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Authentication of Documents Act, 1965

Act 20 of 1965

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Authentication of Documents Act, 1965

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Authentication of Documents Act, 1965

Act 20 of 1965

Commenced on 19 June 1970

[This is the version of this document at 1 December 1998.]

An Act to provide for the Authentication of Documents for use in and out of Swaziland.

Part I – Preliminary and general

1. Short title

This Act may be cited as the Authentication of Documents Act, 1965.

2. Interpretation

In this Act, unless the context otherwise requires—

"**administrative officer**" does not include a Cadet;

"**authenticate**", in relation to a document, means to certify the authenticity of—

- (a) the signature on the document;
- (b) the capacity in which the person signing the document acted, and,
- (c) where appropriate, the identity of the seal or stamp which the document bears;

"certificate (*apostille*)" means a certificate in the form set out in the Second Schedule;

"**competent officer**" means any person for the time being performing the duties of one of the officers designated in [section 8](#);

"**Convention**" means the Convention Abolishing the Requirements of Legalisation for Foreign Public Documents, made at The Hague and dated the fifth day of October, 1961;

"**document**" means a book, record, deed, power of attorney, affidavit, certificate, contract, plan, map, drawing, writing and any other method of conveying information in visible form;

"**head of department**" has the same meaning as in Regulations made under the Constitution, regarding the Public Service Commission;^{1*}

"**legalisation**" means the formality by which the diplomatic or consular agent of the country in which a document is to be produced authenticates the document;

"**Magistrate**" means a person appointed as such to preside over a court of the First Class under the Subordinate Courts Proclamation (Cap. 20);

"**public document**" includes—

- (a) a document emanating from an official or other authority connected with the courts of a state which is a party to the Convention, including a document emanating from a public prosecutor, a clerk or registrar of a court, a sheriff or process server; or

^{1*}

NOTE: This term is variously defined in H.C.N. No. 34 of 1963 (as amended by H.C.N. No. 44 of 1965) and in L.N. No. 30 of 1967, not yet reproduced in these Statutes. Ed.

- (b) an administrative document not excluded by this definition; or
- (c) a notarial act; or
- (d) an official certificate which is placed on a document signed by a person in his private capacity such as an official certificate recording—
 - (i) the registration of a document, or
 - (ii) the fact that it was in existence on a certain date,or an official or notarial authentication of a signature;
but does not include—
 - (i) a document executed by a diplomatic or consular agent; or
 - (ii) an administrative document dealing directly with commercial or customs operations;

"signature", in relation to a document, includes the execution of the document by any other lawful means;

"stamp duty" has the meaning of "duty" in the Stamp Duties Act, [No. 37 of 1970](#).

3. Effect of authentication

- (1) This section shall apply—
 - (a) in all criminal and civil proceedings in any court in Swaziland; and
 - (b) to the acceptance of documents by the officer in charge of any public office in Swaziland.
- (2) A certificate which purports to be signed, sealed or stamped by an officer whose certificate is declared by this Act to be sufficient authentication of a document may, if duly stamped under the Stamp Duties Act, [No. 37 of 1970](#), be accepted in evidence without proof of the signature, seal or stamp of that officer and, when accepted, shall be presumed to be signed, sealed or stamped by that officer.
- (3) The certificate of such officer shall be *prima facie* evidence of the facts therein certified or attested.
- (4) Nothing in this Act shall prevent the acceptance by a court or an officer in charge of a public office of other evidence that a document was in fact signed by the person by whom it purports to have been signed, or as to the capacity in which the person signing acted.

4. Stamp duty

For the purposes of item 5 of the Schedule to the Stamp Duties Act, [No. 37 of 1970](#), a competent officer shall be deemed to be a public officer.

