



**Asia-Pacific  
Economic Cooperation**

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**2013/SOM3/EC/WKSP/007**

## **The Hague Apostille Convention**

Submitted by: HCCH



**Workshop on Simplified Authentication Process  
for Production of Public Documents Abroad  
Through the Use of the Hague Apostille  
Convention  
Medan, Indonesia  
27 June 2013**



**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**

The **H**ague **C**onference  
on Private International Law

La **C**onférence de La **H**aye  
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



## How does the HCCH do it?

- 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

## 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**

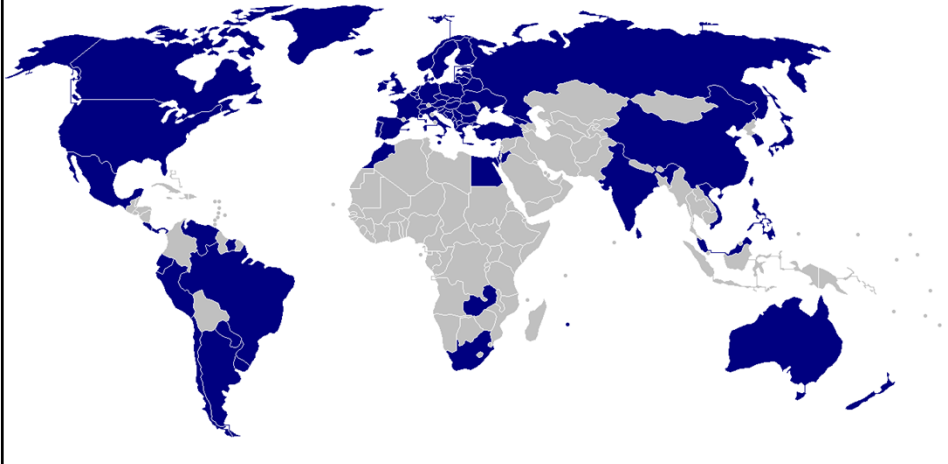
VS.

