THE LAW REFORM COMMISSION

AN COIMISIÚN UM ATHCHÓIRIÚ AN DLÍ

(LRC 48-1995)

REPORT ON

THE HAGUE CONVENTION ABOLISHING THE REQUIREMENT OF LEGALISATION FOR FOREIGN PUBLIC DOCUMENTS

IRELAND
The Law Reform Commission
Ardilaun Centre, 111 St Stephen's Green, Dublin 2

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THE LAW REFORM COMMISSION

The Law Reform Commission was established by section 3 of the *Law Reform Commission Act, 1975* on 20th October, 1975. It is an independent body consisting of a President and four other members appointed by the Government.

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Ms. Maureen Gaffney, B.A., M.A. (Univ. of Chicago), Senior Lecturer in Psychology, University of Dublin, Trinity College;
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The Commission's programme of law reform, prepared in consultation with the Attorney General, was approved by the Government and copies were laid before both Houses of the Oireachtas on 4th January, 1977. The Commission has formulated and submitted to the Taoiseach or the Attorney General forty seven Reports containing proposals for the reform of the law. It has also published eleven Working Papers, eight Consultation Papers and Annual Reports. Details will be found on pp.129-133.

Alpha Connelly, B.A., LL.M., D.C.L., is Research Counsellor to the Commission.

Ms. Nuala Egan, B.C.L., LL.M. (Lond.), Barrister-at-Law, Ms. Sarah Farrell, LL.B., LL.M. (Lond.), and Mr. Niall Fitzgibbon, B.C.L., LL.M. (Cantab.) are Research Assistants.

Further information from:

The Secretary,
The Law Reform Commission,
Ardilaun Centre,
111 St. Stephen's Green,
Dublin 2.
Telephone: 671 5699.
Fax No: 671 5316.

The Law Reform Commission

AN COIMISIÚN UM ATHCHÓIRIÚ AN DLÍ

ARDILAUN CENTRE
111 ST. STEPHEN'S GREEN
DUBLIN 2
IRELAND
TELEPHONE (01) 671 5699
FAX (01) 671 5316

7th February 1995

Mr John Bruton T.D.,
An Taoiseach,
Government Buildings,
Dublin 2.

Dear Taoiseach,

Pursuant to the provisions of the Law Reform Commission Act, 1975, I have the honour to transmit to you herewith the Commission's *Report on the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents*.

The Commission proposes to publish this Report in the near future.

Yours sincerely,

ANTHONY J. HEDERMAN
PRESIDENT

Encl.

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INTRODUCTORY REMARKS

In this Report, we examine the question whether Ireland should ratify the Hague Convention Abolishing the Requirement of Legalisation of Foreign Public Documents. The subject is one falling within the scope of the Commission's First Programme for Law Reform.

We began by preparing a Discussion Paper which was circulated to organisations, offices and Departments, concerned and expert in the field, in November last year. We received helpful and supportive submissions on our Paper.

The Commission is particularly grateful to the following for their assistance in the preparation of this Report:

Mr. Michael Buckley, Chief State Solicitor;
The Department of Equality and Law Reform;
The Department of Foreign Affairs;
The Faculty of Notaries Public in Ireland;
The Foreign and Commonwealth Office, London;
The Incorporated Law Society;
Mr. Arthur D.S. Moran, Solicitor;
Mr. E. Rory O'Connor, Solicitor.

CHAPTER 1: INTRODUCTION

The Hague Convention of 1961

1.1 The Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (hereinafter "the Convention") was adopted at the 9th Session of the Hague Conference on Private International Law on 5th October 1961.[1] As of the 1st June, 1994, forty-four states had ratified or acceded to the Convention. The Convention is in force in ten member states of the European Union.[2]

1.2 The Convention brings about a simplification of the formalities which otherwise often complicate the utilisation of public documents outside the country from which they emanate, but which must be fulfilled before a document will be considered effective for its purpose in the foreign state. Specifically the formality to be abolished is the requirement of diplomatic or consular *legalisation*. Legalisation *per se* can be defined as that process which certifies the authenticity of the signature which the document bears, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears. To avoid confusion it is stressed that throughout this Report *legalisation* will refer to those processes of verification which are *carried out by diplomatic or consular agents*, defined by Article 2 of the Hague Convention.[3]

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1 See Appendix I for the text of the Convention.

2 The parties to the Convention are listed in Appendix II. The European Union member states which are not parties are Denmark (but which has instead ratified the *Convention Abolishing the Legalisation of Documents in the Member States of the European Communities, 1987*, reviewed in Chapter 3) and Ireland.

3 *Article 2 of the Convention states:* "...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 documents has acted and, where appropriate, the identity of the seal or stamp which it bears."

The Need for Legalisation Procedures[4]

1.3 The Irish law of evidence, like that of other common law jurisdictions, emphasises the role of oral testimony. It is preferred that witnesses give their evidence *viva voce* before the court. Otherwise the alleged evidence, including documentary evidence, is in fact mere hearsay - the reported statements of a party who does not appear before the court so that he or she may be examined. Clearly, if this principle was to be universally applicable, legal proceedings would be impossibly inefficient. Therefore, the law provides for many exceptions to the normal *viva voce* requirement. To give but two examples, the presentation of evidence by affidavit is permitted in many proceedings where issues of law, rather than fact, arise,[5] and a large number of statutes provide for the admission of statements in public records, such as birth and marriage certificates.[6]

1.4 In civil law states, on the other hand, more probative weight, and a more significant role in general in legal proceedings, is given to documentary evidence. For instance, in French law, statements which are contained in an instrument drawn up by a notary may only be challenged on limited grounds in a special procedure, and the instrument may be directly enforceable by the parties as if it itself was a court judgment.[7]

1.5 Of central importance to this Report, is the general principle of the law of evidence requiring proof of the due execution of documents.[8] The principle requires that it be demonstrated that a document was in fact executed by the person or body alleged to have executed it. This may require proof of handwriting or of the genuineness of the signature, seal or stamp borne by the document. With regard to many public documents of domestic origin it is provided by statute that, for reasons of convenience, they be admitted without any process of proof of the seal and/or signature they bear.[9]

1.6 Both common and civil law states provide for this facilitation of proof of the genuineness of the seal and/or signature borne by public documents of domestic origin. When documents of domestic origin are permitted to be presented in court or to administrative bodies, the law of the state in question usually permits the court to take judicial notice of any signature and/or seal they bear, and it is the practice of administrative bodies to assess on sight the authenticity of the documents - in both cases no further proof will be necessary before the court or the administrative body will accept documents as *prima facie* genuine.

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4 For a review of the general law of evidence which is relevant to the admission of public documents, see Chapters 8 & 10 of A. Keane, *The Modern Law of Evidence*, 3rd ed., 1994. See also the introduction to Loussouarn, *Rapport Explicatif*, in Conférénce de la Haye de Droit International Privé, *Actes et Documents de la Neuvième Session*, (1960), Tome II, p.173. The Irish legal practice relating to the admission of foreign public documents is reviewed in detail in Chapter 5. The requirements of the legal and administrative practices of France, Germany, Saudi Arabia, the United States and England and Wales are dealt with, as representative examples, in Chapter 4.

5 See orders 38 and 40, Rules of the Superior Courts.

6 See, for example, s.5, *Registration of Births and Deaths (Ireland) Act, 1863.*

7 See Herzog, *Civil Procedure in France*, 1967, pp.103-104.

8 For a statement of the general rule as to proof of due execution, see, for instance, A. Keane, *op. cit.*, at p.185.

9 See, for example, s.1, *Evidence Act, 1845.*

1.7 This liberal approach to domestic documents has not been reflected in the law of either common or civil law states. The reason for this is the belief that the courts or other bodies to whom foreign documents are presented would be subject to an unduly onerous burden if they were required to judge, on sight, the authenticity of such foreign documents bearing signatures, seals or stamps with which they would be unfamiliar. In response, common and civil law states have maintained more rigorous evidential requirements with regard to the admission of foreign documents by courts and other bodies.

1.8 Therefore, proof of the due execution of a foreign public document is generally not facilitated by the law of states in the same way as it is for their own public documents. The mechanism of proof of the genuineness of a seal and/or signature borne by a foreign document may have to involve a chain of verificatory seals and/or signatures of various persons or bodies, each of whom is familiar with the immediately preceding seal and/or signature, being attached to the document in question. This chain then culminates with a seal and/or signature which either does not need to be proven before the domestic court or body or which can be easily proven. Such a mechanism represents a process of legalisation. As the laws of many states provide for the noting without proof of the signatures and seals of their own diplomatic and consular agents, often the last signature and/or seal in the chain of verifications will be that of the diplomatic or consular agent in the state from which the foreign document emanates.[10] It can be seen that, despite the drawbacks of these legalisation procedures, they did and still do fulfil an important legal function as regards proof.

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10 As provided for in Irish law by section 5(2) of the *Diplomatic and Consular Officers (Provision of Services) Act, 1993*. See paragraph 1.12.

CHAPTER 2: THE CONVENTION

General Aims of the Convention

2.1 The Convention has three main concerns:

Proof

To ensure that the effect of legalisation as regards proof is preserved.

Simplification

To abolish the formalities associated with the present legalisation procedure which, as demonstrated, are unnecessarily slow and costly.

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.

These three will be considered in turn.

Proof

2.2 The traditional rule for domestic documents, *acta probant sese ipsa* (literally, "documents prove themselves"), does not always hold good for international documents. The courts or the parties to whom foreign documents were presented would be asked to take too much on faith if they were required to judge, on sight, the authenticity of certain foreign documents. Therefore, despite the drawbacks of the present legalisation procedure, it does fulfill an important legal function as regards proof.

2.3 This function is preserved by the attachment of a certificate called an "apostille"[1] by the Competent Authority of the originating state. This "apostille" is deemed by the Convention to have the same legal effect as regards proof as the previous legislation chain. See Article 3, paragraph 1 and Article 5 of the Convention.

Simplification

2.4 Simplicity is ensured by the fact that this single certificate to be affixed in the country where the document originates is to be the *only* requirement necessary. This is emphasised in the first place, in the wording of the first paragraph of Article 3 itself: The only formality that may be required ... is the addition of the certificate described in Article 4 ... This wording tends to stress two points:

(i) The addition of the certificate is the *maximum formality* which may be required. It cannot be duplicated by an additional formality.

(ii) The requirement of the certificate is *optional*. The State in whose territory the document is to be produced in thus free not to require it for documents of one category or another.

2.5 This liberal character is expressed in a particularly explicit manner in the second paragraph of Article 3 of the Convention, under the terms of which:

> "... 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."

2.6 Article 9 reiterates this, providing that each Contracting State shall take the necessary steps to prevent the performance of legalisation by its diplomatic or consular agents in cases where the present Convention provides for exemption. This article deals with the possibility that otherwise certain private organisations, in particular banks, might have continued either by routine or from excessive prudence to require that foreign documents should be subjected to a diplomatic or consular legalisation.

Safeguards

2.7 The Convention, however, stopped short of according to foreign public documents the same probative weight as that accorded to domestic public documents. Instead of abandoning all safeguards, some control was retained in

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1 See back of Convention for a sample 'apostille'.

the "apostille" system itself.

2.8 Domestic public documents can be challenged in court on the grounds of mistake, fraud, undue influence, statute barring etc. Being confined to this type of challenge, however, would have made the position too difficult for someone presented with a foreign document who wished to set it aside on grounds of its lack of authenticity or inaccuracy. In order to find the material basis for his/her challenge he/she would have been forced to undertake searches and enquiries abroad.

2.9 The Convention therefore provides for a system of public numbering and registering by which the Competent Authority will keep a register or card index in which certificates issued will be recorded. Therefore any interested person will easily be able to check the authenticity of any document simply by consulting the register (see Article 7 of the Convention). The register will also have the effect of rendering forgery so difficult that the certified document will be as reliable as to its origin as documents currently legalised.

The Meaning of Legalisation

2.10 "Legalisation" is an imprecise term which can mean different things in different countries. Cognisant of this, the drafters of the Convention defined "legalisation" precisely and exclusively for the Convention's purposes.

2.11 Article 2 of the Convention provides:

> 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 documents has acted and, where appropriate, the identity of the seal or stamp which it bears.

No other Certifying Act Covered

2.12 Other Acts of certification of authenticity, capacity and identity e.g., by any notary or by a diplomat from the jurisdiction from which the document emanates, while they may be described as legalisation in certain documents or be loosely referred to as such *do not* constitute legalisation for the purposes of the Convention.

Contents not Certified

2.13 However extensive or probative the effects of certification in different jurisdictions may be, legalisation *under the Convention* does *not* certify the contents of the documents legalised.

Public Documents

2.14 Article 1 of the Convention defines Public Documents for the Convention's purposes. It states:

> "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."

2.15 The Convention applies to virtually all public documents originating from states party to the Convention. Subparagraph (a) of the second paragraph of Article 1 has a wide scope, applying not only to documents emanating from judicial courts and tribunals, but also to administrative and constitutional tribunals, and even to ecclesiastical courts. Hence tribunals such as An Bord Pleanála and the Employment Appeals Tribunal would be included.

Notarial Acts

2.16 The functions of a Notary Public have been listed as follows:

> "(1) authenticating public and private documents;
>
> (2) attesting the verifying signatures on documents in order to satisfy the evidential or statutory requirements of foreign

governments or of overseas institutions and regulatory authorities;

(3) noting and protesting bills of exchange and promissory notes for non-acceptance or non-payment;

(4) drawing up ship protests; and

(5) giving certificates as to the acts and instruments of persons and their identities."[2]

2.17 Which of these would be affected by the Convention? Functions (3) and (4) would be unaffected. Functions (1), (2) and (5) would be *notarial acts* within Article 1 sub-paragraph (c) of the Convention. Function (5) would also be included by Article 1 sub-paragraph (d) of the Convention.

2.18 The phrase "administrative documents" in Article 1(2)(b) has its ordinary meaning, and refers to documents relating to the organs, powers and duties of administrative authorities (for example public and local authorities).

2.19 The Convention seeks to substitute the legalisation process with the *apostille* system with regard to *public* documents only. Documents which are executed by private persons (which includes commercial concerns) are not within the scope of the Convention. Note, in particular, that "administrative documents" (subparagraph (b) of the second paragraph of Article 1)) would not include ordinary commercial documents, and, second, that (subparagraph (d) of the second paragraph of Article 1)) does not refer directly to documents signed by persons acting in their private capacity. It is important to stress that the text of subparagraph (d) does not refer to the actual documents signed by persons acting in their private capacity, but solely to the official certificates which may accompany them. As the distinction may seem obscure the Convention gives a few examples. The last of these examples (notarial authentications), will overlap with (c) above. A possible example of the sort of document covered by the phrases "official certificates which are placed on documents signed by persons in their private capacity" and "official authentications of signatures" may be the *jurat* placed at the end of affidavits sworn before commissioners for oaths (as opposed to notaries, be they also commissioners for oaths or not) which attest that the document was sworn before the commissioner and that the commissioner knows the deponent.

2.20 The Convention applies to the subsequent legalisation by a diplomat or consular agents of notarial acts *accompanying* a private document which verify that the document in question was duly executed. The Convention replaces verification of the notary's seal and/or signature, effected at present by a consular or diplomatic seal and signature, with the simpler *apostille* system.

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2 E. Rory O'Connor, *The Irish Notary*, 1987, p.31.

2.21 The third paragraph of Article 1 sets out the documents which are excluded from the scope of the Convention, subparagraph (a) providing for the exclusion of documents executed by diplomatic or consular agents because of the problems that would be raised by applying the *apostille* system to the situation in which a diplomat or consul executes documents in his or her country of office as a notary of his or her own country.[3] To use the example in the *Loussouarn* Report, such a situation would arise when a French diplomat, serving in Italy, uses his or her notarial powers under French law to verify the seal and/or signature borne by a French document, and it is subsequently sought to produce that document, accompanied by its verification executed by the French diplomat, before some Italian authority.[4] The verification of the purported signature and/or seal could be carried out by the Italian Foreign Ministry, which would be familiar with the seals and signature of foreign missions in Italy. To substitute that reasonably straightforward process with one requiring the temporary return of the French diplomat's document to France so that an *apostille* might be attached would actually have complicated the present procedure applicable to such documents in direct contradiction of the Convention's aims.

2.22 Similarly, the Convention would not apply to the situation where an Irish diplomat in, say, France, executes a notarial act certifying the seal and/or signature on a French public document which a person wishes to use in Ireland. Most states already exclude such documents executed by their own diplomats working abroad from any need for proof of due execution. For instance, special provision is made in order to avoid the need for any proof of an Irish diplomat's notarial act by section 5(2) of the *Diplomatic and Consular Officers (Provision of Services) Act, 1993*, which accords judicial notice to the diplomat's seal and/or signature. However, it must be re-iterated that the legalisation process consists of a number of separate steps, and so while an Irish diplomat's notarial act will fall outside the scope of the Convention, the previous steps in the legalisation chain may fall within its scope. For instance, any notarial certificate issued by a foreign notary verifying a seal and/or signature will fall within the category of notarial acts (subparagraph (c) of the second paragraph of Article 1).

2.23 The documents covered by subparagraph (b) of the third paragraph of Article 1 are excluded because they are given favourable treatment in the majority of countries, including Ireland, and the Convention's expressed aim is to *simplify*, and not to *unify*, legalisation procedures. Therefore when a form of legalisation less onerous than the *apostille* system currently operates it should not be displaced. This is stressed by the second paragraph of Article 3.

2.24 The qualifier "administrative" with regard to commercial documents shows that documents such as contracts and powers of attorney are subject to the rules of the Convention. Moreover, the adverb "directly" further restricts the exclusion, and so documents which are only occasionally used for commercial or

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3 As provided, with regard to Irish diplomatic and consular agents, by s.5, *Diplomatic and Consular Officers (Provision of Services) Act, 1993.*

4 Loussouarn, *op. cit.*, at p.175.

customs operations, such as certificates issued by patent offices, are within the scope of the Convention.

2.25 With regard to documents dealing directly with customs operations, a further basis for their exclusion from the scope of the Convention is that, when some formality is in fact required, it is not solely a question of verification of the seals and signatures the documents bear. Rather, it is a question of authentication of their *contents*, possibly by means of a physical check. That level of verification goes far beyond the Convention definition of legalisation in Article 2 and to substitute the *apostille* as a guarantee of such checks would impose too heavy a burden on the competent authority.

A Confusing Exclusion

2.26 It is very easy indeed to become confused when seeking to reconcile the exclusion from the provisions of the Convention of the documents executed by diplomatic or consular agents in Article 1(a) with the provisions of Article 2, which define legalisation for the purposes of the Convention as the formality by which such diplomats or agents certify the authenticity etc of documents. One could be forgiven for assuming that such certification, constituting the execution of a public document, was excluded from the provisions of the Convention. However, this would lead to the absurd result that the Convention did not apply to legalisation as defined by the Convention. The only satisfactory way to reconcile the provisions is to regard Article 1(a) as providing that the legalising Act captured by the Convention and performed by the diplomat *does not itself have to be legalised.* A stop has to be put to an unending chain of legalistions at some stage. The Convention dispenses with and substitutes a new procedure for what, to date, has been the last act of legalisation in the chain. The drafting of 1(a) is not helpful - It would have been preferable to draft it in terms such as "The formality which constitutes legalisation within the meaning of Article 2 does not *itself* require legalisation."

The New Formality

2.27 Article 3 states:

> "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."

2.28 The simplification of the existing legalisation process is ensured by the fact that this single certificate, to be affixed in the country where the document originates, is to be the *only* requirement necessary. The wording of the first paragraph of Article 3 stresses two points. The first is that the addition of the certificate is the maximum formality which may be required. It cannot be supplemented by an additional formality, such as a verification of the due execution of the seal and signature borne by the *apostille* itself. Secondly, the requirement of the certificate is optional. The State in the territory of which the document is to be produced is thus free not to require it if it has already dispensed with its necessity.

2.29 In many ways the second paragraph of Article 3 is the key paragraph of the Convention as far as Ireland's possible modes of implementation of the Convention are concerned. It ensures that the Convention imposes no more onerous system for the recognition of the seals and/or signatures borne by foreign public documents than existed prior to its implementation. It is clear that the *apostille* system may not be substituted for any verificatory requirements which do not amount to legalisation. The use of the very wide phrase "practice in force" demonstrates the Convention's commitment to ensuring no unintended increase in formalities. Therefore, the need arises to establish what exactly is the current Irish legal practice in this area, to establish the consequences, if any, of implementing the Conventions.

2.30 Article 4 states that:

1) "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.

2) "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."

2.31 To give an example of the effect of the new *apostille* system, a private document, such as a power of attorney, would be brought to a notary and its due execution verified in a document bearing the seal and/or signature of the notary. Then the notary would dispatch the private document and the notarial act certifying the private document's due execution to the local supervisory body of notaries (in Ireland the Supreme Court Office), then to some public body in a position to recognise the seal and/or signature of the supervisory body (in Ireland the Department of Foreign Affairs) and finally to the competent authority for the attachment of the *apostille*. This possible chain of verifications is described on the unlikely assumption that any ratification of the Convention by Ireland would not be accompanied by an administrative rationalisation which would reduce the number of different bodies involved in the new verification process. The current situation is that, after the Department's verification, the documents are dispatched to the embassy of the state where the documents are to be produced

for verification of the Department's seal and signature.

The Certificate

2.32 Article 5 states

> "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."

2.33 The second paragraph of Article 5 seeks to preserve legalisation's probative function by stating that the attachment of a certificate called an "apostille" by the competent authority of the originating state to the document in question will verify the genuineness of the signature, the capacity in which the person signing the document has acted and the identity of the seal or stamp which it bears. Thus the "apostille" is deemed by the Convention to have the same legal effect as regards proof as the substituted legalisation chain. The provisions of the second paragraph of Article 5 follow from those of the first paragraph of Article 3 and Article 2, above. The third paragraph of Article 5 rules out any possibility of the seal and signature borne by the *apostille* itself being subject to verification. In the absence of this provision there is the danger that the *apostilles* would become just another link in the legalisation chain. Therefore it is necessary for states which wish to be a party to the Convention to provide in their law for the acceptance without proof, of the seal and signature borne by the *apostille*.

2.34 Article 5 sets a limit to the number of links in the chain and does not attribute any particular probative force to the document itself. The Hague Conference concluded that the relevant domestic laws of the possible contracting states were simply too diverse in their nature to allow for this matter to be dealt with in the Convention. Therefore, it is up to Irish law to decide what exact weight it shall attach to the *apostille*'s certification. The Convention's terms make

Model of certificate

APOSTILLE

(Convention de La Haye du 5 octobre 1961)

1. Country: .....

This public document

2. has been signed by .....

3. acting in the capacity of .....

4. bears the seal/stamp of .....

.....

Certified

5. at ..... 6. the .....

7. by .....

8. N° .....

9. Seal/stamp: 10. Signature:

....

Sample of an *apostille* taken from the Convention

clear the nature of the probity to attach to the *apostille*. It is apparent, from the second paragraph of Article 5, that to implement the Convention effectively one must attribute judicial notice to the seal and signature borne by the *apostille* so as to avoid the necessity of the *apostille* itself being subject to verification. The Convention clearly intends that such attribution not be conclusive proof that the seal and signature borne by the *apostille* are genuine, as it provides (as we shall see) a mechanism in Article 7 for verifying the seal and signature when a person so requests. Therefore it is clear that we would have to attribute judicial notice to the seal and signature borne by the *apostille* until that presumption of genuineness is rebutted.

The Competent Authority

2.35 Article 6 of the Convention states:

> "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."

2.36 Article 6 of the Convention provides that 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 (i.e. the *apostille*). It is emphasised in the *Loussouarn* Report[5] (the explanatory report on the Convention), that it is purely an internal matter for the contracting states to select their competent authorities, the Permanent Bureau having faith in the states to make an appropriate selection. The only desire mentioned explicitly is that states do not reintroduce by the back door any legalisation chain by requiring a new chain of verifications before the designated competent authorities could issue the *apostille*.

2.37 In the *Loussouarn* Report,[6] it is emphasised that the competent authority must be named by reference to its official function (i.e. the official title of the chosen person is used, rather than the name of the individual in question). It appears that the competent authority appointed must be a state organ or a public body. The involvement of a state body lends to the *apostille* system a degree of trust and confidence which is fundamental to its successful functioning, and therefore it follows that the body which is selected as a competent authority for Ireland ought to be a body which is in some way part of the public administration of Ireland.

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5 At p.182.
6 Fn 1, (p.15).

Details Recorded

2.38 Article 7 states:

> "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."

2.39 Verification of the seal and/or signature borne by a foreign public document is still permitted under the provisions of the Convention - it is not sought to assimilate the status of foreign and domestic public documents. However, the mechanism of those checks has been altered by the substitution of the legalisation stage of verification with the *apostille* system. The certification of the *apostille* attached to a foreign public document is not intended to be conclusive of the matters certified. Instead the Conference believed that in order for the *apostille* system to contain sufficient safeguards, it was necessary to establish some supervisory system making it possible to detect false information or false signatures which might be placed upon the certificate and, in particular, to facilitate proof of non-authenticity of the certificate where this might be alleged.

2.40 The *Loussouam* Report notes that the Permanent Bureau of the Hague Conference on Private International Law considered three alternative systems of control. The first two possibilities were the establishment of a central office at international level or, alternatively, at national level, with the role of centrally gathering the various signatures of officials authorised to issue certificates. These systems were rejected as being too cumbersome, it being difficult to keep the collection of signatures up to date. It was decided that such organisations would be of a size disproportionate to their utility.

2.41 The third possibility was to entrust the authority responsible for the issue of the certificate with the exercise of the necessary supervision as well, and such was adopted in Article 7. The Convention therefore provides for a system of public numbering and registering by which the competent authority will keep a register or card index in which details of the certificates issued will be recorded. Any interested person will easily be able to check the authenticity of an *apostille* and/or signature borne by any document simply by contacting the competent authority and having the register consulted. The recording of details of the

apostilles will have the effect of rendering forgery so difficult that the certified document will be as reliable as to its origin as documents currently legalised.

