care of their life and to protect their rights is becoming very important issue.

One of the legal framework to protect them is the adult guardianship system., which protects the rights and interests of adults with impaired capacity.

The summary is as prescribed in the note 1.

And there are two types how to elect adult guardian.

Civil Law Article 843 indicates that ; The family court shall appoint ex officio a guardian of an adult if it orders commencement of guardianship. But if there is a voluntary adult guardianship contract which is registered, family court can appoint another guardian of an adult when deemed necessary for the adult ward.

Act on Voluntary Guardianship Contract was enforced in 2000.

Voluntary Guardianship Contract is as follows;A person mandates the other person to perform

necessary juristic act about the management of life for time when he became the situation constantly lacks the capacity to discern right and wrong due to mental disability.

The voluntary adult guardianship contract shall be made by a notarial deed.

The reason to involve notary is to secure the legitimate and effective contract by the participation of the notary institutionally

Notary guarantee the contract was concluded by the real intention of the principal

From the point of view to prevent dispute, manipulation, loss of the contract paper, etc., notarial deed is very effective.

The right of the elderly person whom the ability for judgment decreased is protected by the use of this system.

But there are following issues and problems.

The number of use remains to a few. The number of care by the care method (similar system Betreuung) in Germany takes last year rise to 1,200,000 cases, on the other hand in Japan, at 2011 annual number remains as follows; commencement of guardianship 20,492 cases,, Voluntary Guardianship Contract 8,378 cases, the election of supervisor of a guardian for the wards remain in 526. So we cannot say we are able to meet potential demand enough.

This is because it is not publicized enough, why there is little use of the system in this way.

We are now trying for enlightenment through improvement of public information

One of the obstacles to spread this contract is anxiety of illegal acts.

Concerning the illegal act of the relative guardian, total damage is 1,800 million yen in 182 cases which was found out from June, 2010 to March, 2011.

In many cases, family member is appointed as guardian. Family member also must comply with law, and has same fiduciary responsibilities as a trustee of a trust to comply with. Although it depend on the character of guardian, sometimes embezzlement happens from the overreliance mentality as family member.

Japanese Penal Code says <A person who commits the crime prescribed under Article 235 or 235-2 or attempts thereof against a spouse, lineal blood relative or relative living together, shall be exculpated.>

But Supreme Court denied the application of this clause in the case of embezzlement committed by statute guardian who is the father in law of principal.

The reason is that guardian's work has official character and he has the duty to manage the estate with fiduciary responsibilities.

By prevailing these knowledge, law-abiding mind will spread among family guardians.

It is important to secure an appropriate human resource to a guardian, and the mutual checks by plural guardians.

In April 2012, the Act on Social Welfare Service for Elderly was amended and municipalities are now obliged to do development of human resources for guardian and training them.

As the measures to prevent the illegal act, the use of the tutelage support trust may be effective.

Under this system a guardian manages money that is sufficient to pay the daily use as deposits and savings and main money is trusted to the trust banks. If the guardian want to use the trusted money, he/she must take the remit of the family court.

The involvement of the notary is limited at the opportunity making the deed. As notary we should explain the legal duty of guardian in detail, and we should make a various effort to be able to more substantially contribute to the protection of vulnerable groups.

Note 1

What is the Japanese adult guardianship?

The adult guardianship is a system that aims to legally support persons with insufficient capacity to judge things(hereinafter referred to as "principal")due to dementia,mental disorders, by selecting a supporter who protects the right of the principal(adult guardian,etc.)

There are two types of adult guardianship; statutory guardianship and appointed guardianship, and the former is divided into guardianship, curatorship and assistance.

	Guardianship	Curatorship	Assistance
Object	Persons with no capacity to judge	Persons with extremely insufficient capacity to judge	Persons with insufficient capacity to judge
Persons entitled to file a request	Principal, principal's spouse, any of the principal's relative within the fourth degree of kinship, public prosecutors, municipality majors, etc.		
Authorities mandatorily granted to guardians, etc	General power of representation and the right of rescission regarding the administration of property	The authority to give consent(*1) regarding Specific matters(*2), right, of rescission (except for any act relating to daily life)	

Authorities granted upon request (in case of curators and assistants)		The authority to give consent(*1)regarding specific matters(*2), right, of rescission (except for any act relating to daily life) power of representation regarding certain juristic acts(*3)	The authority to give consent(*1)regarding some specific matters(*2), right, of rescission(except for any act relating to daily life)power of representation regarding certain juristic acts(*3)
Restrictions on the qualifications of the principal, etc., in case of using the system	Loss of qualifications as a doctor, accountant, etc.or positions as a company executive, public officer, etc., the right to vote	Loss of qualifications as a doctor, accountant, etc. or positions as a company executive, public officer, etc.,	

*1 The authority to give consent refers to the authority to give consent(approve)to any act performed by the principal after confirming that the content of the act is not disadvantageous to the principal. A curator or assistant may rescind any act performed by the principal if they do not consent thereto.

