

XII MEETING OF IBERO-AMERICAN NOTARIES

TOPIC III: "CIRCULATION AND REGISTRATION OF FOREIGN DOCUMENTS"

Legislation applicable to the translation of foreign documents

Professional intervention by national Public Translators

LEGALIZATION AND TRANSLATION OF FOREIGN DOCUMENTS

A) Applicable Uruguayan legislation

A.1) Law 15.441 Provisions on the legalization of Foreign Documents are set forth hereunder.

The State Council has approved the following

Bill

Article 1.

Any official judgments and arbitral awards on civil, business, labor, criminal or administrative matters, also public documents and any other kind of document issued by the proper authorities of foreign governments or by any International Organizations, as well as rogatory letters, shall be deemed authentic in our country, on condition that they be duly legalized.

Article 2.

The legalization shall be deemed to be in due form where the foreign documents have been directly issued by the proper public authority, the applicable laws in the country of origin have been observed for the legalization procedure, and the procedure has been certified by the representative or consular agent of the Republic of Uruguay at the respective location, if any were in place, or, if none were available, by the Consul General or diplomatic agent accredited before the Government of the country of origin.

Article 3.

In the event that no consular or accredited diplomatic agent should be available at the location of origin of the document, the first legalization performed shall be accepted when executed by a third country with whom the Republic of Uruguay maintains a diplomatic or consular relationship.

This first legalization shall be held to be valid if in compliance with all legal requirements of said third country, following which, it must in turn be legalized by the consular or diplomatic authorities of the Republic.

This legalization shall mandatorily be accompanied by a translation into the language of the aforementioned third country, done in compliance with the validity requirements of such country.

Article 4.

The above steps shall also apply to the signature authentication procedure, in the event that no consular or accredited diplomatic agent should exist in the country where the document originated.

Article 5.

In the event that rogatory letters be processed through diplomatic or consular channels, or through central authorities, legalization shall not be required; the documents however shall be accompanied by the corresponding translations, if appropriate.

Article 6.

Any official judgments and arbitral awards on civil, business, labor, criminal or administrative matters, also public documents and any other kind of document issued by the proper authorities of foreign governments or by any International Organizations, also rogatory letters and private documents not written in Spanish, shall, in order to be valid in Uruguay, be translated by a national public translator.

Article 7.

The above notwithstanding, translations performed by the Uruguayan consular agent at the location where the document originated, shall be also considered valid.

A.2) Civil Code

A.2.1) Article 1579.

The preceding regulations apply to contracts and public instruments issued in a foreign country, in accordance to the formalities required therein and bearing the appropriate legalizations, save any exceptions set forth in laws or treaties.

**** This addition responds to the need for consistency with Art. 72-2 of the General Code of Procedure.**

A.2.2) Title IV – On Testamentary Succession

Chapter I – On Testaments

Section I – On Formal Testaments

Article 799.

Any persons not knowing Spanish but able to clearly express themselves and write in another language, may make a nuncupative will as follows:

The maker shall present to the Notary the folder containing his or her will, in the legally required kind of paper, signed by his or her hand, in the presence of two interpreters and three witnesses who know his or her language.

The interpreters shall render a true translation thereof, which shall be read to the maker in presence of the witnesses and Notary. If the maker does not raise objections thereto, he or she will affix their signature together with the translators and witnesses. The Notary will attest, immediately following the translation, to having witnessed all of the above, which is to be signed by the parties present. After the Notary has initialed each page of the original

testament and translation, all of this shall be included in the Notary's Journal of Notarial Acts.

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Translator's comment:

From the text of this article it is evident that the lawmakers confused, and were not quite clear about, the differences existing between an interpreter and a translator, and therefore used both terms interchangeably in the same provision. However, since in Uruguay there are no officially recognized courses nor degrees for the profession of interpreter, it is safe to assume that where "interpreter" is mentioned, "translator" is the term actually intended; the more so as the article expressly refers to a rendering into Spanish of the maker's will in writing, to be certified by the witnessing Notary.

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A.3) General Code of Procedure

Article 72.

Documents.

72.2. Public documents issued abroad should be legalized, save for any exceptions set forth in laws or treaties.

72.3. Any document written in a foreign language shall be accompanied by the corresponding translation performed by a public translator, save for exceptions set forth in laws or treaties. However, should the documents consist of books or be otherwise exceedingly lengthy, instructions may be issued to translate only the parts relevant to the proceedings under study.

