

The Apostille System in the Kyrgyz Republic

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The current age of globalization and cross-border business generates a need to accelerate procedures for the recognition of the legal force of documents issued by the official authorities of one state for use in another state. As a rule, official documents are valid in a foreign country through (i) consular legalization, (ii) an apostille, or (iii) the absence of any formality.ⁱ On November 2, 2009, the Parliament of the Kyrgyz Republic adopted, and on November 16, 2009, the President of the Kyrgyz Republic Bakiev signed Law No. 296 of the Kyrgyz Republic "On the Accession of the Kyrgyz Republic to the Hague Convention dated October 5, 1961 Abolishing the Requirement of Legalization for Foreign Public Documents" (the "Hague Convention"). This law allows the Kyrgyz Republic to join more than 97 states that practice issuing Apostilles instead of consular legalization.ⁱⁱ Among the CIS countries, the Russian Federation, Azerbaijan, Kazakhstan, Moldova, and the Ukraine are member countries of the Hague Convention.

Advantages of Apostille in comparison with consular legalization

At present, consular legalization is carried out by placing a legalization stamp on a document. The Department of Consular Services of the State Ministry of Foreign Affairs of the Kyrgyz Republic (the "DKS GMID") and the consular institutions of the Kyrgyz Republic abroad are the competent authorities for consular legalization of documents. Temporary Instructions on the Procedure for Consular Legalization (approved by the Kyrgyz Foreign Ministry dated April 26, 1994, No. 03-12/620) (the "Interim Instructions") are the basic document regulating matters of consular legalization.

Because the term "authority" is not defined by the Interim Instruction, public authorities often require to legalize documents issued by foreign legal entities, even though the latter cannot be deemed an authority.ⁱⁱⁱ

Courts often do not recognize documents issued by legal persons as evidence. For example, the Supreme Court of the Kyrgyz Republic confirmed the legality of terminating proceedings in a court of first instance by the fact that a power of attorney was not legalized in the manner prescribed by the law and therefore was invalid.^{iv} In another case, the court held that a letter of a foreign company was legalized contrary to the Interim Instructions.^v

The introduction of the Apostille system is important for the following reasons: reducing the number of competent authorities, the timing and cost of Apostilles, and the system's simplicity and effectiveness.

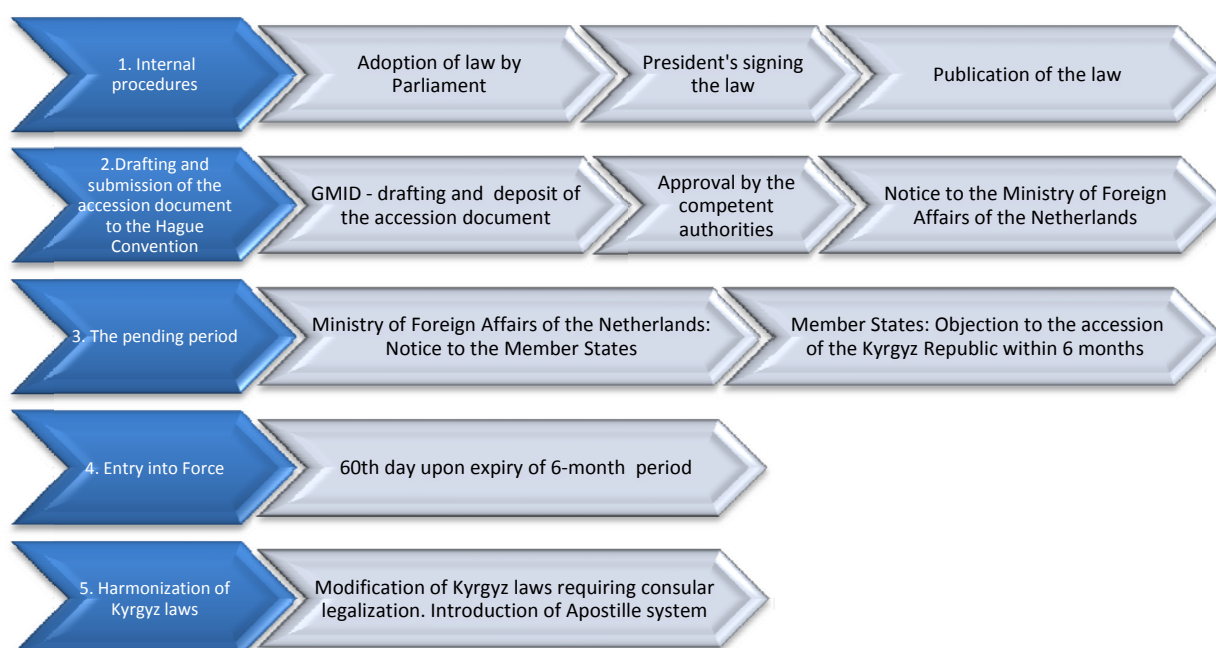
Consular legalization involved four Kyrgyz state bodies^{vi} for the legalization of domestic documents for use abroad, and two state bodies^{vii} for the legalization of foreign documents in the Kyrgyz Republic. This procedure is cumbersome, slow, and entails extra time and material costs.