*2 Specific matters refer to matters such as money borrowing, procedural action ,accepting or renouncing any inheritance, new construction or expansion of a building,etc.,except for any act relating to daily life, such as purchase of commodities.

*3 These acts are not limited to those that require the consent of the curator or assistant as provided for in Article13, paragraph 1 of the Civil Code.

The appointed guardianship(guardianship by contract)is a system where the principal prepares, while he or she still has the capacity to judge, for the possibility of losing the Capacity to an insufficient level. In this system an appointed guardian is selected through an appointed guardianship contract by creating a notarial deed. When the principal's capacity to judge becomes insufficient, the contract takes effect upon appointment of a supervisor of the appointed guardian by the family court.

2. 중 국

Topic 2: functions and roles of the notary public for the socially disadvantaged group

1. The notarization sector has attached high attention to ensure that the disadvantaged group has access to notarization legal services: specifically, we have set up the notarization fee reduction and exemption system for the poverty-stricken groups; and the notary office of various provinces and municipalities can set up the corresponding standards and rules according to the actual situation. The notary offices of developed areas can bear the fee reduction and exemption independently. For the notary offices in west China that could not independently afford the fee reduction or exemption due to the backward development, we are working to include this system into the legal aid system while taking active measures to gain support from the local government. This will be one of our working plans of the next step. Meanwhile, we have taken positive measures to promote the legal enforcement and notarization business to increase the legal consciousness of the local people and their initiatives to seek for the notarization legal services.

For example, in July this year nine members of the Woman Notary Working Committee of China Notary Association extended greetings to 90 poverty-stricken mothers of Wuxia Village, Tangchuan Town, Qinghai Province, and made donation for them, while visiting three grassroots notary offices with hard conditions and donating consolation money to 17 woman notaries in difficulties and computers to three notary offices.

Moreover, the notary would offer the door-to-door services for the senior clients with mobility difficulties, for example the last will or inheritance right notarization. We have also set up a green passage and offered notarization reservation door-to-door legal services for the aged, disabled and critical patients and other special groups. Highly valued by the clients, the services can not only offer convenience for them and free their worries, but also protect their legal rights and interests.

Second, the access of the people of ethnic groups to notarization legal services has been ensured in practice and system establishment. In the minority areas, we have notaries with proficiency in the language of the ethnic groups and can issue the bilingual notarization certificate upon

application. In this way, the ethnic groups can be ensured full access to the notarization legal services even in the face of the language barriers.

Third, notarization legal aid is provided in some areas. For example, Shandong Province promulgated the Notarization Legal Aid Implementation Methods, which is a legal guarantee system that the notary offices offer free notarization services for clients who could not afford the notarization fees but meet the legal aid requirements. The qualified clients can apply for the notarization legal aid free of charge for the following purposes: applying for the state compensation according to the law, the social security treatment or subsistence allowance; pension or relief funds; alimony, upbringing payment, labor remuneration; civil rights and interests incurred in the anti-crime act, compensation for the work-related injury, personal injury in traffic or medical malpractice or other personal injury; compensation for the damage in the labor contracts; compensation for the interest damage in the family violence, abuse or abandonment; applying for notarization for the public welfare donation or remains donation. In such cases the notary offices shall offer the free notarization legal aid.

3. 한 국

국문

한국 공증제도에 있어서 사회적 약자에 대한 배려

- 노인, 미성년자, 장애인 등 사회적 약자를 위한 공증인의 역할에 관하여 -

1. 서 론

라틴계 공증제도를 따르고 있는 나라에서는 일반적으로 법령을 위반한 사항, 무효인 법률행위, 무능력으로 인하여 취소할 수 있는 법률행위에 대하여 공증인은 증서를 작성할 수 없거나 인증을 부여할 수 없는 것으로 정하고 있다. 한국 공증인법 제25조에서도 위와 같은 사유를 증서를 작성할 수 없는 경우로 규정하고 있고, 인증을 할 수 없는 경우는 공증인법 제59조에서 위 제25조를 준용하고 있다. 이처럼 공증을 할 수 없는 사항은 실제 법적인 측면에서 법적, 사회적 약자를 배려하는 규정과 깊은 관련이 있는 경우가 많고, 이러한 규정은 대부분 강행규정에 해당할 것이다.

