

**Law Decree N° 24/2009**  
**Of August 26th**

First alteration of the law decree n° 3/2004, of February 4th, relative to the Judicial Notary Regime

The Judicial Notary Regime, approved through the Law Decree n° 3/2004, of February 4<sup>th</sup>, the legal diploma which establishes the basic and political orientations for the functioning and exercise of all the notaries' activity in Timor-Leste.

It is a diploma inspired by the Spanish legislative notary system, in which it is instituted, besides the public notary documents common to the countries with the administrative notary system in Latin, the notary figure minutes, worthy of mention, taking into consideration its unquestionable utility, both in the administrative and judicial spheres.

Five years after its publication, there is the need to insert modifications which allow the harmonization of the language and technical terms of the Judicial Notary Regime with the different diplomas in vigor, as well as the law projects to be approved, facilitating the respective interpretation to the enforcers of the law; adopt simplified administrative measures and legitimize certain administrative procedures to be more adequate to modern life; introduce justification mechanisms and acquisition of real estate rights and other rights, through notary means; and authorize, provisionally the exercise of notary activities to non Timorese notaries.

In this context, through the example of certain ongoing procedures which are being legitimized, it can be highlighted the nomination of notaries by the Ministry of Justice, depending on nomination by the direct hierarchic superior, with the objective of safeguarding the principles of impartiality and of legality as pillars of public notary faith.

As an administrative simplification measure, it is attributed to the notary the competency of, through electronic means, to be able to request to other public services the necessary documents to the notary instruction, so as to obtain rapid outcomes in respective decisions.

Relative to the impediment notary in practicing acts in which he or his relatives are the interested, in the terms defined in the notary law, it was established that, for certain acts of non-contractual nature, other staff can intervene, so as to avoid the frequent resourcing of other notary offices. Equally, the notary's intervention is regulated in acts subject to restrictions and prohibitions.

It is emphasized that the delegation of competencies in other staff of the notary repatriation is limited to the practice of acts, which do not have any real intervention of the notary.

So as to be able to confirm identities, objective criteria as been established, with the intention of avoiding the adoption of differing procedures in each notary office, guaranteeing more safety in the identification of the interested party and holders of their rights.

Administrative mechanisms are created for the recuperation of lost titles or for the acquisition of rights via usucaption, with the objective of lessening the burden on courts, having for such installed the figure of notary justification, without prejudice to the limits, which may be established by law.

The minutes of diligent protests is expected, seen as this notary document is listed in the type of instruments whose incorporation in the document registry book is compulsory.

The increased demand for the recognition of signature services, and the lack of decentralized notary offices, imposes that the figure of recognition of signatures by similarity be established, which does not necessarily require the presence of the interested party.

The recognition of signatures, in general terms is subordinate to the following fiscal norms, therefore attributing to the notary the competency of making sure that fiscal obligations are followed, even in the acts in which there is no notary intervention.

The scope of annulment is amplified to guarantee that the expected formalities in law and norms are followed, this for the security of notary acts.

The dispositions regarding the margin notes have been revoked, which showed to be poorly operational in notary practice and the disposition which attribute the competency to approve the notary procedures to the Ministry of Justice have been altered, as so the establishment of the notary fee whose competency is attributed by the Constitution, to the Government.

The lack of qualified and specialized staff in the registry and notary field imposes the necessity of authorizing, through the present diploma, the admission of notaries from countries of civilian systems so as to be able to carry out the notary activity.

This authorization does not compromise the State's sovereignty, once it is restricted to the exercising of technical functions. By which it is not permitted to the international notary, the management of any notary office, finding their acts equally subject to the Inspection of the Registry and Notary, and the notary hierarchically subordinates to the National Directorate of Registry and Notary.

The proposed alterations do not compromise the current structure of the Judicial Notary Regime, they merely legitimize current practices and adequate the notary regime to the country's reality, these measures which reveal to be necessary the concretization of one of the objectives of the IV Government Constitution, namely the consolidation of the notary and access to Justice.

