

Notarization Law of the People's Republic of China

Description

Notarization Law of the People's Republic of China

Adopted at the 17th Session of the Standing Committee of the Tenth National People's Congress on August 28, 2005

Chapter I General Provisions

Article 1 This Law has been enacted for the purposes of regulating notarization activities, ensuring that the notarization institutions and notaries perform their duties in accordance with the law, preventing disputes and protecting the lawful rights and interests of the natural persons, legal persons or other organizations.

Article 2 Notarization means an act performed by a notarial institution, upon the application of a party concerned, such as certifying the authenticity and legality of a legal act, a document or a fact of legal significance according to the statutory procedures.

Article 3 A notarial office shall comply with the law and shall stick to the principle of objectiveness and impartiality when performing notarial acts.

Article 4 China Notary Association shall be set up as a national notary association and each province, autonomous region or municipality directly under the Central Government shall establish a local notary association. China Notary Association and local notary associations shall be social organizations with legal person status. The charter of China Notary Association shall be formulated by the general assembly of the representatives of its members and shall be reported to the judicial administrative department of the State Council for archival purposes.

The notary associations are self-disciplinary organizations of the notarization industry. They shall carry out activities in accordance with the charter and shall supervise the practice of the notarial offices and notaries.

Article 5 The judicial administrative department shall, under the law, supervise and offer guidance to the notarial offices, notaries and notary associations.

Chapter II Notarial Offices

Article 6 A notarial office is a lawfully established non-profit-making certification institution that independently exercises the notarial functions and bear corresponding civil liabilities.

Article 7 A notarial office may, in compliance with the principle of overall planning and reasonable distribution, be established in a county, undistricted city, districted city, municipality directly under the Central Government or district directly under a city. One or more notarial offices may be established in a districted city or municipality directly under the Central Government. The notarial offices are not established on different levels according to administrative hierarchy.

Article 8 A to-be-established notarial institution shall meet the following conditions:

Having its own name;

Having a fixed office;

Having 2 or more notaries; and

Having the fund necessary to carry out notarial work.

Article 9 Where a notarial office is to be established, it shall be reported by the local judicial administrative department to the judicial administrative department of the province, autonomous region or municipality directly under the Central Government. After the judicial administrative department of the province, autonomous region or municipality directly under the Central Government grants approval according to the prescribed procedures, the local judicial administrative department shall issue a practicing certificate of notarial office.

Article 10 The person-in-charge of a notarial office shall be selected or elected from the notaries who have 3 or more years of practicing experience, shall be subject to the examination and approval of the local judicial administrative department, and shall be reported to the judicial administrative department of the province, autonomous region or municipality directly under the Central Government for archival purposes.

Article 11 Upon request of a natural person, legal person or any other organization, the notarial office shall performing notarial acts for the following matters:

Contract;

Inheritance;

Authorization, declaration, bestowal, will;

Distribution of property;

Bidding and tendering, auction;

Marriage status, kindred relationship, adoption relationship;

Birth, existence, death, identity, experience, education background, degree, job title, professional technical title, having or not having illegal and criminal record;

Articles of association;

ã€€ã€€ï¼¼^9ï¼¼‰Preservation of evidence;

ã€€ã€€ï¼¼^10ï¼¼‰Signature, seal and date as indicated in a document, duplicate or photocopy of a document conforming with the original document; and

ã€€ã€€ï¼¼^11ï¼¼‰Other matters that a natural person, legal person or any other organization voluntarily requests for notarization.

ã€€ã€€As to any matter that shall be notarized under any law or administrative regulation, the relevant natural person, legal person or any other organization shall file a request with the notarial office for notarization.

ã€€ã€€Article 12 Upon the request of a natural person, legal person or any other organization, the notarial office may handle the following affairs:

ã€€ã€€ï¼¼^1ï¼¼‰The affairs that shall be registered by a notarial office under any law or administrative regulation;

ã€€ã€€ï¼¼^2ï¼¼‰Preservation of evidence;

ã€€ã€€ï¼¼^3ï¼¼‰Preservation of will, heritage or other property, articles and documents relating to the notarization affair;

ã€€ã€€ï¼¼^4ï¼¼‰Making legal documents relating to the notarization matter instead of others;

ã€€ã€€ï¼¼^5ï¼¼‰Providing legal consultation services relating to notarization.

ã€€ã€€Article 13 No notarial office may:

ã€€ã€€ï¼¼^1ï¼¼‰issue a notarial certificate for an untrue or illegal matter;

ã€€ã€€ï¼¼^2ï¼¼‰destroy or fraudulently alter any notarial document or archive file;

ã€€ã€€ï¼¼^3ï¼¼‰canvass notarial business by bespattering other notarial offices or notaries, or by paying kickbacks or commissions, or by any other unfair competition methods;

ã€€ã€€ï¼¼^4ï¼¼‰divulge any state secret, commercial secrete or personal privacy it has access to in its practice;

ã€€ã€€ï¼¼^5ï¼¼‰charge notarization fees by violating the prescribed standards; or

ã€€ã€€ï¼¼^6ï¼¼‰commit any other act as prohibited by any law or regulation, or provisions of the judicial administrative department of the State Council.

