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BOSNIA-HERZEGOVINA

LAW ON NOTARIES

USAID FOSTERING AN INVESTMENT AND LENDER-FRIENDLY
ENVIRONMENT (FILE)

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Law on Notaries

I. Overview of the Law and Implementation Provision

The Law on Notary, which takes effect on March 29, 2004, governs the establishment, selection, conduct and discipline of a new type of professional known as the “notary”.

Based on the German model, the notary in Bosnia will be responsible for handling numerous matters, including the preparation and certification of documents, that was previously the responsibility of the courts and attorneys. In this regard, one of the major goals of the notary profession is relieving the courts of tedious documentary responsibilities.

The cantonal administration agency and the Federation Ministry of Justice are supervising the implementation of the Law. In this regard, the Ministry is required to adopt several implementation regulations. This manual shall be updated, as necessary, to reflect the additional and clarifications provided by the new regulations.

II. General Provisions

A. Basic Qualifications of a Notary

Only persons meet the following conditions may be appointed notary:

- 1) National of Bosnia and Herzegovina;
- 2) Full business capacity and meets general health conditions for a public administration official;
- 3) Graduate from a law school in Bosnia and Herzegovina, or if he graduated before April 6, 1992, from a law school in the former Yugoslavia;
- 4) Passed the bar exam in Bosnia and Herzegovina, or, if he had passed the bar exam before April 6, 1992, in former Yugoslavia. If the bar exam had been passed in another country, this condition is considered met after the Federation Ministry has recognized the exam;
- 5) Not sentenced to imprisonment for committing criminal offenses against humanity and international law, against official or other duty, or for some other premeditated criminal offense that has not yet been expunged from records kept with the responsible agency at the time of appointment;
- 6) No political party affiliation;
- 7) Worked at least five (5) years on legal affairs, or three (3) years as a notary assistant
- 8) Passed the notary exam.

B. Number and Official Territory of the Notary

The number of notaries is determined in accordance with the number of people living in the canton. Typically, one notary position is needed for every 20,000 people. The final decision on the number of notaries required in a particular canton also takes into account the number of documents the notaries’ process per year. Two or three municipalities with fewer people than 20,000 people may share one notary.

The official territory of the notary is the area of the related jurisdiction of the cantonal court. The notary may perform his activities related to issuance of documents only within the

borders of his official territory, except in exceptional cases, when the justified interests of the applicant impose the necessity of operating outside the official territory.

Documents prepared by the Notary in accordance with the provisions of this Law are, however, valid in the whole of the Federation, with all authorities, legal persons and other institutions, regardless of which particular notary has issued them.

III. Duties and Responsibilities of the Notary

A. Mandatory Notary Tasks

Certain legal affairs require notary “processing” in order to be considered legally valid. These include:

- 1) legal transactions on regulating property relationships between spouses, and between persons who live in non-marital community;
- 2) disposal of significant shares of property of a juvenile or person who does not have business capacity;
- 3) legal transactions that promise some action as a gift;
- 4) legal transactions concerning the transfer or acquisition of ownership or other real rights over the real property;
- 5) foundation acts of different business companies and definition of their statutes, as well as any change of the statute; and,
- 6) notary processing provided for in other laws, independent of the Law on Notaries.

B. Additional Notary Tasks

In addition to the responsibilities that that Notary is obliged to perform (See previous section), the Notary may perform other tasks as provided by the Law. Such tasks include:

- 1) undertaking notary processing of a document which does not require notarization under the Law;
- 2) issuing confirmations, and certifying signatures, hand signs and copies; and,
- 3) fulfilling an order issued by court or government agency, such as signing and sealing the inheritance estate and bankruptcy estate; evaluation and public sales (auctions) of movable objects and real estates in non-litigation procedure (particularly in case of voluntary sale); and, division of the sales price in the executive proceedings.

