The Hague Apostille Convention

Submitted by: HCCH
The Hague Apostille Convention
(with an overview of the Hague Conference on Private International Law)

APEC Workshop on Simplified Authentication Process for Production of Public Documents Abroad through the use of the Hague Apostille Convention
Medan, Indonesia – 28-29 June 2013

Christophe Bernasconi
Deputy Secretary General
The Hague Conference on Private International Law
The **Hague Conference on Private International Law**

La **Conférence de La Haye de droit international privé**

(HC + CH = HCCH)

What is the HCCH?

- An **Intergovernmental Organisation**
  the origin of which goes back to 1893
- The *oldest* international organisation
  in The Hague, the “legal capital of the world”
- The only international organisation in
  The Hague with a *legislative* function
  (*i.e.*, not a court or tribunal)
- “World organisation for
  cross-border co-operation in
civil and commercial matters”
What does the HCCH do?

- The purpose of HCCH is to “work for the progressive unification of the rules of private international law”
- The work of HCCH addresses private law problems (as opposed to public law problems) arising among individuals and companies from factual situations which are connected with more than one State

Cross-border family relations  Cross-border business deal  Cross-border legal procedure

How does the HCCH do it?

- By developing international treaties, known as the “Hague Conventions”, to which any country may become party
  - 38 Hague Conventions have been concluded
  - The Hague Conventions are open to all States (even those that are not Members of the organisation)
  - The Hague Conventions co-exist with existing bilateral and regional instruments
The Hague Conventions do not harmonise substantive law ("civil code" or "commercial code")

Instead, the Hague Conventions establish PIL rules that provide 'road signs' showing the way in cross-border situations, for example:

- Which State's laws apply to the situation?
- Which State’s authorities are competent to decide disputes arising out of the situation?

The work of the HCCH focuses on technical aspects (not "politics") and decisions are taken by consensus.

How does the HCCH do it?

The Hague Conventions

Three pillars:

- Child protection, family and property relations
  - 1980 Child Abduction Convention
  - 1993 Intercountry Adoption Convention
  - 1996 Child Protection Convention
  - 2007 Child Support Convention and Protocol

- Legal co-operation and litigation
  - 1961 Apostille Convention
  - 1965 Service Convention
  - 1970 Evidence Convention
  - 1980 Access to Justice Convention
  - 2005 Choice of Court Convention

- Commercial and finance law
  - 1985 Trusts Convention
  - 2006 Securities Convention
The Hague Conference ... vs. The Hague Convention ...

The Hague Conference... = the organisation vs. The Hague Conventions...

= the treaties (instruments)
Members of HCCH

74 Members (73 States plus the European Union)

Constantly welcoming new Members

Impressive growth in membership since 1955
Members of HCCH

74 Members (73 States plus the European Union)

BUT...

Global coverage

141 States are “connected” to HCCH
Most APEC Member Economies are already “connected” to HCCH

Visibility in Asia Pacific

Series of successful regional conferences jointly organised by the Permanent Bureau

- Progressively raising profile of private international law issues in Asia Pacific
- Offering an opportunity for States in the region to discuss the relevance, implementation and operation of the Hague Conventions, as well as the benefits of membership

2005
Sabah, Malaysia

2007
Sydney, Australia

2008
Hong Kong, China

2011
Manila, Philippines
How to become a Member State

A three step process

1. Candidate State requests existing Member to propose candidate State for membership

   In practice, request made to the Government of the Netherlands

2. Admission of candidate State decided by majority vote within six months

3. Acceptance of the Statute by candidate State

   Membership effective immediately – acceptance deposited with the Netherlands MFA
Benefits of being a HCCH Member

- Determining *work program* of HCCH and the Permanent Bureau
- Having a seat at a world forum for dialogue between different legal cultures
- Priority access to *technical assistance* in implementing the Hague Conventions
- Strengthening the voice of Asia-Pacific within HCCH
- Demonstrating a commitment to the HCCH mission:
  
