

## Legalisation of Public Documents within the EU Member States

### IRELAND

National Rapporteur:  
**Maire Ní Shuilleabháin**  
University College Dublin

### PART I – Documents operating cross-border: Current legal practice as regards legalisation or other similar or equivalent requirements

#### OVERVIEW OF PART I

#### PART I.A. General

##### **I.A.1. European Community Law**

###### **I.A.1.1. Introduction**

###### **I.A.1.2. Implementation of specific measures**

#### Area of Justice - judicial cooperation in civil matters (Article 61(c) EC)

##### **Article 19 of Regulation (EC) No 1346/2000**

EC Regulation 1346/2000 was implemented into Irish law by S.I. No. 333 of 2002, the European Communities (Corporate Insolvency) Regulations 2002 (in respect of corporate insolvency) and by S.I. No. 334 of 2002, the European Communities (Personal Insolvency) Regulations 2002 (for personal insolvency/bankruptcy).

Regulation 3(c) of S.I. 333 of 2002 inserts a new s. 227A into the Companies Act 1963. It provides as follows:

“(1) Without prejudice to Article 16(1) of the Insolvency Regulation, a liquidator appointed in insolvency proceedings who intends -

- (a) to request under Article 21 of the Regulation that notice of the judgment opening the proceedings and, where appropriate, the decision appointing him or her be published in the State, or
- (b) to take any other action in the State under the Regulation,

shall deliver to the Registrar of Companies for registration a duly certified copy of the judgment and, where appropriate, of the decision appointing the liquidator.

(2) Registration under subsection (1) may also be effected by the Registrar of

Companies on application by a liquidator who does not intend to take any action in the State under the Insolvency Regulation.

(3) The certified copy or copies mentioned in subsection (1) shall be accompanied by

–

- (a) if the judgment or decision is not expressed in Irish or English, a translation, certified to be correct by a person competent to do so, into either of those languages,
- (b) the prescribed form, and
- (c) the fee payable under the Eighth Schedule, as altered by order of the Minister under section 395(2).

(4) The Registrar shall issue a certificate of the registration to the liquidator.

(5) In any proceedings a document purporting to be –

- (a) a duly certified copy of a judgment opening insolvency proceedings or a decision appointing a liquidator in such proceedings, or
- (b) a translation of such a document which is certified as correct by a person competent to do so,

shall, without further proof, be admissible as evidence of the judgment, the liquidator's appointment or the translation, unless the contrary is shown."

It could be argued that s. 227A imposes requirements which are additional to those set down in EC Regulation 1346/2000 insofar as it requires the completion of a prescribed form and the payment of a fee. It is also arguable that s. 227A goes further than is permitted in requiring that the translation be certified. A. 19 does not make any mention of a 'certified' translation being permitted although it could be argued that this is implicit insofar as the court must have some means of knowing that the translation is reliable.

Reg. 3(f) of S.I. 333 of 2002 inserts into the Companies Act 1963 a new s. 313A which entitles a liquidator or examiner in Irish insolvency proceedings to obtain from the Central Office of the Irish High Court a copy of the winding up order or other certificate/order.

Apart from A. 19 of EC Regulation 1346/2000, A. 25 also provides for automatic recognition/abolition of formalities regarding judgments given in the course of the insolvency proceedings. A. 25 is implemented in Ireland by Reg. 6 of S.I. 333 of 2002.

S.I. 334 of 2002 amends the Bankruptcy Act 1988 in the same way in order to give full effect to EC Regulation 1346/2000 as regards personal debtors.

**Article 4(4) of Regulation (EC) No 1348/2000**

S.I. No. 883 of 2004, Circuit Court Rules (Service in Member States of Judicial and Extra-Judicial Documents in Civil or Commercial Matters) 2004 implemented into Irish

law those aspects of EC Regulation 1348/2000 which required the establishment of Irish receiving agencies. S.I. 883 of 2004 inserted a new Order 14B into the Circuit Court Rules 2001 and provided that the County Registrar for each county shall act as receiving agency in Ireland. O. 14B, r. 8 provides for the service by the County Registrar of documents 'properly received', but the rule does not specify any extra formalities to be complied with. However, O. 14B, r. 3 provides as follows:

"Any party to proceedings to which the Regulation applies, who wishes to have a document served pursuant to the Regulation, must lodge with the Transmitting Agency:

- (a) two copies of the Document to be served with an additional copy thereof for each person to be served;
- (b) a request for service of the Document, in a language as provided for in Article 4(3) of the Regulation, as the case may be, in the form specified in the Annex to the Regulation;
- (c) an undertaking to pay the costs of service."

S.I. No. 506 of 2005, Rules of the Superior Courts (Jurisdiction, Recognition, Enforcement and Service of Proceedings) 2005 and S.I. No. 635 of 2005, District Court (EU Regulations) Rules 2005 contain a similar provision in respect of requests for service originating in Ireland (see the new O.11D, r. 3 inserted into the Rules of the Superior Courts; new O. 11, r. 8 District Court rules).

These requirements set down in O. 14B, r. 3 are not specifically articulated in EC Regulation 1348/2000. However, in substance, they do not appear to go beyond the formalities envisaged by the EC Regulation. A. 4 of the EC Regulation envisages the supply of a completed request form and of a number of copies of the document. A. 11 envisages that the applicant will be responsible for costs.

The only provision which may be regarded as setting a rule of formality not specifically required by the EC Regulation is O. 11, r 8 of the District Court rules which envisages the applicant supplying a translation of each document to the transmitting agency. The EC Regulation does not require that the document be translated – it only goes so far as to allow the respondent to refuse service on the basis that the document is not in a language which he understands (A. 8).

#### **Article 56 of Regulation (EC) No 44/2001**

EC Regulation 44/2001 (hereafter the Brussels I Regulation) was implemented into Irish law by S.I. No. 52 of 2002, the European Communities (Civil and Commercial Judgments) Regulations 2002 and by various amendments to the rules of court [S.I. No. 506 of 2005, Rules of the Superior Courts (Jurisdiction, Recognition, Enforcement and Service of Proceedings) 2005; S.I. No. 882 of 2004, Circuit Court Rules (Jurisdiction and the Recognition and Enforcement of Judgments in Civil or Commercial Matters) 2004 and S.I. 635 of 2005, District Court (EU Regulations) Rules 2005].

Reg. 4 of S.I. No. 52 of 2002 provides as follows:

“(1) An application under the Brussels I Regulation for the recognition or enforcement in the State of a judgment shall be made to the Master of the High Court.  
(2) The Master shall determine the application by order in accordance with the Brussels I Regulation.  
(3) If the application is for the enforcement of the judgment, the Master shall declare the judgment enforceable immediately on completion of the formalities provided for in Article 53 without any review under Articles 34 and 35 and shall make an enforcement order in relation to the judgment.... .”

Reg. 9 of S.I. 52 of 2002 provides as follows:

“(1) For the purposes of the Brussels I Regulation a document that is duly authenticated and purports to be a copy of a judgment, shall without further proof be deemed to be such a copy, unless the contrary be shown.  
(2) A document purporting to be a copy of a judgment shall be regarded for those purposes as being duly authenticated if it purports –  
(a) to bear the seal of the court or authority concerned, or  
(b) to be certified by a judge or officer of the court or authority to be a true copy of the judgment.  
(3) A document which –  
(a) purports to be a translation of –  
(i) a judgment given by a court of a member state,  
(ii) an authentic instrument within the meaning of Article 57(1),  
(iii) a settlement within the meaning of Article 58, or  
(iv) a certificate mentioned in Article 54, 57(4) or 58, and  
(b) is certified as correct by a person competent to do so,  
shall be admissible in evidence of the document of which it purports to be a translation.”

The Rules of the Superior Courts deal with recognition and enforcement in Ireland of judgments from other Brussels I Member States. The new O. 42A (inserted by S.I. No. 506 of 2005) provides at rule 5 that an application for enforcement under the Brussels I Regulation shall be grounded on an affidavit exhibiting the following:

“the judgment which is sought to be enforced or a certified or otherwise duly authenticated copy thereof and the certificate referred to in Article 54 of Regulation 44/2001.... .”

O. 42A, r. 6 stipulates the necessary contents of the affidavit and O. 42A, r. 7 provides that the Master of the High Court may dispense with the production of the documents referred to in rule 5 or may accept equivalent documents.

O. 42A does not set any requirement that the judgment be translated into one of the official languages of the State (English and Irish).

Having regard to the above, it seems that Irish law is in keeping with A. 56 of the Brussels I Regulation and does not set down any extra rule of formality.

O. 42A also deals with the granting of certificates in respect of Irish judgments intended to be enforced in another Brussels I Regulation Member State. O. 42A, r. 21

provides that a Registrar of the High Court (or Supreme Court) shall, at the request of an interested party, provide such party with a copy of the order and the written judgment of the court duly authenticated. O. 42A, r. 22 provides that the application to the Registrar should be founded on an affidavit exhibiting the proceedings and the originating documents, and the Registrar acceding to the request, shall sign the certificate and seal it with the seal of the High Court (or Supreme Court), annexing to it a certified true copy of the originating document.

The Circuit Court Rules (O. 61A inserted by S.I. No. 882 of 2004) and the District Court Rules (O. 62, r. 9 inserted by S.I. No. 635 of 2005) also provide for the provision of such certificates in respect of Irish judgments sought to be enforced abroad, and on the same basis.

O. 42A, r. 6 simply provides that the affidavit grounding the application for enforcement shall state “an address within the State for service of proceedings on the party making the application”. Thus the possibility of appointing a representative *ad litem* does not arise in the Irish context.

#### **Article 57 of Regulation (EC) No 44/2001**

O 42A, r. 19 RSC provides that [t]he foregoing rules of this Order shall apply as appropriate to an application for the enforcement of an instrument or settlement referred to in Chapter IV of Regulation No. 44/2001...”.

S.I. No. 52 of 2004 provides at Reg. 3 that “judgment” means “a judgment or order (by whatever name called) that is a judgment for the purposes of the Brussels I Regulation and, except in Regulations 8 and 10, includes an authentic instrument within the meaning of Article 57 and a settlement referred to in Article 58”. (Regulation 8 deals with currency of maintenance orders and Reg. 10 with provisional, including protective, measures.)

No additional rules of formality are set down for authentic instruments or settlements in S.I. 52 of 2004 and O. 42A.

Thus the Irish provisions implementing the Brussels I Regulation generally treat authentic instruments and settlements in the same way as judgments granted in other Member States.

#### **Article 58 of Regulation (EC) No 44/2001**

See the last comment on authentic instruments under A. 57.

#### **Article 46 Regulation (EC) No 2201/2003**

EC Regulation 2201/2003 (hereafter the Brussels II Regulation) was implemented into Irish law by S.I. No. 112 of 2005, European Communities (Judgments in Matrimonial Matters and Matters of Parental Responsibility) Regulations 2005 and by various amendments to the rules of court [S.I. No. 506 of 2005, Rules of the Superior Courts (Jurisdiction, Recognition, Enforcement and Service of Proceedings) 2005 and S.I. No. 143 of 2006, Circuit Court Rules (Jurisdiction in Matrimonial Matters and Matters of Parental Responsibility) 2006.].

Reg. 6 of S.I. No. 112 of 2005 deals with 'authentication of documents' and provides as follows:

"(1) For the purposes of the Council Regulation a document that is duly authenticated and purports to be a copy of a judgment or a certificate in accordance with Annex I, II, III or IV to the Council Regulation shall without further proof be deemed to be such a copy unless the contrary is shown.

(2) A document purporting to be a copy of a judgment shall be regarded for those purposes as being duly authenticated if it purports –

- (a) to bear the seal or stamp of the court or authority concerned, or
- (b) to be certified by a judge, or an official having powers equivalent to those of a judge, to be a true copy of the judgment.

(3) A document that -

- (a) purports to be a translation of –
  - (i) a judgment given by a court of a Member State, or
  - (ii) a certificate within the meaning of Article 39, 41(1) or 42(1), and
- (b) is certified as correct by a person qualified to do so in a Member State, shall be admissible as evidence of the document of which it purports to be a translation."

S.I. No. 112 refers only to 'judgments' and does not specifically distinguish between court judgments on the one hand and authentic instruments and agreements on the other.

O. 42A of the Rules of the Superior Courts (inserted by S.I. 506 of 2005) also deals with recognition and enforcement in Ireland of Member State judgments under Brussels II, and most of the rules are the same as those pertaining to the Brussels I Regulation as described above.

O. 42A, r. 5 requires an application for enforcement/recognition to be grounded on a affidavit exhibiting:

"... in the case of an application pursuant to Article 28 of Regulation No. 2201/2003, the judgment which is sought to be enforced or a certified or otherwise duly authenticated copy thereof and the certificate referred to in Article 39 of Regulation No. 2201/2003 and, in the case of a judgment given in default, the original or certified copy of a document which establishes that the party in default was served with the document or documents instituting the proceedings or with the equivalent document, or any document indicating that the defendant has accepted the judgment unequivocally"

O. 42A, r. 19 provides that [t]he foregoing rules of this Order shall apply as appropriate ... for the enforcement of an instrument or agreement referred to in Section 5 of Chapter III of Regulation No. 2201/2003".

No additional rules of formality are set down for authentic instruments or agreements in S.I. 112 of 2005 and O. 42A.

Thus the Irish provisions implementing the Brussels II Regulation generally treat authentic instruments and agreements in the same way as judgments granted in other

Member States.

O. 42A, r. 23 sets down a special rule of enforcement for judgments of the kind referred to in A. 41(1) and 42(1) of the Brussels II Regulation.

O. 42A, r. 23 provides as follows:

“(1) Where a party seeks enforcement in the State pursuant to Article 47 of Regulation No. 2201/2003 of a judgment of a kind referred to in Article 41(1) or Article 42(1) of Regulation No. 2201/2003 given in another Member State of the European Union, the application for such enforcement shall be by way of originating notice of motion entitled:

‘The High Court  
Family Law

In the Matter of Article 41 or 42 [as the case may be] of Regulation 2201/2003  
And in the Matter of Foreign Proceedings Entitled “ ”

(2) The said originating notice of motion shall be grounded on an affidavit exhibiting the documents referred to in Article 45 of Regulation No. 2201/2003 and shall specify the orders or other reliefs sought from the Court for the purposes of the enforcement of the judgment.