ã€€ã€€Article 14 A notarial office shall work out rules for the management its business, financial affairs and assets, shall supervise the practices of its notaries and shall set up a responsibility system for wrong practices.

Article 15 The notarial institution shall buy notarial practice responsibility insurance.

Chapter III Notaries

Article 16 A notary shall be a notarial practitioner who meets the conditions as prescribed by this Law and is working in a notarial office.

Article 17 The number of notaries shall be determined according to the needs of notarial business. The judicial administrative department of a province, autonomous region or municipality directly under the Central Government shall determine, in light of the establishment of notarial offices and the needs of notarial business, the plan on the arrangement of notaries and shall submit it to the judicial administrative department of the State Council for archival purposes.

Article 18 A notary shall meet the following conditions:

1. Having the nationality of the People's Republic of China;

2. Being 25- 65 years old;

3. Being impartial and upright, observing the law and disciplines, being of good moral character;

4. Having passed the national judicial examination; and

5. Having acted as an intern in a notarial office for 2 or more years, or having 3 or more years of experience of another legal profession and having acted as an intern in a notarial office for 1 year or more, and having passed the evaluation.

Article 19 Where a person who was engaged in teaching and research of law and has a senior professional technical title, where a person who was a civil servant or lawyer, has a university diploma or above and has full 10 years of experience in adjudication, procuratorial work, legal affairs or legal service, if he has left his post and has passed the evaluation, he may take up the job of a notary.

Article 20 A person shall not take up the job of a notary under any of the following circumstances:

1. Having no civil capacity or limited civil capacity;

2. Having been subject to any criminal punishment due to an intentional crime or duty-related crime;

3. Having been dismissed from a government organ;

4. His practicing certificate has been revoked.

Article 21 Where a person intends to act as a notary, he shall meet the conditions for a notary, shall file an application and shall be recommended by a notarial office. The local judicial administrative department shall submit the application to judicial administrative department of the people's government of the province, autonomous region or municipality directly under the Central Government

for examination and approval. If the judicial administrative department of the people's government of the province, autonomous region or municipality directly under the Central Government approves the application, it shall request the judicial administrative department of the State Council for appointment and shall issue the applicant a practicing certificate of notary.

Article 22 A notary shall observe the disciplines and the law, strictly abide by the professional ethics, perform his notarial duties, keep confidential the secrets he has access to in his practice.

A notary shall be entitled to obtain remunerations, enjoy insurance and welfare treatments. He has the right to resign from his job, to file a complaint or bring a charge. He shall not be dismissed from his post or be punished unless there is a statutory reason or unless the statutory procedures have been completed.

Article 23 No notary may:

1 concurrently act as a notary in 2 or more notarial offices;

2 assuming other paid job;

3 perform any notarial act requested by his close relative or perform any notarial act in which he and his close relative has an interest;

4 illegally issue any notarial certificate;

5 issue a notarial certificate for any untrue or unlawful affair;

6 embezzle or misappropriate the notarization fees or encroaching upon or steal any articles for the exclusive use of notarization;

7 destroy or fraudulently alter any notarial document or archive file;

8 divulge any state secret, commercial secret or personal privacy he has access to in his practices; or

9 commit any other act as prohibited by any law or regulation, or provisions of the judicial administrative department of the State Council.

Article 24 Where a notary is under any of the following circumstances, the local judicial administrative department shall report him to the judicial administrative department of the people's government of the province, autonomous region or municipality directly under the Central Government and shall propose the judicial administrative department of the State Council to dismiss him from the job of a notary:

1 He has lost the nationality of the People's Republic of China;

2 He is 65 years old or he is unable to perform his duties continuously for health reason;

3 He has resigned from the job of notary on his own initiative; or

His practicing certificate of a notary has been revoked.

Chapter IV Notarization Procedures

Article 25 Where a natural person, legal person or any other organization requests for notarization, he may file an application with the notarial office of the place where his domicile or habitual residence is located, or where the relevant act is committed, or where the relevant fact occurs.

Where an applicant requests for notarization of any real property, it shall file an request with the notarial office of the place where the real property is located. The provisions of the preceding paragraph apply to the notarization of the power of attorney, statement, bestowal and will relating to the real property.

Article 26 A natural person, legal person or any other organization may authorize others to perform a notarial act with the exception of the notarization of a will, survival, and adoption relationship, which shall be performed by requestor himself.