IV. Notary Responsibility Regarding Official Actions

In the performance of his Official Actions, the notary is subject to certain ethical considerations. In this regard, the notary is required to act in certain situations and prohibited from acting in others. Failure to abide by these ethical provisions can lead to disciplinary action, up to and including dismissal.

Notary Required to Act. The notary is obliged take all official actions from the area of his legally defined responsibility, and must not refuse to take action without a valid reason.

Notary must Refuse to Act. The notary is obliged to refuse to take official actions if such action does not fall under the notary’s jurisdiction. The Law emphasizes that this

is particularly critical if the notary is requested to participate in something that is obviously illegal or dishonorable.

Notary Exempt from Acting. The notary is exempt from acting, and therefore must not act, if there is any doubt about his impartiality. The notary's exemption from acting is governed by the provisions of the Law on Administrative Proceedings, regarding the exemption of an official person.

Notary Actions Void. Official actions by the notary, notary assistant, acting notary or deputy notary that are inconsistent with these provisions are considered null and void.

Limitations on Action. The notary must not, when concluding a legal transaction, mediate between the parties or give guarantees or some other security for the party in connection with some official action.

Duty of Confidentiality. The notary is liable to keep what he has learned while performing his service confidential, except in those cases provision by law. The same duty of confidentiality applies to all employees and associates of the notary.

V. Original Documents, Dispatches and Copies

A. Original Documents

A document that is made by a notary in accordance with this Law is considered the "original" document (hereinafter "original"). The original is kept by the notary in his files. In the same file, the notary keeps all other documents he makes while performing his notary service, in accordance with law.

B. Dispatch of Original

When a notary makes an original, he issues a dispatch of the original to the parties. The dispatch of the original must fully correspond in its form, content and other issues to the original, it must be marked as a dispatch, and it may replace the original in legal sense. If the original had been issued, no dispatch may be issued thereupon, but only a copy of the original.

1. Issuing dispatches of Originals

Unless otherwise specifically provided in the original, the dispatch of the original may only be issued to the persons: who are parties to the legal transactions described in the document in their own name; in whose name the legal transaction has been concluded; and to whose benefit the legal transaction has been concluded.

2. Dispatch of the Original for the Purpose of Execution

Dispatch of the original for the purpose of execution may be issued to the persons designated in the original as creditors or heirs of creditors.

Except in cases where all the individuals involved in the transaction (or their legal successors) otherwise agree, only one dispatch of the original may be issued for the purpose of execution.

C. Copies of the Original

Unless otherwise specifically provided in the original, the certified and ordinary copies of originals may be issued to witnesses, persons who are drawing some benefit from the legal transactions, legal representatives or heirs and other universal legal successors to the persons who are drawing some benefit from that legal transaction, whenever they demand so. Such persons shall be allowed to see the documents at any time.

D. Dispatch or Copy of the Original Will

The dispatches or copies of the originals that are related to the last will or provisions in case of death, which originals were made by the notary, or which have been submitted to the notary in writing, except when otherwise stipulated in the original itself, may only be issued to the author while he lives, or to the person he explicitly authorizes to that respect by a certified authorization. After the death of the author, such dispatches or copies of the original may only be issued after the pronouncement of the decisions of the last will. The day of pronouncing the decisions of last will shall be noted on the dispatch or on the copy of the original.

VI. Rules of Procedure on the Method of Notary Work

A. Notary Processing of a Document

Notary processing of a document requires that the document be commemorated in writing, made by the notary, then presented to the parties in the presence of the notaries and approved by the signatures of the respective parties.

1. Counseling Requirements

In processing a document, the notary is required to observe a number of checks and verifications. These steps serve to assure the accuracy and integrity of the original document. Specifically, the notary must:

Legal Capacity. Check whether the parties are capable and authorized to undertake and conclude the legal transaction.

Intentions of the Parties. Examine the intentions or will of the parties, explain the situation, teach the parties on the legal effects of the transactions and formulate clear and unambiguous statements in the form of a notary original. In doing so, the notary must make sure that all confusion and doubts are excluded, so that inexperienced and unskilled parties are not harmed.

