

Malawi

Authentication of Documents Act

Chapter 4:06

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Malawi

Authentication of Documents Act

Chapter 4:06

Assented to on 29 December 1966

Commenced on 23 October 1967

[This is the version of this document at 31 December 2014.]

[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]

An Act providing for the Authentication of Documents for use both in and outside Malawi and for Matters Connected therewith

Part 1 – Preliminary

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 authority**” 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 Requirement of Legalization for Foreign Public Documents made at the Hague and dated the 5th day of 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**” means—

- (a) a document emanating from an authority or an official connected with the courts or tribunals 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—

- (e) a document executed by a diplomatic or consular agent;
- (f) 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.

Part II – Effect of authentication

3. Effect of authentication

- (1) This section shall apply in all criminal and civil proceedings in any court in Malawi and to the acceptance of documents by the officer in charge of any public office in Malawi.
- (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 Stamps Act, 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.
[Cap. 43:01]
- (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 the capacity in which the person signing acted.

Part III – Documents signed in Malawi and intended for use in Malawi

4. Authentication of documents in Malawi

- (1) Upon payment of any stamp duty payable, an administrative officer may attest the signature on any document subject to the following conditions—
 - (a) if the document is signed by an individual, upon condition that such individual is personally known to him or is identified to him by two respectable and responsible persons both of whom are known to him;
 - (b) if the document is signed by or on behalf of any individual, company or association or body of persons, corporate or unincorporate, upon condition that the person signing the document is personally known to him or is identified to him as provided in paragraph (a) 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 any seal or stamp which is affixed to the document in his presence.
- (2) 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 or as to the identity of the seal or stamp, as provided in subsection (1)(b), he shall refuse to attest the document.
- (3) 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.
- (4) 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 Malawi.
- (5) 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 Education and Legal Practitioners Act.

[Cap. 3:04]

5. Use of seal or stamp

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 in the service of the Malawi Government; and
- (b) bearing a seal or stamp which purports to be a seal or stamp of the Ministry, 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 Malawi and intended for use outside Malawi

7. Competent authorities

- (1) The authorities who are competent to issue the certificate referred to in [section 8\(2\)](#) are—
- (a) a law officer;
 - (b) the Permanent Secretary of a Government Ministry;
 - (c) the Registrar of the High Court;
 - (d) the Registrar General;
 - (e) a District Commissioner;
 - (f) a notary public;
 - (g) a Resident Magistrate; and
 - (h) such other person as the Minister may by notice published in the Gazette, appoint.

- (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 capacity in which he has acted or, in the case of documents signed otherwise than by an individual, the name of the authority which has 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 Malawi shall be in accordance with the laws of the country or place where the document is to be used.
- (2) Subject to subsection (1) a public document for use in a place where the Convention is in operation may be authenticated by a competent authority who shall place, on the document itself or on an “allonge”, a certificate in the form set out in the Second Schedule, the dimensions of which form shall be a square of which the sides shall be not less than 9 centimetres long.

Part V – Documents emanating outside Malawi and intended for use in Malawi

9. Certain affidavits

An affidavit, which purports to have been sworn before and attested by a notary public of Malawi or commissioner for oaths of Malawi outside Malawi bearing the seal or stamp of the notary public or commissioner for oaths, shall be accepted for use in any court in Malawi 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 Malawi which purports to bear the signature of any person holding office in the service of the Malawi Government in any place outside Malawi as they apply in respect of a document signed in Malawi which purports to bear the signature of any person holding such office therein.

11. Documents from the Commonwealth

A document signed in any country or place within the Commonwealth 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 Ministry or 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 £500 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, assistant magistrate or a justice of the peace of the country or place in which such document is signed.

12. Public documents from Convention countries

Notwithstanding sections 10 and 11, a public document signed in any country or place in which the Convention is in operation shall be sufficiently authenticated if authenticated by a certificate or

“apostille”, in the form set out in the Second Schedule, signed by any person designated in that country or place for the purposes of the Convention as an authority competent to issue a certificate or “apostille”

13. Other documents

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

- (a) a Malawi Consular Officer of such country or place; or
- (b) a person shown by the certificate of a Malawi Consular Officer of such country or place, or of a person holding an office in such country or place equivalent to that of Secretary of State or Under Secretary of State, or of a Diplomatic or Consular Officer of such country or place in Malawi to be authorized to authenticate such document by the law of such country or place.

14. Translations

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

Part VI – General

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. Documents executed by persons on active service

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

First Schedule (Sections 4(4) and 11)

Authentication by administrative officer

[Notes on forms:]

(¹) Here insert qualification to authenticate.

(²) Whichever is applicable.

(³) Delete if no Seal or Stamp and statement under section 5.

(⁴) Name of place.

(⁵) Name of county or territory.

Form I

I, X. Y., in my capacity as..... (¹) do hereby certify that on the date, hereunder written A.B. signed the above written (or annexed) (²) 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 the said 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..... 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 on the date hereunder written 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..... 19.....

.....

Signature

Seal or stamp of office or statement in lieu thereof

Form III

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 who was identified to me by C.D. and E.F., being persons known to me, who have severally testified before me that the person signing the above written (or annexed) ⁽²⁾ document is personally known to them as A.B.) ⁽²⁾ and that the said A.B. 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., signed the above written (or annexed) ⁽²⁾ document in my presence.

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

Second Schedule (Sections 8(2) and 12)

Certificate or Apostille

The certificate will be in the form of a square with sides at least 9 centimeters long.

Apostille		
(Convention de La Haye du 5 October 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.	No.....	
9.	Seal/stamp:	10. Signature:
