



**Asia-Pacific
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FDI Regulations and the Hague Apostille Convention

Submitted by: World Bank



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







FDI Regulations and the Hague Apostille Convention






*Presentation to APEC
Medan, INDONESIA*

The World Bank Group
June, 2013

Presentation of FDI Regulations Database 2012

Summary Overview	Objectives
<p>FDI Regulations Database (formerly know as Investing Across Borders) is a World Bank Group initiative presenting indicators on countries' laws, regulations, and practices affecting how foreign companies:</p> <ul style="list-style-type: none"> Invest across sectors. Start foreign investments. Arbitrate commercial disputes. Convert and repatriate currency. Employ skilled expatriates. 	<ul style="list-style-type: none"> Respond to information requests for benchmarks on FDI regulations by governments, private sector, development partners and academics. Facilitate policy dialogue by identifying good practices and sharing of reform experiences. Stimulate reforms. Inform reform advisory work, research and analysis.

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FDI Regulations Database 2012: Country coverage (105 countries across 7 regions)

Since 2010: 87 countries across 7 regions

- **Latin America and the Caribbean (LAC – 14 economies):** Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Peru, Venezuela R.B.
- **Sub-Saharan Africa (SSA – 21 economies):** Angola, Burkina Faso, Cameroon, Côte d'Ivoire, Ethiopia, Ghana, Kenya, Liberia, Madagascar, Mali, Mauritius, Mozambique, Nigeria, Rwanda, Senegal, Sierra Leone, South Africa, Sudan, Tanzania, Uganda, Zambia
- **East Asia and the Pacific (EAP – 10 economies):** Cambodia, China, Indonesia, Malaysia, Philippines, Papua New Guinea, Singapore, Solomon Islands, Thailand, Vietnam
- **Eastern Europe and Central Asia (ECA – 20 economies):** Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Kazakhstan, Kosovo, Kyrgyzstan, Macedonia, FYR, Moldova, Montenegro, Poland, Romania, Russian Federation, Serbia, Turkey, Ukraine
- **Middle East and North Africa (MNA – 5 economies):** Egypt Arab Rep., Morocco, Saudi Arabia, Tunisia, Yemen Rep.
- **South Asia (SAR - 5 economies):** Afghanistan, Bangladesh, India, Pakistan, Sri Lanka
- **High-income OECD (12 economies):** Austria, Canada, Czech Rep., France, Greece, Ireland, Japan, Korea Rep., Slovak Rep., Spain, United Kingdom, United States

2012 new economies

- **LAC:** Dominican Republic
- **SSA:** Burundi, Chad, Democratic Rep. of Congo.
- **EAP:** Brunei Darussalam, Hong Kong and Taiwan, China.
- **ECA:** Cyprus
- **MNA:** Algeria, Iraq, Jordan, Syria
- **SAR:** Nepal
- **High-income OECD:** Australia, Germany, Italy, Netherlands, New Zealand

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FDI Regulations Database 2012: Topics covered

Investing across sectors	Starting a foreign investment	Arbitrating and mediating disputes	Hiring skilled expatriates	Converting and transferring currency
<p>Foreign equity ownership restrictions in:</p> <p>Primary sectors: -Mining, oil and gas -Agriculture and forestry</p> <p>Manufacturing: -Electronics manufacturing -Food processing -Manufacturing of basic chemicals</p> <p>Services: -Telecommunications: fixed-line and mobile infrastructure and service provision -Banking -Insurance -Accounting / auditing -Transportation: rail, road (truck), air, water (internal waterways), port operation -Electricity: generation (including renewable), transmission and distribution -Water distribution -Waste management and recycling -Courier services -Hotels / Accommodation -Media: newspaper publishing and TV broadcasting -Higher education</p>	<p>Rules and process of starting a foreign business</p> <p>Land-related legal rights and information access</p> <p>Rules for Special Economic Zones (pilot/research section)</p> <p>Accession to the Hague Apostille Convention is one of the indicators in this topic!</p>	<p>Strength of arbitration and mediation laws</p> <p>Strength of arbitration and mediation institutions</p> <p>Extent of judicial assistance</p> <p>Ease of arbitration process</p> <p>Ease of enforcement process</p>	<p>Rules and process of employing skilled expatriates</p> <p>Process of appealing a rejected application for a work permit</p> <p>Rules and process for obtaining a spousal work permit</p> <p>Restrictions on the membership of the Board of Directors</p>	<p>Rules for currency convertibility and repatriation</p> <p>Process of obtaining and servicing a foreign loan, and repatriating dividends</p> <p>Restrictions on holding bank accounts</p>

