

August 29, 2016

## LEGAL ALERT

# Apostille, towards a simpler legalization process

From August 30th of 2016, the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents, commonly known as the “Apostille Convention”, and which changes the legalization process of foreign public documents, will enter into force in Chile. This treaty was signed on October 5th, 1961, and on December 2015 Chile completed the procedures to ratify it.

In order to enforce this convention in Chile, Law No. 20,711 was enacted on January 2014, and Administrative Regulation 81/2015, the regulation of the law, was enacted in November 2015.

### **\*\*What is the apostille?\*\***

The apostille is a certification which simplifies the procedure to certify the authenticity of foreign public documents, substituting the current multi-stage legalization process with a single certification, called an apostille.

The apostille in Chile will have some particular characteristics: **(i)** it will be **electronic**, meaning that the certification will be performed with an advanced electronic signature and its authenticity will be verified through an online system, **(ii)** it will be **deconcentrated and decentralized**, so that individuals will be able to go to different entities (indicated in the following topic) in each of the regions in order to issue apostilles for documents and finally, **(iii)** it will be **free of charge**.

It is important to note that an apostille only certifies the authenticity of the signature, the capacity in which the person signing the document has acted and, when applicable, the identity of the seal or stamp on the document. The apostille does not certify the content of the document for which it was granted.

### **\*\*Who may issue an apostille?\*\***

There are several entities which are authorized to affix apostilles, and each is limited to reviewing documents related to their specific area of expertise. Thus, the entities authorized to issue apostilles are **(i)** the Ministry of

Education, (ii) the Ministry of Justice and Human Rights, (iii) the Civil and Identification Service, (iv) the Ministry of Health, and (v) the Ministry of Foreign Relations. In the case of the Ministry of Foreign Relations, the regulation includes a generic competence clause for issuing apostilles, stating that it will be empowered to, "issue apostilles with respect to any public document issued by any authority and that is authenticated through the System regulated by this regulation" (article 7° of Regulation 81/2015).

### **\*\*How does it work?\*\***

The main objective is to allow for documents issued by signatory countries to avoid the traditional multi-stage legalization procedure. Thus, the legalization procedure will be reduced to a single process, whether it is carried out in Chile or in a foreign country will depend on where the document was issued. This will be executed through the issuing of the apostille by a competent authority, which has the effect that the document is considered to be legalized and accepted in every country which is party to the Apostille Convention.

The apostille is designed to legalize public documents. For private documents, it is necessary to perform a prior process that grants the document a public nature, and then an apostille can be issued on it. For example, a medical order is a private document, but it may be recognized by the Ministry of Health, which gives it a private nature, and then an apostille can be issued on it.

We must bear in mind that an apostille does not expire. Thus, documents over which an apostille has been issued before August 30th, 2016, will still be valid in Chile, as long as the document itself does not expire for another reason.

### **\*\*Where does it work?\*\***

The Apostille Convention only applies to the 112 signatory countries<sup>1</sup>. Although most of the countries that have ratified the convention accept apostilles from all other signatory countries, there are some exceptions. Some countries have approved the Convention with qualifications, and do not accept the apostille from certain members of the Convention. For example, Belgium does not recognize apostilles issued in Dominican Republic, and the latter does not recognize apostilles issued in Belgium. In the case of Chile, there are no such limitations.

Regarding countries who are not members of the Apostille Convention, the traditional multi-stage legalization process must be used.

### **Apostilles on documents issued in foreign countries to be used in Chile**

Public documents issued outside of Chile, in a signatory country, do not need to be legalized in Chile. Once they have been issued an apostille by a competent authority, they may be used in Chile. This has been expressly regulated in article 345 bis of the Civil Procedure Code, incorporated by Law No. 20,711, where it states that if an, "apostille has been issued by the designated authority in the country where the document comes from", it will be sufficient for its legalization in Chile.

Regarding public documents issued on non-member countries of the Convention, the traditional multi-stage process will have to be used.

**\*\*Apostille on documents issued in Chile to be used in another member country of the Apostille Convention\*\***

Besides the Ministry of Foreign Relations, which has generic competence, Chilean institutions designated as competent authorities may only grant apostilles for documents that are within their area of expertise. Thus, an apostille must be requested from the competent authority based on the type of document to be legalized<sup>2</sup>, after which the document will be valid to be presented to any authority of the other signatory countries.

**\*\*Template for the Chilean Apostille\*\***

The Regulation indicates the following template will be used to issue apostilles in Chile

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**1 Complete list available**

at <https://www.hcch.net/es/instruments/conventions/status-table/?cid=41>

2 The details related to what documents may be granted apostilles by which authorities is in Regulation 81/2015.

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