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# Recommendations for the Shortcomings of Notary Office Establishment

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NGUYEN THI BAO ANH<sup>1</sup> AND PHAN THI KIM TUYEN<sup>2</sup>

## ABSTRACT

*The policy of socializing notarial activities has been strongly affirmed in the 2014 Law on Notarization. Its orientation is that notary bureaus will be converted into notary offices or dissolved if it is not necessary to maintain them. In addition, the preferential and supportive policies of the State in the establishment of notary offices in areas with difficult and extremely difficult socio-economic conditions; Notary bureaus are only newly established in areas where there are no conditions for the development of notary offices. With the policy of socialization and support policies to promote the development of notary offices, the model of subsidized notarization in Vietnam will be narrowed and replaced by the model of free practice notarization in the future. Although the Law opening more chances and brings more benefits for both notary office and clients, it has still faced some challenges. This study will analyze and compare the relevant laws to recommend the solutions.*

**Keywords:** Notary office, office establishment, socialization, improvement.

## I. INTRODUCTION

Law on Notarization No.: 82/2006/QH11 (the 2006 Law on Notarization) passed by the 11th National Assembly of the Socialist Republic of Vietnam at its 10th session on November 29, 2006, effective from July 1, 2007, is a step to concretize the above-mentioned policy. This is the first law marking the introduction of a new business field, which is a notarization service business and a type of business that provides notarization services called notary offices. It is familiar to some countries in the world, but it is entirely new and untested in Vietnam. After the implementation of the 2006 Law on Notarization, several problems have arisen in the organization and operation of notary offices that have not been anticipated and regulated in this Law. It leads to a lack of legal basis and difficulties in implementation<sup>3</sup>. To overcome these limitations and inadequacies, on June 20, 2014, the 13th National Assembly of the Socialist Republic of Vietnam, at its 7th session, approved the Law on Notarization No.: 53/2014/QH13 (the 2014 Law on Notarization). The policy of socializing notarial activities has been strongly

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<sup>1</sup> Author is an Associate Professor at School of Law, Can Tho University, Vietnam, India.

<sup>2</sup> Author is a Tran Minh Tri Law firm, Can Tho, Vietnam, India.

<sup>3</sup> Nguyen Van Mich (2018), "Shortcomings of Vietnam's law on the transfer of notary offices", Journal of Law (6), pp. 31-34.39.

affirmed in the 2014 Law on Notarization. Its orientation is that notary bureaus will be converted into notary offices or dissolved if it is not necessary to maintain them. In addition, the preferential and supportive policies of the State in the establishment of notary offices in areas with difficult and extremely difficult socio-economic conditions; Notary bureaus are only newly established in areas where there are no conditions for the development of notary offices. With the policy of socialization and support policies to promote the development of notary offices, the model of subsidized notarization in Vietnam will be narrowed and replaced by the model of free practice notarization in the future.

It can be said that the introduction of the two above-mentioned laws has established a legal corridor and facilitated the professionalization of notarial activities in Vietnam. Notarization is considered a service activity rather than a mere administrative procedure; it contributes to ensuring legal safety for civil and economic transactions, meeting the needs of the people in the socialist-oriented market economy; it makes an important contribution to the process of administrative and judicial reform in Vietnam; it reduces the burden on state payroll and budget; it creates a favorable and reliable legal environment for investment, business and trade activities during the international economic integration. However, besides the achieved results, the 2014 Law on Notarization has had some limitations and inadequacies in both theoretical and practical aspects. It is necessary to continue studying to improve the notarization regime in Vietnam further, meeting the practical requirements.

In addition to the achieved results, the current application of the Law on Notarization has revealed certain limitations and inadequacies. For instance, standard conditions for establishing a notary office in each place are different, leading to arbitrary and unequal application in localities; there are cases where conditions are set to limit the establishment affecting the policy of socialization; the lack of regulations on the order of partnership membership termination (compared to the Law on Enterprises) of the Notary Office has destabilized and affected the operation of the remaining members; the compulsory regulation on the conversion of notary bureau, or the change of the notary office name due to the change of the notary office head or the general partner has caused the loss of the brand because it is also the property value of the enterprise, etc.

In addition, it is essential to learn practical experience from other countries in establishing notary offices to acquire appropriate factors selectively, contribute to the improvement of domestic law, and establish a stable and sustainable system of notary offices in Vietnam. Moreover, in a market economy, the right to freedom of business, including the freedom to choose the type of enterprise and partners, must be recognized and expanded to the maximum

if there is no effect on the rights and interests of other subjects in society. There is no exception for notarial activities. It requires theoretical and practical research on the establishment of notary offices. It is to form a scientific basis for the improvement of the law on the establishment of notary offices in Vietnam, especially when the socialization of notarial activities is promoted.

## **II. PROVISIONS ON NOTARY OFFICE ESTABLISHMENT**

### **(A) Provisions of establishment**

Article 18 of the 2014 Law on Notarization stipulates principles of establishment of notarial practice organizations as follows<sup>4</sup>:

1. The establishment of a notarial practice organization must comply with the 2014 Law on Notarization.
2. Notary bureaus may be established only in areas where conditions for the development of notary offices are not available.
3. Notary offices established in areas with difficult or extremely difficult socio-economic conditions are entitled to preferential policies prescribed by the Government.

The Government guides in Article 16 of Decree No. 29/2015/ND-CP dated March 15, 2015, on the elaboration of and guidelines for the Law on Notarization as follows<sup>5</sup>:

“Article 16. Preferential policies for notary offices established in areas with difficult or extremely difficult socio-economic conditions

1. Notary offices established in areas with difficult or extremely difficult socio-economic conditions are entitled to the following preferential policies:

- a) Tax incentives prescribed by regulations of law on corporate income tax;
- b) The right to lease office buildings at concessional rates, borrow office buildings and be provided with support for working equipment for the first 03 (three) years of operation.

2. Provincial-level People’s Committees shall consider and decide on specific support measures specified at Point b, Clause 1 of this Article and other support measures for notary offices established in areas with difficult and extremely difficult socio-economic conditions.” In particular, the extremely difficult areas are specified in Appendix II: List of investment incentive areas attached to Decree No. 118/2015/ND-CP dated November 12, 2015, by the

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<sup>4</sup> Article 18 of the 2014 Law on Notarization

<sup>5</sup> Article 16 of Decree No. 29/2015/ND-CP dated March 15, 2015 on the elaboration of and guidelines for the Law on Notarization.

Government on the elaboration of and guidelines for the implementation of the Investment Law. This is one of the solutions that the state wants to affect the distribution of notary offices established extensively in districts of the provinces to facilitate the notarization needs of organizations and individuals, reduce travel costs and time, promote transactions, and contribute to promoting socio-economic development in these areas besides other policies. However, most notary offices are currently interested in the market mechanism and the rule of supply and demand. It leads to a small number of transactions, low fees, and low profits, making it difficult to cover office activities. Therefore, no notary wants to establish a notary office in areas with difficult or extremely difficult socio-economic conditions.

