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The Handbook of the Apostille
Convention.

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“DILIGITE JUSTITIAM QUI JUDICATIS TERRAM.” “Ye who judge the earth, give diligent love to justice”

The *Hague Convention of October 05, 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* (the Hague Convention, Apostille Convention or the Convention) is the most accepted and applied of all the international treaties in the area of international legal and administrative co-operation. The final text of the Convention was adopted by the Hague Conference at its Ninth Session on October 26th 1960 and was first signed and ratified on October 5th 1961 by 21 countries. Nowadays the Hague Convention is in force in more than 100 States from all major regions representing all major legal systems of the world, but two third of them had joined in the preceding 25 years alone, demonstrating the exponential growth of the Convention.

The purpose of the Convention was to abolish the requirement of legalization and to facilitate the use of public documents abroad. The legalization procedure was based in the certification of authenticity of a signature, seal or stamp on a public documents by a series of public official along a “chain” that typically involved a number of links, which resulted in a lengthy and costly process. By introducing a simplified authentication process, the Convention facilitates the use of public documents abroad. Ideally, this purpose is pursued by allowing all public documents to be apostilled directly without the need for prior authentication within the State of origin. Indeed, this “one step process” is what the drafters had in mind when the discussion to issue the Apostille Convention took place more than 50 years ago, and nowadays it is how Apostilles are issued in most Contracting States. The Apostille Convention abolishes the legalization process and replaces it with a single formality: the issuance of an authentication certificate -called apostille- by an authority designated by the State of origin.

Another relevant aspect to be considered is that although the Convention has been in forced for more than 50 years and several millions apostilles are issued around the world every year, no amendment of the original text has been needed nor an adoption of a protocol to the Convention. This, however it does not mean that the appliance of the Convention has been exempted of several issues of interpretation and practical implementation when issuance an apostilles all over the world. For this purpose, and in order to facilitate the appliance and the interpretation of the Convention, the Special Commission of the Hague Conference² published the Handbook which has been designed to address issues that arise on the contemporary operation of the Convention, and also seeks to discuss common practical issues in greater depth. Although the Handbook was originally designed to assist the competent authorities to apply the Convention, we consider it is a very useful tool to all legal advisors who are involved in the day to day issuance or reception of apostilles in his daily legal work.

The Handbook is structured as follows:

Part 1 provides an overview of the background and context of the Convention.

Part 2 provides information on the role and functioning of Competent Authorities.

1.- Most of the general notes of this article have been taken form the text of the Handbook of the Apostille Convention. This document may be consulted in: www.hcch.net

2.- The Special Commission is composed of experts designated by members of the Hague Conference and by contracting States of the Convention, relevant international organizations in an observer capacity.

Part 3 describes the scope of the Convention, including a detailed analysis of its substantive scope.

Parts 4 and 5 describe the various stages of the Apostille process, from the moment and Apostille is requested in one Contracting State, to the moment is produced in another- and offer Competent Authorities advice in good practice.

Part 6 provides an introduction to the electronic Apostille Program (e-APP) and explains what it means for Competent Authorities and the international circulation of public documents in the electronic age.

In this article, we will provide some highlights of the Part 3 of the Handbook, which we consider are very helpful for the daily and practical appliance of the Convention.

In respect the scope of the Convention, the Handbook divides its analysis in three basic issues:

- a) **Where** does the Conventions apply (Geographic scope of the Convention).
- b) **When** does the Convention apply (Temporal scope of the Convention).
- c) To **What** documents does the Convention apply (Substantive scope of the Convention).

Where Does the Convention apply?

The Apostille Convention applies if both States are parties of the Convention (this means, the State in whose territory the public document was executed and the State in whose territory the public document is to be produced).³ It is important to note, that if one of the States has joined the Convention by accession, it is convenient to check whether the other State has raised an objection to that accession. This is one of the reasons under which the Convention does not apply.

The concept of territory is important as the Apostille Convention only applies to public documents which have been executed in the territory of a contracting State. However the Convention allows a Contracting State to extend the Convention to its overseas. This extension may take place at the time of signature, ratification or accession or at any other.⁴

When does the Convention apply?

Under the Convention, an apostille validly issued in one State party must be given effect in another State party. For any State of destination, this obligation commences since the date of entry into force of the Convention and applies regardless of the status of the Convention for that State as the time the apostille was issued. An apostille issued in a State party before the entry into force of the Convention for the State of destination must be recognized in the State of destination from the date of the entry into force of the Convention for that State and cannot be refused arguing that at the time of issuance the Convention was not in force for that State.