(3) The Court may give such directions as appear appropriate as to the service of the originating notice of motion.”

#### **Article 52 of Regulation (EC) No 2201/2003**

The provisions governing recognition/enforcement of Brussels II Regulation judgments in Ireland have been described above. It seems that Irish law is in keeping with A. 52 of the Brussels II Regulation and does not set down any extra rule of formality.

#### **Article 52 Regulation (EC) No 2201/2003, certificates drawn up in the standard forms of ANNEX I (Article 39), II (Article 39), III (Article 41) or IV (Article 42)**

O. 42A also deals with the granting of certificates in respect of Irish judgments intended to be enforced in another Brussels II Regulation Member State. O. 42A, r. 21 provides that a Registrar of the High Court (or Supreme Court) shall, at the request of an interested party, provide such party with a copy of the order and the written judgment of the court duly authenticated. O. 42A, r. 22 provides that the application to the Registrar should be founded on an affidavit exhibiting the proceedings and the originating documents, and the Registrar acceding to the request, shall sign the certificate and seal it with the seal of the High Court (or Supreme Court), annexing to it a certified true copy of the originating document.

This procedure is identical to that applying in respect of Irish judgments under the Brussels I Regulation.

O. 42A, r. 22(3) RSC requires the certificate to be “in the form in Annex I or II, as appropriate, to Regulation No. 2201/2003”.

Article 41 and 42 certificates are dealt with separately in O. 11C, r. 8 RSC (inserted by S.I. No. 506 of 2005). O. 11C, r. 8 provides as follows:

“Where in any proceedings a judgment is given of a kind referred to in Article 41(1) or Article 42(1) of Regulation No. 2201/2003, the Registrar shall, where the conditions specified in Article 41(2) or, as the case may be, Article 42(2), of Regulation No. 2201/2003 are satisfied, prepare for signature by the Judge, the certificate in the form in Annex III or IV, as appropriate, to Regulation. No. 2201/2003. Such certificate when signed shall be sealed with the seal of the High Court (or the Supreme Court, as the case may be). The Registrar shall provide such completed certificate to any party to the proceedings who requests same.”

O. 42A, r. 6 simply provides that the affidavit grounding the application for enforcement under the Brussels II Regulation shall state “an address within the State for service of proceedings on the party making the application”. Thus the possibility of appointing a representative *ad litem* under Article 30 does not arise in the Irish context.

#### **Article 27 of Regulation (EC) No 805/2004**

Regulation (EC) No. 805/2004 (hereafter the EEO Regulation) was implemented in Ireland by S.I. No. 648 of 2005, European Communities (European Enforcement Order) Regulations 2005 and by various amendments to the rules of court [S.I. No. 3 of 2006, Rules of the Superior Courts (European Enforcement Orders) 2006; S.I. No. 1 of 2006, Circuit Court Rules (European Enforcement Orders) 2006 and S.I. No. 2 of 2006, District Court (European Enforcement Orders) Rules 2006].

None of the above instruments specifically reflect A. 27 of the EEO Regulation; however, there is nothing to prevent a party seeking recognition and enforcement under the Brussels I Regulation instead.

The Irish implementing rules do seem to be in keeping with the idea that there should be no formalities impeding the effectiveness of the European Enforcement Order (hereafter EEO). Reg. 7 of S.I. No. 648 of 2005 provides that “[w]here a judgment, court settlement or authentic instrument on an uncontested claim has been certified as a European Enforcement Order in a Member State of origin, that judgment, court settlement or authentic instrument, as the case may be - (a) shall be of the same force and effect as a judgment of the High Court, and (b) may be enforced by the High Court, and proceedings taken on it, as if it were a judgment of that Court.”

S.I. No. 3 of 2006, inserts a new O. 42B into the Rules of the Superior Courts and O. 42B, r. 2 provides that the rules for enforcement of domestic judgments (Os. 42, 45 & 46) should apply to EEOs. O. 42B, r. 2 also provides that any reference to ‘judgment’ in those provisions shall be read as including reference to an EEO. O. 42B, r. 3 provides that those domestic enforcement rules shall also apply “with such modifications as may be necessary” to settlements and authentic instruments which have been certified by a Member State court. O. 42B, r. 11 provides that a judgment creditor with an EEO seeking to avail of the enforcement measures available under Os. 42, 45 and 46, is obliged to produce the documents required for the measure in question as well as the documents referred to in A. 20(2) of the EEO Regulation.

S.I. No. 2 of 2006, District Court (European Enforcement Order) Rules 2006 also provides for the extension of the District Court enforcement measures to judgments from other Member States certified as EEOs. These provisions generally mirror the

provisions of O. 42B RSC described above.

**ANNEXES I (Article 9 - judgments), II (Article 24 – court settlements) and III (Article 25 – authentic instruments) of Regulation (EC) No 805/2004**

O. 42B, r. 5(2) provides that an Irish court issuing an EEO in respect of a domestic judgment pursuant to A. 6(1), should do so in the form in Annex I to the EEO Regulation. 'Domestic judgment' is defined as including a 'settlement' for the purposes of O. 42B; however, the subsequent rules do not refer to the possibility of an Irish court issuing an EEO certificate in the form referred to in Annex II. However, the rules of court would be read in light of the contents of the Regulation (which is, of course, directly applicable) and an Irish court asked to grant an EEO in respect of a settlement would do so in the form set out in Annex II. Authentic instruments are not known in Irish law so there would not be a possibility of an Irish court granting an EEO in respect of an authentic instrument.

S.I. Nos. 1 and 2 of 2006 provide for the grant of an EEO by the Circuit Court and District Court and the provisions governing the grant of an EEO generally mirror the RSC provisions outlined above.

**Article 13(5) of Directive 2002/8/EC**

From my searches, it seems that the title of this Directive was subsequently amended by a Corrigendum [2003] OJ L 32/15 so that it is now '2003/8/EC' instead of '2002/8/EC'.

Directive 2003/8/EC (formerly 2002/8/EC) was not specifically transposed into Irish law. The Irish Minister for Justice expressed the view that its contents could be adequately catered for by pre-existing legislation, the Civil Legal Aid Act 1995 and the Civil Legal Aid Regulations of 1996 and 2002 (S.I. No. 273 of 1996, S.I. No. 8 of 2002) - Dáil (Parliamentary) Debates, Vol. 608 No. 5, 27 October 2005.

Having examined the Act and the Regulations, there does not seem to be any requirement which conflicts with A. 13(5) of Directive 2003/8/EC.

**Free movement of goods (Article 23 EC)**

**Article 250 of Regulation (EEC) No 2913/92**

A number of statutory instruments have been adopted in order to facilitate the full implementation of EC Regulation 2913/92 and EC Regulation 2454/93 – see S.I. No. 355 of 1995, European Communities (Customs Appeals) Regulations 1995, S.I. No. 114 of 1996, European Communities (Customs Declarations) Regulations 1996, S.I. No. 318 of 1998, European Communities (Authorised Agencies) (Issue of Certificates of Origin) Regulations 1998 and S.I. No. 369 of 2001, European Communities (Authorised Agencies) (Issue of Certificates of Origin) (Amendment) Regulations 2001. I could not find any provision in these Regulations which conflicts with A. 250 of EC Regulation 2913/92.

**Free movement of workers - social security (Article 42 EC)**

**Article 85 Regulation (EEC) No 1408/71 read in conjunction with Regulation (EEC) No 574/72**

I could not find any national legislation specifically intended to give effect to Regulations (EEC) 1408/71 and 574/72.

**I.A.1.3. Judicial control**

There is no Irish case-law on the relevant Community rules against legalisation or other extra formalities.

**I.A.2. Hague Convention of 5 October 1961 (the 'Apostille' Convention)**

**I.A.2.1. Status**

The Hague Convention was signed on behalf of Ireland on 29 October 1996, was ratified on 8 January 1999 and entered into force in Ireland on 9 March 1999. So I can confirm all of the information set out at 1.A.2.1 regarding Ireland.

**I.A.2.2. Scope**

In Ireland the Convention will be applied only in respect of apostilles issued in other States which are party to the Convention [O. 39, r. 54(1) RSC]. So the geographical scope of the Convention has not been extended. The material scope of the Convention has been restricted by the implementing legislation insofar as it does not apply to any document to which either the 1987 or 1968 legalisation Convention applies [O. 39, r. 54(3)].

**I.A.2.3. Legislative implementation**

The Hague Convention was implemented into Irish law by S.I. No. 3 of 1999, Rules of the Superior Courts (No. 1) (Proof of Foreign Diplomatic, Consular and Public Documents) 1999. This statutory instrument inserted 3 new Parts (VII, VIII and IX) into Order 39 of the Rules of the Superior Courts. Part IX (rule 54) gave effect to the Hague Convention.

This legislative implementation took place after the Irish Law Reform Commission had recommended the implementation of the Hague Convention: Law Reform Commission (LRC 48-1995), *Report on the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents* (hereafter LRC Report No. 48).

Copies of both the statutory instrument and of LRC Report No. 48 are enclosed with the completed questionnaire.

**I.A.2.4. Practical implementation**

The Consular Section of the Department of Foreign Affairs is the competent authority in Ireland. There is no other competent authority. The contact details set out in the questionnaire are accurate: however, it is also possible (and simpler) to use the web-address [www.dfa.ie](http://www.dfa.ie) and the e-mail address [consular@dfa.ie](mailto:consular@dfa.ie). When one uses the general e-mail addresses, it can take some time for the message to reach an appropriate contact person. I have found that it is generally better to e-mail a personal e-mail address. I spoke to a Mr. Chris McCabe who works in the consular section. He was very helpful and his contact details are [chris.mccabe@dfa.ie](mailto:chris.mccabe@dfa.ie). The fax number is + 353 1 4082961.

1. An Apostille can be requested by postal delivery, delivery by courier or by hand delivery where the individual seeking the Apostille attends in person at the Consular Office. Original documents must be provided and a fax or e-mail will not be sufficient.

2. Most requests received by the competent authority in Ireland (hereafter CAI) are documents certified by a public notary. There are approximately 300 public notaries in Ireland and the CAI has all of their signatures and stamps and copies of their headed note-paper on record. The CAI checks the signature and stamp and the notepaper against their records – although in many cases the officers providing the Apostille are very familiar with the relevant stamps and signatures because most of the certified documents come from the same 20 or 30 public notaries.

Sometimes an Apostille request will be received in respect of a document which has been certified by a solicitor who is not a public notary. The CAI also keeps a register of solicitors (and their stamps and signatures); but if a request comes in and the relevant solicitor is not on record, the CAI will contact the solicitor's office and ask them to fax through a copy of the signature and stamp etc.

The CAI will affix an Apostille onto a document which has not been notarised or certified by a solicitor if it has been stamped and signed by a relevant state authority. In practice, this involves probate documents (certified by the signatures of the two registrars at the Probate Office, Four Courts, Dublin) or a birth or marriage certificate (certified by an attached letter from the General Register Office, signed by a member of staff). Again the CAI would be familiar with the headed note-paper used and the signatures – and would have samples of same.

3. A copy of the Apostille is enclosed. The CAI stamps the Apostille onto the document, fills out the details by hand (the notary's name, the registration number, date etc.), then signs it and affixes the stamp of the Department (as seen in green on the sample Apostille provided).

4. The Apostille will usually be stamped directly onto the public document itself. If there is too much text on the page and not enough room for the stamp, the stamp will be on a page of headed notepaper (as in the case of the sample supplied) and attached to the relevant document.

5. The CAI will provide a stamp for each certificate provided by the notary. So, in an appropriate case, the CAI will provide a stamp for each page.

6. The Apostille is in English.

7. The system used is mechanical.

8. The checks described at 2. above are the only methods used to avoid fraud.

9. There are no immediate plans to modernize the system used – but there is a possibility that the CAI will be provided with software which allows them to have precedents for each notary, and which would save a lot of time insofar as it would thereafter not be necessary to fill out all of the details by hand. Such a mechanism would be particularly useful in cases where the CAI is required to stamp multiple pages as part of a single request. However, some other Hague Convention states are very particular

about the form of the apostille (eg. re size) and it would be important that any such change would not cause recognition problems.

10. If an individual attends in person with a request, he will generally receive the Apostille within a matter of minutes. If the office is very busy or if the document consisted of a very large number of pages all of which required stamping, then the process could take up to a day. Where the request is received by post, and the documents returned by post, the time will depend on the speed of the postal system.

11. The usual fee is €20. Where a bundle of documents requires a number of stamps, the maximum fee is €50. The fee for certificates of export is €10. The fees are set by the Minister for Foreign Affairs and are occasionally increased in accordance with price inflation. The level of fees is determined having regard to the fees levied by other contracting states and having regard to considerations of reasonableness. The fees do not cover the cost of administering the service and they are not aimed at bringing in revenue.

The same system is applied regardless of which state is the state of destination.

A computer record is kept of all Apostilles issued. This system records the reference number, the name of the notary who signed, the name of the client, the date, fee, form of payment, destination, method in which the request came in (in person, by post).

A person seeking to check the authenticity of an Apostille would contact the CAI and the CAI would check the register. There are no plans to alter or modernise this system.

#### **I.A.2.5. Judicial control**

There is no Irish case-law on the operation of the Hague Convention.

#### **I.A.2.6. Empirical analysis**

See Annex II completed below.

### **I.A.3. Parallel international agreements**

#### **I.A.3.1. Status**

1. & 2.: The European Convention on the Abolition of Legalisation of Documents Executed by Diplomatic Agents or Consular Officers done at London on 7 June 1968, and the Convention Abolishing the Legalisation of Documents in the Member States of the European Communities done at Brussels on 25 May 1987, have both been implemented into Irish law by S.I. No. 3 of 1999, Rules of the Superior Courts (No. 1) (Proof of Foreign Diplomatic, Consular and Public Documents) 1999 (the same statutory instrument which implemented the Hague Convention).

