

## Weekly update: 02/2023-24

**Question:** How can a legal instrument executed in a foreign country be held valid in India?

**Background:** In a recent case, the husband and wife had filed for a mutual divorce. The husband was staying in the US and therefore, had executed a Special Power of Attorney ('SPA') in the US, in his father's favour. The Hon'ble Family Court objected to the SPA and directed the SPA holder to get the SPA endorsed from the local District Magistrate or Sub-Divisional Magistrate ('SDM') where the SPA holder resides.

**Problem:** However, the concerned Magistrate refused to endorse the SPA stating that there were no guidelines regarding the endorsement of SPA executed outside India. There was lack of clarity with respect to the endorsement of the SPA in both the states, in which the family matter was going on and SPA holder was residing.

**Learning:** We, further researched and found that there is a clear mechanism in place where any legal instrument such as an SPA, which has been executed outside of India, can be held valid if it in the form of an **Apostille**.

An Apostille is a certificate that authenticates the origin of a public document (e.g., a birth, marriage or death certificate, a judgment, an extract of a register or a notarial attestation). Apostilles can only be issued for documents issued in one country party to the Apostille Convention and that are to be used in another country which is also a party to the Convention.

(Source: <https://esanad.nic.in/>)

The Hague Apostille Convention, 1961, abolishes the requirement of legalisation of foreign documents for use in any member country, once an Apostille certificate (including e-Apostille) has been issued by a competent authority of the country where the document originates.

(Source: <https://eoi.gov.in/eoisearch/MyPrint.php?12029?001/0004>)

Therefore, we submitted the SPA in the form of an Apostille along-with relevant case laws. The Hon'ble Family Court accepted and granted our request.

For further discussion or queries on the above-mentioned issue, we can be reached at [anbay.legal@gmail.com](mailto:anbay.legal@gmail.com).