Part II – Documents originating in Swaziland and intended for use in Swaziland

5. Authentication of documents in Swaziland (First Schedule)

- (1) Upon payment of any stamp duty payable, an administrative officer may attest the signature on a document:
Provided that—
 - (a) if the document is signed by an individual, such individual shall be personally known to the administrative officer or identified to him by two respectable and responsible persons both of whom are known to him;

- (b) if the document is signed on behalf of an individual or by or on behalf of any company or other association or body of persons, corporate or unincorporate—
 - (i) the person signing the document shall be personally known to the administrative officer or identified to him as provided in paragraph (a); and,
 - (ii) in addition, he shall satisfy himself as to the capacity and authority of the person signing the document to do so on behalf of the individual, company or association or body of persons and as to the identity of any seal or stamp which the document bears; and,
 - (c) the administrative officer requested to attest the signature on a document shall refuse to attest the document if he is not satisfied as to the identity—
 - (i) of the individual signing the document; or
 - (ii) capacity and authority, as provided in paragraph (b), as the case may be, of the person signing.
- (2) An administrative officer who is requested, by a person purporting to do so on behalf of some other person or on behalf of any company or other association or body of persons, corporate or unincorporate, to attest the signature on a document shall not be satisfied as to the capacity and authority of the person signing the document except by written evidence such as—
- (a) a valid power of attorney containing the authority;
 - (b) the memorandum and articles of association of a company and evidence that the seal, if any, of such company is used in accordance with such memorandum and articles and that the persons present have the capacity which they claim; or
 - (c) the rules or other constitution of any company or other association or body of persons and evidence that the document is signed in accordance with such constitution and that the persons present have the capacity which they claim.
- (3) An administrative officer who attests the signature on a document may endorse such document with, or attach to it, a certificate, duly completed, in the appropriate form set out in the First Schedule with any necessary modifications thereto and such certificate shall be sufficient authentication of the document for use in Swaziland.
- (4) Nothing in this section shall in any way affect the authentication of a document by a notary public admitted to practise as such in accordance with the law relating to legal practitioners.

6. Use of seal

An administrative officer who authenticates a document shall in addition to his signature, affix to the document his seal or stamp of office, or, if he has no seal or stamp of office, state such fact in writing on the document or in his certificate.

7. Official documents

In any criminal or civil proceedings, a document shall on its mere production without proof of the signature, seal or stamp, be presumed to have been signed by such person unless the contrary is proved, if it purports—

- (a) to bear the signature of a public officer, and,
- (b) in addition, bearing a seal or stamp which purports to be the seal or stamp of the department, office or institution to which such public officer is attached.

Part III – Documents originating in Swaziland and intended for use outside Swaziland

8. Competent officers

- (1) The authorities competent to issue the certificate referred to in [section 9\(2\)](#), shall be the persons for the time being performing the functions of—
 - (a) the Deputy Prime Minister,
 - (b) the Attorney-General,
 - (c) the Registrar of the High Court,
 - (d) a head of department not specified in paragraphs (b) and (c),
 - (e) a regional administrator,
 - (f) a magistrate, and
 - (g) such other officer as the Minister may, by notice published in the *Gazette*, specify.
- (2) A competent officer shall keep a register or card index in which register or card index are recorded, in respect of every certificate (*apostille*) issued the number and date, and the name of the person signing the document and the capacity in which he acted or, in the case of a document signed otherwise than by an individual, the name of the authority which affixed the seal or stamp.
- (3) Such certificate (*apostille*) shall be issued at the request of the person who signed such document, or any bearer thereof.
- (4) At the request of any interested person, the competent officer who issued such certificate (*apostille*) shall verify whether the particulars therein correspond with those in the register or card index.

[Amended L.N. 8/1969]

9. Mode of authentication (Second Schedule)

- (1) Authentication of a document for use outside Swaziland shall be effected in accordance with the laws of the place where the document is to be used.
- (2) Subject to subsection (1), a document for use in a place where the Convention is in operation may be authenticated by a competent officer who shall place on the document itself, or on an allonge, a certificate (*apostille*) in the form contained in the Second Schedule, the dimensions of which shall be a square of which the sides are not less than nine centimetres long.