2.42 In the case of Irish public documents which it is sought to use abroad, in order to prevent fraud, the current legalisation process operates on the basis that each party in the legalisation chain can judge on sight the genuineness of the signature and/or seal of the previous party. The notary public can judge the private or public person or body's seal and/or signature, the Supreme Court Office the notary's seal and/or signature, the Department of Foreign Affairs the Supreme Court Registrar's seal and signature, and, finally, the diplomat or consul of the foreign state the seal and signature of the Department. By replacing this last stage of the legalisation process with the *apostille* system, forgery of the seal and signature of the agent of the competent authority, say for present purposes an officer of the Department of Foreign Affairs, is still made almost impossible as the Department will keep a record of the documents which it *does* sign and seal. The register can be consulted by "any interested person" at any point, before or after any challenge has been made to the genuineness of the seal and signature borne by the *apostille*.

2.43 By and large the system instituted by the Convention has been found to be simple and effective. In 1992 the Permanent Bureau of the Hague Conference on Private International Law had occasion to consider certain aspects of Article 7. A question arose as to the effect of the evolution of electronic registers, a development which was not contemplated when the Convention was drawn up in 1960. The Permanent Bureau felt that the phrase "register or card index" in the first paragraph of Article 7 was broad enough to cover this functional replacement of the written register. However, it was felt that special steps might have to be taken in order to prevent erasure of or tampering with the information contained in the data bank. It was suggested that perhaps a back-up "authentic" version should be kept on a separate computer memory disk.[7]

Other Treaties

2.44 Article 8 says that:

> "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."

2.45 This Article governs the Convention's relationship with other conventions

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7 Conférence de la Haye de Droit International Privé, *Note sur certaines questions relatives au fonctionnement de la Convention de la Haye du 5 Octobre 1961 supprimant l'exigence de la légalisation des actes public étrangers*, Preliminary Document No. 13 of May, 1992.

with the same field of application. There is one such convention,[8] and that is the *Convention Abolishing the Legalisation of Documents in the Member States of the European Communities, 1987.*

Compliance

2.46 Article 9 states that

> "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."

2.47 This provision requires states to discontinue the practice of legalising foreign public documents, and is necessary because some parties, bodies and even courts might have continued either by routine or from excessive prudence to request that persons wishing to utilise foreign documents continue to approach state authorities in order to subject the documents to a process of legalisation, in the belief that such constituted the best mechanism of proof available. The simple way to prevent this is simply to make the legalisation facility no longer available in Convention states.

Signature

2.48 Article 10 states:

> "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 ratifications shall be deposited with the Ministry of Foreign Affairs of the Netherlands."

2.49 It is noteworthy that the Convention was opened for ratification by Ireland explicitly in Article 10. It is clear that although Ireland was not represented at the Hague Conference itself, the preparatory reports did review, as part of their general survey of the laws of states which might ratify the Convention, the Irish law in this area.

Operation

Article 11 states:

> "The present Convention shall enter into force on the sixtieth day after the deposit of the third instrument of ratification referred to in the

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8 The European Convention on the Abolition of Legalisation of Documents Executed by Diplomatic or Consular Officers, 1968 would not overlap with the Hague Convention of 1961 as the latter does not apply to documents executed by Diplomats or consular officers.

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."

2.50 Articles 12 to 15 of the Convention similarly refer to procedural matters covering the Convention's operation.[9]

Irish Diplomats' Notarial Powers

2.51 Irish law assimilates several ranks of consular or diplomatic officer to the status of domestic notaries public and gives judicial notice to their seals and signatures. Section 5(1) of the *Diplomatic and Consular Officers (Provision of Services) Act, 1993*, states that Irish diplomatic and consular officers are thereby empowered to:

> "administer any oath and take any affidavit, and may also do any notarial act which any notary public can do in the State, and every oath, affidavit and notarial act administered, sworn, or done by or before any such person in such country or place shall be as effectual as if duly administered, sworn or done by or before any lawful authority in the State."[10]

In section 1 it is stated that "oath" includes affirmation and declaration, and "affidavit" includes:

> "affirmation, statutory or other declaration, acknowledgment, examination, and attestation or protestation of honour."

The Act then gives judicial notice to the signatures and seals of the consular and diplomatic officers, section 5(2) stating:

> "Any document purporting to have affixed thereon or thereto ... the seal of any person or of a mission and to have subscribed thereto the signature of such person, being a person to whom this section applies, in testimony of any oath, affidavit, or act being administered, taken or done by or before him, shall be admitted in evidence (saving all just exceptions) without proof of the seal or signature being the seal of such person or mission or signature of such person, or of the status and official character of such person."

Section 5 applies to:

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9 These are to be found in the full text of the Convention in Appendix I.

10 This Act re-enacts in almost identical terms the corresponding provisions of the *Commissioners for Oaths (Diplomatic and Consular) Act, 1931.*

s.2 (a) "a civil servant employed as a head of mission, a member of the diplomatic staff of a mission or a career consular officer; and

(b) an honorary consular officer appointed by the Minister [for Foreign Affairs]...."

For the purposes of brevity, these persons shall be called "consular and diplomatic officers" throughout this Report.

2.52 It is the notarial powers of Irish diplomats that are central to this Report, and as stated above, section 5(1) of the 1993 Act states that Irish diplomatic and consular officers are thereby empowered to

> "do any notarial act which any notary public can do in the State, and ... every notarial act administered ...by or before any such person in such country or place shall be as effectual as if duly administered ... by or before any lawful authority in the State."

2.53 The three functions of notaries, relevant in this context, are

i) authenticating public and private documents;

ii) attesting the verifying signatures on documents in order to satisfy the evidential or statutory requirements of foreign governments or of overseas institutions and regulatory authorities;

iii) giving certificates as to the acts and instruments of persons and their identities.[11]

2.54 These roles, in so far as they are performed by Irish diplomats and consuls abroad, overlap somewhat. The reference to the requirements of foreign governments reflects the reality that Irish notaries issue notarial certificates verifying the signatures and/or seals of documents of Irish origin for use abroad. Irish diplomats and consuls generally certify foreign documents for use in

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11 See para. 2.16, *supra*.

Ireland.[12]

2.55 The fundamental common law principle is that evidence must be given directly to the court whenever possible, and so if a notary is readily available to come to court and swear to familiarity with a seal or signature, that person should not be allowed just to write out a notarial certificate instead. If the notary is abroad and so not readily available, the strict application of that principle would cause considerable inconvenience. Therefore, an exception to the hearsay rule appears to have grown up, founded on that inconvenience and the trustworthiness of the notarial profession generally, permitting the use of notarial certificates once the notary in question was not readily available to give direct evidence.

2.56 In our view the most logical, and historically convincing, reason for the admission of foreign notarial certificates, as opposed to certificates of domestic origin, must be that based on the application of the hearsay principle and an exception to it. The wholly separate question of mechanisms of *proof of due execution* of such notarial certificates is considered in Chapter 5.

The Implications for Irish Diplomats' and Consuls' Powers

2.57 Therefore, it appears that an Irish notary may

i) verify all signatures with which he or she is familiar; but,

ii) it will only be permissible to use a notarial certificate to demonstrate this familiarity if the notary is in a foreign state and so not readily available to give direct evidence, so grounding the exception to the hearsay rule permitting the use of notarial certificates.

2.58 Therefore, an Irish diplomat working abroad may verify the signature and /or seals borne by a document a person seeks to rely upon in Ireland with which he or she is familiar *and* use a notarial certificate to do so.

2.59 This approach is further confirmed by the use of "effectual" in section 5(1). If the document, the seal and/or signature of which has been verified by a

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12 A question which arises is whether Irish notaries in Ireland are entitled to certify the seal and/or signature on any document - Irish *or* foreign - with which they are familiar, or whether they must, even if they do possess that familiarity, limit themselves to verifying Irish documents. We can find no indication that notaries may only certify the seals and/or signatures of documents of origin in the same state as that in which the notary practices. No case indicates such a distinction either. Nor can we assert any logical basis for such a distinction. Accordingly, we believe there is none. Hence in our view the power of the notary is to verify the due execution of all documents which bear seals and/or signatures with which he or she is familiar. Irish consuls and diplomats are therefore entitled to certify any seal and/or signature, albeit on a foreign or Irish document, once they are familiar with such seal and/or signature. It is clear from the structure of section 5 that the Act intends that Irish diplomats and consuls possess that power as in the first subsection it provides the power for Irish diplomats and consuls representing the State abroad to perform notarial acts (e.g. a notarial certificate verifying the seal and/or signature borne by a birth certificate originating in the diplomat's state of posting) and then, in the second subsection, provides for their seals and/or signatures on such notarial acts to be admissible without proof in Irish courts - clearly envisaging that the subject of the notarial act (e.g. a foreign birth certificate) might be a foreign document to be used in Ireland.

notarial certificate, is of domestic origin, a notarial certificate would not be admitted in order to prove such, given that direct evidence from the person who executed the document would be easily available. That is not to say that a notarial certificate is rendered somehow invalid as *ultra vires* an Irish notary's powers just because it is inadmissible in an *Irish* court. In our view "effectual" logically refers to a notarial act's *validity* rather than its *admissibility* in an individual case. Hence, the diplomat or consul's notarial act is as valid as if it was performed by a notary in the State, while its admissibility remains a distinct issue. As the diplomat or consul is not readily available in the State to give sworn oral testimony, such a certificate is admissible as an exception to the hearsay rule.

2.60 Clearly it is the intention of the 1993 Act (which follows the wording of its predecessors stretching back to the eighteenth century) to confer a power to perform notarial acts which are good for the purposes of giving evidence in this State. For example, it might be argued that the notarial power conferred is simply so that one might approach an Irish diplomat or consul abroad and seek a certification of an Irish document one had in that foreign state for the purposes of its court or other bodies. That would be a case clearly in which an Irish notary could act, even on the most limited view of his or her powers, using a notarial certificate.

2.61 However, it is clear from section 5(2) that section 5(1) is not just concerned with making Irish diplomats' acts admissible in foreign courts, for it provides for judicial notice to be taken *in Irish courts* of the diplomats' and consuls' signatures and seals appended to the notarial acts they are empowered to perform by section 5(1). Therefore, the Act certainly intends to confer the full wide power which we have already asserted that Irish notaries possess.

2.62 Were the power to verify signatures of Irish domestic notaries to be limited by law to Irish seals and/or signatures (in the absence of some other, extra-statutory, legal basis for this power, Irish diplomats would have no power to verify foreign signatures and so the alleged notarial certificate would be worthless - it would simply be an unsworn statement excluded by the hearsay rule. We believe that there is no basis for such an unfortunate conclusion.

An Example of the Legalisation Process

2.63 To illustrate the practical effects of the Convention, and the role which notaries play in this process, it may be helpful to give an example of a typical situation where legalisation is necessary. The example refers to documents executed in Ireland which must be produced abroad. However, documents travelling in the opposite direction may be subject to a similarly long process.

2.64 If, for example, an agreement or contract for implementation or performance outside the jurisdiction were entered into by persons, the majority of whom were Irish residents, the parties might prefer, for reasons of convenience, that certain documentation be drawn up before an Irish notary.

2.65 In order to ensure that the notarial instrument will be accepted by the foreign authorities as duly executed, at present the Irish notary executing the notarial instrument has to have the genuineness of his or her signature and seal and his or her status as a notary public certified by the Registrar of the Supreme Court at the Four Courts in Dublin. The seal and/or signature of the Registrar then has to be certified by an officer of the Department of Foreign Affairs at Stephen's Green, Dublin, and the officer's seal and/or signature must in turn be certified by a diplomatic or consular officer at the French Embassy where the instrument is to be produced.

2.66 The logic behind this arduous process is that it enables the foreign courts or other bodies to examine a signature which can be judged on sight or judicially noted (as provided for in Irish law by the *Diplomatic and Consular Officers (Provision of Services) Act, 1993*) - *i.e.* no independent proof will be necessary to confirm the genuineness of the signature of the diplomatic or consular officer. Even should the foreign law in question not provide for judicial notice of the seal and/or signature of its consular or diplomatic agents, evidence within that state would be easily available to confirm the genuineness of those seals and/or signature.

2.67 However, in order to reach that point where the foreign diplomatic or consular officer can attach his or her signature the officer must have been presented with a signature which is known to him or her, and hence the necessity of involving the Irish Department of Foreign Affairs. The Department would usually be unaware of who is and is not a notary public, and so the Supreme Court Office, which keeps the roll of Irish notaries, must confirm the notary's status. Therefore at each stage of the process an official is presented with a signature he or she can be expected to recognise. The possibility of forgery or some very fundamental mistake is kept extremely slight and so faith can be placed in the genuineness of the notarial signature.

2.68 Were the Convention to be implemented, all that would be required by the authorities in the foreign state would be a certificate from Ireland's competent authority verifying the notary's status as a notary and his or her signature. The exact shape of the proposed new verification process will be discussed later, but the Convention's implementation would certainly obviate the need to send documents to the foreign state's embassy in Ireland.

Reasons for Non-Ratification

2.69 It may be asked why this Convention, with its emphasis on reform of purely procedural requirements, has not been ratified by Ireland for over 30 years. Whilst there are no doubt many reasons, we feel it appropriate to specifically deal with some of the foremost. The first possible reason was that Ireland was unable to send a representative to the 9th Session of the Hague Conference on Private International Law. This factor is, however, no longer of any significance - indeed the Convention was specifically opened up to Ireland's signature in Article 10, despite our country not having been represented at the

9th Session. Second, the Department of Foreign Affairs entertained reservations concerning the effect of the Convention on existing Irish extradition law. We suggest that this view is based on a misconstruction of the Convention and its effects. Finally, the Department of Justice appears to have had, at one stage, some misgivings about ratification of the Hague Convention prior to a overhaul of the whole law of evidence. The Commission's view is that in essence the Convention is procedural only and that there is, as a result, no necessary link between the consideration of its ratification and a review of the substantive law of evidence. Although it might well have been desirable to consider the two together, it is certainly not necessary to do so. Therefore in our view these reasons no longer present any valid obstacle to ratification.

Legal Practice & Administrative Practice

2.70 Identifying the rules applying to the production of foreign documents in Irish courts involves identifying the procedures which the courts require those documents to undergo. These rules represent *legal*, or court, practice in the matter of foreign public documents, and must be distinguished from the requirements other administrative bodies, operating under public law (e.g. social welfare tribunals) or private law (e.g. universities), may lay down when it is sought to utilise a foreign public document.

2.71 These latter bodies may set down requirements which must be fulfilled before they will recognise foreign documents, and this they are entirely free to do - their administrative practice is not the subject of this paper. However, once legal practice is complied with, the documents in question will be fully recognised by the Irish courts in any legal proceedings, and so it is not logical for other bodies to add further formalities to those laid down by legal practice.

2.72 The practice of these bodies should not be confused with that practice which will in this paper be called *administrative practice.* The Department of Foreign Affairs is usually approached by persons wishing to legalise documents, and the Department has a set of requirements and procedures that must be complied with before it will state officially that the seal and/or signature borne by a document has been verified as genuine. The practice of the Department will be termed *administrative practice* throughout this paper.

2.73 The legalisation process is a process of verification in which, by that process's very definition, the Department of Foreign Affairs performs the central role. It would be unsatisfactory for the Department to be utilising a verificatory process which is not in accordance with legal practice, and which either fails to verify the seal and/or signature borne by foreign documents in a legally satisfactory manner, or imposes unnecessarily burdensome requirements on persons wishing to utilise documents in Ireland.

The Legalisation Process in Operation

2.74 Legalisation of outgoing Irish documents is a process particularly familiar

to banks, accountants, solicitors and business people who are involved in international work such as syndicating loans, using contractual or loan documents abroad, or submitting Irish documents to foreign patent offices. Foreign practice and/or law may require that a process of legalisation be undergone before the bodies in question will accept the Irish documents as genuine. In addition, legalisation may also be sought by private persons seeking recognition of documents such as university degrees, birth certificates or doctors' certificates by foreign courts, administrative authorities, banks, universities or other bodies.

2.75 Some idea of the type of documents which commonly undergo legalisation is given by statistics from Britain. In June, 1986, the Nationality and Treaty Department of the Foreign and Commonwealth Office in London conducted a survey to see what sort of documents they were verifying.[13] In two days they verified 739 documents of which 40% related to individuals, 60% to companies. There were five categories of documents:

Legal	37%
Commercial	26%
Educational	20%
Medical	10%
Miscellaneous	7%

2.76 Under **Legal** was included all matters relating to legal proceedings in England or abroad, such as affidavits of service, wills and conveyances, *etc.* **Commercial** related to international commercial contracts. **Educational** included exam certificates and university degrees. **Medical** included doctor's reports. **Miscellaneous** included certificates of birth, death and marriage.

13 Letter from the Lord Chancellor's Office of the House of Lords to Law Reform Commission, dated 20th October, 1986.

CHAPTER 3: CONVENTIONS PARALLEL TO THE HAGUE CONVENTION

The Two Parallel Conventions

3.1 There are two relevant conventions, parallel to the Hague Convention: one concluded within the framework of the Council of Europe and one within the framework of European Political Co-operation under the aegis of the former European Economic Community.

3.2 Neither of these European conventions has as yet been ratified by Ireland. While both the desirability of Ireland's ratification, and the possible mode of implementation, of these Conventions is not within the ambit of this Report, and no detailed review of the relevant Irish law or of the changes necessary in Irish legal or administrative practice to implement the Conventions shall be attempted, the two Conventions are nonetheless highly relevant in that they demonstrate conclusively that the prevailing climate in relations between the legal systems of Europe is to move towards maximum liberalisation and informality in the recognition of European documents. In reviewing the two Conventions, the question will be examined of the relationship between the two Conventions and the Hague Convention and their compatibility with it.

A: The European Convention on the Abolition of Legalisation of Documents Executed by Diplomatic or Consular Officers, 1968[1]

3.3 This Council of Europe Convention has been ratified or acceded to by sixteen states, of which nine are members of the European Union.[2] The seed of this Convention was the exclusion from the field of application of the Hague

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1 European Treaty Series, No. 63. See Appendices III and IV for text and parties. Much of the following commentary is drawn from Council of Europe, *Explanatory Report on the European Convention on the Abolition of Legalisation of Documents Executed by Diplomatic or Consular Officers, 1968*, 1968.

2 As of 30th November 1993.

Convention of documents executed by diplomatic or consular agents.[3] The Convention seeks to abolish the requirements of legalisation for these documents.

3.4 The Convention was motivated by the increasingly close relations at European level between states represented on the Council, as well as between diplomatic agents and consular officers. These relations are based on mutual trust in the legal and consular systems of fellow members. The abolition of legalisation was, the Council of Europe concluded, likely to strengthen ties between states represented on the Council by making it possible to use foreign documents in the same manner as domestic documents.[4]

A Review of the Council of Europe Convention

3.5 Article 1 of the Council Convention states that:

> "For the purposes of this Convention, legalisation means only the formality used to certify the authenticity of the signature on a document, the capacity in which the person signing such a document has acted and, where appropriate, the identity of the seal or stamp which such document bears."

3.6 While the Convention uses the same general terminology as Article 2 of the Hague Convention, it defines legalisation solely by reference to its purpose, whereas in the Hague Convention legalisation is defined by its purpose *and* the persons who carry it out, i.e. diplomatic or consular staff.[5]

3.7 Article 2 states:

> "1. This Convention shall apply to documents which have been executed by diplomatic agents or consular officers of a Contracting Party, acting in their official capacity and exercising their functions in the territory of any State, and which have to be produced
>
> (a) either in the territory of another Contracting Party, or
>
> (b) to the diplomatic agents or consular officers of another Contracting Party exercising their functions in the territory of a State which is not a party to this

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3 *Article 1(3)(b) states:* "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."

4 Preamble to the Convention, set out in Appendix III.

5 *Article 2 of the Hague Convention states:* "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 documents has acted and, where appropriate, the identity of the seal or stamp which it bears."

Convention.

2. This Convention shall also apply to official certificates, such as those recording the registration of a document or the fact that it was in existence on a certain date, and authentications of signatures, appended by diplomatic agents or consular officers to documents other than those referred to in paragraph 1."

3.8 The Convention is intended to cover all the documents executed by diplomatic or consular agents or officers. These include documents executed by diplomats and consuls using their notarial powers under the law of the state they represent and other administrative documents they execute in the course of their official duties. Article 2(1)(a) covers the situation where documents, which have been executed either in, say, Ireland or abroad by a foreign diplomat of a contracting state, have to be produced in Ireland. Often those documents are not put through a process of diplomatic or consular legalisation, as the Hague Convention defines legalisation, because the foreign ministry in the state of production would be familiar enough with the seals and signatures in question to be able to certify them directly. The definition of legalisation in Article 1 of this Convention is wide enough to encompass this certification, which is abolished thereby. Article 2(1)(b) covers the situation where, say, a document executed by a British diplomat or consul has to be produced in a state which is not party to the Convention to the diplomatic or consular agent there of a contracting state (e.g. in Saudi Arabia to the Irish diplomat or consul there). This situation can arise, in particular, due to non-representation of a state in certain countries. If the diplomatic or consular mission in question is unfamiliar with the seal or signature in question, there is a danger that a verificatory chain of signatures may be required. Article 2(2) indicates that the documents referred to in Article 2(1) include official certificates executed by diplomats or consuls.

3.9 Article 3 of the Convention states:

"Each Contracting Party shall exempt from legalisation documents to which this Convention applies."

3.10 Some changes in Irish legal and administrative practice would be necessary for effective implementation of this Convention. Given that the possible implementation of this Convention is beyond the ambit of this Report, we do not intend to review the law in Ireland with regard to the recognition of such documents or the necessary changes to that law were Ireland to accede to the Convention . It is clear, nonetheless, that such changes would be of a similar nature to those necessary to implement the Hague Convention.[6]

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6 In particular, a mechanism would have to be implemented providing for judicial notice to be taken of certain foreign diplomats' or consuls' signatures. When the grant of that notice is the subject of a *bona fide* challenge, the verificatory system provided for in Article 4 would replace the legalisation process which currently may be required at present.

3.11 Article 4 states:

> "1. Each Contracting Party shall take the measures necessary to avoid the carrying out by its authorities of legalisations in cases where this Convention abolishes legalisation.
>
> 2. Each Contracting Party shall provide for the verification, where necessary, of the authenticity of the documents to which this Convention applies. Such verification shall not give rise to payment of any taxes or expenses and shall be carried out as quickly as possible."

3.12 Article 4(2) gives very considerable freedom to contracting states to decide upon the verificatory system for which they wish to provide. The Explanatory Report suggests that verifications should only be requested in exceptional cases and, in general, by official channels.[7] It is clear that administrative changes made in order to implement the Hague Convention would also, with some adaptation, serve to facilitate the implementation of this aspect of the Council of Europe Convention.

3.13 Article 5 states:

> "This Convention shall, as between the Contracting Parties, prevail over the provisions of any treaties, conventions or agreements which provide, or shall provide, for legalisation of the authenticity of signature of a diplomatic agent or consular officer, the capacity in which such person signing the document has acted, and, where appropriate, the identity of the seal or stamp which the document bears."

The remaining articles deal with procedural matters relating to the Convention.

The Interaction of the Council of Europe Convention and the Hague Convention

3.14 The implementation of the Council of Europe Convention would not involve conflict with the Hague Convention as it applies to the first matter excluded by the Hague Convention in the third paragraph of Article 1 of the latter Convention, *i.e.* documents executed by diplomatic or consular agents. Therefore there is no overlap in the fields of application of the two Conventions.

B: The Convention Abolishing the Legalisation of Documents in the Member States of the European Communities, 1987[8]

3.15 This Convention was adopted within the framework of European Political Co-operation and so under the aegis of the former European Community. It is referred to hereafter as the 1987 Convention. It has been

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7 At p.11.

8 See Appendices V and VI for text and parties.

signed by ten Member States of the former European Economic Community and ratified by three. This Convention contemplates the complete free movement of public documents throughout the member states of the European Union, according to foreign public documents the same status as domestic public documents. This Convention overlaps completely with the field of application of both the Hague Convention and the Council of Europe Convention.

A Review of the 1987 Convention

3.16 Article 1 states:

> "1. This Convention shall apply to public documents which are drawn up in the territory of a contracting state and have to be produced in the territory of another contracting state or shown to the diplomatic or consular agents of another contracting state even if those agents are acting in the territory of a State which is not party to this Convention.
>
> 2. 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 the court of 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.
>
> 3. This Convention shall also apply to documents drawn up in their official capacity by the diplomatic or consular agents of a contracting State acting in the territory of any State, where such documents have to be produced in the territory of another contracting State or shown to the diplomatic or consular agents of another contracting State acting in the territory of a State which is not party to this Convention.

3.17 This follows the wording of Article 1 of the Hague Convention closely, and many of the comments made with regard to that Article in Chapter 2 are equally applicable here. The range of public documents covered, however, does

include what the Hague Convention excludes in the sub-paragraph (a) of the third paragraph of Article 1, namely documents executed by diplomatic or consular agents. It *may* also include the documents excluded in sub-paragraph (b), administrative documents dealing directly with commercial or customs operations, as these may be implicitly included in Article 1(2)(b).

3.18 Article 2 states that:

> "Each contracting State shall exempt the document to which this Convention applies from all forms of legalisation or other equivalent or similar formality."
>
> Article 3 states:
>
> "For the purposes of this Convention legalisation means only the formal procedure for certifying the authenticity of a 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."

3.19 These Articles serve to abolish legalisation, as defined very widely in Article 3, for the public documents within the terms of Article 1 when they are transmitted between the member states of the European Union. Article 3's definition, like the definition of legalisation in Article 1 of the Council of Europe Convention, defines legalisation by reference to its purpose alone and therefore is wider than that in Article 2 of the Hague Convention, which only affects legalisations that are carried out by diplomatic or consular agents. This wider definition is necessary in order to make Article 2 effective in removing all mandatory forms of verification of seals and/or signatures borne by documents and so substantially assimilating the position of documents of European Union origin to that of documents of Irish origin. There is no equivalent of the *apostille* system and so no certificate at all need be attached in the originating state or demanded in the requesting state.