### **(B) Conditions for establishment**

To continue implementing the policy of socializing and facilitating notarial activities, in addition to maintaining the existence of the notary bureaus as public non-business units, the 2014 Law on Notarization has recorded the activities of “notary offices” established by notaries in the private sector existing in parallel with the State notary bureaus<sup>6</sup>. Accordingly, the establishment of notary offices must comply with the provisions of the 2014 Law on Notarization and the Master plan for the development of notarial practice organizations approved by the Prime Minister. Article 22 of the 2014 Law on Notarization stipulates the conditions for notary office establishment, including<sup>7</sup>:

#### **First: Conditions on the type of business**

According to Clause 1, Article 22 of the 2014 Law on Notarization, notary offices are established as partnerships<sup>8</sup>.

However, a notary office must have at least two notaries as its partners. Notary offices have no capital contributors.

#### **Second: Conditions on legal representatives of notary offices**

- The legal representative of a notary office shall act as its head. The head of a notary office must be a notary who is its partner and has practiced notarization for at least two years.
- Criteria for notaries are specified as follows:

A Vietnamese citizen who permanently resides in Vietnam, observes the Constitution and law,

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<sup>6</sup> Le Thi Thu Ha, Textbook of Notarial Skills, Judicial Publishing House, 2010

<sup>7</sup> Article 22 of the 2014 Law on Notarization

<sup>8</sup> Clause 1, Article 22 of the 2014 Law on Notarization

has good ethical qualities, and fully satisfies the following criteria shall be considered for appointment as a notary:

- + Having a bachelor's degree in law;
- + Having performed legal work at agencies or organizations for at least five years after obtaining a bachelor's degree in law;
- + Having graduated from a notary training course as prescribed in Article 9 of this Law or completed a notary re-training course as prescribed in Clause 2, Article 10 of the 2014 Law on Notarization;
- + Meeting requirements on notarial practice probation results;
- + Being physically fit for notarial practice.

(According to Article 8 and Clause 2, Article 22 of the 2014 Law on Notarization)<sup>9</sup>

### **Third: Conditions on notary office names**

The name of a notary office is specified in Clause 3, Article 22 of the 2014 Law on Notarization, specifically:

The name of a notary office must contain the words “notary office” followed by the full name of its head or another notary being its partner as agreed by all notaries who are partners, and must not be identical to or cause confusion with those of other notarial practice organizations and violate national historical and cultural traditions, ethics and fine customs.

### **Fourth: Conditions on notary office facilities**

Clause 1, Article 17 of Decree 29/2015/ND-CP dated March 15, 2015, on the elaboration of and guidelines for the implementation of the Law on Notarization, stipulates the facilities of the notary office as follows:

The private notary office must have a specific address, working places for notaries and employees that have sufficient area according to regulations of law on standards and norms of office buildings of public service agencies, places for receiving clients, and storing notarial documents.

### **Fifth: Conditions on notary office seals**

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<sup>9</sup> According to Article 8 and Clause 2, Article 22 of the 2014 Law on Notarization

- Notary offices may have their seals and accounts. They shall operate on the principle of financial autonomy, with their revenues coming from notarization charges, notarization remuneration, and other lawful sources.
- Notary offices shall use seals bearing no national emblem.
- Notary offices may have their seals carved and use them after obtaining establishment permission decisions. Procedures and dossiers of request for permission for seal carving and management and use of seals of notary offices must comply with the law on seals.<sup>10</sup>

### **(C) Procedure**

Article 23 of the 2014 Law on Notarization stipulates the establishment and registration of notary offices as follows<sup>11</sup>:

In order to establish a notary office, notaries who jointly establish a notary office shall compile a dossier of requests for the establishment of a notary office and submit it to the provincial-level People's Committee for consideration and decision. A dossier of requests for the establishment of a notary office must comprise a written request (Application for the establishment of a notary office shall comply with Form TT-CC-08 specified in Article 30 of Circular No. 01/2021/TT-BTP dated February 3, 2021, by the Minister of Justice on the elaboration of and guidelines for the implementation of Notarization Law); a scheme on the establishment of the notary office (clearly stating the necessity to establish the notary office, its expected organizational structure, name, personnel, location, physical conditions, and implementation plan); and copies of appointment decisions of notaries jointly establishing the notary office.

Within 20 days after receiving a complete and valid dossier of requests for the establishment of a notary office, the provincial-level People's Committee shall consider and decide to permit the establishment of the notary office; in case of refusal, it shall issue a written reply clearly stating the reason.

Within 90 days after receiving the decision permitting its establishment, the notary office shall register its operation with the provincial-level Justice Department of the locality where the establishment decision is issued.

The contents of operation registration of a notary office include the name of the notary office, full name of its head, address of its head office, list of notaries being partners, and list of contractual notaries of the notary office (if any).

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<sup>10</sup> Clause 1, Article 17 of Decree 29/2015/ND-CP dated March 15, 2015

<sup>11</sup> Article 23 of the 2014 Law on Notarization

Within ten working days after receiving a complete operation registration dossier, the provincial-level Justice Department shall issue a written operation registration to the notary office; in case of refusal, it shall issue a written reply clearly stating the reason.

A notary office may conduct notarial activities when it is granted a written operation registration by the provincial-level Justice Department. Also, it shall publish information in a central or local newspaper within 30 days after receiving a written operation registration. The provincial-level Department of Justice shall notify the tax agency, statistics agency, provincial-level Public Security Department, and the People's Committee of the district, town, or provincial city and the People's Committee of the commune, ward, or town where the notary office is located.

### **1. Current status of legal application and recommendations for improvement of legal provisions on the establishment of notary offices**

The implementation of socialization and the abolition of planning in notarial activities will increase the number of established notary offices in the future. However, the provisions of the applicable law on the establishment of notary offices have had some inadequacies and limitations, which makes it difficult for notaries who wish to establish notary offices.

## **III. CONDITIONS ON THE TYPE OF BUSINESS**

### **(A) Status of legal application**

Regarding the type of notary office, according to the author, it is inappropriate that the applicable law allows notary offices to organize and operate as partnerships and only have general partners without limited partners. The 2006 Law on Notarization stipulates that notary offices are established and operate as private enterprises. However, the 2014 Law on Notarization has eliminated such regulation. The amendment, supplementation, or cancellation of transaction contracts must be carried out by the notary office that certified such contracts and transactions to maintain the activities of notary offices in the certification of contracts and transactions<sup>12</sup>. Therefore, for a notary office established as a private enterprise with only one notary, when such notary dies or is ineligible to practice, the operation of such notary office may be suspended or terminated. Then, the amendment, supplementation, or cancellation of transaction contracts will not be performed. It leads to the legitimate interests of the notary requesters not being guaranteed because they must wait until the legal issue of the notary office is resolved to continue<sup>13</sup>.