Part IV – Documents originating outside Swaziland and intended for use in Swaziland

10. Certain powers of attorney and affidavits

- (1) A document which is—
 - (a) a power of attorney authorizing a person to take, defend or intervene in, legal proceedings in Swaziland and which purports to have been duly signed by the person so authorizing and to have been duly attested by two competent witnesses; or
 - (b) an affidavit purporting to have been sworn before, and attested by a Commissioner of Oaths of—
 - (i) Swaziland outside Swaziland; or

- (ii) Botswana, Lesotho, the Republic of South Africa or Namibia within such territories respectively;

shall, without further authentication, be accepted for use in a court in Swaziland unless it is proved not to have been signed or sworn by the person by whom it purports to have been signed or sworn.

(2) A document which is—

- (a) a power of attorney authorizing a person to prove claims in Swaziland against the estates of —

- (i) companies which are ordered by the High Court to be wound up; or
- (ii) other persons which are ordered to be sequestrated;

and which purports to have been duly signed by the person so authorizing and to have been duly attested by two competent witnesses; or

- (b) an affidavit in support of such claim purporting to have been sworn before, and attested by, a Commissioner of Oaths specified in subsection (1)(b);

shall, without further authentication, be accepted for use in connexion with the proof of claims in Swaziland against such estates.

11. Certain official documents

Section 7 shall apply in respect of a document originating outside Swaziland which purports to bear the signature of a public officer government outside Swaziland, as it applies in respect of a document originating in Swaziland and purporting to bear the signature of a public officer.

12. Documents from Lesotho and Botswana

Subject to section 10, a document which is both—

- (a) signed in Botswana or Lesotho; and
- (b) attested by an administrative officer (other than a Cadet) of such country, in a manner similar to that provided in section 5;

shall be sufficiently authenticated if authenticated by a certificate purporting to bear the signature and seal or stamp of office of a Permanent Secretary in the government, the registrar or assistant registrar of the High Court or a Regional Administrator, of such country.

13. Documents from elsewhere in the Commonwealth and other places

- (1) A document signed in the United Kingdom or, without prejudice to section 12, in any other country or territory within the Commonwealth shall be sufficiently authenticated if authenticated by the certificate of—
 - (a) a notary public, if it bears his signature and seal of office, or
 - (b) the mayor or provost of a town, if it bears his signature and seal of office, or
 - (c) the permanent head of a government department, or
 - (d) the registrar or assistant registrar of a court of justice having unlimited jurisdiction, or
 - (e) the high sheriff of such country, or

- (f) an officer designated, in such country or territory, as an authority competent for the purposes of the Convention, to issue a certificate (*apostille*):

Provided that a document so signed which affects or relates to property not exceeding in amount or value one thousand emalangeni shall require no further authentication if it is authenticated by a certificate, similar to the form of certificate set out in the First Schedule, of a magistrate, assistant magistrate or a justice of the peace of the country, territory or place in which such document is signed.

- (2) Subject to sections 10, and 12 subsection (1) shall apply to documents signed in the Republic of South Africa, or the Irish Republic, in the same way as it applies to documents signed in a country or territory within the Commonwealth.

14. Public documents from Convention states

Notwithstanding sections 11, 12 and 13, a public document signed in a country or territory in which the Convention is in operation is sufficiently authenticated if authenticated by a certificate (*apostille*) signed by an officer designated, in such country or territory, as an authority competent, for the purposes of the Convention, to issue a certificate (*apostille*).

15. Other modes of authentication

Notwithstanding the other provisions of this Act, a document signed in a country or territory shall be sufficiently authenticated if authenticated by a suitable certificate under the signature and seal or stamp of office of—

- (a) a British consular officer of such country or territory;
- (b) a person shown by the certificate of—
- (i) a British consular officer of the country or territory; or
 - (ii) a person holding an office in the country or territory equivalent to that of Secretary of State or Under-secretary of State; or
 - (iii) a diplomatic or consular officer, of the country or territory, in Swaziland, Botswana, Lesotho or the Republic of South Africa;

to be duly authorized, by the law of such country or territory, to authenticate such document.