3.20 In the case of private documents, this means that the sole check necessary will be to have the seal and/or signature borne by the private document certified by some appropriate official, such as a notary, in the state of origin. Irish law, which will be reviewed in detail in Chapter 5, as a *general* rule gives judicial notice to the seal and/or signature borne by the verification of a private document's seal and/or signature when it has been attached to a private document by a foreign notary or Irish consular or diplomatic agent. Should the Convention be implemented, the new verificatory process would have to be substituted for the current legalisation process. Therefore, while the changes to Irish legal and administrative practice necessary to implement this Convention are not discussed in this Report, it will become apparent that the implementation of this Convention with regard to the seals and signatures borne by foreign public documents in verification of the seal and/or signatures on private documents would require changes in Irish legal and administrative practice directly analogous to those necessary to implement the Hague Convention.

3.21 The Convention applies not only to foreign public documents which are attached to private documents, but applies also to foreign public documents of the type which emanate from public bodies. Irish law in this regard will be reviewed in detail in Chapter 5. Suffice it for now to say that, were this Convention to be implemented, it would be necessary to alter Irish legal practice to provide for the admission of, for instance, birth and death certificates of states in the European Union without even a foreign notary's verification, and that facilitation would require more significant changes to Irish legal practice.

3.22 The Convention applies also to the documents executed by diplomatic and consular agents which are the subject of the Council of Europe Convention reviewed above. Most of the changes which would be necessary to implement the latter Convention would also serve as an implementation of the European Union Convention in regard to these documents.

3.23 Article 4 states:

> "1. If the authorities of the State in whose territory the document is produced have serious doubts, with good reason, as to the authenticity of the signature, the capacity in which the person signing the document has acted or the identity of the seal or stamp, they may request information directly from the relevant central authority, designated in accordance with Article 5, of the State from which the act or document emanated. Requests for information may be made only in exceptional cases and shall set out the grounds on which they are based.
>
> 2. Whenever possible, requests for information shall be accompanied by the original document or by a photocopy thereof. Such a request and the reply thereto shall not be subject to any tax, duty or charge."

3.24 This administrative process shall replace the legalisation process in those cases when it is required that some check be carried out on the seal and/or signature borne by a foreign public document. Many of the views expressed and suggestions made in this Report with regard to the substitution, as a matter of legal practice, of the legalisation process with the apostille system in accordance with the Hague Convention apply equally to any possible implementation of the 1987 Convention. Furthermore, at an administrative level, the creation of the administrative structures necessary in order to implement the Hague Convention would also facilitate any implementation of this Convention.

3.25 Article 5, which, together with the remaining articles of the Convention, covers procedural questions relating to the operation of the Convention, states that:

> "Each contracting State shall at the time of signature, ratification, acceptance or approval of this Convention, designate the central

authority responsible for receiving and forwarding the requests for information referred to in Article 4. It shall indicate the language(s) in which the authority will accept requests for information."[9]

The Interaction of the 1987 Convention with the Hague Convention

3.26 As mentioned above, the 1987 Convention has a field of application which encompasses that of the Hague Convention. Article 8 of the Hague Convention states:

> "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."

3.27 As the 1987 Convention contains less rigorous formalities than the Hague Convention, the 1987 Convention would override the use of the *apostille* system as between Ireland (were it to become a party to the Hague Convention) and those contracting parties to the 1987 Convention which are also parties to the Hague Convention, substituting its own less rigorous provisions.

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9 The remaining Articles of the Convention are set out in the full text of the Convention in Appendix V.

CHAPTER 4: LEGALISATION: LEGAL & ADMINISTRATIVE PRACTICE - IRISH DOCUMENTS FOR USE ABROAD

Foreign States' Legal and Administrative Practice

4.1 The requirements which documents must fulfil before they will be admitted before the tribunals of foreign states is clearly a matter for the procedural rules of the state in question. As civil law states generally attach more weight to documentary, as opposed to oral, evidence in legal proceedings than do the common law countries, and as documents drawn up by notaries carry more probative weight in civil law states than those drawn up by Irish notaries public do in Irish law, the verification that is required by the civil law states is naturally stricter and more rigorously enforced than in common law states.

4.2 It will be seen from the following examples that the legal practice of states in which documents originating in Ireland are to be produced requires such documents to undergo a process of legalisation as defined in Article 2 of the Hague Convention. That process will first be described in general terms.

4.3 Documents fall into two groups - those bearing the signatures or seals of private citizens or concerns, such as agreements, deeds or powers of attorney, and those documents which emanate from an official source, such as birth certificates or public examination results' transcripts.

4.4 Variations sometimes occur in the following legalisation procedure. States apply the requirements of their legal practice with regard to the production of foreign documents with varying degrees of rigour. Furthermore a considerable number of states permit Irish notaries public to register their signatures with the foreign embassy in Dublin so that the diplomatic or consular staff can instantly certify the authenticity of the notary's signature without it first being certified by the Supreme Court Office and the Department of Foreign Affairs. However, not all embassies are willing to do this, and not all notaries do register their signatures where this facility is available.

A: Private Signatures or Seals on Personal or Commercial Documents

4.5 If the document on which it is sought to rely abroad is of a private nature, the process of verification is as follows.[1]

i) The document should first be presented before a notary public in Ireland who will then execute a document (such as a notarial certificate), bearing his or her own signature and/or seal, verifying the seal and/or signature which the private document bears.

ii) The document to which the notary's signature and/or seal have been affixed must be produced at the Supreme Court Office, Four Courts, Dublin, in order to have the status, signature and seal of the notary duly verified. This is done by the Registrar or Deputy Registrar of the Court comparing the signature and seal, purporting to be those of the notary, on the document produced to him or her with specimens of the notary's signature and seal held at the Office. If satisfied that they are the same and that the notary's name is still on the roll of notaries, the Registrar or Deputy Registrar then adds his or her certificate to the notarised document. No fee is charged. Documents are usually left with the Court Office for 24 hours while the check is made.

iii) Having obtained the Registrar's certificate, the documents are next brought or sent to the Consular Section of the Department of Foreign Affairs, Dublin, for the purpose of having the signature of the Registrar of the Supreme Court authenticated. The Secretary, or an authorised officer of the Department acting on his or her behalf, will verify the Registrar's or Deputy Registrar's signature, by reference to a specimen of the Registrar's or Deputy Registrar's signature held at the Department. He or she will then add the Department's own certificate to the documents immediately after the Registrar's certificate. The Department charges £10 per legalisation.[2]

iv) The documents are next brought or sent to the embassy or, in some cases, the honorary consul, in Ireland of the country requiring legalisation. There, the consular officer will legalise the signature of the Secretary or other authorised officer who signed the certificate on behalf of the Department of Foreign Affairs by adding his or her certificate coupled with the seal or stamp of the embassy confirming the signature, seal or stamp of such officer. Consular fees and stamp duty of the foreign country will then be affixed to the certificate and these must be

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1 E.R. O'Connor, *The Irish Notary*, 1987, pp.151-152.

2 As of 30th October, 1993.

paid by the persons seeking legalisation.

4.6 Fourteen states which do not have an embassy or chancery in Ireland, do have an honorary consul in the State and the law of the state in question may provide that such honorary consuls may legalise the seal and signature of the Department.[3] Should it happen that the country for which legalisation is required does not have diplomatic or consular relations with Ireland *via* any representative in Ireland, the process must go several stages further:

v) The notary must collect the documents from the Department of Foreign Affairs and send them to An Bord Tráchtála. An Bord Tráchtála in September, 1991, took over the legalising function of the Department of Foreign Affairs with respect to documents *en route* to countries not having diplomatic or consular relations with Ireland. An Bord charges £25 handling charge and £20 courier charge.[4]

vi) An Bord Tráchtála then sends the documents to the Irish Embassy in London. The Irish Embassy charges £5 for verifying the seal and signature of the Department's officer by affixing its own seal and consular officer's signature.[5]

vii) The Irish Embassy sends the documents to the British Foreign and Commonwealth Office for verification of the seal and signature of the consular officer of the Irish Embassy. For this certification there is a Stg£10 charge.[6]

viii) From the British Foreign Office it goes to the embassy in question where the seal and signature attached by the Foreign and Commonwealth Office will be verified by the embassy's own seal and signature. Again, consular fees will be levied.

4.7 If the country in question does not have a diplomatic or consular representative in the United Kingdom, instead of sending the document to the United Kingdom, the person seeking to have the document legalised will have to go further afield. This may entail sending the document to the Irish consul in some country with which the foreign country also has direct diplomatic or consular relations.

B: Official and Quasi-official Documents

4.8 If the document is official, such as a birth certificate, or quasi-official, for instance a university degree, it should

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3 As provided for in Irish law by the *Diplomatic and Consular Officers (Provision of Services) Act, 1993*, s.5 and s.2.

4 As of 3rd November, 1993.

5 As of 30th October, 1993.

6 *Idem.*

i) first be verified by the issuing authority by the attachment of its seal and/or signature,[7]

ii) the seal and/or signature of which may then be verified by an officer of the Department of Foreign Affairs attaching its seal and his or her signature. Again, a charge of £10 is levied.

iii) The embassy of the relevant country will then be in a position to verify the seal and signature of the Department by attaching its own seal and signature. A fee will be charged.

OR

i) Alternatively, a notary who is familiar with the seal and/or signature in question could be interposed in which case the normal legalisation progress as outlined above in Part A, (ii) - (vii), would be followed.

The same process as that described in Part A when a state has no diplomatic or consular representative in Ireland will, naturally, also have to be undergone with regard to these species of public documents should there be no such representative in the State.

Examples of Requirements

4.9 We will now set out the requirements of five states relating to private documents, e.g. a power of attorney, as typical of state legalisation procedures. With minor variations depending on the type of document, these requirements apply equally to many other documents, such as birth and marriage certificates.

Federal Republic of Germany

4.10 The German Embassy operates a full procedure of diplomatic or consular verification as a matter of practice. The document is usually certified as genuine by an Irish notary. Then his or her signature and/or seal is certified by the Registrar of the Supreme Court Office, which signature and/or seal is in turn certified by an officer of the Department of Foreign Affairs, which is finally certified by a diplomatic or consular officer of the German Embassy. This process reflects German civil procedure. The Embassy states that with regard to documents which play a role in legal affairs these requirements are vigorously enforced by the German authorities.

4.11 Irish notaries public can, however, register their signatures and seals with

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7 If the *original* official or quasi-official document is used, it may of course be unnecessary to seek such authentication as the document will already bear the seal and/or signature of the issuing authority, *e.g.* an original birth or death certificate. If it is wished to use a copy of the document in question it would be necessary to have that copy certified by the issuing authority's seal and/or signature or by a notary who is familiar with the seal and/or signature.

the German Embassy so that the certification of the Supreme Court Office and the Department of Foreign Affairs as to the genuineness of the notary's seal and signature can be bypassed. This avoids considerable time and expense being spent at those two stages. The Embassy charges a minimum of DM.20 per legalisation.

4.12 Germany is a party to the Convention and has implemented the Convention in its relations with the other contracting parties.[8]

Republic of France

4.13 Again, France requires that the full legalisation chain be undergone as a matter of legal practice. However, should an Irish notary public register his or her seal and/or signature with the French Embassy, the need for certification by the Department of Foreign Affairs and by the Registrar of the Supreme Court Office is obviated. The Embassy charges 120F. per legalisation.

4.14 France has implemented the Convention.[9]

England & Wales

4.15 The first point to be made about the admission of Irish public documents by the English courts and other bodies is that regularly the whole question of proof of their due execution is simply waived because the parties do not view it as an issue at all. As Ireland is no longer a member of the Commonwealth, the seals and/or signatures of Irish notaries public are no longer judicially noticed. This is because order 41, rule 12 of the English Rules of the Supreme Court gives judicial notice to Commonwealth notaries only. British diplomatic or consular officials, however, no longer operate a practice of diplomatic or consular verification *at all* since the implementation of the Convention by Britain in 1965, regardless of whether the state of origin is a party to the Convention or not.[10] Rather the present practice, as laid down by the Foreign and Commonwealth Office, is:

> "to require verification of the authority and signature of the foreign official [that is, given the example we are using, a foreign notary] to be made by the High Court of that country. An apostille issued pursuant to the Hague Convention of October 5, 1961, abolishing the Requirement of Legalisation for Foreign Public Documents would seem to satisfy the verification requirement."[11]

4.16 There is some confusion over what exactly are the stipulations of English legal practice in this area.[12] Of course, as Ireland is not a party to the

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8 Information supplied by the Embassy of the Federal Republic of Germany on 1st November, 1993.
9 Information supplied by the Embassy of the French Republic on 1st November, 1993.
10 Jacob, *The Supreme Court Practice*, 1988, Volume 1, p. 658.
11 Ready, *Brooke's Notary*, 11th ed., 1992, pp.63-64.
12 Ready, *op. cit.*, p.64, n. 12.

Convention there is no question of an *apostille* being issued. One must assume that the certification of the Supreme Court Office as to the genuineness of the seal and signature of the Irish notary would suffice. The Commission has been unable to establish under what exact basis in English legal practice the seals and/or signatures borne by such certificates from foreign courts may be judicially noted. We assume that this must be based on the acceptance of such certificates in the cases of *Cooper v. Moon*[13] and *Levitt v. Levitt*[14] and the statements made, in reliance on these cases, in certain texts on relevant English law that these certificates might be accepted.[15] Therefore, no legalisation would appear to be required once a private document's execution is verified by an Irish notary. Similarly, legalisation of an Irish public document can also be avoided by having its seal and/or signature verified by an Irish notary.

4.17 However, the instances where even this verification process is necessary are potentially few. To state briefly any comprehensive rules as to the admission of Irish documents by English courts is as difficult as it is to state the Irish rules on the matter, given the diverse sources. The following pointers may be illustrative.

4.18 Many statutes pre-dating Saorstát Éireann greatly facilitated the recognition of Irish documents.[16] However, enactments relating to proof of Irish documents now only apply to Northern Ireland.[17] An Order-in-Council has been made under the U.K. *Evidence (Foreign, Dominion and Colonial Documents) Act, 1933*, granting to copies of statements in several Irish public registers a streamlined recognition process avoiding any verification process.[18] With regard to affidavits, in *Hume Pipe and Concrete Construction Co. Ltd. v. Moracrete Ltd.*[19] it was held that an affidavit sworn before a commissioner for oaths in Ireland could be filed in the Central Office of the English Supreme Court without any verification that the commissioner was in fact duly authorised to administer oaths here. The *Evidence Act, 1851*, provides for the admission of documents emanating from foreign courts once they are verified by the seal of the court or the signature of a judge of it.[20]

4.19 Finally, in those cases for which no such facilitations are provided, any process of verification may be waived by British courts and other bodies. Certification of the genuineness of the seal and/or signature which a document bears by a notary public will suffice, it appears, as the legal forms used in Ireland are perceived as very similar to those used by English notaries and so courts and other bodies often appear happy to judge them on sight.

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13 [1884] W.N. 78.
14 (1865) 2 Hem. EM. 626.
15 This is discussed in the context of establishing Irish legal practice at paragraph 5.39.
16 In particular s.10 of the *Evidence Act, 1851*, which made admissible in England, without proof of signature or seal, those documents which were admissible in Ireland without proof of the seal or signature that they bore.
17 *Irish Free State (Consequential Adaptation of Enactments) Order 1923*, S.R. & O. 1923, No. 405; *Todd v. Todd* [1961] 2 All E.R. 881.
18 S.I. No. 1059 of 1969.
19 [1942] 1 K.B. 189.
20 S.7.

4.20 Britain has ratified the Convention.

United States of America

4.21 The need for legalisation of foreign public documents is a matter for the laws of the individual states of the Union. Legalisation particularly tends to arise with regard to legal instruments affecting interests in land in the states and various commercial documents. Due to the variation in the legalisation requirements between the several states, attempts have been made to unify the requirements. With regard to acknowledgments of execution which are necessary before conveyances or deeds will be recorded by the legal authorities in some states, the most widely accepted uniform rule is contained in the U.S. *Uniform Recognition of Acknowledgements Act, 1968*, which 17 states have adopted: the seal and signature of a notary attached to such an acknowledgment will be recognised as sufficient proof of the notary's status, and so no process of diplomatic or consular verification is necessary.

4.22 Of broader application to all notarial acts, but only adopted by six states to date, is the *Uniform Law on Notarial Acts, 1982*. The Act provides that the seal and signature of a foreign notary is *prima facie* evidence of his status as a notary and authority to perform notarial acts. The Act further provides that an *apostille* issued under the Convention is conclusive proof of the genuineness of the signature and seal of a notary. Diplomatic or consular verification by the local U.S. Embassy carries a similar conclusiveness.

4.23 In very many cases a full legalisation process still has to be undergone. The Embassy in Dublin will register Irish notaries' signatures so as to avoid the Supreme Court Office and Department of Foreign Affairs stages. The Embassy charges $10 per legalisation.

4.24 The United States has also ratified the Convention.[21]

Saudi Arabia

4.25 It appears that the courts of Saudi Arabia do regularly require the legalisation of foreign public documents. The Ambassador of Saudi Arabia in London is also accredited to Dublin. Therefore, first, the document in question is usually certified as genuine by an Irish notary. Then his or her signature is certified by the Registrar of the Supreme Court Office, which signature is in turn certified by an officer of the Department of Foreign Affairs. The document is then sent to an Bord Tráchtála in Dublin and forwarded from there to the Irish Embassy in London where the seal and signature of the Department is certified with the seal and signature of the Embassy. The document is then transferred to the Foreign and Commonwealth Office in London where the signature of the Irish diplomat or consul is verified by the seal and signature of the Office. The

21 Information supplied by the Embassy of the United States of America, 1st November, 1993.

document is finally submitted to the Embassy where the signature of the British diplomat or consul can be certified.

4.26 Alternatively, the Irish-Arab Chamber of Commerce provides a service for members whereby it will relay documents directly to the Saudi Arabian Embassy in London. The Chamber charges approximately £30 for its services and the Embassy £6.

4.27 Saudi Arabia is not a party to the Convention.[22]

22 From information supplied by the Irish-Arab Chamber of Commerce, 2nd February, 1994.

CHAPTER 5: LEGALISATION: LEGAL & ADMINISTRATIVE PRACTICE - FOREIGN DOCUMENTS FOR USE IN IRELAND[1]

The Structure Of This Chapter

5.1 This Chapter will attempt to establish and set out aspects of Irish legal and administrative practice of direct relevance to Ireland's possible ratification of the Convention, and these shall then be reviewed in the light of the Convention's provisions.

Legal Practice

5.2 The Convention deals with abolishing one of the formalities that attends the use of foreign public documents in the signatory states. In order to identify the requirements of current legal practice, one must identify the requirements laid down by Irish courts in order to ensure, to the greatest extent possible, the authenticity of the signature and/or seal borne by foreign public documents before they will be admitted in evidence. The requirements of the courts define the legal practice of the State, and therefore the essence of the administrative practice. Identifying the safeguards Ireland requires to ensure the authenticity of the seal and/or signature borne by foreign public documents is necessary in order to establish to what extent the Convention would alter Irish legal practice, were it to be implemented. Unfortunately there is no unified rule of evidence in Irish law which specifies the formalities that such documents must undergo. Instead the requirements vary according to the nature of the document in question, and, as will be seen, these requirements are occasionally uncertain.

5.3 The Convention provides a list of documents which it deems to be

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1 See generally Ready, *Brooke's Notary*, 11th ed., 1992, Ch. 6; Lord Hailsham of St. Marylebone, *Halsbury's Laws of England*, 4th ed., 1976, paragraphs 124-230 *passim*.

"public documents" in Article 1,[2] and the present Irish requirements with regard to each of these categories of documents will be surveyed in turn in this chapter. It must be noted that in practice these requirements are very frequently - in fact, usually - waived by the consent of both parties, as neither wishes to challenge the admission of the document in question.[3] This key proviso applies throughout this chapter, and so when we talk of the requirements of Irish law with regard to the proof of the signature and/or seal borne by documents the word "requirements" is used not because they are invariably complied with, or that they must be complied with in every case. Rather "requirements" is used because a party to litigation has the right, in putting the other party on proof of his or her case, to require that all evidence be proven in accordance with the requirements of the law - albeit that in reality parties rarely exercise that right.

5.4 While surveying the requirements of Irish legal and administrative practice with regard to the admission of foreign public documents, the question must be raised whether the practice in question represents a process of legalisation such as would be affected by the Convention. The ambit of the Convention must be borne in mind - the Convention only applies to foreign public documents as defined in Article 1 and only, with regard to such documents, abolishes legalisation as defined in Article 2.[4] In the following paragraphs we will explore whether any distinctive features of Irish legal practice apply to foreign public documents within the meaning of the Convention, and, whether a process of legalisation is required.

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")

Sources of Legal Practice

5.5 Section 7 of the *Evidence Act, 1851*, states that:

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2 It would appear that the list in Article 1 is intended to be exhaustive from the words of Loussouarn, *Rapport Explicatif* in Conférence de la Haye de Droit International Privé, *Actes et Documents de La Neuvième Session, Tome II (Légalisation)*, 1960, at p.175, the relevant part of which, in the translation prepared by the Permanent Bureau of the Hague Conference, is translated as:

> "Since it wished to determine the scope of the Convention as precisely as possible, the Commission was not content simply with using a generic term; in Article 1 it listed the documents which are to be considered as public documents within the meaning of this Convention."

See also see p.25 of the *Actes*.

3 Order 32, rule 2, of the Rules of the Superior Courts states: "Either party may call upon the other party to admit any document, saving all just exceptions; and in the case of refusal or neglect to admit, after such notice, the costs of proving any such documents shall be paid by the party so neglecting or refusing, whatever the result of the cause or matter may be, unless at the trial or hearing the Court shall certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowable unless such notice be given, except where the omission to give the notice is, in the opinion of the Taxing Master, a saving of expense."

4 Article 2 of the Convention states: "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 documents has acted and, where appropriate, the identity of the seal or stamp which it bears."

"[A]ll Judgments, Decrees, Orders, and other judicial Proceedings of any Court of Justice in any Foreign State ..., and all Affidavits, Pleadings and other legal Documents filed or deposited in any such Court, may be proved in any Court of Justice, or before any Person having by Law or by Consent of Parties Authority to hear, receive, and examine Evidence ... either by examined Copies or by Copies authenticated ...; that is to say, ... if the Document sought to be proved be a Judgment, Decree, Order or other judicial Proceeding of any Foreign ... Court, or an Affidavit, Pleading, or other legal Document filed or deposited in any such Court, the authenticated Copy to be admissible in Evidence must purport either to be sealed with the Seal of the Foreign ... Court to which the original Document belongs, or, in the event of such Court having no Seal, to be signed by the Judge [who shall] attach to his Signature a Statement ... that the Court whereof he is a Judge has no Seal; but if any of the aforesaid authenticated Copies shall purport to be sealed or signed as herein-before respectively directed, the same shall respectively be admitted in Evidence in every Case in which the original Document could have been received in Evidence, without any Proof of the Seal ... or of the Signature, or of the Truth of the Statement attached thereto, where such Signature and Statement are necessary, or of the judicial Character of the Person appearing to have made such Signature and Statement."

5.6 Hence for a large number of documents emanating from foreign tribunals the simple attachment of the court's seal or judge's signature coupled with a statement suffices for the document to be *prima facie* admissible in Ireland.

5.7 For those legal documents originating from judicial authorities in states which are contracting parties to the *Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters* (the "Brussels Convention")[5], which is implemented into Irish law by the *Jurisdiction of Courts and Enforcement of Judgments (European Communities) Act, 1988*, it is provided that a copy of a foreign judgment shall be deemed without further proof to be a true copy of the judgment, unless the contrary is shown, once the document which purports to be such a copy is duly authenticated. That duly authenticated copy is then admissible in an Irish court.[6] A document is to be regarded as duly authenticated, states section 1(2) of the Act, if it purports:

"(a) to bear the seal of that court, or

(b) to be certified by a person in his capacity as a judge or officer of that court to be a true copy of a judgment given by that court."

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5 Signed at Brussels on the 27th September, 1968. The contracting parties are the E.F.T.A. states (Austria, Finland, Iceland, Liechtenstein, Norway, Sweden and Switzerland) and the member states of the European Union.

6 Section 10.

5.8 It suffices that the seal or signature *purports* to be that of the foreign court, judge or officer of the foreign court - hence no proof of the genuineness of the seal or signature is, *prima facie*, necessary. The *Child Abduction and Enforcement of Custody Orders Act, 1991*, takes an identical approach to the admission of documents falling within the ambit of the *Hague Convention on the Civil Aspects of International Child Abduction, 1980,* which purport to be the decision of a foreign judicial authority.[7]

5.9 It is clear that the processes of proof required with regard to these foreign public documents by the 1851, 1988 and 1991 Acts do not involve any process of legalisation, as defined by Article 2 of the Convention, whatsoever.

5.10 Another species of foreign public documents of a judicial nature which would fall within this paragraph of the Convention are documents relating to extradition. The *Extradition Act, 1965*, divides countries into two categories and applies to those categories two different extradition regimes. Part II of the Act applies to all countries other than Northern Ireland, England and Wales, Scotland, the Isle of Man and the Channel Islands. Obviously, therefore, extradition to countries with which Ireland has an extradition agreement, such as the United States, is covered by Part II of the *Extradition Act*.

5.11 The relevant section, for our purposes, of Part II of the Act is section 37, which provides:

> "A document supporting a request for extradition shall be received in evidence without further proof if it purports to be signed or certified by a judge, magistrate or officer of the requesting country and to be authenticated by the oath of some witness or by being sealed with the official seal of a minister of state of that country and judicial notice shall be taken of such official seal."