A.4) Regulatory Decree 454/996 of 26 November 1996, on "Foreign Judgments Constitutive of Civil Status Presented Out of Court", Art. 1, makes a reference to Art. 539 of the CGP[General Code of Procedure, by its acronym in Spanish], and reads as follows:

Article 1.

Any foreign judgments constitutive or modificatory of a certain civil status, presented before the Civil Register General Bureau for registration or evidentiary purposes, shall be verified by the authorities of the Bureau for compliance with requirements set forth in Art. 539 of the CGP;

Article 2.

Pursuant to the above article, the Civil Register General Bureau Registrars shall enter a marginal note of such foreign adjudications on the margin of such civil status records as are modified by said judgments;

Article 3.

The Civil Register General Bureau Registrars shall for that purpose send the foreign judgments over to the Bureau's central authorities for appropriate supervision.

A.5) Law 15.514 on Registry Reform

Law 15.514

Article 79.

(Foreign documents). Foreign public and private documents shall be subject to the following prerequisites

1. If written in another language, they must be translated into Spanish by a national public translator. If already translated at origin, a national public translator shall certify that the translation is in agreement with the original.
2. They should be legalized in due form
3. The document and the translation thereof should be duly recorded in a notarial register. This record shall be considered as a source copy for the purposes of [article 1591 and following of the Civil Code](#)¹.

A.6) Law 16.871

A.6.1) Public Registers

Article 42.

(Powers of Attorney granted abroad). Parties acting on the basis of a power of attorney granted abroad, and specifically when such action entails mandatory registration, shall present such powers of attorney, properly legalized and attaching its public translation, if applicable.

Article 91.

(Foreign documents). Foreign public and private documents shall be subject to the following prerequisites

1. If written in another language, they must be translated into Spanish by a national public translator. If already translated at origin, a national public translator shall certify that the translation is in agreement with the original.
2. They should be legalized in due form
3. Where real property located in the country be involved, both the document and translation thereof should be recorded by the notary in his or her Record of Notarial Acts. This record shall be considered as a source copy for the purposes of [of article 1591 and following of the Civil Code](#)².

¹ See page 6 for text of Art. 1591 and ff.

² See page 6 for text of Art. 1591 and ff.

SECTION III

On copies of public documents

1591. Copies made in due form, from the original document, merit full faith as to its contents, in and out of court.

1592. The foregoing article notwithstanding, where any discrepancies be noted between the original and the copy, the original shall supersede the copy.

1593. Where no original exists, any of the following shall merit full faith:

1^o. First copies, drawn from the original by the authorizing Notary.

2^o. Any subsequent copies, drawn by court order.

3^o. REVOKED by Law Nr. 16.603, of 19/Oct/94.

4^o. Certified copies of exhibited public documents, drawn from the original by the authorizing notary or by the notary in charge of the Notarial Record.

If none of the mentioned copies were available, copies of copies shall serve as documentary preliminary evidence or only as mere indication, as the case may be, without prejudice to the provisions of procedural law.

A.6.2) Supreme Court of Justice

Official Communication Nr. 7.533: Notarial Regulations

Article 91.

Foreign documents should not be registered into a Record of Notarial Acts, unless previously legalized and, if appropriate, translated.

Article 92.

In order that documents not written in Spanish may be registered into a Record of Notarial Acts, without prejudice of the exceptions set forth by law, it is necessary that they be first translated into Spanish by a national public translator, and if same were not available, by two interpreters, who shall appear before the Notary during the act where the notarial registration is requested, and they shall thereafter sign the relevant record, taking responsibility for the translation.

Article 93.

In the event that a document written in a foreign language be accompanied by a translation into Spanish done at the country of origin, a national public translator shall certify that the translation is in agreement with the original, and shall issue a certificate of accuracy which, together with the document and translation thereof, shall be registered into the Record of Notarial Acts.

Article 159.

In the event that makers have no knowledge of Spanish, they shall be assisted by an interpreter, who shall read the document out loud to them, in such language as they have expressed to speak and understand, and in which they shall later express their assent. The makers shall state, for it to be duly recorded, their identifying data, shall declare not knowing Spanish but knowing their own language, and shall request from said interpreter being read out the document in their own language. The double reading and the agreed special form of assent shall be duly recorded.

