



TRANSFORMING NOTARIAL PRACTICES: A COMPREHENSIVE OVERVIEW OF NIGERIA'S NOTARY PUBLIC ACT, 2023

1.0 INTRODUCTION

The Notary Public Act, 2023 was enacted in 2023 as an Act of the Nigerian National Assembly. The Act repeals the Notary Public Act, Cap. N141, Laws of the Federation of Nigeria, 2004 and replaces it with a more modern and comprehensive framework for the practice of notarisatation in Nigeria. It provides, *amongst others*, for the appointment and registration of Notaries Public, their duties and functions, and the regulation of their practice. The Act introduces new provisions with potential impacts on the practice of notaries in Nigeria. This article gives a comprehensive overview of the Act as a regulatory framework for notarization in Nigeria and discusses notable provisions therein.

2.0 WHO IS A NOTARY PUBLIC?

A Notary Public under the Act is an individual, mostly a legal practitioner,¹ commissioned or appointed by the Chief Justice of Nigeria to perform notarial functions, including the authentication of documents, the certification of copies of documents, and the administration of oaths and affirmations.² Unlike what was obtainable before, the Act now provides for the registration of Notaries Public in a physical and electronic register to be kept by the Chief Registrar of the Supreme Court.

3.0 DUTIES AND FUNCTIONS OF NOTARIES PUBLIC

The key functions and duties of Notaries public in Nigeria are outlined in the Act. Accordingly, a Notary Public is responsible for performing the following duties and functions:

¹ Under section 21(1) of the Act all magistrates and the collectors of customs and excise at the ports in Nigeria shall ex officio be Notaries Public. Individuals other than legal practitioners can be notaries Public. However, under section 21(1) and (2) of the Act, the rights and authority of those individuals to practice as notaries public are limited in comparison with those of legal practitioners.

² See section 1 and 28 of the Act.

- **Witnessing the Execution of Local and International Documents:**

These include documents such as sale and purchase agreements, transfers of land agreements, assignments of intellectual property, power of attorney, deeds, security documentation, mortgages, company resolutions, minutes of meetings, and reports.³

- **Preparing Notarial Certificates of Law and Good Standing:**

Notaries Public are authorized to prepare and issue notarial certificates related to the law and good standing of individuals or entities.⁴

- **Administering Oaths for Giving Evidence:**

Notaries Public in Nigeria are conferred with the authority and the corresponding duty to administer oaths for individuals providing evidence in legal proceedings or other contexts.⁵

- **Taking Affidavits, Declarations, and Depositions:**

Notaries Public are empowered to take, administer, and certify affidavits, declarations, and depositions.⁶

- **Notarising Bills of Exchange:**

This involves the certification and authentication of bills of exchange by the Notary Public.⁷

- **Obtaining Authentication:**

Obtaining authentication from the Ministry responsible for foreign affairs is one of the functions a notary public can perform. Notaries Public can obtain authentication of documents from the relevant government ministry responsible for foreign affairs.⁸ Documents whose authentication can be obtained at the Ministry of Foreign Affairs include;

- Business documents, e.g. as bye-laws, articles of incorporation, good standing certificates etc;
- Adoption Paperwork, such as home studies, and letters of reference etc;
- Educational Documents; such as diplomas and transcripts, academic certificates, such as degrees and diplomas etc.
- Other Certificates; such as birth certificates, marriage certificates, police clearance certificates, affidavits, power of attorney documents etc.

³ See section 2(a) of the Act.

⁴ See section 2(b) of the Act.

⁵ See section 2(c) of the Act.

⁶ See section 2(d) of the Act.

⁷ See section 2(e) of the Act.

⁸ See section 2(f) of the Act.

- **Noting or Certifying Transactional Documents**

Noting or certifying transactional documents relating to bills of exchange and other negotiable instruments:⁹ Notaries Public have the authority to note or certify transactions relating to bills of exchange and other negotiable instruments.

- **Verifying Company Documents:**

Notaries Public are responsible for verifying the authenticity and accuracy of company documents.¹⁰

- **Verifying Identity and Signature:**

Notaries Public have to verify the identity and signature of individuals executing documents.¹¹

These duties and functions outlined in the Notaries Public Act, 2023 and discussed above reflect the broad scope of responsibilities entrusted to Notaries Public in Nigeria, encompassing both traditional notarial functions and the recognition of digital notarisation methods.

