

Legalization of Foreign Public Documents With reference to the Hague Conference on Private International Law (*Hague Apostille Convention*)

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It is understood by all of us that, whenever we are submitting any Foreign documents to the Legal authorities such as ROC or MCA, signed by the persons outside India or Foreign Nationals or Bodies Corporate outside India, the said documents are required to be attested by the Indian Consulate of the home country in which the documents are being produced or executed. The said process of the attestation by the India Consulate, is normally termed as the legalization.

Since 1893, the Hague Conference on Private International Law (HCCH), a melting pot of different legal traditions, develops and services Conventions which respond to global needs in the areas of International Legal cooperation and litigation, International Commercial and Finance Law covering Contract Act, Law of Torts, Laws relating to Securities, Trusts, Recognition to the Companies etc.

Apostille Convention

The Hague Convention of 5th October 1961 abolishing the Requirement of Legalisation for Foreign Public Documents (*Hague Apostille Convention*) facilitates the circulation of public documents executed in one State party to the Convention, to be produced in another State party to the Convention just by making it "Apostille".

Who are these "State Party" to the convention? And what is the meaning of Apostille?

It is important to make a distinction between a Member State and State Party to the convention. Currently, HCCH is having 65 Member States (List of Member states at Annexure - I), and there are 87 State Party to the Apostille Convention (List of Non- Member states at Annexure - II). This signifies that there is a difference in between the State's decision to join the Hague Conference on Private International Law (HCCH), *i.e.*, the Organisation as such, and a State's decision to join one of the 36 Conventions adopted so far under the support of the HCCH and a State may become a party to any Hague Convention whether or not that State is (also) a Member of the HCCH.

"Member State" - relates to a State, which is a Member of the HCCH, which means the State, which has participated in one or more of the earlier Sessions of the Conference, and has accepted its Statute.

"State party" refers to a State that has consented to be bound by a Convention *for which that Convention is in force*.

Apostille

Apostille means a Certificate or a "Apostille Certificate" issued by a *Competent Authority* designated by the State on whose territory the public document has been executed. The list of Competent Authorities is notified by each Contracting State who is a party to the convention. This certificate certifies the authenticity of the signature, the capacity in which the person signing the document has acted and, wherever required, the identity of the seal or stamp which the document bears.

Applicability of the Convention:

1. The Hague Apostille Convention applies only as between States parties
2. The Convention applies only to public documents.

- These are documents emanating from an *authority or official connected with a court or tribunal* of the State (including documents issued by an administrative, constitutional or ecclesiastical court or tribunal, a public prosecutor, a clerk or a process-server);
- *administrative documents;*
- *notarial acts; and*
- *official certificates*, which are placed on documents signed by persons in their private capacity, such as official certificates recording the registration of a document or the fact that it was in existence on a certain date and official and notarial authentications of signatures.

The main examples of public documents for which Apostilles are issued in practice include birth, marriage and death certificates; extracts

from commercial registers and other registers; patents; court rulings; notarial acts and notarial attestations of signatures; academic diplomas issued by public institutions

3. The Convention however does not apply to documents executed by diplomatic or consular agents or to administrative documents dealing directly with commercial or customs operations (e.g., certificates of origin or import or export licenses etc.)

It is noteworthy to go through the various provisions of the Statute of the Apostille Convention as produced below which are very significant to understand the very purpose of the Convention.

The Statute of the Apostille Convention;

The States signatory to the present Convention,

Desiring to abolish the requirement of diplomatic or consular legalisation for foreign public documents,

Have resolved to conclude a Convention to this effect and have agreed upon the following provisions:

Article 1

The present Convention shall apply to public documents which have been executed in the territory of one Contracting State and which have to be produced in the territory of another Contracting State.

For the purposes of the present Convention, the following are deemed to be public documents:

- a) documents emanating from an authority or an official connected with the courts or tribunals of the State, including those emanating from a public prosecutor, a clerk of a court or a process-server ("huissier de justice");
- b) administrative documents;
- c) notarial acts;
- d) official certificates which are placed on documents signed by persons in their private capacity, such as official certificates recording the registration of a document or the fact that it was in existence on a certain date and official and notarial authentications of signatures.

