



GUIDE IN RESPECT OF THE DUTIES OF THE COMMISSIONER OF OATHS

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Version 4

**GUIDE IN RESPECT OF THE
DUTIES OF THE COMMISSIONER OF OATHS**

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GUIDE IN RESPECT OF THE DUTIES OF THE COMMISSIONER OF OATHS

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GUIDE IN RESPECT OF THE DUTIES OF THE COMMISSIONER OF OATHS

PREFACE

This guide has been developed by the South African Institute of Chartered Accountants and is intended as a summary guideline to members or associates regarding the office of Commissioner of Oaths.

The guide does not deal with all aspects of the office of Commissioner of Oaths, but deals with those aspects related to the powers of Commissioners of Oaths and the administering of an oath or affirmation. Members or associates are empowered to act as Commissioner of Oaths and, in order to assist members or associates to perform their duties, this guideline is issued. The guide also includes some information on the certification of documents, given that many members or associates are requested to carry out such certification on a regular basis.

Although this guide does not have the authority of the Justices of the Peace and Commissioners of Oaths Act, No. 16 of 1963, in the event of significant deviation from the guidance given, and should his or her actions be questioned, a member or associate may be required to demonstrate that such deviation was justified.

The Corporate Reporting section of SAICA in association with the Legal Compliance Committee has prepared the guide.

Every effort is made to ensure that the advice given in this guide is correct. Nevertheless that advice is given purely as guidance to members of SAICA to assist them with particular problems relating to the subject matter of the guide and SAICA will have no responsibility to any person for any claim of any nature whatsoever which may arise out of or relate to the contents of this guide.

1. Introduction

1.1 General

The Justices of the Peace and Commissioners of Oaths Act, No. 16 of 1963 (as amended) (“the Act”) regulates the designation of “Commissioner of Oaths”, powers and duties of a Commissioner of Oaths and the administering of an oath or affirmation.¹ In addition, certain amendments to the principal Act were made in the General Law Amendment Acts, No. 80 of 1964 and No. 49 of 1996; the Justices of the Peace and Commissioners of Oaths Amendment Acts No. 8 of 1965, No. 21 of 1967, No. 55 of 1970, No. 110 of 1984 and No. 36 of 1985; the Parliamentary Services Act, No. 33 of 1974; the Transfer of Powers and Duties of the State President Act, No. 97 of 1986; the Justice Laws Rationalisation Act, No. 18 of 1996; and the Judicial Matters Amendment Act, No. 26 of 1999.

All Chartered Accountants (CA(SA)s) and Associate General Accountants (AGA(SA)s) hold the designation of Commissioner of Oaths, in accordance with Regulations published in 2002.² Fellow members of AAT (SA) and Members of AAT (SA) also holds the designation of Commissioner of Oaths, in accordance with Regulations published in 2015³.

1.2 Glossary

- Associates (specific to this guide) – Associate General Accountants (SA) and Fellow member of AAT (SA) and Members of AAT(SA)
- Members – Chartered Accountant (South Africa) (CA(SA))
- Minister – Minister of Justice and Constitutional Development
- Regulations – Regulations as made by the Minister of Justice as prescribed by section 10 of the Justices of the Peace and Commissioners of Oaths Act, No. 16 of 1963 (as amended)
- the Act – Justices of the Peace and Commissioners of Oaths Act, No. 16 of 1963 (as amended)

Words importing the male gender include the female gender.

2. Office of Commissioner of Oaths

Reference: Sections 5 and 6 of the Act

The Minister or any of his authorised officers is empowered to appoint any person as a Commissioner of Oaths, including any person designated by the Minister as an *ex officio*

¹ Regulations Governing the Administering of an Oath or Affirmation (Government Notice (GN) R1258 in Government Gazette (GG) 3619 of 21 July 1972, as amended).

² Government Gazette 23347, amending GN R903, dated 22 April 2002 and substituted by GN R947 of 4 July 2003.

³ Government Gazette 38498, amending GN R903, dated 10 July 1998

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Commissioner of Oaths. Members and associates of SAICA are designated as *ex officio* Commissioners of Oaths and therefore entitled to exercise the powers granted in the Act.

3. Powers of the Commissioner of Oaths

Reference: Section 7 of the Act

A Commissioner of Oaths is empowered to:

- administer an *oath* or *affirmation*; or
- take a *solemn* or *attested* declaration, from any person.