공증인은 이와 같이 촉탁내용에 일정한 제한 사유가 있으면 공증을 할 수 없는데, 그것 또한 대부분 법적, 사회적 약자를 배려하고 있는 것이므로, 공증을 할 때는 늘 촉탁내용이나 촉탁사항이 법령의 취지에 맞는지 면밀히 살펴보아야 한다. 공증인은 촉탁인이나 그 대리인이 촉탁사항을 충분히 이해하고 공증을 촉탁하는지 확인하고, 경우에 따라서는 그에 따른 법률관계를 설명해 주어야 하며, 법령에 위반한 사항을 포함하고 있으면 그것을 설명하여 법령에 위반되지 않도록 유도하고, 만일 촉탁인이 이에 따르지 않는다면 공증을 하여서는 아니된다.

즉 공증인에게서는 설명교시의무가 인정되고 있다. 한국 공증인법상에서 이와 같은 공증인의 설명교시의무를 명문으로 규정하고 있지는 않지만, 확실은 공증인에게 당연히 설명교시의무가 있다고 해석하고 있다. 그러므로 공증인은 가령, 소비대차계약에 관하여 증서를 작성할 때 당사자 간에 이자제한법에서 정한 제한이율을 초과하여 이자약정을 한 경우라면, 당사자에게 이자제한법의 취지를 설명하고 이자제한법의 제한에 맞게 법률행위 내용을 수정하도록 한 다음 증서를 작성하여야 할 것이다.

촉탁인이 시각장애인이거나 문자를 해독하지 못하는 경우 또는 스스로 참여인의 참여

를 청구한 경우에 공증인은 반드시 그를 위하여 그가 정한 참여인을 참여시켜서 공증을 하여야만 하도록 되어 있는바(공증인법 제29조), 이러한 규정도 시각장애나 문자를 해독하지 못하는 사람 등 사회적 약자에 해당하는 사람이 촉탁인이 된 경우에 그가 촉탁한 대로 공증이 이루어지는 지를 보장하는 기능을 수행한다는 점에서 일정 부분 사회적 약자에 대한 배려로서의 의미가 있다고 할 수 있다.

이렇게 볼 때, 공증제도는 그 자체로 원래 사회적 약자를 배려하는 기능을 띠고 있다고 할 것이다.

여기서는 위와 같이 공증제도 자체에 스며들어 있는 사회적 약자에 대한 배려에 관하여는 논외로 하고, 한국 공증제도에 있어서 사회적 약자를 배려하기 위하여 이미 시행되고 있는 제도나 현재 입법 추진 중에 있는 제도를 살펴본 후, 사회적 약자를 배려하기 위한 앞으로의 공증인의 역할에 관하여 살펴보기로 한다.

2. 참여인 결격자 규정의 개정경위와 그 취지

촉탁인이 시각장애인이거나 문자를 해독하지 못하는 사람인 경우에는 다른 나라에서와 마찬가지로 한국에서도 공증인이 공증을 하기 위하여 참여인을 참여시켜야 한다. 라틴계 공증제도를 시행하고 있는 나라에서는 일정한 사유가 있는 사람에 대하여는 참여인이 될 수 없도록 하는 참여인 결격자 규정을 두고 있으며, 한국 공증인법도 당연히 이에 관한 규정을 두고 있다. 그런데 한국에서는 2009. 2. 6. 법률 제9416호로 공증인법이 개정되기 전에는 촉탁인이나 그 대리인의 친족을 참여인 결격자의 하나로 규정하고 있었는바, 이는 친족의 이해관계가 얽혀 있을 것을 우려한 것으로 해석되었었다.

그러나 참여인은 원래 촉탁인을 위한 존재이므로 그 사람의 친족이 오히려 그 역할을 수행하기에 적합한 측면이 있다. 한편 시각장애인이거나 문자를 해독하지 못하는 사람은 법률행위를 할 때 누구보다도 그에 대하여 공증을 받을 필요가 있는 사람일 것이다. 그런데 자신의 친족은 참여인이 될 수 없다고 하였기 때문에 종전에 시각장애인이거나 문자를 해독하지 못하는 사람이 공증을 받으려면 자신의 친족이 아닌 다른 사람을 참여인으로 대동하여야만 공증을 받을 수 있었고, 이는 시각장애인이거나 문자를 해독하지 못하는 사람이 공증인의 도움을 받기 어렵게 하는 요인이 되었다. 그리하여 촉탁인이나 그 대리인의 친족을 참여인 결격자로 정한 규정을 삭제하게 되었다. 이러한 조치는 분명 사회적 약자를 배려하기 위한 반성적 차원에서 법률이 개정된 것이라고 평가된다고 할 것이다.