4. Of the Conventions listed, only the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1969) and the Hague Convention on Civil Aspects of International Child Abduction (1980) have been implemented in Ireland.

An Act has been adopted in order to give effect to the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (1996) – but that Act has not yet come into operation.

#### **I.A.3.2. Scope**

1. In Ireland the 1968 Convention will be applied in respect of other Contracting States which are party to the Convention. [O. 39, r. 53(1) RSC]. So the geographical scope of the Convention has not been extended. The material scope of the 1968 Convention has been restricted by the implementing legislation insofar as it does not apply to any document to which the 1987 Convention applies [O. 39, r. 53(4) RSC]. However, the Convention will otherwise apply to all documents referred to in Article 2 of the Convention [O. 39, r. 53(1) RSC].

2. In Ireland the 1987 Convention will be applied in respect of other Member States which are party to the Convention, including States which have made a declaration under Article 6(3) of the Convention [O. 39, r. 52(1) RSC]. The material scope of the 1987 Convention has not been restricted. It applies to all documents falling within Article 1 of the Convention [O. 39, r. 52(1) RSC].

As regards precedence, the 1987 Legalisation Convention has precedence over the other two Legalisation Conventions. The 1968 Convention applies if the 1987 Convention does not – and the Hague Convention only applies if the other two Conventions do not apply (O. 39, rs. 52-54 RSC).

4. In Ireland the Hague Convention on service applies to Convention countries but not to those EU Member States where EC Regulation 1348/2000 is in force (O. 11E, r. 1 RSC). Irish law provides for the extension of the system (with some modifications) to incoming documents from non-Convention countries (O. 121B, r. 1 RSC). Irish law provides for the service outside the jurisdiction of all judicial and extra-judicial documents (specifically including “any summons, notice, document, citation, petition, affidavit, pleading, order or any form”) through the Hague Convention mechanism (O. 11E, r. 1 & 2 RSC). As regards incoming documents, Irish law provides for the service of ‘foreign process’ through the Hague mechanism. ‘Foreign process’ is defined as “any document initiating or relating to proceedings in a Convention country or in a foreign country which have been forwarded to the Central Authority” (O. 121B, r. 1 RSC).

Formally, the Hague Convention on Child Abduction applies in Ireland only with regard to countries in respect of which the Minister for Foreign Affairs has made a declaration (s. 4 1991 Act). The last such declaration was made in 2001 and the list of countries covered is not fully in line with the Hague list of contracting states (S.I. No. 507 of 2001). However, in practice the Irish authorities will apply the Convention to all states who have ratified the Convention even if they are not listed in the 2001 order. So Ireland does operate the Convention with respect to States who have recently ratified the Convention, even though on the face of it, it would appear that it does not. Irish law has not altered the material scope of the Convention (save of course for the fact that in certain cases EU law takes precedence over the Hague rules).

#### **I.A.3.3. Legislative implementation**

1. & 2.: S.I. No. 3 of 1999, Rules of the Superior Courts (No. 1) (Proof of Foreign Diplomatic, Consular and Public Documents) 1999 gave effect to the 1968 and 1987 Conventions by inserting a new Part VII – rule 52 (1987 Convention) and a new Part VIII – rule 53 (1968 Convention) into Order 39 of the Rules of the Superior Courts. This is the same statutory instrument as that giving effect to the Hague Convention.

4. The Hague Convention on service was first implemented by S.I. No. 101 of 1994, Rules of the Superior Courts (No. 3) 1994 and by S.I. No. 120 of 1994, District Court

(Service Abroad of Documents in Civil or Commercial Matters) Rules 1994. The latter rules were subsequently annulled by S.I. No. 93 of 1997, District Court Rules 1997 and a new O. 11 was introduced to give effect to the Hague Convention on service. O. 11 of the District Court Rules has now been replaced by a new O. 11 by virtue of S.I. No. 635 of 2005, District Court (EU Regulations) Rules 2005. The relevant provisions of the Rules of the Superior Courts (as inserted by the 1994 statutory instrument) have since been amended by S.I. No. 506 of 2005, Rules of the Superior Courts (Jurisdiction, Recognition, Enforcement and Service of Proceedings) 2005. The effect of this 2005 amendment was to retain the contents of the former O. 11B but to include them under a new O. 11E. So what was O. 11B effectively became O. 11E and the RSC now provide at O.11E for the application of the Hague Convention as regards outgoing documents. The RSC provide at O. 121B for the application of the Hague Convention as regards incoming documents (previously O. 121A). The District Court Rules provide at O. 11 for the application of the Hague Convention as regards outgoing documents.

The Hague Convention on Child Abduction was implemented into Irish law by the Child Abduction and Enforcement of Custody Orders Act 1991 (No. 6 of 1991). The most recent section 4 declaration of contracting states was made in 2001: S.I. No. 507 of 2001, Child Abduction and Enforcement of Custody Orders Act 1991 (section 4) (Hague Convention) Order 2001. The Act was also implemented by the amendment of the Rules of the Superior Courts - S.I. No. 94 of 2001, Rules of the Superior Courts (No. 1) (Child Abduction and Enforcement of Custody Orders Act 1991) 2001.

As mentioned above, an Act has been adopted in order to give effect to the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (1996). This is the Protection of Children (Hague Convention) Act 2000 (No. 37 of 2000) but it has not yet come into operation.

The Irish Law Reform Commission also recommended the implementation of the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (1972) – see Law Reform Commission Report on Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (LRC 16-1985) but this recommendation has not been followed.

Copies of the following are enclosed with the completed questionnaire:

- (a) Statutory Instrument 101 of 1994, Rules of the Superior Courts (No. 3) 1994,
- (b) S.I. No. 506 of 2005, Rules of the Superior Courts (Jurisdiction, Recognition, Enforcement and Service of Proceedings) 2005,
- (c) S.I. No. 635 of 2005, District Court (EU Regulations) Rules 2005,
- (d) Child Abduction and Enforcement of Custody Orders Act 1991,
- (e) S.I. No. 507 of 2001, Child Abduction and Enforcement of Custody Orders Act 1991 (section 4) (Hague Convention) Order 2001,
- (f) S.I. No. 94 of 2001, Rules of the Superior Courts (No. 1) (Child Abduction and Enforcement of Custody Orders Act 1991) 2001,
- (g) Protection of Children (Hague Convention) Act 2000,
- (h) Law Reform Commission Report on the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters (LRC 22-1987),
- (i) Law Reform Commission Report on Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (LRC 16-1985)

#### I.A.3.4. Practical implementation

1. & 2. The Consular section of the Department of Foreign Affairs is the central authority for the 1987 legalisation convention as well as for the Hague Convention on legalisation. The contact details are set out in the questionnaire (and above). The 1968 legalisation convention does not seem to require the nomination of a central authority.

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4. The Master of the High Court is the central authority for the purpose of the Hague Convention on service. The contact address is: Four Courts, Inns Quay, Dublin 7. The phone number is +353 1 8886576. Ms. Angela Denning is the Registrar at the Master's Court.

The competent authorities (under the Hague Convention on service) for outgoing documents (leaving Ireland) are all Irish solicitors, country registrars (at the Circuit Court) and all District Court Clerks [O. 11E, r. 2(3)].

While O. 11E, r. 3 RSC provides for the lodgment of outgoing documents with the Master's court before they are sent to the central authority in the receiving state, in practice that does not happen. In practice the competent authorities send the documents directly to the central authority abroad.

Incoming documents from Hague Convention states are sent to the Central Office of the High Court (same contact details as above). The request and accompanying documents are checked by a member of staff to make sure that they are in compliance with the Convention and if the papers are in order, they are given to the Master of the High Court for his directions as to service. When he has given his directions, the documents are forwarded to the Chief State Solicitor's office and a member of staff at that office will then serve the documents (usually by way of personal service). When the documents have been served, the server will return one copy of the process with an affidavit of service to the Central Office - and the Central Office of the High Court then sends the proof of service back to the applicant (along with the completed certificate set out in the Annex to the Convention).

Incoming documents from states which are not party to the Hague Convention come to the Central Office from the Department of Foreign Affairs with a recommendation from the Minister that they be served. In such a case the documents will have been transmitted to the Irish Department of Foreign Affairs via an embassy abroad. Once the documents have reached the Central Office, and it has been confirmed that they are in compliance with O. 121B, then they will be dealt with thereafter in the same way as documents submitted via the Hague Convention mechanism. Particular documentary requirements have to be complied with in such non-Convention cases [see O. 121B, r. 3(1) RSC].

The same procedure applies to all documents coming from Hague Convention states.

I have enclosed a list of all of the Circuit Court and District Court offices at which the country registrars and district court clerks are based. However, the best person to contact regarding the Hague Convention is the Master's Registrar.

The system does not vary depending on which competent authority is sending documents abroad using the Hague Convention. All incoming documents are channelled through a single competent authority (the Master's court).

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The Minister for Justice, Equality and Law Reform is the central authority for the Hague Convention on child abduction (hereafter CACA). The contact address is Bishops Square, Redmonds Hill, Dublin 2. The phone number is + 353 1 4790200, fax number +353 1 4790292, e-mail [child\\_abduction@justice.ie](mailto:child_abduction@justice.ie). I spoke to Ms. Emma Peppard (+353 1 4790290) who was very helpful.

Most incoming requests under the Hague Convention on child abduction come from the central authorities of other states. Occasionally a request will come from an individual. The requesting authority (or individual) must complete an application form based on the Good Practice Guide (available on the Hague website) and must provide details: e.g. name of child, circumstances of abduction etc. Incoming requests from abroad will usually be accompanied by a summary of the law on custody (establishing a right on the part of the applicant) or by a court order (if the right is based on an order). Most incoming requests are not accompanied by any official affidavit or sworn document – although some contracting states do provide an affidavit (eg. Australia). All of these documents will have been translated into English. In some cases, the translations will be certified, but often they are not official translations. CACA does not insist on receiving official translations, taking the view that the respondent will have his/her opportunity to dispute the validity/accuracy of the information/translation in court. If the applicant's custody rights arise from a court order, CACA will want an original copy of the order as well as the translation of its contents. Having gathered all of the necessary information, CACA will contact a solicitor in a law centre operating under the Legal Aid Board who will act on behalf of the applicant. The address of the Legal Aid Board is Quay Street, Cahirciveen, Co. Kerry and the contact details are + 353 66 9471000, fax +353 66 9471053 ([www.legalaidboard.ie](http://www.legalaidboard.ie)). CACA will also request the Irish police to find the child and the alleged abductor. The alleged abductor will then be served with the proceedings. The proceedings will be conducted in accordance with Rules of the Superior Courts - S.I. No. 94 of 2001, Rules of the Superior Courts (No. 1) (Child Abduction and Enforcement of Custody Orders Act 1991) 2001.

#### **I.A.3.5. Judicial control**

The Hague Convention on child abduction is the only convention to have generated case-law in the Irish context. The Irish cases tend to focus on the substantive issues and have not dealt explicitly with the Article 23 rule on legalisation. However, the courts have in some cases dealt with the admissibility of official documents and documents claimed to be copies or translations of official documents. In general the courts have approached the matter on the basis that where both sides agree to the admission in evidence of a document, the court should accept the document and rely upon it, provided it is properly exhibited in an affidavit (*TMM v. MD*, High Court, McGuinness J, 20 January 1999, p. 2). Even in the absence of agreement, the court will admit a document and rely on it if it appears on the face of it to be an official document, and the other party has made no specific challenge to its admission (*Re CM* [1999] 2 ILRM 103, pps. 110-114). However, if on the face of it there is no reason to regard a document as an official document, and no effort has been made to authenticate it or prove its official nature, then the document will not be admitted (*HI v. MG* [1999] 2 ILRM 1, pps. 10-11).

Please see annexed cases for further information.

#### **I.A.4. National Law**

##### **I.A.4.1. Legislative framework**

Irish law has generally not concerned itself with legalisation as such. However, the law governing admissibility of evidence in court proceedings has demonstrated some of the same concerns as those underpinning legalisation rules in other jurisdictions. The starting point in the common law system was that documentary evidence was hearsay and inadmissible as such. It was not permissible for a party to provide the court with a document which tended to support his case – he was obliged to tender the best evidence (‘the best evidence rule’) and this involved calling the person who executed the document to give live evidence as a witness. So between them, the ‘best evidence rule’ and the ‘rule against hearsay’ demonstrated a common law antipathy towards documentary evidence. However, over time, it was accepted that in certain cases documentary evidence was the best evidence and was reliable (with the result that the rationale for the rule against hearsay did not apply). While many of the exceptions were created at common law, the most relevant exceptions in this context were created by statute.

Section 7 of the Evidence Act 1851 (which still applies in Ireland) provided that:

“...all Judgments, Decrees, Orders, and other judicial Proceedings of any Court of Justice in any Foreign State..., and all Affidavits, Pleadings and other legal Documents filed or deposited in any such Court, may be proved in any Court of Justice, or before any Person, having by Law or by Consent of Parties Authority to hear, receive, and examine Evidence, either by examined Copies or by Copies authenticated...; that is to say,... if the Document sought to be proved be a Judgment, Decree, Order or other judicial Proceeding of any Foreign... Court, or an Affidavit, Pleading or other legal Document filed or deposited in any such Court, the authenticated Copy to be admissible in Evidence must purport either to be sealed with the Seal of the Foreign ... Court to which the original Document belongs, or, in the event of such Court having no Seal, to be signed by the Judge ...[who] shall attach to his Signature a Statement in Writing on the said Copy that the Court whereof he is a Judge has no Seal; but if any of the aforesaid authenticated Copies shall purport to be sealed or signed as herein-before respectively directed, the same shall respectively be admitted in Evidence in every Case in which the original Document could have been received in Evidence without any Proof of the Seal where a Seal is necessary, or of the Signature, or of the Truth of the Statement attached thereto, where such Signature and Statement are necessary, or of the judicial Character of the Person appearing to have made such Signature and Statement.”

