



AUTHENTICATING DOCUMENTS SIGNED OUTSIDE OF SOUTH AFRICA

A number of complications arise with cross-border transactions, such as jurisdictional issues for example. Generally speaking, signing a document or contract overseas when it is intended to be used in South Africa does not invalidate such document. However, if the agreement or document is to be relied on for court proceedings or for use in amongst others the Deeds Office a specific procedure should be followed when signing (executing) such agreement or document in order for it to be accepted.

Authentication

In terms of High Court Rule 63, any document executed in any place outside South Africa shall be deemed to be sufficiently authenticated for the purpose of use in South Africa if duly authenticated at such foreign place by the signature and seal of office of:

- the head of the South African diplomatic/consular mission; or
- a person in the administrative or professional division of the public service serving as a South African diplomatic consular abroad; or
- any government authority of such foreign country charged with the authentication of documents;
- the consul-general, consul, vice-consul or consular agent of the United Kingdom in that foreign country; or
- a notary public in the United Kingdom of Great Britain and Northern Ireland or in Zimbabwe, Lesotho, Botswana or Swaziland.

Authentication: Apostille

Member countries of the Hague Convention apostille (i.e. certify the authenticity of a document) and recognise apostilled documents of other member states. If the convention applies between two countries, such an apostille is sufficient to certify a document's validity, and removes the need for double-certification, by the originating country and then by the receiving country. The apostille process differs from country to country and you'll need to find out who the relevant "competent authority" is in the relevant country and follow the process required by them to apostille the document. For example, in Australia you may have the document signed in front of a duly authorised notary public which document will then be apostilled by a duly authorised government official thereafter. A list of such countries is available at <https://www.hcch.net/en/states/hcch-members> - for ease of reference the countries as at the date of this newsflash are annexed at the end of this newsflash. Please note that certain documents are excluded from being apostilled.

Authentication: Commissioner of Oaths

In terms of the Justices of the Peace and Commissioner of Oaths Act 16 of 1963, amongst other designated persons, persons designated as Commissioner of Oaths of the High Court may administer oaths or affirmations in the ordinary course outside of South Africa and shall be required to place his seal, stamp or certification thereon. Such authenticated affidavit, affirmation or solemn or attested declaration will be of the same force and effect as if made in front of a Commissioner of Oaths in South Africa. As such, attorneys that are overseas which are on the South African role would be in a position to assist in this regard.

Manner of Execution

The colour of ink to be used for signing varies from country to country, for example in New Zealand blue ink is commonly used in legal documents. If a document or contract is intended for use in South Africa **black ink** should be used (especially if the documents are intended for use in the Deeds Office). Generally, each page should be initialled in the bottom right hand corner except for the signature page, which need not be initialled as the full signature would appear on such page.

Before Travelling or Emigrating – sign a power of attorney

If you have a transaction with our offices and you are emigrating or will be overseas when the transfer documents, or any other documents or agreements need to be signed, consider signing a power of attorney before leaving South Africa authorising someone to sign these documents on your behalf in order to prevent delays. There are two types of powers of attorney (i) a general power of attorney and (ii) a special power of attorney. For transfer documents or if there is a specific transaction that needs to be signed or attended to a special power of attorney should be signed. If you are emigrating, or will be overseas for an extended period of time and need someone to handle and settle your affairs, a general power of attorney may be signed. General Powers of attorney are required to be registered in the Deeds Office. Please take care and note that in respect of a general power of attorney you should only appoint a trusted family member or representative as your agent as they will be given broad powers to act in your name place and stead.

Please note that a power of attorneys needs to be signed by two witnesses or by a commissioner of oaths. However, if the parties granting the power of attorney are married to each other in community of property then the power of attorney must be signed by two witnesses and not by a commissioner of oaths.

HCCH – Hague Convention Member Countries

Albania; Andorra; Argentina; Armenia; Australia; Austria; Azerbaijan
 Belarus; Belgium; Bosnia and Herzegovina; Brazil; Bulgaria; Burkina Faso
 Canada; Chile; China, People's Republic of; Costa Rica; Croatia; Cyprus; Czech Republic
 Denmark
 Ecuador; Egypt; Estonia; European Union
 Finland; France
 Georgia; Germany; Greece
 Hungary
 Iceland; India; Ireland; Israel; Italy
 Japan; Jordan
 Kazakhstan; Korea, Republic of
 Latvia; Lithuania; Luxembourg
 Malaysia; Malta; Mauritius; Mexico; Monaco; Montenegro; Morocco
 Netherlands; New Zealand; Norway
 Panama; Paraguay; Peru; Philippines; Poland; Portugal
 Republic of Moldova; Republic of North Macedonia; Romania; Russian Federation
 Saudi Arabia; Serbia; Singapore; Slovakia; Slovenia; South Africa; Spain; Sri Lanka; Suriname; Sweden; Switzerland
 Tunisia; Turkey
 Ukraine; United Kingdom of Great Britain and Northern Ireland; United States of America; Uruguay
 Venezuela; Viet Nam
 Zambia

This newsflash has been prepared for information purposes only and does not constitute legal advice, or a legal opinion, the practical application of the provisions of this newsflash will vary depending on the facts of each case.

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