The National Directorate of Registry and Notary, the Appeal Court, Attorney General's Office, and the Public Defense have been heard.

As such, the Government declares under the first and third line of the 115<sup>th</sup> article of the Republic's Constitution, that to be of legal value, the following:

**1st Article**  
**Alteration of the law decree n.3/2004, of February 4**

The articles 4<sup>a</sup>, 11<sup>a</sup>, 17<sup>a</sup>, 18<sup>a</sup>, 19<sup>a</sup>, 20<sup>a</sup>, 21<sup>a</sup>, 22<sup>a</sup>, 23<sup>a</sup>, 24<sup>a</sup>, 27<sup>a</sup>, 28<sup>a</sup>, 29<sup>a</sup>, 30<sup>a</sup>, 32<sup>a</sup>, 33<sup>a</sup>, 36<sup>a</sup>, 37<sup>a</sup>, 38<sup>a</sup>, 39<sup>a</sup>, 41<sup>a</sup>, 42<sup>a</sup>, 43<sup>a</sup>, 44<sup>a</sup>, 45<sup>a</sup>, 47<sup>a</sup>, 48<sup>a</sup>, 49<sup>a</sup>, 50<sup>a</sup>, 53<sup>a</sup>, 54<sup>a</sup>, 55<sup>a</sup>, 57<sup>a</sup>, 58<sup>a</sup>, 68<sup>a</sup>, 69<sup>a</sup>, 73<sup>a</sup>, 77<sup>a</sup>, and 78<sup>a</sup> of the Law Decree n° 3/ 2004 of February 4, will from now on read as follows:

**4th Article**  
**Competent Organ to nominate**

It is up to the Minister of Justice to nominate the notaries for the fulfillment of notary functions, under proposal from the National Directorate of Registry and Notary.

**11th Article**  
**Technical Competency**

1. (...)
2. (...)
3. As a request from the interested parties, the notary can request, in any way, from other public services, necessary documents for the fulfillment of acts in his competency.
4. The notary can, due to decree, under his responsibility and according to the job necessities, authorize one or various staff of the notary office with adequate training, to carry out certain acts or certain categories of acts.
5. The signature of the authorized staff to carry out notary acts is subject to registry in the signature registry book and legal communications.
6. The authorization referred to in n. 4 cannot reach the practice of acts titled by public scripture, public testaments, approving acts, of opening and depositing testaments, or of international testaments and the respective alterations to these, any type of minutes, in a general way all acts which need the interpretation of the willingness of the interested party or to clarify them judicially.

**17th Article**  
**Restrictions and prohibitions of notary's actions**

(...):

- a) (...);
- b) Public testaments which contain dispositions in ones favor, of one's spouse or of anyone's family members up to the fourth degree:

- c) (...)
- d) (...)

### **18<sup>th</sup> Article**

#### **Books**

1. (...)
2. No notary can clean acts or register documents in other books which are not the indicated ones in the previous number, except with a legal disposition which expresses the contrary.
3. (...)

### **19th Article**

#### **Protocol**

The Protocol Book is utilized by the notaries, consuls, and other workers in accordance with the 3<sup>rd</sup> article, to draw up, in order of respective dates, the scriptures which need to be inserted in them.

### **20th Article**

#### **Protocol System**

1. (...)
2. Each book contains 10 pages, all numbered and signed by the Inspector of Registries and Notaries.
3. In the beginning of the notary's activity and in the beginning of each civil year, which is extended from the first day of January and the thirty first day of December, it is given to them ten numbered and signed books, and a sufficient quantity notary paper for the fulfillment of corresponding functions.
4. The notary must solicit with enough time, to the Inspector of the Registry and Notary, numbered and signed protocol books, in such case the ten which were given to him are not sufficient.

