

Rwanda

Ministerial Order determining Modalities for Access to and Practice of the Office of Notary by Private Persons, Supervision of a Private Notary and Conservation of Authentic Deeds

Ministerial Order 13 of 2017

Legislation as at 27 March 2017

FRBR URI: /akn/rw/act/mo/2017/13/eng@2017-03-27

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Rwanda

Ministerial Order determining Modalities for Access to and Practice of the Office of Notary by Private Persons, Supervision of a Private Notary and Conservation of Authentic Deeds Ministerial Order 13 of 2017

Published in Official Gazette 13 on 27 March 2017

Assented to on 24 February 2017

Commenced on 27 March 2017

[This is the version of this document from 27 March 2017.]

The Minister of Justice/Attorney General;

Pursuant to the Constitution of the Republic of Rwanda of 2003 revised in 2015, especially in Articles 121, 122 and 176;

Pursuant to Law n° 13bis/2014 of 21/05/2014 governing the Office of notary, especially in Articles 6, 22 and 45;

After consideration and approval by the Cabinet, in its session of 05/08/2015;

HEREBY ORDERS:

Chapter One General provision

Article One – Purpose of this Order

This Order determines modalities for access to and practice of the office of notary by private persons and determines modalities for the supervision of a private notary and the way he/she keeps authentic deeds.

Chapter II Access to the office of notary by private persons

Article 2 – Requirements to be a private notary

Any person who wishes to be a private notary must fulfil the following requirements:

- 1° be a Rwandan national;
- 2° have attained the age of majority;
- 3° hold at least a bachelor's degree in law or its equivalent;
- 4° not having been sentenced, in a final court decision, to a term of imprisonment of more than or equal to six (6) months which has not been nullified by amnesty or rehabilitation;
- 5° not having been dismissed from duties as a result of disciplinary sanctions;
- 6° having at least a five (5) years' experience in a legal profession.

Article 3 – Application for being a private notary

Any person who wishes to be a private notary is required to apply to the Minister in writing through a registered mail or hand delivery with acknowledgement of receipt.

The applicant is also required to attach all the required documents.

In this Order, the term “Minister” means the Minister in charge of Justice.

Article 4 – File assessment

The Minister examines the file of the applicant and informs the Prosecutor General within thirty (30) days from the date of examining the file.

The Prosecutor General must, in a period of sixty (60) calendar days from when the Minister notified him/her, provide his/her written opinion to the Minister on the application for being a private notary. Failure to provide his/her opinion thereon, the application is considered approved.

The Minister may or may not base on the opinion of the Prosecutor General.

Article 5 – Time limit for response

If the applicant for being a private notary fulfils the requirements mentioned in Article 2 of this Order, the Minister is required to approve his/her application within thirty (30) days from the date of reception of the opinion of the Prosecutor General. In case the applicant does not fulfil the requirements, he/she is also informed within the same period.

If the Prosecutor General does not communicate his/her opinion, the applicant is informed of the decision taken after ninety (90) days following the date the Prosecutor General was notified.

The Minister is required to approve or reject the application for access to the function of a private notary through a letter.

Article 6 – Supervision and period of professional internship

Before practicing, an authorized private notary is required to choose a notary who supervises him/her during the internship for a period of six (6) months.

The supervisor of the internship is required to prepare and submit to the Minister a report on the internee in a period of thirty (30) days from the day following the last day of the internship.

If the internship supervisor’s report indicates the trainee’s capacity, the trainee is definitively enrolled on the list of private notaries by the Minister.

In case the report indicates that the trainee is incapable, the internship period is extended for another period of three (3) months and if he/she fails, he/she is disqualified on the basis of the internship supervisor’s report.

A person who practiced as an advocate for a period of five (5) years or as a public notary for more than one (1) year is exempted from the internship provided for in Paragraph One of this Article.

The supervision of the internship of private notaries is carried out by public notaries within a period of one (1) year from the date of publication of this Order in the Official *Gazette* of the Republic of Rwanda. After that period, private notaries are supervised only by private notaries.

Chapter III

Practice of the office of notary by private persons

Article 7 – Independence of a private notary

In the exercise of his/her duties, a private notary is fully independent in his/her notarial functions.

Article 8 – Validity of private notary acts

Acts of a private notary who carries out his/her activities are considered valid except if declared void by courts.