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FDI Regulations Database 2012: Methodology

- FDI Regulations Database presents indicators of laws and regulations (**de jure indicators**) and their implementation (**de facto indicators**).
 - They are not indicators of company or investor perception.
 - More than 200 individual data points are presented for each country.
- Limited focus on **5 thematic areas of FDI policy***.
- Data is based on a hypothetical **case study assumptions** tailored for each of topic in order to ensure comparability of responses across countries.
- Surveys developed in consultation with **Expert Consultative Groups (ECGs)**, whose 50+ members include specialists from UNCTAD, OECD, UNCITRAL, leading universities, etc.
- FDI Regulations Database relied on a survey of over 3,500 expert respondents in the 105 economies covered. Respondents include primarily investment promotion institutions, lawyers, accounting and consulting firms, chambers of commerce, and law professors.
- FDI Regulations Database does **not rank** countries, but benchmarks them against a regional average score.
- For a comprehensive list of the project's limitations, including topic-specific ones, please visit our website: www.investingacrossborders.org

* Some aspects of the business environment that matter to investors (such as security, macroeconomic stability, market size, corruption) are not measured by the indicators.

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FDI Regulations Database 2012: How to use it?

- FDI Regulations Database 2012 focuses on regulatory issues related to Foreign Direct Investment and that could be reformed by governments. In that regard, it identifies common areas for regulatory reform that could be considered across economies.
- Initially: **Investing Across Borders**, with a report published in 2010 with data on 85 countries and scoring.
- Now, **FDI Regulations Database 2012** consists in on-demand reports and contributions:
 - South Asia report, May 2012 (at the request of the World Bank South Asia Office of the Chief Economist).
 - Bangladesh Report, June 2012 (at the request of the World Bank South Asia Poverty Reduction and Economic Management (PREM) network as part of a larger Diagnostic Trade Integration Study on Bangladesh).
 - Special report on Brazil, Chile, Colombia, Mexico, and Peru, March 2012 (at the request of the Andean Development Cooperation).
 - Contributions to reports/studies on specific countries/regions: Greece, Tajikistan, APEC, ECA, MENA.

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FDI Regulations findings related to the 1961 Hague Apostille Convention

- Out of the 105 countries surveyed by the project, only 52 are party to the 1961 Hague Apostille Convention.
- Only 12 of them have adopted one of the components of the electronic Apostille Pilot Program.
- Our findings show that majority of the countries covered by the project require some sort of authentication of parent company documents in the country of origin.
- Those countries that are not party to the convention impose a burdensome and lengthy process for the recognition of foreign public documentation in their territory.
- The process consists of a multi-step authentication before various authorities (from civil registry to Ministry of justice, to ministry of foreign affairs and then to the relevant consulate at the state of production, etc.)

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FDI Regulations findings related to the 1961 Hague Apostille Convention: Examples and implications

- Example of Saudi Arabia where a foreign company needs to go through a lengthy and burdensome process for authentication
- Further complications in case of no diplomatic representation in the country of origin
- The main concern faced by foreign investors is the uncertainty surrounding the time needed to complete the authentication/regularization process

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Countries are more likely to reform their laws and adhere to international conventions when that gets recognized

- **Nicaragua** recently acceded to the convention as a result of recommendations from the World Bank Group
- **Tajikistan** and **Kosovo** are both contemplating acceding to the convention

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Conclusions

- The Hague Apostille Convention identified by the World Bank Group's "FDI Regulations" project as a way to improve the investment climate for foreign investors
- The benefits are many for the citizens of member countries as well as investors
- Accession is a fairly easy process
- Cost of accession can be low and the country does not need to lose revenue (can charge for the Apostille)

