



**Asia-Pacific  
Economic Cooperation**

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2018/SOM1/EC/WKSP2/006

**Technology and the Hague Conventions - Panel  
Intervention: International Instruments to Facilitate  
the Use of Modern Technology for Contract  
Management**

Submitted by: HCCH



**Workshop on the Use of Modern  
Technology for Dispute Resolution and  
Electronic Agreement Management  
Particularly Online Dispute Resolution  
Port Moresby, Papua New Guinea  
3-4 March 2018**



**Asia-Pacific  
Economic Cooperation**



**HCCH**  
HAGUE CONFERENCE ON  
PRIVATE INTERNATIONAL LAW  
CONFÉRENCE DE LA HAYE  
DE DROIT INTERNATIONAL PRIVÉ

# Technology and the Hague Conventions

*Panel intervention: International Instruments to facilitate  
the use of modern technology for contract management*

Port Moresby, Papua New Guinea  
March 2018

**Dr Christophe BERNASCONI**  
Secretary General

# The HCCH, Technology and Contract Management



***Technological Neutrality:*** Hague Conventions and instruments drafted to allow for the possibility of using modern technologies (*even the old ones!*)

*Authenticating signatures for commercial dealings and contractual negotiations:*

- ***Apostille Convention 1961:*** *electronic Apostille Program (e-APP): e-Apostilles and e-Registers of Apostilles (both paper and e-Apostilles)*

*Strategic need to plan for the potential litigation stage, even in contract management:*

- ***Service Convention 1965:*** *“e-Service” developments; electronic transmission of requests*
- ***Evidence Convention 1970:*** *Experts’ Group on the use of video-link; electronic transmission of requests; digital evidence developments*
- ***Choice of Court Convention 2005:*** *definitions such as “in writing; or by any other means of communication which renders information accessible so as to be usable for subsequent reference”*

*HCCH instruments also embrace technology in the family law area, e.g.:*

- ***Maintenance Convention 2007:*** *“i-Support” for cross-border recovery of maintenance obligations*



