



ALL SECTORS | DECEMBER 2022

'A SMALL CHANGE WITH A BIG EFFECT': APOSTILLE CONVENTION ENTERS INTO FORCE IN SAUDI ARABIA

AN INFORMAL Q&A

Hopes for shortened timelines and improved efficiency in cross-border transactions involving Saudi Arabia, as the country replaces legalisation with apostilles as the means of recognition of documents executed abroad. In this informal Q&A, Euan Pinkerton and Abbas Sharif of the Riyadh office of HFW in association with Attorney Mohammed Alkhlwi answer some of your questions on this change in Saudi Arabian law.

A small but significant change in Saudi Arabian law occurred earlier this month.

It didn't attract headlines in the way that the various **giga-projects** currently underway in the Kingdom do. In fact, it didn't attract much attention at all.

But, if you are doing **cross-border business** with Saudi Arabia, it could make your life just that little bit easier.

From **07 December 2022**¹ onwards, the Kingdom of Saudi Arabia started accepting **apostilles** (a type of internationally-recognised certification) on documents that are executed before **notaries public** outside the Kingdom, for use inside the Kingdom.

As we said, a small but significant change.

What has that got to do with me?

If you are doing any kind of cross-border transactions involving Saudi Arabia - whether as an **international entity** doing business with Saudi Arabian entities, or as a **Saudi Arabian entity** doing business with international entities - this is important for you.

Specifically, the change in Saudi Arabian law helps **to simplify and to shorten the process** of doing cross-border business with Saudi Arabian entities inside Saudi Arabia. Let us explain.

How does this simplify business in Saudi Arabia?

Amongst other things, international business depends on **timely and efficient** execution of documents.

The **recognition** of apostilles in Saudi Arabia reduces the number of steps that you now need to undertake when **executing** documents before a notary public **outside** Saudi Arabia, where you need to have the documents recognised **inside** Saudi Arabia as having been duly notarised in the country of origin.

Why is this an 'issue' when doing business with Saudi Arabia?

The execution of documents before a notary public outside the country where they are needed has **traditionally** been more of an 'issue' when doing business with Saudi Arabia than with other countries.

This is due to **two reasons**, namely:

1. requirements of Saudi Arabian law; and
2. **historically**, the way in which many multi-nationals operate in Saudi Arabia.

¹ Refer to Article 12 of Saudi Arabia Cabinet Decision No. 277/1443 on the Approval of the Accession of the Kingdom to the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, the Apostille Convention, issued on 24/05/1443 H (corresponding to 28 December 2021 G)

If we consider these two points in turn:

1. **requirements of Saudi Arabian law:** Saudi Arabia requires that many common types of corporate document (including **powers of attorney**, **articles of association** and certain **shareholders' resolutions**) be executed in front of a notary public (i.e., 'notarised'), in order to be regarded in Saudi Arabia as **properly executed**; and
2. **operation of multi-nationals in Saudi Arabia:** although things are now changing (and will change further under the **Regional HQ policy** of the Saudi Arabian Government), many multi-nationals with a business presence in Saudi Arabia have historically based part of their workforce with responsibility for Saudi Arabia outside the country. Specifically, authorised signatories may be based outside Saudi Arabia. As such, they sign notarised documents concerning the Saudi Arabian business outside the country.

Until now, such documents needed to undergo a **potentially time-consuming process** – partly in the country where they were signed and partly in Saudi Arabia itself - in order to be recognised in Saudi Arabia as having been **properly notarised** in the country of origin.

This process is called **legalisation**.

What is 'legalisation'?

In a nutshell, legalisation is a **multi-step process** that enables documents that are executed and notarised outside the country where they will be used to be recognised in the country of use as having been properly notarised in the country of origin.

Unfortunately, the legalisation process can add **weeks and sometimes months** to the timeline of cross-border transactions.

The rules on execution of documents vary from country to country. However, and as noted above, the **Saudi Arabian legal system** requires that certain common types of corporate document be formally executed before a notary public, rather than just signed.

For documents that are executed and notarised outside Saudi Arabia for use in Saudi Arabia, the process of legalisation **typically** involves the following steps:

Figure 1: The legalisation process for a notarised document – typical example (see below at the end of this article)

Until now, **between seven and eight steps** have been typically necessary in order to have a document executed and notarised outside Saudi Arabia and then ready for use inside Saudi Arabia.

The steps are **simple and easy** to understand. However, as mentioned above, they typically add weeks and sometimes months to the time required to complete a cross-border transaction. And that's without taking into consideration the added costs.

In short, the requirement for legalisation can be a source of frustration for the transaction participants.

Is there a simpler way?

Yes, there is. And it's a way that is not particularly new, having been in existence for around sixty years.

In 1961, a number of countries **signed** one of the many conventions known for short as 'The Hague Convention'. Under this particular **Hague Convention**², the signatory states agreed that, for notarised documents issued in one signatory state for use in another signatory state, the signatory states would **mutually abolish** the requirement for legalisation.

Instead, and in order to have a **notarised** document issued in one signatory state recognised and hence available for use in another signatory state, it would be sufficient to affix to the document a **standardised certificate**, typically issued by the ministry of justice or foreign affairs in the issuing signatory state. This certificate is known as an **apostille**.

The document with the apostille affixed would then be acknowledged in the recipient signatory state as validly notarised and hence available for use in the recipient signatory state, without the need for further formalities. For this reason, the relevant Hague Convention is informally known as the **Apostille Convention**.

In the years since 1961, a great many countries round the world have **acceded** to the Apostille Convention (currently 122 signatory states³, including most of the major economies) and begun recognising and accepting apostilles as a replacement for the older, often cumbersome legalisation process. However, and until recently, Saudi Arabia was not among them.