Questioning Parties about Documents. The original must be read to the parties in the presence of the notary. This allows the notary to ask direct questions to ensure that the content of the original document corresponds with the will of the parties. Only after the reading of the original will the parties approve the document by personally signing the original. Before the parties sign the document, a statement to the effect that the notary has followed these steps must be entered in the original.

Obligation to Warn and Instruct. The notary has certain limited duties to provide specific counsel to the parties, when language is unclear or imprecise. In this regard, the notary shall warn and give appropriate instructions to any party that wishes to include unclear, imprecise or ambiguous statements into the original document, especially if such language might give rise to disputes or would fall short of achieving the desired effects.

Treatment of Attachments. Any attachments to the document must also be read, except when the parties renounce this right or state that they are familiar with the content of the attachment. This must also be reflected in the original.

2. Documentation Requirements

a. Informational Requirements

In order to be valid, the Law provides that the original must contain certain prescribed information. Specifically, the original must contain:

- 1) Data on the notary participating in compilation of the original (last name, first name, seat of the notary);
- 2) Data on the parties (last name, first name, profession and address), and data on possible witnesses and interpreters/translators;
- 3) The method used by the notary to ascertain the identity of the parties to the document (valid I.D. card, passport, etc);
- 4) Text of the legal transaction, with indication of possible authorizations or attachments;
- 5) A note confirming that the original has been read to the parties, and, if appropriate, that the provisions of this Law regarding deaf, dumb, and blind parties have been adhered to;
- 6) The day, month, year and place, and when so required by law or parties, the hour when the original has been made;
- 7) The signatures of the notary participating in compilation of the original and the parties, and the seal of the notary who has made the original.

b. Preparation Requirements

As further safeguards for ensuring the integrity and accuracy of the original document, the notary must observe a number of requirements in the preparation of the original, and when making any amendments thereto. Briefly, these requirements cover the standards for writing, marking, correcting errors, linking, indicating the documents with several pages, protecting and issuing documents and other issues of relevance for validity of notary documents.

Method of writing originals. The original must be written on a typewriter or other typing device, and be clear and readable. Although not encouraged, an original may be written by hand, but only in permanent ink. An abbreviation may be used in the original, provided such abbreviation is common and generally known. All blank spaces in the text must be filled with hyphens.

Signature and seal. The notary is required to personally sign the original, stating his name and the title “Notary”. Next to the signature, he shall affix his official seal. The parties and the witnesses, if any, shall sign at the end of the original document, but above the notary signature.

Changes and Amendments. Changes and/or amendments to the original shall be made at the end of the document, with an indication of the part of the text to which the changes apply. And changes and amendment made after the original was signed shall be signed by the parties and the notary.

Crossing out words. Nothing may be deleted from the original. If a word needs to be crossed out, it shall be done in such a way that will preserve its readability. The number of crossed out words must be indicated at the end of the original. The parties shall sign such note.

VII. Confirmation of the Identity of the Parties

If the notary does not know the parties personally and by name, he shall confirm their identity by viewing their identification cards, passport, or some other personal document. If identification cannot be made by personal documentation, then identification must be made by another notary or by two witnesses.

In the original, the notary shall mention whether he knows the parties, or the method used to determine their identity. Further, the notary must accurately note the name, profession, and address of the witness, date and number of the document used for confirmation of identity, and the issuing agency of the document.

VIII. Provisions Regarding Witnesses

A. Calling Witnesses

If one of the parties to the transaction is illiterate, two witnesses or another notary must observe the processing of the original. In other cases, the need for witnesses will depend on the notary and parties.

Except where otherwise stipulated by law, the witnesses or other notary must be present when the notary starts reading the original to the parties, and when the parties sign the original.

At the request of the parties, witnesses may be excluded at the time of reading the original, unless specifically provided by law. In such cases, however, the parties must sign the original in the presence of the witnesses and state that they had read the original or had it read to them, and that it corresponds to their will. All this shall be reflected in the notary original.

