



The Notarial System

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Notarisation refers to the activity of the State notarial department that, upon application of any party concerned, certifies the authenticity and legality of legal actions, legal documents and legal facts. The notarial system is a preventive system of judicial certification established by the State to ensure the correct enforcement of the law, prevent disputes and safeguard lawful rights and interests of citizens and legal persons.

Notarisation has the following characteristics in law: (1) notarisation is an activity of certification conducted by the notarial department on behalf of the State; (2) notarisation is an activity of certification conducted by the specialised department of the State in accordance with law; (3) notarisation is an activity of certification conducted in accordance with the procedures specified by law.

(I) The Scope of Business of the State Notarial Department

The scope of business of the State notarial department refers to the functions and powers of the State notarial department to handle legal matters of notarisation in accordance with law. According to the provisions of Article 4 of China's Interim Regulations Concerning Notarisation, the scope of business of the notarial department includes: (1) to certify contracts (legal deeds), powers of attorney, wills; (2) to certify the right of inheritance; (3) to certify donation of property and certify partition of property; (4) to certify the relationship of adoption; (5) to certify a family relationship; (6) to certify identity, record of education, and personal experience; (7) to certify a person's birth, marital status, existence and death; (8) to certify the authenticity of signatures and seals on documents; (9) to certify the conformity of duplicates, abridged versions, translations, and photo-offset copies of an original; (10) to certify the effect of compulsory execution of documents concerning the claim for repayments of debt and articles in the event that such documents are considered to be unequivocal; (11) to be responsible for the preservation of evidence; (12) to be responsible for the safekeeping of wills or other documents; (13) to draft, on behalf of a party, a document of application for notarisation; (14) to handle other notarial matters in accordance with the application of the party concerned and international practice. In addition, the Rules on Notarial Procedures (For Trial Implementation) promulgated on December 12, 1990 prescribe notarial services for invitation for bidding, bidding, drawing lottery, auctions and a debtor's submission of the subject matter of an obligation to competent authorities.

(II) The Basic Principles of Notarisation

Basic principles the notarial department should observe in notarisation serve as the basis and criterion the notarial department adopts to carry out notarisation, and fully reflect the nature and characteristics of China's notarial system. (1) The principle of authenticity and legality. As provided by the Interim Regulations Concerning Notarisation, notarisation means that the State notarial department, upon application of any party concerned, certifies, according to law, the authenticity and legality of legal actions, legal documents and legal facts. The notary office shall refuse to certify false or illegal statements and documents. (2) The principle of combining voluntary notarisation and compulsory notarisation. Voluntary notarisation means that the notarial department handles notarisation on voluntary application by the parties. The notarial department has no power to compel the parties to apply for notarisation, or to carry out notarisation forcibly on matters for which the parties have not made application. Compulsory notarisation means that the parties shall apply for notarisation and the notarial department shall carry out notarisation in accordance with law, with regard to legal actions, legal documents and legal facts that take legal effect through notarisation as provided by laws or regulations. (3) The principle of direct examination. This principle means that the notaries shall meet the parties, examine notarial matters and relevant evidentiary materials, possess firsthand materials, and find out the real intention of the parties before they make decisions on whether or not to certify the matters. (4) The principle of confidentiality. The Rules on Notarial Procedures (For Trial Implementation) provide that the notaries shall keep confidential the secrets of the State and of the parties when handling notarial matters. (5) The principle of recusal. Recusal in notarial activities means that the notaries shall not handle notarial matters that they themselves or their relatives have interests or other relations in, so as to prevent the notaries being biased in notarisation, committing illegalities for personal interests or by fraudulent means, and making an unfair and illegal decision. (6) The principle of convenience. The principle of convenience means that the notarial department shall handle notarial matters in a timely, accurate and

efficient way within the limits permitted by law and out of consideration for the convenience of the persons concerned and the parties. (7) The principle of adopting Chinese and languages of ethnic minorities. The Rules on Notarial Procedures (For Trial Implementation) prescribe that notarial documents shall be prepared in Chinese. In areas where people of minority nationalities live in concentrated communities or where people of several nationalities live together, notarial documents may be prepared in the written languages commonly used by the local nationalities, except for notarial matters involving foreign interests.

(III) The Notarial Department and Notaries

The notarial department is the department specially established by the State to perform the notarial functions and powers of the State in accordance with law and conduct notarial certification activities on behalf of the State. The form of organisation of the notarial department is the notary office established by the State in each locality. According to the provisions of the Interim Regulations Concerning Notarisation, the notary office shall be set up in municipalities directly under the Central Government, counties, autonomous counties, and municipalities; with the approval of the judicial administration department of the province, autonomous region or municipality directly under the Central Government, a municipal district may also set up a notary office; the notary office shall have a notary or notaries and assistant notaries; when necessary, it may have a director and deputy director; the position of director and deputy director shall be assumed by notaries; the director and deputy director shall direct the work of the notary office, and must also execute the duties of notaries.