5.12 It appears from this section that Part II extradition documents, like nearly all other documents, are, *prima facie*, exempt from any process of proof altogether. It suffices that the seal or signature borne by a document supporting the request *purports* to be that of the foreign judge, magistrate or officer of the requesting country, once (a) it is sealed with an official ministerial seal (of which judicial notice is taken); or (b) it *purports* to be authenticated by the oath of some witness. Hence no proof of the genuineness of any of the signatures and seals is, *prima facie*, necessary. Since the formality specified in section 37 of the *Extradition Act* does not fall within the terms of Article 2 of the Convention, it would not be affected by the Convention.

5.13 Part III of the *Extradition Act, 1965*, covers our extradition arrangements with the United Kingdom. Specifically, warrants have to be endorsed by the Commissioner or Deputy Commissioner of the Garda Síochána under the *Petty*

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7 Sections 5, 10 and 19.

Sessions (Ireland) Act, 1851, as amended by s.43 of the *Extradition Act, 1965*.

5.14 Sections 54 and 55 set out several facilitations in the process for the endorsement of these warrants and the subsequent reception of British documents in court.[8] Paraphrasing, they provide that:

i) a document appearing to be a British warrant issued by a judicial authority and its verifying affidavit appearing to be sworn before a person authorised by the foreign law to take affidavits;[9]

ii) a certificate appearing to be given by the warrant-issuing authority with regard to the offence in question;[10]

iii) a document which appears to be a certified copy of a summons issued by the judicial authority;[11]

iv) a copy of an affidavit or other declaration of service and an affidavit or other written statement purporting to have been sworn by an officer of the court concerning the failure of a person to appear before a foreign court,[12]

may be accepted by the Commissioner[13] and any court (unless the court sees good reason to the contrary)[14] as having been, as the case may be, duly signed, issued, executed or sworn. It is clear that none of these stipulated processes involve any process of legalisation whatsoever.[15]

Other Modes of Admission

5.15 Despite the wide range of different words used, the 1851, 1988, 1991 and 1965 Acts just considered provide for what can be described as the grant of judicial notice to the seal and/or signatures of each of the persons and bodies to which the respective Acts refer. In other words, the Acts provide for the specified purported signatures and/or seals borne by documents emanating from foreign judicial authorities to be *deemed*, rather than be *proven*, to be true.

5.16 This, however, does not in any case imply that where a *bona fide* objection has been raised to the granting of judicial notice to the purported seal and/or signatures that the genuineness of the seal and/or signature will be accepted by the court regardless. If a plausible allegation is made of some

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8 The sections are set out in Appendix IX in full.
9 Section 54(1).
10 Section 54(2).
11 Section 54(3).
12 *Idem.*
13 Section 54.
14 Section 55.
15 The Department of Foreign Affairs once feared that this endorsement would have to be abolished if Ireland ratified the Convention. We believe that this objection was misconceived.

fundamental defect, such as mistake or forgery, the Irish court is free to request that the due execution of the foreign public document be proven by the most reliable means. Similarly, a party who anticipates the likelihood of a plausible challenge to the admission of a document may wish to use a mechanism of proof of due execution.

5.17 The current mechanism for providing the best proof of the due execution of such a document is the process of legalisation. Given that such challenges are rare, the role of legalisation in the proof of the due execution of such documents has in effect been consigned to the theoretical. Nevertheless, legalisation still retains a residual role as providing the best mechanism of proof of the due execution of documents emanating from foreign judicial authorities. The Convention would have an impact on this residual mechanism of proof, replacing the legalisation process with the *apostille* system with regard to documents emanating from Convention states. This residual role for legalisation shall be discussed in more detail later in the context of order 40, rule 7, of the Rules of the Superior Courts.[16]

Current Legal Practice

5.18 Practice reflects accurately the law as set out above. The practice of the Central Office of the High Court is of interest in this regard, for they receive, in the course of proceedings, many foreign judgments which are sought to be enforced in the Irish courts, usually exhibited in affidavits. Most of the foreign judicial documents adduced in Irish courts originate from Brussels Convention states, in which case Order 42A of the Rules of the Superior Courts, which reflects the provisions of the 1988 Act with regard to proof, are followed.[17] With regard to the admission of foreign judicial documents not originating from Brussels Convention States, documents are usually submitted bearing the seal of the foreign court, or the signature of the judge in question and the documents are usually admitted without further proof. Occasionally, the signature or seal is further certified by the registrar of the foreign court, but this is not viewed as a prerequisite of admission. Nonetheless, this practice is not a process of legalisation and so is outside the scope of the Convention.

Administrative documents

Sources of Legal Practice

5.19 There is no modern Irish authority to indicate under what conditions statements in foreign registers of births, marriages, deaths and other matters are admissible in Irish courts. Therefore, the Irish law in this area must be regarded

16 At paras. 5.27 *et seq.*

17 S.I. No. 14 of 1989 made a number of additions to the Rules in order to implement the Brussels Convention.

as somewhat uncertain.[18] Pre-1922 English authorities indicate that such statements are admissible in court in the form of certified and examined copies of entries. The register must be required to be kept by the law of the country to which it belongs or by Irish law.[19] Furthermore, the court must be satisfied that a certificate or other official document was in the form required by the law of the foreign place.[20]

5.20 An examined copy is a copy of a document which a witness swears he or she has compared with the original and swears is a correct copy. A certified copy of a public document is one which purports to be signed and certified as a true copy or extract by the officer to whose custody the original is entrusted.

5.21 Once a certified copy is produced of a statement recorded in a register (e.g. a birth or death certificate), for the document to have any probative value it must be proved, in accordance with the general rule of evidence that a document will only be admitted on proof of due execution, that that copy bears the genuine seal or signature of the officer in question.[21] There are a number of ways in which this is possible. One possibility is to bring the certificate to a local Irish diplomat or consul who is familiar enough with the signature and/or seal to verify it. This would represent a process of legalisation. This particular incidence of legalisation shall be discussed in more detail in the context of order 40, rule 7, which is dealt with below.[22] Alternatively a notarial certificate or an affidavit may be drawn up by a foreign notary verifying, in reliance on the notary's familiarity with public documents emanating from his or her state of practice, the signature and/or seal borne by the copy. The notary's authentication will be a notarial document, and the position with regard to the admissibility of these verificatory documents depends on the interpretation of order 40, rule 7.

5.22 Therefore, to summarise, it appears that copies of statements in public registers abroad which are required to be kept by the law of that country or by Irish law and which are in the official form required by law in that country will be admitted when they have been authenticated by the issuing authority and when the seal and signature of that authority has been verified. A process of legalisation *may* be the means used to carry out this proof of due execution.

5.23 The *Child Abduction and Enforcement of Custody Orders Act, 1991*, which implements the *Hague Convention on the Civil Aspects of International Child*

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18 Section 14 of the *Evidence Act, 1851*, provides for certified or examined copies of statements from any book or other document to be admissible when the original book from which the copy is taken "is of such a public Nature as to be admissible in Evidence on its mere Production from the proper Custody" and the copy bears the purported signature of the officer to whose custody the original is entrusted. However, the remaining words of the section indicate that this facilitation applies only to documents of domestic origin.

19 *Burnaby v. Baillie* (1889) 42 Ch. D. 282.

20 *Smith v. Smith* (1913) 109 L.T. 744.

21 For a statement of the general rule as to proof of due execution, see, for instance, A. Keane, *The Modern Law of Evidence*, 3rd ed., 1994, p.185. While the *Evidence Act, 1845*, provides in section 1 for the admission of copies of certain public documents without proof of due execution where a *statute* provides for the admission of a copy of the public document, copies of documents which are admissible under the common law could not benefit from this derogation from the general rule of evidence.

22 At paragraphs 5.27 *et seq.*

Abduction, 1980, sets out the procedure for the admission of a document falling within the ambit of the Convention which purports to be a copy of a decision of an administrative authority of a foreign state, saying that such document shall be deemed to be a true copy of the decision, unless the contrary is shown, if it bears the seal of the authority in question or is certified by a person in his capacity as an officer of that authority to be a true copy of the decision.[23] It is clear that this, not involving a diplomat or consular agent, does not represent a requirement of legalisation within the terms of Article 2 of the Convention. As stated above in the context of similar provisions providing for the admission without proof of documents emanating from foreign judicial authorities, this provision does not imply that where a *bona fide* objection has been raised to the granting of judicial notice to the purported seal and/or signatures that the genuineness of the seal and/or signature will be accepted by the court regardless. If a plausible allegation is made of some fundamental defect, such as mistake or forgery, the due execution of the foreign public document must be proven by the most reliable means, e.g., by a process of legalisation. Therefore, with regard to documents covered by the 1991 Act, legalisation only has a residual, and rarely performed, role. The Convention would have an impact on this alternative mode of admission, replacing the legalisation process with the *apostille* system.

Current Legal Practice

5.24 Certified copies of statements in foreign public registers, which are presented most commonly in the form of exhibits attached to affidavits, are usually admitted without challenge.

5.25 The current practice with regard to proof of copies of statements in foreign public registers and other administrative documents will be more fully dealt with in the following section.

Notarial acts on foreign private documents

5.26 By the turn of the 19th century the great weight of authority leant towards requiring some process of verification of documents executed by non-Commonwealth notaries. While mechanisms such as a certificate from the local court within the jurisdiction of which the foreign notary public worked or an affidavit sworn in the country where the document was sought to be adduced in evidence were certainly not ruled out, the general practice seems to have been to follow a process of legalisation. No such process was required for documents originating in Commonwealth countries, in which case judicial notice was taken of the notarial seal.

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23 See sections 5, 10 and 19.

i) The New Rules of the Superior Courts

5.27 In 1962 new Rules of the Superior Courts were drawn up. Order 40, rule 7 of the 1962 Rules, which has been continued in identical form as order 40, rule 7 of the 1986 Rules, stated:

> "All examinations, affidavits, declarations, affirmations and attestations of honour in causes or matters pending in the High Court or the Supreme Court ..., and also acknowledgments required for the purpose of enrolling any deed ..., may be taken ... in any foreign ... place before any Irish diplomatic or consular representative ... in that ... place or, when there is no such representative ... conveniently near to the deponent in such ... place, before any notary public lawfully authorised to administer oaths in that ... place, or where such ... place is a part of the British Commonwealth of Nations ..., before any judge, court, notary public or person authorised to administer oaths in such part ...;and the judges or other officers of the High Court and of the Supreme Court shall take judicial notice of the seal or signature [of any of the above persons] appended ... to any such examination, affidavit, declaration, affirmation, attestation of honour, or acknowledgment, or to any other deed or document."[24]

An Exposition of the Contents of the Rule

5.28 The new provision extended the judicial notice granted to the seals of foreign notaries, but also reflects the approach in the related Irish case law.

5.29 Before analysing the rule in detail, two features must be noted. First, the rule does not represent a process which *must* be complied with before documents will be admitted in court - note the use of "may" in the first sentence. Instead, many documents are admitted without any regard at all to the question of whether the seal and/or signatures they bear can be judicially noted or proven in some way, as the parties do not view it as an issue in the litigation in question. Second, in the Commission's view, once the mechanism in rule 7 is utilised, the requirement that judicial notice be granted, indicated by the word "shall" in the last sentence, must be read subject to certain fundamental Constitutional considerations, with the result that the court is only obliged to give judicial notice if no *bona fide* argument is raised against the grant of it.[25]

5.30 Those points aside, the approach of the rule is as follows. Order 40, rule 7 indicates that it is preferred that affidavits, declarations, etc. are made before Irish diplomatic or consular officers whose position is assimilated to that of Irish

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24 It would appear that what had formerly been the "British Commonwealth of Nations" termed itself the "Commonwealth of Nations" by 1971. The term is not a precise term of art.

25 The basis for this view is given at paragraph 5.48.

notaries public operating abroad.[26] When such affidavits, declarations, etc. are made before an Irish diplomatic or consular officer, the "act" involved goes beyond simple verification and no foreign notary or person authorised to administer oaths under foreign law is involved at all. There is no need for any process of verification, as the diplomatic or consular officer's seal and signature are judicially noted, as provided for in section 5(2) of the *Diplomatic and Consular Officers (Provision of Services) Act, 1993*. Therefore, no process of legalisation within Article 2 at all is involved. This situation will remain unaltered by any implementation of the Convention, as documents executed by diplomats or consuls, when not constituting legalisation within the meaning of the Convention, are explicitly excluded from the scope of the Convention in the third paragraph of Article 1. Throughout the discussion which follows, one must constantly remind oneself that legalisation will only arise when *two* elements are present.

(1) Diplomatic or consular verification of

(2) the signature etc. on a public document.[27]

5.31 Diplomatic verification is the mode of verification given precedence under order 40, probably because the use of an Irish diplomat or consul given notarial powers by Irish legislation gives the process a more familiar character.

Commonwealth Documents

5.32 With regard to Commonwealth documents some privilege is maintained. However its extent is unclear. Order 40 is interpretable in two different manners according to the various rules of statutory construction that may be applied to it. On the one hand, rule 7 may be stating that where no Irish diplomat or consul is conveniently near, a local public notary, and, in a Commonwealth state, any other person entitled to administer oaths there, will suffice instead of an Irish diplomat or consul, and no extra verification process will be necessary. Alternatively, it may be stating that in a Commonwealth state, any person authorised to administer oaths will suffice as a direct alternative to the use of an Irish diplomat or consul. The central question is whether the subordinate clause listing the parties authorised to take oaths in Commonwealth states is posed as an alternative to the use of a diplomat or consul *simpliciter*, or whether those parties are a stated alternative only when an Irish diplomat or consul is not conveniently near.

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26 *Diplomatic and Consular Officers (Provision of Services) Act, 1993*, section 5(1).

27 It is also preferred that acknowledgments for the purpose of enrolling deeds are made before Irish diplomatic or consular officials. This involves the acknowledgment before an Irish diplomat or consul by a signer of a *private* document of his or her signature on a *private* document which has been executed. The role of the Irish diplomat or consul is to certify that the signature of the person who signed the private document is genuine, and so this is a process of diplomatic or consular verification of a private signature. The acknowledgment itself, made before the diplomat or consul is an Irish, and not a foreign document which, in accordance with the *Diplomatic and Consular Officers (Provision of Services) Act, 1993*, will be admitted without any verification process.

5.33 While the law is uncertain, the Commission leans towards the first of the above two interpretations as the more logical one as it is more in accordance with the preference expressed for the involvement of an Irish diplomat or consul in the first sentence of the rule. The use of an Irish diplomat or consul would appear to be preferred with regard to documents originating from non-Commonwealth countries as it gives the process a more familiar character. This is no less desirable with regard to Commonwealth states and so therefore it is more logical and coherent to favour the interpretation maintaining the degree of diplomatic or consular precedence. However, the second interpretation has a certain amount of legislative history working in its favour. The *Chancery Act (Ireland), 1867*, and the Rules of Court up until 1962 permitted the use of Commonwealth judges, notaries or other persons authorised to administer oaths in the place in question as a direct alternative to the use of British and, subsequently, Irish diplomatic or consular staff, and so rule 7 may simply maintain that range of options in full without giving any precedence to diplomats or consuls. As will become apparent, whichever view applies has little effect on the question of whether Ireland applies any process of legalisation to any foreign public documents under its existing legal practice.

5.34 Hence our view is that the stipulation in order 40, rule 7, with regard to examinations, attestations, declarations, etc., made in a Commonwealth state is that when a diplomatic or consular officer is not conveniently nearby, these foreign public documents, within the meaning of the Convention, may be executed before *any* person authorised to take oaths in that state, whose seal and signature will be judicially noted by the Irish court. When done in that manner, without the involvement of a diplomat or consular officer, no process of legalisation is involved.

Non-Commonwealth Documents

5.35 When an Irish diplomat or consul is not conveniently near the deponent, foreign public documents, within the meaning of the Convention, may be executed before a local notary whose seal will then be recognised by the Irish court.

5.36 It is clear, therefore, that in every case, regardless of how order 40 is interpreted, any process of legalisation with regard to affidavits, declarations, acknowledgments, etc. made before foreign notaries public is *prima facie* unnecessary, for the purpose of obtaining judicial notice.

5.37 If an Irish diplomat or consul is asked to certify a seal and/or signature on a private document, it will not be a legalisation of a foreign public document within the terms of the Convention. However, the officer may refer the matter to a local notary if he or she feels too unfamiliar with the seal and/or signature borne by the private document in question. Therefore, it is arguable that it would be open to the officer who is unfamiliar with the seal and/or signature in question to request an earlier process of notarisation by a local notary, verification of his or her status as a notary by the local authorities, and finally to

return to the Irish mission for verification of that verification of status - in other words, a full process of legalisation.

5.38 The more likely intent of order 40, rule 7, must be to express a preference for the use of Irish diplomatic or consular staff, if possible, and that otherwise other local officials may be used. It follows, in our view, that a diplomat or consul who is unable to certify a seal and/or signature is a diplomat or consul who is not "conveniently near", exercising his or her functions for the purposes of rule 7. The effect is that once an individual seeking to use the mechanism of proof provided by order 40, rule 7, has attended directly on an Irish diplomat or consul (on the ground that Irish diplomats or consuls who are conveniently near the deponent have precedence over a local notary or any other person authorised by local law to administer oaths), and the diplomat or consul refers the matter to a local notary or other official, the obligation to use an Irish diplomat or consul is exhausted.

5.39 Therefore, one of the very few situations where Ireland requires legalisation within the terms of Article 2 of the Convention arises when a person who is conveniently near to an Irish diplomat or consul wishes to have the seal and/or signature borne by a foreign public document certified and the Irish consul or diplomat is familiar with that seal and/or signature. Note that this is not an instance, however, of a chain of verifications being used. If the person were to attend a foreign notary directly there would be no need to involve an Irish consul or diplomat. Rather, the rule simply prefers the use of an Irish diplomat or consul instead of a local notary when it is convenient. Failure to use an Irish diplomat or consul when there is one conveniently near could result in the refusal to give judicial notice to the seal and/or signature of the notary or other official used instead. If Ireland were to ratify the Convention, it might be necessary to provide that the use of an Irish consul or diplomat to verify the seal and/or signature borne by foreign public documents in these circumstances was not a pre-condition to admission of the documents.

5.40 Furthermore, it is arguable that it would be open to the officer who is unfamiliar with the seal and/or signature in question to request an earlier process of notarisation by a local notary, verification of his or her status as a notary by the local authorities, and finally to return to the Irish mission for verification of that verification of status - in other words, a full process of legalisation. This would appear to be the interpretation reflected in the Department of Foreign Affairs' practice discussed below.[28] The answer to the question also is important with regard to the question of whether it would be necessary to alter the wording of order 40, rule 7, to remove the instance of the requirement of legalisation described in the above paragraph. Our view is as above - to relate the number of probative checks which ought to be made to distance from an Irish mission borders on the absurd and clearly cannot be the intended interpretation of rule 7. The more likely intent of order 40, rule 7, must be to express a

28 At para. 5.59.

preference for the use of Irish diplomatic or consular staff, if possible, and that otherwise other local officials may be used. The seal and/or signature of the local notary, or other person authorised by the local law to administer oaths, to whom the matter is referred could be judicially noted in accordance with order 40, rule 7, without any further involvement of the Irish mission in question. Our view of the wording of rule 7 is that there would be no obligation then for the Irish consul or diplomat to then verify that verification.

5.41 If the diplomat or consul is not conveniently near, the verification of, say, a birth certificate by a local notary may alone suffice. That seal and/or signature would be judicially noticed and therefore no process of legalisation would be involved. According to the second possible interpretation of rule 7 with regard to the use of Irish diplomats or consuls in Commonwealth states, any person authorised to administer oaths in such state may be used as a direct alternative to an Irish diplomat or consul, however again the outcome is the same - no legalisation is necessary.

5.42 If order 40, rule 7, does not cover notarial certificates verifying the seal and/or signature borne by foreign public documents, such as certified copies of statements in public registers, no authority yet having confirmed that it does, some other mechanism is usually feasible - such as the swearing of an affidavit by the notary as to the genuineness of the certificate - so that order 40, rule 7's granting of judicial notice can be utilised. In practice affidavits sworn by foreign public notaries are regularly used to prove the seal and/or signature borne by foreign documents, however an Irish diplomat or consul will be used if there is one conveniently nearby. Then the documents in question are usually admitted without any further formalities.

5.43 It is difficult to envisage a situation in which order 40, rule 7 cannot provide a streamlined process for the admission of foreign public documents. However, should it not be possible for some reason to utilise the order 40, rule 7 process and the document in question does need to be proven, in our view the "residual" mechanism of proof would be a process of legalisation. That would mean that if the certificate originated in a non-Commonwealth country, a local notary ought verify its origin, and his or her status would be in turn verified by the local authorities, and their verification would in turn be verified by an Irish diplomat or consul. This is a process of legalisation. If the document originates from a Commonwealth country, verification of the document by a local notary may suffice alone. This does not involve any legalisation.

5.44 Finally, this provision is now outmoded. Apart from the fact that the term "British Commonwealth of Nations" has not been used by that body to describe itself since the early 1970s (it now being the "Commonwealth of Nations"), it is odd to define the extent of a facilitation in the process of proof by reference to an association of which the State has not been a member for

forty-five years.[29] While it might be said that Irish courts might be more familiar with many of the legal systems and therefore the offices held by officials in Commonwealth states, the same applies to many other states, e.g. the United States of America.[30] Finally, it certainly seems anachronistic that this larger evidential facilitation is granted to members of an international association of which the State is *not* a member, and denied to members of associations of which we *are* a member *and* which have sought to liberalise the recognition of foreign public documents i.e. the European Union and the Council of Europe.

ii) Other Modes of Admission

5.45 The starting point for discussing possible alternative modes of admission of foreign public documents in court must be to emphasise that the mechanism for the proof of foreign documents provided by order 40, rule 7 is not mandatory. The word "may" is used in the first sentence, indicating that the use of an Irish diplomat or consul or other listed person, depending on the circumstances, is not mandatory. However, the "shall" in the final sentence would appear to indicate that once the rule 7 mechanism is followed judicial notice must be granted.

5.46 Secondly, it is to be noted that the admission of foreign public documents is rarely a matter of controversy. Foreign public documents may simply be presented before the court without any further formality and accepted without challenge. The fact that rule 7 is not mandatory enables documents to be admitted even though that process is not followed. Therefore, a party may introduce a foreign document, e.g. a foreign birth certificate, without any accompanying documents attesting to its genuineness of origin.

5.47 At this point, therefore, one can establish two possibilities with regard to the admission of foreign documents -first, that no process at all is undergone and the document is simply produced in court, the party in question being confident that the other party will not put the matter to proof; and, second, that the party, either anticipating that the other party will put him or her to proof of the genuineness of the seal and/or signature borne by documents, or purely in order to be thorough, chooses to put the document through one of the mechanisms set out in order 40, rule 7, upon which the judge "shall" give judicial notice to the signature of those officials involved in the mechanism in question.

5.48 Order 40, rule 7 should be read subject to the provisions of the Constitution, and so the Court is only *prima facie* obliged to give judicial notice to the purported signature and/or seal of the listed persons. If an argument is raised as to the genuineness of a seal and/or signature, no obligation is placed on the judge to give judicial notice.

5.49 While it may be extremely rare for a judge to request a process of

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29 See Lord Hailsham of St.Marylebone, *Halsbury's Laws of England*, 4th ed., 1991, para. 801.

30 Strangely, order 78, rule 2(2), does make special provision concerning documents verifying powers of attorney emanating from the United States.

legalisation, it certainly remains open to him or her to do so in order to ensure the probative weight of the documents in question. Therefore, legalisation still has a place in Irish law as a mechanism of proof.

iii) The Companies (Forms) Order, 1964

5.50 The only legislative provision which explicitly requires that a process of legalisation be gone through is Part XI of the *Companies Act, 1963*, which refers to companies incorporated outside the State which have established a place of business within the State, i.e. external companies. The documents required by the Registrar of Companies in connection with the registration of external companies are outlined in section 352(1) of the Act. The certification and authentication procedures for such documents are stated in paragraph 4 of the *Companies (Forms) Order, 1964*,[31] which provides:

> "[Any] instrument constituting or defining the constitution of a company shall, ...be certified... as follows:
>
> (a) certified as a true copy by an official of the Government to whose custody the original is committed, the signature or seal of such official being authenticated by an Irish diplomatic or consular officer; or
>
> (b) certified as a true copy by a notary of the country in which the company is incorporated, the certificate of the notary being authenticated as aforesaid; or
>
> (c) duly certified as a true copy on oath by some officer of the company before a person having authority to administer an oath, the status of the person administering the oath being authenticated as aforesaid."[32]

5.51 Paragraph 4 does provide for legalisation within the meaning of Article 2 of the Convention of the seal and/or signature borne by the official certificates issued or notarial acts executed in order to certify the company's constitution. The Hague Convention would simplify verification procedures for these foreign public documents compared to those outlined in the Order.

The Special Position of Some Documents Admissible in England

5.52 There is however one state for which a blanket exception is apparently made from the variety of rules applying to the species of documents listed above. Documents which are admissible without proof of due execution in England or Wales are liable to be admitted in Ireland as they would be in the courts of

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31 S.I. 45 of 1964.
32 See Appendix XII.

England and Wales. Section 9 of the *Evidence Act, 1851*, states:

> "Every Document which by any Law now in force or hereafter to be in force is or shall be admissible in Evidence of any Particular in any Court of Justice in England or Wales without Proof of the Seal or Stamp or Signature authenticating the same, or of the judicial or official Character of the Person appearing to have signed the same, shall be admitted in Evidence and to the same extent and for the same Purposes in any Court of Justice in Ireland, or before any Person having in Ireland by Law or Consent of the Parties Authority to hear, receive, and examine Evidence, without Proof of the Seal or Stamp or Signature authenticating the same, or of the judicial or official Character of the Person appearing to have signed the same."