*The Hague Conventions...*

**= the treaties (instruments)**

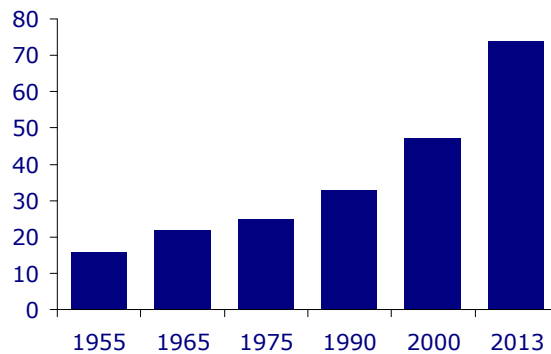
## Members of HCCH

74 Members (73 States plus the European Union)



## Constantly welcoming new Members

Impressive growth in membership since 1955



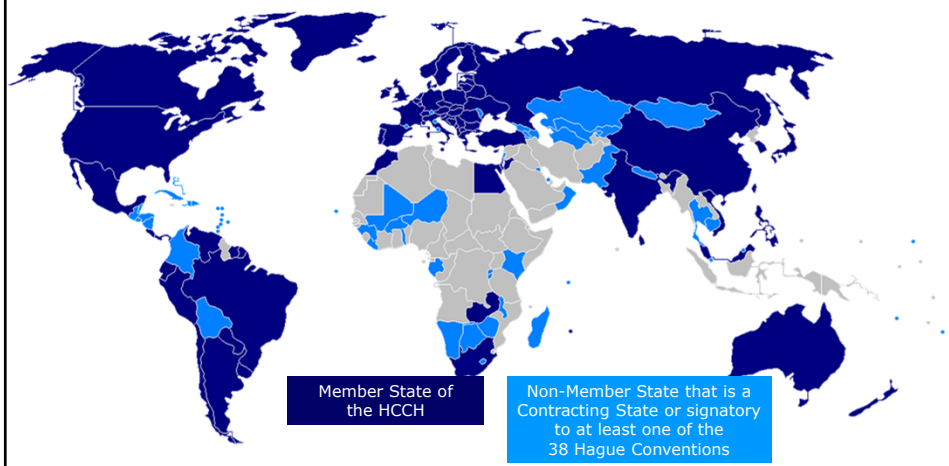
## Members of HCCH

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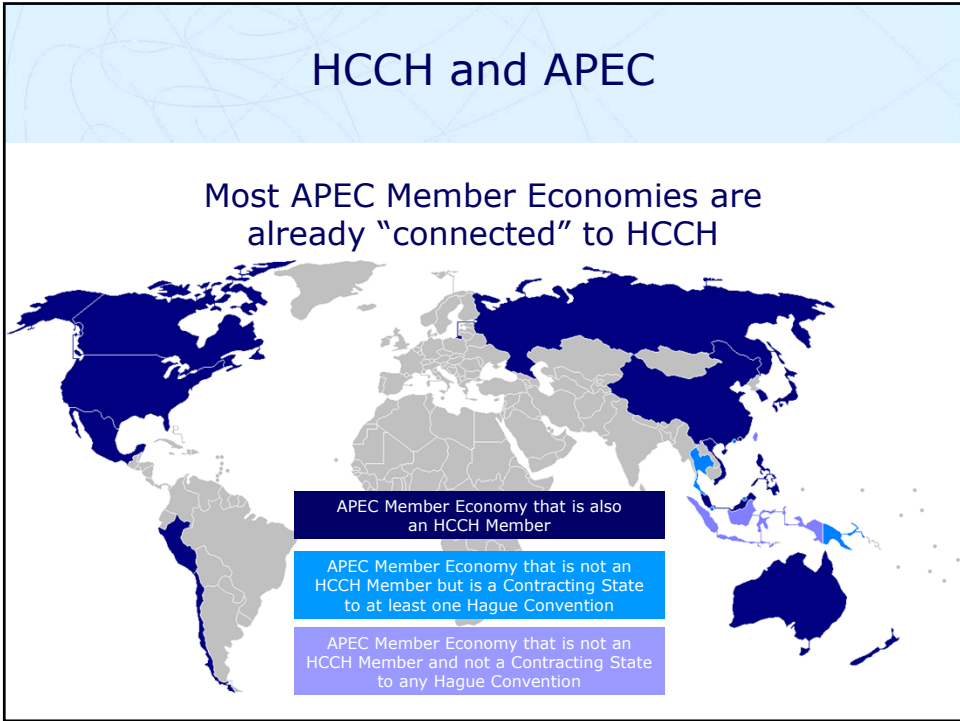
**BUT...**