Article 27 The party who requests for notarization shall faithfully provide the notarial office with the relevant information about the matter it requests for notarization, and shall provide genuine, lawful and adequate certification materials. If the certification materials are incomplete, the notarial office may demand it to make supplements.

After the notarial office accepts a notarial request, it shall inform the party concerned of the legal significance and the possible legal consequences of the matter it requests for notarization, and shall record down those things it has informed the party concerned and keep them in the archive files.

Article 28 When performing notarial acts, a notarial office shall, according to the rules for performing different notarial acts, examine the following items, respectively:

1. The identity of the party concerned, the qualifications for requesting for the notarial act and the corresponding rights;

2. Whether the documents he offers are complete, whether the meanings are clear and whether the signature and seal are complete;

3. Whether the certification materials are authentic, lawful and adequate; and

4. Whether the matters under request for notarization are genuine and lawful.

Article 29 The notarial office shall, in light of the rules for performing notarial acts, verify or authorize a public office located in another place to verify the matter under request for notarization and the certification materials provided by the party concerned, if it deems it necessary to do so or if it has any doubt about them. The relevant entity or individual shall offer assistance.

Article 30 If the notarial office, upon examination, considers that the certification materials offered by the requestor are genuine, lawful and enough, and that the matter under request for

notarization is true and lawful, it shall issue a notarial certificate to the party concerned within 15 days after it accepts the notarization request. However, the time for force majeure, supplementing certification materials or verifying the relevant information shall not be included in the aforesaid time period.

Article 31 A notarial office shall refuse to perform a notarial act under any of the following circumstances:

The person, who has no civil capacity or has limited civil capacity, has no guardian to request for notarization on his behalf;

The party concerned has no interest in the matter under request for notarization;

The matter under request for notarization is a matter of professional technical authentication or assessment;

There are disputes over the matter under request for notarization between the parties concerned;

The party concerned makes up a story, conceals the fact or provides any false certification materials;

The party concerned fails to provide enough certification materials or refuses to supplement the certification materials;

The matter under request for notarization is untrue or unlawful;

The matter under request for notarization violates the social morality; and

The party concerned refuses to pay the notarization fees.

Article 32 A notarial certificate shall be made according to the format as required by the judicial administrative department of the State Council and shall bear the signature or seal of the notary as well as the seal of the notarial office. The notarial certificate comes into effect as of the date of issuance.

A notarial certificate shall be made in the written language commonly used nationwide. In an autonomous area of ethnic minorities, it may be made in the local commonly used ethnic minority language.

Article 33 Where anyone needs to use a notarial certificate outside China, if the country where the notarial certificate is to be utilized requires certification in advance, it shall be subject to the certification of the Ministry of Foreign Affairs of the People's Republic of China or its authorized institution and the China-based embassy or consular office of the relevant country.

Article 34 The party concerned shall pay notarization fees in accordance with the relevant provisions.

ã€€ã€€If the party concerned satisfies the conditions for obtaining a legal aid, the notarial office shall decrease or remit the notarial fees.

ã€€ã€€Article 35 A notarial office shall classify the notarial documents into different categories and keep them as archives. At the expiration of the time period for the preservation of notarial archives of the important matters, which shall be subject to notarization under the law or administrative regulation, the notarial office shall transfer these notarial archives to the local archives for preservation.

ã€€ã€€Chapter V The Effect of Notarization

ã€€ã€€Article 36 The notarized civil legal act, fact and document of legal significance shall be considered as the basis for determining a fact except that there is contrary evidence which is enough to reverse the notarization.

ã€€ã€€Article 37 As to a notarized creditor's right document that states the payment and the commitment of the debtor to accept the forcible execution, if the debtor fails to perform or to properly perform its duties, the creditor may file an application with the jurisdictional people's court for execution.

ã€€ã€€If there's any mistake in the creditor's right document as mentioned in the preceding paragraph, the people's court shall decide not to execute it and serve its ruling upon both parties concerned as well as the notarial institution.

ã€€ã€€Article 38 Where any law or administrative regulation provides that a certain matter has no legal effect unless it is notarized, this law or administrative regulation shall be followed.

ã€€ã€€Article 39 Where an interested party of the party concerned or of a notarized matter considers that there is any mistake in the notarial certificate, it may propose the notarial office that performed the notarial act to review it. If the content of the notarial certificate is illegal or contrary to the fact, the notarial office shall revoke the notarial certificate and publish an announcement, and the notarial certificate shall be invalidated from the very beginning. If there is any other mistake in the notarial certificate, the notarial office shall correct it.

ã€€ã€€Article 40 Where a party concerned or interested party of the notarized matter has any different opinion in respect to the content of the notarial certificate, it may lodge a civil lawsuit in the people's court.