LRC Report No. 48, p. 43 interprets this provision as rendering documents from foreign tribunals *prima facie* admissible in evidence, by virtue of the simple attachment of the court’s seal, or the presence of the judge’s signature coupled with a statement.

Even in the absence of any specific statutory authorisation (like the 1851 Act), the Irish courts frequently admit foreign public documents into evidence without requiring proof of authenticity. Because Ireland operates an adversarial system, the courts will usually only

put a party on proof if the other party insists on such proof – and as a matter of practice this rarely happens. Under the rules of court (O. 32, r. 2 RSC) a party who unreasonably puts another party on proof of documents is liable for the costs of such proof, and as a result a party will only put the other party on proof where there is a real dispute as to the authenticity of the document.

Where there is a real dispute as to the authenticity or due execution of a foreign public document, the party seeking to admit the document may decide to put the document through a process of legalisation in the state of origin. However, Order 40, r. 7 RSC provides for a form of proof which falls short of full legalisation:

“All examinations, affidavits, declarations, affirmations and attestations of honour in causes or matters pending in the High Court or the Supreme Court, and also acknowledgements required for the purpose of enrolling any deed in the said Courts may be taken in any foreign country or place before an Irish diplomatic or consular representative or agent exercising his functions in that country or place or, when there is no such representative or agent or no such representative or agent conveniently near to the deponent in such country or place, before any notary public lawfully authorised to administer oaths in that country or place, or where such country or place is part of the British Commonwealth of Nations or a British possession, before any judge, Court, notary public or person authorised to administer oaths in such part or possession; and the Judges and officers of the High Court and of the Supreme Court shall take judicial notice of the seal or signature, as the case may be, of any such diplomatic or consular representative or agent, judge, Court, notary public or other person attached, appended or subscribed to any such examination, affidavit, declaration, affirmation, attestation of honour; or acknowledgement, or to any other deed or document.”

This rule allows an Irish court to accept the verification of an Irish consular representative, or if there is none, the verification of a notary public in the state of origin, or if it is a commonwealth state, the verification of any court officer or commissioner of oaths. O. 40, r. 7 RSC does not envisage a full process of legalisation in the ordinary case; however, if the Irish consular officer was not familiar with the seal or signature on the document, he might ask that it first be verified by a notary and a full process of legalisation might occur. Also LRC Report No. 48, p. 54 indicates that O. 40, r. 7 RSC would be subject to the Irish Constitution, and a court would not take judicial notice of a document verified in accordance with O. 40, r. 7 (or appearing to have been so verified) if there remained a reason for suspecting the genuineness of the document or the stamp/seal. In such a case a full process of legalisation might be required.

Section 5 of the Diplomatic and Consular Officers (Provision of Services) Act 1993 also enables the Irish courts to take judicial notice of the signatures and seals of Irish diplomatic/consular staff:

“(1) [Irish consular/diplomatic staff] may, in any country or place outside the State in which he is for the time being exercising the functions of his office, administer any oath and take any affidavit, and may also do any notarial act which a notary public can do in the State, and every oath, affidavit and notarial act administered, sworn or done by or before such person in such country or place shall be as effectual as if duly administered, sworn or done by or before any lawful authority in the State.

(2) Any document purporting to have affixed thereon or thereto, or to have impressed thereon, the seal of any person or of a mission and to have subscribed thereto the

signature of such person, being a person to whom this section applies, in testimony of any oath, affidavit or act being administered, taken or done by or before him, shall be admitted in evidence (saving all just exceptions) without proof of the seal or signature being the seal of such person or mission or signature of such person, or of the status and official character of such person.”

For historical reasons, Irish law affords special recognition to the public documents of England and Wales under s. 9 of the Evidence Act 1851:

“Every Document which by any Law now in force or hereafter to be in force is or shall be admissible in Evidence of any Particular in any Court of Justice in England or Wales without Proof of the Seal or Stamp or Signature authenticating the same, or of the judicial or official Character of the Person appearing to have signed the same, shall be admitted in Evidence to the same extent and for the same Purposes in any Court of Justice in Ireland, or before any Person having in Ireland by Law or Consent of the Parties Authority to hear, receive, and examine Evidence, without Proof of the Seal or Stamp or Signature authenticating the same, or of the judicial or official Character of the Person appearing to have signed the same.”

In summary, Irish law very rarely imposes a requirement of legalisation for incoming documents (see LRC Report No. 48, pps. 42, 46 & 54). The law governing such matters is archaic and unclear. Issues of authenticity, when they do arise, are dealt with on a case-by-case basis. Where the evidence supporting the authenticity of a document is relatively weak the court can respond to that by attributing less evidential weight to the document in question.

Copies of the following are enclosed with the completed questionnaire:

- (i) Diplomatic and Consular Officers (Provision of Services) Act 1993
- (ii) Evidence Act 1851
- (iii) Orders 32 and 40 RSC

#### **I.A.4.2. Scope**

**Geographical Scope:** Irish law favours documents verified by officials in commonwealth states, and documents which would be automatically admitted before the English courts. However, in practical terms, it would seem that the same approach is taken regardless of the source of the documents.

**Material scope:** Section 7 of the 1851 Act provides for the admissibility of all foreign court orders and all documents associated with proceedings before a foreign court or tribunal. O. 40, r. 7 RSC would seem to apply to any document which has been verified by a consular officer, notary or court official abroad. The 1993 Act would similarly appear to apply to any class of document. Section 9 of the Evidence Act 1851 seems to provide for the automatic admission in evidence of all documents which would be automatically admissible under statute (without proof of due execution being required) before the courts of England and Wales. Section 9 would not appear to be limited to documents originating in England and Wales. It seems reasonably clear that this provision would extend to all documents exempted under pre-1851 statute law in England and Wales, but the effect of subsequent statutory exemptions is not clear (LRC Report No. 48, p. 56).

#### **I.A.4.3. Practical implementation**

1. The Consular Section of the Department of Foreign Affairs (hereafter CSDFA) is responsible for legalisation of documents originating in Ireland and required for use in other countries. In other words, the CSDFA is responsible for Hague Convention Apostilles and for all other legalisation of documents for use abroad. As indicated above, the Irish embassies abroad also have powers of verification – but where the request is for legalisation of an Irish document, all such requests are generally channelled through the CSDFA in Dublin.

2. Again, as is the case with the Hague requests, all other requests may be submitted in person, by post or by courier and original documents are required. The CSDFA will post the stamped document directly onto the relevant embassy if requested to do so.

3. The procedure does vary depending on the requirements of the state of destination. In some cases the state of destination will require the Irish Supreme Court Office to affirm the notary's signature and stamp, and the CSDFA will then affirm that stamp. This was the procedure which was followed in all cases before the Hague Convention came into force in 1999. Since the Hague Convention has come into force, the CSDFA has a record of all registered notaries and their signatures and stamps, and the CSDFA is now willing to affirm the validity of the notary's stamp without first requiring the verification of the Supreme Court Office. However, some foreign states still require the old procedure to be followed.

The procedure also varies depending on the documents at issue. If the documents emanate from an Irish state authority (eg. the General Register Office or from an Irish court office) and carry the signature of an official of such authority, they do not need to be notarised in advance of being stamped/signed by the CSDFA. All other documents do need to be confirmed by an Irish registered notary or solicitor.

A sample of the stamp used in non-Hague cases is provided on the back of the page bearing the sample of the Hague stamp.

4. Original documents which have been notarised by an Irish notary, or signed and confirmed by a state official, are required.

5. The official checks the notary's signature and stamp (or the stamp and signature of the solicitor or official) against the samples kept on record by CSDFA.

6. Again, as in the case of Hague requests, it usually only takes a few minutes if a person attends in person at the CSDFA with the relevant documents. It may take longer if the office is especially busy or if the person is requesting legalisation of multiple documents. The fees are the same as for Hague requests.

#### **I.A.4.4. Judicial control**

There is no case-law on the domestic Irish practices and laws with regard to legalisation.

### **PART I.B. Specific**

#### **I.B.1. Introduction**

#### **I.B.2. Specific documents**

##### **1. Documents proving involuntary unemployment**

Directive 2004/38/EC was transposed into Irish law by S.I. No. 226 of 2006, the European Communities (Free Movement of Persons) Regulations 2006.

The competent authority under the statutory instrument is the Department of Justice, Equality and Law Reform – and specifically the section of the Department entitled the 'Irish Naturalisation and Immigration Service', based at 13-14 Burgh Quay, Dublin 2. The phone number is + 353 1 6167700.

S.I. 226 requires Union citizens to have either a valid passport or a valid national identity card in order to enter the state (Reg. 4). Family members and dependents are generally required to have a valid passport (Regs. 4 and 5). Dependents who are not qualifying family members may be required to produce documentary evidence from the “relevant authority” of the country of origin “certifying that he or she is a dependent, or a member of the household, of the Union citizen” or “documentary evidence of the existence of serious health grounds which strictly require the personal care of the applicant by the Union citizen” or “documentary evidence of the existence of a durable relationship with the Union citizen” [Reg. 5(1)]. A family member of a Union citizen who wishes to apply for a residence card has to fill out an application form and provide “such documentary evidence as may be necessary to support the application” [Reg. 7(1)(b)]. A Union citizen (and an entitled family member) can apply for a permanent residence certificate (or card) by completing an application form and providing “such documentary evidence as may be necessary to support the application” [Reg. 13(2), Reg. 15(2), Reg. 16(2)]. Reg. 17 provides that the Minister may “require the production of satisfactory evidence” by a person to whom the Regulations apply. Schedule 2 sets out the particulars of the application form for the residence card and it is indicated that the applicant is required to submit his/her own original identity card or passport and the original identity card or passport of the Union citizen and ‘other documentary evidence’. Schedule 4 provides that a Union citizen applying for a permanent residence certificate must submit an original passport or identity card along with “other documentary evidence”. Schedule 6 provides that a family member applying for a permanent residence card must submit his or her own original passport, the original passport or identity card of the Union citizen and “other documentary evidence”. Thus the Regulations themselves, while they clearly envisage the supply of official documents from other countries, do not specify that those documents must be accompanied by an official translation and do not specify that the documents need to be legalised.

The forms used by the Department of Justice (copies of which are supplied) indicate that in practice applicants for residence cards and permanent residence cards may be required to submit an original marriage certificate, birth certificate or partnership certificate, where such document is relevant to the application. However, the forms do not indicate that there is any need for legalisation or translation.

S.I. No. 226 of 2006 indicates that where involuntary unemployment is at issue, the individual only has to show that he or she has registered as a job-seeker with a relevant office of the Department of Social and Family Affairs ([www.welfare.ie](http://www.welfare.ie)) and FÁS ([www.fas.ie](http://www.fas.ie)) ([Reg.6(2)].

In Ireland birth, marriage and death certificates are issued by the General Register Office ([www.groireland.ie](http://www.groireland.ie)) under the Civil Registration Act 2004.

In relation to proof of unemployment, see also the answer at 9. below.

## **2. Documents proving a family relationship or other durable relationship**

See the answers at 1. above and at 5. and 9. below.

## **3. Documents proving or contesting a parent-child relationship**

See the answer at 1. above and at 9. below. See also I.A.3.4 (re the Hague Convention on Child Abduction) and I.A.1.2 (as regards EC Regulation 2001/2003).

**4. Documents proving the name and forenames of a child or adult**

Irish law does not have any 'name law' like that which applies in many civil law states. In Ireland a person may change his or her name as of right if he or she so wishes. Any person can effect an official record of a name change by enrolling a deed poll at the Central Office of the High Court in Dublin. This can then be submitted along with that person's birth certificate in any situation where evidence of the person's identity is required. However, the deed poll is required for evidential purposes only and there is no requirement that a person who wishes to use a different name (to the name originally recorded on the birth certificate), go through any official process.

**5. Documents proving or annulling/terminating a marriage/civil partnership or other durable relationship**

In Ireland only births, deaths and marriages taking place in Ireland need to be registered (see the Civil Registration Act 2004 – a copy is enclosed). So Irish law does not require any general record to be kept regarding the civil status of persons living in the state and there is no need for foreign civil status documents to be registered. However, such documents may be required in particular contexts. For example, where parties intend to marry in Ireland they must complete an advance 'notice of intention to marry' form in accordance with s. 32 of the Family Law Act 1995 (a copy of the section is attached). The form (a copy is attached) requires individuals to indicate whether they have previously been married or not. If either party indicates that he or she was previously married but obtained a divorce or a decree or annulment abroad, or else that the earlier spouse died abroad, the Registrar intending to officiate at the ceremony will ask for a copy of the foreign decree or death certificate. Where a foreign divorce or annulment is at issue, the party in question may be required to seek a court declaration as to marital status in order to determine whether the decree is recognisable (under s. 29 of the Family Law Act 1995). S.I. No. 343 of 1997, Rules of the Superior Courts (No. 3) 1997 inserted a new Order 70A into the RSC which provided at r. 4(c)(3) that in proceedings for a declaration as to marital status, a party should "where appropriate", exhibit in an affidavit "a certified copy of the marriage certificate/decree of divorce/annulment/legal separation". This rule of court indicates that the original court order or certificate must bear some form of authentication by the court/authority of origin, but it clearly does not require the certificate/decree to go through a full process of legalisation.

A party applying for financial relief following a foreign divorce under Part III of the Family Law Act 1995 is required to exhibit, where appropriate, "a certified copy of the decree absolute or final decree of divorce ... (together with, where appropriate, an authenticated translation thereof)" (O. 70A, r. 4(b)(1) RSC as inserted by S.I. No. 343 of 1997).

See also the answers at 1. above and 9. below.

See also I.A.1.2 (as regards EC Regulation 2001/2003).

**6. Documents proving a person's legal establishment for the purpose of pursuing specific regulated professional activities**

See 7. below.