## Global coverage

141 States are "connected" to HCCH





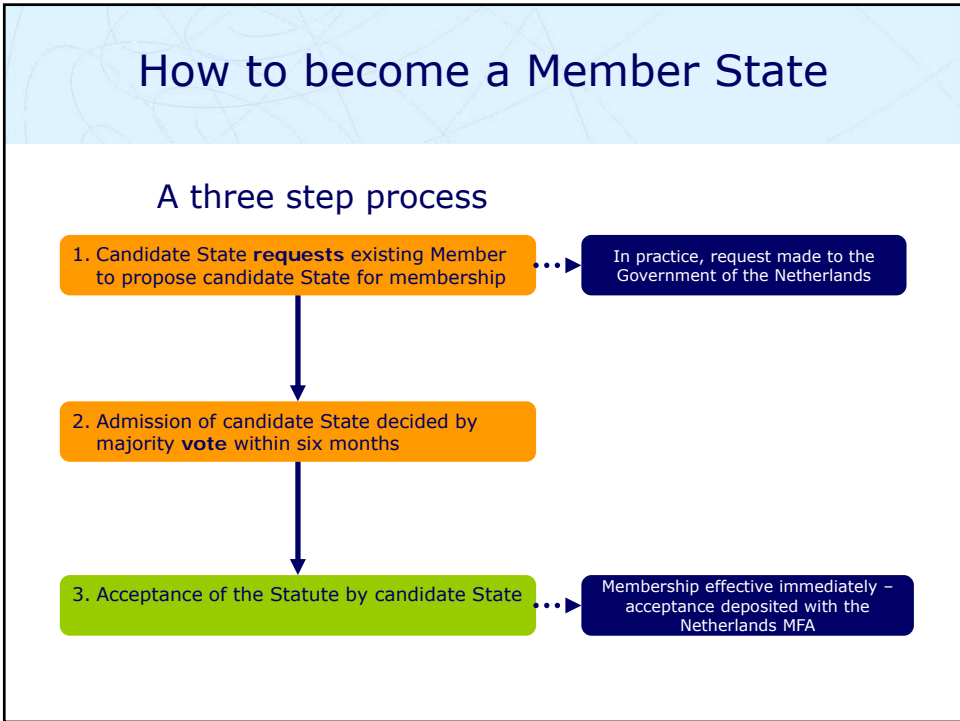


## Visibility in Asia Pacific

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

<b>2005</b>	<b>2007</b>	<b>2008</b>	<b>2011</b>
Sabah, Malaysia	Sydney, Australia	Hong Kong, China	Manila, Philippines



## 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

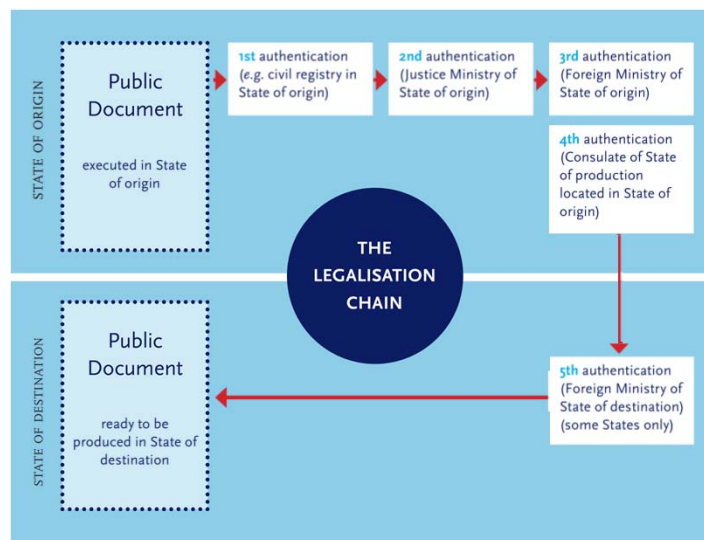
- Each Member required to contribute to the budget
- Budget for 2012-13 financial year: € 3.75 million (\$ 4.9 mil.)
- Contributions based on the unit system of the Universal Postal Union (UPU)
  - For States joining from July 2010, 1 unit = €5,825 (2012-13 financial year)
  - Biggest payers (33 units) 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*

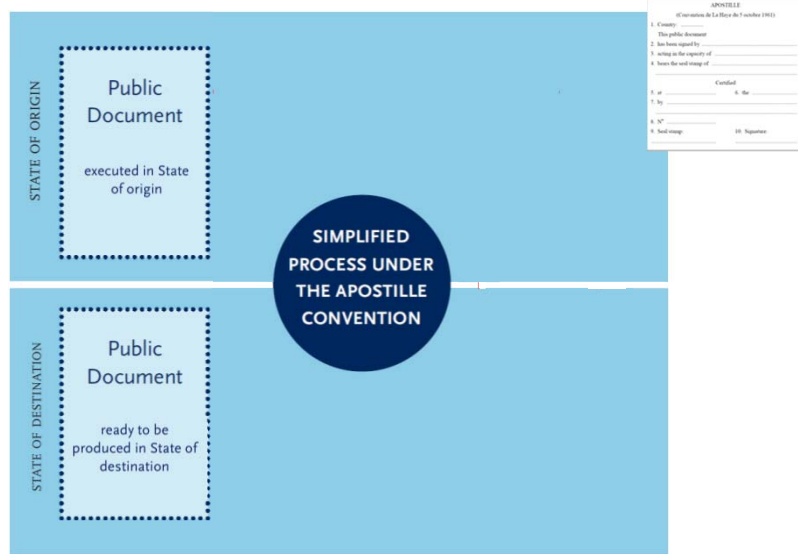
### Production of public documents abroad