3.1 Oath

Legally, the term “oath” refers to any type of attestation by which a person signifies that he or she is bound in conscience to perform a particular act truthfully and faithfully; a solemn declaration of truth or obligation in reference to that person’s appeal to God to witness the truth of what he is saying or a pledge to do something enforced by the person’s responsibility to answer to God. In a court of law, reliance is placed on a statement under oath by the person giving the statement or testimony and the court is entitled to regard that statement or testimony to be true, correct and within the knowledge of the person giving the statement.

In the context of the Act, the role of the Commissioner of Oaths is to confirm that a person making a sworn statement (affidavit) has sworn that the content of the statement is true. This is carried out in accordance with the formal process prescribed in the Act.

3.2 Affirmation

An affirmation is a solemn and formal declaration that a statement is true; however, an affirmation includes no reference to God so it can be made by someone who does not believe in God or by a person who has conscientious objections against swearing to God.

Again, the Act prescribes a process by which a Commissioner of Oaths confirms that a person making a statement has solemnly confirmed the truth of the contents of that statement.

3.3 Truth of the content of a statement

It is not the role of a Commissioner of Oaths to confirm the objective truth of the contents of the statement being commissioned. The Commissioner of Oaths is, in fact, not required to have knowledge of the contents of the document involved. Instead, the Commissioner of Oaths is a formal “witness” to the fact that the person making the statement has sworn or affirmed that the content of the statement is true.

4. Duties of the Commissioner of Oaths

The office of Commissioner of Oaths and the concomitant obligations are a public duty and a special privilege dispensed at the pleasure of the Minister to certain persons recognised and empowered to act as Commissioner of Oaths. Members and associates of SAICA are such persons by virtue of their designation and good standing with SAICA.

The office of Commissioner of Oaths serves a public interest in that it is intended to guard and protect society against placing reliance on a statement or declaration that is not true, correct or within the knowledge of the person making that statement. In the case of the last mentioned, knowledge can be direct knowledge, as known and told by the deponent (the person making the statement), or indirect; ie as told or revealed to the deponent by another person who can confirm the statement made by the deponent (by way of a confirmatory declaration; ie a confirmatory affidavit).

Members or associates will be called upon from time to time to exercise the powers of, and act as, a Commissioner of Oaths. The general requests relate to the following:

- *Certifying documents*
This involves certifying documents as true copies of the original documents. These documents range from *company statutory documents, identity documents, qualifications* and certificates such as degree certificates to *court documents*.

- *Oath or affirmation*
This involves administering an oath or taking an affirmation from a deponent in an affidavit that contains statements or declarations.

5. Certifying Documents

Neither the Act nor its Regulations make specific provision for certifying of documents as true copies of their originals. It appears, however, that a strong custom has developed in South Africa of accepting copies of documents certified by Commissioners of Oaths as true copies.

The purpose of certifying documents is to confirm that the copy presented to the Commissioner of Oaths is in all respects a true copy of the original document presented. Given that a legislative basis for certification does not exist, the public is essentially relying on the integrity of Commissioners of Oaths to ensure that certifications of documents are meaningful. As such, members and associates have the responsibility to maintain the public's trust placed in them by following a procedure for certification that would stand up to scrutiny in the event that the integrity of a copy is brought into question.

SAICA proposes that the process set out below should, in most instances, suffice when members or associates certify a copy. Members and associates should not proceed with the requested certification, however, if there is anything in the document, the copy thereof,

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or the circumstances under which the certification is requested that indicates that forgery, fraud or any other suspicious purpose is intended.

5.1 Process to be followed

The Commissioner of Oaths must be presented with the original document and the copy thereof at the same time, and must look at the original document and the copy and satisfy him or herself that the content of the documents is the same. If the content is not the same, the Commissioner of Oaths cannot certify the copy as a true copy of the original.

Black and white copies of coloured documents, as well as copies that have reduced or enlarged the size of original documents, are acceptable, provided that the content and context of the originals remain clear. For example, an A4 black and white copy of an A3 university certificate would normally be certifiable as a “true copy of the original”. On the other hand, a Commissioner of Oaths would not be able to certify a translation of the university certificate as a “true copy”, as the content would have been changed. The general principle is that the public should be able to rely on the integrity of Commissioners of Oaths so that any document certified by them can be relied on to be the same as the original in substance.

