

EUROPEAN AFFAIRS COMMISSION
of the
INTERNATIONAL UNION OF NOTARIES
CIVIL LAW – COMMON LAW TASK FORCE

Questionnaire relating to professional status and the work of Notaries

This questionnaire is addressed to all Members of the Task Force. Please answer the questions below according to the position in your own jurisdiction and respond by e-mail to the Secretary by no later than the 31st March day of 2012

1. Which type of legal system do you work in?

® Civil Law

® Common Law

Civil Law.

2. What educational and professional qualifications are required in order that you may become and practice as a Notary in your jurisdiction?

According to the Law on Notaries¹ a person wishing to practice as Notary:

- **must be a citizen of Bosnia and Herzegovina,**
- **must have business competence and meet general health conditions,**
- **must have graduated from a law faculty**
- **must have passed a bar exam**
- **must have at least three years of the experience in legal profession**
- **that the person in question has not been sentenced to a prison sentences for crimes against humanity and of international law, violation of official or other duties or a crime of a premeditated offence, which was not deleted from criminal records by a competent body at the time of appointment and**
- **must have passed the notary examination.**

In the Law on Notaries in Federation of Bosnia and Herzegovina is prescribed another condition that he/she is not a member of a political party.

3. What continuing professional education is required to be undertaken each year to enable you to continue practising as a Notary?

All practising notaries have to attend minimum two professional development courses recognised by the relevant Ministry of Justice each year as the part of their continuing education.

4. Are you able to practice as both a lawyer and a Notary?

Notary have an education equivalent to other law professionals like judges, prosecutors or lawyers. All notaries have passed bar exam and many notaries practised as lawyers or judges prior they started their notarial service, but notary is not allowed to act as a lawyer at the same time. Also, notary's service is incompatible with any paid office or function.

¹ Article 26 para 1 point 7 of the Law on Notaries („Official Gazette of the Republika Srpska“ no 86/04, 2/05, 74/05, 91/06, 37/07, 50/10, 78/11) and Article 32 para 1 point 7 of the Law on Notaries („Official Gazette of the Federation of Bosnia and Herzegovina“ no 45/02)

5. How and by whom are you appointed to the office of Notary?

Selection of a notary is done by means of a competition organized and conducted by the relevant Ministry of Justice. When making selection between several candidates who meet conditions and terms contained in the Law on Notaries, candidate's success at the notary examination has to be given primacy, whereas when selecting between candidates of equal rates national representation of constitutive peoples and others in the seat of the notary shall be taken into account as well.

Attendance at a preparatory seminary by candidates constitutes a condition to take the notary examination. A written Notaries examination is composed of three assignments to be done within four hours. Two out of four assignments are designed to test whether candidates are capable to draw up notary documents in the following legal areas: Law of Obligations and Property Law, Family and Inheritance Law, Business Law, Execution Procedure. The following subject matters may be tested in the third assignment: regulations on notary service, land registry procedure regulations, regulations of registration of legal persons into court registry and business law, inheritance law, family law, law of obligation and property law, and execution procedure.

6. By whom is your Notarial profession regulated?

Notariat as a public service is regulated by the Law on notaries ("Official Gazette of the Republika Srpska" no 86/04, 2/05, 74/05, 91/06,37/07, 50/10 i 78/11), Law on Notaries ("Official Gazette of the Federation of Bosnia and Herzegovina" no 45/02) and Law on Notaries of Brcko District in Bosnia and Herzegovina ("Official Gazette of Brcko District in Bosnia and Herzegovina", no 1/00).

7. In your office as Notary, are you employed by the State/Government or are you in private practice?

The notary service is public service performed by notaries, who are self-standing and independent providers of that service.

8. Is the amount you may charge for your services (tariff) set by the laws of your country?

Tariff is set out in the bylaw issued by the relevant Ministry of Justice.

9. If the answer to 8 is yes, are there any aspects of your work/services which are not subject to prescribed fees?

No there is not

10. Briefly summarise the categories of work which you undertake as a Notary, as well as your usual fields of expertise.

Legal affairs which in order to have legal validity require processing of documents by the notary are: legal affairs related to regulation of property relation between marital partners as well as between persons living in a common law marriage, handling of property of under age and business incompetent persons, legal affairs under which an execution of an action as a gift is promised, legal affairs the subject of which is transfer or obtaining of ownership or other substantive rights over property, founding acts of business companies.

Notary can also: make last will, issue certificates and attestations on different matters, takeover of documents, money and securities for safe keeping and delivery at the instruction of the courts, they perform the tasks which may be delegated to them in accordance with the law (court trustee).

11. In which area of law would you believe that your clients recognize you as the best expert to be consulted?

Contracts and company law.

11. Is the number of Notaries who are allowed to practice in a particular geographic area controlled by law in your country (numerus clausus) and if so, on what basis?

Yes, number of notaries is determined based on the number of inhabitants in the territory of the Republika Srpska or Federation of Bosnia and Herzegovina, taking into account a number of documents processed by notaries annually, whereas as a rule one notary seat should be established for every 20,000 inhabitants. Two or more municipalities with a lesser number of inhabitants may have one notary. When determining a number of notaries as well as their respective official seats, an opinion of the Notary Chamber shall be requested.

12. Do you give legal advice to clients in the course of your practice as a Notary?

Notary can give legal advice related to his work but is not permitted to advise in relation to any contentious matters.

13. Do you hold client money and, if so, how is this protected?

Notary may take over for safe keeping some cash, bonds, cheques, public bonds and other securities. The notary is obliged to keep money and securities taken over separately from his/her own money and securities. Notary is obliged to keep entrusted money in a separate account with a bank or other financial organization, which cannot be accessible in case of compulsory execution against the notary.

Also, notary is obliged to insure himself/herself against liability for damage he/she may cause to third persons by his/her practice.

15. What kinds of Notarial Acts in your jurisdiction have:

- ® Executory Force?
- ® Probative Force?
- ® Neither of the above?

They have probative force but under conditions prescribed in the laws they can have also executory force. (Notary documents are executive documents if they are made in a prescribed format, and if they are compiled on a right of a claim, the subject of which is payment of a specified amount of money or giving a certain quantity of other replaceable things or securities, and the debtor has accepted in the document the execution without delay.)

16. Please specify any areas of work conducted by a Notary which may be delegated to another e.g. a Clerk?

Assistant notary may conduct all work assigned to a certified notary under the law at notary office and under direct supervision by a notary. Assistant notary must not personally sign notary documents or notes on attestations.

It is usual that notary employ clerks to prepare documents and to do technical aspects of the work in notary's office.

18. Please specify any new areas of practice where you believe Notaries in your jurisdiction could provide additional services?

Some non contentious work (like successions) could be transferred from the courts to notarial service. Such possibility is foreseen in different laws but courts do not practice it.

19. How and to whom do you believe that we could advertise the notarial profession in your country?

Notarial profession in our country exists for five years and there is a lot of space to advertise it.

Links for both Notary Chambers in Bosnia and Herzegovina e.g: www.notarrrs.org and www.notaribih.ba should be added to the UINL web site.

20. Do you think that such advertisement would be a benefit to your profession?

Certainly, such advertisement would be a benefit not only for notaries but also for people from abroad that are seeking for notarial services in Bosnia and Herzegovina and especially to the potential foreign investors.