

China Accession to Apostille Convention to Simplify Cross-border Use of Foreign Public Documents

Description

It is no longer news by today I wrote this article. After all, China has acceded to this Hague Convention on Abolishing the Requirement of Legalization for Foreign Public Documents (hereinafter the “**Apostille Convention**”) on November 7, 2023.



Convention on Abolishing the Requirement of Legalization for Foreign Public Documents

I. Currently Not Well Received by China Governments and Courts

Despite that the announcement was made more than a month ago, governments and courts in China are not fully ready to receive such change.

We recently submitted such a document without legalization by China consulate to foreign exchange authority (SAFE, State Administration of Foreign Exchange) in Shanghai and the officer initially challenged the validity of our document based on the lack of legalization by China consulate in Australia, and after we pointed out the new change of China accession to the Apostille Convention, they said they need to internally discuss the issue.

The same reaction happened with a Shanghai court when we submitted document duly notarized and apostilled but without legalization from China consulate, the presiding judge frowned upon the documents being with no legalization stamp. Though taking over the documents we submitted, she said they need to discuss the issue within the court.

So it takes some time for foreign public documents without legalization by China consulates in the originating foreign countries to be readily received and accepted without problem.

II. Other Impacts

In our past legal practice, very often China consulates raise some tricky legal issues, which will block clients finalizing the documents that have been duly notarized and apostilled, a big headache for

foreign clients.

For example, in quite a few cases where foreign clients hire our services in selling their China properties, we need clients to issue power of attorney to us so that we can act on their behalf in the course of selling their Chinese properties and repatriate the sale proceeds out of China. Sometimes it takes months to sell a property esp when clients are not willing to lower the price, so the power of attorney is drafted to be open-ended with no clear expiry date but only expires upon completion of all relevant services as set out in the POA. In those a few cases, China consulates require that there must be a clear valid term for the POA and such valid term cannot be more than two years. Now we have China consulates stand in the way.

Also just a couple of months ago, in a cross-border inheritance case, we need client to have a set of probate documents from California court to be used as evidence in China court, when the client presented the apostilled probate docuemnts to China consulate, she was told to the effect that they won't legalize such documents as it involved a will whose validity shall be determined by China courts, thus they reufsed to legalize these documents. Now with the Apostille Convention taking effect on China, these probate documents are now admitted to China court though pending the court's internal discussion. In no case could the Shanghai court reject those documents for lack of legalization by China consulate in California.

On the other hand, the simplified treatment of foreign public documents esp those notarized documents could create some loopholes in using those documents in China, posing new challenges to Chinese courts and lawyers. Those who are not wary of foreign notarization may not be able to identify problems of such foreign documents.

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