When certifying a copy of the original as a true copy of that document, the Commissioner of Oaths *does not* certify the true origin of the original document. In other words, the act of certifying a copy of the original as a true copy thereof does not afford the original document authenticity. For example, if a degree certificate is presented to the Commissioner of Oaths as an original document and a copy thereof is presented at the same time, if the copy looks exactly the same as the original, then the Commissioner of Oaths can certify the copy as a true copy of the original. However, if the original document turns out not to be true despite its appearance of authenticity, the certification does not make it a real or true degree. At the same time, the Commissioner of Oaths cannot be held liable for having certified the copy thereof or having caused someone to place reliance on it. Therefore, the duty of the Commissioner of Oaths extends only to verifying that the copy handed to him or her looks exactly like the original document handed to him or her, unless, as indicated above, the Commissioner of Oaths has reason to be suspicious of the information presented.

Similarly, if a person hands over a green bar-coded identity document and a copy that looks like a copy of the original, and a Commissioner of Oaths certifies the copy as a true copy of the original, that act of certification does not mean that the green bar-coded identity document presented to the Commissioner of Oaths is an official green bar-coded identity document issued by the Department of Home Affairs, whose contents and details are correct and true in respect of the person whose picture appears thereon.

SAICA does not believe that Commissioners of Oaths have a duty to investigate the authenticity of documentation. SAICA does believe that they have a duty to protect the reputation of the office by not certifying documents as true copies if there is anything that appears to them to be suspicious.

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Although the Act does not apply to certification of documents, SAICA is of the view that members and associates should apply the same principles as those set out in the Act in respect of a personal interest in a matter. Members and associates should therefore never certify documents pertaining to themselves (such as identity documents, utility bills and qualifications) or to close family members.

5.2 How to certify documents

A document can be certified to be a true copy by a Commissioner of Oaths by *verifying the copy against the original* and by *affixing* the words:

“Certified a true copy of the original”

or

“I certify that this document is a true copy of the original which was examined by me and that, from my observations, the original has not been altered in any manner.”

In order to record that the certification was indeed carried out by a Commissioner of Oaths, SAICA is of the view that it is necessary to add the name, office (eg (CA(SA))) and address of the person who carries out the certification, as well as the date of certification.

Where a document to be commissioned is longer than one page, it is SAICA’s view that the Commissioner must certify on the first page and then initial every other page to indicate that the rest of the document is included in the certification.

6. Certifying Electronic Documents

Reference: Section 18 of the Electronic Communications and Transactions Act, No. 25 of 2002

The Act does not deal with certifying documents and therefore also does not deal with the process to be followed in respect of electronic documents.

For example, a Commissioner of Oaths may be requested to certify a printed copy of, for example, a Certificate of Incorporation which was electronically transmitted by the Companies and Intellectual Property Registration Commission (“CIPC”). Can the Commissioner of Oaths certify a copy of the electronically transmitted certificate as a true copy thereof?

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Section 18 of the Electronic Communications and Transactions Act, No. 25 of 2002 (“ECT Act”) provides as follows:

“Notarisation, acknowledgement and certification

18. (1) Where a law requires a signature, statement or document to be notarised, acknowledged, verified or made under oath, that requirement is met if the advanced electronic signature of the person authorised to perform those acts is attached to, incorporated in or logically associated with the electronic signature or data message.

(2) Where a law requires or permits a person to provide a certified copy of a document and the document exists in electronic form, that requirement is met if the person provides a print-out certified to be a true reproduction of the document or information.

(3) Where a law requires or permits a person to provide a certified copy of a document and the document exists in paper or other physical form, that requirement is met if an electronic copy of the document is certified to be a true copy thereof and the certification is confirmed by the use of an advanced electronic signature.”

SAICA is of the view that Commissioners of Oaths are entitled to certify a printed version of an electronic document as a true copy as set out in section 18(2) of the ECT Act. However, if a Commissioner of Oaths is prepared to certify a copy in these circumstances, then he or she must be aware of, and must accept, the enhanced duty that he or she is placing on him or herself. As electronic documents can often be altered without evidence of such alteration on the face of the document, members and associates should ensure that, when assessing the “original”, they should be particularly diligent to satisfy themselves that the “original” is in fact the original document. If a member or associate cannot be reasonably certain that the electronic document presented to him or her is authentic, the member should not certify a printed copy as a true copy of the original.

SAICA members should not verify a printed version of an electronic document as a “copy of a copy” as the ECT Act allows for a print-out of an electronic document to be certified, as a true copy of the electronic copy.

