

**CHINA FINALLY JOINS 1961 HAGUE “APOSTILLE” CONVENTION:
LAYER OF CERTIFICATION AND LEGALIZATION OF FOREIGN DOCUMENTS
FOR USE IN CHINA WILL BE ABOLISHED FROM NOVEMBER 2023**

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Despite China’s opening up and reform since the late 1970s, one humdrum but hugely important practice remained unreformed: all foreign documents required for use in China’s ubiquitous filings and proceedings must be legalized. This is a three (or sometimes four) step process where first the document is notarized and then the notary’s certificate must be confirmed by the state in which it was issued and then legalized at the closest Chinese diplomatic mission before it will be accepted in China’s courts, market regulatory administrations, immigration bureaux and other government departments.

Typically this means that a wide range of foreign documents including powers of attorney, documentary evidence in court proceedings, diplomas and marriage certificates, certificates of no-criminal conviction, and just prosaic copies of passports for company representatives all have to be notarized in their country of issue and then the notary’s commission (authorization from the state) must be certified by the ministry of foreign affairs of the country where the notary is qualified and then legalized by the Chinese embassy or a Chinese consulate in the same state.

In federal countries like the United States, this may also mean legalization at both the state

and federal levels. In British dependent territories like the Cayman Islands and BVI, this creates further logistical challenges as the signatories to documents issued there may be non-resident and the Foreign and Commonwealth Office which had to legalize the notary’s commission is half way around the world. For the Cayman Islands, where there is no Chinese diplomatic mission, the documents must be sent to the Chinese Embassy in Jamaica.

The costs of these three or four layers of certification and the time wasted in the process is legendary among lawyers and other professionals making even routine corporate filings in China.

As notarization and legalization etc. must all been done on paper and in person, the Pandemic brought this process almost to a stand-still and in the US at least, in 2021 it could take three or four months by the

time documents were notarized and legalized in the US and then quarantined in China before use.

The need for legalization of documents was abolished by the Hague Convention in 1961.¹ China finally joined the Convention on 8 March 2023 and accession will come into effect in China on 7 November 2023. After this date, all the documents for use in China which now

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¹ Convention Abolishing the Requirement of Legalisation for Foreign Public Documents. Done in the Hague on 5 October 1961. (Sometimes also known as the “Apostille Convention”).

require legalization, whether for business or personal use, will be accepted on the basis of the apostille (certificate) of the state in which the document was issued and no further legalization will be necessary. As is existing practice, if the document is in a foreign language, a Chinese translation made by a recognized Chinese translation company will usually be required.

Where a foreign private document is produced, e.g. a power of attorney, it is likely that the Chinese authorities will still require it to be notarized, but the state certification of the notary's commission will be conclusive and Chinese consular legalization will not be required.

China's accession to the 1961 Hague Convention will not affect the use of foreign documents in the Hong Kong and Macau

special administrative regions of China, which owing to their special status have continued to apply the 1961 Hague Convention since 1997 and 1999 respectively.

China's accession will also not affect the certification of documents produced in Hong Kong and Macau which are not, by definition, foreign. Since the 1980s China has appointed attesting officers in Hong Kong and Macau to certify documents for use in Mainland China, which are then legalized by a China-recognized body in Hong Kong and Macau.

In conclusion, China's accession to the "Apostille Convention" is an important simplification of requirements for using foreign documents in China and will be welcome by any practitioners who are assisting foreign clients in Chinese court proceedings and administrative procedures.

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