  ...to work for a world in which individuals, families and companies, whose lives and activities cross borders, enjoy a high degree of legal security

Financial implications of Membership

- Each Member required to contribute to the budget
- Budget for 2012-13 financial year: € 3.75 million ($ 4.9 mil.)
- Contributions based on the unit system of the Universal Postal Union (UPU)
  - For States joining from July 2010, 1 unit = €5,825 (2012-13 financial year)
  - Biggest payers (33 units) are Canada, France, Germany, Japan, United Kingdom, United States of America – other Members pay from 1-25 units
Overview of the Apostille Convention

Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents

Production of public documents abroad

*Without* the Apostille Convention

```
Public Document
executed in State of origin

Public Document
ready to be produced in State of destination

1st authentication
(e.g. civil registry in State of origin)

2nd authentication
(Justice Ministry of State of origin)

3rd authentication
(Foreign Ministry of State of origin)

4th authentication
(Consulate of State of production located in State of origin)

5th authentication
(Foreign Ministry of State of destination) (some States only)
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THE LEGALISATION CHAIN
Production of public documents abroad

*With* the Apostille Convention

105 Contracting States...
105 Contracting States...

... and many others considering joining (•)
Effective and widespread operation

- The most widely ratified/acceded to of all the Hague Conventions
- 41 new Contracting States since 2000
- The most widely applied Hague Convention
- ** Millions of Apostilles issued every year**

Benefits of the Apostille Convention
Greatly facilitates circulation of public documents
Saving time and money

- Apostille Convention greatly facilitates circulation of public documents
  - Improves the lives of citizens that rely on public documents in their cross-border activities (has an immediate impact)
- The Apostille Convention reduces the time and cost of authenticating documents
  - Fees are often payable at each step of the traditional legalisation chain (*i.e.*, in both the State of origin and the State of destination)
  - Under the Apostille system, fees are payable only once (when the Apostille is issued by the Competent Authority in the State of origin of the public document)
  - Studies conducted by newly acceded States confirm these findings and indicate that citizens can save millions of US dollars

Accessibility

- The Apostille Convention makes authentication much more accessible and easy:
  - The absence of missions abroad or of foreign missions in the State of origin can make it difficult for citizens to access traditional authentication services. Citizens may need to send their documents to another country in order to be authenticated, which costs money and risks document loss.

- **The Apostille Convention provides a simple, uniform, one-step process in all 105 Contracting States (and growing...)**
Freeing up consular resources

- The Apostille Convention frees up resources at foreign missions, allowing consular staff to focus on serving citizens’ and companies’ other needs
- But States can still maintain important sources of revenue
  - more on this later...

Attracting foreign investment

- The Apostille Convention establishes conditions that are more amenable to foreign investment
  - In its 2010 Report *Investing Across Borders*, the World Bank surveys foreign direct investment regulation in 87 economies around the world (incl. 7 ASEAN Member States: Cambodia, Indonesia, Malaysia, Philippines, Singapore, Thailand, and Vietnam)
  - The Report finds that the Convention makes it easier for companies to start up a business in a foreign State
- The World Bank recommends that States join the Apostille Convention
Attracting foreign investment

- The Apostille Convention facilitates cross-border trade
  - In 2012, the ICC called on States to join the Apostille Convention and to expand and modernise its use
  - Cross-border trade of goods can require a considerable amount of paperwork in which foreign officials require the origin of these documents to be authenticated
  - The ICC confirmed that the Apostille Convention establishes a global standard that is recognised and expected by parties involved in cross-border transactions
Facilitating international trade

Interpol has expressed interest in the Apostille Convention in the context of cross-border extradition requests

- The HCCH and Interpol are looking into using the e-APP to streamline the cross-border transmission of electronic requests – more on this later...

- The World Customs Organisation has also expressed an interest in the Convention in the context of reducing customs formalities

- The Apostille Convention is also relevant to ongoing trade facilitation efforts by the World Trade Organisation (cutting “red tape”)

Interest of other organisations
Support Services