3.- For this purpose, it is important to check the updated list of Contracting States on the Apostille Section, of the website of the Haghe Conference (www.hcch.net).

4.- United Kingdom, France, Australia, Portugal and the Kingdom of Netherlands, for example, have extended the Convention.

The Convention does not prescribe any time limit for issuing an apostille after the execution of the underlying public documents. In the same way, the Convention does not contemplate the expiration of apostilles.

A relevant considerations are included in the Handbook in respect apostilles issued in successor States, including newly independent states. Several hypothesis are analyzed in the Handbook. Due to space reasons, we suggest to review it in the Handbook.⁵

To What documents does the Convention apply?

The Convention applies to Public Documents. The term “Public Documents” extends to all other than those issued by persons in their private capacity. A document executed by an authority or a person in an official capacity is a public document. Whether a person is acting in a private or in an official capacity is determined by the law of State of origin. An apostille may not be rejected on the basis that the underlying document is not considered to be a public document under the law of the State of destination, although that domestic law may determine what legal effect to give the underlying document. If the underlying document is not considered public document under the law of the State of origin, but is considered to be so under the law of the State of destination, the Convention will not be applicable to such documents. The Handbook suggests that the Competent Authority⁶ may refer the applicant to a notary in order to find out whether the document may be notarized, in which case an apostille may be issued for the eventual notarial certificate.

The Convention lists four categories of documents which can be considered as “public documents”. This list is not an exhaustive one, but in practice most documents that are apostilled under the Convention fall within one of the listed categories. These are:

- a) Documents emanating from an authority or an official connected with a court or tribunal, including those emanating from a public prosecutor, a clerk of court or a process server.
- 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 of the fact that it was in existence on a certain date and official and notarial authentications or signatures.

Because of space reasons, we will not analyze each of the four categories, but the Handbook contains a number of considerations in regards these documents and even those that are excluded to be apostilled.

As you can see, the Handbook is useful tool and an important reference source to apply and to interpret the Convention. Many other matters are contained in the Handbook which will be subject of analysis in further articles, but we hope that these general ideas may be useful for the readers.

5.- The Socialist Federal Republic of Yugoslavia was one of the first Contracting States of the Convention. This State ceased to exist in the aery 1990's. New States of Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia (subsequently Serbia and Montenegro), Slovenia, and Macedonia made separate declarations of succession. On June 3rd 2006, Montenegro became independent form Serbia and Montenegro and amdea declaration of succession on January 2007.

6.- Manual defines Competent Authority as an authority designated by a contracting State as competent to issue apostilles.

Obama Names Woman as Mexican Ambassador for the First Time Ever.

United States President Barack Obama has named his new nomination for the position of US Ambassador in Mexico. The nominee, named Roberta Jacobson, played a crucial role in the United States' negotiations with Cuba recently and due to her knowledge of Mexico, has been chosen as the replacement of Earl Anthony Wayne who holds the position since 2011. The U.S. senate has confirmed her nomination and she will be the first woman ever to hold this position. *eluniversal.com.mx 02/05/15.*

Mexico's expects growth reduction.

The Secretary of Treasury and Public Credit has reduced the predicted expansion rate for the Mexican Economy for 2015. The estimated range is now between 2.2 and 3.2 stated the sub secretary of the Federal entity. With a very optimist approach, the growth reduction prediction comes as a result of a low oil production, a "weak" recuperation from domestic expenditure. *eleconomista.com.mx 21/05/2015.*

Brazilian President's visit to Mexico produces new agreements.

During a state visit from Brazilian president, Dilma Rousseff, to Mexico new agreements were made between the countries regarding several matters. The Brazilian president met with Mexican President, Enrique Peña Nieto, in order to discuss several matters in to help each other's countries move forward. Agreements were made in order for the quality of both of these countries' citizens to be elevated. Several agreements were made in order to achieve this ranging diverse matters such as investments, tourism, and the agricultural sector. Both presidents stated that these new agreements will be really beneficial for their respective countries. *animalpolitico.com 26/05/2015.*

Mexican President with High Hopes for Anticorruption System.

New reforms have been made to the Mexican Constitution in order to implement new systems to stop corruption in the Mexican Government. During the promulgation of these reforms Mexican president, Enrique Peña Nieto, stated that these new reforms will be "an authentic change in paradigm in order to face corruption, a historic moment in favor of a new culture of legality. These reforms involve changes to 14 laws in the Constitution designed to strengthen Government Branches in order to detect corruption and punish those who commit it accordingly as well as the creation of a National Anticorruption System. *animalpolitico.com 27/05/2015.*

CONTRIBUTORS

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