### **21st Article**

#### **Notary Paper**

All notary activity must be done in simple numbered and signed paper, identified as notary paper and with the security seals that the Inspector of Registry and Notary determines.

### **22nd Article**

#### **Regulation of the system of cleaning protocol**

The system of drawing up protocol, the system of annual closing and archive, and the returning of the remaining protocol books are subject to notary regulation.

**23rd Article**  
**Judicial act of incorporation of documents**

To incorporate a document is the judicial act of drawing up or registering documents in the book of document registration, with the formalities that the present law and the respective regulations determine.

**24th Article**  
**Book of document registration**

1. The Book of Document Registration is destined to the registration of documents, draw up notary minutes and other documents solicited by the parties, during the civil year, by the notary that keeps it, by force of the law, regulation or decision of the judicial authority or administrative entity, or by solicitation of the interested party, with the general outcome of authenticating or conserving and reproducing.
2. The Book of Document Registration follows the applicative terms to the protocol book, with exception to the formalities that are not compatible with the nature and composition.
3. The voluntary incorporation of documents, the ones solicited within context of drawing up a public instrument or notary minute.
4. The testimonials, certificates, and the minutes relating to closed testaments, when not incorporated in the Book of Document Registration, which the notary authorizes, are noted chronologically monthly, in a special minute, with the precise indication of the intervention number, the name of the petitioner, a summary of the matter and content, the date, the number of papers used, and the amount charged for the act.
5. The registry omission of any document in the special minute referred to in the previous number, the lack of incorporation of the same in the Book of Document Registration, or the alteration of the data which it needs to have, are sanctioned according to the circumstances, in accordance with legal disposition.
6. The following documents need to be incorporated mandatorily:
  - a. Protest diligence minutes
  - b. Notary minutes, whichever may be the nature
  - c. Attorneys General or Granter in a foreign country, previous or simultaneously in use within the country.
  - d. The many documents authorized by the notary whose registry are not made in the special minutes or in the Protocol Book, or whose incorporation in the book of document registration is determined by law or regulations for authenticity effects.

**27th Article**  
**Content of the book of document registration**

1. (...):

- a) By the public and private documents which are incorporated, in terms of the previous articles;
- b) By the notary minutes
- c) (Revoked)

### **28th Article**

#### **Incorporation of documents not written in the official languages**

1. (...)
2. In the lack of a professional translator, the written translation is made by an interpreter, which comes to the notary by the solicitation act of the incorporation of the document, and signs the respective minutes, taking responsibility for the translation.

### **29th Article**

#### **System for the registration of documents**

The system for writing in the book of document registration is the objective of notary regulation.

### **30th Article**

#### **Take off incorporated documents**

1. (...)
2. The process of doing all one can is objective of notary regulation.

### **32<sup>nd</sup> Article**

#### **Document Exhibition**

The exhibition is done by the notary himself and it solely incorporates the acts or parts of interest.

### **33<sup>rd</sup> Article**

#### **Refusal of exhibition**

If the notary refuses to exhibit the registries, the interested party can go to the National Director of Registry and Notary, in the expected terms by the notary regulation.

### **36th Article**

#### **Relation of the authorized testaments**

The notaries must hand into the Central Archive, in three subsequent days of the relevant month, a relation of the authorized testaments, which must contain the following elements:

- a) The nature of the act
- b) The complete names, nationality, civil status, residential address, and the profession of the granter, and if possible the place and date of birth.
- c) The place and date of the grant;
- d) The complete name and residential address of the notary and witnesses.

### **37th Article**

#### **Objective of the public scripture**

1. Public scripture is the notary instrument in which are written declarations of willingness, judicial acts which imply oath taking of consent, contracts, and judicial business of all kinds, in the Protocol Book, in legal terms, and authorized by the notary.
2. (...)
  - a. (...)
  - b. (...)
  - c. (...)
  - d. (...)
  - e. (...)
  - f. (...)
  - g. (...)
  - h. (...)
  - i. (...)
  - j. The notary justification

### **38th Article**

#### **Composition of Public Scripture**

1. (...)
2. The notary can translate the scriptures to the local languages if be required by the interested parties, and can put them in the Protocol Book, right after the Portuguese version, making note that it is a faithful translation.