Article 9 – Beneficiaries of services of a private notary

A private notary must serve every person who seeks his/her assistance.

However, a private notary is not permitted to certify or authenticate his/her own document, one of his/her spouse or one of direct or collateral relative up to the fourth (4th) degree.

A private notary is not also permitted to certify or authenticate any document of a company, association or a cooperative in which he/she has shares, he/she is a member or any company in which one of the persons mentioned in Paragraph One of this Article is a shareholder or a member. He/she is not permitted to certify or authenticate any document in which he/she participated.

Article 10 – Office of the private notary

Every private notary must have an office easily identified by a sign post. He/she must submit a written notice to the Minister indicating the District in which his/her main office is located.

Article 11 – Collaboration among private notaries

A private notary may practice either as an individual, in association or in collaboration with other private notaries in an association with no legal personality but with its administration. He/she may also practice in association or in partnership with other private notaries, with legal personality in accordance with relevant laws.

Article 12 – Agreement of collaboration and agreement of association

Private notaries may perform notarial services on the basis of agreement of collaboration.

The agreement of notarial association is one by which two (2) or several private notaries decide to practice the profession together, either within the same office or in different offices and agree to share profits and losses.

Chapter IV

Modalities of supervision of a private notary and cessation of activity

Article 13 – Report of a private notary

A private notary is required to prepare a report of notarial activities performed every three (3) months and submits it to the Minister.

The report of notarial activities must indicate:

1° the nature of documents received;

- 2° the certification date;
- 3° the names and address of the owner of the document;
- 4° the service the notary was required to deliver.

If a private notary does not submit the report mentioned in this Article, the Minister reminds him/her to do so through a written notice. If thirty (30) days which are counted from the date of reception of such a notice elapse without submitting the report, the private notary is suspended for a period of three (3) months. If after that period, the private notary persists in failing to submit the report, he/she is prohibited from exercising the function of a notary.

Article 14 – Capacity building for a private notary

Every private notary is required to attend trainings relating to the profession organized by the Ministry in charge of justice.

In case a private notary does not participate in the trainings provided for in Paragraph One of this Article without reasonable grounds, the Minister writes to him/her requesting to provide explanations. If he/she does not participate again in the next training without reasonable grounds, the private notary is suspended for a period of six (6) months. If he/she is again absent in the following training, without reasonable grounds, he/she is prohibited from practicing the notary functions.

Article 15 – Cessation of a private notary functions and its notification

A private notary may cease his/her activities. In that case he/she informs the Minister in writing indicating reasons and date of cessation of notary activities.

A private notary who ceases the activities must make an inventory of pending files and submits them to the private notaries association and communicates to owners of the files where they may find them.

In case the association is not yet established, a private notary who ceases his/her activities is required to return any file under his/her possession to the owner to enable him/her get any other notary to handle it.

A private notary who requested for suspension of his/her notarial activities may re-apply to practice at any time he/she so wishes provided he/she fulfils the required conditions. However, if the private notary suspends the activities for a period exceeding six (6) months, he/she re-applies upon fulfilment of the requirements and informing the Prosecutor General thereof.

Article 16 – Grounds for suspension of a private notary

A private notary is suspended from duties because of the following grounds:

- 1° if he/she does not have any known office and account on which the payments of his/her services are made;
- 2° if he/she does not submit the report as provided for in Article 13 of this Order;
- 3° if he/she requests, receives or offers a bribe;
- 4° if he/she is definitively sentenced to imprisonment of six (6) months or more;
- 5° if he/she commits a serious fault in notary functions following his/her misconduct;
- 6° if he/she used fraudulent practices to be a private notary.

Chapter V

Conservation of authentic deeds by a private notary

Article 17 – Place for conservation of authentic deeds

A private notary must keep all original authentic deeds received in his/her office. He/she gives copies to the concerned owners.

Article 18 – Damaged or lost deeds

In case of damage or loss of deeds, the notary makes a writing to attest that they existed.

Article 19 – Deeds of a private notary after cessation of activities

In case of death, suspension or termination of activities of a private notary or revocation, the authentic deeds are kept by the public notary in the territorial jurisdiction where the private notary's office is located.

Chapter VI

Final provisions

Article 20 – Repealing provision

All prior provisions contrary to this Order are repealed.

Article 21 – Commencement

This Order comes into force on the date of its publication in the Official *Gazette* of the Republic of Rwanda.