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<sup>12</sup> Clause 2, Article 51 of the 2014 Law on Notarization

<sup>13</sup> Dang Van Dinh, *Notary office establishment - Situation and solutions*

[https://tapchitoaan.vn/thanh-lap-van-phong-cong-chung-thuc-trang-va-giai-phap-hoan-thien-quy-dinh-cua-phap-](https://tapchitoaan.vn/thanh-lap-van-phong-cong-chung-thuc-trang-va-giai-phap-hoan-thien-quy-dinh-cua-phap)



In fact, after five years of implementing the Law on Notarization No.: 82/2006/QH11 dated November 29, 2006 (2006 Law on Notarization), 487 notary offices have been established in Vietnam, of which 352 notary offices operate as private enterprises and 135 notary offices operate as partnerships. Thus, it shows that the percentage of notary offices operating as private enterprises accounts for over 72% of established notary offices, 2.6 times higher than that of notary offices operating as partnerships. Remarkably, Vietnam has 60/63 provinces and municipalities with established notary offices, but 43/60 provinces and municipalities do not have notary offices organized and operated as partnerships<sup>14</sup>. Thus, based on the correlation between the partnership model and the private enterprise model, the type of partnership has not been prioritized for application to notary offices in Vietnam. Notaries favor the private enterprise model. However, the 2014 Law on Notarization has “killed off” and allowed notary offices to organize and operate as private enterprises.

There is a view that notarization is an activity of providing public services, which is for social service and not for profit purposes. Those who follow this viewpoint also believe that: *“A notary office is a “trust-based” rather than a “capital-based” organization. Notaries work based on prestige rather than on the number of contributed capital. If there are limited partners, it will not guarantee the objectivity of the notary office because they may use their capital contribution to govern, control, or “force” the notaries to perform wrongful or unqualified notarization.”*<sup>15</sup> Contrary to the above-mentioned view, the opposite view is that the notary office is also an enterprise because a notary must invest on its own, without state subsidies. Hence, even if the public service is provided, the operation of the notary office cannot fail to take into account the profit factor. Profit is probably the first goal that notaries aim at when establishing or receiving the transfer of notary offices. The potential risks in notarial activities trade off profit. Notary offices operating for not-for-profit purposes will directly contradict the regulations on allowing notary offices to hire notaries to work and the regulation on auctioning the right to receive the conversion of notary offices or transfer notary offices. The author agrees with this view because no one contributes capital to establish notary offices, receive the transfer of notary offices, or receive the conversion of notary bureaus for no profit.

It can be said that a partnership is a closed company and the least sustainable company type because its establishment is based on the relationship and trust between the partners and is

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luat9304.html accessed on September 22, 2023

<sup>14</sup> Ministry of Justice (2013), *Report on 5 years of implementing the Law on Notarization*, Report No.: 105/BC-BTP, May 13, 2013;

<sup>15</sup> Ministry of Justice (2013), *Report on 5 years of implementing the Law on Notarization*, Report No.: 105/BC-BTP, May 13, 2013;

bound by the infinite and joint liability regulations of the partners for the company's property obligations. The "partnership" will be easily broken<sup>16</sup> when a notary, as its partner, dies, dismisses, or does not continue to practice, leading to the notary office not maintaining operations.

In addition, if the notary office is only allowed to organize and operate as a partnership with at least two notaries being its partners, the number of notaries will not be enough to meet the needs of establishing notarial practice organizations, especially in areas with difficult socio-economic conditions. In addition, it can be seen that the addition of partnership notaries becomes even more difficult. This is because the supplemented partnership notaries shall inherit and bear joint and infinite liability for damages and violations in notarization performed by colleagues before. The liability of partnership members is also specified in Article 177 of the Law on Enterprises 2020. The law stipulates that notary offices are only allowed to organize and operate as a partnership with all its characteristics, i.e., the notaries, being its partners, are infinitely and jointly liable for the property obligations of the notary office. Any mistake from a partnership notary makes other notaries jointly liable.<sup>17</sup> The partnership notary may only abdicate liability if other notaries have exceeded their representative authority<sup>18</sup>. The principle of partnership is equality between partners in internal relations as well as external relations. In other words, in a partnership, neither of the general partners has higher authority than the others or is subject to management and supervision from other general partners. Moreover, establishing a mechanism to monitor compliance with the law and ethical codes for notaries is very difficult, not to say impossible. It means that partnership notaries must bear the risks due to other partnership notaries in notary offices.

The 2014 Law on Notarization stipulates that notary offices operate as a partnership and with no capital contributors. It once again shows inadequacy in "imposing" the operating model for notary offices. Investment activities in the fields are mostly investment and business activities, so it is undeniable that the profit targets of investors when they invest capital and business. Notarization is no exception because a notary office is also a type of enterprise. The operation based on the principle of financial autonomy and profit is probably the first goal that notaries aim at when establishing or receiving the transfer of a notary office. Currently, notary offices still have notaries as their partners and contractual notaries. No matter what form of practice,

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<sup>16</sup> Nguyen Van Mich. (2020). *The legal form of the notary office under the law of Vietnam* (Thesis, Vietnam National University, Hanoi, p.8

<sup>17</sup> Point d, Clause 2, Article 176 of the Law on Enterprises No.: 68/2014/QH13 dated November 26, 2014

<sup>18</sup> Pham Duy Nghia (2006), "Change in Germany's company law and comparison with Vietnam's company law", *Journal of Legislative Studies* (7/(79)), pp. 54-57,60

notaries are still responsible for the documents certified by them.

Therefore, the author believes that the existence of limited partners does not affect the objectivity of notarial activities because the 2014 Law on Notarization stipulates the rights and duties of notaries. On the other hand, not all partnership notaries have the financial capacity to invest to establish a notary office and ensure its maintenance. In the current situation, establishing and ensuring the operation of the notary office requires a large amount of investment capital. Therefore, the above-mentioned provisions have somewhat limited the rights of notaries, making it difficult for notaries to expand and invest in facilities to improve the quality of notarization practice to serve customers. There have been many disputes and contradictions about capital contribution when establishing notary offices.<sup>19</sup>

### **(B) Solutions**

It is necessary to supplement the operating model for notary offices and recognize the freedom to choose the operating model of notary offices as prescribed by the law. The author believes that in addition to the type of partnership, the notarization law in Vietnam needs to recognize the type of notary offices owned by notaries. This is to create conditions for notaries to have many opportunities to choose the type of business suitable to their conditions, circumstances, needs, and desires. As a result, the policy of socializing notarization is promoted extensively, especially in remote areas. A small-scaled notary office operated by a notary is suitable for places where the level of civil, economic, and commercial transactions is less, and the demand for notarization services of the people is not high. The notary office owned by a notary is heterogeneous, with the status of a notary office having only one practicing notary. The notary office may sign an employment contract with another notary depending on the scale of service provision to meet the notarization needs of residents in the locality<sup>20</sup>. The experience of the Latin notarization system shows that in some countries, such as Germany, France, or Spain, notary offices belong to notaries individually. France is one of the countries that allows the most forms of practice. In France, a notary may practice as an individual, in a civil professional association, in a freelance professional association, or as a payee in an individual notary office or a legal entity called a notary association. A notary can also be a member of an economic group or a shareholder of a joint-stock company. A notary, who is the owner of an individual notary office, may hire only one paid notary. In Germany, the association of practicing or

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<sup>19</sup> Quang Ninh: Dubious billion contracts of investment to notary offices <https://vanhoadoanhnghiepvn.vn/quang-ninh-map-mo-nhung-hop-dong-gop-von-tien-ty-dau-tu-vao-cac-van-phong-cong-chung/> accessed on September 17, 2023

<sup>20</sup> Tran Thi My Tien, (2022), *Law on notarization and authentication services of notary offices*. Master's thesis, Can Tho University, p. 44

sharing offices with other notaries must be authorized by the State government by a Decree based on local needs. In Spain, it is flexible when a notary can agree on the organization of a notary office in common. However, the dominant model is still a notary office operated by a notary<sup>21</sup>.