*Without* the Apostille Convention

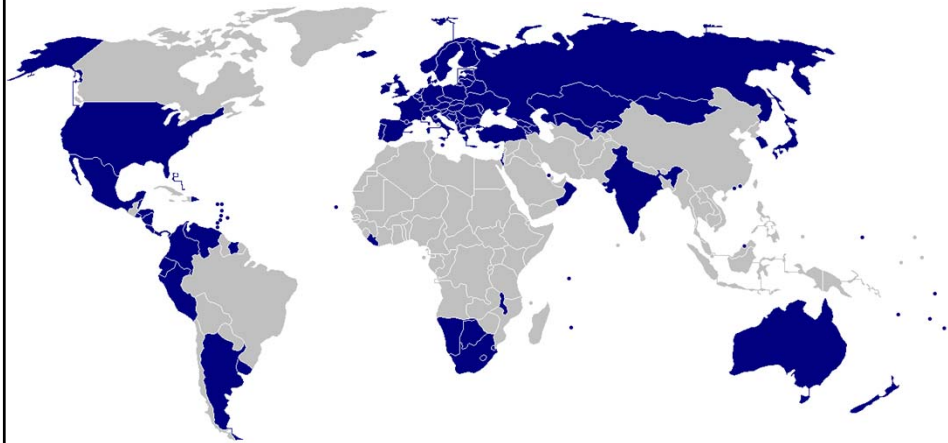


# Production of public documents abroad

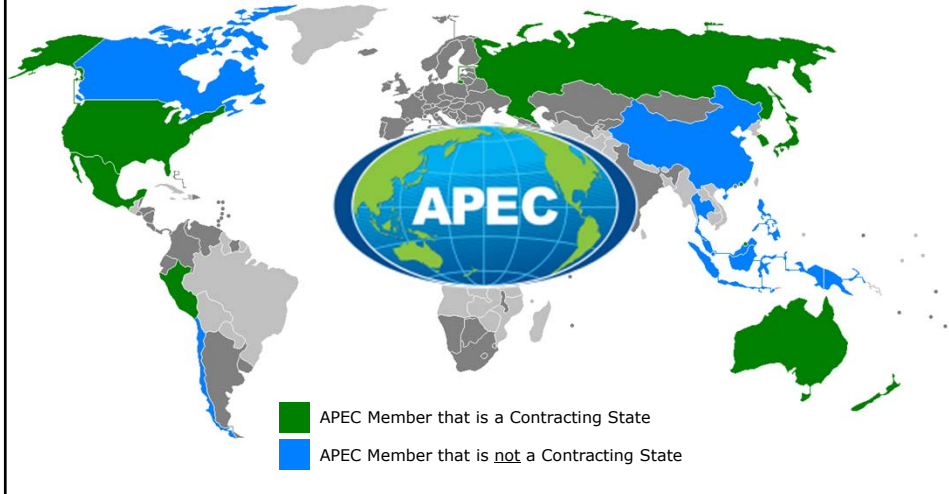
*With* the Apostille Convention



## 105 Contracting States...



# 105 Contracting States...

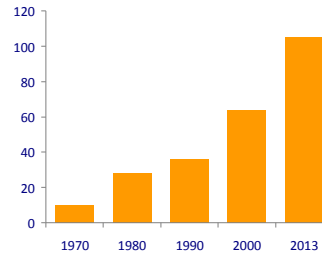


# ... and many others considering joining (■)



## 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

**Investing Across Borders**  
2010

Indicators of foreign direct investment regulation in 87 economies

Investment Climate Advisory Services | World Bank Group

MIFC | IFC | IDB | AfDB | EBRD | THE WORLD BANK

With financial support from

**Investing Across Borders**  
INDICATORS OF FOREIGN DIRECT INVESTMENT REGULATION

Home » Data » Indonesia

Region: East Asia & Pacific  
Income group: Lower middle income  
Most populous entity: Jakarta

ACCESS DATA BY ECONOMY OR TOPIC  
Select an economy  
or  
Select a topic

The tables below summarize the key indicators for each topic and benchmark against regional and global averages.

Investing Across Borders: Starting a Foreign Business, Accessing Industrial Loans, Attracting Commercial Deposits

These indicators measure the time, procedures, and regulatory regime for establishing a local subsidiary of a foreign company in the largest business city.

Establishing a local subsidiary

Indicator	Country score	ADB regional average	ADB global average
Procedures (number)	12	11	10
Time (days)	64	64	42
Ease of establishment index (0-100)	52.5	57.4	64.5

**Summary**  
It takes 12 procedures and 64 days to establish a foreign-owned limited liability company (LLC) in Jakarta, Indonesia. This is slower than both the ADB regional average for East Asia and the Pacific and the ADB global average. In addition to the procedures required of domestic companies, foreign companies must translate and notarize the documents of the parent company in its country of origin. Foreign investors must then file for a foreign investment license from the Investment Coordinating Board (BKPM). This license must be obtained before the company deed is executed, and takes on average 14 days. If disclosed, the foreign investor can submit an appeal to the State Administrative Court (Pengadilan Tata Usaha Negara or PTUN). In addition, foreign companies must obtain a limited liability registration number (Angka Pengenal Impor) Terbatas or API-IT to engage in international trade. The deed of establishment must be made before a notary public. The company registration process is not yet available online. Foreign companies are free to open and maintain bank accounts in foreign currencies. The minimum paid-up capital requirement for a domestic LLC is IDR 12,500,000 (~\$1,365), whereas for a wholly foreign-owned LLC, it depends on the business sector and the projected sales target.