# Apostille Convention

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

# Apostille Convention:

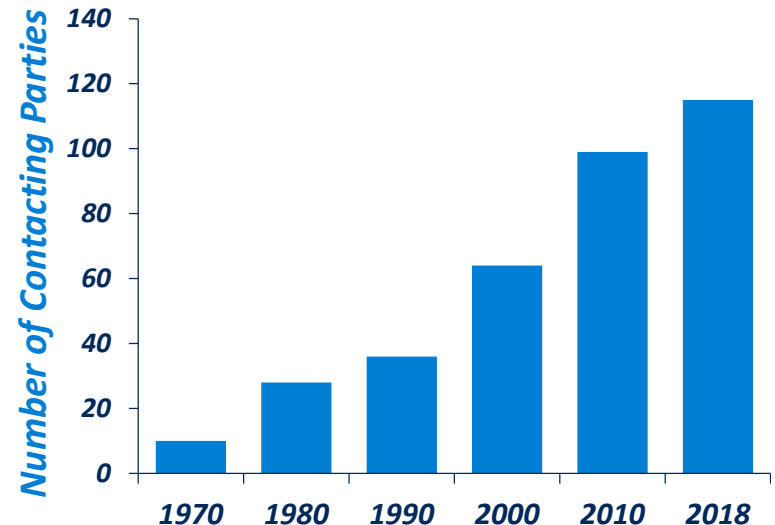
## *Effective and widespread operation*



## ***Contracting Parties***

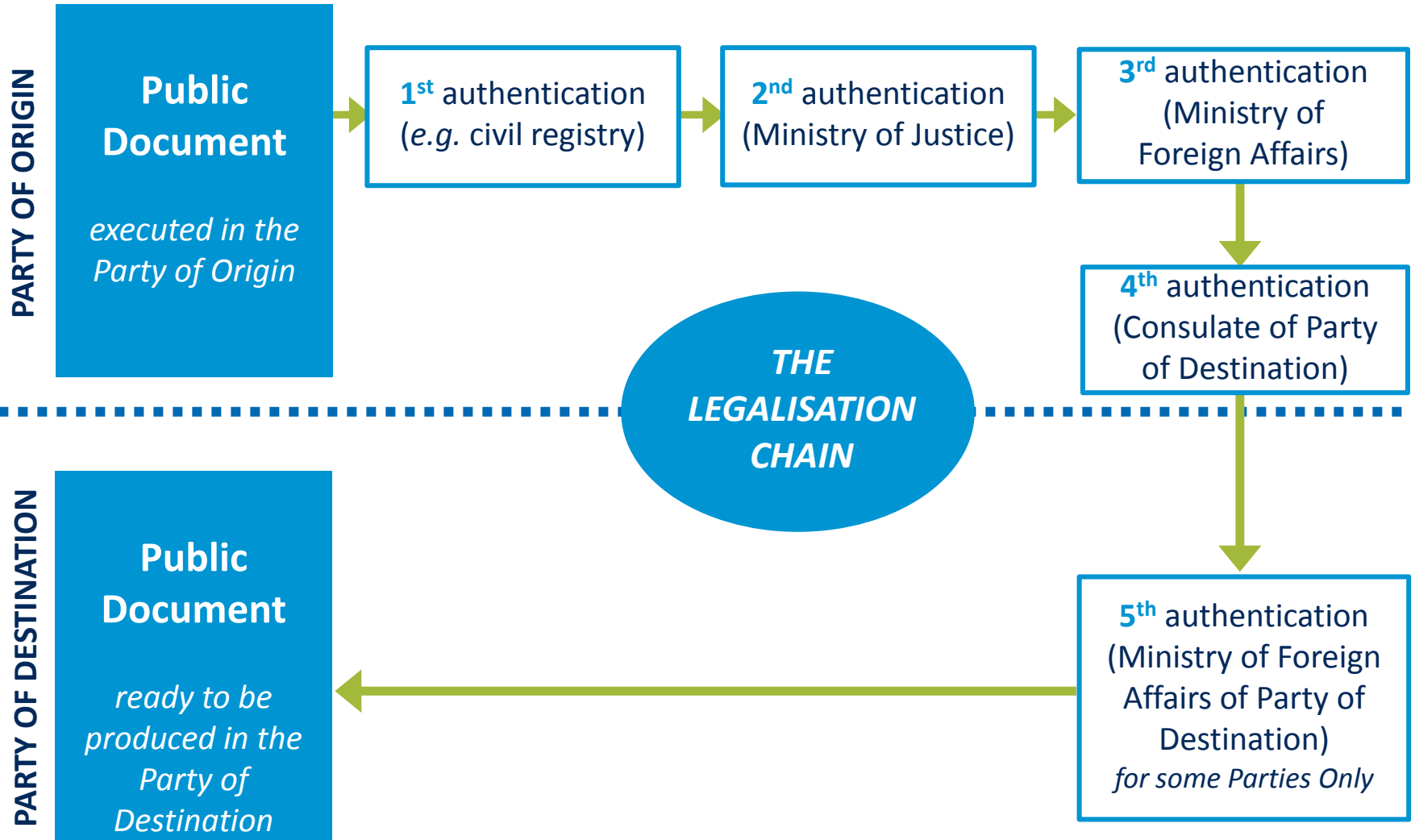
- Most ***widely ratified /acceded to*** of all the Hague Conventions
- ***49 new Contracting Parties*** since 2000
- ***Most widely applied*** Hague Convention, **millions** of Apostilles issued every year, *(including to authenticate signatures in contractual and commercial negotiations)*

Including:  
Australia, Chile, China (Hong Kong SAR),  
Japan, Republic of Korea, Mexico,  
New Zealand, Peru, Russian Federation,  
Singapore, United States of America