According to the author, it is necessary to amend Clause 1, Article 22 of the applicable Law on Notarization in the following direction: *“Notary offices shall be organized and operate under the Law on Notarization and other relevant legal documents concerning the type of enterprise.”* Accordingly, notaries can establish and operate as private enterprises, partnerships, or other types of enterprises as prescribed by the law”.

Also, Article 51 of the 2014 Law on Notarization needs to be amended as follows: *“ The notary requester may request any notary to certify the amendment, supplementation or cancellation of the contract or transaction. In case the previous contract or transaction is kept at a notarial practice organization, the notarization requester must notify the notarial practice organization keeping the contract or transaction of the amendment, supplementation, or cancellation of such contract or transaction. The certification of the amendment, supplementation, or cancellation of contracts and transactions must also comply with the provisions of Article 42 of this Law.”*

Among the freedoms of business, the freedom to choose the type of enterprise is recognized by law. Notarization is no exception. Therefore, it is necessary to remove this provision from the 2014 Law on Notarization by regulating that a notary is allowed to choose the operating model of the notary office. Hence, the 2014 Law on Notarization should be amended to recognize limited partners in the partnership notary office and also the type of private enterprise as stipulated in the 2006 Law on Notarization.

For the partnership model (including notaries being their general partners and limited partners), the general partners have the legal entity status to be infinitely liable for the operation of the notary office in the position of the partnership notary. The limited partners, without legal status, are limitedly liable for the notary office operation. It will eliminate inconsistencies in the applicable enterprise law and notarization law. Only then can we overcome the causes that make the notary office system operate unsustainably.

On the other hand, limited partners may operate notarization at their notary offices as contractual notaries. Accordingly, if limited partners wish to transfer or leave the inheritance of their capital contribution to another person, it does not affect the existence of the notary office<sup>22</sup>.

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<sup>21</sup> Ministry of Justice, General Legal Report on Notarization, March 31, 2022, pp. 24,25

<sup>22</sup> Nguyen Hong Chi – Lecturer of Tay Do University, *Inadequacies of provisions on the conditions for notary*

#### IV. CONDITIONS ON THE LEGAL REPRESENTATIVES AND NOTARIES OF NOTARY OFFICES

##### (A) Status of legal application

According to the provisions of Clause 2, Article 22, and Article 8 of the 2014 Law on Notarization on the legal representatives of notary offices, the prerequisite to becoming the head of a notary office must be a notary who is its partner and has practiced notarization for at least two years. Hence, to become a partnership notary, a notary must be appointed, which is specified in Article 8 of the Law on Notarization. Therefore, the author will analyze some criteria that a notary meets, as well as limitations, as well as list the inadequacies in the issue of being ineligible for a notary appointment as prescribed by the applicable law.

*Firstly, Regulation on Criteria for notaries according to Clause 2, Article 8 of the 2014 Law on Notarization, “a notary must have performed legal work at agencies or organizations for at least five years after obtaining a bachelor of law degree.”*

This regulation aims to appoint notaries with practical experience and legal knowledge. Still, the implementation in practice has many shortcomings and problems due to the lack of clarification of the concept of “legal work.” Currently, no document clearly specifies what legal work is and in which industries, agencies, and organizations, leading to many different interpretations and applications. In Clause 3, Article 3 of Circular No. 01/2021/TT-BTP dated February 3, 2021, by the Ministry of Justice on the elaboration of certain articles and implementation of Notarization Law (Circular 01/2021/TT-BTP), there are specific instructions on documents proving the time of legal work for judges, procurators, investigators; professors, associate professors, doctors of law; senior verifiers of the court, senior inspectors of the procuracy, senior experts, senior researchers, senior lecturers in the field of law; lawyers, auctioneers, administrators, bailiffs.

However, Circular 01/2021/TT-BTP does not mention many other cases, such as National Assembly deputies and People’s Council deputies who are legislators and law enforcement supervisors. After the end of the five-year term, can that be counted as the time spent doing legal work? In addition, Point b, Clause 3, Article 3 of this Circular also provides general provisions, not yet clarifying the legal work of other subjects who are employees and employers of all economic sectors. For example, “The decisions to recruit, rotate or transfer, employment contract or labor contract accompanied by a document proving period of social insurance

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*office establishment and recommendations*, Journal of Scientific Research and Economic Development of Tay Do University (No. 15-2020), p. 148

payment suitable for the legal position to be recruited or signed a contract.” Is it considered a document proving the period of legal work?

Thus, the provisions of the 2014 Law on Notarization and the documents of elaboration and guidelines for implementation of the adjustment of notary practice conditions are still incomplete, incomprehensive, and unclear. Hence, it is difficult to implement, which can create arbitrariness in the application of the law.

*Secondly, Shortcomings in the regulations on the legal representatives of notary offices*

Article 8 of the 2014 Law on Notarization stipulates six criteria for considering for appointment as a notary: *“A Vietnamese citizen who permanently resides in Vietnam, observes the Constitution and law, has good ethical qualities; Having a bachelor of law degree; Having performed legal work at agencies or organizations for at least five years after obtaining the bachelor of law degree; Having graduated from a notary training course or completed a notary re-training course; Meeting requirements on notarial practice probation results; Being physically fit for notarial practice.”*

The Head of the notary office is its legal representative, which is also a mandatory condition in the application for the establishment of a notary office. One of the current criteria to consider is the regulation on the age of a notary who is the head of the notary office. A comparison of the above-mentioned criteria shows that the applicable Law on Notarization does not stipulate a restriction on the age of notarization practice. With the current provisions, anyone who qualifies under Article 8 of the 2014 Law on Notarization can apply for notarization, even if they are elderly. In this case, the competent authority also has no grounds to refuse the receipt of the dossier for consideration and appointment of notaries.

Meanwhile, notarization is a field that requires notaries to be sufficiently healthy and lucid in the practice process. According to the provisions of Article 169 of the 2019 Labor Code, the retirement age is *“60 years and 03 months for men and 55 years and 04 months for women”*. Some fields also have different retirement ages. For example, in the field of education, the extension of work for lecturers with doctoral degrees is no more than five years; for lecturers with the title of associate professor, it is no more than seven years, and for lecturers with the title of professor, it is no more than ten years<sup>23</sup>.

Age conditions are necessary for practitioners in general and notary practitioners in particular. The practice time should be similar to the retirement age regulations of the 2019 Labor Code,

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<sup>23</sup> Clause 2, Article 9 of Decree No. 141/2013/ND-CP on the elaboration of and guidelines for the implementation of the Law on Higher Education.

which will be consistent with general practice. It is to both effectively use and exploit notary resources with professional qualifications and practical experience and ensure the quality and efficiency of notarial activities.

*Thirdly*, Regulations on cases of nonappointment of notaries

Clause 3, Article 13 of the Law on Notaries stipulates that not appointing “*those who have their civil act capacity lost or restricted*” without mentioning the case of “*persons with limited cognition and behavior control*.” It is not consistent with Article 46 of the 2015 Civil Code. Specifically, Clause 1, Article 46 stipulates the guardianship of “*minors, legally incapacitated persons, persons with limited cognition and behavior control*.”