- The Permanent Bureau closely monitors the practical operation of the Apostille Convention
- Regular expert meetings (called “Special Commissions”) are convened to review the practical operation of the Convention
  - Last SC meeting held in November 2012
  - attended by 162 participants from 75 States and international organisations
  - Conclusions & Recommendations of the Special Commission are available on the Hague Conference website
- Specialised “Apostille Section” of HCCH website...
## Publications

<table>
<thead>
<tr>
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<th>Description</th>
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<tbody>
<tr>
<td><strong>The ABCs of Apostilles</strong></td>
<td>Brochure for users of Apostilles with short answers to FAQs, including when, where and how Apostilles are issued and what their effects are.</td>
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<tr>
<td><strong>Brief Implementation Guide</strong></td>
<td>Guide to assist authorities in new and potential Contracting States to implement the Convention. Includes practical tips on how to issue and register Apostilles.</td>
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<tr>
<td><strong>Apostille Handbook</strong></td>
<td>Comprehensive Handbook to assist Competent Authorities in performing their functions under the Convention.</td>
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### Operation of the Apostille Convention

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Date: 7/3/2013
Competent Authorities

- Apostilles may only be issued by a **Competent Authority** designated by the State of origin.
- The identity, quantity and organisation of Competent Authorities is left to each Contracting State to determine (the Convention does not impose a specific model).

Competent Authorities perform three fundamental functions under the Convention:
- **verifying** the authenticity (origin) of public documents;
- **issuing** and **affixing** Apostilles; and
- **recording** each Apostille issued in a register (in order to be able to later verify, at the request of a recipient, the origin of an Apostille supposedly issued by that Competent Authority).
Competent Authorities

In order to fulfill these functions, each Competent Authority should:

- maintain (or have access to) a database with sample signatures / seals / stamps of the officials and authorities that execute the public documents for which it has competence to issue Apostilles
- have sufficient resources to issue the expected volume of Apostilles
- have the capacity to maintain a register of Apostilles issued, preferably an electronic register that can be accessed online (an "e-Register")
- ensure that its staff is properly trained

Competent Authorities – in the region

Australia - Department of Foreign Affairs and Trade
Brunei Darussalam - Chief Registrar, Deputy Chief Registrar and Registrars of the Supreme Court, Chief Magistrate, Magistrates and Registrars of Subordinate Courts
Hong Kong SAR - Registrar of the High Court
Macau SAR - Chief Executive, Secretary for Administration and Justice, Director of Justice Affairs Department
Japan - Ministry of Foreign Affairs
Korea - Ministry of Foreign Affairs and Trade, Ministry of Justice, National Court Administration
Mexico - Federal Government Secretary (for federal documents), State Government Secretaries (for state documents)
### Competent Authorities – in the region

<table>
<thead>
<tr>
<th>Region</th>
<th>Authorities</th>
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<tr>
<td>New Zealand</td>
<td>• Department of Internal Affairs, Authentication Unit</td>
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<td></td>
<td>• Ministry of Foreign Affairs</td>
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<tr>
<td>Peru</td>
<td>• Ministry of Justice</td>
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<tr>
<td></td>
<td>(for certain categories of public document)</td>
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<tr>
<td>Russian Federation</td>
<td>• General Prosecutor’s Office</td>
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<td></td>
<td>• Ministry of the Interior</td>
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<td></td>
<td>• Register Offices</td>
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<td></td>
<td>• Federal Archives Agency</td>
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<tr>
<td></td>
<td>(for certain categories of public document)</td>
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<tr>
<td></td>
<td>• Executive bodies of constituent entities (“federal subjects”)</td>
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<td></td>
<td>• Ministry of Defense</td>
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<td></td>
<td>(for certain categories of public document)</td>
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<tr>
<td>United States</td>
<td>• Federal Department of State</td>
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<td>(for federal documents)</td>