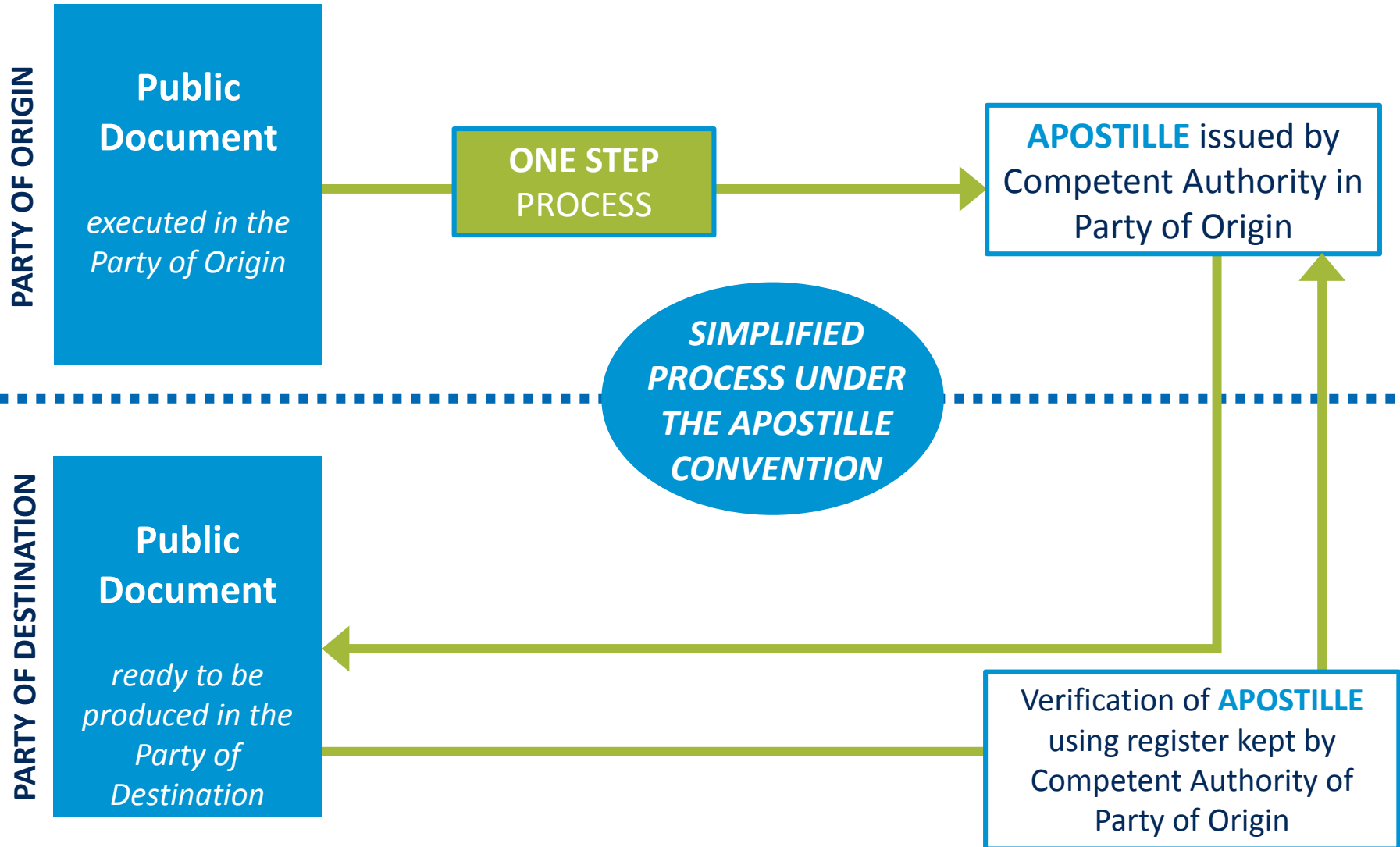
# Production of public documents abroad

## *without* the Apostille Convention



# Production of public documents abroad

## *with* the Apostille Convention



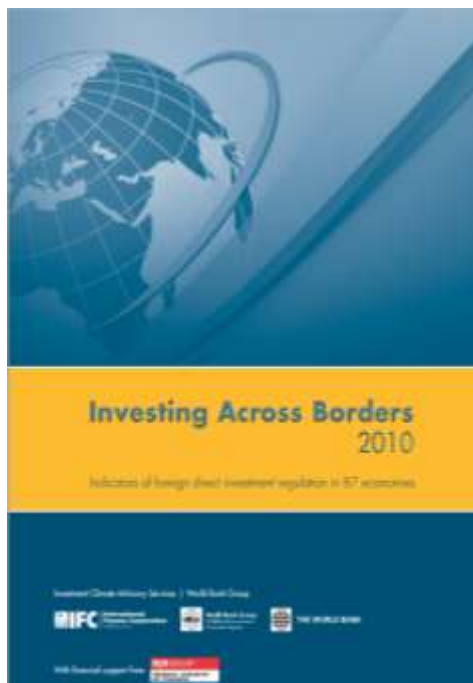
# Principal Advantages



The Apostille Convention facilitates *foreign investment* and *international trade and commerce*



WORLD BANK GROUP



**ICC** INTERNATIONAL CHAMBER OF COMMERCE  
The world business organization

ABOUT ICC | NEWS & MEDIA | GLOBAL INFLUENCE | PRODUCTS & SERVICES | ADVOCACY, CODES & RULES | TRAINING & E

Articles

CLEAR SELECTION

Topics

Arbitration

ATA

Banking

BARMA

BASCAP

BASIS

Business Services

Commercial crime services

Commercial Law & Practice

Competition

Corporate

Responsibility & Anti corruption

Customs & Trade Facilitation

**ICC urges States to ratify Apostille Convention for simplified authentication of public documents**  
Paris, 14 December 2012

Back to the list

ICC is encouraging governments to ratify an international treaty that proposes simplified authentication formalities to produce public documents abroad. ICC is also calling for expanded and modernized use of the treaty drafted by the Hague Conference on Private International Law.

Cross-border trade of goods can require a considerable amount of paperwork whose origin often need authenticating by foreign officials and other third parties. Known also as the Apostille Convention, the treaty replaces the costly and burdensome process of legalization that typically involves a chain of certificates. With a single formality an 'Apostille' cuts red tape in a document's country of origin by certifying its authenticity vis-a-vis foreign administrations.

The Apostille Convention – whose full title is *The Hague Convention of 5 October 1961 Abolishing the Requirement of Legalization for Foreign Public Documents* – has been ratified by over 100 States since it was adopted in 1961, thereby establishing the Apostille system as a global standard recognized and expected by parties involved in cross-border transactions.