3. 사회적 약자에 대한 수수료 등의 면제

공증인은 정당한 사유가 없으면 촉탁을 거절하지 못하고(공증인법 제4조), 공증인 수수료 규칙 제34조에 의하면 촉탁인이 ①「국민기초생활 보장법」 제2조 제2호에 따른 수급자이거나 ②「한부모가족지원법」 제5조에 따른 보호대상자에 해당하는 경우에 공증인은 수수료, 일당 및 여비를 면제하도록 규정하고 있다.

여기서 「국민기초생활보장법」상의 수급자란 부양의무자가 없거나, 부양의무자가 있어도 부양능력이 없거나 부양을 받을 수 없는 사람으로서 소득 인정액이 최저생계비 이하인 사람 등에 대하여 급여를 받는 사람으로 인정된 자를 말하는바, 한마디로 극빈층을 말한다 할 것이다. 또한 「한부모가족지원법」상의 보호대상자란 편부나 편모 또는 이와 유사한 지위에 있으면서 자를 양육하는 사람이나 양육되는 사람으로서 위 법에 의한 지원을 받는 사람을 말한다. 이는 이들이 「국민기초생활 보장법」상의 수급자에 해당하지 않은 경우라도 사회적 약자로서 공증인 수수료를 면제한다는 취지이다.

원래 이 규정은 촉탁인이 구, 시, 읍, 면의 장의 증명서로서 지급의 자력이 없음을 증명한 경우에는 공증인은 수수료, 일당 및 여비의 지급을 면제할 수 있다고 되어 있었던 것에서 이와 같이 개정된 것이다. 원래 공증인은 수수료에 대하여 공증인 수수료 규칙에서 정하고 있는 것보다 더 받아도 안 되지만 덜 받아도 안되는바, 그런 점에서 공증인이 수수료를 면제할 수 있다는 종전 규정은 수수료 규칙에서 정한 수수료를 덜 받아도 안 된다는 것에 대한 특칙에 해당한다고 할 수 있고, 수수료를 면제하느냐의 여부는 어디까지나 공증인의 재량에 달려 있는 것이었다.

그러나 공증인 수수료 규칙이 2010. 2. 5.에 위와 같이 개정된 뒤에는 수수료 등을 면제할 것인지 여부가 재량 사항이 아니고 의무 조항이 되었다. 그런 점에서 이는 경제적 사회적인 약자에 해당하는 사람에 대해 더 진전된 형태의 경제적인 배려를 입법화 한 것이라고 할 수 있을 것이다.

4. 입법 추진 중인 인도집행증서 제도의 도입에 있어서 사회적 약자에 대한 배려

한국 공증인법상으로는 지금까지 공정증서에 의하여 강제집행을 할 수 있는 경우가 극히 제한적으로만 인정되어 왔다. 즉 민사집행법 제56조 제4호에 따라 일정한 금액의 지급이나 대체물 또는 유가증권의 일정한 수량의 급여를 목적으로 하는 청구에 관하여 채무자가 강제집행을 승낙한 취지가 기재된 공정증서와 공증인법 제56조의 2에 의한 어음·수표의 공증에 대하여만 집행증서로 인정되고 있다.

따라서 금전 기타 대체물의 지급을 목적으로 하는 것이 아닌, 동산이나 부동산의 인도를 목적으로 하는 집행증서는 인정되지 않고 있는데, 이는 임대차계약을 체결하면서 상

대방이 계약 종료 후에도 목적물을 반환하지 않을 경우에 대비하여 미리 집행력을 확보하는 방법이 공증제도로 인정되지 않는다는 것을 의미한다. 이에 따라 임대차계약 체결 단계에서는 분쟁이 없음에도 불구하고 마치 분쟁이 존재하는 것처럼 가장하여 임차인의 물건인도의무에 관하여 강제집행할 수 있도록 제소전 화해를 하는 편법이 동원되는 경우가 상당히 존재하는 것이 현실이다.