### **39th Article**

#### **Interpreter Assistance**

1. When public scriptures are granted by people that do not know the Portuguese language, they must be assisted by interpreters of their choice, who must verbally transmit the instrument of the translation, except if the notary knows the language of the parties.
2. When the notary knows the language of the parties, he orally transmits the translation of the instrument, making sure that it is noted that he did the translation orally and that the will of the parties is faithfully reflected in the same.

3. If there is more than one granter and if it is not possible to find a language that all the interested parties understand, the necessary interpreters must intervene.

#### **41st Article**

##### **Wrong scriptures and without effect**

1. (...)
2. (...)
3. (...)
4. A scripture without effect is that in which the notary ended, and that the parties voluntarily do not sign, but making sure that the notary takes note that it has become without effect, but which the interested parties pay the necessary fees.

#### **42nd Article**

##### **Basic data of public scripture**

1. Any public scripture must contain, at least:
  - a. The complete names of the granters, the witnesses, and accidental intervenient when it is the case, as well as other names by which the person is known in its private life, if possible, identification number.
  - b. The nationality, civil status, age, complete residential address with detailed mentioning of the same, of any person that is present in the scripture, as a granter or as a witness, accidental intervenient, legal representative or volunteers.
  - c. In the acts subject to registration, if the granter or representative is married, the mentioning of the matrimonial regime, and the complete name of the spouse is necessary.
  - d. (revoked)
  - e. The aforementioned line d) applies to the scriptures of the notary's relative ability to which it applies.
  - f. The mentioning of the proxies, and of the documents relative to the instrument which justify the solicitor's authenticity, and of the representative, with mention of power verification necessary for the act.
2. The notary procuration establishes the formalities of the proxies.

#### **43rd Article**

##### **Reading, granting, signing, and authorization of public scriptures**

1. The notary regulation establishes:
  - a. (...)
  - b. (...)
  - c. (revoked)
  - d. The mention that a notary can make in a scripture after it is written and before it is signed.



2. The reading, granting, and signing of a scripture must be done in the beginning in a single act, with the exception of what the notary regulation establishes.
- 3.

**44th Article**  
**Knowledgeable witnesses**

They are knowledgeable witnesses those which intervene in the act with the end result of identifying the granter.

**45th Article**  
**Instrumental witnesses**

1. The instrumental witnesses must intervene in the following cases.
  - a. Public testaments, approving minutes, deposits, opening of closed testaments and internationals, as well as the instruments of revoking testaments;
  - b. When some of the granters do not know how to sign or cannot sign, and it is not possible for them to put a fingerprint;
  - c. When one of the granters requests it, except in the minutes of diligent protest.
  - d. Whenever a notary considers it convenient, except in the minutes of diligent protest.
  - e. And in any other cases established in law or in regulation.
2. The notary regulation establishes the requisites which must be obeyed by the knowledgeable and instrumental witnesses.

**47th Article**  
**Formulation of notary minutes**

1. In the formulation of notary minutes, the following criteria is taken into account:
  - a. The identity of the people that sign the minutes must be verified by the notary in one of the ways stated in the 42<sup>nd</sup> article of the law;
  - b. The declarant or the notary can solicit the intervention of instrumental witnesses, or accidental intervenient, in accordance with the case, except if the declarant does not know or cannot sign, in which case instrumental witnesses must intervene, or is blind, in which case declarant must assign someone that proceeds with the second reading of the document, except in cases that the legal disposition expresses otherwise;
  - c. (...)
2. Except in cases where the legal disposition expresses otherwise, the minutes are always incorporated in the book of document registration.