*Fourthly*, Clause 4, Article 13 of the Law on Notarization stipulates that “*Cadres who have been disciplined in the form of removal from office; civil servants or public employees who have been disciplined in the form of dismissal; officers, professional army men, workers and public employees of agencies and units under the People’s Army, and officers, non-commissioned officers, workers and employees of units under the People’s Public Security Force who have been disciplined in the form of deprivation of the title of army man or people’s policeman or have been expelled from the service*.” This provision shows that only schools where cadres have been disciplined in the form of removal from office; civil servants or public employees who have been disciplined in the form of dismissal; officers, professional army men, workers, and public employees of agencies and units under the People’s Army, and officers, non-commissioned officers, workers and employees of units under the People’s Public Security Force who have been disciplined in the form of deprivation of the title of army man or people’s policeman or have been expelled from the service, are ineligible for appointment of notaries. It is contrary to the provisions of Clause 2 of the 2020 Law on Enterprises, which stipulates that organizations of individuals do not have the right to establish and manage enterprises (Notary offices also operate as partnerships in accordance with the Law on Enterprises).

Clause 1, Article 23 of the 2015 Civil Code stipulates: “*A court shall, based on the opinion of forensic-psychiatric examination by any authorized organization and at the request of a person with related rights or interests or a relevant agency or organization, issue a decision to declare an adult with limited cognition or behavior control due to his/her physical or spiritual condition, and appoint a legal guardian and define rights and obligations of such guardian*.” Thus, persons with limited cognition or behavior control cannot be considered and appointed as notaries.

## **(B) Solutions**

*Firstly*, to overcome the unspecific regulations on the time of legal work specified in the criteria for notaries specified in Article 8 of the 2014 Law on Notarization, it is necessary to have specific regulations and guidelines on legal work and the time of legal work for each subject. Accordingly, it is necessary to amend and supplement Clause 2, Article 8 of the 2014 Law on Notarization in the direction of assigning the Minister of Justice to detail the provision “having performed legal work at agencies or organizations for at least five years after obtaining the bachelor of law degree.” Also, to improve the quality of appointment of notaries with practical experience and legal knowledge, it is possible to study and amend the Law on Notarization in the direction of extending the time of training, fostering, and practicing notarization practice longer than it is in the applicable provisions.

*Secondly*, supplementing the age conditions of notarization practice is necessary for practitioners in general and notarization practice in particular. The practice period, which can be extended to 70 years of age, will be in line with general practice. It is to both use and effectively exploit notary resources with professional qualifications and practical experience, as well as ensure the quality and efficiency of notarial activities.

From this point of view, the author recommends amending and supplementing Clause 5, Article 8 of the 2014 Law on Notarization in the direction of supplementing the criteria for consideration and appointment of notaries as follows: “*Being under 70 years of age and physically fit for notarial practice.*” Accordingly, if a person is over 70 years old, he/she will not be considered and appointed as a notary, or if a person is currently a notary when he/she reaches the age of 70, he/she will be reviewed and dismissed by a competent agency according to the provisions of Clause 1, Article 15 of the 2014 Law on Notarization 2014. In fact, in France and Germany, as well as most other countries in the world, the decision to appoint a notary is unlimited in validity, i.e., a notary, once appointed, will maintain it for life. However, the practice age is often limited to a certain age, as in France and Germany, it is 70 years old<sup>24</sup>.

*Thirdly*, therefore, it is necessary to amend and supplement Clause 3, Article 13 of the 2014 Law on Notarization in the direction of: Do not appoint persons who have their civil act capacity lost or restricted and people with limited cognition and behavior control as notaries.

*Fourthly*, it is necessary to amend and supplement Clause 4, Article 13 of the 2014 Law on Notarization in the direction of:

4. *Persons who are cadres, civil servants, or public employees (except officers of the notary bureaus); officers, professional army men, workers, and public employees of agencies and units*

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<sup>24</sup> Ministry of Justice, General Legal Report on Notarization, March 31, 2022, p, 18



*under the People's Army, and officers, non-commissioned officers, workers, and employees of units under the People's Public Security Force.*

5. Cadres who have been disciplined in the form of removal from office; civil servants or public employees who have been disciplined in the form of dismissal; officers, professional army men, workers, and public employees of agencies and units under the People's Army, and officers, non-commissioned officers, workers and employees of units under the People's Public Security Force who have been disciplined in the form of deprivation of the title of army man or people's policeman or *have been expelled from the service.*

## **V. CONDITIONS ON PROCEDURES FOR THE ESTABLISHMENT OF NOTARY OFFICES**

*Firstly*, the criteria for preparing a scheme for the establishment of a notary office were determined. According to the 2014 Law on Notarization, the provincial-level People's Committee issued criteria for preparing a scheme for the establishment of a notary office<sup>25</sup>. Therefore, each province/municipality has applied different scheme development criteria. For example, based on the provisions on criteria for approving the application for establishment of a notary office in Ho Chi Minh City (Attached to Decision No. 13/2021/QD-UBND dated May 18, 2021, by the People's Committee of Ho Chi Minh City), on the elaboration of the criteria for approval and the maximum score for: the expected location of the notary office: Up to 17 points; the office of the notary office: Up to 14 points; Facilities: Up to 02 points; Notaries: Up to 36 points; Professional secretary: Up to 10 points; Personnel in charge of accounting: Up to 02 points; Personnel in charge of information technology: Up to 02 points; Personnel in charge of archiving: Up to 02 points; Translation collaborators, notary offices with translation collaborators get a maximum of 01 point, of which 0.5 points for each language; Building a notarial professional process and an archival process correctly: Up to 03 points; Organization and administration of the notary office: Up to 03 points; The feasibility of the Scheme, the feasibility of the Scheme to be considered and evaluated the overall conditions of the headquarters, facilities, and personnel of the notary office with the full contents of the Scheme as prescribed: up to 08 points

However, in some other provinces/municipalities, the above criteria are simpler. Decision No. 11/2019/QD-UBND, dated June 28, 2019, by the People's Committee of Can Tho City, stipulates the criteria for approving the application for the establishment and the expected location of the notary office is calculated on a scale according to the area of use, stability of use, the current status of the house used as a headquarters, etc., without setting criteria for distance

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<sup>25</sup> Article 23 of the 2014 Law on Notarization.

and location-allocation at the district level compared to notarial practice organizations operating in Ho Chi Minh City. In addition, the regulations on grading scales applied when considering notary criteria in Can Tho City are also easier than in Ho Chi Minh City. With the difference in scheme evaluation criteria, in practice, notaries often tend to submit dossiers to request the establishment of a notary office in provinces and cities with simpler criteria.

Faced with the above situation, the establishment of notary offices is not evenly distributed among provinces and cities. It leads to difficulties in state management, failure to meet the needs of society, and also unfair competition between notarial practicing organizations<sup>26</sup>.

