

Short notes on:

Difference between Legalisation, Authentication and Apostillisation

Introduction

When traveling or emigrating to a country abroad, one would at some point in time come across requirements provided by legalisation, authentication and/or apostillisation and which requirements need to be complied with.

But what is the difference between the three? This article will explain the difference when public documents from South Africa are used outside South Africa and *vice versa*.

Authentication

When producing a public document abroad such document requires verification in most instances as the document on face value does not explain or confirm authenticity of the document. For this reason, states require that the origin of the public document must be certified by an official who is familiar with such document. This is known as legalisation. This authentication refers to verifying or authenticating the origin of such public documentation.¹

The authentication of the document is the verification thereof which could be executed by either way of legalising the document or by apostillising such document. Public documents need to be legalised when either the state where the document originates or the state where the documents are to be produced are not contracting states of the Apostille Convention.²

Legalisation

Legalisation is the process whereby the signature, a seal and/or stamp on a public document is certified as authentic. This is done by a series of public officials in South Africa until it is gladly

¹ De Rebus, October 2018 DR 22 – Riaan de Jager.

² De Rebus, October 2018 DR 22 – Riaan de Jager.

recognised by an office of the state of destination and to which legal effect it has been given by such state.³

This usually entails that a diplomatic and consular of the state where the documents is to be used is located in South Africa or accredited to South Africa as the state of origin of the public document are to facilitate this process.⁴ However, such officials do not have examples of such signatures, seals and/or stamps of every authority.⁵

To ease this burden, an intermediate authentication between the authority and public office was required and the Department of International Relations and Cooperation (hereinafter “DIRCO”), to be more specific the Chief Directorate: Consular Services was established. DIRCO will then attach a “Certificate of Authentication” to such public document. However, in some instances the Ministry of Foreign Affairs will also be required to add a final authentication in cases where the state in which the document is to be produced will not directly recognise the public document.⁶

Apostillisation

As a result of the inconvenience in the process when producing a public document, the Council of Europe saw the need for a convention to streamline the process and to provide relief. As a result of same, the Hauge Conference on Private International Law developed and negotiated a new convention which would facilitate the authentication of the public documents which is to be produced aboard in other states.

The “Apostille Conventions” was then created and the main purpose is to eliminate the legalisation process and replace it with a single formality.⁷ This process is known as Apostille and this is done by an authority designated by the State of origin called the Competent Authority. Any Magistrate at a Magistrate’s Court or any Registrar or Assistant Registrar at the High Court and the Chief Directorate: Consular Services at DIRCO has been elected as competent authorities to assist herein.⁸

³ De Rebus, October 2018 DR 22 – Riaan de Jager.

⁴ De Rebus, October 2018 DR 22 – Riaan de Jager.

⁵ De Rebus, October 2018 DR 22 – Riaan de Jager.

⁶ De Rebus, October 2018 DR 22 – Riaan de Jager.

⁷ De Rebus, October 2018 DR 22 – Riaan de Jager.

⁸ De Rebus, October 2018 DR 22 – Riaan de Jager.

Conclusion

The above mentioned is an unwieldy, time consuming and in most instances a costly process for members of the public.

This is why it is important to get the process correct from the first stage. Members of the public should further note that DIRCO cannot provide members of the public with advice on which public documents needs authentication as this should be done by each individual as each state has their own requirements.

At SchoemanLaw we can assist you in all your notary and authentication and legalisation of public documents.