**48th Article**  
**Finality of notary minutes**

1. The minutes, in accordance with its finality, can be:

- a. (...)
  - b. Incorporation of drawn up acts outside of the notary books, which consists of the registration of the respective acts in the Book of Document Registration, namely the authentication of documents, the registry of the minutes referring to the closed testaments, translations, and notary certificates, are subject to registry in the referred minutes of n. 4 of the 24<sup>th</sup> article, of the present diploma;
  - c. Incorporation of other public and private documents
  - d. Confirmation with the objective of proving occurred facts or situations which occur in the presence of the notary;
  - e. Incorporation of documents by legal determination
  - f. Of protest diligence
2. The notary regulation establishes the content and the way in which the minutes must be done in reference to the previous numbers.

#### **49th Article**

##### **Minutes of document incorporation**

1. (...)
  - a. The title, with the number specification referent to the incorporation in the Book of Document Registry;
  - b. (...)
  - c. (...)
  - d. (...)
  - e. The pages which occupy the incorporated document, in accordance to the case;
  - f. (...)
  - g. (...)
2. (...)

#### **50th Article**

##### **First copy of the scriptures and testament**

1. The notaries delivered the parts, whichever the nature of the case may be, and one copy of the public scriptures or testimonials on the incorporations made.
2. The delivery is made until the third day after the signing of the scripture, or the incorporation of the document.
3. (...)
4. The copy and the testimonial, in the terms of this article, must be issued, as a rule, in favor of the petitioner, beneficiary or respective representatives, dully mandated for the effect.
5. (...)

#### **53rd Article**

### **Objective of the testimonials for exhibition**

1. Besides the testimonials referred to in the previous articles, the notaries can issue testimonials for exhibition of public or private documents, by solicitation of the interested party and with the end objective of certifying the existence, nature, or content of the reproduced document, without this implying that it affects its efficacy and effects.
2. (...)

### **54th Article**

#### **Format and content of the testimonial for exhibition**

The notary regulation establishes the format and the content of the testimonial for exhibition.

### **55th Article**

#### **Objective of the certificates**

The notaries can issue certificates that have the objective of:

- a) (...)
- b) Recognizing the signature and letter, or just the signature put in public or private documents.

### **57th Article**

#### **General requisites of the certificates**

1. Any notary certificate must contain:
  - a. The act or objective facts of the certificate
  - b. The complete name of the person that solicited its emission, when this data does not result of the own modality of the certification, in the terms of the previous articles;
  - c. A mention of the way in which the notary verified the identity of the granter, signatory, or mediator, witnesses and accidental intervenient, in accordance with the case;
  - d. The specific mentioning of the act in the previous articles, so that it clearly demonstrates that it was done in accordance with the legal requisites for each type of intervention;
  - e. The mentioning of laws and regulations demanded, in accordance with the intervention that is necessary;
  - f. The designation of the eminent service, the place and date in which they were passed, the seal and signature of the notary or of the worker authorized by law, being that when there is place for a witness intervention, trustee, or accidental intervenient, there must be an apostasy before the signature of the competent worker.

2. It is applicative the verification of the identity of the signee or mediator, as well as the verification of identity and intervention of any accidental intervenient, the disposed in the present diploma for the notary documents.
3. Signature recognition can be done with special mentioning of the representative of the signee, a simple signature confrontation of the document with the opposed signature in any of the documents referred to in n.4 of the 55<sup>th</sup> article – A.

### **58th Article**

#### **Refusal of recognitions**

1. The notary must refuse the recognition of the letter or signature in which produce materials that do not guarantee permanency, and, as well, the letter or signature put in documents that contains lines or spaces in white, or not utilized.
2. It must still be refused the recognition of signatures put on blank paper or in documents whose reading is not easily made by the notary.
3. If the document was written in a language that the notary does not speak, the recognition can only be done if the same is translated, even if verbally by an interpreter of one's choice, who must be clearly identified as an intervenient in the act.
4. The recognition in the document, act, or contract, is subject to fiscal obligation and must not be done without the proven fulfillment of said obligation, except with expressed legal disposition that concedes an exception, being that the legal disposition that concedes it must be mentioned.