7. Administering an Oath or Affirmation

Reference: Section 7, and Regulations Governing the Administering of an Oath or Affirmation (GN R1258 in GG 3619 of 21 July 1972 as amended by GN 1648 in GG 5716 of 19 August 1977, GN R1428 in GG 7119 of 11 July 1980 and GN R774 in GG 8169 of 23 April 1982)

The purpose of administering an oath or affirmation is to bind a deponent to his or her attestation or declaration so as to seal the truthfulness, correctness and knowledge of his attestation or declaration in his conscience (ie to bind his conscience).

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A Commissioner of Oaths may be called upon to administer an oath or an affirmation in respect of a person who wishes to testify on, or declare or attest to, the truthfulness or correctness of a fact. This covers a situation where a person makes statements in an affidavit and wishes to have those statements binding on his or her conscience.

7.1 Process to be followed

- Where a signature is required, the person taking the oath or affirmation must sign the document *in the presence* of the Commissioner of Oaths. (If a person cannot write, such a person must make his or her “mark” at the foot of the declaration in the presence of the Commissioner.)
- Before taking the oath or affirmation, the Commissioner of Oaths must ask the deponent three questions:
 - whether he or she knows and understands the contents of the declaration;
 - whether he or she has any objection to taking the prescribed oath; and
 - whether he or she considers the prescribed oath to be binding on his or her conscience.
- If the deponent acknowledges that he or she knows and understands the contents and has no objection to taking the oath, the Commissioner of Oaths may administer the oath. Should the deponent object to taking the oath, then an affirmation will be taken.

An oath is administered by causing the deponent to utter the following words in the presence of the Commissioner of Oaths:

“I swear that the contents of this declaration are true, so help me God.”

An affirmation is administered by causing the deponent to utter the following words in the presence of the Commissioner of Oaths:

“I truly affirm that the contents of this declaration are true.”

Note: A Commissioner of Oaths *may not charge any fee* for administering any oath or affirmation or attesting any declaration.

A Commissioner of Oaths shall not administer an oath or affirmation in a matter in which he has an interest (Regulation 7(1)).⁴ The Act does not define what would constitute an interest in a matter. Therefore, the normal English meaning of the term “interest” will apply. SAICA is of the view that the following, amongst others, will constitute an “interest”:

- any declaration that involves a matter that directly affects the Commissioner of Oaths or his or her close family member;
- a declaration taken down or drafted by the Commissioner of Oaths, even if such a declaration relates to a client or third party;

⁴ Regulations Governing the Administering of an Oath or Affirmation (GN R1258 in GG 3619 of 21 July 1972 as amended by GN 1648 in GG 5716 of 19 August 1977, GN R1428 in GG 7119 of 11 July 1980 and GN R774 in GG 8169 of 23 April 1982)

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- a declaration that affects the business affairs of the Commissioner; for example, relating to a tender by a firm of which the Commissioner is a partner or director.

The Regulations do provide for an exemption where Regulation 7(2) states that Regulation 7(1) would not apply to an affidavit or declaration mentioned in the Schedule to the Regulations which refers to the Commissioner being able to Commission documents in which his interests only relates to being employed.

The Schedule to the Regulations states the following:

Declarations exempted from the provision of Regulation 7(1) specifically exclude in section 2 of the Schedule, "A declaration taken by a Commissioner of Oaths who is not an attorney and whose only interest therein arises out of his employment and in the course of his duty".

7.2 How to administer an oath or affirmation

A Commissioner of Oaths may administer an oath or affirmation or take a solemn or attested declaration from any person, provided that that person does not object to taking an oath or affirmation or declaration and provided that he is not so prohibited from doing so under the Act or law.

8. Penalties and Offences

Reference: Section 9 of the Act

Any person who, in an affidavit, affirmation or solemn or attested declaration made before a Commissioner of Oaths has made a false statement knowing it to be false shall be guilty of an offence and liable upon conviction to the penalties prescribed by law for the offence of perjury.

Although the Act does not create an offence or penalty in relation to the Commissioner of Oaths, it is important for a Commissioner of Oaths to follow the Act properly in certifying documents or administering an oath or affirmation. This means that the validity of a document or credibility (as advanced by the person presenting it) of a declaration can be questioned if certification, or the administering of an oath or affirmation, was not carried out properly.

In practice, the Commissioner of Oaths can be subject to liability and possible criminal sanction if he or she fails to perform his or her duties in accordance with the Act. In addition, members and associates of SAICA may be subject to disciplinary steps in the event that they fail to comply with the provisions of the Act.