Endorsed by the World Bank Group & International Chamber of Commerce



# Additional benefits

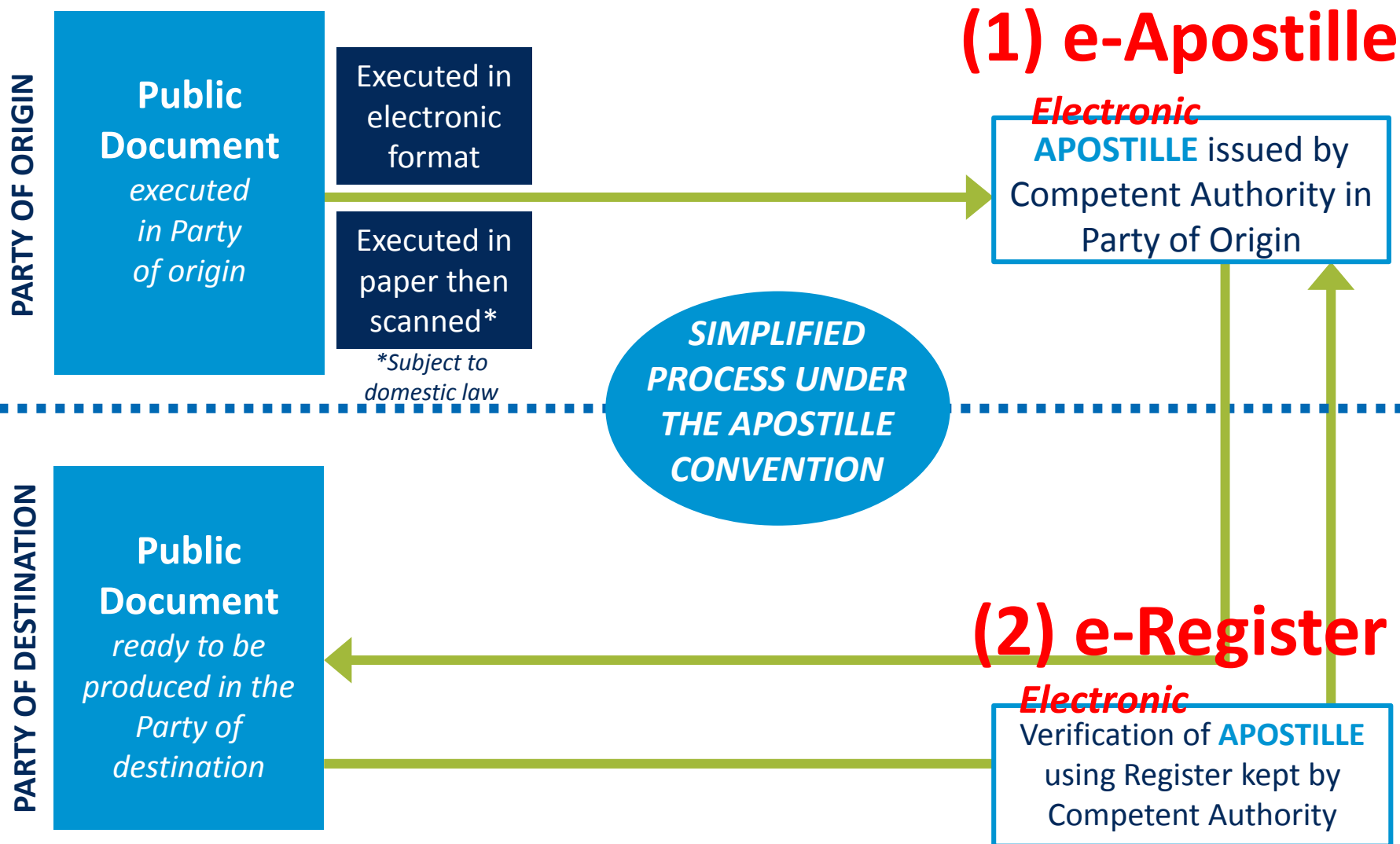


- ***Saving time and money:*** the one-step process reduces the time and costs of authenticating documents
- ***Facilitates private and commercial cross-border exchanges:*** better for mobility of people and companies; greatly assists when authentications are required in *cross-border contract management*
- ***International co-operation:*** once issued, the Apostille is recognised in all other Contracting Parties to the Convention
- ***Freeing up consular resources:*** allows consular staff to concentrate on serving citizens' and companies' other needs
- ***Accessibility:*** especially in capital cities without many foreign missions, or for States without many missions abroad (*Apostille system eliminates the need to find the nearest consular mission*)

# The e-APP (electronic Apostille Program)



## Two Components



# e-APP: The First Decade



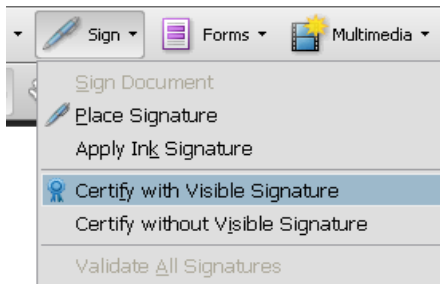
2006 Launch e-APP		
2009	2011	2018
10	62	over 200
<i>Competent Authorities</i>		
9	12	32
<i>Contracting Parties having implemented one or both components of the e-APP</i>		