**7. Documents proving a person's professional qualifications (diplomas)**

Directive 2005/36/EC has not yet been transposed into Irish law. However, the Building Control Bill 2005 gives some indication of how it will be transposed. This bill indicates at sections 12 and 13 that a person who wishes to practise as an architect in Ireland and who has qualified in another Member State is required to prove his qualification by way of a university or professional certificate from his home state. In some cases he may be required to provide a certificate from the competent authority in his home Member State. The Admissions Board is entitled to seek verification of the documents furnished to it in accordance with Article 50 of the Directive [s. 12(3), s. 13(7)].

The Bill provides that the Royal Institute of Architects of Ireland will be the competent authority in Ireland as respects architects (s. 10).

Thus the Bill indicates that in Ireland the proof of qualification will very much follow the letter of the Directive and there will be no extra requirement of legalisation that may impede freedom of establishment.

The Bill does not appear to deal with free movement of services. There does not seem to be any indication of any intention to set a requirement based on A. 7 of the Directive.

S.I. No. 1 of 1991, European Communities (General System for the Recognition of Higher Education Diplomas) Regulations 2001 (giving effect to Directive 89/48/EEC) as amended by S.I. No. 36 of 2004, European Communities (General System for the Recognition of Higher Education Diplomas and Professional Education and Training and Second General System for the Recognition of Professional Education and Training) (Amendment) Regulations 2003 (giving effect to Directive 2001/19/EC), also indicates that Irish law does not purport to go beyond the legalisation/ authentication requirements imposed by European law. Reg. 8 of the 1991 SI (as amended by Reg. 6 of the 2004 SI) closely reflects the requirements of A. 8(1) and A. 6 of Directive 89/48/EEC (as amended) - see the copies attached.

The Department of Education in Ireland ([www.education.ie](http://www.education.ie)) is the authority generally responsible for overseeing the system for recognition of foreign professional qualifications.

**8. Documents proving a person's death**

See the answers at 1. and 5. above and 9. below.

O. 79, r. 81 of the Rules of the Superior Courts provides: "Every applicant for a grant of probate or letters of administration shall produce a certificate of death or burial of the deceased, or give a satisfactory reason for the non-production thereof".

### 9. Documents proving a person's date of birth

For Irish taxation and social security purposes, an individual needs to be allocated a unique Personal Public Service (PPS) Number. Section 262 of the Social Welfare Consolidation Act 2005 provides for the allocation of such PPS numbers. S. 262(3) provides that a person seeking a PPS number shall furnish certain specified information (eg. name, address, nationality, date of birth).

Documentation on the website of the Department of Social and Family Affairs ([www.welfare.ie](http://www.welfare.ie)) indicates that where an EU citizen is applying for a Personal Public Service (PPS) number, the individual in question would be asked to produce a passport or national identity card, and evidence of one of birth, work, unemployment, residency, tax liability or education in an EEA State (along with proof of an Irish address). I spoke to officials of the Department and they told me that the individual would be asked to produce original documents but would not be asked to provide translations of documents in a foreign language. In most cases the individual would be granted the PPS number straight away on production of those documents even if they are in a different language. The Department would itself commission a translation in a case where that was considered necessary. There is a special set of requirements for each of the following groups: Irish nationals, UK nationals, EEA nationals and non-EEA nationals and the documents needing to be produced vary in each case (see a copy of the Department's documentation enclosed with questionnaire).

S.I. No. 417 of 1994, the Social Welfare (Consolidated Payments Provisions) Regulations 1994, provided at Reg. 101 that "[e]very claimant [of benefit] shall furnish such certificates, documents, information and evidence as may be required by an officer of the Minister". Enclosed with the questionnaire are copies of some of the forms required to be completed by claimants. The application form for the 'Widowed Parent Grant' requires a claimant to provide his/her original birth certificate, marriage certificate and death certificate (or press cutting showing date of death). The application form for child benefit requires the applicant to provide either an original birth certificate for the child in respect of whom the claim is made or else a copy which has been verified by either a police station or a local social welfare office. The child benefit form does refer to the possibility of the applicant enclosing a translation of a birth certificate but it does not seem to compel the inclusion of a translation. This is consistent with the practice described by the Department officials that I spoke to. They indicated that they would simply ask applicants from other states to supply their certificates in the same way as Irish applicants – and then the Department would itself organise a translation if that was deemed necessary.

### 10. Documents proving the establishment by incorporation of a company

Part XI of the Companies Act 1963 applies to "companies incorporated outside the State which ... establish a place of business within the State" (s. 351).

S. 352 provides that such companies shall within one month of the establishment of the place of business, deliver to the registrar of companies for registration:

"(a) a certified copy of the charter, statutes or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and, if the

instrument is not written in the English or Irish language, a certified translation thereof;  
(b) a list of the directors and secretary of the company ...  
(c) the names and addresses of some one or more persons resident in the State authorised to accept on behalf of the company service of process and any notices required to be served on the company and also the address of the company's principal place of business in the State."

S. 360 provides, for the purposes of the Part, that "certified' means certified in the prescribed manner to be a true copy or a correct translation." S. 2(1) defines 'prescribed' as meaning "prescribed by order made by the Minister".

S.I. No. 45 of 1964, Companies (Forms) Order 1964, as amended by S.I. No. 14 of 1999, Companies (Forms) (Amendment) Order 1999 sets down the relevant requirements. The 1964 order, as amended, provides as follows at A. 4:

"A copy of the charter, statutes or memorandum and articles of a company, or other instrument constituting or defining the constitution of a company, shall, for the purposes of section 352, be certified, in the state in which the company is incorporated (in this Article and Articles 4A to 4E of this Order referred to as the 'relevant state') as follows:

- (a) certified as a true copy by an official of the government of the relevant state to whose custody the original is committed, or
- (b) certified as a true copy by a notary of the relevant state, or
- (c) duly certified as a true copy on oath by some officer of the company before a person having authority to administer an oath."

S.I. No. 14 of 1999 refers to the 1987 EC Convention on Legalisation as 'the EC Convention' and the 1968 Council of Europe Convention on Legalisation as the 'European Convention' (A. 3).

Article 4A of the 1964 Order (as inserted by the 1999 order) provides:

"Unless –

- (a) the relevant state is a state in relation to which the EC Convention is in force, or
  - (b) in case the relevant state is a state in relation to which the EC Convention is not in force but is a state in relation to which the European Convention is in force, the official, notary or other person giving the certificate or, as the case may be, administering the oath concerned is a diplomatic or consular officer of the relevant state acting in his official capacity,
- the signature, stamp or seal of the official, notary or other person giving the certificate or, as the case may be, administering the oath concerned, and the capacity in which he acts, shall, subject to Article 4B of this Order, be authenticated by an Irish diplomatic or consular officer."

Article 4B provides:

"If the relevant state is a state in relation to which the Hague Convention is in force, then the matters required to be authenticated by Article 4A of the Order shall, in lieu of being authenticated in the manner specified by that Article, be authenticated by the issuing, in accordance with the provisions of the Hague Convention, of a certificate referred to in Article 4 of that Convention."

Article 4C provides:

“Nothing in this Order shall, as respects a case to which paragraph (a) or (b) of Article 4A, or 4B, of this Order applies, be construed as preventing the registrar, if he has serious doubts, with good reason, as to the authenticity of the signature, stamp or seal of the official, notary or other person giving the certificate or as the case may be, administering the oath concerned or the capacity in which he purports to act, from requesting verification of the matter in accordance with, as the case may be, Article 4 of the EC Convention, Article 4 of the European Convention or Article 7 of the Hague Convention.”

Article 4E provides:

“If a Convention mentioned in any of the preceding Articles of this Order does not apply to a particular territory of a relevant state or a particular territory the international relations of which a relevant state is responsible for, then, for the purposes of any case in which the company concerned is incorporated in such a territory, the said state shall be deemed not to be a state in relation to which that Convention is in force and references in any of the said Articles to a relevant state being a state in relation to which a Convention mentioned in such an Article is in force shall be construed accordingly.”

A. 6 of S.I. No. 45 of 1964 provides:

“A translation of a charter, statutes or memorandum and articles of association, or other instrument constituting or defining the constitution of a company, or any account or other document to be delivered to the registrar under the Act shall be certified to be a correct translation –

- (a) if made outside the State, by an Irish diplomatic or consular officer, or by any person whom such an officer certifies to be known to him as competent to translate it into the Irish or English language;
- (b) if made within the State, by a public notary or solicitor”.

S.I. No. 395 of 1993, European Communities (Branch Disclosures) Regulations 1993 transposes Council Directive 89/666/EEC of 21 December 1989.

In Part II, Reg. 4(1) of the SI provides, in respect of a company incorporated in another EC Member State which establishes a branch in the State, that such company shall:

“within one month of the date of the establishment of a branch in the State, deliver to the registrar for registration a certified copy of the memorandum and articles of association or the charter, statutes or other instrument constituting or defining the constitution of the company.”

Reg. 4(2) requires the notification of certain matters (regarding the identity of the Directors, the place of registration etc. and including a certificate of incorporation).

In Part III, Reg. 7(1) provides, in respect of a company incorporated outside the State, other than in a Member State, which establishes a branch in the State, that such company shall:

“within one month of the date of establishment of a branch in the State, deliver to the registrar for registration a certified copy of the memorandum and articles of association,

or the charter, statutes or other instrument constituting or defining the constitution of the company.”

Reg. 7(2) requires the notification of certain matters (regarding the identity of the Directors, the place of registration etc. and including a certificate of incorporation).

Reg. 13 provides that every document required to be delivered to the registrar under Reg. 4(1) or Reg. 7(1) shall:

“if they are not written in the Irish or the English language, have annexed to them a certified translation thereof.”

Reg. 14(1) provides that “Part XI of the Principal Act (1963 Act) shall not apply to a company as a result of that company having established a branch, where, by virtue of having established that branch, these Regulations apply.”

Investment businesses applying for authorisation under s. 10 of the Investment Intermediaries Act 1995 must also provide certified copies of the applicant’s certificate of incorporation and memorandum and articles of association (if any). The Guidance Notes on submitting an application (available at [www.ifrsa.ie](http://www.ifrsa.ie)) define a certified document as one “that is stamped, signed and dated as being a true copy of the original at a particular date in time” by an independent party.

Copies of Part XI of the Companies Act 1963, S.I. No. 14 of 1999, Companies (Forms) (Amendment) Order 1999 and S.I. No. 395 of 1993, European Communities (Branch Disclosures) Regulations 1993 are supplied with this questionnaire. Also enclosed are copies of the Forms F1, F12 and F13 required to be completed by foreign companies establishing a place of business or a branch in Ireland. Also enclosed are copies of the Guidance documents issued by the Companies Registration Office (Information leaflets Nos. 5 and 5A).

In Ireland the office responsible for registration of companies and for the issue of duplicate copies of certificates of incorporation etc. is the Companies Registration Office, Parnell House, 14 Parnell Square, Dublin 1, phone + 353 1 8045200 (fax 8045222), e-mail [info@cro.ie](mailto:info@cro.ie), website [www.cro.ie](http://www.cro.ie).

**11. Documents proving the constitution of a company, including any official translation thereof**

See the answer at 10. above.

**12. Documents proving the latest banking accounts of a company**

S. 354(1) of the Companies Act 1963 provides that companies affected by Part XI of the Act shall “in every calendar year, make out a balance sheet and profit and loss account and, if the company is a holding company, group accounts, in such form and containing such particulars and including such documents, as under the provisions of this Act it would, if it had been a company within the meaning of this Act, have been required to make out and lay before the company in general meeting, and deliver copies of those documents to the registrar of companies.”

S. 354(2) provides that “[i]f any such document as is mentioned in subsection (1) is not written in the English or Irish language, there shall be annexed to it a certified translation thereof.”

S. 354(3) entitles the Minister to grant exemptions from s. 354(1) and s. 354(4) provides that s. 354(1) does not apply to a company having provisions in its constitution that would entitle it to rank as a private company if it had been registered in the State.”

Reg. 4(2)(i) and Reg. 7(2)(j) of SI 395 of 1993 require companies establishing a branch in the State to notify the registrar of “copies of the latest accounting documents prepared...”.

In Part IV of SI 395 of 1993, Reg. 11(1) provides that all companies establishing branches (i.e. Part II and Part III companies) shall:

“once in every year, deliver to the registrar the accounting documents of the company as drawn up, audited and, where so required, disclosed in accordance with ...”.

Reg. 11(2) provides that Part III companies shall:

“where there is no requirement in the law of the State in which it is incorporated to have accounting documents drawn up, deliver to the registrar accounting documents drawn up and audited in accordance with Council Directives 78/660/EEC...”

Reg. 12 defines ‘accounting documents’.

Reg. 13 provides that every document required to be delivered or notified to the registrar under Reg. 4(2)(i), 7(2)(j), or 11 shall:

“if they are not written in the Irish or the English language, have annexed to them a certified translation thereof.”

Investment businesses applying for authorisation under s. 10 of the Investment Intermediaries Act 1995 must also provide copies of the applicant’s “audited accounts for the previous three years”. The Guidance Notes on submitting an application (available at [www.ifrsa.ie](http://www.ifrsa.ie)) does not seem to set any additional requirements of authentication/certification.

### **13. Documents proving the deposit of cash or certificates of deposit**

I could not find any requirement of Irish law of this nature.

## **PART II – Incoming documents: Effects in the Member State’s legal order**

**II.A.1. European Community Law**

**II.A.1.1. The effect of the implementation of Community law**

As indicated at I.A.1 above, the Irish Statutory Instrument implementing EC Regulation 1346/2000 has set documentary requirements which may go further than the EC Regulation permits. However, in general, the Irish implementing Regulations remain faithful to EC law and, while there is no case-law, I have no doubt that an Irish court presented with a public document from another Member State pursuant to these rules, would follow the letter of the secondary legislation, interpreting it in light of the relevant European instrument. In other words, an Irish judge asked to recognise a document in accordance with a particular set of rules derived from EC law, would afford the same status to that document (assuming that this was what the relevant Community rules required and that the various conditions set down in those rules had been satisfied).