이런 이유로 물건의 인도를 목적으로 하는 계약에 관하여 공정증서를 작성하는 경우 의무자가 물건을 인도하지 않으면 공정증서로써 강제집행을 할 수 있도록 하여야 한다는 주장이 공증업계는 물론 민사집행법학계에서도 끊임없이 제기되어 왔다.

그리하여 물건의 인도에 관하여도 공정증서에 의하여 강제집행을 할 수 있는 집행증서 제도를 도입하기로 하여 현재 공증인법 개정안이 국회에 계류 중에 있다. 다만 그 개정안의 입안과정에서 경제적 약자에 대한 주거권이나 생계권이 충분히 보호되어야 한다는 견해가 강력히 대두되어 개정안에는 건물임차인 보호를 위한 다음과 같은 사항이 가미되었다.

- ① 우선 건물임대차에 대하여는 3개월 이내에 건물을 인도하여야 하는 경우에 한하여 집행증서를 작성할 수 있되, 임차인의 건물인도의무에 관하여 집행증서를 작성하는 경우에는 반드시 임대인의 보증금반환의무에 관하여도 강제집행 인낙조항을 포함하고 있는 경우에 한하여 작성할 수 있는 것으로 하였다. 공정증서 작성일부터 3개월 이내에 인도의무가 발생하는 임대차에 한하여 인도집행증서를 작성할 수 있도록 하는 것은 우선 전면적으로 제도를 도입하여 시행하기보다는 제도의 시험적인 운용을 거치는 것으로 하여 만일에 있을 시행착오를 줄이겠다는 의도이다. 또한 임대인의 보증금반환의무에 관하여도 강제집행할 수 있는 것으로 하는 경우에 한하여 인도집행증서를 작성할 수 있도록 한 것도 제도적으로 임차인의 권리구제에 만전을 기하기 위한 것이다.
- ② 종전의 금전 기타 대체물의 지급에 관한 집행증서는 공정증서 작성일부터 최소한 7일 이후에 집행문을 부여할 수 있도록 되어 있으나, 인도집행증서에 관하여는 1개월 이후에 집행문을 부여할 수 있도록 하고 있다. 그만큼 채무자에 대하여 집행에 대비할 시간을 배려한 것이다.
- ③ 종전의 집행증서의 경우에는 공증인이 단독으로 집행문을 부여하지만, 인도집행증서의 경우에는 공증인이 단독으로 집행문을 부여하지 못하고 반드시 법관의 허가를 받아 집행문을 부여하도록 하고 있다. 이 규정도 인도집행증서로 인한 집행에 있어서 혹시 있을지도 모르는 위법사항을 법관으로 하여금 통제하도록 하기 위한 규정으로서, 사회적 약자인 임차인의 보호를 위해 마련된 제도적 장치이다.

5. 성년후견제도의 시행과 공증인의 역할

한국에서는 2011. 3. 7. 개정되어 2013. 7. 1. 시행을 앞두고 있는 개정 민법에서 행위무능력자 제도를 없애고 성년후견 제도를 도입하였는바, 성년후견 제도의 도입으로 후견제도에 있어서 많은 변화가 초래되고 있다. 특히 종전 행위무능력자 제도 아래에서는 그에 대응할 만한 규정을 찾아 볼 수 없는 후견계약 제도가 새로 도입되었다. 민법 제959조의 14부터 제959조의 20까지의 내용이 그것이다.

민법 제959조의 14에 따르면 후견계약은 질병, 장애, 노령 그 밖의 사유로 인한 정신적 제약으로 사무를 처리할 능력이 부족한 상황에 있거나 부족하게 될 상황에 대비하여 자신의 재산관리 및 신상보호에 관한 사무의 전부 또는 일부를 다른 자에게 위탁하고 그 위탁사무에 관하여 대리권을 수여하는 것을 내용으로 하는데, 이 후견계약은 반드시 공정증서로 체결하여야 한다.

여기서 주의할 것은 후견계약은 사무를 처리할 능력이 부족하게 될 상황에 대비하여 하는 경우뿐만 아니라, 현실적으로 그러한 능력이 부족한 상황에 있는 경우에도 계약을 체결할 수 있다고 하고 있는바, 이 역시 사회적, 법적 약자를 위한 제도라고 할 것이다.

공증인은 후견계약의 당사자 본인이 의사능력이 없는 경우라면 당연히 공정증서를 작성하여서는 아니 된다(공증인법 제25조). 만일 의사능력이 인정되어 후견계약을 체결할 정도가 된다고 하여도 변별력이 저하되어 있는 경우라면 누구보다도 본인의 진의를 살펴 공정증서를 작성하여야 할 것이다. 본인의 진의를 명확히 파악하기 위하여 후견계약 공정증서의 작성은 일반 공정증서의 작성과 달리 철차적으로 본인의 진의확인을 위한 세밀한 절차를 규정할 필요가 있다는 점에서 이에 대한 공증업계의 준비가 요구되고 있다.

