

NEWSLETTER

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AUTHENTICATING AND LEGALISING DOCUMENTS FOR INTERNATIONAL PURPOSES

INTRODUCTION

Different countries have varying rules and regulations regarding the use of documents for international purposes. Whenever a person or entity is presenting a document originating in one country for use in another, the receiving country may often require proof of authenticity for the signature and seals of the public official who executed, issued, or certified a copy of the document. Documents intended for international use, therefore, need to undergo a process to establish their validity or legality.

This can occur through three (3) primary processes: **Notarization, Authentication, and Consular Legalisation**. The premise of these processes is to certify the legitimacy of the document and facilitate its use in the receiving country. Below is an overview of the various legalisation processes and their application to Ghanaian documents.

THE LEGALISATION PROCESS

The entire process centres on certifying that the official signature(s) on the document are legitimate. These processes are as follows:

1. Notarization

Notarization is the process where a Notary Public certifies the authenticity of signatures appended to a document. In Ghana, a Notary Public is appointed by the Chief Justice pursuant to section one of the Notaries Public Act, 1960 (Act 26). Notarized documents carry legal weight in establishing their validity because a Notary Public acts as a neutral third-party witness. This is the first step in the legalisation process. Depending on the laws of the receiving country, some private documents will require only notarisation to be accepted.

2. Authentication

Authentication involves the process of certifying the authenticity of the notarized document. This involves an attestation and certification by the Judicial Secretary and the Ministry of Foreign Affairs and Regional Integration (the “**Ministry**”). The Judicial Secretary will attest to the signature of the Notary Public on the document stating that the Notary Public is recognized by the Judicial Service of Ghana as a person duly appointed by the Chief Justice to act in that capacity and then issues a certificate to that effect.

From the Judicial Secretary, the document will be sent to the Legal and Consular Bureau of the Ministry to authenticate the signature of the Judicial Secretary and issue a certificate of authentication to that effect. The Ministry will also certify that the seal and signature on the document are from a Notary Public in good standing.

3. Consular Legalisation

Consular Legalisation is a concept under private international law where diplomatic or consular agents certify the authenticity of a document's signature for use in the country of the diplomatic or consular agent. Only signatures known to the consulate can be legalised and as such, a document goes through different authentication stages in various public institutions. Thus, the legalisation is done by the embassy or consulate of the receiving country. A consular official will confirm that the document is prepared appropriately and also confirm the certificate of authentication affixed by the Ministry. If all is in order, the embassy or consulate will then affix a certificate of legalisation to the document.

THE HAGUE CONVENTION ON APOSTILLE

Consular Legalisation has over time decreased in many countries due to the adoption of some international conventions that regulate documents from signatory countries, thereby eliminating the need for the legalisation process. One such convention is The Hauge Convention of 5 October 1961, Abolishing the Requirement of Legalisation for Foreign Public Documents (the “**Convention**”).

This Convention is intended to simplify the process of authenticating documents for use in its member states, thereby eliminating the need for multiple authentication procedures associated with consular legalisation. A single certification, known as the **Apostille** is issued by the county of origin, certifying the authenticity of the documents to be used in the destination county. This can only take effect between member states. Therefore, if the destination country is not a member state, it is not applicable.

Under the Convention, certain documents are eligible for an apostille. These are public documents issued by governmental authorities, such as birth certificates, marriage certificates, court judgments, and notarial acts¹. Overall, the Conventions simplifies the process of certifying the validity of documents for cross-border transactions, facilitating the recognition of legal documents across its 126 member countries².

Some member countries that apply the apostille include: Burkina Faso, Canada, United State of America, United Kingdom of Great Britain and Northern Ireland³.

Ghana is not a signatory to any such convention and therefore any document to be used in the country or outside the jurisdiction must undergo the legalisation process described above. Once these authentication steps are completed, the document can then be accepted for use in the receiving or destination country.

CONCLUSION

Understanding the processes of document authentication and legalisation is crucial for ensuring that documents from Ghana are recognized internationally. Adhering to these procedures ensures the authenticity and legality of documents, whether for personal or business use and facilitates smooth international operations and thus avoiding delays and legal complications.

As global interactions continue to expand, staying informed about these processes becomes increasingly important. It is therefore advised that individuals go through the necessary procedures, ensuring that their documents meet all necessary legal requirements for international use.

¹ Article 1 of the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents <https://Assets.Hcch.Net/Docs/b12ad529-5f75-411b-B523-8eebe86613c0.Pdf>

² HCCH, Status Table, <<https://www.hcch.net/en/instruments/conventions/status-table/?cid=41>> accessed May 30,2024

³ <https://www.hcch.net/en/states/hcch-members>