

**CHAPTER 14:02**  
**AUTHENTICATION OF DOCUMENTS**

ARRANGEMENT OF SECTIONS

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Law 33, 1964,  
L.N. 28, 1965,  
L.N. 84, 1966,  
S.I. 20, 1967,

Act 45, 1968,  
Act 57, 1970.

**An Act applying the provisions of the Convention abolishing the requirement of legalisation for foreign public documents and extending to civil proceedings in courts certain provisions of the Criminal Procedure and Evidence Act relating to the production of documents and generally to make better provision for the authentication of documents emanating inside or outside Botswana and intended for use inside or outside Botswana.**

*[Date of Commencement: 1st April, 1967]*

**PART I**  
***Preliminary (ss 1-2)***

**1. Short title**

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

**2. Interpretation**

In this Act, unless the context otherwise requires-

**"authenticate"**, in relation to a document, means to certify the authenticity of the signature thereon, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which the document bears;

**"competent officer"** means a person for the time being performing the duties of one of the offices designated in section 7;

**"Convention"** means the convention abolishing the requirements of legislation for Foreign Public Documents made at the Hague and dated the 5th October, 1961;

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

**"legalisation"** means the formality by which the diplomatic or consular agent of the country in which a document is to be produced certifies the authenticity of the signature, the capacity in which the person signing the document has acted and where appropriate, the identity of the seal or stamp which it bears;

**"public document"** includes-

- (a) a document emanating from an authority or an official connected with the courts of any State being a party to the Convention, including those emanating from a public prosecutor, a clerk or registrar of a court, a sheriff or a process server;
- (b) an administrative document not hereinafter excluded;

- (c) a notarial act;
- (d) an official certificate which is placed on a document signed by a person in his private capacity, such as an official certificate recording the registration of a document, or the fact that it was in existence on a certain date, and an official or notarial authentication of a signature;

but does not include-

- (i) a document executed by a diplomatic or consular agent;
- (ii) an administrative document dealing directly with a commercial or customs operation;

**"signature"**, in relation to a document, includes execution of the document by any other lawful means, and "sign" has a corresponding meaning.

## **PART II**

### **General (s 3)**

#### **3. Effect of authentication**

(1) The provisions of this section shall apply in all criminal and civil proceedings in any court in Botswana and to the acceptance of documents by the officer in charge of any public office in Botswana.

(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 be accepted in evidence without proof of the signature, seal or stamp of such officer, and when accepted shall be presumed to be signed, sealed or stamped by such 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 any court or 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 capacity in which the person signing acted.

## **PART III**

### **Documents Emanating in and Intended for Use in Botswana (ss 4-6)**

#### **4. Authentication of documents in Botswana**

(1) An administrative officer, other than a cadet, may attest the signature on any document:

Provided that-

- (i) if the document is signed by an individual who is personally known to him or is identified to him by two respectable and responsible persons both of whom are known

to him;

- (ii) if the document is signed by or on behalf of any individual, company or association or body of persons, corporate or unincorporate, the person signing the document is personally known to him or is identified to him as provided in paragraph (i) and he is satisfied as to the capacity and authority of the person signing the document to do so on behalf of such individual, company or association or body of persons, and as to the identity of the seal or stamp which the document bears;
- (iii) if the administrative officer requested to attest the signature on a document is not satisfied as to the identity of the individual signing the document or, as the case may be, of the identity, capacity and authority of the person signing as provided in paragraph (ii), he shall refuse to attest the document.

(2) An administrative officer who is requested to attest the signature on a document by a person purporting to do so on behalf of some other person or on behalf of a company or association or body of persons, corporate or unincorporate, 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 such authority;
- (b) the memorandum and articles of association of a company and evidence that the seal of the company is used in accordance therewith and that the persons present have the capacity which they claim;
- (c) the rules or other constitution of any association or body of persons and evidence that the document is signed in accordance therewith and that the persons present have the capacity which they claim.

(3) An administrative officer who attests the signature on a document may endorse on or attach to the document a certificate in the appropriate form set out in the First Schedule with any necessary modifications, and such certificate shall be sufficient authentication of the document for use in Botswana.

(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 Legal Practitioners Act.

## **5. Use of seal**

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

## **6. Official documents**

In any criminal or civil proceedings a document-

- (a) purporting to bear the signature of any person holding office under the State; and

- (b) bearing a seal or stamp which purports to be a seal or stamp of the department, office or institution to which such person is attached,

shall on its mere production, without proof of such signature, seal or stamp, be presumed to have been signed by such person, unless it is proved not to have been signed by him.

**PART IV**  
***Documents Emanating in Botswana and Intended for Use***  
***Outside Botswana (ss 7-8)***

**7. Competent authorities**

(1) The authorities who are competent to issue the certificate referred to in section 8(2) are-

(a) the persons for the time being exercising the functions of-

- (i) Permanent Secretary;
- (ii) Registrar of the High Court;
- (iii) District Commissioner;

(b) a Magistrate Grade I; and

(c) such other persons as the President may appoint by notice published in the *Gazette*.

(2) Each of the said authorities shall keep a register or card index in which shall be recorded in respect of every certificate issued-

- (a) the number and date of such certificate;
- (b) the name of the person signing the public document and the capacity in which he has acted or, in the case of documents signed otherwise than by an individual, the name of the authority which affixed the seal or stamp.

(3) At the request of any interested person, the authority which has issued the certificate shall verify whether the particulars in the certificate correspond with those in the register or card index.