*Secondly*, the provision of preferential and support policies for notary offices established in areas with difficult and extremely difficult socio-economic conditions is unclear. Notary offices in Vietnam have been officially recognized since the 2006 Law on Notarization. Accordingly, besides the notary bureaus, the law also recognizes the notary offices. However, notary offices are established mainly in cities, urban areas, or residential centers with developed economic conditions. Meanwhile, in areas with difficult and extremely difficult economic conditions, there is a scarcity of organizations to provide notarial services to the people. Therefore, to attract notary offices to invest in the above-mentioned difficult areas, the 2014 Law on Notarization stipulates certain preferential and attraction policies such as tax incentives prescribed by regulations of law on corporate income tax, the right to lease office building at concessional rates, borrow office building, be provided with support for working equipment for the first 03 (three) years of operation under the decision of the provincial-level People's Committee where the notary office is located<sup>27</sup>. However, this provision still has some inadequacies, as follows:

The policy on corporate income tax exemption and reduction is a general provision of law. It applies to entities subject to corporate income tax payment operating in difficult and extremely difficult economic areas, including newly established notary offices in this area. In the list attached to Regulation No. 218/2013/ND-CP dated December 26, 2013, by the Government on the elaboration of and guidelines for the implementation of the Law on Corporate Income Tax and Decree No. 91/2014/ND-CP dated October 1, 2014, by the Government on amendments of the Decrees regulating tax are subject to corporate income tax exemption and reduction.

Therefore, if Decree 29/2015/ND-CP of the Government on the elaboration of and guidelines for the implementation of the Law on Notarization does not provide that newly established

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<sup>26</sup> Ho Thi Bao Ngoc & Nguyen Ngoc Huy, *Completing regulations on the notary office establishment*. Journal of the Legal Profession, Judicial Academy, Iss. 06/2022 - The seventeenth year, pp. 35,36

<sup>27</sup> Article 16 of Decree 29/2015/ND-CP of the Government on the elaboration of and guidelines for the implementation of the Law on Notarization

notary offices in difficult and extremely difficult economic areas are entitled to incentives for exemption and reduction of corporate income tax, notary offices are also automatically entitled to this incentive<sup>28</sup>.

Support policies are the right to lease office buildings at concessional rates, borrow office buildings, and be provided with support for working equipment for the first 03 years of operation under the decision of the provincial-level People's Committee where the notary office is located. In this case, the law does not specify the policy, which cases are supported, and how to support them. With unclear provisions, it will depend on the emotional evaluation of each locality and lead to the occurrence of a request-provision mechanism in this regulation. Specifically, notary offices will be supported more, supported less, or sometimes not supported.

*Thirdly*, provision on notarial practice organization development. Nominally, some notary offices operate as partnerships. However, there are many notary offices with only one practicing notary; the remaining notaries are “borrowed” or “hired” to qualify for the common operation of a notary office. It is easy to recognize that notaries leasing their notary appointment or reappointment decisions are not present at the office at the time. The number of notarized documents is very small; if any, only nominally sign a few contracts and transactions in a year<sup>29</sup>.

The development of notarial practice organizations has not met the requirements of reasonable quantity and allocation. After the master plan for the development of notarial practice organizations was abolished, a series of individuals and organizations secretly established new notary offices. Meanwhile, notary offices in suburban or rural districts simultaneously request to be transferred to central districts, increasing the irrationality in the allocation of notarial practice organizations. The reason is the development orientation of notarization towards limiting the number of notarial practice organizations in an administrative area. On December 29, 2012, the Prime Minister issued Decision No. 2104/QĐ-TTg approving the “master plan for the development of notarial professions until 2020” to limit the establishment of notarial practice organizations in a district-level area until the 2014 Law on Notarization was promulgated, as prescribed in Article 69 “... The Prime Minister promulgated the master plan for the development of notarial practice organizations in the country”; until the Law on amendments of 11 laws related to planning passed by the National Assembly on June 15, 2018

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<sup>28</sup> Nguyen Huy Cuong – A notary of Ly Tra Vinh *Notary Office, Legal status of the notary office operation*, p. 19 [www.cesti.gov.vn/tai-lieu/262245/2/thuc-trang-phap-luat-ve-hoat-dong-cua-van-phong-cong-chung-va-kien-nghi-hoan-thien-nguyen-huy-cuong](http://www.cesti.gov.vn/tai-lieu/262245/2/thuc-trang-phap-luat-ve-hoat-dong-cua-van-phong-cong-chung-va-kien-nghi-hoan-thien-nguyen-huy-cuong), accessed on July 23, 2023

<sup>29</sup> Nguyen Xuan Bang (Head of Notary Office No. 6 in Hanoi City), *Amendment recommendations for the Law on Notarization to improve the efficiency of State management activities*. Journal of the Legal Profession, Judicial Academy, Iss. 06/2022 - The seventeenth year, p. 44

abolished regulations related to the development planning of notarial practice organizations and invalidated the regulations on the planning of notarial practice organizations. Faced with the situation that notarial practice organizations may be massively and uncontrollably established, on November 19, 2020, the Government issued Resolution No. 172/NQ-CP on “Notarial practice development policy “continuing to stipulate “... developing notarial practice organizations under control associated with residential areas... not concentrating many notarial practice organizations in a district-level area... .” In fact, to implement this resolution, localities face many difficulties in limiting the number of notarial practice organizations in a district-level area. Pursuant to Article 70 of the 2014 Law on Notarization that is the Provincial-level People’s Committee promulgates criteria for approving the dossier of establishing a notary office; many localities have issued criteria for establishing a notary office in the form of scoring the criteria: facilities, personnel, etc., in the dossier of a notary office. Accordingly, the dossier will be graded and allowed to be established for the notary offices with the highest score from the highest score to the end of the number of notary offices that the locality is expected to establish at an establishment review in an administrative area.

According to the author, the above method is only a temporary solution and is still a form of planning for notarial practice organizations in an administrative area. On the other hand, the setting of scoring criteria (in addition to the provisions of the law on notarization) has caused the phenomenon (relatively common) of leasing the title of a notary to a partnership to establish a notary office to arise. When the notary office is established and put into operation, that partnership notary does not really operate<sup>30</sup>.

*Fourthly*, Provision on the time limit for a response of the Provincial-level People’s Committee on the issuance of the Decision on establishing a notary office. Pursuant to the provisions of Clause 2, Article 23 of the 2014 Law on Notarization, “*Within 20 days after receiving a complete and valid dossier of request for the establishment of a notary office, the provincial-level People’s Committee shall consider and decide to permit the establishment of the notary office; in case of refusal, it shall issue a written reply clearly stating the reason.*” With the role of a competent agency to approve and issue a decision on the establishment of a notary office, the provincial People’s Committee is entitled to evaluate the criteria in the scheme of establishing a notary office within a certain time limit. However, in practice, the Provincial People’s Committee considers the establishment of a notary office beyond the prescribed time

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<sup>30</sup> Nguyen Xuan Bang (Head of Notary Office No. 6 in Hanoi City), *Amendment recommendations for the Law on Notarization to improve the efficiency of State management activities* Judicial Academy, Journal of the Legal Profession Iss. 6/2022, p. 44

limit, affecting the legitimate rights and interests of the notaries, typically in the following cases:

*“On November 15, 2015, Ms. Bui Thi Ha, a permanent resident of Group 6, Phan Dinh Phung Ward, Thai Nguyen City, Thai Nguyen Province, made an application to establish a notary office to the People’s Committee of Thai Nguyen Province, expected to be located in Quan Trieu Ward, Thai Nguyen city according to the type of notary office established by the two notaries and operated under the type of partnership. After receiving the application and attached documents, on November 23, 2015, Mr. Nhu Van Tam - Standing Vice Chairperson of the Thai Nguyen Provincial People’s Committee, signed Document No. 2402 to the Department of Justice, stating: Thai Nguyen Provincial People’s Committee “agrees on the policy to allow the establishment of a notary office at the request of Ms. Bui Thi Ha, assigns the Department of Justice based on the provisions of law and the roadmap for developing the network of notarial practice organizations in the province approved by the competent agency, appraising the dossier of establishing a notary office of Ms. Bui Thi Ha, and advising the Provincial People’s Committee to resolve”. Although it has been assigned to the Director of the Department of Justice based on the content of the official dispatch, after nearly a year of submitting the dossier, as well as that waiting time, the Thai Nguyen Department of Justice has not yet appraised the case of Notary Bui Thi Ha and her associates to complete the dossier of establishing a notary office”<sup>31</sup>.*

From the above situation, it can be assessed that the Provincial People’s Committee’s overdue evaluation causes damage to the notaries registering to establish offices. Pursuant to the provisions of the 2014 Law on Notarization, notary offices organized under the partnership model must have at least two notaries as partners. In case of prolonging the time of deciding to establish a notary office, one of the partnership notaries shall register to participate in the establishment of another office, affecting the rights of the remaining notaries. In addition, in the scheme to establish a notary office in many localities, the expected location of the notary office must be clearly defined, including the area and stability of the office (lease term...). Thus, if the notary has rented the office of a notary public practice organization, the prolonged decision-making time will cause damage to the notary in the lease contract<sup>32</sup>.

*Finally, the criteria for grading dossiers of the establishment of notary offices are still inconsistent in all areas. The contents of some criteria are still inconsistent with the law or cause*

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<sup>31</sup> <https://baoxaydung.com.vn/thai-nguyen-kho-khan-trong-thanh-lap-van-phong-cong-chung-195031.html>. Accessed on June 22, 2023.

<sup>32</sup> Ho Thi Bao Ngoc & Nguyen Ngoc Huy, *Completing regulations on the notary office establishment*. Journal of the Legal profession, Judicial Academy, Iss. 06/2022- The seventeenth year, p. 37

different interpretations in the implementation organization with the provisions, such as:

- Some localities stipulate that the notary is required to submit a dossier of application for the notary office establishment and documents proving that the facilities of the notary office are in the scheme of establishing a notary office. It is not in accordance with the provisions of the Law on Notarization.
- Some localities stipulate that not calculating points for notaries, professional staff who have been disciplined in the course of their work, or sanctioned for administrative violations in the field of judicial assistance within one year up to the date of submission of dossiers. It is incorrect. (must exclude the case of warning because the time limit is considered not to have been handled for administrative violations is 06 months).
- Some other specific application issues related to the priority regime for notaries practicing in the locality... also need to be reviewed accordingly.

## **VI. REGISTRATION AND CHANGE OF OPERATION REGISTRATION CONTENTS OF NOTARY offices**

### **(A) Status of legal application**

A notary office is organized and operated as a partnership regulated by the 2020 Law on Enterprises and the 2014 Law on Notarization. Meanwhile, in the 2014 Law on Notarization, the partnership notary of a notary office may terminate the partnership membership status according to personal aspirations or, in other cases, prescribed by law<sup>33</sup>. The 2020 Law on Enterprises stipulates that the partnership status shall be terminated in case of voluntary withdrawal of capital from the company<sup>34</sup>.

In addition, the conditions for dissolution of a partnership in case the minimum number of members (i.e., two partnership notaries) is no longer sufficient within 06 consecutive months without carrying out the procedures for converting the type of enterprise<sup>35</sup>.

Thus, for a notary office (only two partnership notaries) with one partnership notary to terminate their partnership membership status, that notary office only has one member left and can operate within six months since the other partnership notary terminates his/her status.

The above regulations have created a loophole for some cases to circumvent the law to operate, specifically as follows:

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<sup>33</sup> Clause 1, Article 27 of the 2014 Law on Notarization

<sup>34</sup> Article 185 of the 2020 Law on Enterprises.

<sup>35</sup> Point c, Clause 1, Article 207 of the 2020 Law on Enterprises

Due to the regulations that a notary office is established by at least 02 notaries and the notary office is allowed to operate for 06 months since one notary terminates his/her membership status, only 03 notaries will still be allowed to operate two notary offices. When the partnership notary terminates his/her partnership membership, such notary will participate in the scheme to establish another notary office. When a new notary office is established, one notary will terminate the partnership membership status to join the former notary office. It will rotate in such a way that the law can not limit it. It has affected the legal validity of the Law on Notarization<sup>36</sup>.

Hence, many localities have faced difficulties but cannot set conditions or prohibit them because they are not under their competence, contrary to the Law on Enterprises and the Law on Notarization. Instead, the content of adjusting the above-mentioned circumvention should be added to the decision to promulgate the criteria for approving the dossier of the establishment of a notary office. Specifically, when the notary has just terminated his/her partnership membership for a period of time (three months, six months, or one year) but is named in the scheme of establishing a new notary office, his/her score is not counted. Still, it cannot be stipulated as not being approved.

The time factor to become a notary in accordance with the law on notarization is long. It takes at least 05 years to become a notary after graduating from the University of Law (with a minimum of 05 years of legal work). During this time, it is possible to combine working and participating in training courses (12 months) and apprenticeship (12 months) if possible. Otherwise, it will take at least 02 more years, a total of 07 years. Therefore, finding a partnership notary in the past period is very difficult. However, the more difficult it is, the greater the need to exploit legal loopholes becomes; otherwise, they will be dissolved, which notaries, in particular, and business management, in general, do not want.

The exploitation of legal loopholes of partnership notaries leads to unfair competition in the implementation of law between subjects in society. The regulation of each locality is arbitrary, different, and inconsistent. They will lead to arbitrariness in the application and concretization of the legal documents of superiors, leading to inconsistency. That has affected the efficiency and effectiveness of state management for notarial activities as well as the management of enterprises.

## **(B) Solutions**

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<sup>36</sup> Nguyen Van Thom, (2020), Law on the establishment and operation of notary offices. Master's thesis in Economic Law, Can Tho University, p.

To improve the above legal provisions, supplementing the regulation is recommended: “Within six months from the date of termination of the partnership membership, the notary is not allowed to become a partner of another notary office.” Thus, Clause 1, Article 27 of the 2014 Law on Notarization, after supplemented, will become:

“Article 27. Change of partners of notary offices

*1. A notary, being a partner of a notary office, may terminate his/her partnership status at his/her own will or in other cases prescribed by law.*

*Within six months from the date of termination, such a notary may not become a partner of another notary office.*

*A notary office may admit new notaries as partners, provided that the remaining notaries accept such notaries as their partners.*

*The termination of the partnership status of notaries and admission of new notaries as partners must comply with this Law and the law on enterprises.”*

## VII. CONCLUSION

The introduction of the 2014 Law on Notarization and documents to elaborate and guide the implementation have facilitated the socialization of notarial activities. The establishment and operation of notary offices nationwide have helped the notarization management of competent agencies to be favorable in socialized conditions. Notarial activities have affirmed the important position and role in social life. It has become a regular and indispensable transaction demand of individuals, organizations, and enterprises. It actively contributes to socio-economic development, maintaining security safety and stabilizing the country's order by ensuring legal safety for the parties to contracts and transactions.