Under the Apostille system, the procedure for the recognition of foreign documents is reduced to a minimum - an Apostille stamp. This makes it quick, efficient, and responsive to the interests of entrepreneurs. Currently, the cost of consular legalization by the DCS GMID varies from 170 Kyrgyz Soms (the "KGS") to 1200 KGS, and the review of documents takes up to 10 working days.^{viii}

Additional costs of consular legalization include payments for the services of companies that render services on consular legalization, a fee for the notarization of the document, and any fees for legalization required by the diplomatic mission or consular office. Apostilles are expected to be cheaper and to reduce the review period for documents. Finally, another proof of the efficiency and relevance of the Hague Convention is the fact that no single Member State of the Convention has yet denounced it.

The procedure for entry into force of the Hague Convention

The following steps of the Hague Convention are necessary for the Kyrgyz Republic during the process of accession to the Convention: (i) the performance of internal procedures, (ii) the preparation and submission of an accession document, (iii) "the pending period," (iv) the entry into force of the Convention, and (v) the harmonization of Kyrgyz laws with the requirements of the Hague Convention.



As shown in the chart, the introduction of Apostilles in the Kyrgyz Republic is at the second stage. At this stage a document on the accession of the Kyrgyz Republic to the Hague Convention must be submitted to the Ministry of Foreign Affairs of the Kingdom of the Netherlands. A Kyrgyz authority (or authorities) which is competent to stamp Apostilles, must also be named. As a rule, the Ministries of Justice, the Interior and/or Foreign Affairs and the registration offices for civil acts are named as competent authorities. It should be noted that the Hague Convention does not define requirements for the minimum and/or the maximum number of competent authorities empowered to stamp Apostilles. According to Letter No. 091/A-1 of the GMID dated January 21, 2010, the accession document was sent to the Ministry of Foreign Affairs of the Kingdom of the Netherlands. Notes from the depositary of the Hague Convention have not yet been received, and the GMID is in constant contact with the Embassy of the Kyrgyz Republic to the Kingdom of Netherlands with respect to this matter.

The next stage may be called the "pending period." This period lasts for six months. During this period, the Member States of the Hague Convention have the right to object to the accession of the Kyrgyz Republic. The Hague Convention shall be valid only in the relations between the Kyrgyz Republic and Member States, which do not express an objection within the designated period of time after receipt of

notice. The provisions of the Hague Convention will apply to the Kyrgyz Republic on the sixtieth day after the six month period specified above. The harmonization of Kyrgyz laws and the regulations of the Kyrgyz Republic with the requirements of the Hague Convention is the final stage of accession to the Hague Convention.

At present, the Kyrgyz Republic has shown its desire at the legislative level to encourage foreign investment. The steady improvement of the country's position in the "Doing Business" ratings proves it. Accession to the Hague Convention is a further vivid example of fruitful work in this direction.

ⁱ For example, documents issued by the public authorities of the CIS countries are not subject to legalization for their use in the Kyrgyz Republic, and vice versa, in accordance with the Convention dated January 22, 1993, on Legal Assistance and Legal Relations in Civil, Family, and Criminal Matters dated January 22, 1993 (the Minsk Convention) and the Convention dated October 7, 2002, on Legal Assistance and Legal Relations in Civil, Criminal, and Family matters dated October 7, 2002 (the Kishinev Convention).

ⁱⁱ More detailed information on the status of the Hague Convention with regard to Member States can be found on the official website of the Hague Conference on Private International Law: http://www.hcch.net/index_en.php?act=conventions.status&cid=41.

ⁱⁱⁱ Letter from the Department of Consular Service GMID, dated March 14, 2007.

^{iv} Decision of the Supreme Arbitration Court, dated November 11, 2002, re; Case No. B-01-475/2002-S4pr.

^v Decision of the Supreme Court, dated November 11, 2002, re; N B-01-475/2002-S4pr.

^{vi} For domestic documents being used abroad, documents must be processed through: 1) the Bishkek Notary Office, 2) the Notary Department of the Ministry of Justice of the Kyrgyz Republic, 3) the Department of Consular Services of GMID, and 4) The diplomatic mission or consular office of the foreign country.

^{vii} For foreign documents being used in the Kyrgyz Republic, documents must be processed through: 1) The diplomatic mission or consular office of the foreign state, and 2) the Department of Consular Services of GMID.

^{viii} http://www.mfa.kg/consular-service/legalization-2_ru.html.