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The Jurisdiction of Public Notary

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Abstract: The jurisdiction generally means the ability of a body or persons to solve a specific problem. Legal language is not too far from the general sense described. In notary matters, the jurisdiction determines the specific applications and procedures of a notary office. Notary Public offices have overall responsibility regarding the notary acts. This jurisdiction shall be defined by the powers of the jurisdictional bodies because of non-contentious character of the applications that are address to the notary office. But the Law is regulating also an exceptional territorial jurisdiction. The paperwork refers to an analysis of main forms of notary jurisdiction. There will be also presented the competence of the administrative bodies and diplomatic missions in notary matter.

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According to the provisions of Article 8 of Law no. 36/1995, the notary public shall meet the following notary acts:

- a) drafting legal documents with legal containing, at the request of the parties;
- b) authentication of documents drafted by the notary public, or personally by the party or by a lawyer;
- c) notary probate proceedings;
- d) certification of facts in the cases provided by law;
- e) the legalization of signatures on documents, of specimens of the signatures and also of seals;
- f) setting officially attested date to the documents presented by the parties;
- g) deposit the inscriptions and the documents submitted by the parties;
- h) acts of protest bills of exchange, the promissory notes and checks;
- i) authentication of copies of documents;
- j) performing translations and legalization;

- k) issuance of duplicates of notary documents that they elaborated;
- l) any other operations required by law.

As noted, this paragraph of legislation that has an open content, meaning that any legal provision which will appear later and give the notary public power is another function, it will enter into his obligations without the need of amending the Law no. 36/1995. Based on article 9 from the same law, notaries public have the right to give legal advice on notary matters, other than those relating to the content of the acts they carry out and participate, as experts nominated by the parties to the preparation and drafting of legal documents with notary character.

For carrying out his duties, the notary public has general jurisdiction, with exceptions in cases specified by law, namely:

- a) The probate procedure is in the responsibility of the notary public from the notary office located in the territorial jurisdiction of the court where the deceased had his last residence;
- b) in case of successive inheritances, heirs can choose the power of any notary offices located in the territorial jurisdiction of the court in which he was last home one of the authors who died at least;
- c) acts of bills of exchange, promissory notes and checks are territorial jurisdiction of the notary public of the court in which payment shall be done;
- d) issuance of duplicate and renewal of notary documents are the responsibility of notary public in whose office is located their original.

Excepting the notary public, Law confers specific attributes to notary activities and to others. It is, for example, the case stipulated by art. 12 of Law no. 36/1995 which establishes that the secretaries of local councils of municipalities and cities where the offices of notary public does not work, shall fulfil, at the request of the parties, the following notarial acts: a) legalization of signatures on the documents submitted by the parties, b) legalizing copies of documents, excepting the documents by private signature. The listed documents, excepting if their deposit is required at some institutions or traders, shall be fulfilled by those. Notary activity carries out also diplomatic missions and consular offices of Romania, based on Romanian legislation and international agreements to which Romania is party, and also according to international practice.

At the request of natural persons having Romanian citizenship, as well as Romanian legal entities, diplomatic missions and consular offices meet the following notarial acts: a) drafting legal documents for signature authentication or legalization, b) authentication of documents, c) legalization of seals and signatures, d) setting officially attested date to the documents presented by the parties; e) certification of facts, f) certification of copies of documents; g) performing translations and legalization h) deposit the documents and the documents submitted by the parties, i) issuing of duplicates of notarial acts issued by diplomatic missions or consular offices.

Notarial acts are carried out at the head-offices of diplomatic missions or consular offices and on board of ships and aircraft under the Romanian flag, which are located in the area of activity of these bodies, as well as Romanian citizens residence or in another place, if so required by international conventions to which Romania is party and the state of residence are parts or local law does not object.

Another component of notarial activity is driven by the increasing mobility of people and goods currently registered. The media of communication and telecommunications have strongly evolved, borders are obstacles hard to overpass. They speak of the phenomenon of globalization. Whether it's

about travel for professional reasons dictated by an employer, or personal, for family reunification abroad or pure convenience, such as for example the withdrawal of the province area, with a better climate, individuals are extremely mobile. From this international travel are resulting various risks of conflict between laws. In this changing world, notaries must be able to inform customers of the consequences and legal consequences of acts which they handle and to anticipate conflicts that may arise.

Finally, the final contents that will be given to a document will depend on the consequences it will have. For this, information should cover all items that notary should know and about which the parties have insufficient knowledge, a common practice in international law. Thus, the notary must inform the parties clearly and intelligibly on points that are favourable as well as those that are unfavourable. When a problem involves an element about which there is a risk of conflict with a foreign legal system, the notary is obliged to notify its customers and, where appropriate, together with a specialist in that country, to clarify parties or at least invite them to make themselves such an approach. For this reason it is important for the notary to keep informed not only on national law issues but also major developments of the main foreign rights, whether civil law or fiscal law. In tax matters, the countries which may be affected often use different concepts and criteria to be examined by a notary. For these reasons, the notary has the responsibility of inform the customer when drawing up a notarial act in connection with fiscal consequences of this act. The problem that we will examine here to know where goes the obligation of the notary, and not simply the opportunity, to inform the client of the tax consequences of acts performed by him. The notary, first if all not a specialist in taxation should be confined largely to inform customers about the tax cost of an operation or on the contrary it should help to create a tax situation that would be as favourable possible? Following the quick development of tax law and jurisprudence, the issue of the notary requirement to inform the client in the tax area should be reassessed periodically. Taxation has increased in complexity over the past 20 years. There appeared new taxes such as value added tax (VAT). Major reforms have been undertaken in various fields of interest in the notary, for example in terms of winning estate. More than once, we can say that the legislature can ignore the tax consequences of an act of notary investigated, especially in cases of sale of property or companies. The level of knowledge that we can expect from notaries is not the same in all areas of taxation.

From his side it is asked, rightly, to know precisely to inform the customer on how to calculate the tax on the gain derived from property or right to move. Be a similar situation also for the tax consequences to the example to transform a company from a reason individual capital into a capital society? If the answer is affirmative then the notary is required to acquire fiscal knowledge, such as a tax specialist, which seems hard to accept. If the answer is no, then let the customer in a great uncertainty about the direct consequences of an act issued by a public officer, a situation which is also not very satisfactory.

It thus define, together with the obligation to inform, meaning de the debt of notary to send the client to a specialist for the most complex cases, respectively, to ensure that the customer has been informed on these issues (duty to indicate or to signal).

In this way, the assessment can not be uniform over all areas of taxation in the awareness that the notary is obliged to provide these matters to his client.