16. More than one mode of authentication

If a document may be authenticated in more than one manner under this Act, no objection to the acceptance of the document may be made on the ground that the authentication could have been carried out in some manner other than the one adopted.

17. Translation

A certificate (*apostille*) which is not in the English or French language shall be accompanied by a translation.

18. Documents executed by persons on active service

Notwithstanding this Act, a document signed by a person on active service in the Navy, Army, Air Force or other armed service of His Majesty, wherever signed, shall be sufficiently authenticated if authenticated by the signature of a commissioned officer of such service.

Part V – Saving

19. Saving

This Act shall not prevent the admission in evidence of any document which is admissible under any other law in force in Swaziland.

First Schedule (Section 5)

Authentication by administrative officer

Form I

"I, X.Y., in my capacity as⁽¹⁾ _____ do hereby certify that A.B. signed this document in my presence and that A.B. is personally known to me (or that C.D. and E.F., being persons known to me, have severally testified before me that the person signing this document is personally known to them as A.B.).⁽²⁾

GIVEN under my Hand (and Seal)⁽³⁾ _____⁽⁴⁾ in _____⁽⁵⁾ on the
_____ day of 19 _____ "

(Signature)

Seal or Stamp of Office or Statement in lieu thereof

Form II

"I, X.Y., in my capacity as⁽¹⁾ _____ do hereby certify that the Common Seal of A.B. Company, Limited, was affixed to the abovementioned (or annexed) _____⁽²⁾ document in my presence in accordance with the provisions of the Memorandum and Articles of Association thereof, which have been examined by me, and that the signatures L.M. and O.P. thereon are, respectively, the true signatures of _____

(1)

Here insert qualification to authenticate.

(2)

Whichever is applicable.

(3)

Delete if no Seal or Stamp and add Statement under section 6.

(4)

Name of place.

(5)

Name of country or territory if not Swaziland.

(1)

Here insert qualification to authenticate.

(2)

Whichever is applicable.

and _____ [give full names] who are, respectively, a director and the secretary [or, as the case may be] of the said company.

GIVEN under my Hand (and Seal) ⁽³⁾ at _____ ⁽⁴⁾ in _____ ⁽⁵⁾ on the _____ day of _____ 19 _____ "

(Signature)

Seal or Stamp of Office or Statement in lieu thereof

Or

"I, X.Y., in my capacity as _____ ⁽¹⁾ do hereby certify that on the date hereunder written there appeared before me A.B., who is personally known to me (or was identified: *See Form 1*) and who produced to me a Power of Attorney which appeared to have been given on the _____ day of _____ 19 ____ by L.D. of _____ and to have been duly registered at _____ and in his capacity as the attorney of the said L.D. he signed the above-written (or annexed) ⁽²⁾ document in my presence at _____ ⁽⁴⁾ and ⁽⁵⁾.

GIVEN under my Hand (and Seal) ⁽³⁾ at _____ ⁽⁴⁾ in _____ ⁽⁵⁾ on the _____ day of _____ 19 _____ "

(Signature)

Seal or Stamp of Office or Statement in lieu thereof

⁽⁵⁾

Delete if no Seal or Stamp and add Statement under section 6.

⁽⁴⁾

Name of place.

⁽⁵⁾

Name of country or territory if not Swaziland.

⁽¹⁾

Here insert qualification to authenticate.

⁽²⁾

Whichever is applicable.

⁽⁴⁾

Name of place.

⁽⁵⁾

Name of country or territory if not Swaziland.

⁽³⁾

Delete if no Seal or Stamp and add Statement under section 6.

⁽⁴⁾

Name of place.

⁽⁵⁾

Name of country or territory if not Swaziland.

Second Schedule (Section 9)**Certificate (*Apostille*)**

(In the form of a square with sides at least 9 centimetres long)

Apostille

(Convention de la Hague du 5 Octobre, 1961)

1. Country _____
This public document
2. has been signed by _____
3. acting in the capacity of _____
4. bears the seal/stamp of _____

Certified

5. at _____
6. the _____
7. by _____
8. Seal/Stamp:
9. Signature _____