

HAGUE CONVENTION OF 5 OCTOBER 1961 ABOLISHING THE REQUIREMENT OF LEGALISATION FOR FOREIGN PUBLIC DOCUMENTS

QUESTIONNAIRE RESPONSE BY AUSTRALIA

QUESTION 1. In practice, what are the kinds of public documents (e.g., commercial documents, birth certificates) for which the competent authority(ies) in your state is (are) most commonly called upon to issue apostilles?

Birth, death and marriage certificates, decrees nisi and educational documents.

QUESTION 2. Do you have statistics at your disposal with respect to the number of apostilles issued by your competent authorities (by type of document, if possible)?

15,890 in the 2002-03 Australian financial year (July 2002-June 2003)

QUESTION 3. Pursuant to the application by the European Community for membership of the Hague Conference, it will need to be determined to what extent the Hague Conventions, and in particular the "Apostille" Convention, should or could be extended to regional economic -integration organizations. Do you consider that it would be necessary or appropriate to adopt a protocol favouring the adoption of a clause similar to that of Article 18 of the Hague Convention on the law applicable to certain rights in respect of securities held with an intermediary?

We consider that Article 18 of the Hague 'Securities' Convention is an appropriate (but not necessary) starting point for negotiating a provision on EC membership. However, we reserve our position on the issue of the EC's membership fees and voting rights. Another precedent - for the definition of a REIO - that might be worth looking at is found in the UN Framework Convention on Climate Change: "an organization constituted by sovereign States of a given region which has competence in respect of matters governed by this Convention or its protocols and has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to the instruments concerned" (Art 2).

QUESTION 4. Would you be in favour of the adoption of a protocol designed to enable a State with several units to extend the application of the Convention to one or several of its territorial units?

We note that Article 29 of the Vienna Convention on the Law of Treaties states that unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory. We reserve our position on the substance of this issue.

QUESTION 5. Can you specify the price charged by the competent authorities in your country for issuance of the Apostille?

\$60 Australian per apostille

QUESTION 6. In practice, have you encountered difficulties connected with the formal requirements provided for under the Convention?

The main difficulty we have confronted relates to what can be considered a public document.

QUESTION 7. Practical information relating to the methods used to affix the apostille would be very useful. In particular, how do you proceed when the public document to receive the apostille has several pages?

The apostille is placed either on the back of the document by a rubber stamp or computer generated image or, where there are several pages, these are bound and the apostille is placed on a covering sheet.

QUESTION 8. Is consultation of the register or card index for verification requested frequently?

No. We have received two requests over the last year.

QUESTION 9. Do you use signatures by mechanical means, stamp and/or electronics, to fill in apostilles? If so, have security measures been taken to avoid any fraud? If so, which?

No – Although we may produce a computer generated copy of the apostille stamp, all details are filled in by hand and it is signed by hand. A wet seal is placed in one corner and in the other a wafer seal, which has the relevant Department of Foreign Affairs and Trade office seal impressed over it.

QUESTION 10. Do you use an electronic medium to keep the "register or card index" provided for under Article 7 of the Convention? If so, do you also keep a paper copy of the entries and if not, do you contemplate doing so? What are your reasons?

The register is kept on a computer database. We do not need to keep hard copies because the Australian Government rules regarding computer based records requires all computer systems to have a series of backups.

QUESTION 11. Do you issue apostilles for electronic documents? If so, can you provide us with details of the manner of that issuance and if not, do you think this possibility can be contemplated?

We do not issue apostilles for electronic documents. We would be happy to explore this further, particularly if it provided a better service for customers and could be implemented efficiently. We do however have reservations with respect to the possibility of fraud.