### **68th Article**

#### **Admitted declarant**

1. (...)
2. The notary must let it be known to the declarants, and that they incur with all applicable criminal penalties of falsification of declarations to a public officer, these enforced if false declarations are made.

### **69th Article**

#### **Documents to be annexed**

1. The scripture of ability must be annexed with the following documents:
  - a. (...)
  - b. (...)
  - c. (...)
2. When the regulatory law of succession is not the Timorese one, and if the notary does not know it, the scripture must be annexed with the faithful document that proves the referred law.

### **73rd Article**

#### **Refusal of the practice of the act**

1. The notary must refuse to practice the act that he is asked to, in the following cases:
  - a. (...)
  - b. (...)
  - c. (...)
  - d. If the parties are not fully prepared, except with regards to the legal disposition expressing otherwise.
2. (...)
3. (...)
4. (...)
5. (...)

**77th Article**  
**Fees**

The fees, taxes, and expenses to be charged by the notary are established by the Law Decree

**78th Article**  
**Notary Regulation**

Notary regulations approved by Law Decree.

**2<sup>nd</sup> Article**  
**Annulment**

Are revoked the 52<sup>nd</sup> and the 56<sup>th</sup> article of the Law Decree n. 3/2004, of February 4.

**3rd Article**  
**Adding to the Law Decree n. 3/2004 of February 4**

The following articles are added 17° - A, 17° - B, 42° - A, 45° - A, 55° - A, 55° - B, 56° - A, 57° - A, 72° - A, 72° - B, 73° - A and 76° - A, to the Law Decree n.° 3/2004 of February 4 with the following redaction.

**17th Article – A**  
**Exceptions**

1. The disposed in the previous article n. 1 does not apply to the notary re-recognitions added in documents that do not involve contractual content, except if the representative or author of the document goes personally to the notary.
2. The authorized workers, in the limit of their competencies, can practice the acts which are referred to in the previous number, even though the representative or the author of the document goes in person to the notary.

**17<sup>th</sup> Article – B**  
**Extension of the impediments**

1. The impediment of the notary applies equally to the workers authorized to carry out the acts of the notary's office to which the impeded notary belongs;
2. The impediment is extended to the acts to which parties or beneficiaries have as solicitor or legal witness any of the persons mentioned in line a) of the 17<sup>th</sup> article.

**42<sup>nd</sup> Article – A**  
**Verification of identity**

1. The notary must always verify the identity of the granter and other intervenient in the act, and the same must be done in one of the following ways:
  - a. By presenting their identification card or equivalent document of resident citizen issued by the authorities of Timor;
  - b. By presenting their passport for those residing outside of Timor-Leste;
  - c. By the declaration of two knowledgeable witnesses, whose identities the notary has verified extensively by one of the ways previously mentioned.
2. It can only be accepted, for the identity verification, documents whose data coincides with the identification elements supplied by those interested, and whose validity as not yet expired, it can be admitted the change of residency and civil status if, for these there is supporting documentation of its alteration not occurring in the last six months.
3. In notary acts it must be mentioned the number and date of the exhibited documentation for the identification of each granter, as well as the issuing service.
4. The instrumental witnesses can serve as trustees.

**45<sup>th</sup> Article – A**  
**Intervention of translators, readers, interpreters and experts**

1. Interpreters must intervene in the act when the granters do not understand the Portuguese language, is deaf, cannot speak, or both.
2. A reader can intervene in the act when the granter is blind.
3. Experts can intervene in the act to guarantee the mental sanity of any of the granters, or any other fact that requires an expert's intervention, by request from any of the interested parties or notary.
4. The identity verification of the translators, readers, interpreters, and experts can only be done by one of the ways mentioned in lines a) and b) of article 42. –A.
5. The notary can request proof of the alleged qualities by the translators and experts.
6. The notary regulation establishes the requisites that must be obeyed by accidental intervenient, including the trustee and the outcome of each intervention.