**II.A.1.2. Admissibility and evidentiary weight in judicial proceedings**

As indicated above, I would expect that public documents emanating from other Member States would be admitted in evidence where the requirements of the secondary legislation have been complied with. Where the relevant EC instrument, and the secondary legislation so requires, the document would be given the same weight by the court as a domestic document.

**II.A.1.3. Admissibility and evidentiary weight in administrative matters**

The documents referred to in Part I.A.1 would generally tend to be more relevant to judicial proceedings and would be less likely to arise for consideration in administrative matters. However, documents recording a divorce, for example, might require recognition by an administrative authority. In such cases, there is probably a greater risk that the relevant officer might not follow the letter of the relevant EC instrument and the secondary legislation. Administrative staff working for the State will not usually have any legal training; however, there are usually practice documents instructing administrative staff on the implementation of EC law, and from my recent experiences of asking administrative staff about the implementation of rules of formality, most appeared to have a very sound understanding of the different rules applying. So, generally, I would expect that foreign public documents falling within the scope of the various EC instruments, would be admitted and given the same weight as domestic documents, where the relevant instrument so requires and where the particular requirements of the EC instrument have been met

**II.A.2. Hague Convention of 5 October 1961 (the 'Apostille' Convention)**

**II.A.2.1. The effect of completion of the requirements of the Hague Convention**

Because Irish law so rarely imposes a legalisation requirement, it will only very rarely be necessary for a foreign public document to carry an apostille for the purposes of satisfying Irish law. In these circumstances there can be no question of Irish law imposing any distinction as between different kinds of documents, or documents originating in different Convention states.

**II.A.2.2. Admissibility and evidentiary weight in judicial proceedings**

S.I. No. 3 of 1999 (giving effect to the Hague Convention) provides that "[a] document which purports to be an apostille... shall without further proof be deemed to be such and shall be admissible as evidence of the facts stated therein unless the contrary is shown." This wording suggests that the only effect of the apostille is to prevent an Irish judge questioning the facts stated in the certificate – the apostille itself. The apostille only goes so far as to state that the foreign competent authority is certifying that the document has been signed or stamped by a public notary (or other official agency). This falls far short of guaranteeing that the foreign public document will be equally admissible in judicial

proceedings and enjoy the same evidentiary weight as an equivalent domestic public document. For example, where the foreign document was a death certificate bearing an apostille, the Statutory Instrument does not guarantee that the foreign certificate would be afforded equal evidential status to an Irish death certificate. Section 13(4) of the Civil Registration Act 2004 provides that “[e]vidence of an entry in a register and of the facts stated therein may be given by the production of a document purporting to be a legible copy of the entry and to be certified to be a true copy by [the GRO].” It follows from s. 13(4) that an Irish death certificate is automatically admissible as evidence of a person’s death (subject to s. 68). The 1999 Statutory Instrument, by contrast, does not guarantee admissibility of a foreign death certificate. It only prevents an Irish court objecting to its admissibility on the basis that it had not been properly authenticated or legalised. It would still be possible that the foreign certificate could be objected to on the basis that it offended the rule against hearsay or the best evidence rule. It seems from the 2004 Act that such objections can no longer be made as against a domestic death certificate. Furthermore, an Irish court would recognise, and be able to understand the contents of, an Irish death certificate. If the foreign certificate, bearing the apostille, was in another language, an Irish court might reasonably require further evidence (perhaps oral evidence) as to the contents of the certificate. The quality of this evidence might affect the evidential weight to be attached to the certificate (again S.I. No. 3 of 1999 says nothing about the weight to be attached to documents with an apostille attached). So legally, the Statutory Instrument giving effect to the Hague Convention, does not provide any guarantee that foreign public documents (with apostilles on) would be admitted into evidence in the same way as equivalent domestic documents, and afforded the same weight. However, in practice, in particular in civil cases, the Irish courts are flexible regarding the admissibility of evidence and would generally admit the foreign document at the instance of one party, subject to the right of the other party to object. The Irish court would be all the more likely to admit the document into evidence when it bears an apostille. The court would be aware of the Hague Convention and would endeavour to respect its aims of mutual recognition of public documents duly executed. So in the end it is likely that in fact foreign public documents bearing an apostille would be afforded equal recognition.

#### **II.A.2.3. Admissibility and evidentiary weight in administrative matters**

The only instance where Irish law clearly imposes a legalisation requirement is in respect of foreign companies establishing a place of business in Ireland. Article 4B of the Companies (Forms) Order 1964 (as amended) provides that the Article 4A requirement of authentication by an Irish consular officer does not need to be fulfilled if the foreign company in question is based in a Hague Convention state and the relevant company document bears an apostille. This provision clearly indicates that a company using an apostille instead of authentication by an Irish consular officer could not be accused of non-compliance with Part XI of the Companies Act 1963 and could not be prosecuted under s. 358. However, it does not follow that the foreign company document would be admissible in exactly the same way as an Irish company document, or that it would be afforded the exact same evidential weight. To be admissible, the foreign document would also have to be accompanied by a certified translation (s. 352(a) 1963 Act). Furthermore, the registrar retains the entitlement to seek verification in the case of a foreign document (A. 4C 1964 Order).

#### **II.A.3. Parallel international agreements**

##### **II.A.3.1. The effect of completion of the requirements of parallel agreements**

Because Irish law so rarely imposes a legalisation requirement, the Council of Europe Convention of 1968 and the EC Convention of 1987 will very seldom arise for specific

consideration in Ireland as regarding incoming documents. In these circumstances there can be no question of Irish law imposing any kind of de facto distinction in the application of either Convention as regards different kinds of documents, or documents originating in different Convention states.

As regards incoming documents under the Hague Convention on service, the position is set out at I.A.3.4 above.

As regards incoming documents under the Hague Convention on child abduction, the position is set out at I.A.3.4 above.

### **II.A.3.2. Admissibility and evidentiary weight in judicial proceedings**

As indicated above, S.I. No. 3 of 1999 gives effect to the 1987 EC Convention on Legalisation and to the 1968 Council of Europe Convention on Legalisation. S.I. No. 3 provides in respect of the EC Convention that “[a] document which purports to be a public document within the meaning of Article 1 of the Convention shall, without proof of any formal procedure for certifying the authenticity of a signature, the capacity in which the person signing the document has acted, or where appropriate, the identity of the seal or stamp which it bears, be admissible in evidence as such if otherwise admissible.”

S.I. No. 3 provides in respect of the Council of Europe Convention that “[a] document which purports to have been executed by the diplomatic agents or consular officers of a Contracting State shall, without proof of any formality used to certify the authenticity of the signature on such a document, the capacity in which the person signing such a document has acted, and where appropriate, the identity of the seal or stamp which such document bears, be admissible without such proof if otherwise admissible.”

According to these provisions, the Statutory Instrument does not guarantee that the foreign public documents falling within the two Conventions will be afforded the same weight as equivalent domestic documents. Nor does the Statutory Instrument rule out the possibility of inadmissibility under some other rule of evidence, such as the rule against hearsay or the best evidence rule. These rules are (as indicated above) much diluted and are often ignored in civil cases. However, they still carry considerable weight in criminal matters where the rules of evidence are generally much more strictly applied. As indicated at II.A.2.2, above, there are some exceptions to the rule against hearsay, which apply to Irish public documents, but which do not extend to foreign public documents.

Under the Hague Convention on service, the only relevant incoming document which could be relevant to Irish judicial proceedings is the certificate of service issued by the Central Authority of the foreign state. O. 11E, r. 3(6) RSC provides in respect of such certificate that “any such certificate purporting to have been issued by such Central Authority in the form prescribed shall be prima facie evidence of the facts stated therein”. O. 11E, r. 4 RSC allows an Irish plaintiff to rely on such document in broadly the same way as an affidavit of service sworn in Ireland and, in particular, such certificate will generally have the same status in an action for judgment in default of appearance, as an affidavit of service sworn in respect of service effected domestically. There are, however, some distinctions (presumably intended to protect the defendant). O. 11E, r. 4(2) provides that “[j]udgment shall not be given or entered in default of appearance in any proceedings which have been served pursuant to this Order until it is established that: (a) the document was served by a method prescribed by the internal law of the State addressed for the service of documents in domestic actions upon persons who are

within its territory, or (b) the document was actually delivered to the defendant or to his residence by another method provided for by the Convention, and that in either case the service or delivery was effected in sufficient time to enable the defendant to defend.” O. 11E, r. 4(3) also provides that judgment in default of appearance shall only be entered with leave of the Court in cases where service was effected under the Hague Convention.

See I.A.3.5 on the status of foreign documents received in child abduction cases pursuant to the Hague Convention on child abduction.

#### **II.A.3.3. Admissibility and evidentiary weight in administrative matters**

Incoming documents under the Hague Convention on Child Abduction and the Hague Convention on Service would not be used in administrative matters.

The 1987 and 1968 Conventions on legalisation are, however, relevant in the only context where Irish law clearly imposes a legalisation requirement – as regards foreign companies establishing a place of business within Ireland. Article 4A of the 1964 Order (as amended) clearly provides that there is no need for any authentication by an Irish consular officer in a case where the company is based in a 1987 Convention state or where the document comes from a 1968 Convention state and the person giving the certificate or administering the oath is a diplomatic or consular officer. However, it does not follow that such a foreign company document has the same status or carries the same weight as an Irish company document - see II.A.2.3 above.

#### **II.A.4. National Law**

##### **II.A.4.1. The effect of the completion of the requirements of national law**

See I.A.4.1 and I.A.4.2.

##### **II.A.4.2. Admissibility and evidentiary weight in judicial proceedings**

Foreign and Irish public documents would be used in broadly the same way in Irish judicial proceedings. The party seeking to have the document admitted into evidence would usually swear an affidavit exhibiting the document and setting out the facts which the document purports to prove. In most civil cases the document would be admitted into evidence and little emphasis would be placed on the fact that the relevant document was not issued in Ireland. In the Irish adversarial system, it is generally considered to be a matter for the defendant to object to the admission of the document. The defendant will not usually object unless there is some real basis for doubt as to the authenticity of the document. If such an objection is made, then the fact that the document is a foreign one will be of relevance. In the case of an Irish-issued document, the plaintiff would usually be able to immediately obtain some certification from the relevant public body which the judge would recognise and be able to rely on. An issue as to the authenticity or validity of an Irish public document would usually be resolved without much difficulty. Where, however, the issue related to the authenticity or validity of a foreign public document, the party seeking to rely on the document would probably have to put the document through a full process of legalisation or else tender some alternative evidence which supports the authenticity of the document and rebuts the argument put forward by the opposition.

##### **II.A.4.3. Admissibility and evidentiary weight in administrative matters**

The only administrative context where a clear requirement of legalisation is imposed is in the context of a company seeking to establish a place of business within the State. Domestic documents would not be used in this context.

**PART III – Incoming documents: Difficulties**

**OVERVIEW OF PART III**

**PART III.A. General**

**III.1. Hague Convention of 5 October 1961 (the ‘Apostille’ Convention)**

**III.A.1.1. Legal**

It is most unlikely that anybody experiences the difficulty of failing to have an apostille recognised by Irish authorities in circumstance where the apostille should be recognised. The fact that Irish law so rarely imposes a requirement of legalisation means that the presence or absence of an apostille will rarely be an issue. However, the lack of clarity of Irish law regarding the need for legalisation and the lack of transparency in our law is a problem. Parties who are unfamiliar with Irish law would find it very difficult to ascertain in advance as to whether a document needs an apostille for Irish purposes. It is likely that parties very often go to the expense and trouble of obtaining an apostille in circumstances where there is no need. Further difficulties may stem from the fact that the presence of an apostille may not be enough to guarantee the admissibility of a document under Irish law. An arcane rule of evidence (such as the rule against hearsay) may be invoked against a document which bears an apostille. The rule against hearsay is intended to exclude unreliable evidence; but it may apply in circumstances (especially in criminal proceedings) where there is no issue as to the reliability of the evidence. Irish evidence law is mainly based on case-law rather than statute, and this exacerbates its inaccessibility and uncertainty [especially from the point of view of civil law states where the law is generally codified and where (as far as I know) there is not the same tradition of having exclusionary rules of evidence].

**III.A.1.2. Practical**

See III.A.1.1 above.

**III.2. Parallel international agreements**

**III.A.2.1. Legal**

As regards, the 1987 EC Convention and the 1968 Council of Europe Convention, the fact that Irish law so rarely imposes a requirement of legalisation will make it very unlikely that any person will encounter a difficulty in enjoying the rights conferred by the two Conventions. However, as is the case with the Hague Convention (see III.A.1.1), there may be difficulties with transparency and uncertainty in Irish evidence law.

As far as the Hague Convention on service is concerned, I cannot identify any legal difficulties that might arise in respect of incoming documents.

As regards the Hague Convention on child abduction, some legal difficulties could arise because of the lack of synchronisation between the list of contracting states in the 2001 declaration and the actual up-to-date list of Hague contracting states.

Further legal difficulties might also arise regarding the Hague Convention on child abduction insofar as the requirements of the Irish Central Authority differ to some extent to the requirements of the 1991 Act. The Authority asks for an original copy of any court order and will accept an unofficial/uncertified translation of the order if an official translation is not forthcoming (see I.A.3.4 above). The Rules of Court (O. 133 RSC) also indicates some level of flexibility regarding the documentation (see O. 133, r. 3 – “shall,

where possible, be accompanied by all relevant documentation”). The 1991 Act, by contrast, does not insist on an original copy of the order being provided – but does require translations to be certified. Section 5 provides as follows:

“(1) For the purposes of Article 14 of the Hague Convention a document, duly authenticated which purports to be a copy of a decision or determination of a judicial or administrative authority of a Contracting State other than the State shall without further proof be deemed to be a true copy of the decision or determination, unless the contrary is shown.