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<td></td>
<td>• Clerks and Deputy Clerks of the Federal Courts</td>
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<td>(for Federal Court documents)</td>
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<tr>
<td></td>
<td>• State Secretary of State Offices</td>
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<td>(for state documents)</td>
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### The Model Apostille Certificate

Apostilles should conform as closely as possible to the model annexed to the Convention
The Model Apostille Certificate

States are encouraged to use a **multilingual** Apostille Certificate

The Convention only applies to “public documents”

Public document include:

- Birth, death, marriage certificates
- Documents issued by a court or tribunal
- Notarial acts
- Patents
- Extracts from commercial registers
- Education documents (e.g., diplomas) from public institutions

The “public” nature of a document is determined by the law of the State of execution
Excluded documents

- The Apostille Convention does not apply to:
  - documents executed by diplomatic or consular agents
  - administrative documents dealing directly with commercial or customs operations
- These exceptions are interpreted **narrowly**
- In practice, some States issue Apostilles for documents such as import / export licenses, health certificates and certificates of origin
  - Other Contracting States are encouraged to accept Apostilles issued for these documents even if they would not themselves issue Apostilles for such documents

Excluded documents – Rule of thumb

- If a particular category of documents was legalised in a State before entry into force of the Apostille Convention for that State, it should now be apostillised
- If a particular category of documents did not require legalisation before entry into force of the Apostille Convention, it does not now require an Apostille
## Limited effect of an Apostille

- The only effect of an Apostille is to certify:
  - the authenticity of the signature;
  - the capacity in which the person signing the document has acted; and
  - where appropriate, the identity of the seal or stamp which document bears
- An Apostille has this effect only as between Contracting States

### Limited effect of an Apostille

- The Apostille authenticates the **origin** of a public document, **not the content** of that document
  - C&R No 82 of the 2009 SC
  - C&R No 13 of the 2012 SC

- The law of State of destination determines the admissibility and probative value of the public document in that State
  - C&R No 14 of 2012 SC
## No more legalisations among the “club”

- States Parties have an obligation under the Apostille Convention to take all necessary steps to prevent the performance of legalisations by their diplomatic or consular agents in cases where the Convention applies.

## Fees for Apostilles

- The Convention is silent on fees
  - A few Contracting States issue Apostilles for free
  - Most States charge a fee (average fee = USD 20)
- By charging a fee for Apostilles, States may recover revenue lost from the provision of legalisation services
- The experience of newly acceding States confirms that revenue levels can be maintained after implementing the Apostille Convention
Accession flowchart

- The State deposits the instrument of accession with the Depositary (Art. 12(1)) and notifies the Depositary of each designated Competent Authority (Art. 6(2))
- The Depositary notifies Contracting States of the deposit and designation(s) (Art. 15)
- Any Contracting State may object to the accession within a six month period, the exact dates for which are determined by the Depositary (Art. 12(2))
- The Depositary notifies Contracting States of objections (if any) after expiry of the objection period (Art. 15 d)
- The Convention enters into force as between the acceding State and each Contracting State that has not objected to its accession on the 60th day after the end of the six-month objection period (Art. 12(3))
- The Convention does not enter into force as between the acceding State and any Contracting State that has objected to its accession (Art. 12(3))
- A State may withdraw its objection at any time by notification to the Depositary

The instrument of accession

- Each State has its own procedure for deciding to accede to a Convention and prepare the actual accession at domestic level
  - Generally, the decision to accede will be initiated by the Minister of Foreign Affairs or by the head of State, and then typically involves the Parliament
- The final decision is documented in an "instrument of accession" – this is forwarded to the State’s diplomatic mission in the Netherlands (or nearest mission) for deposit
- The instrument of accession is accompanied by a cover note from the Embassy which should include the required notifications (Competent Authority(ies))
Thank you

Christophe Bernasconi
cb@hcch.nl

[Website Link]