

APOSTILLE VS NOTARY

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We are often confronted with the query "Is an apostille the same as a notary?". The answer is no.

As our life becomes more intricately connected on a global level, apostilles allow businesses and individuals to ensure the legitimacy of their international proceedings without significant delay. Though the situations where you may need an apostille vs. notary services are similar, there are critical differences between these two types of document certifications.

An apostille is a certificate that authenticates a document to be used in proceedings in a foreign country. An apostille guarantees the authenticity of a document signature and any notarial stamps/ seals affixed to the document and the capacity in which it was made. Apostilles are attached to the original document are certified so as to ensure that the certification will be accepted in any other countries that are members of the Hague Apostille Convention (provided that both are signatories to the 1961 Hague Convention abolishing the requirement for Legalization for Foreign Public Documents). In simple terms, Apostilles are used to ensure that notarized legal documents are recognized as valid across borders. While every country has its own set of laws and procedures for notarizing documents, apostilles provide an international guarantee that these requirements have been met. It is important to note that the Apostille only certifies the origin of the official document to which it refers and it does not certify the content of the official document to which it refers.

Getting a document notarized means that the document has been certified by a notary public. The notary public verifies the identity of the person signing the document and also witnesses the signing. The notary public marks the document with a stamp or seal. The notary process involves a person signing a document in front of a notary public and the notary public verifying the identity of the person signing.

Given this background, we have attempted to understand the usage of Notary and Apostille under the Companies Act, 2013, with a view to bring in clarity with respect to the appropriate usage of these terms.

Incorporation of a Company

The most common usage arises in the case of subscribers to the Memorandum, with reference to the country to which such subscriber belongs to

- a. As per Rule 13(5)(a) of the Companies (Incorporation) Rules, 2014 (hereinafter referred to as “Incorporation rules”), Where the subscriber belongs to a country which is part of the Commonwealth, then the documents shall be notarised by a Notary Public in that part of the Common wealth. List of countries part of the Commonwealth for which Notary is required under CA 2013 are given as **Annexure A**.
- b. As per Rule 13(5)(b) of the Incorporation rules, Where the subscriber to the Memorandum belongs to a country which is a part of the Hague Apostille Convention, 1961, the signatures and address shall be notarized before the Notary (Public) of the country of his origin and duly apostilled in accordance with the said Hague Convention. List of countries part of the Hague convention are given as **Annexure B**.
- c. As per Rule 13(5)(c) of the Incorporation rules, Where the subscriber to the Memorandum belongs to a country which is outside the Commonwealth and which is not part of the Hague Apostille Convention, 1961, signatures and address, shall be notarized before the Notary (Public) of such country and the certificate of the Notary (Public) shall be authenticated by a Diplomatic or Consular Officer empowered in this behalf under section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (40 of 1948) or, where there is no such officer, by any of the officials mentioned in section 6 of the Commissioners of Oaths Act, 1889 (52 and 53 Vic.C.10), or in any Act amending the same; List of countries falling under this category are given as **Annexure C**.
- d. As per Rule 13(5)(d) of the Incorporation rules, if the Foreign national residing out of India is visiting India on a Business Visa during the incorporation, Notarization and Apostille is not required. In addition, if the foreign national is a Person is of Indian Origin or Overseas Citizen of India, the requirement of business visa is not applicable

To summarise,

Reference Number	Country Belonging to	Whether Notary is required	Who should Notarise	What should be notarized	Whether apostille is required	Who should apostille	Time taken for apostille	List of countries in Annexure
Rule 13(5)(a), Incorporation rules	Commonwealth	Yes	Notary Public in that part of Commonwealth	1) Signature and address of the concerned signatory on the MoA and AoA and 2) Proof of identity of the signatory	NA	NA	NA	A
Rule 13(5)(b), Incorporation rules	Hague Apostille Convention, 1961	Yes	Notary Public in origin country	1) Signature and address of the concerned signatory on the MoA and AoA and 2) Proof of identity of the concerned signatory	Yes – As per Hague Convention	By the authority as designated in each country, the details of such authority is available in the following link https://www.hcch.net/en/states/authorities	Differs based on the country as different authorities are involved. It may take anywhere between few days to a few months.	B