- **Digital Notarization Through Electronic Means:**

The Act recognizes the authority of Notaries Public to perform notarisation using electronic means,¹² reflecting the modernization of notarial practices. Obviously, the Act invariably recognizes the increasing use of digital technologies in legal practice and provides for the performance of digital and remote notarisations of documents. It sets out the following provisions for the performance of digital and remote notarizations:

- **Recognition of Digitally Notarized Documents:**

The Act recognizes the validity of digitally notarized documents and provides for the use of electronic signatures and seals by Notaries Public. Thus, all electronically notarised documents shall be recognised as valid in all Courts within Nigeria as though they were signed in person.¹³

- **Performance of Electronic Notarial Acts:**

The Act provides for the performance of electronic notarial acts by Notaries Public through electronic means, including audio-visual communication. Notaries Public are required to include a statement in the electronic notarial certificate to indicate that the electronic notarial act was performed using audio-visual communication.¹⁴

⁹See section 2(g) of the Act.

¹⁰See section 2(h) of the Act.

¹¹See section 2(i) of the Act.

¹² See section 2(j) of the Act

¹³ See section 8 of the Act.

¹⁴ See section 6 of the Act.

- **Remote Electronic Notarisation System:**

The Act allows a notary public to remotely notarise a document whether or not the person whose document is to be notarised is in the same state or outside the domicile of the Notary Public or even outside Nigeria.¹⁵ The Act however requires that a remote electronic notarisation system used to perform electronic notarisation acts by audio-visual means of communication must provide sufficient audio clarity and video resolution to enable the notary and the individual to see, hear, and speak to each other through live, real-time transmission. The system must also include a means of authentication that reasonably ensures only the proper parties have access to the audio-visual communication.¹⁶

- **Confirmation of identity:**

The Act requires that the Notary Public must confirm the identity of the individual through two-factor identification methods, which may include completion of a dynamic knowledge-based authentication assessment, presentation of a government-issued identification, or other means of authentication.

Overall, the Notaries Public Act, 2023 provides a comprehensive framework for the performance of digital and remote notarisations of documents in Nigeria. The Act recognizes the importance of modernizing notarial practices to keep pace with technological advancements and provides for the use of electronic means to perform notarial acts, while also ensuring the security and authenticity of the notarisation process.

TRANSITIONAL PROVISIONS IMPACTING EXISTING NOTARIES PUBLIC

The Notaries Public Act, 2023 includes transitional provisions that have implications for existing Notaries Public in Nigeria. These provisions are designed to address the transition from the previous legal framework to the new Act and to ensure the continued regulation of the practice of Notary Public. The transitional provisions outlined in the Act and their impact on existing Notaries Public are as follows:

- **Revision of the Register of Notaries Public:**

The Act provides for the revision of the Register of Notaries Public. This revision involves updating and maintaining a register of Notaries Public, which includes the removal of names of Notaries Public who have left Nigeria or are deceased. This ensures that the register accurately reflects the current status of Notaries Public in Nigeria.

¹⁵ See section 6(1)(a),(b) and (c) of the Act

¹⁶ See section 6(3)(a)(b) and (c)



- **Repeal of the previous Notaries Public Act:**

The Act repeals the Notaries Public Act, Cap. N141, Laws of the Federation of Nigeria, 2004. This means that the previous legal framework for Notaries Public is replaced by the new Act, and existing Notaries Public are subject to the provisions of the new Act.

- **Impact on Existing Notaries Public:**

Existing Notaries Public are required to comply with the provisions of the new Act, including the registration requirements, the performance of electronic notarial acts, and the use of digital signatures and seals. The Act does not exempt existing Notaries Public from these new requirements, and they are expected to adapt to the modernized framework for notarial practice.

- **Recognition of Previous Appointments:**

The Act recognizes the appointments of Notaries Public made before its enactment. Notaries Public appointed before the enactment of the new Act are deemed to have been entered in the register to be kept by the Chief Registrar of the Supreme Court under the provisions of the new Act.