**55<sup>th</sup> Article – A**  
**Types of recognitions**

1. Notary recognitions can be simple or with special mentions, in person, or by similarity.
2. Simple recognitions are the ones that simply respect the letter and signature, or just the signature, of the document's signee.
3. Recognition with special mentions is the one that includes, by requirement from the law, or by request from the interested parties, the mentioning of any special circumstance, the signees or the mediators, and that is known by the notary or by him, verified in accordance to the documentation that are presented.
4. The recognition of the letter and signature is in person, or just the signature, which is on written documents and signed, or which is signed in the presence of the notary or of another authorized staff, or the recognition which is done where the signee is present.

**55<sup>th</sup> Article – B**  
**Recognition by similarity**

1. Signature recognition by similarity is done by the simple confrontation of:
  - a. Identification documents which were referred to in the 42th Article- A, in which the signature of the signee is present.
  - b. Authenticated photocopy of the documents referred to in the previous point.
  - c. A document which may be archived in the notary's office, in which present is the signature to be recognized.
2. The demand with regards to legal disposition and the recognizing by similarity may be substituted by the presentation of a resident identification document, an equal document or passport, or an authenticated photocopy of the same, possessing its nature, number, date and issuing authority, the receiving staff member must take note in the respective document accordingly.
3. The staff member that demands the document's legalization via recognition by similarity may incur disciplinary responsibility when it is shown that the previous point has been followed up on.
4. The notary recognition is by similarity, except when the law specifically demands recognition in person.

**56th Article – A**  
**In loco parentis Signature**

1. The signature in loco parentis can only be recognized as such through personal recognition, and only if the mediator does not know, or cannot sign.
2. The petition must be given or confirmed before the notary in the same act as the recognition of the signature and after the document has been read to the mediator.
3. The trustee signs the document declaring that they do as per the request of the mediator.
4. The notary can demand that the mediator insert in the document, in the section reserved for signatures, his fingerprint of the index finger of the right hand or, in the

lack of such, another way indicated by the notary, taking into account that the same must make a mention of this.

5. The recognition of the signature by request must still express the circumstances that legitimize it.

### **57th Article – A** **Special requisites of the certificates**

1. In birth certificates and identity, a mention must be made of the petitioner's identification, the way in which such identity was verified, the signature or the declaration that he does not know, or cannot sign, being in this case mandatory the making of a fingerprint of the right index finger, or if not possible, any other way indicated by the notary, with specific mention of this circumstance.
2. In the certificate of performance of the public post of administration or management of commercial societies, or of collective persons, it must declare the type of public or private document presented so as to prove that intended to certify.
3. In the certificates of other facts it must be made with precision the certified fact and the way in which this fact came to be known to the notary.
4. In the documents transmitted by fax, in terms of the lines k) of n.2 of the 11<sup>th</sup> article, besides the mentions referred to in the previous points, there must be a reference of the way in which the document was sent.
5. In the documents received by fax, the pages must all be numbered and signed, and be drawn a note of receipt with the indication of the number of pages effectively received, place, date, category, and signature of the competent service staff that receives it.
6. The recognitions of signature must contain:
  - a. Besides the elements of the lines b) of n.1 of the 57<sup>th</sup> article, the mentioning that the laws and regulations demand, in accordance with the intervention that is necessary, if it is with special mentions;
  - b. The expressed mention of the circumstances that legitimize the recognition and the way it was verified, the identity of the petitioner by one of the ways stated in n.4 of the 55<sup>th</sup> article – A if it is a request.

### **72<sup>nd</sup> Article – A** **Object of the notary justification**

It is up to the notary to decide if the reasons invoked by the interested allow them to prove, by normal extrajudicial ways, the facts they pretend to justify.