B. Witness Qualifications

The witness must be an adult who speaks one of the official languages of Bosnia. At least one of the witnesses must know how to read and write. The identity of the witnesses must be certified in accordance with provision regarding identification as set forth in the Law.

The list of persons who may not serve as witnesses include:

- 1) persons who cannot provide valid testimony due to their mental or physical disabilities;
- 2) persons employed by the notary who is performing the official action;
- 3) persons who may benefit from the transaction;
- 4) persons who are related to the party or to the one benefiting from the notary action in any way, or
- 5) persons who are related to the notary himself, in the way that may serve as a basis for exemption of the notary.

IX. Special Accommodation Issues

The Notary must be prepared to deal with all types of people, and still be able to ensure the integrity of the document. In this regard, the Law sets forth specific requirements for dealing with handicapped individuals, and with people who do not speak the local language.

A. Parties with Physical Impairments

1. Literate Persons who are Deaf and Dumb

- 1) A literate party who is deaf must personally read the original, and in an obvious way state that he has read it and that it is in accordance with his will.
- 2) A literate party who is dumb, or who is deaf and dumb, must write on the original by his own hand that he has read that document, and that he approves the content. Such statement must be entered in the original, before the signatures.
- 3) The original must contain an indication whether the foregoing provisions have been acted upon.
- 4) The notary must rest assured that a person of competence can communicate by sign language with the party who is deaf, or the party who is deaf and dumb, and indicate his assurance in the original.

2. Illiterate Persons who are Deaf, Dumb or Blind

- 1) In cases involving an illiterate party who is deaf, or an illiterate party that is deaf and dumb, the notary must call, in addition to the two witnesses, one person who can communicate with him by sign language.
- 2) This person must have the capacity of witness, and does not have to be literate.
- 3) This person may be related to the person with the impairment, if he has no personal interest in the legal transaction the original deals with.

- 4) The notary must rest assured that the person of competence can communicate by sign language with the person with the impairment, and indicate his assurance in the original.

3. Blind, deaf or dumb person

If a party is blind, deaf and dumb, the witnesses must be present when the parties issue a statement on disposal that would be entered into the original; when reading the whole original to the parties; when they were reading it themselves; or when the parties state their agreement and sign the original.

B. Parties that Need an Interpreter

- 1) If any of the parties do not speak one of the official languages, in addition to the witnesses required when a person is illiterate, a court interpreter must also be present. The original shall reflect that this has been done.
- 2) A person employed with the notary may also act as an interpreter, but he also has to have all other qualities of a witness.
- 3) An interpreter is not required if the notary and both witnesses or other notary can speak the particular language. In such cases, the witnesses may not be excluded when reading the original. The original will contain an explanation why an interpreter had not been invited.
- 4) When an interpreter is required, the notary shall try to learn the real will of the party through him, and compile the original in one of the official languages respecting that will, which original will then be translated by the interpreter to the parties. If so demanded by the party, a written translation of the original shall be made, which shall be attached to the original.
- 5) The notary should warn the parties that they may require the written translation and its attachment to the original. The original should reflect whether this was done, and whether the parties have renounced this right.

X. Notary Certifications and Confirmations

The Notary is responsible for certifying documents for use in legal proceedings. Again, the Law itemizes certain steps that the Notary must observe as a means to preserve the integrity of the certification process. The provisions are set forth below.

Certification of a Copy. The notary shall certify only the copies made in the notary office, or using the photocopying machine in the notary office.

Certification of Extracts from Trade or Business Books.

Certification of Signature. The notary may certify that a party has personally signed a writ, or placed his signature on it, or that the signature, which had already been on a writ, was confirmed by the party as his own.

Confirmation on the Time for Presenting the Writs. The time when the writ has been presented to the notary or some other person in the presence of notary shall be confirmed in the writ, with a precise indication of the day, month, year, and if so demanded by the party, the hour too.

Confirmation of a person's life. The notary may confirm that a person is alive if he knows him personally or by name, or when he has determined the person's identity in accordance with the Law.

