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# MAINLAND CHINA ADOPTS APOSTILLING AS METHOD OF AUTHENTICATING DOCUMENTS

Mainland China has adopted the Hague 1961 Apostille Convention, simplifying legal processes in China and beyond.

## Background

Historically, countries required public documents issued or produced by another state to be 'legalised' to prove their authenticity. The legalisation process, which requires diplomatic or consular verification by the issuing state, is expensive and time-consuming and can cause delay.

Although practice moved on elsewhere (see below), mainland China has, until recently, required official documents produced in China to be legalised if they were used abroad and *vice versa*. Given China's size, and its position in the world economy, this meant that a not insignificant amount of court proceedings and transactions (e.g. those involving Chinese individuals, entities or business operations) have, to date, involved documents which had to be legalised.

The cumbersome nature of legalisation, and lack of control over the process, affected a wide range of legal proceedings and commercial transactions in Asia (and beyond), such as corporate and finance transactions, investment or exports into China and cross-border disputes.

## Recent Developments

On 7 November 2023<sup>1</sup>, the Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents (**Convention**) came into effect in mainland China.

As a result, a foreign public document bearing an 'Apostille' issued by a "**Competent Authority**" in any of the other 125 Convention "**Member Countries**" will now suffice for authentication purposes under Chinese law.

Apostilling is a simpler and more cost- and time-efficient process. A single Apostille certificate (accompanied by a red seal / stamp) is issued by the jurisdiction which produced or issued the document.

The Apostille process is familiar in most common law jurisdictions, such as Hong Kong, the United Kingdom (**UK**) and the British Virgin Islands (**BVI**)<sup>2</sup> and in other jurisdictions such as the USA<sup>3</sup>, major economies in Latin America and EU states<sup>4</sup>.

In many jurisdictions, including mainland China, the Competent Authority is the Ministry of Foreign Affairs. Elsewhere in HFW's global network, the Competent Authority responsible for Apostilling official documents is:

- **BVI**: Governor's office;
- **HK**: High Court Registrar;
- **UK**: Legalisation Office, Foreign, Commonwealth and Development Office.

<sup>1</sup> Mainland China acceded to the Convention on 8 March 2023. For more information, please see [here](#).

<sup>2</sup> The Convention came into force in all three jurisdictions in 1965.

<sup>3</sup> The Convention came into force in the USA in 1981.

<sup>4</sup> For further information, please see [here](#).

## Commentary

China's adoption of the Apostille process for authenticating documents is welcome news for those who do business in the PRC.

We expect that costs and delay will significantly reduce in relation to the authentication of documents needed for corporate and finance transactions, investment, exports, cross-border litigation and other legal proceedings.

It remains to be seen how mainland China will interpret the Convention and the classes of documents which can now be Apostilled. Most Member Countries take the same, or a similar, approach to interpretation of the Convention and, generally speaking, "*public documents*" include:

- Certificates of Incorporation and Certificates of Good Standing issued by the issuing state's corporate registry (or equivalent);
- permits and licenses issued by government departments; and
- notarised documents e.g. affidavits, powers of attorney and certified true copy documents (i.e. documents submitted in support of a visa or employment application or filed as evidence in support of legal proceedings).

China's stated aims in relation to the adoption of the Convention include the reduction of costs and delay and a desire to "*further facilitate trade and people-to-people exchanges*" and "*improve the business environment*"<sup>5</sup> so it appears likely that they will take a similar approach.

## Contact Us

This article provides a high-level overview of process required to authenticate documents for use in mainland China (and elsewhere). Should you need further guidance, please contact the authors of this alert, or your usual HFW contact.

## Authors



### SCOTT CRUICKSHANK

Partner, BVI

**T** +1 (284) 494 6864

**E** [scott.cruickshank@hfw.com](mailto:scott.cruickshank@hfw.com)



### CATRIONA HUNTER

Knowledge Counsel, Asia

**T** +852 3983 7675

**E** [catriona.hunter@hfw.com](mailto:catriona.hunter@hfw.com)



### ROB McINTYRE

Consultant, BVI

**T** +1 (284) 494 6864

**E** [rob.mcintyre@hfw.com](mailto:rob.mcintyre@hfw.com)



### BRINTON SCOTT

Partner, Shanghai

**T** +86 21 2080 1068

**E** [brinton.scott@hfw.com](mailto:brinton.scott@hfw.com)

<sup>5</sup> [Foreign Ministry Spokesperson Mao Ning's Regular Press Conference on March 10, 2023 \(fmprc.gov.cn\).](#)

## Global BVI team contacts



**NOEL CAMPBELL**

Partner, Hong Kong

**T** +852 3983 7757

**E** noel.campbell@hfw.com



**KAREN CHEUNG**

Partner, Hong Kong

**T** +852 3983 7628

**E** karen.cheung@hfw.com



**WING CHEUNG**

Partner, Hong Kong

**T** +852 3983 7618

**E** wing.cheung@hfw.com



**HENRY FUNG**

Partner, Hong Kong

**T** +852 3983 7777

**E** henry.fung@hfw.com



**DANIEL LEUNG**

Partner, Hong Kong

**T** +852 3983 7669

**E** daniel.leung@hfw.com



**JUSTIN SUN**

Partner, Hong Kong

**T** +852 3983 7713

**E** justin.sun@hfw.com



**KEVIN WARBURTON**

Partner, Hong Kong

**T** +852 3983 7629

**E** kevin.warburton@hfw.com



**DANIELLE PENG**

Of Counsel, Shanghai

**T** +86 21 2080 1059

**E** danielle.peng@hfw.com



**EDWARD BEELEY**

Senior Associate, Hong Kong

**T** +852 3983 7737

**E** edward.beeley@hfw.com



**WHITNEY CHAN**

Senior Associate, Hong Kong

**T** +852 3983 7763

**E** whitney.chan@hfw.com



**JAMES HENSON**

Senior Associate, BVI

**T** +1 (284) 494 6864

**E** james.henson@hfw.com



**THILO JAHN**

Senior Associate, Shanghai

**T** +86 21 2080 1175

**E** thilo.jahn@hfw.com



**NANCY CHEN**

Associate, Shanghai

**T** +86 21 2080 1092

**E** nancy.chen@hfw.com



**HUGO COSTA-LIZIARIO**

Associate, BVI

**T** +1 (284) 494 6864

**E** hugo.costaliziaro@hfw.com



**JUSTINE PORTER**

Associate, Hong Kong

**T** +852 3983 7696

**E** justine.porter@hfw.com

**hfw.com**

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