**8. Method of authentication**

(1) Authentication of a document for use outside Botswana shall be in accordance with the laws of the place where the document is to be used.

(2) Subject to the provisions of 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 "allongé" a certificate in the form in the Second Schedule the dimensions whereof shall be a square of which the sides shall not be less than 90 mm long.

**PART V**

***Documents Emanating outside Botswana and Intended to be Used  
inside Botswana (ss 9-17)***

**9. Certain powers of attorney and affidavits**

A document which is-

- (a) a power of attorney authorizing any person to take, defend or intervene in any legal proceedings which purports to have been signed in Lesotho, Swaziland, Zambia, Zimbabwe, the Republic of South Africa, or Namibia and to have been attested by two competent witnesses;
- (b) an affidavit, which purports to have been sworn before and attested by a Commissioner of Oaths of Botswana outside Botswana, or by a Commissioner of Oaths of Lesotho, Swaziland, Zambia, Zimbabwe, the Republic of South Africa, or Namibia within those respective countries, bearing the seal or stamp of the Commissioner of Oaths,

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

**10. Certain official documents**

Section 6 shall apply in respect of a document emanating outside Botswana, which purports to bear the signature of any person holding office under the State in any place outside Botswana as they apply in respect of a document emanating in Botswana which purports to bear the signature of any person holding such office therein.

**11. Documents from Lesotho and Swaziland**

Subject to section 9, a document signed in Lesotho or Swaziland and attested by an administrative officer in a manner similar to that provided in section 4 shall be sufficiently authenticated if authenticated by a certificate under the signature and seal or stamp of office of a Permanent Secretary, the Registrar or Assistant Registrar of the High Court or a District Commissioner of that country.

**12. Documents from Commonwealth countries**

(1) A document signed in any Commonwealth country shall be sufficiently authenticated if authenticated by the certificate of a notary public, under his signature and seal of office, the mayor or provost of any town under his signature and seal of office, the permanent head of a Government Department, the Registrar or Assistant Registrar of a court of justice having unlimited jurisdiction, the High Sheriff of a county or any person designated for the purposes of the Convention as an authority competent to issue a certificate or "*apostille*":

Provided that a document so signed which affects or relates to property not exceeding in amount or value P1 000 shall require no further authentication if it is authenticated by the

certificate, to the like effect of one of the certificates in the First Schedule, of a magistrate or a justice of the peace of the country or place in which such document is signed.

(2) Subject to sections 9 and 11, subsection (1) of this section shall apply to documents signed in the Republic of Ireland, the Republic of South Africa, or any protectorate, protected state or trust territory as defined in the British Nationality Acts 1948 to 1981, as it applies to documents signed in a country or territory within the Commonwealth.

### **13. Public documents from convention countries**

Notwithstanding sections 10, 11 and 12, a public document signed in any country or territory in which the Convention is in operation shall be sufficiently authenticated if authenticated by a certificate or "*apostille*" in the form in the Second Schedule, signed by any person designated in that country or territory for the purposes of the Convention as an authority competent to issue a certificate or "*apostille*".

### **14. Other documents**

Notwithstanding any other provisions contained herein, a document signed in any other country shall be sufficiently authenticated if authenticated by a suitable certificate under the signature and seal or stamp of office of-

- (a) a member of the Diplomatic Branch of the Botswana Foreign Service attached to a Botswana Embassy or High Commission in such country; or
- (b) a person shown by the certificate of-
  - (i) a member of the Diplomatic Branch of the Botswana Foreign Service attached to a Botswana Embassy or High Commission in such country;
  - (ii) a person holding an office in such country equivalent to that of Secretary of State or Under Secretary of State;
  - (iii) a Diplomatic or Consular Officer of such country serving in Botswana, Lesotho, Swaziland or the Republic of South Africa; or
  - (iv) a British Consular Officer attached to a British Embassy or High Commission in such country, where such country has no member of the Diplomatic Branch of the Botswana Foreign Service accredited thereto on a residential basis,

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

### **15. More than one mode of authentication**

Where under this Act a document may be authenticated in more than one manner, it shall be no objection to the acceptance of the document that the authentication could have been carried out in some manner other than that which has been adopted.

**16. Translations**

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

**17. Documents executed by persons on active service**

Notwithstanding the provisions of this Act, a document signed by a person on active service in the armed service of the State, wherever signed, shall be sufficiently authenticated if authenticated by the signature of a commissioned officer of such service.

**FIRST SCHEDULE  
AUTHENTICATION BY ADMINISTRATIVE OFFICER**

**Form I**

I, X.Y. in my capacity as ..... (1) ..... do 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) ..... at ..... (4) ..... in ..... (5) ..... on the ..... day of 20 .....

.....  
(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 above written (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 ..... 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 ..... 20 .....

.....  
(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 I) and who produced to me a Power of Attorney which appeared to have been given on the ..... day of ..... 20 ..... 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) (4) document in my presence at ..... (5) .....

Date .....

.....  
(Signature)

Seal or stamp of office or statement in lieu thereof.

- (1) Here insert qualifications to authenticate
- (2) Whichever is applicable
- (3) Delete if no seal or stamp and add statement under section 5
- (4) Name of place
- (5) Name of country if not Botswana

**SECOND SCHEDULE  
CERTIFICATE OR APOSTILLE**

The certificate will be in the form of a square with sides at least 90 mm long.

**APOSTILLE**  
(Convention de la Haye 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:

.....

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