Overall, the transitional provisions in the Notaries Public Act, 2023 ensure a smooth transition from the previous legal framework to the new Act and provide for the continued regulation of existing Notaries Public in Nigeria. Existing Notaries Public are expected to comply with the requirements of the new Act and adapt to the modernized framework for notarial practice.

OTHER NOTABLE PROVISIONS IN THE ACT

In addition to the provisions related to the duties and functions of Notaries Public, the performance of digital and remote notarisations, and the transitional provisions, the Notaries Public Act, 2023 includes several other important notable provisions. These provisions contribute to the comprehensive regulation of Notaries Public in Nigeria and address various aspects of their appointment, regulation, and conduct. Some of these notable provisions include:

- **Appointment of Notaries Public:**

The Act empowers the Chief Justice of Nigeria to appoint fit and proper legal practitioners as Notaries Public for Nigeria. Nonetheless, the Act also confers the authority of a notary public on all magistrates and the collectors of customs and excise at the ports in Nigeria as *ex officio* Notaries Public.¹⁷ Notwithstanding, the exercise of duties by the collector of customs and excise is limited to minuting, noting or extending ships' protests and even such duties cannot be exercised at any part at which a Notary Public appointed by the Chief Justice of Nigeria is available. This provision establishes

¹⁷ See section 21 of the Act.

the authority responsible for the appointment and the limitation to the exercise of the duty conferred on collector of customs and excise.

- **Prohibition on Exercising Powers when Interested:**

The Act prohibits Notaries Public from exercising any of the powers of their office in any proceeding or matter in which they have a personal interest. This provision ensures the impartiality and integrity of Notaries Public in the performance of their duties.

- **Power to Make Regulations:**

The Chief Justice of Nigeria is granted the power to make regulations related to the practice of Notaries Public. This provision allows for the establishment of additional rules and guidelines to govern the conduct and practice of Notaries Public.

- **Interpretation and Repeal:**

The Act includes provisions for the interpretation of terms used in the legislation and repeals the previous Notaries Public Act, replacing it with the new regulatory framework. Of note in the interpretation section is the definition of a Notary Public adopted by the Act. A Notary Public is defined as 'an individual commissioned or appointed to perform notarial act by the Chief Justice of Nigeria' thus giving an indication that an individual other than a legal practitioner may exercise duties of a notary public if commissioned or appointed by the Chief Justice of Nigeria.¹⁸

- **Register of Notaries Public:**

The Act establishes the requirement for the maintenance of a Register of Notaries Public, which includes both physical and electronic records. This provision ensures the transparency and accessibility of information related to Notaries Public.

- **Record Keeping:**

The Act requires that copies of digitally notarised documents including the recordings of audio-visual notary sessions be submitted to the Chief Registrar of the Supreme Court for record-keeping or to such persons as may be appointed by the Chief Registrar of the Supreme Court.

- **Delegation of Adjudication Power:**

The Chief Justice of Nigeria may delegate the power to adjudicate over misconduct under the Act to any other court or body. This provision allows for the efficient handling of disciplinary matters related to Notaries Public. These notable provisions, among others, contribute to the comprehensive regulatory framework established by the Notaries Public Act, 2023. They address various aspects of the appointment, regulation, conduct, and oversight of Notaries Public, reflecting the importance of ensuring the integrity and effectiveness of notarial practices in Nigeria.

¹⁸ See sections 1, 21 and 28 of the Act.

CONCLUSION

In summary, the Notaries Public Act, 2023 marks a crucial advancement in regulating notarial practices in Nigeria. Replacing the outdated 2004 legislation, it introduces a modern framework accommodating digital notarisations. The Act's transitional provisions facilitate a smooth transition for existing Notaries Public, emphasizing compliance with updated regulations. Notable provisions, including the Chief Justice's appointment authority and the establishment of a comprehensive register, contribute to transparency and effectiveness in notarial practices. Overall, the Act sets a foundation for a transparent and efficient notarization system in Nigeria, addressing various aspects of appointment, regulation, and conduct.

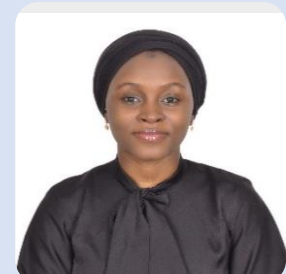
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Feel free to contact us for any inquiry or request for any further information about Notary Public

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