5.53 The breadth of this provision should be noted. Not only does it seek to make England and Wales-originating documents admissible in Ireland, but also any documents originating from any source (e.g. some other state) which *would* be admissible in England and Wales. However, the reference to "any law now in force or hereafter to be in force" would indicate that the Act refers solely to exceptions to the need to prove due execution existing by reason of *statute* law. It was pointed out above that the reciprocal provision in English law giving privileged status to documents admissible without proof of due execution in Ireland (section 10 of the same Act) now only applies to Northern Ireland.[33]

5.54 Article 73 of the 1922 Constitution and then Article 50 of Bunréacht na hÉireann carried over the pre-1922 corpus of law into Saorstát Éireann and Ireland respectively to the extent that the laws in question were not inconsistent with the respective Constitutions. This Act does not benefit from the presumption of constitutionality.[34]

5.55 There is therefore, it appears, no need for any legalisation procedure with regard to documents admissible in England and Wales which are sought to be admitted before an Irish court where that document is admissible without proof of signature or seal before an English court under a pre-1851 statute.

5.56 To survey the position with regard to public documents as defined by Article 1 of the Convention, the position with regard to documents emanating from the English courts is still regulated by the 1851 Act and so these are admissible under the same conditions as spelt out above at paragraph 5.5. With

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33 See paragraph 4.18.

34 In this case there is no possibility of somehow altering the plain words of section 9 so as to essentially transform "hereafter" into "hereafter until 1922" so as to excise the clear intent that the provision operate indefinitely. However, in *Cassidy v. Minister for Industry and Commerce*, [1978] I.R. 297 at 312, Henchy J. referred to the concept of "horizontal severance". In question was a statutory instrument which applied in its terms simply to the sale of intoxicating liquor, and which made no reference to the location of the sale. In so far as it referred to a lounge bar (as opposed to a public bar) it was *ultra vires*. Henchy J. accepted that the words of the instrument did not lend themselves to severance, but stated that the words could simply be severed in their range of application. Therefore, the instrument was preserved and was ruled inoperable only in so far as its application ran into the area of *ultra vires*. Were the same mode of severance to be applied to the 1851 Act, it would of course apply up until 1922.

regard to administrative documents and official certificates, the combined effect of section 14 of the 1851 Act and section 1 of the *Evidence Act, 1845*, is to permit the use of certified or examined copies, without proof of the purported signature and/or seal, to prove the contents of any document provided that the original document is of such a public nature that it is admissible in evidence on production from proper custody and no other statute provides for proof of its contents by means of a copy. Therefore, certificates of birth, marriage and death originating in England are all admissible without any process of proof in Ireland.

5.56 With regard to notarial acts ((c) and (d) in Article 1 the central question is under what conditions of proof the seal and signature of domestic and foreign notaries are recognised in English law. Provision was made by statute for the admission without proof of the seal and/or signature borne by notarial certificates drawn up by British consuls and diplomats working abroad, and so their seals and/or signatures, it appears, should be accorded equal recognition in this State. As for foreign notaries, no provision appears to have been made by statute at that time for the admission without proof of documents bearing their seals and/or signatures, and so they cannot benefit from the 1851 Act's facilitation.

5.57 As for acts of English notaries in England, the seals and/or signatures of English notaries were, it appears, (and still are) admitted without proof by the English courts. However, no statute in force in 1851 of which we are aware seems to have made provision for such, it being a matter of common law. Therefore, it would appear that English notaries' seals and/or signatures do not benefit from the facilitation of proof under the 1851 Act.

5.58 To summarise, it can be said that in several instances it is possible to adduce documents of English origin without any further process of proof in accordance with English statute law pre-1851.

Administrative Practice

5.59 In this section the administrative practice of the Department of Foreign Affairs shall be examined - in other words, the Department's reaction to a request made by a person wishing to utilise documents before some body in Ireland that some process of verification of the seal and/or signature borne by the documents be carried out. It has already been described how a party may decide that no issue will be raised as to the genuineness of a seal and/or signature and so never approach any person, let alone an Irish diplomat or consul, for verification. Naturally, the Department's practice only deals with those latter occasions when it is considered *necessary* to approach an Irish mission. Of course, individuals often approach Irish missions seeking verifications which are unnecessary.

5.60 In these circumstances it is not surprising that practitioners advise that courts and administrative bodies in Ireland will often accept as genuine a document which has come directly from the Irish Embassy situated in the originating country (or indeed a British Embassy if there is no Irish Embassy)

without any previous legalisation chain. This practice could stem from either an application of order 40, rule 7 or a waiver of any process of proof at all by the parties.

5.61 The Department of Foreign Affairs has described its practice as of March, 1992, outlined below.

Private Signatures on Documents

5.62 These documents are of interest in so far as their presentation before Irish authorities may require accompaniment by a foreign public document, usually falling into the category of notarial acts and official certificates which are placed on documents signed by persons in their private capacity (c) and (d) of the second paragraph of Article 1 respectively). The legal practice concerning the admission of these documents is dealt with above. For personal signatures on documents, whether of a legal nature or otherwise, the official process is described as follows:

i) No signature of a private person will be legalised[35] by the Department of Foreign Affairs unless it is written or acknowledged by the writer in an officer's presence, or is a signature personally known to the diplomatic or consular officer. The fee for legalisation is £9 approx.

ii) If the person is unable to be present or is unable to produce satisfactory proofs as to his or her identity, then his or her signature should be authenticated in the originating country by a person qualified under local law to administer oaths, i.e. the equivalent of a notary public or a commissioner for oaths.

iii) Then the latter's signature should be subsequently authenticated by an official of the relevant court of justice or other such authority competent to authenticate such signatures.

iv) Having compared that authenticating signature with that held on file by the Embassy, the diplomatic or consular officer will then affix the seal of the Embassy and his or her own signature.

5.63 This represents a process of legalisation within Article 2 of the Convention. Our view is that this mechanism of diplomatic or consular legalisation is not required in Irish law, when the person seeking the verification is utilising the process laid out in order 40, rule 7 (as opposed to specifically requesting legalisation). First, the Irish diplomat or consul can use his or her notarial powers so as to remove the need for the involvement of a foreign notary (e.g. by the execution of an affidavit). Secondly, and more importantly, it appears to the Commission that once an individual seeking to use the mechanism of proof

35 The term is used by the Department in a general sense, and naturally does not refer to the Hague Convention's use of the word in Article 2.

provided by order 40, rule 7, has attended directly on an Irish diplomat or consul (on the ground that Irish diplomats or consuls who conveniently near the deponent have precedence over a local notary or any other person authorised by local law to administer oaths), and the diplomat or consul has referred the matter to a local notary, the obligation to use an Irish diplomat or consul is probably exhausted.

5.64 In the Commission's view, the seal and/or signature of the local notary, or other person authorised by the local law to administer oaths, to whom the matter is referred could be judicially noted in accordance with order 40, rule 7, without any further involvement of the Irish mission in question. Under the law as it now stands in Ireland, in our view, Irish diplomats or consuls ought only be involved in legalisations at the specific request of the person seeking that full process of proof.

Official and Quasi-official Documents

5.65 The phrase "official and quasi-official documents" as used by the Department, covers a considerable array of documents, the rules governing which are indicated under the categories given above (e.g. documents emanating from the courts, administrative documents, etc.). Again it should be noted that the practice of the Department is only relevant to the extent that there is some obligation to have resort to an Irish mission abroad. For example, foreign judicial documents need never be brought to an Irish mission.

5.66 In essence the Department follows the same general approach as with regard to private signatures on documents.

i) The signature and seal on the document will only be certified by the Irish diplomatic or consular official if it is known to that person. Irish missions are encouraged to keep specimens of the signatures and seals most commonly attached to such documents (e.g. the signatures and seals of officers who handle the local register of births, deaths and marriages) and so may be able to certify the seal and signature without any further procedure.

5.67 This is an example of legalisation, *i.e.* Irish diplomats or consuls using their notarial powers under Irish law to verify the seal and/or signature borne by a foreign public document.

ii) If the signature and/or seal is unfamiliar, a local notary will be involved and the process will be the same as in steps (iii)-(v) in *Signatures in Private Documents*, above.

5.68 When Irish diplomats or consuls are unfamiliar with a seal and/or signature, they must refer the matter to a local notary who will be familiar with the seals and signatures of the institutions of the state in question. The same

issue arises then as mentioned above i.e., when a matter is referred to a local notary, does order 40, rule 7 require that the matter be returned to the Irish mission for further certification? In our view, given the words and reasoning of order 40, rule 7 there is no such need. The opposite is the case when it is not sought to utilise rule 7 and a process of legalisation is specifically requested.

Conclusions

The Current Legal Practice

5.69 From the review of current legal practice we conclude that legalisation within the terms of Article 2 of the Convention would only be required under Irish legal practice (and would have to change on ratification) when

i) a *bona fide* challenge is made to the genuineness of the seal and/or signature borne by a document so that a judge would be justified in refusing to grant it judicial notice in accordance with order 40, rule 7, or one of the other statutory provisions discussed above.

ii) a verification of the seal and/or signature borne by some foreign public document, with regard to the admission of which no specific provision outside of order 40, rule 7 has been made in Irish law, is sought and an Irish diplomatic or consular representative who is able to verify that seal and/or signature directly is conveniently near to the person seeking such verification. This requirement stems from the wording of order 40, rule 7.

iii) no provision of Irish law provides for a mechanism of proof of a seal and/or signature borne by a foreign public document without involving actual proof of due execution by the most cogent means, which is currently legalisation, and it is necessary to prove the seal and/or signature. This residual requirement stems from the general law of evidence.

5.70 By far the most significant of these occasions when legalisation is required is the first. The second stems from the preference for the use of Irish diplomats or consuls expressed in order 40, rule 7. It does not represent, in our view, a specific determination that a chain of verifications, and so special safeguards, is necessary for foreign public documents. This is because the alternative, when a consul or diplomat is not nearby, is simply to attend a local notary whose signature is then judicially noted without any verification whatsoever. The third occasion when legalisation is required is purely residual. We have already indicated that it is exceptional for order 40, rule 7, not to enable one to avoid a verificatory chain for the signatures and/or seals borne by foreign public documents.

The Administrative Practice

5.71 This, while it accords with practice goes beyond the actual requirements of the law, in our opinion, by requiring that a process of legalisation be undergone, even when no challenge has been made with regard to the question of due execution of a foreign document, in the situation when order 40, rule 7 requires that verification of the document's seal and/or signature first be sought from an Irish diplomat or consul who then refers the document back to a local notary, on the ground of unfamiliarity, before attaching his or her own certification. As stated above, in our view this latter practice stems from an inaccurate perception of the law.

The Effect of the Legalisation of Foreign Public Documents

5.72 While the Convention gives legalisation a precise meaning, unfortunately Irish law and, as the drafters of the Convention discovered, the laws of many other states do not have any precise definition of the term. A large part of this uncertainty stemmed from the differing national views of what the legalisation process demonstrated with regard to the execution of the document, or, in other words, what were the precise effects of legalisation. In the review of the Convention in Chapter 2 it was noted that this uncertainty led to the drawing up of a precise and limited definition of legalisation in the Convention's Article 2.[36]

5.73 The question of what effects other states attribute to legalisation in their legal practice has no effect on the desirability of Ireland's ratifying the Convention, nor on the mode of any possible implementation, and therefore it is not proposed to survey these effects.

5.74 The Convention's definition of legalisation refers solely to the process of certifying the authenticity of the signature, the identity of the seal or stamp borne by the document and the capacity in which the person signing the document has acted.[37] In order to establish the effect in Irish law of the Convention's abolition of legalisation and its replacement with the *apostille*, we need to first establish what are legalisation's effects. If legalisation does have in Irish law a wider effect than that specified in Article 2, it means that the *apostille* system alone might not replace the effect of the legalisation process and persons will have to make extra checks in order to receive the same assurance they once did from legalisation.

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36 In a comparative report on the effects of legalisation in various states represented at the Hague Conference (but which also reviewed the laws of Ireland, Liechtenstein, Turkey and Iceland), La Lègalisation des Actes Officiels Étrangers, Preliminary Document No. 1 of March 1958, G.A.L. Droz, Secretary of the Permanent Bureau of the Hague Conference, highlighted the differing effects of legalisation in the various states. He named Ireland, Great Britain, Denmark, Germany, Norway, Sweden and Switzerland, amongst others, as attributing effects beyond mere verification of the seal and/or signature which a document bears to the legalisation processes required by those states.

37 *Article 2 of the Convention states:* "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 documents has acted and, where appropriate, the identity of the seal or stamp which it bears."

The Effect of Legalisation in Irish Legal Practice

5.75 The Commission has already reached the conclusion that the central role for legalisation in Irish law is as a mechanism of getting the best evidence of the genuineness of the seal and/or signature borne by a document when that signature and/or seal would not be judicially noted in accordance with order 40, rule 7, and a *bona fide* challenge has been raised to its genuineness.[38]

5.76 In the case of a birth certificate executed by, say, the Registrar of Births, that would involve showing that the seal and signature is that of the Registrar, and so showing that the person identified by that signature holds the office of Registrar. It would not involve showing, say, that the Registrar had authority in law to affix his seal and signature to birth certificates, as that issue is not relevant to the question of whether the certificate bears the purported seal and signature of the person whom it is claimed executed it. The essential of the proof of due execution, therefore, is the proof of the genuineness of the seal and/or signature borne by a document, which would encompass, in the case of public documents, proof that the person in question holds the capacity alleged in the document. If the person does not hold the alleged capacity, the seal and/or signature cannot be seen as genuine in the case of a public document as they do not indicate the truth.

5.77 Therefore, from general principles of the law of evidence, the effects attributed to the legalisation process by Article 2 of the Convention and by Irish law are one and the same.

5.78 When it is sought to show the competence of a person to administer oaths under a foreign law and judicial notice is not given to the seal and/or signature borne by the document by reason of order 40, rule 7, some separate confirmation of the authorisation to administer oaths under the foreign law would be necessary, either from the Irish consul abroad or the local supervisory authorities (e.g. the local court).

5.79 While the verification of competence could be carried out by an Irish consul, the Department of Foreign Affairs instructs its officers only to verify the genuineness of the seal and/or signature on documents and nothing else and so clearly the Department takes a narrow view of the legal effects of the consular or diplomatic stage of the present verificatory process. As the Irish consul or diplomat will not make such a confirmation, the local body will have to do so instead in a supplementary act to its verification of the status of the person in question, the verificatory body's seal and/or signature then being verified by the diplomat or consul. That supplementary act will be at the request of the person seeking the process of legalisation. It is no longer, if it ever in fact was, the role of the Irish consul or diplomat to establish such competence - this needing to be established at some earlier point in the legalisation chain, and therefore the Irish consul or diplomat does not certify anything beyond those matters specified in

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38 At paragraph 5.69.

Article 2 of the Convention and so the replacement of legalisation as defined by the Convention with the *apostille* system would be of no legal significance in this regard.

CHAPTER 6: PRACTICAL ASPECTS OF THE CURRENT PROCEDURES & ADVANTAGES OF RATIFYING THE CONVENTION

A: Practical Aspects of the Procedures for Outgoing and Incoming Documents

Problems Posed for Those Wishing to Use Irish Documents Abroad

The Time Involved

6.1 It is estimated that, in the case of a country with consular or diplomatic representatives in Ireland, the full legalisation process takes two to three days. With regard to documents which must be sent to foreign consular or diplomatic representatives in London, it takes a minimum of three weeks unless one is prepared to go to the expense of hiring a courier service.[1] Some notaries have managed to short-circuit the legalisation process by registering their signatures directly with the diplomatic or consular representatives of the foreign countries in Ireland. This means that the seal of the notary will be certified without reference to the Registrar of the Supreme Court or the Secretary of the Department of Foreign Affairs.

6.2 However not all foreign embassies are prepared to facilitate notaries in this way, and in any case not all notaries have availed of the opportunity. All the missions in Ireland of member states of the European Union, excepting Greece and Luxembourg, permit Irish notaries to give samples of their seal and/or signature directly to the mission. The United States Embassy also keeps a register.

6.3 There are only 34 countries with resident embassies in Ireland and a further 14 countries with consulates only.[2] This can be compared with the

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1 Information received from the Faculty of Notaries Public in Ireland, 21st October 1992.

2 Listed in Appendix XI.

United Kingdom, which has roughly 150 resident embassies. The problems that this lack of direct representation might create are somewhat ameliorated by the acceptance by some states of documents legalised by their honorary consular representatives in Ireland and, though somewhat less so, by the existence of bodies, such as An Bord Tráchtála and the Arab-Irish Chamber of Commerce, which facilitate the legalisation process. The number of occasions on which it is necessary to go through the United Kingdom is by no means negligible. Some of the states which are not represented in Ireland are parties to the Hague Convention, *e.g.* Luxembourg, while others are not, *e.g.* Saudi Arabia.

The Costs Involved

6.4 The processes applied are labour-intensive, particularly when the document is private in nature and a notary is employed. Quite apart from professional fees, the legalisation process involves the incurring of what can amount to quite substantial costs, charges being levied at every stage. The Department of Foreign Affairs charges a minimum £10 for its certification, and embassies in the range of £7 to £15. These charges are just minimum ones and are levied with regard to each document certified.[3] An Bord Tráchtála now levies a minimum aggregate charge of £45, to which must be added the extra charges of the Irish Embassy in London (£5) and the Foreign and Commonwealth Office (Stg£10). The Arab-Irish Chamber charges approximately £30 for its service.

Attitude to the Current System

6.5 The Commission is aware that the costs and slowness of the current procedure are a very serious source of concern, particularly for firms involved in exporting goods and services. To this is coupled the irritation felt by all involved, at having to put documents through a process which to lawyers and non-lawyers alike appears highly bureaucratic and an anachronism.

Problems Posed for Those Wishing to Use Foreign Documents in Ireland

6.6 While Irish law does not require any form of consular or diplomatic verification in many cases, it would appear that foreign public documents for use in Ireland are being put through the full legalisation process more frequently than Irish legal practice does in fact require. This may stem from a misunderstanding of the law in this area, which cannot be very surprising given its diverse sources and, very probably, the laying down of excessive verificatory requirements by private bodies in the State, regardless of whether that administrative practice does in fact reflect Irish law.

6.7 In those cases where authentication of foreign public documents has to be performed by Irish consular or diplomatic staff abroad, a minimum fee of £9

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3 Costs are as of 3rd November, 1993.

is usually charged. Ireland does not keep registers of foreign notaries at its foreign embassies so as to short-circuit the procedure, as do many foreign embassies in Ireland for the benefit of Irish notaries and their clients.

6.8 If Ireland were party to the Convention, procedures would be simpler and less expensive in those cases where legislation was thought necessary.

Administrative Problems for the State

Documents for Use Abroad

6.9 In addition to the expense and inconvenience suffered by those wishing to have documents legalised, there is also evidence that the present process of legalisation can cause severe problems in the administration of the Supreme Court Office: the volume of documents requiring legalisation is likely to have exceeded 2,500 in 1993.[4]

6.10 There are also occasional bursts of activity which must be dealt with without any short-term increase in resources. This occurred during the rush to adopt Romanian children in 1989-90 when couples arrived at the Supreme Court Office, without notice, with up to 25 documents in need of immediate authentication.[5]

6.11 A similar burden is imposed upon the Department of Foreign Affairs (including its London Embassy) and An Bord Tráchtála.

Documents for Use in Ireland

6.12 Irish missions abroad have to provide verification facilities for those persons who, rightly or wrongly, seek to have documents legalised and this, of course, constitutes a further burden on the administration and finances of the Department.

B: The Advantages and Administrative Changes Deriving From Implementation of the Convention

Simplification of the Existing Process for Outgoing and Incoming Documents

6.13 The most substantial advantage would be the reduction of time and expense for those involved in the present legalisation system. The primary effect of the implementation of the Convention by this State would be the ending of the necessity to send documents (going outwards) to the diplomatic or consular representatives of foreign states for legalisation. It will be recommended that the Department of Foreign Affairs take over the verification of the status of notaries

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4 Information received from the Supreme Court Office, 1st November 1993.

5 Information received from the Faculty of Notaries Public in Ireland, 6th November, 1992.

public from the Supreme Court Office.[6] The implementation of that recommendation would end the necessity to attend both at the Supreme Court Office *and* the Department of Foreign Affairs during the legalisation process. Therefore, in the verification of a private document, only a notary and the Department of Foreign Affairs would be involved.

6.14 The Supreme Court Office and notaries in general would benefit from the improved procedure offered by the Convention. The resulting increase in efficiency would be of general benefit to the public and the business community, who are in the unenviable position of both funding and suffering the current laborious process. Ireland's missions abroad would also benefit from a decline in the number of legalisations sought.

6.15 Thus it would seem that Ireland would have nothing to lose and everything to gain by ratifying the Convention. Ratification would entail no undue interference with our verificatory regime as regards incoming foreign documents, which is already very lax in practice, and it would, at the same time, facilitate the production of Irish documents abroad.

The Impact on Notaries

6.16 The Faculty of Notaries Public in Ireland has actively supported the ratification of the Convention by Ireland for several years. Ratification of the Convention, coupled with the recommendations contained herein, will simplify the current verification process for notaries by ending the need to present documents at foreign embassies and pay the relevant charges there, and the need to attend both at the Supreme Court Office and the Department of Foreign Affairs to obtain verifications - simplifications which must be welcomed by all those who find themselves involved in the current lengthy and expensive process.

The Impact on the Irish Authorities

The Competent Authority for Ireland

6.17 The extent of any administrative burden created by the appointment of a competent authority in accordance with contracting states' duties under Article 7 of the Convention will be examined in Chapter 7.

The Supreme Court Office

6.18 The transfer of the duty to verify a notary's status on the roll of notaries, currently placed upon the Office, to the Department of Foreign Affairs would reduce substantially the paperwork in the Supreme Court Office.

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6 Paragraph 7.43.

Ireland's Missions Abroad and An Bord Tráchtála

6.19 Ireland's consular and diplomatic representatives abroad would no longer have to receive and certify foreign public documents emanating from some forty Convention states. This would naturally result in a diminution of the administrative burden borne by our missions, the scale of that diminution varying with the extent of Irish citizens' contacts with that country.

6.20 As was discussed in Chapter 5, many of the services which Irish missions provide abroad, such as the swearing of affidavits before Irish consular or diplomatic representatives, do not fall within the definition of legalisation and so will not be affected as a result of the Convention. It is for the Department to consider whether it still wishes to provide these other services.

6.21 The Convention's implementation will have an impact on An Bord Tráchtála's role. An Bord currently relays documents to Irish embassies abroad and thence to the consular or diplomatic representative there of states which do not have representatives in Dublin. This process is currently necessary when it is sought to legalise documents for use in states which do not maintain any direct diplomatic or consular links with Ireland. As the Convention will abolish the need for such legalisation, there will be no need to involve An Bord at all in verifications involving Convention states without direct links with Ireland. This will greatly facilitate verifications of documents bound for the considerable number of states which currently fall into that category.[7] As the number of accessions to the Convention is likely to continue to grow, the remaining burden on An Bord will diminish somewhat over the coming years.

6.22 While in certain respects the Convention's implementation, and the implementation of the recommendations herein, particularly with regard to the creation of a competent authority for the State, will increase the burden on particular sections of the public service, it is submitted that the total administrative burden on the State will be reduced. Furthermore, that likely decline in the aggregate administrative burden on the State will coincide with a concrete significant reduction in the burdens placed on private businesses and citizens who wish to have documents legalised. In particular, facilitating the free movement of documents will improve the situation of those involved in business in Ireland, as well as foreign and Irish citizens involved in transactions outside their native legal systems.

Ireland's Participation in International Developments

6.23 The Convention of 1961 is the most widely ratified Convention ever concluded by the Hague Conference on Private International Law. It has been signed by 40 states and significant territorial extensions have been made under Article 12. Its ambit is continually extending to cover emerging areas of law,

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7 Luxembourg, Liechtenstein, Cyprus, Israel, Suriname, Antigua and Barbuda, Bahamas, Botswana, Brunei Darussalem, Croatia, Lesotho, Malawi, Malta, Marshall Islands, Mauritius, Panama, Seychelles, Fiji, Slovenia, Swaziland and Tonga.

such as intellectual property documents. Thus the general utility of the Convention is widely recognised.

6.24 The two relevant parallel conventions to the Convention of 1961, which have been reviewed in Chapter 3, being the *European Convention on the Abolition of Legalisation of Documents Executed by Diplomatic or Consular Officers, 1968* (concluded within the framework of the Council of Europe) and the *Convention on the Abolition of Legalisation of Documents in the Member States of the European Community, 1987* (concluded under the aegis of the European Union) indicate that the ratification of the Hague Convention by Ireland would clearly reflect the prevailing climate, in favour of maximum liberalisation and informality, within Europe.

6.25 With the implementation of the European Union's Single European Market programme from the 1st January, 1993, and Ireland's increasing involvement in the movements towards European cohesion, it is becoming troublesome and embarrassing that the Hague Convention, which can be viewed as at least a first step in the State becoming involved in the more liberal legalisation regime envisaged by the European Union Convention, has not been ratified. The Commission is aware that Ireland has come under criticism in this regard from the business community. Adherence to the Hague Convention would be a significant measure of legal cooperation with our partners in the European Union, all of whom, except Denmark (which has instead implemented the more liberal European Union Convention), have ratified it.

6.26 *The Commission recommends that Ireland should become party to the Hague Convention on the Abolition of the Requirement of Legalisation for Foreign Public Documents, 1961.*

Reservations

6.27 The desirability of making a reservation or reservations on the State's possible ratification of the Convention, so as to prevent any particular aspect of Irish law being altered by the Convention, is dependent on whether the State has any fundamental interest somehow challenged by the Convention. It can be seen from the discussion to date that the substitution of legalisation, a mechanism of proof, with a new and equally effective mechanism - the *apostille* system - is without substantive impact on Irish law. However, given the particular assiduousness that must attend on proof in criminal matters, the Commission believes that the possibility of a reservation in this regard ought to be openly canvassed.

Criminal Matters

6.28 Most conventions which, like the Hague Convention, are of a predominantly civil character expressly state that they do not apply to criminal matters. Nonetheless, the words of (a) of the second paragraph of Article 1 of the Convention indicate that it does apply to criminal matters, the subparagraph

providing that documents emanating from a public prosecutor are deemed to be public documents within the scope of the Convention.