# The e-Apostille Component



- An *electronic file that has been digitally signed* (usually using Adobe® PDF technology)
- *transmitted by electronic means*, such as email or otherwise made available
- for the purpose of *download* or *viewing from a website*

*Electronic file contains an Apostille **with** either an electronic public document, or a paper document which has been subsequently scanned*

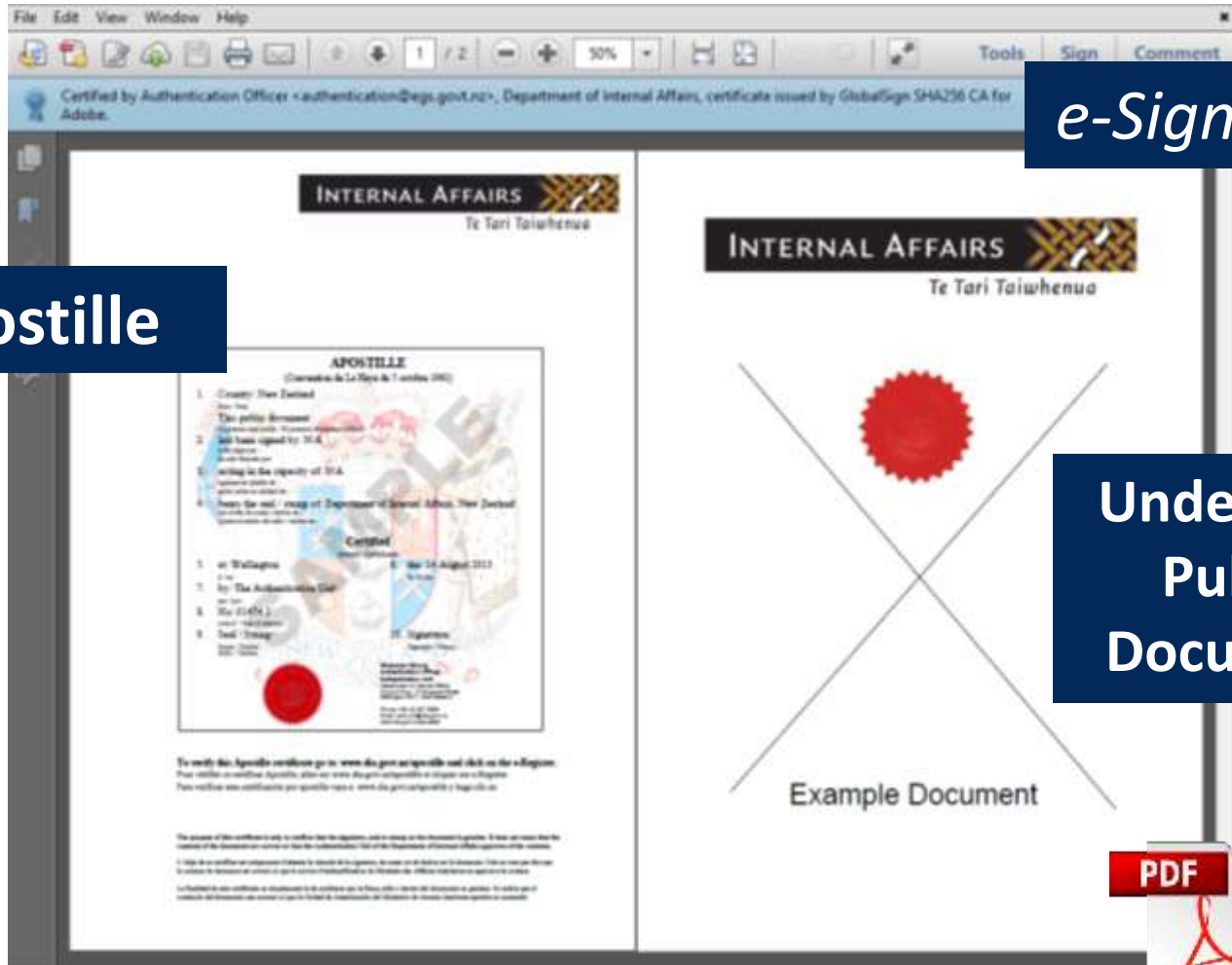


- e-Apostilles are issued in **11 Contracting Parties:**  
*Austria, Belgium, Bahrain, Chile, Colombia, Estonia, New Zealand, Moldova, Slovenia, Spain, one state in the United States of America*
- *Low number of rejections* worldwide