According to the Interim Regulations Concerning Notarisation and other relevant provisions, a notary shall meet the following requirements: (1) to adhere to the Four Cardinal Principles, uphold the leadership of the Communist Party of China, love the socialist motherland, observe laws and discipline, be in good health, and have fine professional ethics; (2) to be a citizen of the People's Republic of China who has reached the age of 18, has full capacity for civil conduct, and has not been deprived of the right to vote and stand for election; (3) to have graduated at least from a specialized course of an institution of higher education and possess necessary professional knowledge of law; (4) to have work experience in law as required; (5) to have been specially tested or examined as qualified. Since 1992, the Ministry of Justice has organised the uniform examination for the qualification as a notary and granted the qualification as a notary according to the uniform standards. Since 2002, notaries have been selected from those who pass the uniform national judicial examination.

(IV) Jurisdiction of Notarisation

Jurisdiction of notarisation refers to division of functions and powers to handle notarial matters among notary offices. Functions and powers of a notary office to handle notarial matters within the limits prescribed by law constitute its jurisdiction. In accordance with law, a notary office only handles notarial matters within its jurisdiction and may not handle notarial matters beyond its jurisdiction. Jurisdiction of notarisation is, in the first place, to define the limits of powers of a notary office to handle notarial matters and prevent notary offices shirking or fighting for notarial business each other as a result of jurisdictional confusion, and in the second place, to make it clear to the parties to which notary office the parties apply for notarisation. Jurisdiction of notarisation is determined on the basis of the following principles: first, it is convenient for the parties to apply for notarisation in their neighbourhood; second, it is convenient for the notarial department to handle notarial matters; third, a principled stand is combined with flexibility. According to relevant provisions, jurisdiction of notarisation is classified into territorial jurisdiction, coordinated jurisdiction, designated jurisdiction and exclusive jurisdiction.

(V) The Effect of Notarisation

The effect of notarisation refers to the effect and binding force of notarial certification in law. Because notarial documents are the fruits of notarial certification activities, the effect of notarisation is the same as that of notarial documents. In accordance with laws and regulations, notarisation possesses the following three basic legal effects. (1) The effect of evidence. The effect of notarisation as evidence refers to the effect of certifying the authenticity and legality of the subject matter of notarisation, and thereby notarisation can be directly taken as the basis on which the facts are ascertained. According to the Civil Procedure Law, notarial certification obviously has higher effect of evidence in litigation than that of ordinary certifying documents provided by units or individuals. Unless there is evidence to the contrary sufficient to invalidate the notarisation, the people's court may directly take it as the basis for ascertaining the facts without determining its validity through examination. (2) The effect of validating legal actions. The effect of notarisation validating legal actions means that notarisation becomes one of indispensable conditions for establishment of legal actions. That is, a legal action is legalised by notarisation or the legal action cannot be established and take effect without notarisation, as provided by laws, regulations or rules or as agreed upon by the parties. (3) The effect of compulsory execution. If the debtor fails to act, within the specific time limit, in accordance with the stipulations of the document concerning creditor's rights which has been rendered compulsory by notarisation, the creditor may directly apply to a people's court which has jurisdiction for execution without trial in court.

Notarial procedures are the legal basis on which the notarial department and the parties in notarisation carry out notarial activities, and are the basic rules they should follow in conducting notarial activities. According to the provisions of the Rules on Notarial Procedures (For Trial Implementation), notarial procedures are divided into the following three basic stages. (1) Application and acceptance. Application is an act of a citizen, legal person or other organisation that requests the notarial department to handle notarisation. Application is the major basis on which the notarial department handles notarial matters and marks the beginning of notarial activities. Acceptance is an act of a notary office that accepts the applications of citizens, legal persons or other organisations for notarisation and agrees to handle the matters. Acceptance marks the beginning of notarial activities of notary offices.

(2) Examination. Examination means that a notary office, after accepting the application and before preparing a notarial document, inquires into and checks, in respect of law and the facts, the matters for notarisation upon application by the parties and relevant certifying materials they submitted. The notary office mainly examines the following particulars: 1) the number, identity, qualification and capacity for civil conduct of the party; 2) the intention expressed by the party and his corresponding rights; 3) whether the actions, facts or documents for notarisation are authentic and legal; 4) whether the texts of the documents for notarisation are prefect, the wording is exact, and the signature and seal are complete; 5) whether the certifying materials provided by the party are authentic and complete.

(3) Issuance of notarisation. Issuance of notarisation means that the notary office, upon examination, prepares and issues a notarial document within the specific time limit, with regard to those notarial matters that meet the conditions prescribed by law. Issuance of notarisation is the result of notarial activities conducted by the notarial department at the final stage of notarial procedures, and plays a significant role in the process of notarisation.

Chapter IX Judicial Cooperation Between China and Foreign Countries and Systems Concerned

It is necessary for China to develop judicial cooperation with various countries in its reform and opening-up process. With disputes and cases involving foreign-related or transnational matters increasing, China has been establishing judicial cooperative relations on the basis of equality and reciprocity with various countries and accepting and adopting the internationally accepted rules of judicial cooperation, with a view to ensuring that the relevant proceedings and judicial activities be handled and conducted justly in time and protecting the legitimate rights and interest of the relevant parties.

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