6.29 As there are no legislative provisions in the field of Ireland's criminal law upon which the Convention has any effect, and the Convention does not mark any decline from the level of effectiveness of the most reliable mechanism of proof of due execution currently existing (i.e. legalisation), the Commission can see no reason for the State to object to the Convention's application to the criminal field.

Extradition

6.30 As was discussed in Chapter 5, the Convention has no effect whatsoever on any of existing provisions of the *Extradition Act, 1965*, with regard to the foreign documents required by Ireland when a request is made for extradition.

6.31 When the United States ratified the Convention, it insisted on a reservation as regards extradition. This was necessary in the light of section 3190, Title 18 of the *United States Code*, which provides:

> "...foreign documents accompanying an extradition request will only be admissible in the American court if they are certified by the principal United States diplomatic or consular agent in the requesting state to be admissible for similar purposes by the courts and tribunals of that state."

6.32 This, unlike the provisions of Irish extradition law, does stipulate a process which partially comes within the scope of the Convention. This verification certifies the admissibility of the documents in the originating state *and* the authenticity of the signature, the capacity in which the person signing the documents has acted and the identity of the seal or stamp which they bear. Therefore, this process has effects beyond legalisation as defined by Article 2 of the Convention and so an *apostille* would not represent a sufficient certification. Rather than divide up the processes, the United States in its ratification expressly stated that an extradition request without this attestation would be refused.

CHAPTER 7: THE IMPLEMENTATION OF THE CONVENTION

Part A: Documents Originating in Ireland which It is Sought to Use in Convention States

The Nature of the Competent Authority

7.1 If Ireland decides to ratify the Convention, Article 6 of the Convention requires the State to appoint a competent authority, the duties of which shall be:

(i) to affix an *apostille* to Irish public documents, when requested to do so, "certifying 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.";[1]

ii) to maintain a register recording details of each *apostille* issued;[2]

iii) to verify the details in purportedly issued *apostilles* against those in the register when requested to do so by any person.[3]

7.2 The starting point for considering which person or body ought to be appointed the competent authority to issue *apostilles* for Ireland must be to identify the parameters laid down by the Convention within which that decision must be made.

7.3 Article 6 of the Convention states:

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1 Article 5.
2 Article 7.
3 *Idem.*

"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."

7.4 This provision was discussed above in Chapter 2.[4] The wording of Article 6 indicates that the body which is appointed Ireland's competent authority ought to be part of the public administration of the State. It is fundamental to the successful functioning of the *apostille* system that other contracting states be willing to place their trust and confidence in Ireland's competent authority. The involvement of an Irish state body ensures continuity and constant and easy availability. Furthermore, it may be a reassuring indication to the other contracting states that faith can be placed in the *apostilles* issued in Ireland. This consideration may not be of immediate significance to Irish lawyers, as traditionally the Irish courts have had a relaxed approach to proving the due execution of foreign documents. This relaxed approach is probably justified given that there is little evidence of misstatements or forgeries occurring in the flow of foreign public documents into Ireland. However, for the civil law states where great faith is placed in public documents, and most especially notarial instruments, in an array of legal situations, Ireland must, in its implementation of the Convention, institute a system in which civil law systems will be happy to place their trust. In short, the reliability of the Irish *apostille* system will be made most clear, as a matter of appearance *as well as* reality, to Convention states by the involvement of the Irish State itself.

7.5 A further factor in Ireland's decision should be the avoidance of the appointment of too many and diverse competent authorities, which otherwise might undermine the potential simplicity of the *apostille* system. Similarly, the appointment ought to be made with a mind to reducing the chain of verificatory signatures and/or seals to a minimum.[5]

7.6 At the moment, the legalisation of most outgoing Irish documents is facilitated by notaries public. Indeed, this will continue to be the case if the Convention is ratified. This is not to say that notaries' functions are not affected by the Convention - the Convention replaces the link in the chain of verifications of the notary's seal and/or signature, which has consisted up to now of the affixing of a consular or diplomatic seal and signature, with the simpler *apostille* system. While it would obviously be convenient if notaries in general could, amongst others, be designated competent authorities, as this would reduce the

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4 See paragraphs 2.35 *et seq.*
5 *Ibid.*

number of steps necessary in attaching the *apostille*,[6] we do not believe that, in the light of the above, it would be in keeping with the words or spirit of the Convention to appoint each individual notary public in the State, nor the Faculty of Notaries Public in Ireland, Ireland's competent authorities.[7]

The Number of Competent Authorities

7.7 An analysis of the competent authorities appointed by other contracting parties reveals three alternative approaches, the suitability of which we now examine.[8]

A Network of Competent Authorities Throughout Ireland

7.8 Such a national network could consist of, for example, the court system in conjunction with government departments. This option would have a double benefit. First, the work involved would be distributed e.g., among County Registrars, so that no one body would have to cope with compiling and updating a national register. Secondly, the court houses, being dispersed throughout the country, are well placed to provide such a service in that persons requiring an *apostille* would not be required to deal with a central body located in, say, Dublin.

7.9 Twenty of the states which are party to the Convention have opted for some form of network.[9] For example, the United States designated the following as its competent authorities:

i) Authentication Officer and Acting Authentication Officer, United States Department of State.

ii) Clerks and deputy clerks of the following: the Supreme Court of the United States, the Courts of Appeal for the first through the eleventh circuits and the District of Columbia Circuit, the United States District Courts, the United States Court of Claims, the United States Court of Customs and Patent Appeals, the United States Court of International Trade, the United States District Court for the district of the Canal Zone, the District Court of Guam, the District Court of the Virgin Islands, and the District Court for the Northern Mariana Islands.

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6 To use the example of the verification of a birth certificate, the notary would simply draw up a notarial certificate verifying its seal and signature, then issue an *apostille* confirming the genuineness of his or her own seal and/or signature and record the issuance of the *apostille*.

7 The Commission wishes to point out that the Faculty of Notaries Public in Ireland does not seek to be appointed Ireland's competent authority. Its views are examined below. While Finland has appointed the Notary Public for each administrative region as its competent authorities, the notaries in this instance are part of the Finnish public service.

8 The categorisation of the types of competent authority systems countries have established is purely our own.

9 As of 17th June, 1994, the states are Austria, Finland, France, Germany, Italy, Netherlands, Norway, Portugal, Spain, Switzerland, Turkey, United States, Russian Federation, Botswana, Brunei Darussalam, Swaziland, Lesotho, Malawi, Marshall Islands and Croatia.

iii) Officers of the individual states and other subdivisions.

7.10 The Faculty of Notaries Public in Ireland mooted the possibility of appointing judges or officials of lower courts as Ireland's competent authorities. These would include Circuit Judges, District Judges, County Registrars and District Court Clerks. The Faculty felt, however, that the volume of work in some counties would be so low as not to merit the time and cost of setting up a country-wide system.

7.11 While there is no immediately apparent common factor amongst the states which have opted for this approach, this system, being more cumbersome to implement, is, in the Commission's view, only really suitable for federal or larger-sized states. The Faculty of Notaries Public also felt that such a system would be unsuitable for a country like Ireland.

Appointing Different Competent Authorities for Different Species of Documents

7.12 This approach distinguishes between documents on the basis of their source and appoints a separate competent authority for each category of document. At least seven Convention states opted for this approach, sometimes in combination with a network of competent authorities throughout the country in question.[10] For instance, Hungary appointed:

i) The Minister of Justice of the Hungarian People's Republic in respect of public documents and verifications executed by judicial authorities and

ii) the Minister for Foreign Affairs of the Hungarian People's Republic in respect of public documents and verifications executed by other authorities.

7.13 Spain chose to sub-classify the second of these categories into verifications executed by other authorities and notarial acts, and therefore three separate competent authorities were appointed.

7.14 Article 1 of the Convention indicates how it may be desirable to appoint more than one competent authority - in order for a document to come within the definition of a public document, the competent authority must be satisfied that it either (a) emanates from the courts, (b) is an administrative document, (c) is

10 Being Germany, Panama, Hungary, Italy, Turkey, Russian Federation and Spain.

a notarial act or (d) is an official certificate appended to a private document.[11] Unless the document presented to the competent authority comes within one of these categories, the Convention will not apply.

7.15 As regards (a), (b) and (d) the competent authority will have to compare the purported seals and/or signatures of the documents with its own specimen signatures and seals in order to verify the respective seals and/or signatures. At present such comparisons are performed by the Department of Foreign Affairs which has a card index of the signatures and seals of all such official bodies.

7.16 Whenever a notary is used as an intermediary, under (c) above, the competent authority would have to be satisfied of the genuineness of his or her signature and seal and of the fact that his or her name has not been removed from the Roll of Notaries. At present this function is performed by the Supreme Court Office - the Department of Foreign Affairs does not possess or deal with the Roll of Notaries.

7.17 It can be seen therefore that there is an option to appoint the Department of Foreign Affairs as the competent authority for one category of documents (i.e. non-notarial documents) and the Supreme Court Office as the competent authority in respect of another (notarial acts). This would have the advantage of abolishing the consecutive dual roles presently performed by those state authorities in respect of notarial acts.

7.18 However, as pointed out by the Faculty of Notaries Public, the Supreme Court Office is already over-burdened. In our view it would be inadvisable to appoint it as a competent authority, even solely as regards notarial acts. The Commission believes that, in the context of the Irish legalisation system, appointing two competent authorities would not have any desirable effect. In order to deal with the problem of the dual role of the Department and the Supreme Court Office it would be preferable to require the Department of Foreign Affairs to check the Roll of Notaries itself. This subject will be considered below.

A Single Competent Authority

7.19 The main advantage of the appointment of just one competent authority for the purpose of all outgoing Irish public documents is its simplicity. Information on seals and signatures borne by Irish documents and details borne

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11 *Article 1 reads:* "The present Convention will 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."

by *apostilles* would only need to be gathered at one point. The system would be easy to use, both from the point of view of Irish and foreign residents. In particular, the danger of misdirected enquiries and documents from within Ireland and abroad would be reduced. Furthermore, given the small scale on which the verification of outgoing Irish public documents occurs in Ireland, it is most likely that only through the attribution of the status of competent authority to one single body that any economies of scale can be made in the performance of the duties necessary under the Convention.

7.20 The desirability of appointing a single competent authority cannot be considered in complete isolation from the question of just how many bodies in the state are in fact suited to the tasks which the authority would have to perform, nor in complete isolation from the overall advantages that could flow from the appointment of a particular body as Ireland's competent authority. In Chapter 6 it was noted that the length of time and cost involved arising from the number of stages of certification in the current verification process were two of its central disadvantages from the point of view of the citizens and businesses having to use the system.

7.21 The desirability in principle of appointing just one competent authority must, in our view, be greatly enhanced if that approach would facilitate the speedy implementation of a substantial reduction in the number of stages involved in the new verification process. The administrative changes which could streamline the verification process, and so substantially reduce the time and costs involved in the use of Irish public documents abroad, would be most easily and speedily achieved were one particular body to be appointed Ireland's sole competent authority, i.e., the Department of Foreign Affairs. The advantages which would flow from the Department's appointment, once it is coupled with the administrative changes we discuss below at paragraph 7.38 *et seq.*, are so considerable that in our view they weigh very heavily in deciding that the Commission ought to express a preference for the appointment of one single body, the Department, as Ireland's competent authority.

7.22 Approximately 16 of the Convention states represented at the Hague Conference opted for appointing some form of centralised competent authority.[12] It is notable that the legal system of England and Wales, which has a similar legal structure, in particular with regard to the role of notaries public, to Ireland, has appointed just one, central competent authority.[13] The Faculty of Notaries Public suggests that Ireland adopt a similar approach.

7.23 The United Kingdom has appointed the Foreign and Commonwealth Office in London as its sole authority. The document to be legalised is usually sent by post to that office and returned a day later by post. The fee chargeable

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12 Being Belgium, Japan, Luxembourg, United Kingdom, Liechtenstein, Cyprus, Israel, Suriname, Fiji, Seychelles, Slovenia, Tonga, Malta, Mauritius and Argentina.

13 Note, however, that the United Kingdom's competent authority also deals with documents emanating from Scotland and Northern Ireland which it is sought to use outside the United Kingdom.

is Stg£8 and the system works, reportedly, extremely well even though the United Kingdom's large industrial areas are well dispersed throughout that jurisdiction.[14]

7.24 The simplicity of appointing just one competent authority was felt, by the Faculty of Notaries Public, to outweigh the disadvantage of channelling everything through one location, such as Dublin, and the Commission agrees with this view.

7.25 A further possible reason to select just one, central competent authority is the possibility of Ireland at some point ratifying the *Convention Abolishing the Legalisation of Documents in the Member States of the European Community, 1987* (which is reviewed in Chapter 3). Article 4 of this Convention requires member states of the European Union to designate one *central authority* (to be distinguished from the *competent authorities* which the Hague Convention stipulates in Article 6) to receive and forward requests for further information in those exceptional cases where the authorities of the state where the public document is produced have serious doubts as to the authenticity of the origin of the document.[15]

7.26 This Convention permits just one central authority to be appointed, which clearly must be some public body. While the tasks of the authorities appointed under the two Conventions are certainly not identical, it would be undeniably convenient if the central authority and the competent authority were one and the same body for reasons of simplicity and the pooling of experience and information. It would make little sense to have two different government bodies operating in the area of verification of seals and signatures, if this can be avoided. Therefore, it would be administratively desirable to appoint just one competent authority should Ireland wish to consider the ratification of the Convention of 1987.

7.27 *The Commission,* therefore, *recommends that Ireland appoint just one, central, competent authority.*

The Identity of the Competent Authority

7.28 The Faculty of Notaries Public in Ireland considered the question as to which person or body should be appointed a central competent authority for Ireland.[16] It considered the Chief Justice, the Supreme Court Office and the Department of Foreign Affairs.

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14 Information received form the Foreign and Commonwealth Office, 10th March, 1994.

15 Article 4 of the *European Convention on the Abolition of Legalisation of Documents Executed by Diplomatic or Consular Agents, 1968,* requires contracting states to provide for verification, in the exceptional cases where such is necessary, of documents which that Convention exempts from any form of verification. The Council of Europe, *Explanatory Report on the European Convention on the Abolition of Legalisation of Documents Executed by Diplomatic or Consular Officers, 1968,* 1968, suggests, at p.11, that verifications should preferably be made *via* official channels.

16 Information received from Mr. Brendan Walsh, the Registrar of the Faculty of Notaries Public in Ireland, 1st December, 1992.

The Chief Justice

7.29 Despite the fact that the Chief Justice is the authority for appointing notaries and commissioners for oaths in Ireland, it was felt that the constitutional independence of the judiciary and its separation from the executive arm of the State might disqualify the Chief Justice.

7.30 The Faculty suggested that the only documents which would really suit the constitutional function of the Chief Justice were documents emanating from or relating to the courts or judicial system of foreign countries.

7.31 Given that we have already concluded that it would be desirable just to have one competent authority for the issuance of *apostilles* with regard to all Irish public documents, there would seem to be no compelling reason to take the novel step of increasing the Chief Justice's involvement in this area.

The Supreme Court Office

7.32 The Faculty felt that the Supreme Court Office is already overburdened and should not be asked to take on the extra tasks involved in being a competent authority. The Commission agrees with this view.

The Department of Foreign Affairs

7.33 The Department has been involved in this type of work since the foundation of the State, and so has built up both experience and administrative structures with regard to the handling of the verification of outgoing Irish public documents. The appointment of the Department would not only utilise existing experience, but also serve to facilitate the implementation of the administrative changes, discussed below.[17] Those changes are essential if the new verification process for Irish public documents bound for the forty Convention states is to be a substantial improvement on the existing process. The Department therefore seems ideally suited to the task of being Ireland's competent authority.

7.34 In September, 1991, the Department transferred some of its powers to an Bord Tráchtála. The role of an Bord is described in Chapter 4. The Commission provisionally favours the appointment of the Department of Foreign Affairs as Ireland's competent authority. The Commission having already expressed its preference for the appointment of one single competent authority would not be in favour of the additional appointment of an Bord Tráchtála. The appointment of an Bord as a second competent authority would serve to detract from the simplicity of appointing just one competent authority and increase the financial and administrative burden on state bodies.

7.35 At the moment, an Bord's involvement springs from the need for certain Irish public documents to be sent abroad (usually to London) in order to

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17 At paragraphs 7.38 *et seq.*

undergo a process of legalisation by the embassy of the state where it is sought to produce the document. Where that state is a party to the Hague Convention, clearly there will be no need for such a process of legalisation to be undergone and so the document will not have to be sent to a third state. Therefore, making an Bord Tráchtála a competent authority as well as the Department of Foreign Affairs lacks any compelling logical basis.

7.36 While an Bord will continue its role with regard to documents bound for non-Convention countries which do not have a diplomatic or consular representative in the State, in the Commission's view it would be most undesirable to give an Bord a role with regard to the attachment of *apostilles*.

7.37 *The Commission*, therefore, *recommends that the Department of Foreign Affairs be designated by the Government as the sole competent authority for Ireland pursuant to Article 6 of the Convention.*

The Need for Administrative Changes

7.38 While the content of administrative changes is purely a matter for the Departments concerned, if implementation of the Convention is not accompanied by changes in the current administrative approach, many of the possible advantages that might flow from the Convention will never materialise at all.

7.39 It is apparent from the review of the current legalisation process in Chapter 6 that both the costs and time involved in the use of the verificatory process are substantially the result of the number of consecutive certifications of previously attached seals and/or signatures that have to be sought. The chains of verifications that are necessary place a burden on individuals, businesses and the State itself.

7.40 Clearly it would be preferable if the number of stages in the current verification process prior to verification by the consular or diplomatic representative of the state of production (the stage for which the *apostille* system is substituted) could be reduced. As noted in Chapter 4, documents which bear the signature and/or seal of a notary public must first be brought by those seeking legalisation to the Central Office of the Supreme Court, where the roll of notaries is checked to confirm that the notary in question is still in fact a notary, and then to the Department of Foreign Affairs where the Supreme Court Registrar's signature and/or seal, verifying the status of the notary, is itself verified.

7.41 If the Department had a copy of the roll of notaries this would obviate the need to make the extra journey to the Supreme Court Office. Those seeking legalisation could simply send their documents to the Department which would verify the status of the purported notary and issue the *apostille* in an in-house "one-stop shop" procedure which would reduce costs and labour for all concerned. This simple administrative change is of central importance to the effective implementation of a new system of verification.

7.42 In their observations on our Discussion Paper, the Faculty of Notaries expressed concern that the copy roll of notaries kept in the Department would be kept up to date at all times and suggested, inter alia, that the Roll of Notaries might be computerised and changes automatically recorded in each place. The Commission is satisfied that the appropriate administrative procedure could be put in place without difficulty.

7.43 *The Commission*, therefore, *recommends that the Department of Foreign Affairs should maintain a copy of the current roll of notaries held by the Supreme Court Office and confirm the status of any notary from that copy.*

The Impact on the Irish Authorities

The Department of Foreign Affairs

7.44 The ratification of the Convention would involve the Department in four tasks.

i) The Register of *Apostilles*

As regards documents within Article 1[18] of the Convention, the Department would have to compile and update a computer register or card index in which it would record the details of the certificates issued in accordance with Article 7 of the Convention.[19]

ii) Issuing of *Apostilles*

As regards documents within Article 1(a), (b) and (d), the Department would have to check that the signatures or seals on the document presented for certification correspond with the relevant specimen for the official who has signed the document, and if so, attach the *apostille*. This is no more than the Department is required to do at the moment.

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18 *Article 1 reads:* "The present Convention will 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 an 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."

19 *Article 7 reads:* 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.

iii) Roll of Notaries

As regards notarial acts within Article 1(c) and Article 1(d) of the Convention, the Department would have to compile and consult a roll of notaries to ensure that the notary in question was competent so to act. This would involve an extra burden on the Department as this function is now already carried out by another state authority - the Supreme Court Office. The change would simply involve a transfer of function and so there would be no additional *overall* burden on the State. Furthermore, as already pointed out, the Supreme Court Office is severely overtaxed and therefore such a transfer would seem to be in the interests of efficient administration generally, quite apart from the other advantages conferred.

iv) Enquiries

The Department would have to answer any enquiries from the receiving state as to the veracity of the *apostille* with which it is presented by consulting its register of *apostilles* issued. The number of occasions on which the competent authority would receive such enquiries would be extremely few. Little extra burden on the Department would be involved.

The Fees to be Charged

7.45 The Department of Foreign Affairs at present charges £10 per legalisation.[20] Even though the Convention is silent on the point of the charge which the competent authority may exact for the *apostille*, the Loussouarn Report[21] indicated that the cost of the formality introduced by the Convention should be reasonable. The question of what is a reasonable charge is naturally a matter for the Department. However it certainly ought to have regard to the general level of charges exacted by other Convention states and attempt to keep Irish charges in line with them.

Part B: Documents Originating in Convention States which it is Sought to Use in Ireland

The Extent and Nature of the Implementation of the Apostille System

7.46 Under Article 3 of the Convention the *apostille* system with which the Convention replaces the existing legalisation stage in the verification procedure may not be used when the existing practice in the state where the document is

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20 As of 3rd November, 1993.

21 Loussouarn, *Rapport Explicatif*, in Conférence de la Haye de Droit International Privé, *Actes et Documents de La Neuvième Session, Tome II (Légalisation)* (1960), at p.183.

to be produced exempts the document from legalisation.[22] Therefore the *apostille* is solely a substitute for the legalisation process.

7.47 As discussed above in Chapter 5, it is rare for legalisation to be required by Irish legal practice for incoming foreign public documents covered by the Convention. From the review of the current legal practice we can conclude that legalisation within the terms of Article 2 of the Convention is, most probably, only required under Irish legal practice when

i) a *bona fide* challenge is made to the genuineness of the seal and/or signature borne by a document so that a judge would be justified in refusing to grant the seal and/or signature judicial notice in accordance with order 40, rule 7, or another statutory provision. This requirement stems from the requirement of the general law of evidence that due execution of documents be proven.

ii) no provision of Irish law provides for a mechanism of proof of a seal and/or signature borne by a foreign public document other than legalisation (i.e. the current most reliable means of proof of due execution of foreign documents) and it is necessary to prove the seal and/or signature. This residual requirement stems from the general law of evidence.

iii) a verification of the seal and/or signature borne by some foreign public document, for which no provision is made in Irish law other than by order 40, rule 7, is sought and an Irish diplomatic or consular representative who is able to verify that seal and/or signature directly is conveniently near to the person seeking such verification. This requirement stems from the wording of order 40, rule 7.

iv) it is sought to register a foreign company's business in Ireland and therefore the provisions of paragraph 4 of the *Companies (Forms) Order, 1964*, must be complied with.[23]

7.48 By far the most significant of these occasions when legalisation is required is the first. The second occasion when legalisation is required is purely residual. We have already indicated that it is exceptional for order 40, rule 7 not to enable one to avoid a verificatory chain for the signatures and/or seals borne by foreign public documents. The third stems from the preference for the use

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22 *Article 3 reads*: "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 between two or more contracting States have abolished or simplified it, or exempt the document itself from legalisation."

23 S.I. No. 45 of 1964.

of Irish diplomats or consuls expressed in order 40, rule 7. It does not represent, in our view, a specific determination that a chain of verifications, and special safeguards, are necessary for foreign public documents. This is because the alternative, when a consul or diplomat is not nearby, is simply to attend a local notary whose signature is then judicially noted without any verification whatsoever.

7.49 Hence the question arises as to the extent to which Ireland ought to implement the Convention with regard to incoming documents. A number of options will be discussed. The structure of our review of the possibilities is first to consider the possible broad changes to the general law, i.e. requirements (i) and (ii). The question of how order 40, rule 7, and the *Companies (Forms) Order, 1964*, should be adjusted so as to remove requirements (iii) and (iv) shall then be considered separately, as they raise much narrower issues.

Reform and clarify the law on the requirements for recognition of foreign documents and then implement the Convention

7.50 The wholesale reform of the law concerning the admission of foreign documents is a matter beyond the ambit of this report. While any clarification and simplification of the law in this area would be welcome, it must be stressed that it is possible to implement the Convention satisfactorily without first attempting wholesale reform. To attempt such a reform as a *precondition* to ratification of the Convention would inevitably postpone that ratification substantially, depriving Irish business and individuals of the many advantages which its ratification in the current state of the law can immediately deliver.

7.51 In this regard it should also be noted that the Convention Abolishing the Legalisation of Documents in the Member States of the European Community, 1987, reviewed in Chapter 3, dramatically simplifies the legal practice on the recognition of foreign public documents emanating from European Union states, and so its implementation, were Ireland to become a party to the Convention, would in one fell swoop remove many documents emanating from European Union member states from the field of application of the current Irish rules relating to the recognition of foreign documents *and* any future clarificatory rules which may replace them.

Require the universal use of the apostille system with regard to all incoming foreign documents covered by the Convention

7.52 It could be argued that it would be in keeping with the spirit of the Convention to adopt the *apostille* system with regard to documents from all Convention states on the basis that this approach would simplify the existing Irish law, bringing with it all the benefits attendant on complete certainty of law.

7.53 However, as was demonstrated in Chapter 5, primary legislation, the Rules of the Superior Courts and the parties to legal proceedings by reason of their agreement or acquiescence in effect exempt many documents from any need

for legalisation. As no legalisation process is usually required of foreign documents in Irish legal practice, it would be in breach of Article 3 of the Convention now to require a verification process, albeit by *apostille*, where no legalisation was generally necessary before. Article 3 states:

> "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."

The role and meaning of Article 3 were reviewed at paras. 2.27-2.29.

7.54 Apart from being impermissible, such a blanket rule for foreign public documents emanating from states party to the Convention would also be undesirable. The aim of the Convention, and that of Irish law and practice also, is to streamline procedures, and not just to add to them in some cases and simplify them in others. It can be of no practical advantage to this State now to require some individuals and businesses to start dealing with foreign competent authorities whereas previously no such process was necessary.