However, the present Convention shall not apply:

- a) to documents executed by diplomatic or consular agents;
- b) to administrative documents dealing directly with commercial or customs operations.

Article 2

Each Contracting State shall exempt from legalisation documents to which the present Convention applies and which have to be produced in its territory. For the purposes of the present Convention, legalisation means only the formality by which the diplomatic or consular agents of the country in which the document has to be produced 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 it bears.

Article 3

The only formality that may be required in order 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 it bears, is the addition of the certificate described in Article 4, issued by the competent authority of the State from which the document emanates.

However, the formality mentioned in the preceding paragraph cannot be required when either the laws, regulations, or practice in force in the State where the document is produced or an agreement between two or more Contracting States have abolished or simplified it, or exempt the document itself from legalisation.

Article 4

The certificate referred to in the first paragraph of Article 3 shall be placed on the document itself or on an "allonge", it shall be in the form of the model annexed to the present Convention.

It may, however, be drawn up in the official language of the authority which issues it. The standard terms appearing therein may be in a second language also. The title "Apostille (Convention de La Haye du 5 octobre 1961)" shall be in the French language.

Article 5

The certificate shall be issued at the request of the person who has signed the document or of any bearer.

When properly filled in, it will 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 the document bears.

The signature, seal and stamp on the certificate are exempt from all certification.

Article 6

Each Contracting State shall designate by reference to their official function, the authorities who are competent to issue the certificate referred to in the first paragraph of Article 3.

It shall give notice of such designation to the Ministry of Foreign Affairs of the Netherlands at the time it deposits its instrument of ratification or of accession or its declaration of extension. It shall also give notice of any change in the designated authorities.

Article 7

Each of the authorities designated in accordance with Article 6 shall keep a register or card index in which it shall record the certificates issued, specifying:

- a) the number and date of the certificate,
- b) the name of the person signing the public document and the capacity in which he has acted, or in the case of unsigned documents, the name of the authority which has affixed the seal or stamp.

At the request of any interested person, the authority which has issued the certificate shall verify whether the particulars in the certificate correspond with those in the register or card index.

Article 8

When a treaty, convention or agreement between two or more Contracting States contains provisions which subject the certification of a signature, seal or stamp to certain formalities, the present Convention will only override such provisions if those formalities are more rigorous than the formality referred to in Articles 3 and 4.

Article 9

Each Contracting State shall take the necessary steps to prevent the performance of legalisations

by its diplomatic or consular agents in cases where the present Convention provides for exemption.

Article 10

The present Convention shall be open for signature by the States represented at the Ninth Session of the Hague Conference on Private International Law and Iceland, Ireland, Liechtenstein and Turkey.

It shall be ratified, and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 11

The present Convention shall enter into force on the sixtieth day after the deposit of the third instrument of ratification referred to in the second paragraph of Article 10.

The Convention shall enter into force for each signatory State, which ratifies subsequently on the sixtieth day after the deposit of its instrument of ratification.

Article 12

Any State not referred to in Article 10 may accede to the present Convention after it has entered into force in accordance with the first paragraph of Article 11. The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in subparagraph *d)* of Article 15. Any such objection shall be notified to the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force as between the acceding State and the States which have raised no objection to its accession on the sixtieth day after the expiry of the period of six months mentioned in the preceding paragraph.

Article 13

Any State may, at the time of signature, ratification or accession, declare that the present Convention shall extend to all the territories for the

international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned.

At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.

When the declaration of extension is made by a State which has signed and ratified, the Convention shall enter into force for the territories concerned in accordance with Article 11. When the declaration of extension is made by a State which has acceded, the Convention shall enter into force for the territories concerned in accordance with Article 12.

Article 14

The present Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 11, even for States which have ratified it or acceded to it subsequently.