특히 2012. 10. 기준 53만 명인 65세 이상 치매 노인이 2025년이면 100만 명을 넘어설 것으로 예상되는 등 그 숫자의 급속한 증가로 인하여 그들의 재산 등에 대한 침해 행위를 보호하기 위해서도 성년후견계약 제도 등에 대한 심도 있는 연구가 요망된다고 할 것이다.

6. 결 론

한국 공증제도는 변호사 겸업 제도로 정착되면서 공증업무에 대하여는 지금까지 소송업무나 그 밖의 변호사업무에 비하여 상대적으로 관심을 덜 받고 있고, 그만큼 심도 있는 연구가 미진한 것도 사실이다. 그러나 2009년 공증인법 개정시 그 동안 법무법인의 경우에 누구나 공증업무를 취급할 수 있었던 것을 폐지하고, 법무법인에 대하여도 따로 인가

를 받은 경우에 한하여 공증업무를 취급할 수 있도록 공증제도에 큰 변화를 주었다.

한국 법조계는 현재 한국 사회의 경제사회적인 변화뿐만 아니라 이른바 로스쿨제도의 시행으로 그 어느 분야보다도 거대한 변화의 회오리 속에 있는데, 공증업계도 그러한 변화의 영향을 비켜갈 수는 없다 할 것이다. 그 동안 변호사업무를 겸업하는 공증인(인가공증인)이 대부분이었으나, 이제 공증만을 전업으로 하는 임명공증인이 차츰 늘고 있는 추세이고 인가공증인의 경우도 내부적으로 공증업무를 주로 담당하는 변호사를 지정하는 추세에 있다고 보인다.

바야흐로 이제 변호사업무와 공증업무의 분화가 이루어지고 있는 것이다. 그 동안 공증업무가 변호사업무의 일부로 취급되면서, 사회적 약자를 위한 공증이나 공증인의 역할이 무엇인지에 대한 진지한 고민이 부족한 것도 사실이었다. 그러나 강제단체화 된 협회를 중심으로 국제적인 교류를 통하여 공증인의 역량을 발전시켜 나가면서 제도적으로 더 정비해 나간다면, 조만간 사회적 약자를 위하여 공증인이 매우 의미 있는 역할을 수행하는 것도 충분히 기대된다고 할 것이다.

영문

Topic # 2: Consideration for the Socially Disadvantaged in Korean Notarization System
- the Role of the Notary Public for the Aged, Minors, and Disabled.

1. Introduction

In the countries which adopt the Latin notarization systems, a notary public may not generally prepare a notarial deed or grant authentication concerning any legal activity which is revocable due to an illegal factor, invalid conduct, or incompetence therein. Article 25 of Korea's Notary Public Act also prescribes the above-mentioned as the causes for not preparing a notarial deed, and this is applied to the cases for not granting authentication under Article 59 of the Act. In terms of the substantive law, these laws under which the notary public service may not be provided are substantially related to the laws considering the legally and socially disadvantaged, and are mostly compulsory provisions.

As mentioned above, a notary public may not provide his/her service for the commissioned matter having a certain prohibited factor, and this prohibition mostly considers the legally and socially disadvantaged. A notary public, when provides the service, should examine whether the commissioned matter or item is in compliance with the relevant laws and regulations. A notary public should always confirm whether a client or his/her agent sufficiently understands the nature of the commissioned matter. A notary public should sometimes explain the relevant legal factors to them, advise them not to violate the laws for any potential illegal factor in the commissioned matter, and should not provide the service for the client who refuses to follow his/her advice.

In other words, a notary public has the duty of explanation. Although the Korea's Notary Public Act does not explicitly impose such duty of explanation on a notary public, the relevant legal theory asserts that there is the duty of explanation imposed on the notary public in Korea. Thus, for example, where a notary public prepares a notarial deed about a loan agreement for consumption and the stipulation for interest therein is beyond the limited interest rate prescribed

by the Interest Limitation Act, the notary public should advise the client about the meaning of the Interest Limitation Act, have the client revise the stipulation of interest to be in compliance with the Act, and prepare the notarial deed therefrom.