Make no alteration to the existing Irish law with regard to incoming foreign public documents emanating from states party to the Convention

7.55 Ireland could, following this approach, simply ratify the Convention, adopt the *apostille* system as regards outgoing Irish documents and admit all foreign documents with the same level of formality as is usually accorded to them now. This approach does not present a valid option which is in accordance with the Convention's abolition of the diplomatic or consular stage in the verification process - legalisation exists in Irish law as a mechanism of proof of the genuineness of the seal and/or signature borne by a document in the circumstances outlined above. For instance, it is not mandatory that judicial notice be given to, for instance, the seal and/or signature of foreign notaries where the genuineness of such seal and/or signature has been challenged, and it is open to a judge to seek to use the most rigorous means of proof available, i.e. a process of verification involving legalisation. Similarly, in practice Irish embassies abroad are frequently involved in legalisations. Therefore, to simply leave the current approach to the proof of signatures and seals borne by foreign public documents in place would not amount to complying with our obligations under the Convention.

Abolish legalisation in our relations with states party to the Convention without replacing it with the apostille system

7.56 In accordance with this approach Ireland would simply require its consular and diplomatic representatives abroad to cease verifying signatures and seals on foreign public documents presented to them, without making any provision for the recognition of *apostilles*. In effect, the legalisation stage in the verification process would be severed. This change would have little effect in the majority of instances when it is sought to use foreign public documents in this State. For those instances where legalisation is necessary in order to provide proof of the genuineness of a seal and/or signature, new chains of proof would have to be established, within the framework of the limited number of foreign public seals and signatures to which Irish law grants judicial notice. In our view, this approach is a rather arbitrary one. It would result in utter confusion in legal practice as to how one is supposed to provide best evidence of a seal and/or signature where this was necessary, and would create more complications than it removed.

Direct substitution of the legalisation process with the apostille system with regard to documents emanating from Convention states

7.57 Following this approach Irish legal practice would, in order to implement the Convention, replace the process of legalisation that is very occasionally used in order to prove the seal and/or signature borne by a foreign public document with the *apostille* system. In the Commission's view it is clear from the review of Irish law in Chapter 5 and the above discussion that this is the course that effective implementation of the Convention requires us to take.

7.58 Ireland would simply substitute the legalisation stage with the *apostille* system, without any alteration of the number of occasions on which the full verification process is or is not necessary. This would fulfil our obligations under the Convention, while maintaining the *status quo* in legal practice to a significant extent and would limit any confusion which might arise. A more efficient mechanism of proof would be available where needed.

7.59 *The Commission recommends that Ireland ought simply substitute the process of proof by legalisation with proof by use of the apostille process - the apostille would be used in identical circumstances to those in which legalisation is now used.*

The Requirement of Legalisation under the Companies (Forms) Order, 1964, and Order 40, Rule 7

7.60 The *Companies (Forms) Order, 1964*, provision which currently provides for legalisation[24] may simply follow the general change, and so the Minister for Enterprise and Employment might decide to replace the legalisation stipulation

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24 Discussed above at paragraph 5.50 *et seq.*

with an *apostille* one for Convention state documents. This question is examined further below at paragraph 8.35 *et seq.*

7.61 The requirement of legalisation arising under order 40, rule 7, is exceptional. It will be recalled from paragraph 5.72 *et seq.* that certain foreign public documents, for which no provision is made other than by order 40, rule 7, (and so which are most likely to be within categories (b) and (d) in the third paragraph of Article 1 of the Convention) are required, should the mechanism of proof in rule 7 be utilised, to undergo a process which falls within the definition of legalisation in Article 2 of the Convention. This stems from the fact that rule 7 expresses a preference for foreign public documents to be certified directly by an Irish diplomat or consul if one is conveniently nearby the person seeking certification. If another person, such as a local notary, is used instead in these circumstances, there is the possibility that judicial notice will not be given to his or her seal and/or signature.

7.62 The Commission believes that it would be inappropriate to replace this incident of legalisation with the *apostille* system. It can be seen that the aim of rule 7 is to streamline processes of proof for foreign documents, and that this incident arises not from any view that extra verifications are necessary for certain foreign documents, but from the expression of a preference for the use of Irish diplomatic or consular representatives. At present, when a diplomatic or consular representative is not conveniently nearby, a foreign notary may simply be used instead and that seal and/or signature will be judicially noted by the court in accordance with rule 7.

7.63 In the Commission's view *it would be most satisfactory if the preference for the use of the Irish consul or diplomat in order 40, rule 7, was simply removed, and the use of a foreign notary became the mechanism in all such cases occurring within Convention states, and we so recommend.* To replace this incident of legalisation with the *apostille* system would, in the context of the rest of rule 7, be inappropriate.

The Legal Effects of Abolishing Legalisation

7.64 The effects of legalisation in Irish law were considered above.[25] The Commission's conclusion was that the effects of legalisation in Irish law, it being a mechanism of proof of the due execution of public documents, are to demonstrate the authenticity of the signature, the capacity in which the signer has acted and the identity of any seal. Therefore, it would appear from general principles that the effects attributed to the legalisation process by Article 2 of the Convention and by Irish law are one and the same, and so the replacement of legalisation as defined by the Convention with the *apostille* system would be of no legal significance in this regard.

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25 In Ch. 5.

CHAPTER 8: THE MODE OF IMPLEMENTATION OF THE CONVENTION IN IRISH LAW

The Constitution

8.1 This must be the starting point in establishing if any particular mode of implementing the Convention is required by Irish law.

8.2 Article 29.5 of the Constitution provides:

> 1° Every international agreement to which the State becomes a party shall be laid before Dáil Éireann.
>
> 2° The State shall not be bound by any international agreement involving a charge upon public funds unless the terms of the agreement shall have been approved by Dáil Eireann.
>
> 3° This section shall not apply to agreements or conventions of a technical and administrative character.

The Convention as an Agreement of a Technical and Administrative Character

8.3 In *State (Gilliland) v Governor of Mountjoy Prison*,[1] Finlay C.J. stated that one of the categories of international agreement which this provision envisaged was:

> "[a]n agreement or convention of a technical and administrative character which need neither be laid before Dáil Eireann nor, irrespective, apparently, of whether it involves any charge on public funds, do its terms require the approval of Dáil Eireann."[2]

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1 [1987] I.R. 201.
2 *Ibid* at 238.

8.4 The meaning of the phrase "technical and administrative character" has not been judicially considered. If it were concluded that the Convention of 1961 did not fall within Article 29.5.3°, the Convention would have to be laid before the Dáil under Article 29.5.1° *and*, arguably, approved by the Dáil under Article 29.5.2° before ratification. While some aspects of the phrase "technical and administrative" are unclear (in particular, whether it ought be read disjunctively or conjunctively, i.e. whether it is necessary to prove that the convention is *both* technical *and* administrative for it to come within Article 29.5.3°), ordinary words ought to be given their ordinary meaning. *Technical* probably pertains to what is purely formal and specialised and without general substantive effect, and *administrative* to what is organisational or managerial and which does not seek to alter the resulting substantive effects.

8.5 It has already been established that legalisation in Irish law is merely a means of proof of due execution of foreign documents. The Convention is administrative in nature because it merely affects the method by which an act is carried out (i.e. proof of the due execution of a document) and not the nature nor substantive effect of the act itself. It is technical because it has no effect, and is meant to have no effect, on the general substantive law. As was noted in Chapter 5, the Convention deals with a subject-matter already covered in the Rules of the Superior Courts, which deal purely with practice and procedure in the courts, not substantive law.[3] Therefore, legal practice with regard to the admission of foreign public documents was historically and is currently treated purely as a matter of practice and procedure. The purely procedural nature of this Convention makes it very much the kind of international agreement intended to be covered by Article 29.5.3°.

8.6 To conclude, the Commission's view is that the Convention need not be laid before, and neither does it require the approval of, Dáil Eireann in order for ratification of it to be valid.

The Legal Mechanism of Implementation of the Apostille System

8.7 In Chapter 7 the Commission recommended that the legalisation process, to the extent to which its use is currently stipulated by Irish legal practice, ought to be substituted with the *apostille* system, directly, in our relations with Convention states. As an exception, the single instance, in order 40, rule 7, where legalisation is stipulated would be simply removed and not substituted.[4] How these recommendations are implemented as a matter of legal practice in large part depends on the nature of the sources of current Irish legal practice which stipulates the use of the legalisation process of proof. The four occasions when Irish legal practice stipulates the use of the legalisation process originate from uncodified legal practice, codified legal practice (the Rules of the Superior Courts) and specific secondary legislation. We shall consider the necessary legal changes to implement the Commission's recommendations in each of these three

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3 See para. 5.27 *et seq*. See also paragraph 8.20.

4 At paragraph 7.60 *et seq*.

categories in turn.

Uncodified Legal Practice

8.8 It has already been established in Chapter 5 that the following requirements of legalisation stem, firstly, from uncodified legal practice, arising when

i) a *bona fide* challenge is made to the genuineness of the seal and/or signature borne by a document so that a judge would be justified in refusing to grant the seal and/or signature judicial notice in accordance with order 40, rule 7, or another statutory provision; or

ii) no provision of Irish law provides for a mechanism of proof of a seal and/or signature borne by a foreign public document not involving legalisation (i.e. the current most reliable means of proof of due execution of foreign documents) and it is necessary to prove the due execution of the seal and/or signature.

8.9 These requirements are the key ones for which the new *apostille* system must be substituted, as they are of general application.

8.10 Faced with the need to establish the best mechanism of proving the due execution of documents, legal practice developed the mechanism of a chain of signatures and/or seals. Legalisation represents a purely evidential mechanism. While section 5(2) of the *Diplomatic and Consular Officers (Provision of Services) Act, 1993,* provides for the judicial notice of the final signature in the chain - that of the Irish diplomat or consul - legalisation is a mechanism with no *general* basis in any piece of primary or secondary legislation. That is not to say that individual pieces of legislation do not stipulate legalisation in a particular instance, as the remaining two requirements demonstrate.

8.11 Substituting the *apostille* process for the legalisation one is a change in method of proof. How parties seek to prove matters is a matter for them to decide within the confines of the rules of evidence. There is no obvious advantage to be gained from altering that position and putting the practice and procedure with regard to this mechanism of proof on a codified footing in the Rules of the Superior Courts. The suggested substitution does not involve any change in rules of evidence as applied to foreign documents. In particular, it does not at all alter the rigour of evidential requirements, for the *apostille* system provides the same guarantee of effectiveness as does the legalisation process. In our view no legislation is necessary to make that substitution.

Administrative Changes Necessary to Implement the Convention

It is the view of the Commission that the implementation of this Convention may

be primarily administrative. The *apostille* mechanism can be implemented in large part simply by the Department of Foreign Affairs discontinuing the legalisation service.

8.12 Therefore, *the Commission recommends that the Convention be implemented partially by administrative means. This would simply require the Department of Foreign Affairs to inform its officers that no legalisations within the terms of the Convention may be carried out on foreign public documents originating from Convention states, that the legalisation process has been replaced by the apostille system in our relations with Convention states, in which Irish embassies have no role whatsoever, and that Irish embassies ought therefore not attempt to certify the marks borne by an apostille.*

8.13 However, while as a general statement, no alteration in existing legislation or new legislation is necessary to *substitute* the legalisation process with the *apostille* system, provision shall have to be made in law with regard to two aspects of the new system.

Changes in Law Necessary to Implement the Convention

8.14 When an *apostille* is presented in court, it will bear the signature and/or seal of the person or body which is the competent authority of the state of the document's origin. The due execution of the *apostille* itself will have to be shown as Irish law requires that of all documents as a general principle. But the Convention itself states that the *apostille* will be exempt from any certification of the signature and seal it bears, lest otherwise a new chain of verifications is simply substituted for the old one.

8.15 Therefore, some provision will have to be made for the avoidance of the need to prove due execution of the *apostille*. It would be most convenient and speedy if the necessary legal changes to implement the Convention could be made without resort to primary legislation. The fact that much of the law relating to the admission of foreign public documents is contained in order 40, rule 7, of the Rules of the Superior Courts - a statutory instrument - indicates that this may be possible.

8.16 In our view the grant of judicial notice to the signature and seal borne by an *apostille* (i.e. accepting that the signature and seal on the *apostille* is *prima facie* genuine) is, in this context, a matter purely of practice and procedure. The rules of court already provide for the judicial notice of certain signatures and/or seals in order 40, rule 7, in the context of proof of due execution and so the provision for the judicial noting of the signature and seal borne by the *apostille* should be made in a similar fashion.

8.17 When a challenge is raised in an Irish court to the genuineness of the origin of an *apostille*, the judge will be able to direct that one of the parties seeks a verification of the *apostille*'s particulars from the appropriate competent authority in accordance with Article 7. This, as was discussed in paragraph 2.27,

indicates clearly the weight that ought to be attached to the *apostille*'s seal and signature in Irish legal practice.

8.18 The second provision that must be made also refers to the admissibility of the *apostille*. Not only is facilitation of proof of the fact that the *apostille* was executed by the body or person which purported to do so necessary, but so is the facilitation of the admission of the statements contained in that *apostille*. In the absence of such, the statements in the *apostille*, albeit duly executed, are the statements of a third party who does not appear before the court to be examined and so are likely to be inadmissible in accordance with the rule against hearsay.[5]

8.19 The admissibility of the *apostille* cannot be left to chance, and therefore the Commission believes that specific provision ought to be made for this. An example of where a provision is made *in a statute* for the admission of the statements contained in a foreign public document is section 10(1) of the *Jurisdiction of Courts and Enforcement of Judgements (European Communities) Act, 1988*, which states that:

> "(b) the original or copy of [a foreign judgment] shall be admissible as evidence of any matter to which it relates."

8.20 On the question of whether it would be possible to make a provision for the admission of statements in the *apostille* in the Rules of the Superior Courts, the issue arises as to whether such a provision would be a matter of practice and procedure. In, *in re Grosvenor Hotel (No. 2)* Denning M.R. stated that the Rules Committee of the English Supreme Court were empowered to "make rules for regulating and prescribing the procedure and practice of the court, but they cannot alter the rules of evidence, or the ordinary law of the land."[6] However, in *Holloway v. Belenos Publications*, where there was a challenge to order 31, rule 29, of the Rules of the Superior Courts on the basis it was *ultra vires* the Rules Committee, Barron J. stated:

> "The rule is attacked on the basis that it alters the rules of evidence. I do not see that it does. Nor if it does, do I see that it must be *ultra vires* as not relating to practice and procedure. For example, hearsay evidence is under the rules accepted at the hearing of interlocutory applications, but the validity of such rule has never been questioned."[7]

8.21 Providing for the admissibility of the statements contained in the *apostille*, itself merely a part of a mechanism of proof of the due execution of documents, is, in our view, a matter that falls within the category of practice and procedure and so may be dealt with in the Rules of the Supreme Court. The

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5 See, for example, *Myers v. D.P.P.* [1965] A.C. 1001. In *Myers* the possibility of admitting documents, which were compiled within an efficient system of recording by unknown persons, in order to demonstrate the truth of the facts stated therein was rejected by the House of Lords. Whether the Irish courts would follow such an approach is open to question.

6 [1964] W.L.R. 992 at 1013.

7 [1988] I.L.R.M. 685 at 689.

issue of the admissibility of the statements in the *apostille* does not touch on the substance of the law or issues which might arise at trial. Rather, making provision for such admissibility is simply a necessary step in substituting a stage (legalisation) in one of the existing modes of proof of the due execution of foreign public documents provided for by legal practice with a new stage (the *apostille*). Use of the *apostille* does not affect the substance of the proof itself. The character of such a provision can be seen from the fact that mechanisms of proof of the due execution of documents are already dealt with in order 40, rule 7. While a provision in the Rules of the Superior Courts with regard to *apostilles* may make hearsay statements as such admissible, it does so purely in the context of the *mode* of proof of due execution. No law is being amended and Article 3 of the Convention provides that the Convention *cannot* introduce new evidential requirements.

8.22 *The Commission recommends*, accordingly, *that the Rules Committee of the Superior Courts consider the addition of words to the following effect to the Rules:*

> *"A document which purports to be an apostille duly issued and executed in accordance with the Hague Convention of the 5th October, 1961, shall, without further proof, be deemed to be such and shall be admissible as evidence of the facts stated therein unless the contrary is shown."*

While this rule could be simply inserted as an extra sub-paragraph in order 40, rule 7, it should be noted that order 40 is entitled "Affidavits", and the *apostille* system's scope extends to a much wider range of documents than just these and one would hope to avoid any confusion. The same is, of course, true of the range of application of order 40, rule 7. The present location of that rule is the product of its legislative history.

8.23 It is noteworthy that the United Kingdom implemented the Convention without even altering its Rules of Court to accommodate explicitly the *apostille* system. Instead the Foreign and Commonwealth Office discontinued the verification of consular legalisation simply as a matter of practice. No provision was made with regard to judicial notice of the seal and signature of the competent authorities of states party to the Convention. The present practice is for one to follow the previous process up to the point of consular or diplomatic legalisation. For instance, in the case of notarial authentications, the signature of the notary will be verified by the authority of the foreign state which supervises notaries there (usually the local court). It would appear that an *apostille* can be used to avoid that verification. There would appear to be some confusion remaining over the verification process required for foreign public documents.[8]

8.24 Would the recommended approach result in confusion? In our view the approach could not be more straightforward. Legalisation will be replaced with

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8 Cf. Ready, *Brooke's Notary*, 11th edition, 1992, at p.64, n.12.

the *apostille* in order to prove the same particulars to the same standard of proof. A provision analogous to the role of section 5(2) of the 1993 Act in the legalisation process would allow for the judicial noting of the signature and seal borne by the *apostille*.

The Rules of the Superior Courts

8.25 The third requirement of legalisation originates in codified legal practice - i.e. the Rules of the Superior Courts - arising when

> iii) a verification of the seal and/or signature borne by some foreign public document, for which no provision is made in Irish law other than by order 40, rule 7, is sought and an Irish diplomatic or consular representative who is able to verify that seal and/or signature directly is conveniently near to the person seeking such verification. This requirement stems from the wording of order 40, rule 7.[9]

8.26 This requirement stems from the fact that order 40, rule 7, provides for the judicial noting of certain signatures borne by "any other deed or document", which would include notarial certificates issued by foreign notaries or Irish diplomats or consuls using their notarial powers. Such certificates may be used to prove the seals and/or signatures borne by foreign public documents. When such a certificate is issued by an Irish diplomat or consul with regard to a foreign public document, it falls within the definition of legalisation in Article 2 of the Convention. A number of circumstances must coincide for this instance of legalisation to arise.[10] It occurs mainly with regard to foreign public documents within categories (b) (administrative documents) and (d) (official certificates placed on documents signed by persons acting their official capacity, *etc.*) of the second paragraph of Article 1. This is because there is little specific legislation in these areas which might otherwise avoid the use of the order 40, rule 7, mechanism.

8.27 The stipulation of legalisation will only arise, secondly, when an Irish consul or diplomat is conveniently nearby the person seeking verification so that the option of simply using a local foreign notary or, if it is a Commonwealth country, some other local official, is closed off. Thirdly, the Irish consul or diplomat must be familiar with the seal and/or signature in question so that he or she can carry out the certification. If not, the administrative practice is simply

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9 *Order 40, rule 7, states:* 'All examinations, affidavits, declarations, affirmations and attestations of honour in causes or matters pending in the High Court or the Supreme Court ..., and also acknowledgments required for the purpose of enroling any deed ..., may be taken ... in any foreign ... place before any Irish diplomatic or consular representative ... in that ... place or, when there is no such representative ... conveniently near to the deponent in such ... place, before any notary public lawfully authorised to administer oaths in that ... place, or where such ... place is a part of the British Commonwealth of Nations ..., before any judge, court, notary public or person authorised to administer oaths in such part ...;and the judges or other officers of the High Court and of the Supreme Court shall take judicial notice of the seal or signature [of any of the above persons] appended ... to any such examination, affidavit, declaration, affirmation, attestation of honour, or acknowledgment, or to any other deed or document.'

10 See paragraph 5.32 *et seq.* for a full treatment of this stipulation.

to refer the person to a local notary, in which case, we believe, there is no requirement to seek any further verifications from the Irish consul or diplomat.[11] If the person does not request such a verification of the public document's seal and/or signature from the nearby Irish diplomat or consul and an issue is raised as to the proof of due execution, a court may refuse to grant judicial notice to the seal and/or signature borne by a notarial or other official certificate unless there is evidence that a verification was sought from a nearby Irish diplomat or consul instead.

8.28 This requirement of legalisation must be removed in order to comply with the Convention. However, in the Commission's view this may naturally follow on the discontinuance of certification services by Irish missions in Hague states. In paragraph 5.38 above, it was discussed how the reference to a diplomatic or consular representative *exercising his or her functions* in rule 7 had to be seen as not including, for the purposes of rule 7, a representative who was unable, due to unfamiliarity, to give a direct notarial verification of a seal and/or signature when requested to do so.

8.29 Clearly he or she retains the status of an Irish diplomat or consul armed with notarial powers under Irish law, but is unable to exercise a particular aspect of their functions in the circumstances. If an inability to exercise the notarial power on a particular occasion means that there is no Irish diplomat or consul conveniently near the deponent who is able, for the purposes of rule 7, to exercise his or her functions, a local official, whose signature and/or seal will be judicially noted by an Irish court, may be used instead. This interpretation is necessary because otherwise persons who wish to rely on a private document with a seal and/or signature which is not familiar to an Irish diplomat or consul, purely by reason of the fact that they are physically placed within a convenient distance of the Irish mission, would have to put the documents through more checks, amounting to a full process of consular or diplomatic verification, than if they lived further away. Any other interpretation would lead to absurd results which would have the effect of linking the number, rather than the nature, of verifications necessary to prove due execution of a document to the distance the person seeking such proof was from an Irish mission.

8.30 If an inability to exercise the certification function must be seen as meaning the Irish diplomat or consul is not exercising his or her functions for the purposes of order 40, rule 7, were Irish missions to discontinue the certification service, this would also have to be seen as meaning there was no Irish representative in the state exercising his or her functions for the purposes of rule 7.

8.31 Therefore, in our view, when Irish missions no longer provide a certification service, and so there is deemed, for the purposes of rule 7, to be no available diplomat or consul exercising his or her functions, persons could simply

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11 See paragraph 5.38.

attend foreign notaries or, in Commonwealth states, other officials, whose signatures and/or seals would be judicially noted in accordance with rule 7's final sentence. This is our view of order 40, rule 7.

8.32 Nonetheless, effective implementation of this Convention requires that no doubt remains, and so we believe it would be a wise precaution to make specific recommendations. We note that it has already been stated that it would be preferable to avoid making alterations to the complex wording of rule 7, except in the context of a review of all the Irish law relating to the recognition of foreign public documents, and we have already suggested that the outcome of any such review ought not to delay the implementation of this Convention.[12]

8.33 *The Commission recommends that the Rules Committee of the Superior Courts consider the addition of words to the following effect in a third paragraph to rule 7 of order 40:*

> *"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 such representatives or agents refuse, decline or are unable to perform the particular functions requested."*

8.34 This provision would enable the current notarial services which Irish diplomats and consuls perform which do not fall within the Convention's definition of legalisation in Article 2 to be retained, should it be felt desirable to do so by the Department of Foreign Affairs. It is felt that this would also be preferable to specifically referring to the Hague Convention's definition of legalisation in Article 2, as in certain instances it would require considerable research to establish whether a particular verification sought was within that definition or not. In this way the burden is placed upon the Department of Foreign Affairs to instruct its officers appropriately. It also grants the Department some freedom to determine which range of notarial services they wish to continue in the cases of those services which do not fall within that definition.

The Companies (Forms) Order, 1964

8.35 The fourth requirement stems from a statutory instrument, arising when

> iv) it is sought to register a foreign company's business in Ireland and therefore the provisions of paragraph 4 of the *Companies (Forms) Order, 1964*, must be complied with.[13]

8.36 Paragraph 4 ought, therefore, to be amended in so far as those documents received from states which are party to the Convention would not

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12 See paragraph 7.49 *et seq.*

13 S.I. No. 45 of 1964.

require any process of legalisation. The Minister can clearly make that alteration by the issuing of a new statutory instrument permitting the use of an *apostille* in accordance with the Convention with regard to documents emanating from Convention states instead of the process of legalisation within Article 2 of the Convention which it currently specifies.

8.37 *The Commission*, therefore, *recommends that the certification and authentication procedures 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, be amended so as to remove the requirement of legalisation for documents emanating from states which are parties to the Convention.*

8.38 In the case of documents emanating from states which are not party to the Convention, the requirement of legalisation can of course be retained. However, the requirement of legalisation set out by the Order, which applies *even when no challenge has been made* to the genuineness of the foreign company documents, is exceptional in Irish law. It ought to be considered whether the distinction between foreign companies documents and the wide range of documents not subject to any legalisation requirement (e.g. foreign court documents) justifies the involvement of an Irish diplomat in the verificatory process. Therefore, less onerous mechanisms might be considered as substitutes, such as acceptance of the documents as *prima facie* genuine once they appear to bear the seal and signature of the foreign registrar of companies, with the use of legalisation only in those cases of actual doubt.

8.39 *We recommend*, accordingly, *that the Minister consider the substitution of less onerous procedures for the verification of documents emanating from all states in any new Companies (Forms) Order.*

CHAPTER 9: SUMMARY OF RECOMMENDATIONS

1) *Ireland should become a party to the Hague Convention on the Abolition of the Requirement of Legalisation for Foreign Public Documents, 1961:* Para. 6.26.

2) *Ireland should appoint just one, central, competent authority*: Para. 7.27.

3) *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*: Para. 7.37.

4) *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*: Para. 7.59.

5) *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*: Para. 8.12.

6) *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 5th 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.": Para. 8.22.

7) *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.*": Para. 8.33.

8) *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*: Para. 7.43.

