

## **The Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents**

In February 1995, the Commission published a Report on [\*The Hague Convention abolishing the requirement of legalisation for Foreign Public Documents \(LRC 48-1995\)\*](#), as part of the Commission's first programme on law reform, which examined the question of whether Ireland should ratify the Hague Convention abolishing the requirement of legalization of Foreign Public Documents. It recommended that Ireland should become a party to the Convention and contained proposals for the implementation of the Convention in Irish law.

The 1961 Convention has three main concerns:

1. **Proof:** to ensure that the effect of legalization as regards proof is preserved.
2. **Simplification:** to abolish the formalities associated with the present legalisation procedure which, as demonstrated, are unnecessarily slow and costly.
3. **Safeguards:** to preserve some kind of procedure for checking and challenging the authenticity of signatures on foreign documents, the capacity in which the person signing them has acted and the identity of the seal or stamp which they bear.

The 10 main recommendations put forward in the report are as follows:

- (i) Ireland should become a party to the Hague Convention on the Abolition of the Requirement of Legalisation for Foreign Public Documents, 1961
- (ii) Ireland should appoint just one, central, competent authority
- (iii) The Department of Foreign Affairs should be designated by the Government as the sole competent authority for Ireland pursuant to Article 6 of the Convention
- (iv) Ireland should substitute directly the current process of proof by legalisation with proof by use of the apostille system with regard to foreign public documents emanating from Convention states. The apostille would, as a general rule, be used in identical circumstances to those in which legalisation is now.
- (v) The Convention should be implemented partially by administrative means. To this end, the Department of Foreign Affairs should inform its officers that no legalisations can be carried out on foreign public documents within the terms of the Hague Convention of 1961 originating from states which are party to the Convention; that the legalisation process has been replaced by the apostille system established under the Convention, in which Irish embassies have no role whatsoever; and that, therefore, Irish embassies ought not to attempt to certify the marks borne by an apostille.
- (vi) The Rules of the Superior Courts ought to be amended by the addition of words to the following effect:

“A document which purports to be an apostille duly issued and executed in accordance with the Hague Convention of the 5<sup>th</sup> October, 1961, shall, without further proof, be deemed to be such, unless the contrary is shown, and shall be admissible as evidence of the facts stated therein.”
- (vii) The Rules of the Superior Courts ought to be amended by the addition of a third paragraph in order 40, rule 7, to the following effect:

“For the purposes of rule 7, there is deemed to be no Irish diplomatic or consular representative or agent exercising his or her functions in a country or place, or no such representative or agent conveniently near to the deponent in such country or place, when the particular functions which the deponent would request to be performed are not performed by those representatives or agents as a matter of fact.”

- (viii) The Department of Foreign Affairs should maintain a copy of the current roll of notaries held by the Supreme Court Office and ascertain the status of any purported notary purely from that copy.
- (ix) The legalisation procedure specified in paragraph 4 of the Companies (Forms) Order 1964 applying to the documents referred to in section 352 (1) of the *Companies Act, 1963*, should be amended by the introduction of the apostille as an alternative means of certification for company documents coming from states which are contracting parties to the Convention, or some other less onerous process.
- (x) The Minister should consider the substitution of less onerous procedures for the verification of documents emanating from all states in any new Companies (Forms) Order.

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| <b>Draft Legislation in Report</b> |
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Not applicable.

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| <b>Information on Implementation</b> |
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Recommendations of the Commission were further implemented by the Courts (No.1) (Proof of Foreign Diplomatic, Consular and Public Documents) 1999 (SI No.3 of 1999) and the *Civil Law (Miscellaneous Provisions) Act 2008*, s.50.