

## APOSTILLE CONVENTION IN A NUTSHELL

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The **Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents**, otherwise known as the Apostille Convention, was concluded on Oct. 5, 1961 and entered into force on Jan. 21, 1965. It is an international treaty facilitating the circulation of public documents executed by one Contracting Party and which have to be produced in another. The Philippines deposited its instrument of accession on Sept. 12, 2018 and the Convention entered into force for the Philippines on May 14, 2019. The Apostille Convention has 117 Contracting Parties.

The purpose of the Convention is to replace the complicated and expensive legalization process of chain certification, with the mere issuance of a single Apostille certificate. Hence, as a party to the Hague Apostille Convention, public documents issued by another Contracting Party need not undergo the authentication process by the Philippine Embassy or Consulate General in that foreign country.

The scope of the Convention covers only public documents, with the law of the State of origin of the document determining the public nature of documents. Article 1 of the Convention nonetheless specifies what are deemed public documents for purposes of the Convention. These are court documents, administrative documents, notarial acts, and “official certificates which are placed on documents signed by persons in their private capacity.”<sup>1</sup>

Examples of administrative documents are birth, marriage and death certificates, medical and health certificates, police records, and grants of patents. Notarial acts on the other hand include contracts and affidavits which are authenticated by the signature and seal of a notary public. Court documents necessarily include the decisions and decrees issued by courts and tribunals. To illustrate, in the case of *Republic vs. Orbecido III*,<sup>2</sup> the Court held that Article 26, paragraph 2 of the Family Code allows a “Filipino citizen, who has been divorced by a spouse who had acquired foreign citizenship and remarried, also to remarry.” However, the Court was unable to rule that Orbecido could remarry since Villanueva had been naturalized as an American citizen and had obtained a

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<sup>1</sup> Hague Conference on Private International Law, Outline of the Apostille Convention, at 1.

<sup>2</sup> GR No 154380, 5 October 2005.

divorce decree. The Court expounded that “the records are bereft of competent evidence duly submitted by respondent concerning the divorce decree and the naturalization of respondent’s wife. It is settled rule that one who alleges a fact has the burden of proving it and mere allegation is not evidence.” With the Apostille Convention, the foreign divorce decree and record of naturalization of Villanueva can be apostillized and presented directly as evidence in Philippines Court without going through the authentication process.

Only the Competent Authority designated by the origin State Party may issue an Apostille. The Competent Authority places the Apostille either on the public document or on an *allonge*.<sup>3</sup> Competent Authorities are considered the “backbone of the sound operation” of the Convention and are tasked with three fundamental functions: verification of the authenticity of the public document, issuance of the Apostille, and recording the apostilles they have issued in the Register.<sup>4</sup> The purpose of the Register is to combat fraud and verify the origin of an Apostille, by making the Register accessible to any interested person. In the Philippines, the designated Competent Authority is the Authentication Division of the Office of Consular Affairs at the Department of Foreign Affairs.

As explained, the Apostille does not certify the quality of the content in the apostillized public document. Instead, it certifies only the “authenticity of the signature, the capacity in which the person signing the document has acted, and where appropriate, the identity of the seal or stamp which the document bears.”<sup>5</sup>

Amendments to our Revised Rules on Evidence include provisions implementing the Apostille Convention. Paragraph (c) of Rule 132, Section 19 provides that “documents that are considered public documents under treaties and conventions which are in force between the Philippines and the country of source” are public documents.<sup>6</sup> Under Section 24 of the same rule official records

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<sup>3</sup> A Handbook on the Practical Operation of the Apostille Convention (Apostille Handbook) defines an *allonge* as “a slip of paper, attached to the underlying public document on which an Apostille is placed. An *allonge* is used as an alternative to placing the apostille directly on the underlying document.”

<sup>4</sup> Apostille Handbook at 13.

<sup>5</sup> Hague Conference on Private International Law, Outline of the Apostille Convention, at 1.

<sup>6</sup> Rule 132, Section 19. Classes of documents. – For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

- a) The written official acts, or records of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;

kept in an office in a foreign country, which is a contracting party to a treaty or convention to which the Philippines is also a party, or considered a public document under such treaty or convention pursuant to paragraph (c) of Section 19 hereof, may be proved by the certificate or its equivalent “in the form prescribed by such treaty or convention subject to reciprocity granted to public documents originating from the Philippines.”<sup>7</sup> Prior to the Philippines’ accession to the Convention, Rule 24 stipulated that the public documents of a sovereign authority may be proved by (1) an official publication thereof, or (2) a copy attested by the officer having legal custody thereof. Further, such must be accompanied with a certificate issued by an official of the Philippine embassy or consular office stationed in the foreign country in which the record is kept and must be authenticated by the seal of that office. With the amendment of this rule on Proof

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- b) Documents acknowledged before a notary public except last wills and testaments;
  - c) Documents that are considered public documents under treaties and conventions which are in force between the Philippines and the country of source; and
  - d) Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private.

<sup>7</sup> Rule 132, Section 24. Proof of official record. – The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his or her deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody.

If the office in which the record is kept is in a foreign country, which is a contracting party to a treaty or convention to which the Philippines is also a party, or considered a public document under such treaty or convention pursuant to paragraph (c) of Section 19 hereof, the certificate or its equivalent shall be in the form prescribed by such treaty or convention subject to reciprocity granted to public documents originating from the Philippines.

For documents originating from a foreign country which is not a contracting party to a treaty or convention referred to in the next preceding sentence, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice-consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his [or her] office.

A document that is accompanied by a certificate or its equivalent may be presented in evidence without further proof, the certificate or its equivalent being prima facie evidence of the due execution and genuineness of the document involved. The certificate shall not be required when a treaty or convention between a foreign country and the Philippines has abolished the requirement, or has exempted the document itself from this formality.

of Official Record, authentication is mandatory only if the foreign country from where the document originates is not a State Party to the Convention.<sup>8</sup>

Pursuant to Article 13 of the Apostille Convention, the Philippines made a declaration that the Convention does not apply to Contracting Parties that it does not recognize as States. The Philippines likewise declared that the “[C]ertification by apostille under the Apostille Convention does not satisfy the requirements under the Philippine Extradition Law.”<sup>9</sup> Section 4 of the Extradition Law or Presidential Decree 1069 (s. 1977) details who may request for the “extradition of any accused who is or suspected of being in the territorial jurisdiction of the Philippines.” It requires that the request be accompanied by the original and authentic copy of the decision issued by the court of the requesting State or the criminal charge and warrant of arrest issued by the authority of the requesting State. Moreover, Section 5 dictates that all related documents be attached to the Petition filed before the proper Court of First Instance that will hear the extradition case.

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<sup>8</sup> *Id.*

<sup>9</sup> Declaration found in <https://www.hcch.net/de/instruments/conventions/status-table/notifications/?csid=1398&disp=resdn>.