Rule 13(5)(c), Incorporation rules	Out of commonwealth and not part of Hague Apostille Convention	Yes	Notary Public in origin country	1) Signature and address of the concerned signatory on the MoA and AoA and 2) Proof of identity of the concerned signatory	NA However, the certificate of the Notary Public is to be duly authenticated by A) A Diplomatic and Consular Officers empowered under Diplomatic and Consular Officers (Oaths and Fees) Act, 1948, or B) Officials mentioned in section 6 of the Commissioners of Oaths Act, 1889	NA	NA	C
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Practical Application

In this section, we will be dealing with the situations that require documents to be notarized and/or apostilled over and above the provisions of the Companies Act 2013.

1. Incorporation of a Company

Though the provisions of CA 2013 contemplate a situation of notarisation/apostille for incorporation of a company with a Foreign Subscriber to the MoA, it may be observed that additionally even in cases of a Foreign national who is a resident outside India who is proposed to be appointed as a Director of a new company (to be incorporated), any / all documents signed by him/her are required to be notarized/apostilled.

2. Director Identification Number

Where it is proposed to obtain a DIN or file E-Form KYC or intimate corrections/change in details of the Foreign national director who resides outside India, the proof of address, proof of identity, passport and any other attachments to be submitted with the MCA through the relevant E-Forms are required to be notarized and/or apostilled.

A In the above situations though not required under Companies Act 2013, such notarisation/apostille is warranted based on resubmission remarks from the MCA either in respect of Incorporation Forms or DIN related forms. These documents are to be authenticated as per Rule 13(5)(a) to 13(5)(c) based on the country of citizenship of the proposed / existing Foreign director.

ANNEXURE A – COUNTRIES PART OF COMMONWEALTH

Africa:

1. Botswana
2. Cameroon
3. Gabon
4. Gambia, The
5. Ghana
6. Kenya
7. Kingdom of Eswatini
8. Lesotho
9. Malawi
10. Mauritius
11. Mozambique
12. Namibia
13. Nigeria
14. Rwanda
15. Seychelles
16. Sierra Leone
17. South Africa
18. Togo
19. Uganda
20. United Republic of Tanzania
21. Zambia

Caribbean and Americas:

1. Antigua and Barbuda
2. Bahamas, The
3. Barbados
4. Belize
5. Canada
6. Dominica
7. Grenada
8. Guyana
9. Jamaica
10. Saint Lucia
11. St Kitts and Nevis
12. St Vincent and The Grenadines
13. Trinidad & Tobago

Asia:

14. Bangladesh
15. Brunei Darussalam
16. Maldives
17. Malaysia
18. Pakistan
19. Singapore
20. Sri Lanka

Pacific:

1. Australia
2. Fiji
3. Kiribati
4. Nauru
5. New Zealand
6. Papua New Guinea
7. Samoa
8. Solomon Island
9. Tonga
10. Tuvalu
11. Vanuatu

Europe:

1. Cyprus
2. Malta
3. UK

**ANNEXURE B – COUNTRIES PART OF HAGUE APOSTILLE CONVENTION,
1961**

- 1) Albania
- 2) Andorra
- 3) Antigua and Barbuda
- 4) Argentina
- 5) Armenia
- 6) Australia
- 7) Austria
- 8) Azerbaijan
- 9) Bahamas
- 10) Bahrain
- 11) Barbados
- 12) Belarus
- 13) Belgium
- 14) Belize
- 15) Bolivia
- 16) Bosnia and Herzegovina
- 17) Botswana
- 18) Brazil
- 19) Brunei Darussalam
- 20) Bulgaria
- 21) Burundi
- 22) Cape Verde
- 23) Chile
- 24) China, People's Republic of
(Hong Kong & Macao Only)
- 25) Colombia
- 26) Cook Islands
- 27) Costa Rica
- 28) Croatia
- 29) Cyprus
- 30) Czech Republic
- 31) Denmark
- 32) Dominica
- 33) Dominican Republic
- 34) Ecuador
- 35) El Salvador
- 36) Estonia
- 37) Fiji
- 38) Finland
- 39) France
- 40) Georgia
- 41) Germany
- 42) Greece
- 43) Grenada
- 44) Guatemala
- 45) Guyana
- 46) Honduras
- 47) Hungary
- 48) Iceland
- 49) Indonesia
- 50) Ireland
- 51) Israel
- 52) Italy
- 53) Japan
- 54) Jamaica
- 55) Kazakhstan
- 56) Korea, Republic of
- 57) Kosovo
- 58) Kyrgyzstan
- 59) Latvia
- 60) Lesotho
- 61) Liberia
- 62) Liechtenstein
- 63) Lithuania
- 64) Luxembourg
- 65) Malawi
- 66) Malta
- 67) Marshall Islands
- 68) Mauritius
- 69) Mexico
- 70) Moldova, Republic of
- 71) Monaco
- 72) Mongolia
- 73) Montenegro
- 74) Morocco
- 75) Namibia
- 76) Netherlands
- 77) New Zealand
- 78) Nicaragua
- 79) Niue
- 80) Republic of North Macedonia



- 81) Norway
- 82) Oman
- 83) Palau
- 84) Panama
- 85) Paraguay
- 86) Peru
- 87) Philippines
- 88) Poland
- 89) Portugal
- 90) Romania
- 91) Russian Federation
- 92) Saint Kitts and Nevis
- 93) Saint Lucia
- 94) Saint Vincent and the Grenadines
- 95) Samoa
- 96) San Marino
- 97) Sao Tome and Principe
- 98) Saudi Arabia
- 99) Serbia
- 100) Seychelles
- 101) Singapore
- 102) Slovakia
- 103) Slovenia
- 104) South Africa
- 105) Spain
- 106) Suriname
- 107) Swaziland
- 108) Sweden
- 109) Switzerland
- 110) Tajikistan
- 111) Tonga
- 112) Trinidad and Tobago
- 113) Tunisia
- 114) Turkey
- 115) Ukraine
- 116) United Kingdom of Great Britain
- 117) and Northern Ireland
- 118) Uruguay
- 119) Uzbekistan
- 120) Vanuatu
- 121) Venezuela



**ANNEXURE C – COUNTRIES OUT COMMONWEALTH AND NOT PART OF
HAGUE APOSTILLE CONVENTION**

- 1) Algeria
- 2) American Samoa
- 3) Andorra
- 4) Angola
- 5) Anguilla
- 6) Aruba
- 7) Benin
- 8) Bermuda
- 9) Bhutan
- 10) Burkina Faso
- 11) Cambodia
- 12) Chad
- 13) Comoros
- 14) Cuba
- 15) Democratic Republic of Congo
- 16) Djibouti
- 17) Egypt
- 18) Ethiopia
- 19) Falkland Islands
- 20) Faroe Island
- 21) Haiti
- 22) Iran
- 23) Iraq
- 24) Ivory Coast
- 25) Jordan
- 26) Kazakhstan
- 27) Kuwait
- 28) Kyrgyzstan
- 29) Lebanon
- 30) Libya
- 31) Madagascar
- 32) Mali
- 33) Myanmar
- 34) Nepal
- 35) Niger
- 36) Puerto Rico
- 37) Qatar
- 38) Reunion Island
- 39) Senegal
- 40) Somalia
- 41) South Sudan
- 42) Sudan
- 43) Syria
- 44) Taiwan
- 45) Thailand
- 46) Tibet
- 47) Timor Leste
- 48) Turkmenistan
- 49) United Arab Emirates
- 50) Vietnam
- 51) Virgin Island
- 52) Yemen
- 53) Zimbabwe

