

## PERSONALISED LEGAL ASSISTANCE

Professional legal and property consulting

### **SONNENBERG & ASSOCIATES PROPERTY AND LEGAL ADVICE NEWSLETTER #29**

#### **1. Legal Quotes**

"There are three sorts of lawyers: able, unable and lamentable." [Robert Smith Surtees]

"Whoever tells the best story wins." [John Quincy Adams]

"In times of war, the law falls silent." [Marcus Tullius Cicero]

#### **2. Legal short**

The Cape Town legal fraternity are frequenting a new sushi bar in the Waterfront called Sosumi.

#### **3. Inspiring quotes**

"It takes courage to stand up and speak. It takes even more courage sometimes to sit down and listen." [unknown]

"Adversity is the best source of strength." [Japanese proverb]

"Whatever you want to do, do it now. There are only so many tomorrows." [Michael Landon]

#### **4. Authentication of documents executed inside or outside South Africa**

Have you ever had to sign or legalise documents within South Africa for use abroad or vice versa?

If you have, then you have no doubt experienced the frustration of having same signed/executed only to find out later that the documents are not legally valid.

#### **Summary:**

1. Documents must be properly authenticated to ensure that they are legally valid for use either within South Africa or abroad.
2. The country in which the documents will be used will determine the authentication process required.
3. The process of authentication is simplified where the country is a party to **The Hague Convention of 5 October 1961** (which abolishes the requirement of diplomatic and consular legalization for public documents originating in one Convention country for use in another). Documents issued in a Convention country which have been certified by a Convention Apostille are entitled to recognition in any other Convention country without any further authentication. Such recognition is an obligation on the part of the United States to the other countries party to the Convention and the federal courts and state authorities have been alerted to this obligation. Consular officers in Convention countries are prohibited from placing a certification over the Convention Apostille.

Public documents include:

- Documents emanating from an authority or an official connected with the courts or tribunals of the state, including those emanating from a public prosecutor, a clerk or a process server;
- Administrative and notarial documents; and
- Official certificates which are placed on documents signed by persons in their private capacity, such as official certificates recording the registration of a document or the fact that it was in existence on a certain date and official; and notarial authentications of signatures.

If you have a document which you want legalized for use in another Convention country, the Convention certification called an Apostille must be affixed to the document by a competent authority. The Apostille is a pre-printed form prescribed by the Convention.

4. Documents are authenticated via a Certificate of Authentication and/or an Apostille Certificate.
5. Rule 63 of The Rules of the High Court of South Africa regulates the requirements for authentication where documents are signed/executed outside South Africa for use within South Africa.

Use this guide to ensure that your documents are legally valid:

● **SIGNING/EXECUTING OF DOCUMENTS *WITHIN* SOUTH AFRICA FOR USE *OUTSIDE* OF SOUTH AFRICA:**

1. *Where countries are party to The Hague Convention* (currently 77 states including most European countries, the United Kingdom, The United States of America and South Africa):

- i. **Documents are signed and/or executed in the presence of a Notary Public.** The Notary Public will attach his Certificate of Authentication to the documents which must bear his signature, stamp and seal.
- ii. **Documents are then forwarded by the Notary Public to The High Court in the area in which the Notary Public practices.** The Court will then **attach an Apostille Certificate** authenticating the Notary Public's signature.

OR:

2. *Where countries are not party to The Hague Convention:*

- i. **Documents are signed and/or executed in the presence of a Notary Public.** The Notary Public will attach his Certificate of Authentication to the documents which must bear his signature, stamp and seal.
- ii. **Documents are then forwarded by the Notary Public to The High Court in the area in which the Notary Public practices.** The Court will then **attach an Apostille Certificate** authenticating the Notary Public's signature.
- iii. Documents are then submitted to the Legalisation Section at DIRCO (The Department of International Relations and Co-operation) based in Pretoria to be legalised.
- iv. Once legalised by DIRCO the documents are then forwarded to the Embassy/Consulate of the country in which they are intended to be used for further authentication.

● **SIGNING/EXECUTING OF DOCUMENTS *OUTSIDE* SOUTH AFRICA FOR USE *WITHIN* SOUTH AFRICA:**

Rule 63 of the Uniform Rules of the High Court regulates the requirements for authentication.

In terms of Rule 63 a document is sufficiently authenticated by means of a Certificate of Authentication which bears the signature and seal of office of:

- i. **a head of a South African diplomatic or consular mission** or a person in the administrative or professional division of the public service serving at a South African diplomatic, consular or trade office abroad; or
- ii. **a consul-general, consul, vice-consul or consular agent of the United Kingdom or any person acting in any of the aforementioned capacities or a pro-consul of the United Kingdom;** or
- iii. **any Government authority of such foreign place charged with the authentication of documents under the law of that foreign country;** or
- iv. **any person in such foreign place who shall be shown by a certificate of any person referred to in paragraph (i), (ii) or (iii) or of any diplomatic or consular officer of such foreign country in the Republic to be duly authorised to authenticate such document under the law of that foreign country;** or
- v. **a Notary Public** in the:
  - United Kingdom of Great Britain and Northern Ireland (England or Ireland);
  - Zimbabwe;

- Lesotho;
- Botswana;
- Swaziland; or

vi. **a Commissioner Officer of the South African Defence Force** as defined in section 1 of the Defence Act, 1957 (Act 4 of 1957) in the case of a document executed by any person on active service.

- **DOCUMENTS EXECUTED IN NAMIBIA**

Documents executed in Namibia cannot be authenticated before a Notary Public.

However Namibia is a party to The Hague Convention and the documents can thus be authenticated via these formalities.

- **POWER OF ATTORNEY EXECUTED IN LESOTHO, BOTSWANA OR SWAZILAND**

A Power of Attorney which is executed in these countries and which gives authority to a person to take, defend or intervene in any legal proceedings in a Magistrate's Court within The Republic of South Africa shall not require authentication. However the Power of Attorney must be duly signed and the signature must have been attested by two competent witnesses.

All newsletters can be obtained on our website [www.sonnenberg.co.za](http://www.sonnenberg.co.za).



**FRITZ SONNENBERG** | Legal Consultant  
Mobile: 083 251 5451 | Email: [Fritz@sonnenberg.co.za](mailto:Fritz@sonnenberg.co.za) | Skype: fritzsonnenberg



**SONNENBERG**  
PROPERTY & LEGAL ADVICE

[in](#) Visit my page

[Download Vcard](#)

[View Disclaimer](#)