In cases where a client is blind or illiterate or a client asks a participant to participate in the transaction, the notary public should have a participant participate in the transaction and prepare a notarial deed for the benefit of the client. (See Article 29 of the Notary Public Act.) This provision has the meaning of considering the socially advantaged in that it guarantees the notary public service to be performed in accordance with the socially disadvantaged client's wishes. As explained above, the notarization system itself originally has the function of considering the socially disadvantaged.

In the following presentation, we will look at the current system and prospective system considering the socially disadvantaged in the Korean notarization system, and think about the future role of the notary public to consider the socially disadvantaged.

2. Amendment of the Disqualified Participant Provision

Where a client is blind or illiterate, the Korean notarization system requires a participant to participate in the notary public service. In the notarization systems adopting the Latin system, there is a provision that a certain person may not be a participant due to the disqualifying reasons, and the Korea's Notary Public Act has such provision.

The Korea's Notary Public Act, before the amendment by the Korean Code § 9416 on February 6, 2009, prescribes a relative of a client or agent as the disqualified person to be a participant, and this provision is interpreted as concern for the potential conflict of interest between a client and the relative.

However, it is also true that a relative of a client is appropriate to be a participant because a participant should be in favor of a client. The blind or illiterate needs to obtain the authentication of the notary public for any legal activity more desperately than other people because of his/her disability. If a relative of the blind or illiterate cannot be a participant for the notary public service, then the disabled client should try to secure any person other than his/her relative as a participant and this burden makes difficult for the disabled client to obtain the

notary public service. Thus, the provision disqualifying a relative of a client or agent as participant was repealed. This amendment is a forward step to consider the socially disadvantaged.

3. Fee Exemption for the Socially Disadvantaged, Etc.

A notary public cannot refuse to provide the service to a client without any justifiable reason. (Article 4 of the Korea's Notary Public Act) According to Article 34 of the Regulation of the Notary Public Service Fees, where a client is? a recipient under Article 2, Clause 2 of the National Basic Living Security Act or? a person eligible for protection under Article 5 of the Single-Parent Family Support Act, a notary public should exempt the fee, service charges, and other expenses from such client.

A recipient under the National Basic Living Security Act means a person who does not have a person liable for supporting or, if any, he is either unable to support or unreliable for supporting the recipient, and whose recognized amount of income is less than the minimum cost of living. In other words, it refers to the destitute. A person eligible for protection under the Single-Parent Family Support Act means a parent or child or any person with similar status within a single-parent family who obtains support under the Act. Although such person may not be included as a recipient under the National Basic Living Security Act, the Notary Public Act deems such person as the socially disadvantaged and exempts the fees from them.

Originally, this provision, before its amendment, provided that where a client presents a letter of a local government head certifying that he/she is unable to pay for the fees, a notary public may exempt from such client the fee, service charges, and other expenses. A notary public should not originally charge the fee more or less than what the Regulation of the Notary Public Service Fee prescribes. Thus, such exemption provision was an exception to the Regulation, and it depended on the notary public's discretion on whether the fee is exempted or not.

Since the amendment of the Regulation on February 5, 2010, the issue of the fee exemption does not depend on the notary public's discretion. It became the mandatory provision. Such amendment means the legislation of economic consideration for the economically and socially disadvantaged in more advanced way.

4. Pending Legislation on the Consideration for the Socially Disadvantaged in Adopting the Delivery Execution Certificate System

According to the Korea's Notary Public Act, a compulsory execution by a notarial deed was enforced in a very limited number of cases. Under Article 56, Clause 4 of the Civil Execution Act, a compulsory execution may be enforced by a notarial deed in respect of the claims aiming at the payment of specific amount, or at the payment of a specific quantity of substitute goods or securities, which states the purport of giving a consent of the debtor to the compulsory execution. Under Article 56-2 of the Notary Public Act, a notarial deed stating the intention to accept the compulsory execution attached to a bill or check is deemed as the certificate of execution.

It means that the certificate of execution aiming at the delivery of real property or chattel, not at the payment of money or substitute goods, may not be enforced. In other words, in executing a real property lease agreement, securing the execution power against the case where the other party fails to return the subject matter upon expiration of the lease agreement may not be enforced as the notarization system. Accordingly, in executing a real property lease agreement, although there is not any real dispute, people pretend to be in a dispute and to settle before filing a complaint in courts so that a landlord may exercise a compulsory execution for a tenant's duty to return the real property.

For this reason, the Korean notary public industry and academic world have asserted that a compulsory execution should be enforced by a notarial deed aiming at the delivery of the subject matter if an obligator fails to return it.