[4] More info for this indicator

## Facilitating international trade

- 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 document 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

**International Chamber of Commerce**  
*The world business organization*

## Facilitating international trade

The screenshot shows the ICC website with a news article titled "ICC urges States to ratify Apostille Convention for simplified authentication of public documents". The article is dated 14 December 2012. The main headline is "ICC urges States to ratify Apostille Convention for simplified authentication of public documents". Below the headline, there is a sub-headline: "Paris, 14 December 2012". The article text begins with "ICC is encouraging governments to ratify an international treaty that provides simplified administrative formalities to produce public documents abroad. ICC is also calling for expanded and modernised use of the treaty issued by the Hague Conference on Private International Law".

## Interest of other organisations

- **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")


## 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...



HCCCH  
HAGUE CONFERENCE ON  
PRIVATE INTERNATIONAL LAW  
CONFÉRENCE DE LA HAÏVE  
DE DROIT INTERNATIONAL PRIVÉ

The World Organisation for Cross-border Co-operation in Civil and Commercial Matters  
L'Organisation mondiale pour la coopération transfrontalière en matière civile et commerciale







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GO

### Welcome to the Apostille Section

Latest updates



The Permanent Bureau has produced a series of three publications on the practical operation of the Apostille Convention.

*The ABCs of Apostilles* is a brochure that is primarily addressed to users of Apostilles with short answers to frequently asked questions, including when, where and how Apostilles are issued and what their effects are. Download [here](#).

*How to Join and Implement the Hague Apostille Convention* is a brief guide that is designed to assist authorities in new and potential Contracting States in implementing the Convention. Download [here](#).