(2) For the purposes of Articles 14 and 30 of the Hague Convention the original or a copy of any such document as is mentioned in Article 8 of that Convention shall be admissible –

- (a) insofar as it consists of a statement of fact, as evidence of that fact, and
- (b) insofar as it consists of a statement of opinion, as evidence of that opinion.

(3) A document which –

- (a) purports to be a translation of a decision or determination of a judicial or administrative authority of a Contracting State other than the State or of a document mentioned in Article 8 of the Hague Convention, and
- (b) is certified as correct by a person competent to do so,

shall be admissible as evidence of the translation.

(4) A document purporting to be a copy of a decision, determination or declaration of a judicial or administrative authority of a Contracting State shall, for the purposes of this Part, be regarded as being duly authenticated if it purports –

- (a) to bear the seal of that authority, or
- (b) to be certified by a person in his capacity as a judge or officer of that authority to be a true copy of a decision, determination or declaration of that authority.”

The flexibility of the rules of court and of the Central Authority is desirable and necessary in this context where cases may fall to be determined in circumstances of great urgency. However, it is undesirable that there is a lack of harmony between the practice and the primary legislation in the area. This lack of consistency is further compounded by the (understandable) willingness of the courts to allow departures from the requirements of the Act and those of the Central Authority.

**III.A.2.2. Practical**

See III.A.2.1

**III.3. National law**

**III.A.3.1. Legal**

Irish law rarely imposes a requirement of legalisation. At one level, this makes Irish law very unproblematic and straightforward. However, the fact that Irish law occasionally imposes such a requirement (for example, under the Companies legislation, or in legal proceedings where the authenticity of a document is challenged) and sometimes imposes lesser requirements of authentication (for example, under s. 7 of the Evidence Act 1851) can make Irish law treacherous for the unwary. The law is particularly unhelpful from the point of view of a person who is intending to come to Ireland and wishes to know in advance which forms of authentication of documents are necessary. Irish requirements vary from one circumstance to another - ranging from full legalisation to a lesser form of authentication to no authentication at all. The difficulties arising from the confusing array of requirements are compounded by the very disparate array of sources for these requirements: some are set down in pre-1922 UK statutes which are still effective in Ireland, some in Irish statutes, some in Irish statutory instruments, some

arise from judge-made law and some arise from the practices of administrative authorities.

**III.A.3.2. Practical**

See II.A.3.1 above.

**PART III.B. Specific**

**1. Documents proving involuntary unemployment**

Again, the greatest problem with Irish law is the lack of clarity regarding the requirements (the nature of the documentation required to be produced). The non-specific language of Irish law can be helpful insofar as it allows for a degree of flexibility – but this flexibility comes at a cost in terms of clarity and unpredictability for those seeking to meet the requirements. Open-ended requirements can also result in an inconsistency of approach. See also III.A.3.1 above.

**2. Documents proving a family relationship or other durable relationship**

See 1. above.

**3. Documents proving or contesting a parent-child relationship**

See 1. above.

**4. Documents proving the name and forenames of a child or adult**

This issue does not usually arise in Irish law.

**5. Documents proving or annulling/terminating a marriage/civil partnership or other durable relationship**

See 1. above.

**6. Documents proving a person's legal establishment for the purpose of pursuing specific regulated professional activities**

See 1.B.2.7 above.

**7. Documents proving a person's professional qualifications (diplomas)**

Irish law very much follows Community law as regards recognition of qualifications from/professional practice in other Member States. The law is therefore reasonably transparent and clear in this domain.

**8. Documents proving a person's death**

See 1 above.

**9. Documents proving a person's date of birth**

See 1 above.

**10. Documents proving the establishment by incorporation of a company**

Irish (domestic) law is reasonably clear when it comes to the authentication of documents by companies seeking to establish a place of business or branch in Ireland. All of the requirements have been properly set out in legislation. The only real difficulty here is the absence of a clear dividing line between the scope of application of Part XI of the 1963 Act and the 1993 Regulations (based on EC law).

**11. Documents proving the constitution of a company, including any official translation thereof**

See 10 above.

**12. Documents proving the latest banking accounts of a company**

These requirements are also reasonably clear – again the only difficulty lies in identifying the dividing line between the scope of application of Part XI of the 1963 Act and the 1993 Regulations.

**13. Documents proving the deposit of cash or certificates of deposit**

See I.B.2.13 above.

**PART IV – Outgoing documents: Difficulties**

**OVERVIEW OF PART IV**

**PART IV.A. General**

**IV.A.1. Hague Convention of 5 October 1961 (the 'Apostille' Convention)** Error! Reference source not found.

**IV.A.1.1. Legal**

There is no domestic law specifically assigning the task of issuing apostilles to the Department of Foreign Affairs (DFA). The 1999 SI (the only SI giving effect to the Hague Convention) is concerned exclusively with incoming documents and their reception in the Irish legal system. It is ironic that Irish legislation caters only for this aspect of the Hague system (which is of little significance in practice) and does not specifically set down the arrangements and procedures for the affixation of apostilles to outgoing documents (of much greater practical significance – because foreign states are much more likely to

impose a requirement of legalisation).

**IV.A.1.2. Practical**

While there is no formal legal basis for the assignment to DFA of the task of issuing apostilles, the DFA website does provide clear information on the practical arrangements.

The officers at the DFA indicated to me that some individuals could occasionally encounter difficulties arising from slightly different requirements of other states regarding the apostille. They indicated that some states are more particular about the size of the apostille than others (e.g. Russia). Generally the practical arrangements for the issue of apostilles in Ireland would seem to be very efficient and effective (see I.A.2.4 above).

**IV.A.2. Parallel international agreements** Error! Reference source not found.

**IV.A.2.1. Legal**

Again there is no formal legal basis for the application of the two other legalisation conventions (1987 and 1968) as regards outgoing documents.

The rules of court implementing the Hague Convention on service are problematic insofar as they do not properly reflect the practice. O. 11E, r. 3 RSC (although it is not mandatory) envisages that the documents would normally be lodged with the Irish Central Authority (the Master's Court) before they are sent to the foreign Central Authority. In practice the competent authorities forward the documents onto the foreign Central Authority directly and the rule 3 procedure is not used. It would be preferable if O. 11E, r. 3 properly reflected the practice.

I am not aware of any legal difficulties regarding outgoing documents under the Hague Convention on child abduction. The 1991 Act makes specific provision for the provision of documents in assistance of proceedings abroad. Section 14 allows the Irish Central Authority to request a welfare report concerning the child. Section 14 also obliges any court to which a report has been sent, to give the Authority a copy of that report. Section 15 entitles an Irish court to make a declaration for the purposes of Article 15 of the Hague Convention and the Irish Central Authority is empowered to assist in seeking such declaration. Section 16 provides for the issue of duly authenticated copies of Irish decisions concerning custody at the request of a person taking action under the Convention abroad.

**IV.A.2.2. Practical**

I am not aware of any practical difficulties regarding outgoing documents under the relevant international conventions.

**IV.A.3. National law** Error! Reference source not found.

**IV.A.3.1. Legal**

There are some difficulties insofar as some states require the Irish Supreme Court office to affirm the notary's signature and stamp, before the document is forwarded to the Consular Section of the DFA for its stamp. This step has not been necessary since 1999 – because the DFA now has a record of all notary signatures and stamps and can verify them directly without the need for any intermediate affirmation by the Supreme Court Office.

**IV.A.3.2. Practical**

The Consular Section of the DFA indicated that some applications for legalisation can be extremely time-consuming. This was particularly the case with applications for foreign adoptions, where the DFA would end up having to stamp and sign each page of a huge pile of documents in respect of a single application.

However, from the point of view of a person asking the DFA to stamp notarised documents, I am not aware of any practical difficulties.

**PART IV.B. Specific**

**1. Documents proving involuntary unemployment**

I have no indication of any difficulties regarding outgoing documents proving involuntary unemployment.

**2. Documents proving a family relationship or other durable relationship**

It is more a matter of proving the absence of a family relationship – but there can be some confusion regarding the need for ‘civil letters of freedom’ (or ‘certificates de coutume’ or ‘certificates of nulla osta’) where Irish residents intend to marry in other countries. This practice (of marrying outside of Ireland) has become very common in recent years and it causes the parties to encounter this requirement which is unknown as a matter of Irish law. However, the Consular Section of the Department of Foreign Affairs will provide parties with an appropriate certificate.

**3. Documents proving or contesting a parent-child relationship**

I have no knowledge of any difficulties regarding outgoing documents of this kind. The DFA indicated to me that it is quite common for EU nationals from other Member States, who have had children born in Ireland, to seek legalisation of birth certificates when they are returning to their Member State of origin. Such parties would obtain official signed copies of the birth certificate from the General Register Office/GRO (where the birth would be registered) and the DFA would then affix an apostille (or stamp the documents). In such cases there is no need for any intermediate affirmation by a public notary. There was no indication of any difficulty in such cases. The cost of obtaining an official copy of the entry on the birth register is €10 and it is a further €10 for authentication by GRO. It costs €8 each for additional official copies. Simple photocopies of the birth entry may be obtained for only €6 (and extra copies for €4). It usually takes four weeks from the date of application to obtain the certificate (but the GRO will prioritise an application and expedite the issue of the certificate where the applicant can explain why it is urgent).

**4. Documents proving the name and forenames of a child or adult**

See 3 above.

**5. Documents proving or annulling/terminating a marriage/civil partnership or other durable relationship**

I have no indication of any difficulty regarding such documents. A person needing to prove abroad that he obtained a decree of divorce or nullity in Ireland would be able to have a copy of the decree notarised and then stamped (or affixed with an apostille) by the DFA. Alternatively under s. 61 of the Civil Registration Act 2004, a person is entitled

to a copy of the entry on the register of decrees of divorce or nullity, and an official authenticated certificate issued by the GRO does not need to be notarised – the DFA can place an apostille or a stamp on the document without the need for notarisation.

**6. Documents proving a person’s legal establishment for the purpose of pursuing specific regulated professional activities**

I have no indication of any difficulty regarding such documents.

**7. Documents proving a person’s professional qualifications (diplomas)**

I have no indication of any difficulty regarding such documents.

**8. Documents proving a person’s death**

The procedure for obtaining and legalising a death certificate is identical to that described at 3. above in respect of birth certificates.

**9. Documents proving a person’s date of birth**

See 3. above.

**10. Documents proving the establishment by incorporation of a company**

The Irish Companies Office (see [www.cro.ie](http://www.cro.ie)) accepts online applications for certificates of incorporation.

**11. Documents proving the constitution of a company, including any official translation thereof**

I have no indication of any difficulty regarding such documents.

**12. Documents proving the latest banking accounts of a company**

I have no indication of any difficulty regarding such documents.

**13. Documents proving the deposit of cash or certificates of deposit**

In have no indication of any difficulty regarding such documents.

**PART V – Justification of legalisation or other similar or equivalent requirements identified in Part I**

## OVERVIEW OF PART V

### PART V.A. General

#### **V.A.1. Hague Convention of 5 October 1961 (the 'Apostille' Convention)**

##### **V.A.1.1 Requirements and procedures**

The requirements and procedures implementing the Hague Convention are not overtly discriminatory, and, in my view, they do not operate in a discriminatory manner. The implementing rules set down in S.I. No. 3 of 1999 do not impose any additional conditions on recognition of apostilles. The fees charged by the DFA in respect of apostilles for outgoing documents seem reasonable. The apostille is provided very quickly. I think that the system regarding apostilles on outgoing documents is generally very effective and not in any way irrational or burdensome.

##### **V.A.1.2 Effects rules**

Because Irish law so rarely imposes a requirement of legalisation, the Hague Convention rarely has any effect on the recognition of public documents within Ireland.

#### **V.A.2. Parallel international agreements**

##### **V.A.2.1 Requirements and procedures**

The rules (S.I. No. 3 of 1999) implementing the 1987 and 1968 legalisation conventions are not overtly discriminatory, and, in my view, they do not operate in a discriminatory manner. The implementing rules set down in S.I. No. 3 of 1999 do not impose any additional conditions on recognition of qualifying documents.

The rules implementing the Hague Convention on service could indirectly create a very slight hindrance to the free movement of documents insofar as the relevant rules of court do not directly reflect the practice and are therefore not very transparent. There is no need for this discrepancy and it could easily be removed by redrafting the relevant rules. However, the adoption of EC Regulation 1348/2000 makes this almost irrelevant from a European Union point of view.

The rules implementing the Hague Convention on child abduction may also create a small hindrance to free movement insofar as the 2001 declaration of states with which Ireland operates the convention is not up-to-date. In particular the 2001 list omits to refer to some EU Member States which are party to the Convention. For example, Latvia, Lithuania and Estonia are not included in the declaration of 2001 – and on the face of the statute-book are not states with which Ireland will operate the Hague Convention. While, in practice, Ireland does operate the Convention with respect to these states, their legal exclusion is undesirable and may be misleading. This is especially undesirable when one considers that Ireland has reasonably substantial numbers of residents of Lithuanian, Latvian and Estonian origin. This problem could easily be rectified by the issue of an up-to-date declaration.

The lack of a unified coherent set of rules regarding authentication of incoming child abduction documents is also problematic – the fact that the 1991 Act, the Central Authority, the courts and the Convention itself are not completely *ad idem* as regards these authentication requirements is also potentially a small hindrance to the operation of free movement. These differences are understandable in view of the need for flexibility in the face of very urgent circumstances. However, the need for certainty could be reconciled with the need for flexibility if the legislation were redrafted so as to provide

for a clear set of rules on authentication of documents, which correspond properly to the Hague Convention and which allow for some flexibility in an appropriate case.

**V.A.2.2 Effects rules** Error! Reference source not found.

Because Irish law so rarely imposes a requirement of legalisation, the 1987 and 1968 conventions rarely have any effect on the recognition of public documents within Ireland. I am not aware of any discriminatory effect arising from the operation of the Hague Convention on service or the Hague Convention on child abduction.