Confirmation of the Authority to Represent. The notary has power to issue a confirmation on the authority to represent, if such authorization stems from a court or other registry.

Confirmations of other Facts from the Registry. The notary may issue a confirmation on existence or seat of a legal person, on statutory changes and other legally relevant facts if they stem from any public registry.

Confirmation of Conclusions made by Bodies of a Legal Person. The notary may confirm the conclusion of an assembly or meeting of some other body in a legal person.

Confirmation of other Facts. The notary may confirm facts that have taken place in his presence, such as hearings on offers, auctions, drawing or statements of persons on facts and conditions of which the notary himself, or with participation of expert persons, had learned.

XI. Foreign Notary Documents

Notary documents issued in a different country have the same legal effect as the notary documents issued in accordance with this law, subject to reciprocity.

The foreign notary documents may not have the legal effect in the Federation that they do not have in accordance with the law which was applicable on their issuance in that other country.

XII. Safekeeping Responsibilities

A. Documents

The notary is authorized to take possession of all kinds of documents for safekeeping. He may, however, refuse to assume the responsibility for safekeeping a document for just cause.

An original shall be made at the time the notary takes possession of the document. Such original shall indicate the place and time of the takeover, last and first name, profession and address of the person giving over the document, the reason for depositing it and to whom the document should be issued. Both the person who submitted the document and the notary shall sign the original. The notary shall fix his official seal on the original.

B. Cash and Securities

The notary may accept for safekeeping cash, bills of exchange, checks, government bonds and other securities. Upon taking possession of cash and securities, the notary shall compile a

notary original for the purpose of delivering them to a designated person, or for depositing them with appropriate government agencies.

C. Separate Keeping

The money and securities in the possession of the notary for the purposes of safekeeping shall be maintained separately from the notary's own money and securities, in a separate envelope, where he shall write the file and the name of the party. The notary must keep the money entrusted to him on a separate account with a bank or another financial institution, which may not be available in case of forced execution against the notary.

D. Obligation to Surrender and Return

The notary shall immediately surrender the money and securities in his possession to the government agency or person to whom he was supposed to surrender them after he had established his identity. The recipient shall confirm the receipt on the file or in the book of deposits.

If the notary cannot perform the surrender within the specified time, he may, after the lapse of that time, or, if the time has not been restricted, but not later than fifteen (15) days from the day of taking possession, immediately return the valuables to the party, or, if this is not possible, he may surrender them to the responsible judge for safekeeping and notify the surrenderor thereupon by a registered letter, or in some other reliable way.

The deposit with the notary has the effect of a court deposit.

XIII. Fee for work and reimbursement of expenditures

Notaries are entitled to a fee for their work, and to reimbursement of expenses incurred in connection with the work performed. Payment of fees and reimbursement for expenditures shall be made after the completion of the job. The notary may, however, also request an appropriate advance at the time of accepting the job. The notary has the obligation to issue a receipt for the fee and reimbursements that have been paid.

Fees for work will be charged in accordance with a tariff of fees and reimbursements. The Federation Ministry on proposal by the Notary Chamber shall define the tariff on the fees and reimbursements to the notaries.

XIV. Notary Selection, Operation of the Notary Office

A. Notary Exam

A person, who meets the qualifications to become a notary pertaining to education, experience, moral character, and citizenship, may submit an application to the Federation Ministry of Justice to take notary exam.

The exam has both oral and written portions. The written portion covers the law on obligations and law on property rights, family and heritage law, commercial law, and executive law. The oral portion covers those parts of the various laws and regulations that affect the work of the notary. In this regard, the oral exam may cover the regulations on the notary service, regulation on land-book procedures, regulations on entry of legal persons into

the court registry and commercial law, heritage law, family law, obligation law and law on property rights, which affect the work of the notary.

