



9th International Forum on the e-APP

9 and 10 October 2014

Hong Kong Special Administrative Region of the People's Republic of China

CONCLUSIONS & RECOMMENDATIONS

Approximately 65 experts from 20 States¹ convened in the Hong Kong Special Administrative Region of the People's Republic of China (hereinafter, Hong Kong) to attend the *9th International Forum on the electronic Apostille Program (e-APP)*. The Forum has been jointly organised by the Department of Justice of Hong Kong and the Permanent Bureau as well as its Asia Pacific Regional Office in Hong Kong.

This was the first e-APP Forum to be held in the Asia Pacific region. The participants expressed their gratitude to the Department of Justice for generously hosting the event.

The Forum brought together several States from the Asia Pacific region both parties and non-parties to the *Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* (Apostille Convention). Participants recognised that the interest in the Apostille Convention and the e-APP is increasing in the Asia-Pacific region, with several States currently considering accession to the Convention and/or implementation of the e-APP. In addition, participants welcomed the presence of States that had not participated in previous Fora, in particular from the Middle East.

Furthermore, participants recalled the 2010 Report of the International Finance Corporation of the World Bank Group entitled *Investing Across Borders*, which acknowledges the positive impact of the Apostille Convention on the ability of foreign companies to set up and conduct business.

Participants echoed Conclusions and Recommendations (C&R) Nos 1-3 adopted at the *Asia Pacific Economic Co-operation (APEC) Workshop on the Ease of Doing Business through Hague Conventions*, which took place in August 2014 in Beijing, China, on the benefits that an APEC-wide adoption of the Convention would have on the ease of doing business, the reinforcement of institutional and people-to-people connectivity and liberalisation of trade and investment. The Workshop participants also resolved to encourage wider participation in the Convention and the wide use of e-Apostilles and e-Registers of Apostilles.

The participants unanimously reached the following conclusions and made the following recommendations:

¹ Austria, Bahrain, Chile, Colombia, Georgia, Kuwait, Luxembourg, Mongolia, New Zealand, People's Republic of China, Philippines, Qatar, Republic of Korea, Republic of Moldova, Russian Federation, Spain, Thailand, United Kingdom, United States of America and Viet Nam.

The electronic Apostille Program (e-APP) in general

1. The participants noted that approximately 180 Competent Authorities from 22 Contracting States have already implemented one or both components of the e-APP.² They particularly welcomed the jurisdictions that have joined the e-APP since the 2013 Montevideo Forum, namely Bahrain, China (Hong Kong), Paraguay, the United Kingdom and two states of Mexico: Federal District and Jalisco. In addition, participants congratulated those States that are progressing with the implementation of one or both components of the e-APP, such as the introduction of an e-Register by the Ministry of Justice of the Russian Federation, and the issuance of e-Apostilles in Georgia and Bahrain.
2. Participants congratulated the High Court of Hong Kong for having implemented a Category 2 e-Register, which is available both in English and Chinese. The participants also took note that the High Court is planning to include other elements of the e-APP in the future. In addition, participants also welcomed the introduction of a bilingual Apostille in Chinese and English.
3. Participants recalled the value of the e-APP as a tool to further the secure and effective operation of the Apostille Convention. In addition, participants noted the increase in the issuance of e-Apostilles, with demand growing steadily.
4. Participants welcomed the fact that States currently considering accession, such as Chile, the Philippines and Viet Nam, are considering implementing one or both components of the e-APP.
5. Participants recalled C&R No 5 of the 2013 Montevideo Forum, encouraging all Contracting States to the Apostille Convention, and those considering joining the Convention, to consider implementing both components of the e-APP. In this respect, participants noted the increasing ease with which these components may be implemented, as the many States that have implemented the e-APP are available for consultation and to provide assistance, particularly in light of their experience in addressing privacy, security, technological or other concerns. Participants thus confirmed that effective communication between Competent Authorities with regard to the implementation of the e-APP will facilitate the development of good practices and enhance awareness among State authorities of the different e-APP systems in operation.
6. Participants acknowledged the importance of political support in order to realise the implementation of both components of the e-APP.

e-Apostilles

7. Participants confirmed C&R Nos 8-13 of the 2013 Montevideo Forum, concerning e-Apostilles. Participants noted the increase in the number of electronic public documents issued around the globe and that e-Apostilles offer the only solution for apostillising electronic public documents. Participants noted that two different systems relating to the issuance of e-Apostilles are currently in use among the Contracting States to the Convention: the *dynamic* system and the *static* system. Under the former, the electronic file containing the e-Apostille and the electronic public document is transmitted electronically from the State of origin to the State of destination, while under the latter the electronic file is stored in a repository of the Competent Authority. Participants also reiterated that it is a good practice to inform the Permanent Bureau of the Hague Conference and the Depositary when Contracting States begin issuing e-Apostilles. Participants noted that some jurisdictions issuing e-Apostilles have passed laws or regulations enabling their Competent Authorities to issue e-Apostilles, while others have not.
8. Participants noted that despite the differences between the systems relating to the issuance of e-Apostilles, both systems work well in practice. States that presented reported receiving positive feedback with respect to the issuance of e-Apostilles.