**V.A.3. National law**

**V.A.3.1 Requirements and procedures** Error! Reference source not found.

The legal requirements of Irish national law are overtly discriminatory insofar as they give preferential treatment to the recognition of English public documents (eg. s. 9 of the Evidence Act 1851). However, this provision is of very little practical importance as Irish law rarely imposes any requirement of legalisation. As a result, a law which on the face of it is discriminatory, has no real discriminatory effect.

**V.A.3.2 Effects rules** Error! Reference source not found.

See V.A.3.1.

**PART V.B. Specific**

**1. Documents proving involuntary unemployment**

The legal requirements of Irish law are not overtly discriminatory; however, they may create an impediment to free movement insofar as the law is somewhat vague and inaccessible.

**2. Documents proving a family relationship or other durable relationship**

The requirements of Irish law are overtly discriminatory insofar as all births, deaths, marriages, divorces and annulments taking place within the jurisdiction are recorded on a local registry whereas such events taking place outside the jurisdiction may not be recorded (save in the exceptional case of an Irish domiciliary in circumstances where there is no system for recording such events). Where such an event is recorded on the Irish register, its occurrence may be proven before an Irish court by the simple production of the certificate. There is no equivalent provision for the direct recognition of foreign certificates. Similarly, while the DFA may provide an apostille for an Irish marriage certificate without the need for affirmation by a public notary, the intervention of a public notary is necessary where an apostille is sought in respect of a foreign marriage certificate.

While there is such overt discrimination, however, such discrimination is probably justified. There would be duplication of labour if the Irish register were required to record matters already recorded on a foreign register. The GRO can verify the accuracy of all relevant events taking place in Ireland. They would not be in a position to verify such events taking place abroad without imposing a cumbersome chain of legalisation. Such a burdensome pre-requisite to registration would far outweigh the value of inclusion on the Irish register. It is preferable that such events not be recorded on the Irish register and the foreign certificates be used in the event of proof being required. The approach of

the 2004 Act may also be justified by reference to the relatively lenient attitude of Irish law towards legalisation. It would be rare for the Irish authorities to impose a requirement of full legalisation. Foreign marriage certificates will usually be treated in the same manner as an Irish marriage certificate.

The DFA's differential treatment of foreign marriage certificates is also justified. The DFA can reasonably be expected to maintain an up-to-date record of the signatures and stamps of the Irish GRO officials. The maintenance of these records allows the DFA to place an apostille directly onto the certificate. It would not be reasonable to expect the DFA to maintain a record of the signatures and stamps of equivalent officials across all of the countries of the world.

**3. Documents proving or contesting a parent-child relationship**

See 2. above.

**4. Documents proving the name and forenames of a child or adult**

See 2. above.

**5. Documents proving or annulling/terminating a marriage/civil partnership or other durable relationship**

See 2 above. There is indirect discrimination insofar as a party seeking to marry in Ireland is much more likely to be asked to seek a declaration of marital status under s. 29 of the Family Law Act 1995 if he has been party to a previous marriage dissolved or annulled abroad. Where a party has been party to a marriage previously annulled or dissolved in Ireland, there will usually be no difficulty. This differential treatment stems not from an Irish mistrust of, or discrimination against, the foreign certification; rather it stems from a substantive Irish policy-interest in confining recognition to particular decrees issued abroad. This substantive limitation on recognition is informed by a number of different policy interests including the prevention of evasion of domestic requirements for divorce and the interest in preventing forum shopping. EC Regulation 2201/2003 (Brussels II) provides for the mutual recognition of such decrees. However, Brussels II only applies to decrees issued after 1 March 2001. Thus, it follows that many Member State decrees will continue to be discriminated against for some time into the future.

This discriminatory treatment has already been tackled so far as is possible in the European Union context. Because the failure to automatically recognise foreign divorce decrees has almost nothing to do with discrimination against documentation, the solution does not lie in the reform of the law of legalisation and authentication.

**6. Documents proving a person's legal establishment for the purpose of pursuing specific regulated professional activities**

See 1.B.2.7 above.

**7. Documents proving a person's professional qualifications (diplomas)**

Irish law seems to be very much based on Community law so there should not be any problem of discrimination.

**8. Documents proving a person's death**

See 2. above.

**9. Documents proving a person's date of birth**

See 2. above.

**10. Documents proving the establishment by incorporation of a company**

The Branch Regulations 2003 are based on Community law and the documentary requirements do not seem to go beyond that which is permitted by Directive 89/666/EC. Part XI of the 1963 Act only applies to non-Irish companies but logically this must be so because the provisions are intended to allow non-Irish companies to establish a place of business within the state. Part IX and the implementing Regulations provide for full legalisation of documents. This imposes a burden on companies establishing a place of business in Ireland but it would not appear to be an excessive burden when one considers (a) that it is a once-off requirement, (b) that all corporate entities operating in Ireland, Irish and non-Irish, are required to register with the Companies Office and are supervised, (c) full legalisation is not required if the applicant company is based in a Hague Convention state.

Part XI does not have any significant discriminatory effect because most cases are covered by the Branch Regulations 1993.

The requirement set down under the Investment Intermediary Act 1995 (that applicants for authorisation submit a certified copy of the certificate of incorporation and of the memorandum and articles of association) is not very onerous. All that is required is certification by an independent party. There is no requirement of legalisation.

**11. Documents proving the constitution of a company, including any official translation thereof**

See 10 above.

**12. Documents proving the latest banking accounts of a company**

Part XI of the Companies Act 1963 requires companies establishing a place of business within Ireland to file annual accounts and to provide a certified English translation if the accounts are not in English. It does not seem excessive that a company having a place of business within the State be required to file accounts in a language which is intelligible

to the Irish officers.

The requirement in respect of applicants for authorisation under s. 10 of the Investment Intermediaries Act 1995 is not onerous at all and there is no special requirement of certification or authentication – only that the accounts be audited accounts.

### **13. Documents proving the deposit of cash or certificates of deposit**

See I.B.2.13 above.

## **PART VI – Suggested action**

### **OVERVIEW OF PART VI**

#### **VI.1. European**

In Ireland public documents from Member States and non-Member States are generally taken at face value and there does not appear to be any significant incidence of fraud. At one level this suggests that it would be possible for all Member States to relax their laws on recognition of public documents from other Member States – arguably the Irish experience indicates that automatic recognition of such documents is generally a safe practice. However, the Irish experience must be considered in the context of the Irish adversarial system. Such an approach might be much more dangerous in the context of a civilian non-adversarial system.

It seems to me that the difficulties involved in automatic recognition of public documents from other Member States are fourfold. Firstly the documents will often have an unfamiliar appearance from the point of view of the official asked to recognise and rely on the document. If he has no past experience of such documents, he will have no means of distinguishing the obvious forgery from the genuine document. Secondly, public documents from other Member States will often be written in a language (or script) which is unintelligible from the point of view of the official asked to rely on it. This can make it very difficult for the official to ascertain, and rely on, the contents and particulars contained in the document. If, for example, the document is a court order written in another language, he may not be able to ascertain the outcome of the action (who won the case). He may easily confuse the date of commencement of the action with the date of grant of the judgment (or confuse either with the date of issue of the certificate). Thirdly, the official will have no familiarity with the forms of authentication and certification used on the documents. He may not be able to distinguish a genuine signature or stamp from a bogus one. Fourthly and finally, the official may not have the local knowledge or the language skills to contact an official in the institution of origin in order to verify that in fact the document in question was issued on the day in question and is genuine. In a purely domestic context, an official having any doubts would be able to telephone the office of the originating official to verify the validity of the document directly.

Most of these difficulties could be resolved, or at least ameliorated, by an EU system of authentication. A number of measures are possible. A measure which would tackle the first problem identified above would be the standardisation of the main public documents

which tend to require recognition in other Member States. An EU Regulation could prescribe a standard form for the appearance of all marriage certificates, birth certificates, certificates of incorporation, court decrees etc. Such a measure could prescribe, for example, that the state symbol would appear on the top-left hand corner of the page and the EU symbol on the top-right hand corner of the page. The Regulation could also prescribe the ordering of the contents on such documents. If, for example, a Greek marriage certificate had the same background as an Irish marriage certificate and contained the same set of particulars in the same order, an Irish official would find it much easier to rely on and interpret such a certificate. The language and script barriers could be further ameliorated by the provision of EU web-pages (akin to the judicial atlas) containing a translation of all standard terms likely to appear on a Greek certificate. The third and fourth difficulties identified above could be tackled by the introduction of an EU-wide coding-system whereby all state officials would be obliged to affix an identification code onto a certificate/official document and then to enter the corresponding code and the particulars of the certificate/document onto an EU-wide database which would only be accessible to state officials. It would be possible to insist, for example, that all documents coming from Ireland have an identification code commencing with the letters IE. This country-code could then be followed with a code indicating the document-type: MC for marriage certificate, or CI for certificate of incorporation. That document code could then be followed with the initials of the officer issuing the certificate, the year of issue and then a sequential number. So, for example, the first marriage certificate issued by Joe Bloggs, Official at the GRO in Ireland, in 2007 would have the following code: IEMCJB071.

A Greek or Estonian official asked to recognise such a certificate would be able to check the EU database in order to ensure that in fact a marriage certificate containing the relevant particulars was issued on the date in question.

Each Member State would be asked to appoint a Central Authority as a trouble-shooter in the event that an official asked to recognise a document could not find it on the system in question. The Central Authorities could be obliged to have the means to communicate through one of three widely-known EU languages.

A less radical EU system could involve the use of an EU stamp which would be affixed by the official in the Member State of origin and which would be immediately recognised in the destination Member State.

A universal stamp could be developed which would act as a general guarantee of authenticity –in other words as a guarantee that the document does emanate from a state authority in a Member State and is not a forgery.

Going a little bit further, it might be possible to develop different EU stamps for different document-types. For example, it might be possible to have an EU-stamp which incorporates the name of the document (e.g. birth certificate) in all of the EU languages or in a number of the widely-known EU languages. If such stamp were affixed on all certificates issued by the Member States, then recognising officials would have a means of knowing that the document was genuine and that it was a particular type of document.

## **VI.2. Intergovernmental**

It would probably not be possible to develop a system of the variety described above on an international basis. An advanced recognition system of that kind would probably require the mutual trust and inter-institutional infrastructure which is available in the European Union context.

However, it might be possible to develop some sort of international hallmark of validity (like the apostille) which could be borne by particular state documents from the start. The difficulty with the apostille-system is that it involves many different layers of bureaucracy. There is no reason why some sort of internationally-recognised stamp could not be borne from the outset by particular public documents. Of course the apostille-system, being channelled through a single body (or a small number of state bodies) in each state facilitates a verification system. It would not be so easy to provide for an international system of verification, where all sorts of state officials within each state would be entitled to issue the stamp in question. However, even if such a stamp did not carry the same sort of guarantee of authenticity as an apostille, it would allow for a higher level of automatic recognition of public documents than is currently the case. Even if it was only a matter of ensuring that the name of the relevant international convention, and the name of the document in the local language - and in English or French - was affixed at the bottom of each such document, such a step could still radically improve the international recognition of personal documents.

### **VI.3. National**

In the Irish context, legalisation is not often required. On this basis it might be argued that Irish law is relatively unproblematic and unlikely to impede free movement insofar as Irish law already allows for automatic recognition of public documents in many circumstances. However, the fact that Irish law does occasionally impose a requirement of legalisation and the fact that it frequently imposes other authentication requirements, some specific and some non-specific, is problematic. Because Irish law is so varied and very often very inaccessible, Member State nationals coming to Ireland may very often spend time and money on legalisation of documents which in the end was not necessary. The Member State national who does not err on the side of caution in that way, may find on arrival in Ireland that some form of authentication is necessary for certain documents – and having departed from his Member State of origin, it may be very difficult to organise that form of authentication.

Irish law would be radically improved by the adoption of a special statute on authentication of documents (conferring power on a relevant Minister to adopt statutory instruments setting the relevant fees and dealing with other administrative matters). Such a statute would facilitate a streamlining of the very disparate rules of authentication in Irish law.

Such a statute could also provide a formal legal platform for the various administrative arrangements for legalisation and the affixation of apostilles to outgoing documents. Such a statute could allow for some flexibility and discretion (in keeping with the current Irish approach) and allow an official to disregard a failure to satisfy a particular requirement in a particular case.

Even incorporating some flexibility in that way, the statute would provide clear guidance on the maximum requirements which a person would be required to meet in any given set of circumstances.

While the drafting of such a statute might be reasonably complex, in the long-term it would save time and money because future statutes would not have to contain detailed provisions on authentication.

It might be argued that such a statute would effectively force the state to set a single

requirement of authentication and that different levels of authentication might be required for different document-types. However, that argument can be countered by reference to the following:

- Irish law hardly ever imposes a requirement of legalisation.

The only statutory example of such a requirement is in the relatively rare context of a company establishing a place of business, which is not a branch within the meaning of Directive 89/666, in Ireland. The interest in maintaining this relatively insignificant requirement is arguably outweighed by the interest in having a simple straightforward law of authentication across the board.

The only other context where a requirement of legalisation could arise is where the court insists on such proof in the course of a case where authenticity is raised as an issue, or where a party seeks legalisation in anticipation of such an issue. The use of legalisation on an ad hoc basis in the course of litigation could be retained without compromising the integrity of a general statute imposing a lesser requirement of authentication. Such a statute could simply provide that it is without prejudice to the right of any party to litigation to seek to prove the authenticity of a document by a process of legalisation, or the right of a court to order same.

- The existing authentication requirements, where they are clearly articulated in the law, generally require a party to produce an original official document from the institution of origin or a certified, stamped copy. This requirement is sometimes supplemented by a requirement that the document be accompanied by a certified translation of the document if it is not in English or Irish.

A statute on authentication of documents might reasonably set a general requirement that parties seeking to use foreign public documents within the Irish legal system meet these two requirements. The statute might reasonably allow a party to rely on a copy of the original document which has not been specifically certified by the institution of origin, if it has been confirmed by an Irish notary.

A statute in these terms would make the Irish law of authentication of documents much more certain and much more accessible.