# e-Apostille Component: *Single electronic file*



*e.g. New Zealand*



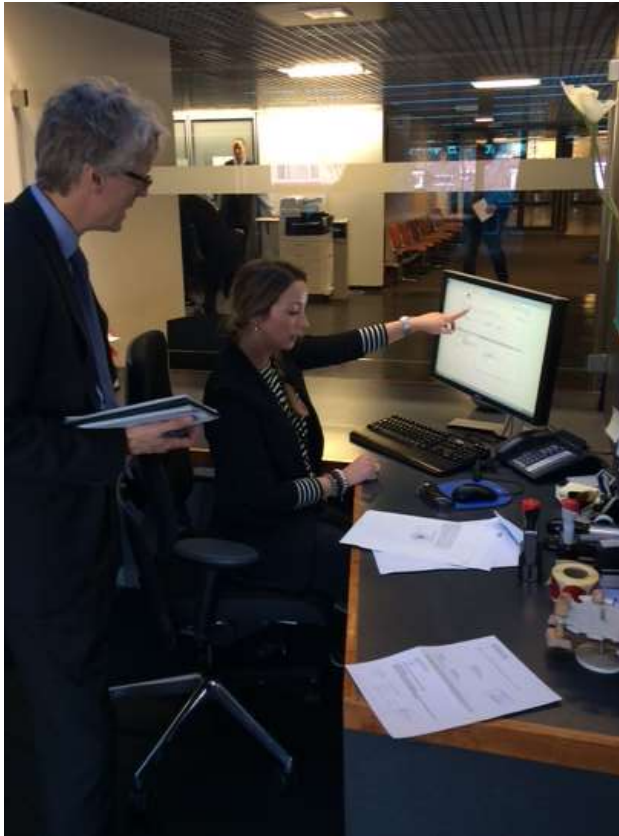
*e-Signature*

**Apostille**

**Underlying  
Public  
Document**



# The e-Register Component



- **Article 7** requirements:
  - *Apostille **number** and **date***
  - ***name** and **capacity** of the person signing*
  - *and/or name of the **authority** affixing the seal/stamp*
- Enables recipient to **verify the origin** of an Apostille **easily and securely online** (typically via the website of the Competent Authority)
- e-Register is used to record the particulars of **all Apostilles issued** by the Competent Authority (*i.e.*, both paper and electronic Apostilles)

# e-Register Component: Online Verification

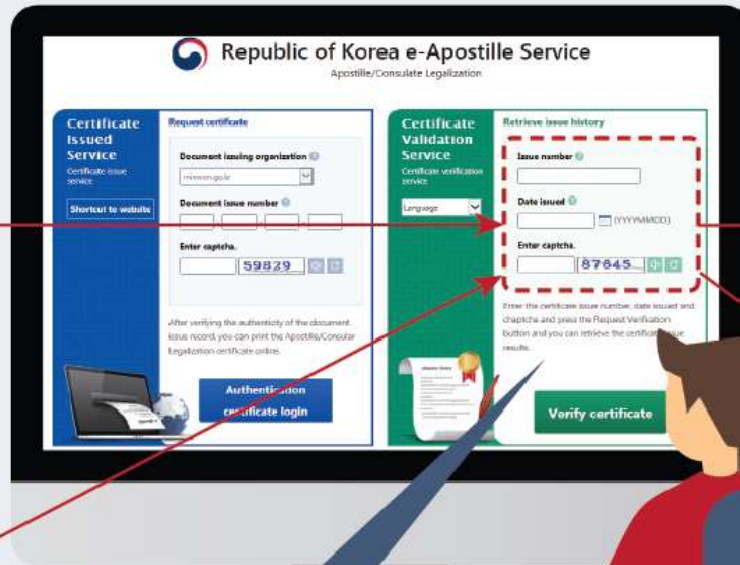


## e.g. Republic of Korea

### 1 Sticker Type Apostille



<http://www.apostille.go.kr>



### 1



### 2 Paper Type Apostille



Foreign Officer

1. Input Apostille Number & Issued Date
2. Input Captcha code

### 2



# e-Register Component: QR Codes and Mobile devices



e.g. Republic of Korea

**APOSTILLE**  
(Convention de La Haye du 5 octobre 1961)

1. Country	Republic of Korea		
This public document			
2. has been signed by	Kim Chung Seok		
3. acting in the capacity of	Mayor of Yeosu City Jeollanam-do		
4. bears the seal / stamp of	Yeosu City Jeollanam-do		
Certified			
5. at	Seoul	6. the	2018/Oct/18
7. by	The Ministry of Foreign Affairs	8. No	KAAC09019002
9. Seal / stamp		10. Signature	

Additional Information of Underlying Document

Issued No : [REDACTED]  
Issued Date : 2018Oct18

이 인증 표시 없이는 위변조를 확인할 수 있는 보안 장치를 포함하고 있습니다.  
If Underlying Document has the own forgery prevention.