² Andorra, Bahrain, Belgium, Bulgaria, China (Hong Kong Special Administrative Region), Colombia, Costa Rica, Dominican Republic, Georgia, Ireland, Mexico (Estado de Mexico and Jalisco), New Zealand, Nicaragua, Paraguay, Peru, Republic of Moldova, Slovenia, Spain, Russian Federation, Uruguay, United Kingdom, United States of America (California, Colorado, Kansas, North Carolina, Rhode Island, Texas, Washington and West Virginia).

9. Participants acknowledged the good practice of providing information about how to validate signatures on e-Apostilles and, where applicable, of ensuring that all e-Apostilles issued are included in the e-Register.

10. Participants also noted that the design and layout of Apostilles (both paper and electronic) must conform with the model annexed to the Convention. In order to facilitate the circulation of public documents, participants recalled the utility of conforming as closely as possible to this model, as well as the importance of bilingual or trilingual Apostille Certificates.

Recognition of e-Apostilles

11. Participants confirmed C&R No 6 of the 2010 Madrid Forum (as reiterated in C&R No 9 of the 2012 Izmir Forum and C&R No 14 of the 2013 Montevideo Forum):

“[T]he Forum participants again emphasised the fundamental principle of the Convention according to which an Apostille validly issued in one State Party must be accepted in other States Party; the Forum participants stressed that this principle also applies to e-Apostilles issued in accordance with domestic law of the issuing State. Not extending this basic principle to e-Apostilles would provide receiving States with more power in the electronic environment than they have in the paper environment. Such a double standard would be very unsatisfactory as the use of e-Apostilles offers a far higher security standard than paper Apostilles. This recognition of foreign e-Apostilles is further supported by the fact that the majority of States have adopted legislation to the effect that electronic signatures are the functional equivalent of manuscript (holographic) signatures. Finally, Forum participants stressed the great advantage of the parallel use of an e-Register if and when a Competent Authority issues e-Apostilles; the possibility to also verify the origin of an e-Apostille in the relevant e-Register should provide recipients of e-Apostilles with all the necessary assurance.”

12. Participants recalled C&R No 15 of the 2013 Montevideo Forum, noting that a State of destination may not reject e-Apostilles on the sole ground that the State of issuance or the State of destination does not have legislation concerning e-Apostilles. Participants further recalled that Apostilles, whether in paper or in electronic format, do not affect the acceptance, admissibility or probative value of the underlying public document.

13. Reference was made to the model laws promulgated by UNCITRAL in relation to e-commerce and e-signatures. Participants were invited to work with their relevant authorities to ensure, where suitable, that domestic law is compatible with the receipt of underlying public documents in the electronic form, so as to reduce, as far as possible, the risk of rejection of underlying public documents in the State of destination.

14. The participants noted that e-Apostilles are being widely accepted and have been of great benefit to users. Where there have been instances of rejection because the underlying public document must be presented in paper form under the domestic law of the State of destination, Competent Authorities have attempted a variety of actions, such as contacting the diplomatic missions of the State of destination and engaging in a dialogue to explain the process of issuance in further detail to alleviate security and other concerns. As a result of this dialogue, some Competent Authorities then issue a paper Apostille to accommodate the (often urgent) needs of the applicants.

e-Registers

15. The participants confirmed the C&R Nos 10 to 11 of the 2012 Izmir Forum and the C&R No 17 of the 2013 Montevideo Forum concerning e-Registers, noting the need for e-Registers to comply with the requirements set out in Article 7 of the Apostille Convention and encouraging Competent Authorities to implement Categories 2 or 3 e-Registers. Participants noted that Category 1 e-Registers do not provide the assurance that the relevant Apostille is being used with the underlying public document for which it was originally issued. Participants further recalled that the full display of the Apostille and/or the underlying public document is subject to data protection laws of the jurisdiction operating the e-Register. In addition, participants reiterated that e-Registers must prevent “fishing expeditions”.

16. Participants noted that States are increasingly utilising Quick Response (QR) code technology to facilitate the verification of paper and e-Apostilles in their e-Registers.

10th International Forum on the e-APP

17. The Permanent Bureau announced that the 10th International Forum on the e-APP is tentatively envisaged for 2016 in The Hague, the Netherlands, in conjunction with the next Special Commission meeting on the Practical Operation of the Apostille Convention. By combining both meetings, the Permanent Bureau intends to facilitate the participation of experts in both events and to further promote the e-APP among the participating States.