The *Apostille Handbook* is a comprehensive reference tool that is designed to assist Competent Authorities in performing their functions under the Apostille Convention, as well as address issues that arise in the contemporary operation of the Convention. Download [here](#).

To order hard copies of these publications, please use the [order form \(DOC or PDF\)](#).

▶ [Text of the Convention Translations](#)

▶ [Updated list of Contracting States \(status table\)](#)  
[How to read the status table](#)

▶ [How to get an Apostille](#)

▶ [Competent Authorities](#)  
(contact details, practical information)

▶ [Model Apostille Certificate](#)

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▶ [Explanatory documents](#)

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## Publications

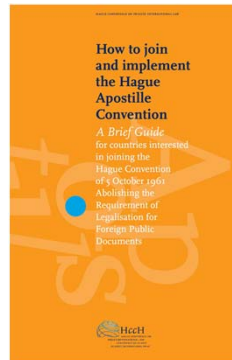
### The ABCs of Apostilles

Brochure for users of Apostilles with short answers to FAQs, including when, where and how Apostilles are issued and what their effects are.



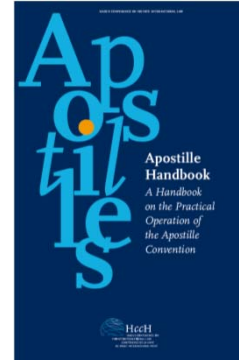
### Brief Implementation Guide

Guide to assist authorities in new and potential Contracting States to implement the Convention. Includes practical tips on how to issue and register Apostilles.



### Apostille Handbook

Comprehensive Handbook to assist Competent Authorities in performing their functions under the Convention.



## Operation of the Apostille Convention

## 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

- 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	<ul style="list-style-type: none"> <li>• Department of Foreign Affairs and Trade</li> </ul>
	Brunei Darussalam	<ul style="list-style-type: none"> <li>• Chief Registrar, Deputy Chief Registrar and Registrars of the Supreme Court</li> <li>• Chief Magistrate, Magistrates and Registrars of Subordinate Courts</li> </ul>
	Hong Kong SAR	<ul style="list-style-type: none"> <li>• Registrar of the High Court</li> </ul>
	Macau SAR	<ul style="list-style-type: none"> <li>• Chief Executive</li> <li>• Secretary for Administration and Justice</li> <li>• Director of Justice Affairs Department</li> </ul>
	Japan	<ul style="list-style-type: none"> <li>• Ministry of Foreign Affairs</li> </ul>
	Korea	<ul style="list-style-type: none"> <li>Ministry of Foreign Affairs and Trade</li> <li>• Ministry of Justice</li> <li>• National Court Administration</li> </ul>
	Mexico	<ul style="list-style-type: none"> <li>• Federal Government Secretary <i>(for federal documents)</i></li> <li>• State Government Secretaries <i>(for state documents)</i></li> </ul>

## Competent Authorities – in the region



New Zealand

- Department of Internal Affairs, Authentication Unit



Peru

- Ministry of Foreign Affairs



Russian Federation

- Ministry of Justice  
*(for certain categories of public document)*
- General Prosecutor's Office
- Ministry of the Interior
- Register Offices
- Federal Archives Agency  
*(for certain categories of public document)*
- Executive bodies of constituent entities ("federal subjects")
- Ministry of Defense  
*(for certain categories of public document)*



United States

- Federal Department of State  
*(for federal documents)*
- Clerks and Deputy Clerks of the Federal Courts  
*(for Federal Court documents)*
- State Secretary of State Offices  
*(for state documents)*

## The Model Apostille Certificate

Apostilles should conform as closely as possible to the model annexed to the Convention

Title

APOSTILLE  
(Convention de La Haye du 5 octobre 1961)

1. Country: .....

This public document

2. has been signed by .....

3. acting in the capacity of .....

4. bears the seal/stamp of .....