However, to a certain extent, Vietnam's notarial activities are fledging compared to some countries in the world. They have been gradually improved, especially in the implementation period of the Politburo's policy of judicial reform in the 2010-2020 period, with a strong reform perspective. From the model of collective notarization (assumed by the State) to the model of free notarization, with the participation of individuals and organizations outside the State, there is still more or less confusion and lack of practical experience. Especially in the provisions of the 2014 Law on Notarization, there are still many limitations and problems that should be reviewed and adjusted by relevant agencies. Hence, the Law on Notarization shall become more and more complete, closer to international practices, and soon come to life most practically and effectively. In particular, the author has analyzed the business type, representatives,



registrations, and activities of notary offices, among many other issues.

## **VIII. LIST OF DOCUMENTS**

### **(A) Documents of the communist party**

1. Resolution No. 49-NQ/TW, dated June 2, 2005, by the Politburo on the strategy for judicial reform until 2020
2. Resolution No. 10-NQ/TW dated June 3, 2017, by the 5th Conference of the 12th Party Central Committee on developing the private economy to become an important driving force of the socialist-oriented market economy.
3. Resolution No. 11-NQ/TW dated June 3, 2017, of the 5th Conference of the 12th Party Central Committee on perfecting the socialist-oriented market economy institution.

### **(B) Legal documents**

4. The 2012 Labor Code;
5. The 2015 Civil Code;
6. The 2006 Law on Notarization (expired);
7. The 2014 Law on Notarization;
8. The 2014 Law on Enterprises (expired);
9. Law on Handling of Administrative Violations No. 15/2012/QH13;
10. Amendments of Article 6 and Appendix 4 on the list of conditional business lines of the 2016 Law on Investment;
11. The 2017 Law on Management and Use of Public Assets;
12. Amendments of 37 Laws related to the National Assembly's planning No. 35/2018/QH14 in 2018;
13. The 2020 Law on Investment;
14. The 2020 Law on Enterprises;
15. Decree No. 59, signed on November 15, 1945, by President Ho Chi Minh on inspection rights and fees for all types of contracts (expired);
16. Ordinance No. 85, dated February 29, 1952, by President Ho Chi Minh on the issuance of registration regulations on the purchase, sale, donation, and exchange of houses and lands (expired);

17. Decree No. 45-HDBT, dated February 27, 1991, by the Council of Ministers on the organization and operation of state notarization (expired);
18. Decree No. 31/CP, dated May 18, 1996, by the Government on the organization and operation of state notarization (expired);
19. Decree No. 75/2000/ND-CP dated February 8, 2000, by the Government on notarization and authentication (expired);
20. Decree No. 29/2015/ND-CP dated March 15, 2015, by the Government on the elaboration of and guidelines for the implementation of the Law on Notarization;
21. Decree No. 152/2017/ND-CP dated December 27, 2017, by the Government on regulating standards and norms for the use of working offices and non-business establishments
22. Decree No. 141/2013/ND-CP on the elaboration of and guidelines for the implementation of the Law on Higher Education
23. Decision No. 250/QD-TTg dated February 10, 2010, by the Prime Minister on approving the Scheme on Developing the Master Plan for the Notarial Practice Organization Development in Vietnam by 2020 Decision No. 240/QD-TTg dated February 17, 2011, by the Prime Minister on promulgating the criteria for the development of notarial practice organizations in Vietnam by 2020;
24. Decision No. 2104/QD-TTg dated December 29, 2012, by the Prime Minister on approving the Master Plan for the Notarial Practice Organization Development by 2020;
25. Circular No. 06/2015/TT-BTP dated June 15, 2015, by the Ministry of Justice on the elaboration of and guidelines for the implementation of the Law on Notarization;
26. Circular No. 54/2015/TT-BTC dated April 21, 2015, of the Ministry of Finance on regulating the collection of fees for notary examination and appointment; fees for issuance of notary cards and operation registration certificates of notary offices (expired);
27. Decision No. 11/2019/QD-UBND dated June 28, 2019, by the People's Committee of Can Tho City on stipulating the criteria for approving the application for notary office establishment in Can Tho City;
28. Government (1945), Decree No. 59/SL dated November 15, 1945, on the determination of inspection regulations;

## IX. REFERENCES

### (A) Books, journals and reports

1. Le Thi Thu Ha, *Textbook of Notarial Skills*, Judicial Publishing House;
2. Nguyen Van Mich (2018), "Shortcomings of Vietnam's law on the transfer of notary offices," *Journal of the Legal Profession* (6);
3. Pham Duy Nghia (2006), "Change in Germany's company law and comparison with Vietnam's company law," *Journal of Legislative Studies* (7/(79))
4. Ministry of Justice (2013), Report on five years of implementing the Law on Notarization, Report No.: 105/BC-BTP, May 13, 2013;
5. Ministry of Justice (2022). General legal report on notarization of the Latin notarization system (France, Germany, Spain, Poland, People's Republic of China, Japan, South Korea) and information related to the Anglo-Saxon notarization system. Report for the appraisal meeting of the application dossier for the development of the Law on Notarization (amended) dated July 26, 2022, Hanoi, July 2022;
6. Nguyen Xuan Bang (Head of Notary Office No. 6 in Hanoi City), Amendment recommendations for the Law on Notarization to improve the efficiency of State management activities. *Journal of the Legal Profession, Judicial Academy, Iss. 06/2022 - The seventeenth year*;
7. Nguyen Huy Cuong – A notary of Ly Tra Vinh Notary Office, Legal status of the notary office operation;
8. Nguyen Hong Chi – Lecturer of Tay Do University, Inadequacies of provisions on the conditions for notary office establishment and recommendations. *Journal of Scientific Research and Economic Development of Tay Do University* (Iss. 15-2020);
9. Dang Van Dinh, Notary office establishment - Situation and solutions. <https://tapchitoaan.vn/thanh-lap-van-phong-cong-chung-thuc-trang-va-giai-phap-hoan-thien-quy-dinh-cua-phap-luat9304.html>
10. Ho Thi Bao Ngoc & Nguyen Ngoc Huy, Completing regulations on notary office establishment. *Journal of the Legal Profession, Judicial Academy, Iss. 06/2022 - The seventeenth year*;

### (B) Thesis/dissertation

1. Nguyen Van Mich, (2020). *The legal form of the notary office under the law of Vietnam*.

Thesis, Vietnam National University, Hanoi;

2. Tran Thi My Tien, (2022), *Law on notarization and authentication services of notary offices*. Master's thesis, Can Tho University;
3. Nguyen Van Thom, (2020), *Law on the establishment and operation of notary offices*. Master's thesis in Economic Law, Can Tho University;

**(C) Electronic documents**

1. Quang Ninh: Dubious billion contracts of investment to notary offices  
<https://vanhoadoanhnghiepvn.vn/quang-ninh-map-mo-nhung-hop-dong-gop-von-tien-ty-dau-tu-vao-cac-van-phong-cong-chung/>

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