The services of an interpreter shall be dispensed with in the event that the Notary have knowledge of the language of makers; in which case, after reading the document in Spanish, the Notary shall also read it out in the foreign language, all of which shall be duly recorded.

B) Regional and international laws

B.1) Inter-American Convention on Proof of and Information on Foreign Law

Article 5.

The requests to which this Convention relates shall contain the following:

- a. The name of the authority from which the request comes and the nature of the matter;
- b. Precise statement of the elements of proof being requested, and
- c. Specification of each of the points to which the request relates, together with an indication of its meaning and scope, and a statement of the pertinent facts for a proper understanding thereof.

The authority addressed shall answer each of the points contained in the request and as completely as possible.

The requests shall be prepared in the official language of the State of destination or shall be accompanied by a translation into that language. The reply shall be prepared in the language of the State of destination.

Article 7.

The requests to which this Convention refers may be forwarded directly through the judges or courts or through the Central Authority of the State of origin, to the corresponding Central Authority of the State of destination, and legalization shall not be required.

The Central Authority of each State Party shall receive the requests made by the authorities of its State and forward them to the Central Authority of the State of destination.

B.2) Legal Regime of Powers of Attorney to be Used Abroad

Inter-American Convention of the Legal Regime of Powers of Attorney

Article 2.

The formalities and solemnities to be observed in giving a power of attorney to be used abroad shall be governed by the law of the place in which it was given unless the principal chooses to submit to the law of the State in which the power of attorney is to be used. In any case, should the law of the State in which a power of attorney is to be used require solemnities essential to its validity, such law shall govern.

Article 8.

Powers of attorney shall be legalized when the law of the place where they are to be used so requires.

Article 9.

Powers of attorney granted in a language different from the official language of the State in which they are to be used shall be translated into that official language.

B.3) BRAZIL-URUGUAY

Judicial Assistance Agreement on Civil, Commercial, Labor and Administrative Matters.

Chapter IV.

Recognition and Enforcement of Judgments and Arbitral Awards.

Article 15.

Provisions under this Chapter shall apply to the recognition and enforcement in the State of destination, of the judgments and arbitral awards passed in the State of origin on civil, commercial, labor and administrative matters. Said provisions shall likewise be applicable to those judgments on the reparation of damages and restitution of property passed under criminal venue.

Article 16.

The judgments and arbitral awards referred to in the preceding Article, shall have extraterritorial validity in the Contracting States Parties provided they meet the following conditions:

- a) that they be in compliance with the formalities and solemnities required to be deemed authentic in the Country of origin;
- b) that the judgment or award and the necessary exhibits attached thereto be duly translated into the official language of the Country where recognition and enforcement are to take place;

B.4) MERCOSUR

B.4.1) Protocol on the Cooperation and Judicial Assistance on civil, commercial, labor and administrative matters

Article 20.

The judgments and arbitral awards referred to in the preceding Article, shall have extraterritorial validity in the States Parties provided they meet the following conditions:

- a) that they be in compliance with the formalities and solemnities required to be deemed authentic in the Country of origin;
- b) that such documents and the necessary exhibits attached thereto be duly translated into the official language of the Country where recognition and enforcement are to take place;

B.4.2) Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Done in New York on 10 June 1958.

Article IV.

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:
 - a) The duly authenticated original award or a duly certified copy thereof;
 - b) The original agreement referred to in article II or a duly certified copy thereof.
2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Internationally: The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (1970).

Article 4.

A Letter of Request shall be in the language of the authority requested to execute it or be accompanied by a translation into that language.

Nevertheless, a Contracting State shall accept a Letter in either English or French, or a translation into one of these languages, unless it has made the reservation authorized by Article 33.

A Contracting State which has more than one official language and cannot, for reasons of internal law, accept Letters in one of these languages for the whole of its territory, shall, by declaration, specify the language in which the Letter or translation thereof shall be expressed for execution in the specified parts of its territory. In case of failure to comply with this declaration, without justifiable excuse, the costs of translation into the required language shall be borne by the State of origin.

A Contracting State may, by declaration, specify the language or languages other than those referred to in the preceding paragraphs, in which a Letter may be sent to its Central Authority.

Any translation accompanying a Letter shall be certified as correct, either by a diplomatic officer or consular agent or by a sworn translator or by any other person so authorized in either State.