Certified

5. at ..... 6. the .....

7. by .....

8. No .....

9. Seal/stamp: ..... 10. Signature: .....

10 numbered standard informational items

Items 1 to 4 relate to the underlying document

Items 5 to 10 relate to the Competent Authority issuing the Apostille



## The Model Apostille Certificate

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

APOSTILLE (Convention de La Haye du 5 octobre 1961)	
1. Country: Pays:	
This public document Le présent acte public	
2. has been signed by a été signé par	
3. acting in the capacity of agissant en qualité de	
4. bears the seal / stamp of est revêtu du sceau / timbre de	
Certified Attesté	
5. at à	6. the le
7. by par	
8. N° numéro	
9. Seal / stamp: Sceau / timbre	10. Signature: Signature

**Bilingual version**

APOSTILLE (Convention de La Haye du 5 octobre 1961)	
1. Country: Pays / País:	
This public document Le présent acte public / El presente documento público	
2. has been signed by a été signé par / a sido firmado por	
3. acting in the capacity of agissant en qualité de / actuando en calidad de	
4. bears the seal / stamp of est revêtu du sceau / timbre de / está revestido del sello / timbre de	
Certified Attesté / Certificado	
5. at à / en	6. the le / el día
7. by par / por	
8. N° numéro / número	
9. Seal / stamp: Sceau / timbre / Sello / timbre	10. Signature: Signature / Firma

**Trilingual version**

## Public documents

- 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 apostilled
- 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

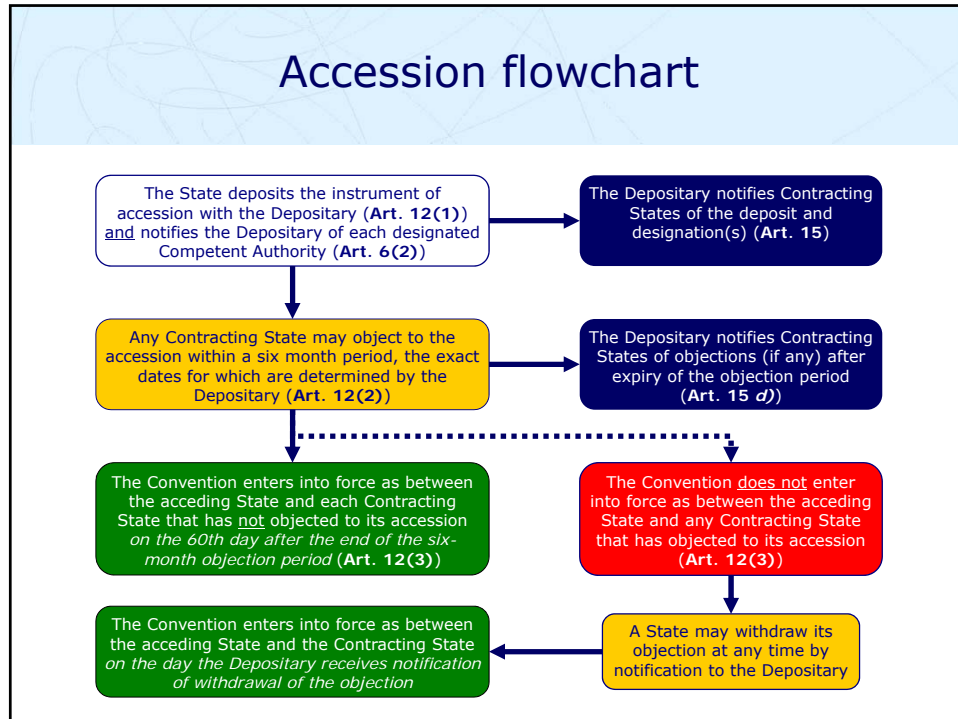
C&R No 14 of 2012 SC

## 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



Thank you

**Christophe Bernasconi**  
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[www.hcch.net](http://www.hcch.net)