본 아포스티유는 전자정부 홈페이지를 통해 발급되었습니다. 이를 확인할 위해 인증서용-인증필수 사이트.  
This Apostille was issued from Korea e-GOV Web site. To verify that issuance of apostille see under the site.  
(France) le justificatif de certifié doit être pour appareil sécurisé  
(Spain) De apostille sin el marcado nuevo/antiguo, la verificación del certificado emitido

<https://www.apostille.go.kr/> Tel : +82-2-4321-0404



# Implementation of the e-APP



## *Comprehensive and co-ordinated approach*

- Either or both e-APP components may be implemented independently

## *No additional obligation upon Parties*

- Participation not contingent on a formal agreement or binding commitment

## *Convention keeps pace with technology*

- Importance of actively involving IT experts at the early stages

## *Communication and exchange*

- Sharing of experiences, resources and statistics (both with other Contracting Parties and the Permanent Bureau)





# Service Convention

*Hague Convention of 15 November 1965 on the Service Abroad of  
Judicial and Extrajudicial Documents in Civil or Commercial Matters*

# Technology and the Service Convention



- 1) Document to be transmitted for service from ***one Contracting Party to the Convention to another Contracting Party***
- 2) Document to be served ***must be judicial or extra-judicial*** in nature
- 3) Document to be served must relate to a ***civil or commercial matter***
- 4) The ***address*** of the person to be served ***must be known***

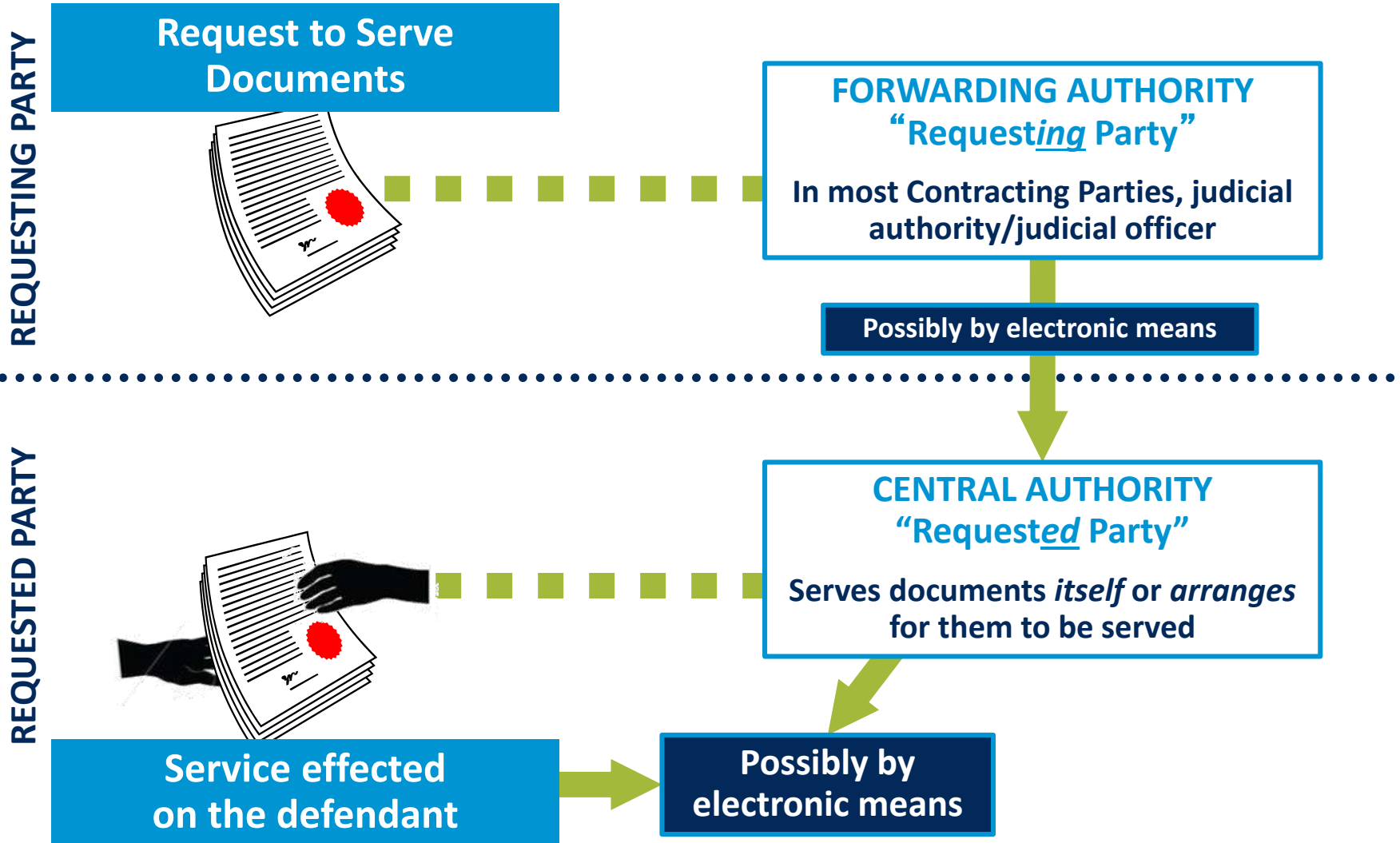
If email is to be used, is service still “abroad” ?