ã€€ã€€Chapter VI Legal Liabilities

ã€€ã€€Article 41 Where a notarial office or any of its notaries commits any of the following acts, the judicial administrative department of the province, autonomous region or municipality directly under the Central Government shall give it a warning. If the circumstance is serious, it shall impose upon the notarial office a fine of 10, 000 up to 50, 000 yuan, shall impose upon the notary a fine of 1, 000 up to 5, 000 yuan, and may give him a punishment of suspending his practice for 3-6 months. If there are any illegal gains, such illegal gains shall be confiscated:

ã€ã€€ï¼ˆ1ï¼ˆ‰Canvassing notarial business by bespattering other notarial offices or notaries, or by paying kickbacks or commissions, or by any other unfair competition methods;

ã€ã€€ï¼ˆ2ï¼ˆ‰Charging notarization fees by violating the prescribed standards;

ã€ã€€ï¼ˆ3ï¼ˆ‰Practicing as a notary in 2 or more notarial offices concurrently;

ã€ã€€ï¼ˆ4ï¼ˆ‰Assuming other paid jobï¼ˆsï¼ˆ‰;

ã€ã€€ï¼ˆ5ï¼ˆ‰Performing a notarial act for himself or his close relative, or performing a notarial act in which he himself or his relative has interests; or

ã€ã€€ï¼ˆ6ï¼ˆ‰Other acts that shall be punished under the law or administrative regulation.

ã€ã€€Article 42 Where a notarial office or any of its following acts, the judicial administrative department of the people's government of the province, autonomous region, municipality directly under the Central Government, or districted city shall give a warning to the notarial office and shall impose upon it a fine of 20, 000 up to 100, 000 yuan, and may give a punishment of suspending business for rectification for 1 up to 3 months. It shall give the notary a warning and shall impose upon him a fine of 2, 000 up to 10, 000 yuan and may give him a punishment of suspending his practices. If there are any illegal gains, such illegal gains shall be confiscated. If the circumstance is severe, the judicial administrative department of the people's government of the province, autonomous region or municipality directly under the Central Government shall revoke the practicing certificate of the notary. If any crime is constituted, it ï¼ˆheï¼ˆ‰ shall be subject to criminal liabilities:

ã€ã€€ï¼ˆ1ï¼ˆ‰ Illegally issuing any notarial certificate;

ã€ã€€ï¼ˆ2ï¼ˆ‰issuing a notarial certificate for any untrue or unlawful affair;

ã€ã€€ï¼ˆ3ï¼ˆ‰embezzling or misappropriating the notarization fees or encroaching upon or steal any articles for the exclusive use of notarization;

ã€ã€€ï¼ˆ4ï¼ˆ‰destroying or fraudulently altering the notarial document or notarial archive file;

ã€ã€€ï¼ˆ5ï¼ˆ‰divulging any state secret, commercial secret or personal privacy it has access to in its practice; or

ã€ã€€ï¼ˆ6ï¼ˆ‰Other acts that shall be punished under the law or administrative regulation.

ã€ã€€Where anyone who purposely commits any crime or commits any position-related crime due to negligence and is thus given a criminal punishment, his practitioner's certificate as a notary shall also be nullified.

ã€ã€€Article 43 Where a notarization office or notary causes any losses to the party concerned or interested party of the notarization matter due to its ï¼ˆhisï¼ˆ‰ fault, the notarial office shall bear the corresponding compensation liabilities. After the notarial office makes a compensation, it may demand the notary with intentional or serious mistake to make a repayment.

ã€€ã€€If there is any dispute over the compensation between the party concerned, interested party of the notarization matter and the notarial office, a civil lawsuit may be initiated in the people's court.

ã€€ã€€Article 44 Where a party concerned or any other individual or organization commits any of the following acts and causes any losses to others, it ï¼ˆheï¼ˆ shall bear the civil liabilities. If the act is in violation of the public security administration, it ï¼ˆheï¼ˆ shall be given a public security administrative punishment. If any crime is constituted, it ï¼ˆheï¼ˆ shall be subject to criminal liabilities:

ã€€ã€€ï¼ˆ1ï¼ˆObtaining any notarial certificate by providing false certification materials;

ã€€ã€€ï¼ˆ2ï¼ˆUsing any false notarial certificate to commit fraudulent acts; or

ã€€ã€€ï¼ˆ3ï¼ˆCounterfeiting, altering or buying or selling any counterfeited or altered notarial certificate or seal of notarial office.

ã€€ã€€Chapter VII Supplementary Provisions

ã€€ã€€Article 45 The embassies ï¼ˆconsular officesï¼ˆ of the People's Republic of China stationed abroad may perform notarial acts pursuant to this Law or the international treaties, which the People's Republic of China has concluded or has acceded to.

ã€€ã€€Article 46 The notarization fee charging rates shall be formulated by the public finance and price administrative departments of the State Council jointly with the judicial administrative department of the State Council.

ã€€ã€€Article 47 This Law shall come into force as of March 1, 2006.

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