B. Selection of the Notary and Commencement of Work

Selection of notaries is made by the head of the cantonal administration agency, with the consent of the Federation Minister of Justice. The process is competitive, and the competition must be advertised in at least one daily newspaper and in the “Official Gazette of the Federation BiH” and the official gazette of the canton.

Only those candidates who are by their work and human qualities worthy of the dignity of notary service may be selected to the notary position.

On appointment as notary, the notary takes an official oath, and then receives the charter on appointment from the cantonal administration agency. The Federation Minister of Justice shall determine the format and content of the charter.

The notary starts to work when he meets certain specified conditions, but not later than 60 days from the day of receiving the Charter on Appointment. In justified cases, the head of the cantonal administration agency may extend this deadline.

C. Notary Office

To ensure the notary office runs smoothly and efficiently, the Law provides for the positions of notary assistant, a deputy notary and an expert associate.

1. Notary Assistant

The notary assistant works in the notary office as a trainee, with the expectation that he will take the notary exam and work as a notary in the future. The notary assistant must be a citizen of Bosnia and Herzegovina, who has passed the bar exam in Bosnia or the former Yugoslavia. The notary assistant works and trains in the notary office for a period of not less than three (3) years. The notary assistant may perform all of the jobs a notary is authorized to perform by law, provided that the notary assistant is under the direct supervision of the notary.

2. Deputy Notary

If the notary is unable to perform his duties for more than one month, he must make a request to the cantonal administration agency for the appointment of a deputy notary. In cases of temporary suspension of the notary, the deputy notary may be appointed without request.

Only a notary assistant or other notary may be appointed a deputy notary. The deputy notary provides the same services as a notary during the time the notary is unable to perform his duties.

A party who has suffered damage due to violation of official duty committed by the deputy notary, may hold responsible, in addition to the deputy notary, the notary as a joint debtor.

3. Expert Associate

A notary may hire an expert associate to assist in the notary office. The expert associate must have passed the bar exam.

XV. Notary Termination, Dismissal and Discipline

A. Notary Termination

Service as a notary ends with the death of the notary; the notary turning 70 years of age; by a written resignation of the notary; upon the conviction of the notary of a stipulated criminal offense which was committed with premeditation; if the notary fails to start working within the deadline specified by the Law (without a valid reason); or upon the day when a disciplinary body revokes the notary's right to perform notary services.

The head of the cantonal administration agency makes the decision on termination of notary service, when the reason for termination of service occurs.

B. Notary Dismissal

A notary shall be dismissed upon the occurrence of any one or more of the following:

- 1) if the legally prescribed requirements for performing notary services cease to exist;
- 2) if it is determined subsequently that such prerequisites had not been met at the time of appointment;
- 3) if the notary establishes a working relationship or performs some other service not specifically permitted by the Law,
- 4) if the notary starts receiving an age or disability pension;
- 5) if the notary has been deprived of or restricted in his business capacity by a court decision;
- 6) if due to a physical disability, physical or mental weakness or illness he becomes permanently incapable of performing his service properly;
- 7) if his business relations or method of conducting the notary business, or his material circumstances bring the interests of the parties into jeopardy;
- 8) if he has not concluded the liability insurance policy by making an insurance contract, or is not paying the insurance fee to the Notary Chamber; or,
- 9) if he has not attended at least two courses for professional development of notaries per year, which courses are recognized by the Federation Ministry.

The head of the cantonal administration agency shall make the Decision on dismissal after consultations with the Notary Chamber. The notary must be informed of the bases of his possible dismissal and given an opportunity to respond before the decision is made.

C. Other Disciplinary Provisions

The Law contains a series of other disciplinary actions and remedial actions for dealing with Notary performance issues, including the loss of the right to use the official name; temporary suspension from notary service, and the appointment of an acting notary.

D. Acting Notary

When the service of a notary has been terminated, the cantonal administration agency may, without public competition, appoint an acting notary. The mandate of the acting notary lasts until the appointment of the new notary, but not more than six (6) months. The task of the acting notary is to continue the official action of the notary office. In this regard, he takes over all files, book and other documents of the notary office.

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