² The Hague Convention of 05 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents

³ The current number of signatory states is 124, of which 122 have signed and brought into force and a further 2 have signed but not yet brought into force

That changed in December 2021, when the Saudi Arabian Government approved the **accession** of the Kingdom to the Apostille Convention. The accession occurred in April 2022 and, in accordance with the terms of the Apostille Convention, became effective on **07 December 2022**.

As a result, and from now on, where Saudi Arabian law requires that a document be signed in front of a **notary public** and the document is notarised **outside** Saudi Arabia for use **inside** Saudi Arabia, this shorter process – 'apostillisation' – will **suffice** instead of legalisation.

Figure 2: The apostille process for a notarised document in a cross-border transaction – typical example (see below at the end of this article)

Under the new process, **only three steps** are now required instead of the previous seven or eight. Cross-border transactions where documents are executed and notarised outside Saudi Arabia for use in Saudi Arabia can now proceed **more quickly**, with **fewer formalities and at lower cost** than before.

Conclusions

The **recognition and acceptance of apostilles** in Saudi Arabia is not a '**cure-all**' for all of the practical challenges that the participants in cross-border transactions involving Saudi Arabia sometimes face.

For example, if a document is notarised in, and comes to Saudi Arabia from, a country that is not a signatory state to the Apostille Convention (for example, **Canada** and the **People's Republic of China** are two of the bigger gaps in the list of signatory states as it currently stands), it will still be necessary to use the older legalisation system.

Also, the changeover from legalisation to apostilles does not remove the **requirement** in Saudi Arabia to have documents that are executed in a language other than Arabic **translated** into Arabic by a court-licensed translator, in order to be admissible in the Saudi Arabian court system.

Regardless, the recognition and acceptance of apostilles in Saudi Arabia is a **very welcome step forward** as the country increasingly aligns its legal procedures with international practices. In so doing, Saudi Arabia becomes **ever more accessible** for cross-border transactions.

Definitely a small change with a big effect.

Figure 1: The legalisation process for a notarised document in a cross-border transaction – typical example

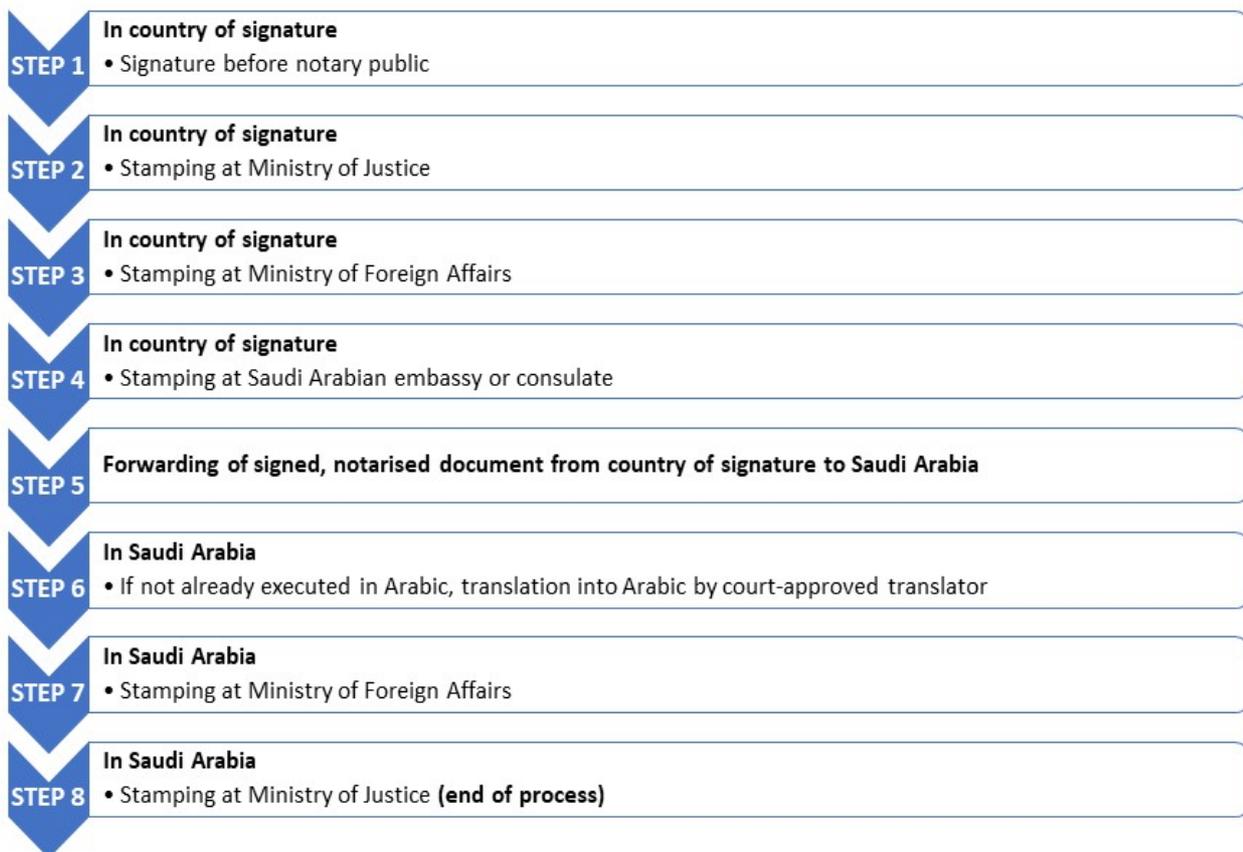


Figure 2: The apostille process for a notarised document in a cross-border transaction – typical example



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