Thus, it is decided to adopt the certificate of execution system in which a compulsory execution may be enforced by a notarial deed with respect to the delivery of the subject matter. The relevant amendment of the Notary Public Act is pending in the National Assembly. The opinion that the economically disadvantaged's right to livelihood and housing should be reflected in the amendment was strongly on the rise, so the following were added to the amendment.

- ① The certificate of execution for leased building may be prepared only within three (3) months before expiration of a lease agreement. In addition, the certificate of execution

should include a provision regarding return of the security deposit so that both parties may equally have his own execution right. The provision that the certificate of execution may be prepared for a lease of which the obligation to return arises within three (3) months therefrom is a trial provision rather than a complete adoption of the new system. It intends to minimize trial and error arising from the enforcement of this amendment. The provision that the certificate of execution may be prepared only if it permits a compulsory execution for return of security intends to make assurance for protection of a tenant's right systematically.

- ② The previous version of the certificate of execution regarding the payment of money or substitute goods may grant an execution clause at least seven (7) days after the date of a notarial deed preparation. Meanwhile, the certificate of execution for delivery may grant an execution clause one (1) month after the date of a notarial deed preparation, which means consideration for a debtor to prepare for the execution.
- ③ For the previous version of the certificate of execution, a notary public may solely grant an execution clause. However, for the certificate of execution for delivery, a notary public may not solely grant an execution clause. A notary public should grant an execution clause after obtaining the judge's approval in advance. This provision intends to protect the tenants, the socially disadvantaged by having the judge control any illegal factor in executing the certificate of execution for delivery.

5. Enforcement of Adult Guardianship and the Role of a Notary Public

The amendment of the Korea's Civil Act (amended on March 7, 2011 and enforced as of July 1, 2013) abolishes the incompetency system and adopts the adult guardianship system, which causes many changes in the guardianship system in Korea. Especially, the guardianship agreement system is adopted, which the previous incompetency system does not have the comparable provision. (See Article 959-14 through 959-20 of the amended Civil Act.)

According to Article 959-14 of the Civil Act, Such amendment permits a person to execute a guardianship agreement for his/her own financial management or personal affairs if he/she is not or will not be capable of handling personal matters due to diseases, disabilities, old ages, or

any other reason. Such guardianship agreement should be executed as a notary public documentation prepared by a notary.

Here, one thing to note is that a guardianship agreement may be executed not only against the case that a client will not be able to handle personal matters in the future but also against the case that he/she is currently not able to do it. This is the system to protect the socially and legally disadvantaged.

A notary public should not prepare a notarial deed if a client for a guardianship agreement does not have the required mental capacity (Article 25 of the Notary Public Act). If a client has the mental capacity enough to execute a guardianship but his/her judgment level is decreased, a notary public should confirm the client's intention before preparing a deed. In order to confirm the client's intention necessary to prepare a notarial deed for a guardianship agreement, the notary public industry should prepare the detailed procedural provisions to confirm the client's intention which is not required in preparing a general notarial deed.

As of October 2012, the number of the aged more than sixty five (65) years old suffering Alzheimer's is 530,000 (five hundred thirty thousand). In 2025, the number will be expected to be more than one million. Careful study on the adult guardianship agreement is necessary in order to prevent any infringing activity on the aged' right to property, etc.

6. Conclusion

The notarization system in Korea has been established as the attorneys' side work system. The notary public service has not received attention than the attorneys' other work scope, such as litigation, has. There has not been thorough study on the notary public service. However, by the amendment of the Notary Public Act in 2009, the provision that a law firm may automatically perform the notary public service was abolished, and a law firm should obtain a separate approval in order to perform the service. This amendment caused substantial changes in the Korean notarization system.

Due to the implementation of the law school system and other economic and social changes, the Korean legal field is undergoing a transformation. So is the Korean notary public industry. Most of the notary publics have been the authorized notary publics who were attorneys taking

up the notary's job as a sideline. However, the appointed notary publics who are full time notary publics are increasing.

In addition, in cases of the authorized notary publics, an attorney in charge of the notary public service is specifically designated by his/her law firm.

Attorneys' field and notary publics' field are now being divided separately. A thoughtful concern about the role of the notary public for the socially disadvantaged has not been sufficient made because the notary public service was deemed as part of the attorney work scope. However, if we improve the system by developing the notary publics' qualities through international relations with the Association as the center, we may expect the notary publics in Korea to provide meaningful services to the socially disadvantaged very soon.