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Thank you



Annex – The Hague Apostille Convention

Overview of the Hague Apostille Convention

- The *Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* is the most widely ratified Hague Convention to date
- 104 Contracting States
- Extremely useful and applied millions of times each year throughout the world
- Relevance to the lives of citizens and cross-border business
- Simplifies the process of producing public documents abroad, including civil status certificates and notarial acts

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About the Apostille Convention

- Simplifies the authentication of **public documents** to be used abroad: replaces the traditional and often lengthy and cumbersome legalization process with a single formality
- Traditional process often involves multiple authentications:
 - Civil registry
 - Ministry of Justice
 - Ministry of Foreign Affairs
 - Consulate
- Authentication certificate (Apostille) is issued by an authority designated by the State where the public document was executed

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Benefits of the Apostille Convention

- Streamlines administrative formalities for individuals and business and facilitates the international circulation of public documents
 - Cuts red tape
 - Saves time (and sometimes money) for citizens of Tajikistan that need to legalize documents
 - Facilitates **international trade** and **foreign investment**
- Maintains the **integrity** of public document authentication
- Maintains a revenue stream for States that charge **fees** for authentication services
 - It is up to each Contracting State to determine whether or not to charge a fee, whether charging a fee conforms to internal financial regulations, and if so, the fee amount
 - Some States charge a fee, others not. The average fee charged for issuing an Apostille is approximately 15 Euros

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Applicability

- All the following conditions must be met in order for the Apostille Convention to apply
 - The State in which the document was issued is party to the Convention
 - The State in which the document is to be used is party to the Convention
 - The law of the State in which the document was issued considers it to be a public document
 - The state in which the document is to be used requires an Apostille in order to recognize it as a foreign public document

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How to accede to the Convention

- Deposit the instrument of accession with the Depository of the Convention (Ministry of Foreign Affairs of the Netherlands)
- Instrument of accession must be in English or French (or translated into these languages)
- Acceding State must notify the Depository of the Competent Authority it has designated (including name, contact details, competence of each authority if multiple)

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Designation of the Competent Authority

- The acceding State must designate a Competent Authority
 - Each State is free to determine the identity and quantity of the Competent Authority
 - Usually a State will designate an existing authority, but some establish a new one (financial impact of creating a new authority)
 - Examples of Competent Authority: Ministry of Foreign Affairs, Ministry of Interior, Ministry of Justice
- Good practice
 - Decentralize the provision of Apostille services by designating additional Competent Authorities or opening local offices of the existing Competent Authority
 - When designating several Competent Authorities: separate Authority for each territorial unit (province, state, etc.) or separate Authority for each categories of public documents (Ministry of Justice for court documents, Ministry of Education for diplomas, Ministry of Foreign Affairs for civil status records, etc.)

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Requirements of Competent Authority

- Verify the signature on the public document and the capacity in which the person who signed has acted
 - Recommended that States establish a clear procedure for Competent Authorities to verify the authenticity of public documents before issuing Apostilles (ex: database of sample signatures and seals of persons executing public documents)
- Have sufficient resources to issue the expected volume of Apostilles
- Have the capacity to maintain a register of Apostilles issued (best practice: e-register accessible online)

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Objection period

- When a State deposits its instrument of accession with the Depositary, it does not immediately become party to the Convention – six-month objection period
 - Any Contracting State may raise an objection to the new accession (no need to provide reasons)
 - Objection may be withdrawn at any time
- Effect of raising an objection: Convention will not enter into force between the newly acceding State and the objecting State
- Objections are fairly rare
- Examples of recent accessions and objections
 - Mongolia (December 2009): objections from Austria, Belgium, Germany, Greece, and Finland
 - Kyrgyz Republic (July 2011): objections from Austria, Belgium, Germany, and Greece
 - Uzbekistan (April 2012): objections from Austria, Belgium, Germany, and Greece

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Notification requirements

- **Acceding States should notify the following parties of accession to the Convention and its impact:**
 - Relevant authorities (courts, government service agencies, Ministry of Justice, embassies and consulates)
 - The general public (individuals and business groups)
 - Professional groups involved in the circulation of public documents (lawyers, notaries, patent attorneys)