If there has been no denunciation, the Convention shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands at least six months before the end of the five year period.

It may be limited to certain of the territories to which the Convention applies.

The denunciation will only have effect as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 15

The Ministry of Foreign Affairs of the Netherlands shall give notice to the States referred to in Article 10, and to the States which have acceded in accordance with Article 12, of the following:

- a) the notifications referred to in the second paragraph of Article 6;
- b) the signatures and ratifications referred to in Article 10;

- c) the date on which the present Convention enters into force in accordance with the first paragraph of Article 11;
- d) the accessions and objections referred to in Article 12 and the date on which such accessions take effect;
- e) the extensions referred to in Article 13 and the date on which they take effect;
- f) the denunciations referred to in the third paragraph of Article 14.

In witness whereof the undersigned, being duly authorised thereto, have signed the present Convention.

Done at The Hague the 5th October 1961, in French and in English, the French text prevailing in case of divergence between the two texts, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which a certified copy shall be sent, through the diplomatic channel, to each of the States represented at the Ninth Session of the Hague Conference on Private International Law and also to Iceland, Ireland, Liechtenstein and Turkey.

Applicability in India:

Recently the Ministry of External Affairs had vide the Notification L161/1/2003 dated 31st March 2006 has notified that India has accepted the Hague Convention and it has entered into force for India w.e.f. 14th July 2005. The Convention has become effective for India and it is obliged to accept the Apostille issued by the other States Parties to the convention except those received from Belgium, Germany, Finland, Netherlands and Spain who has objected to the India's accession within the prescribed time when the information was circulated by the Secretariat of the Hague Conference to all States parties under the provisions of the Convention.

In the light of above discussion, now it is clear that the process of legalisation of Foreign documents has been relaxed to the extent that the said documents accompanying "Apostille Certificate" can be accepted by the Legal Authorities in India.

Annexure –I

List of Member Sates of HCCH Organisation

1	Albania	34	Luxembourg
2	Argentina	35	Malaysia
3	Australia	36	Malta
4	Austria	37	Mexico
5	Belarus	38	Monaco
6	Belgium	39	Morocco
7	Bosnia and Herzegovina	40	Netherlands
8	Brazil	41	New Zealand
9	Bulgaria	42	Norway
10	Canada	43	Panama
11	Chile	44	Paraguay
12	China, People's Republic of	45	Peru
13	Croatia	46	Poland
14	Cyprus	47	Portugal
15	Czech Republic	48	Romania
16	Denmark	49	Russian Federation
17	Egypt	50	Serbia
18	Estonia	51	Slovakia
19	Finland	52	Slovenia
20	France	53	South Africa
21	Georgia	54	Spain
22	Germany	55	Sri Lanka
23	Greece	56	Suriname
24	Hungary	57	Sweden
25	Iceland	58	Switzerland
26	Ireland	59	The former Yugoslav Republic of Macedonia
27	Israel	60	Turkey
28	Italy	61	Ukraine
29	Japan	62	United Kingdom of Great Britain and Northern Ireland
30	Jordan	63	United States of America
31	Korea, Republic of	64	Uruguay
32	Latvia	65	Venezuela
33	Lithuania		

Annexure II

List of Non-Member States

1	Andorra	19	Kazakhstan
2	Antigua and Barbuda	20	Lesotho
3	Armenia	21	Liberia
4	Azerbaijan	22	Liechtenstein
5	Bahamas	23	Malawi
6	Barbados	24	Marshall Islands
7	Belize	25	Mauritius
8	Botswana	26	Moldova, Republic of
9	Brunei Darussalam	27	Namibia
10	Colombia	28	Niue
11	Cook Islands	29	Saint Kitts and Nevis
12	Dominica	30	Saint Lucia
13	Ecuador	31	Saint Vincent and the Grenadines
14	El Salvador	32	Samoa
15	Fiji	33	San Marino
16	Grenada	34	Seychelles
17	Honduras	35	Swaziland
18	India	36	Tonga