

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

### ***Purpose of the Convention***

The Apostille Convention facilitates the circulation of public documents executed in one State party to the Convention and to be produced in another State party to the Convention.<sup>1</sup> It does so by replacing the cumbersome and often costly formalities of a full legalisation process (chain certification) with the mere issuance of an Apostille (also called Apostille Certificate or Certificate). The Convention has also proven to be very useful for States that do not require foreign public documents to be legalised or that do not know the concept of legalisation in their domestic law: the citizens in these States enjoy the benefits of the Convention whenever they intend to produce a domestic public document in another State party which, for its part, requires authentication of the document concerned.

### ***Public documents***

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;<sup>2</sup> etc. Apostilles may also be issued for a certified copy of a public document. On the other hand, the Convention neither applies to documents executed by diplomatic or consular agents nor to administrative documents dealing directly with commercial or customs operations (*e.g.*, certificates of origin or import or export licenses).

### ***Who may issue an Apostille and how to assess the origin of an Apostille?***

Apostilles may only be issued by a *Competent Authority* designated by the State from which the public document emanates (for more information, including the list of Competent Authorities designated by the Contracting States, contact details of Competent Authorities and other practical information such as the price for an Apostille, see the "Apostille Section" on the HCCCH website). *The Permanent Bureau (Secretariat) of the Hague Conference on Private International Law does not issue Apostilles*. The Apostille is placed by the Competent Authority on the public document itself or on an *allonge*. The Apostille should conform as

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<sup>1</sup> The Apostille Convention only applies as between States parties. For a comprehensive and updated list of Contracting States, see the "Status table of the Apostille Convention", which is available on the "Apostille Section" of the HCCCH website at < [www.hcch.net](http://www.hcch.net) >. Among all Hague Conventions, the Apostille Convention has attracted the highest number of ratifications and accessions. The Convention is applied millions of times a year.

<sup>2</sup> Diplomas issued by private institutions may not be apostilled directly; a 'private' diploma may, however, bear an official certificate issued by a notary, solicitor, agency or any other person or authority competent under the law of the State of origin of the diploma to authenticate the signature on the diploma. This official certificate is a public document under the Convention and thus may be apostilled. In such a case the Apostille does not relate to the diploma itself; instead it certifies the authenticity of the certificate on the diploma.

closely as possible to the Model annexed to the Convention. In addition, each Competent Authority is required to keep a Register in which it records the Apostilles it has issued. The Registers, which may be accessed by any interested person, are an essential tool to combat fraud and assess the origin of an Apostille in case of doubt.

### ***The effects 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 the document bears. The Apostille does not relate to the content of the underlying document itself (*i.e.*, the apostilled document).

### ***Monitoring of the Convention***

The Apostille Convention's practical operation was last reviewed by a Special Commission in 2009. The Special Commission confirmed the "very wide use and effectiveness" of the Convention, as well as the "absence of any major practical obstacle". The Special Commission further recalled Conclusion & Recommendation No 4 of the 2003 Special Commission and reiterated, that the spirit and letter of the Convention 'do not constitute an obstacle to the usage of modern technology' and that the Convention's application and operation can be further improved by relying on such technology. This finding was confirmed by the 5<sup>th</sup> *International Forum on the electronic Apostille Pilot Program (e-APP) and Digital Authentication* (held in London in 2009).

### ***The e-APP***

In April 2006, the HCCH and the National Notary Association of the USA officially launched the electronic Apostille Pilot Program (e-APP). Under the e-APP, the HCCH and the NNA are, together with any interested State, (or any of its internal jurisdictions), developing, promoting and assisting in the implementation of low-cost, operational and secure software for (i) the issuance and use of electronic Apostilles (e-Apostilles) and (ii) the creation and operation of electronic Registers of Apostilles (e-Registers).

The e-APP modernises the operation of the Apostille Convention by extending it into the electronic medium without changing its nature and without having to change its content; the e-APP makes the overall operation of the Convention much more effective, dramatically enhances security and offers a very powerful and effective deterrent to fraud. Most importantly, all the material developed under the e-APP is offered to any Competent Authority at not cost.<sup>3</sup> For more information on the e-APP, go to < [www.e-APP.info](http://www.e-APP.info) >.

The 2009 Special Commission noted its entry into practical use in various jurisdictions, and that several States are actively pursuing implementation of one or both components of the e-APP. As at August 2009, already ten jurisdictions have implemented one or more components of the e-APP.

For additional information, please visit the Hague Conference's Web site at <[www.hcch.net](http://www.hcch.net)> or contact the Permanent Bureau of the Hague Conference at: [secretariat@hcch.net](mailto:secretariat@hcch.net).

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<sup>3</sup> The two main components of the e-APP consist of 1) comprehensive explanatory material as to how Competent Authorities may use out-of-the-box PDF technology and digital certificates to issue e-Apostilles, and how third parties can use such e-Apostilles and, 2) open-source software for the creation and operation of e-Registers by Competent Authorities, and an explanation as to how third parties can use such e-Registers. An e-Register under the e-APP allows for easy online queries by third parties to verify the origin of an Apostille without Competent Authorities having to answer these queries individually by phone, email or otherwise. This being said, an e-Register as suggested under the e-APP does not allow for "fishing expeditions" – persons do not have unlimited access to all the information stored in an e-Register but can only verify whether or not an Apostille they have been presented with has really been issued by the Competent Authority whose name appears on the Apostille. To access the relevant e-Register, a person must provide the date and the number of the Apostille he or she has been presented with.