9. Oath, Affirmation and Certifying Instruments (Stamps)

Reference: Regulations Governing the Administering of an Oath or Affirmation (GN R1258 in GG 3619 of 21 July 1972 as amended by GN 1648 in GG 5716 of 19 August 1977, GN R1428 in GG 7119 of 11 July 1980 and GN R774 in GG 8169 of 23 April 1982) section 4

The Regulations state that the Commissioner shall below the deponent's mark certify that the deponent has acknowledged that he knows and understands the contents of the declaration and he shall state the manner, place and date of the declaration. The Commissioner shall also sign the declaration and print his full name and business address below the signature and state his designation for which he holds the appointment or the office held by him if he holds the appointment *ex officio*. In practice, it appears that the use of stamps on which the full names, designation and address of the Commissioner are already indicated is also accepted.

Commissioner of Oaths stamps can be purchased at stationery shops but may also be custom made to include the detail above. (See Appendix 1 for examples of the wording required.)

10. Oaths and Affirmations outside the RSA

Reference: Section 8 of the Act

Administering an oath or affirmation outside the Republic of South Africa may only be undertaken if authorised by the Minister. In terms of section 8(1)(a) of the Act, the Cabinet member responsible for justice and correctional services may:

“by notice in the *gazette*, declare that the holder of any office in any country outside the Republic shall in the country in which or at the place at which he or she holds such office, have the powers conferred by section 7 upon a commissioner of oaths, and may in like manner withdraw or amend any such notice.”

Members and associates of SAICA have not been authorised by the Minister and therefore cannot exercise the powers contemplated in section 7 of the Act in another country. However, this service can be accessed by approaching any diplomatic or consular officer to ensure that documents are certified or authenticated.

In a judgment of the case of *APJ Dique v MV Viljoen*, Case Number 14218/2007, it was stated that:

“**‘authentication’** means, when applied to a document, the verification of any signature thereon.

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(2) Any document executed in any place outside the Republic shall be deemed to be sufficiently authenticated for the purpose of use in the Republic if it be duly authenticated at such foreign place by the signature and seal of office:

(a) of the 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

(b) of 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 Proconsul of the United Kingdom; or

(c) of any Government authority of such foreign place charged with the authentication of documents under the law of that foreign country;

(d) of any person in such foreign place who shall be shown by a certificate of any person referred to in paragraph (a), (b) or (c) 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;

(e) of a notary public in the United Kingdom of Great Britain and Northern Ireland or in Zimbabwe, Lesotho, Botswana or Swaziland; or

(f) of a commissioned officer of the South African Defence Force as defined in section one of the Defence Act, 1957 (Act No. 44 of 1957), in the case of a document executed by any person on active service.

(3) If any person authenticating a document in terms of sub rule (2) has no seal of office, he shall certify thereon under his signature to that effect.

(4) Notwithstanding anything in this rule contained any court of law or public office may accept as sufficiently authenticated any document which is shown to the satisfaction of such court or the office to have been actually signed by the person purporting to have signed such document.

(5) No power of attorney, executed in Lesotho, Botswana or Swaziland, and intended as an authority to any person to take, defend or intervene in any legal proceedings in a magistrate's court within the Republic shall require authentication: provided that any such power of attorney shall appear to have been duly signed and the signature to have been attested by two competent witness."

This means that certification or authentication can be carried out in foreign countries by consulates or diplomatic missions of the relevant countries concerned and not by SAICA members or associates.

Appendix I: Examples of Wording

The following are examples of wording for the administration of an oath or affirmation and certification of documents.

Administration of an oath or affirmation stamp wording

I certify that the deponent has acknowledged that he/she knows and understands the contents of this affidavit, that he/she does not have any objection to taking the oath, and that he/she considers it to be binding on his/her conscience, and which was sworn to and signed before me and that the administering of the oath complied with the regulations contained in the Government Gazette No. R1258 of 21 July 1972, as amended.

SIGNATURE

FULL NAMES

COMMISSIONER OF OATHS (ex officio)

Designation: Chartered Accountant CA(SA)⁵ - 01010101⁶

Place / business _____

Business address _____

Date _____

⁵ Relevant designation

⁶ Refers to the Individual SAICA membership/associateship number.

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Certification of document stamp wording

I certify that this document is a true copy of the original which was examined by me and that, from my observations, the original has not been altered in any manner.

SIGNATURE

FULL NAMES

COMMISSIONER OF OATHS (ex officio)

Designation: Chartered Accountant CA(SA)⁷ - 01010101⁸

Place /business _____

Business address _____

Date _____

⁷ Relevant designation

⁸ Refers to the Individual SAICA membership / associateship number.