Therefore, knowledge solely of general email “addresses” (@hotmail.com or @gmail.com) is not sufficient for the purposes of the Convention

***BUT e-Communication between authorities is encouraged:  
e.g. forwarding documents by email, fax, secure platform, etc.***

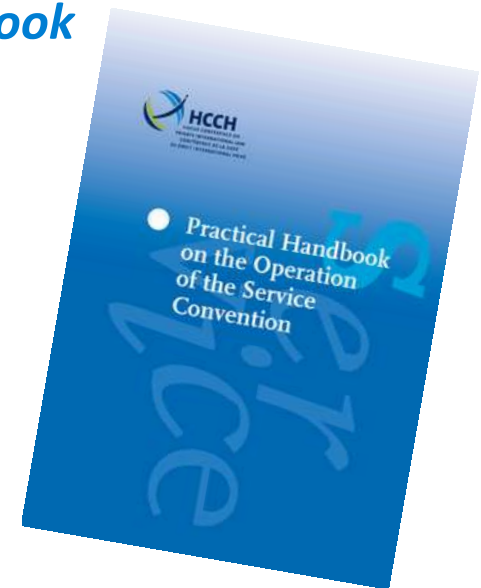
# Service abroad *with* the Convention: Main Channel



# The Main Channel



- ***Service by electronic means*** may be possible under ***the law of the Requested Party*** (or service by a particular method):
  - ***Service of process***  
(with prior authorisation of the defendant, especially in civil law States)
  - ***Service of other judicial or extrajudicial documents***
- Use of ***information technology in the operation of the Service Convention*** discussed in ***Annex 8*** of the ***Service Handbook***
- ***Rapidly evolving area of law*** - research examples from ***case law***:
  - ***Service by e-mail*** (incl. service of process) generally used in *common law* as “alternative” or “substituted” service
  - ***Service by message board, Facebook, Twitter, and LinkedIn***



# Alternative Channels: Examples



## Postal channel → Art. 10(a)

- *“Functional equivalence” approach:*  
may include information technologies such as e-mail or fax
- Provided that Contracting Party has **not objected** to Article 10(a) and to the extent that such documents are sent by **postal agencies**

## Direct communication → Art. 10(b) and (c)

- *Secure e-communication platforms:*
  - *“e-Palais”:* allows judicial officers to serve documents by electronic means on lawyers and public prosecutors in France
  - *EJS (e-Justice Service of Documents):* seeks secure cross-border exchange of documents between judicial officers in the European Union



# Evidence Convention

*Hague Convention of 18 March 1970 on the Taking  
of Evidence Abroad in Civil or Commercial Matters*

# Technology and the Evidence Convention

## *Experts' Group*



- ***Original Protocol Proposal: Evidence Special Commission – May 2014***  
*Approval: Council on General Affairs and Policy – March 2015*
- ***Meeting of the “Experts’ Group on the Use of Video-link and Other Modern Technologies in the Taking of Evidence Abroad” – December 2015***  
*Approval: Council on General Affairs and Policy – March 2016*
- ***Subgroup: Formation and continuation of work 2016-2018***  
*Approval: Council on General Affairs and Policy – March 2016*
- ***Country Profile Questionnaire & Guide to Good Practice (2017-2018)***





# Technology and the Evidence Convention: Handbook, Country Profiles, Guide to Good Practice



## Evidence Handbook (3<sup>rd</sup> edition, 2016)

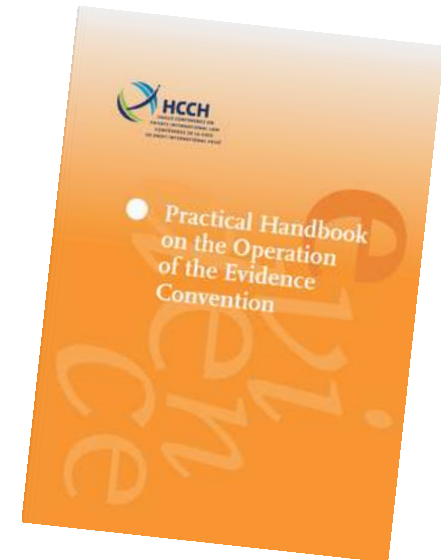
- Case law and developments including **electronic transmission of requests** (as for the Service Convention), **digital evidence** and “**e-Discovery**”
- **Annex 6 – dedicated to the Use of Video-links**

## Country Profile Responses

- **Individualised questionnaires from Contracting Parties**
- **Legal and practical considerations, but also specific technical and security aspects:** use of licensed software and commercial providers, minimum standards and system requirements, specifications related to the hearing room

## Guide to Good Practice (expected 2019)

- A **comprehensive Guide specifically addressing the legal, practical and technical considerations of taking evidence abroad using video-link technology, intended to expand upon and supersede the 2016 Handbook Annex**





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