9) *The legalisation procedure specified in paragraph 4 of the Companies (Forms) Order 1964*[1] *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*: Paras. 8.36 and 8.37.

10) *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*: Para. 8.39.

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1 S.I. 45 of 1964.

APPENDIX I: CONVENTION ABOLISHING THE REQUIREMENT OF LEGALISATION FOR FOREIGN PUBLIC DOCUMENTS

Concluded 5th October, 1961

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 documents 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 ratifications 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 sub-paragraph (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.

Annex to the Convention

Model of certificate

The certificate will be in the form of a square with sides at least 9 centimetres long.

APOSTILLE

(Convention de La Haye du 5 octobre 1961)

1. Country: .....

This public document

2. has been signed by .....

3. acting in the capacity of .....

4. bears the seal/stamp of .....

.....

Certified

5. at ..... 6. the .....

7. by .....

8. N° .....

9. Seal/stamp: 10. Signature:

....

APPENDIX II: PARTIES TO THE HAGUE CONVENTION ABOLISHING THE REQUIREMENT OF LEGALISATION FOR FOREIGN PUBLIC DOCUMENTS

(The list of parties who have ratified or acceded to the Convention is accurate to the 1st June, 1994.

States represented at the Ninth Session of the Hague Conference on Private International Law which have ratified the Convention:

Austria
Belgium
Finland
France
Germany
Greece
Italy
Japan
Luxembourg
Netherlands
Norway
Portugal
Spain
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland

Non-Represented States which have ratified the Convention

Liechtenstein

States represented at the Hague Conference which have acceded to the Legalisation Convention

Argentina
Cyprus
Hungary
Israel
Suriname
United States

States not represented at the Hague Conference which have acceded to the Legalisation Convention

Antigua and Barbuda
Bahamas
Belize
Byelorussia
Bosnia and Herzegovina
Panama
Botswana
Russian Federation
Brunei Darussalam
Croatia
Fiji
Swaziland
Lesotho
Macedonia (former Yugoslav republic of)
Malawi
Malta
Marshall Islands
Mauritius
San Marino
Seychelles
Slovenia
Tonga

APPENDIX III: EUROPEAN CONVENTION ON THE ABOLITION OF LEGALISATION OF DOCUMENTS EXECUTED BY DIPLOMATIC AGENTS OR CONSULAR OFFICERS

European Treaty Series Number 63

The member States of the Council of Europe, signatory hereto;

Considering that the aim of the Council of Europe is to achieve a greater unity between its Members;

Considering that relations between the member states, as well as relations between their diplomatic agents or consular officers, are increasingly based on mutual trust;

Considering that the abolition of legalisation is likely to strengthen the ties between the member States by making it possible to use foreign documents in the same manner as documents emanating from national authorities;

Convinced of the need to abolish the requirement of legalisation of documents executed by their diplomatic agents or consular officers;

Have agreed as follows:

Article 1

For the purposes of this Convention, legalisation means only the formality used to certify the authenticity of the signature on a document, the capacity in which the person signing such a document has acted and, where appropriate, the identity of the seal or stamp which such document bears.

Article 2

1. This Convention shall apply to documents which have been executed by diplomatic agents or consular officers of a Contracting Party, acting in their official capacity and exercising their functions in the territory of any State, and which have to be produced

(a) either in the territory of another Contracting Party, or

(b) to the diplomatic agents or consular officers of another Contracting Party exercising their functions in the territory of a State which is not a party to this Convention.

2. This Convention shall also apply to official certificates, such as those recording the registration of a document or the fact that it was in existence on a certain date, and authentications of signatures, appended by diplomatic agents or consular officers to documents other than those referred to in paragraph 1.

Article 3

Each Contracting Party shall exempt from legalisation documents to which this Convention applies.

Article 4

1. Each Contracting Party shall take the measures necessary to avoid the carrying out by its authorities of legalisations in cases where this Convention abolishes legalisation.

2. Each Contracting Party shall provide for the verification, where necessary, of the authenticity of the documents to which this Convention applies. Such verification shall not give rise to payment of any taxes or expenses and shall be carried out as quickly as possible.

Article 5

This Convention shall, as between the Contracting Parties, prevail over the provisions of any treaties, conventions or agreements which provide, or shall provide, for legalisation of the authenticity of signature of a diplomatic agent or consular officer, the capacity in which such person signing the document has acted, and, where appropriate, the identity of the seal or stamp which the document bears.

Article 6

1. This Convention shall be open to signature by the member States of the Council of Europe. It shall be subject to ratification or acceptance. Instruments of ratification or acceptance shall be deposited with the Secretary General of the Council of Europe.

2. This Convention shall enter into force three months after the date of deposit of the third instrument of ratification or acceptance.

3. In respect of a signatory State ratifying or accepting subsequently, the Convention shall come into force three months after the date of the deposit of its instrument of ratification or acceptance.

Article 7

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any State not a member of the Council of Europe to accede to this Convention.

2. Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect three months after the date of its deposit.

Article 8

1. Any Contracting Party may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, specify the territory or territories to which this Convention shall apply.

2. Any Contracting Party may, when depositing its instrument of ratification, acceptance or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Convention to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.

3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn according to the procedure laid down in Article 9 of this Convention.

Article 9

1. This Convention shall remain in force indefinitely.

2. Any Contracting Party may, in so far as it is concerned denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

3. Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.

Article 10

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to this Convention of:

(a) any signature;

(b) any deposit of an instrument of ratification, acceptance or accession;

(c) any date of entry into force of this Convention;

(d) any declaration received in pursuance of the provisions of Article 8;

(e) any notification received in pursuance of the provisions of Article 9 and the date on which denunciation takes effect.

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

Done at London, this ... June 1968, in English and French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory and acceding States.

APPENDIX IV: PARTIES TO EUROPEAN CONVENTION ON THE ABOLITION OF LEGALISATION OF DOCUMENTS EXECUTED BY DIPLOMATIC AGENTS OR CONSULAR OFFICERS

European Treaty Series Number 63

Member States	*Date of signature*	*Date of Ratification or Accession*	*Date of of Entry into Force*
Austria	08/02/71	09/04/73	10/07/73
Belgium			
Bulgaria			
Cyprus	29/10/68	16/04/69	14/08/70
Czech Republic			
Denmark			
Estonia			
Finland			
France	07/06/68	13/05/70	14/08/70
Germany	07/06/68	18/06/71	19/09/71
Greece	07/06/68	22/02/79	23/05/79
Hungary			
Iceland			
Ireland			
Italy	06/11/68	18/10/71	19/01/71
Liechtenstein	Accession	06/11/72	07/02/73
Lithuania			
Luxembourg	07/06/68	30/03/79	30/06/79
Malta	07/06/68		
Netherlands	16/09/69	09/07/70	10/10/70
Norway	07/05/81	19/06/81	20/09/81
Poland			
Portugal	22/11/79	13/12/82	14/03/83
San Marino			
Slovakia			
Spain	15/04/82	10/06/82	11/09/82
Sweden	07/06/68	27/09/73	28/12/73
Switzerland	07/06/68	19/08/70	20/11/70
Turkey	01/09/80	22/06/87	23/09/87
United Kingdom	07/06/68	24/06/69	14/08/70

APPENDIX V: CONVENTION ABOLISHING THE LEGALISATION OF DOCUMENTS IN THE MEMBER STATES OF THE EUROPEAN COMMUNITIES

THE MEMBER STATES OF THE EUROPEAN COMMUNITIES

CONVINCED of the desirability of ensuring the free movement of documents between their States.

DESIRING for this purpose to adopt uniform rules concerning the abolition of all forms of legalisation of documents.

HAVE AGREED AS FOLLOWS:

Article 1

1. This Convention shall apply to public documents which are drawn up in the territory of a contracting state and have to be produced in the territory of another contracting state or shown to the diplomatic or consular agents of another contracting state even if those agents are acting in the territory of a State which is not party to this Convention.

2. 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 the court of 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.

3. This Convention shall also apply to documents drawn up in their official capacity by the diplomatic or consular agents of a contracting State acting in the territory of any State, where such documents have to be produced in the territory of another contracting State or shown to the diplomatic or consular agents of another contracting State acting in the territory of a State which is not party to this Convention.

Article 2

Each contracting State shall exempt the document to which this Convention applies from all forms of legalisation or other equivalent or similar formality.

Article 3

For the purposes of this Convention legalisation means only the formal procedure for certifying the authenticity of a 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 4

1. If the authorities of the State in whose territory the document is produced have serious doubts, with good reason, as to the authenticity of the signature, the capacity in which the person signing the document has acted or the identity of the seal or stamp, they may request information directly from the relevant central authority, designated in accordance with Article 5, of the State from which the act or document emanated. Requests for information may be made only in exceptional cases and shall set out the grounds on which they are based.

2. Whenever possible, requests for information shall be accompanied by the original document or by a photocopy thereof. Such a request and the reply thereto shall not be subject to any tax, duty or charge.

Article 5

Each contracting State shall at the time of signature, ratification acceptance or approval of this Convention, designate the central authority responsible for receiving and forwarding the requests for information referred to in Article 4. It shall indicate the language(s) in which the authority will accept requests for information.

Article 6

1. This Convention shall be open for signature by the Member States. It shall be subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of Belgium.

2. This Convention shall enter into force 90 days after the deposit of the instruments of ratification, acceptance or approval by all the States which are members of the European Communities on the date on which it becomes open for signature.

3. Each State may, when depositing its instrument of ratification, acceptance or approval, or at any later date until the entry into force of the Convention, declare that the Convention will apply to it, in its relations with other States which have made the same declaration, 90 days after the date of deposit.

Article 7

1. This Convention shall be open for accession by any State which becomes a member of the European Communities. The instruments of accession shall be deposited with the Ministry of Foreign Affairs of Belgium.

2. This Convention shall enter into force for any State acceding thereto 90 days after the deposit of its instruments of accession.

Article 8

1. Each Member State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Convention shall apply.

2. Each Member State may, when depositing its instrument of ratification, acceptance or approval or at any later date, by declaration addressed to the Ministry of Foreign Affairs of Belgium extend this Convention to any other territory specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.

3. Any declaration made in pursuance of paragraph 2 may, as regards any territory specified in that declaration, be withdrawn by means of a notification addressed to the Ministry of Foreign Affairs of Belgium.

The withdrawal shall have effect immediately or at such later date as may be specified in the notification.

Article 9

The Foreign Ministry of Belgium shall notify all the Member States of any signature, deposit of instruments, declaration or notification.

APPENDIX VI: PARTIES TO THE CONVENTION ABOLISHING THE LEGALISATION OF DOCUMENTS IN THE MEMBER STATES OF THE EUROPEAN COMMUNITIES

Member State	*Signature*	*Ratification*
Belgium	25/05/1987	
Denmark	25/05/1987	26/07/1989
France	25/05/1987	12/12/1991
Germany	25/05/1987	
Greece	5/06/1992	
Ireland		
Italy	25/05/1987	11/10/1990
Luxembourg	25/05/1987	
Netherlands	25/05/1987	
Portugal	25/05/1987	
Spain		
United Kingdom	25/05/1987	

APPENDIX VII: JURISDICTION OF COURTS AND ENFORCEMENT OF FOREIGN JUDGEMENTS ACT, 1988

Proof and admissibility of certain judgments and related translations and documents

s.10(1) For the purposes of the Conventions -

(a) a document, duly authenticated, which purports to be a copy of judgment given by a court of a Contracting State other than the State shall without further proof be deemed to be a true copy of the judgment, unless the contrary is shown.

s.1(2) A document purporting to be a copy of a judgment given by a court of Contracting State shall, for the purposes of this Act, be regarded as being duly authenticated if it purports -

(a) to bear the seal of that court, or

(b) to be certified by a person in his capacity as a judge or officer of the court to be a true copy of a judgment given by that court.

APPENDIX VIII: CHILD ABDUCTION AND ENFORCEMENT OF CUSTODY ORDERS ACT, 1991

Evidence of decisions and determinations of authorities of Contracting States and other matters relating to Hague Convention

s.5(1) For the purposes of Article 14 of the Hague Convention a document, duly authenticated, which purports to be a copy of a decision or determination of a judicial or administrative authority of a Contracting State other than the State without further proof be deemed to be a true copy of the decision or determination, unless the contrary is shown.

Evidence of decisions and declarations of authorities of Contracting States and other matters relating to Luxembourg Convention

s.10(1) For the purposes of the Luxembourg Convention -

(a) a document, duly authenticated, which purports to be a copy of a decision or declaration relating to custody of a judicial or administrative authority of a Contracting State other than the State shall without further proof be deemed to be a true copy of the decision or declaration, unless the contrary is shown;

and

s.19(4) A document purporting to be a copy of a decision, determination or declaration of a judicial or administrative authority of a Contracting State shall, for the purposes of this Part, be regarded as being duly authenticated if it purports -

(a) to bear the seal of that authority, or

(b) to be certified by a person in his capacity as judge or officer of that authority to be a true copy of the decision, determination or declaration of that authority.

APPENDIX IX: EXTRADITION ACT, 1965, SECTIONS 54 AND 55

s.54(1) Where the Commissioner receives a document appearing to be a warrant issued by a judicial authority in a place in relation to which this Part applies, together with an affidavit verifying the signature on the warrant and appearing to be sworn before a person duly authorised to take affidavits by the law of that place, the Commissioner may, without further evidence, accept the document as being such warrant and as having being duly signed and issued by a judicial authority in accordance with the law of that place and as evidence that the offence for which the warrant is issued is an offence under the law of that place and that the affidavit has been duly sworn before a person so authorised as aforesaid.

(2) A certificate, appearing to be given by the authority or the clerk or other officer of the authority by which a warrant was issued, that the offence to which it relates is, by the law of the place concerned, an indictable offence and not also a summary offence, or that it is a summary offence punishable by a specified maximum period of imprisonment may, without further evidence, be accepted by the Commissioner as evidence of the matters so certified.

(3) A document appearing to be a copy of a summons to which paragraph (a) of subsection (1) of section 51 relates and to be certified by the authority by which it was issued or by the clerk or other officer of that authority, a document appearing to be a copy of an affidavit or other declaration of service of any such summons and an affidavit or other written statement purporting to have been sworn by the clerk or other officer of the court before which a person is required to appear, whether in answer to any such summons or in pursuance of a recognisance or on any date to which the proceedings for the trial of the offence have been adjourned, that that person has failed so to appear may, without further evidence, be accepted by the Commissioner as evidence of such summons, service and failure, respectively.

s.55(1) In any proceedings, unless the court sees good reason to the contrary-

(a) a document appearing to be a warrant issued by a judicial authority in a place in relation to which this Part applies for the arrest of a person for an offence may, if the signature on the warrant is verified as indicated in subsection (1) of section 54, be admitted in evidence as such warrant and as having been duly signed and issued by a judicial authority in accordance with the law of that place;

(b) a document appearing to be a copy of a summons to which paragraph (a) of subsection (1) of section 51 relates and to be certified in accordance with subsection (3) of section 54 may be admitted as evidence of such summons and a document appearing to be a copy of an affidavit or other declaration of service of the summons may be admitted as evidence of service;

(c) a certificate appearing to be given in accordance with subsection (2) of section 54 may be admitted as evidence of the matters certified therein;

without further evidence.

(2) In any proceedings, a warrant purporting to be endorsed by the Commissioner of the Garda Siochana shall, unless the contrary is proved, be deemed to have been duly endorsed without proof of the signature of the person purporting to have endorsed it or that he is such Commissioner or that, before endorsing it, there was produced to him the affidavit referred to in subsection (1) of section 54.

APPENDIX X: RULES OF THE SUPERIOR COURTS

Irish Affidavits

Order 40, Rule 5

Affidavits sworn in Ireland shall be sworn before a judge, commissioner to administer oaths, or officer empowered to administer oaths.

Foreign Affidavits and Other Documents

Order 40, Rule 7

All examinations, affidavits, declarations, affirmations and attestations of honour in causes or matters pending in the High Court or the Supreme Court, and also acknowledgments required for the purpose of enrolling any deed in the said Courts, may be taken in any foreign country or place before any Irish diplomatic or consular representative or agent exercising his functions in that country or place or when there is no such representative or agent or no such representative or agent conveniently near to the deponent in such country or place, before any notary public lawfully authorised to administer oaths in that country or place or where such country or place is a part of the British Commonwealth of Nations or a British possession, before any judge, court, notary public or person authorised to administer oaths in such part or possession; and the Judges and officers of the High Court and of the Supreme Court shall take judicial notice of the seal or signature, as the case may be, of any such diplomatic or consular representative or agent, judge, court, notary public or other person attached, appended or subscribed to any such examination, affidavit, declaration, affirmation, attestation of honour, or acknowledgement, or to any other deed or document.

Deposit of Powers of Attorney

Order 78, Rules 1 & 2

1. An instrument creating or revoking a power of attorney may be deposited in or filed at the Central Office if it be verified in accordance with rule 2, and accompanied by the affidavit, declaration or other document or documents (if any) by which the execution has been verified.

2. (1) The execution of any such instrument may be verified -

(a) by the affidavit or statutory declaration sworn or made by the

attesting witness or some other person in whose presence the instrument was executed, or if no such person is available, by some impartial person who knows the signature of the grantor; or

(b) if the instrument was executed outside the area of the jurisdiction of the Court before a notary public by a notarial certificate complying with the provisions of paragraph (2) of this rule; or

(c) by any other evidence which, in the opinion of the Master, is sufficient.

(2) A notarial certificate of the execution of an instrument shall be annexed to the instrument. Where the certificate is the certificate of a notary public appointed to act for any part of the British Commonwealth of Nations or any British possession, judicial notice shall be taken of the seal and signature of such notary, affixed, impressed or subscribed to or on any such certificate without further proof; but in any other case the signature of the notary public and the fact that he holds such office shall be verified in the United States of America by the certificate of the county clerk within whose area the notary practices and elsewhere shall be authenticated by a judge or a court having jurisdiction in the place where the instrument was executed or by an Irish diplomatic or consular representative or agent exercising his functions in the country or place in which it was executed.

(3) Judicial notice shall be taken of the seal and signature of the persons hereinbefore authorised to authenticate a notarial certificate.

APPENDIX XI: LIST OF DIPLOMATIC MISSIONS/AMBASSADORS ACCREDITED TO IRELAND AND OF COUNTRIES WITH CONSULAR REPRESENTATIVES

Dublin

Apostolic Nunciature
Argentina
Australia
Austria
Belguim
Brazil
Canada
China
Denmark
Egypt
Finland
France
Germany
Great Britain
Greece
Hungary
India
Iran
Italy
Japan
Republic of Korea
Mexico
Morocco
Netherlands
Nigeria
Norway
Poland
Portugal
Russia
Spain
Sweden
Switzerland
Turkey
United States of America

London

Algeria
Bahrain
Brunei
Bulgaria
Czechoslovakia
Iceland
Indonesia
Iraq
Israel
Jordan
Kenya
Lebanon
Libya
Luxembourg
Malaysia
Malta
New Zealand
Oman
Philippines
Qatar
Romania
Saudi Arabia
Singapore
Sudan
Syria
Tanzania
Thailand
Tunisia
United Arab Emirates
Yugoslavia
Zambia
Zimbabwe

List Of Countries With Consular Representatives Only

Brazil
Chile
Colombia
Cyprus, Republic of
Ecuador
Luxembourg
Malta
Monaco
New Zealand
Pakistan

Peru
Phillippines
Sri Lanka
Thailand
Tunisia

APPENDIX XII: THE COMPANIES ACT, 1963, AND THE COMPANIES (FORMS) ORDER, 1964

The Companies Act, 1963

s.352(1) Companies incorporated outside the State, which, after the operative date, establish a place of business within the State, shall, within one month of the establishment of the place of business, deliver to the registrar of companies for registration.

(a) a certified copy of the charter, statutes or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the English or Irish language, a certified translation thereof.

Companies (Forms) Order, 1964 (S.I. No. 45 of 1964)

I, JOHN LYNCH, Minister for Industry and Commerce, in exercise of the powers conferred on me by sections 47, 99, 101, 111, 128, 204, 352, 353, 354, 361, 364 and 396 of the Companies Act, 1963 (No. 33 of 1963), hereby order as follows:

....

2. In this Order -

"the Act" means the Companies Act, 1963;
"Irish diplomatic or consular officer" means a person to whom section 2 of the Commissioners for Oaths (Diplomatic and Consular) Act, 1931 (No. 9 of 1931), applies.

....

4. A copy of the charter, statutes or memorandum and articles of a company, or other instrument constituting or defining the constitution of a company, shall, for the purposes of section 352 of the Act, be certified, in the country in which the company is incorporated, as follows:

(a) certified as a true copy by an official of the Government to whose custody the original is committed, the signature or seal of such official being authenticated by an Irish diplomatic or consular officer; or

(b) certified as a true copy by a notary of the country in which the company is incorporated, the certificate of the notary being authenticated as aforesaid; or

(c) duly certified as a true copy on oath by some officer of

the company before a person having authority to administer an oath, the status of the person administering the oath being authenticated as aforesaid.

6. A translation of a charter, statutes or memorandum and articles of association, or other instrument constituting or defining the constitution of a company, or any account or other document to be delivered to the registrar under the Act shall be certified to be a correct translation -

(a) if made outside the State, by an Irish diplomatic or consular officer, or by any person whom any such officer certifies to be known to him as competent to translate it into the Irish or English language;

(b) if made within the State, by a notary public or a solicitor.

THE LAW REFORM COMMISSION
Ardilaun Centre
111 St Stephen's Green
Dublin 2

Telephone: 671 5699
Fax No.: 671 5316

LIST OF LAW REFORM COMMISSION'S PUBLICATIONS

First Programme for Examination of Certain Branches of the Law with a View to their Reform (Dec 1976) (Prl. 5984) **[out of print] [photocopy available]** [10p Net]

Working Paper No. 1-1977, The Law Relating to the Liability of Builders, Vendors and Lessors for the Quality and Fitness of Premises (June 1977) [£ 1.50 Net]

Working Paper No. 2-1977, The Law Relating to the Age of Majority, the Age for Marriage and Some Connected Subjects (Nov 1977) **[out of print] [photocopy available]** [£ 1.00 Net]

Working Paper No. 3-1977, Civil Liability for Animals (Nov 1977) [£ 2.50 Net]

First (Annual) Report (1977) (Prl. 6961) [40p Net]

Working Paper No. 4-1978, The Law Relating to Breach of Promise of Marriage (Nov 1978) [£ 1.00 Net]

Working Paper No. 5-1978, The Law Relating to Criminal Conversation and the Enticement and Harbouring of a Spouse (Dec 1978) **[out of print] [photocopy available]** [£ 1.00 Net]

Working Paper No. 6-1979, The Law Relating to Seduction and the Enticement and Harbouring of a Child (Feb 1979) [£ 1.50 Net]

Working Paper No. 7-1979, The Law Relating to Loss of Consortium and Loss of Services of a Child (March 1979) [£ 1.00 Net]

Working Paper No. 8-1979, Judicial Review of Administrative Action: the Problem of Remedies (Dec 1979) [£ 1.50 Net]

Second (Annual) Report (1978/79) (Prl. 8855) [75p Net]

Working Paper No. 9-1980, The Rule Against Hearsay (April 1980) **[out of print] [photocopy available]** [£ 2.00 Net]

Third (Annual) Report (1980) (Prl. 9733) [75p Net]

First Report on Family Law - Criminal Conversation, Enticement and Harbouring of a Spouse or Child, Loss of Consortium, Personal Injury to a Child, Seduction of a Child, Matrimonial Property and Breach of Promise of Marriage (LRC 1-1981) (March 1981) [£ 2.00 Net]

Working Paper No. 10-1981, Domicile and Habitual Residence as Connecting Factors in the Conflict of Laws (Sep 1981) [£ 1.75 Net]

Fourth (Annual) Report (1981) (Pl. 742) [75p Net]

Report on Civil Liability for Animals (LRC 2-1982) (May 1982) [£ 1.00 Net]

Report on Defective Premises (LRC 3-1982) (May 1982) [£ 1.00 Net]

Report on Illegitimacy (LRC 4-1982) (Sep 1982) [£ 3.50 Net]

Fifth (Annual) Report (1982) (Pl. 1795) [75p Net]

Report on the Age of Majority, the Age for Marriage and Some Connected Subjects (LRC 5-1983) (April 1983) [£ 1.50 Net]

Report on Restitution of Conjugal Rights, Jactitation of Marriage and Related Matters (LRC 6-1983) (Nov 1983) [£ 1.00 Net]

Report on Domicile and Habitual Residence as Connecting Factors in the Conflict of Laws (LRC 7-1983) (Dec 1983) [£ 1.50 Net]

Report on Divorce a Mensa et Thoro and Related Matters (LRC 8-1983) (Dec 1983) [£ 3.00 Net]

Sixth (Annual) Report (1983) (Pl. 2622) [£ 1.00 Net]

Report on Nullity of Marriage (LRC 9-1984 (Oct 1984) [£ 3.50 Net]

Working Paper No. 11-1984, Recognition of Foreign Divorces and Legal Separations (Oct 1984) [£ 2.00 Net]

Seventh (Annual) Report (1984) (Pl. 3313) [£ 1.00 Net]

Report on Recognition of Foreign Divorces and Legal Separations (LRC 10-1985) (April 1985) [£ 1.00 Net]

Report on Vagrancy and Related Offences (LRC 11-1985) (June 1985) [£ 3.00 Net]

Report on the Hague Convention on the Civil Aspects of International Child Abduction and Some Related Matters (LRC 12-1985) (June 1985) [£ 2.00 Net]

Report on Competence and Compellability of Spouses as Witnesses (LRC 13-1985) (July 1985) [£ 2.50 Net]

Report on Offences Under the Dublin Police Acts and Related Offences (LRC 14-1985) (July 1985) [£ 2.50 Net]

Report on Minors' Contracts (LRC 15-1985) (August 1985) [£ 3.50 Net]

Report on the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (LRC 16-1985) (August 1985) [£ 2.00 Net]

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