### **73rd Article – A** **Nullity of the notary acts**

1. The notary act is null, by vicious form, without prejudice to the nullity which occurs in law, when:



- a. It must have been cleaned outside of the notary books, except when the legal disposition expresses otherwise;
  - b. Misses the mentioning of the day, month, and year, or of the place in which it was cleaned.
  - c. Lacks the signature of any interpreter, expert, reader, trustee or witness;
  - d. Lacks the signature of any granter that knows and can sign, or the fingerprint when necessary;
  - e. Lacks the declaration of fulfillment of the formalities foreseen in the 45<sup>th</sup> article – A;
  - f. Lacks the signature of the notary
2. It is also null the notary instrument cleaned by an incompetent staff in reason of the matter, the place, or is legally unable, without prejudice of what is allowed by civil law with regards to the probatory force of the documents.
  3. It is still null the instrument in which an incapacitated or without capacity, accidental intervenient has intervened.
  4. The notary regulation establishes the procedures and the admissibility of the re-confirmation and of the cure of the notary acts.

#### **76<sup>th</sup> Article – A**

#### **International Notaries**

1. For the performance of the public notary's functions, when necessary, the Minister of Justice can select from a curricular contest, non-Timorese notary, with at least five years experience, which are from countries with a civilian system that provisionally integrates the Timor-Leste notary office.
2. The exercises by an international notary will always solely be of technical character, and will not be allowed to head a notary office.
3. The disposition of the present law applies, with the necessary adaptations, to the international notaries in which exercise functions within Timor-Leste.

#### **4th Article**

#### **Republication**

The Law Decree n. 3/2004 of February 4, in its current writing, is republished in annex to the present diploma of which it is an integral part.

#### **5th Article**

#### **Entrance into effect**

The present diploma comes into effect 30 days after its publication.

Approved by the Council of Ministries on 24 of June 2009

The Prime Minister

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(Kay Rala Xanana Gusmao)

The Minister of Justice

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(Lúcia Maria Brandao Freitas Lobato)

Promulgated on 24/8/09

To be published

The President

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(José Ramos Horta)

## **ANNEX**

(In terms of the 4th article of the Law Decree n. 24/2009, of the 26<sup>th</sup> of August)

Law Decree n. 3/2004  
Of February 4

## **JUDICIAL REGIME OF THE NOTARY**

The approval of a Notary Code is an important instrument in the sustainability of the legislative building in Timor-Leste, namely with reference to economical activity.

The notary function is one of the indispensable parameters to the development of national wealth, being that the notary is more of a simple certificatory of signatures, he must struggle so that the duties he carries covert him, and guarantees the security of the acts and judicial business that is carried out between single parties, between them and the State, therefore relieving the plate of the judicial magistrate.

The norms which are related to the Notary are formulated in such a way that they guarantee the principles of contractual freedom and legality of the rights of the people, their acts,

contracts, and judicial business. The laws of the Notary must be oriented for the creation of notary processes that grant the interested parties' simplicity, economy, and efficiency.

In broadly defined lines, the present law decree bases itself in the simplification of the inherent procedures of the notary acts, and to the level of demanded formality, in the introduction of more rigorous and transparent norms in the notary practice and, still, the rationalization of exercising the notary function.

The fundamental principles are consigned which inform on the Latin notary system, in which Timor-Leste pretends to insert itself, keeping itself naturally unaltered, maximizes the recognition of public faith in the acts practiced by the notary, with the inherent consequences at the probatory level of the documents.

In accordance with the principles of the Latin Notary, to ordain a general norm which defines the acts subject to solemnity, having as a base the creation, modification or extinction of subjective rights on real estate, followed by the initiation of the typology, even though not equal for all, of other acts which must submit themselves to it.

At the level of functioning services, it is expected that the recruitment of notaries starts to be made between lawyers with a special preparation, and a generic competency is attributed to exemption of certain entities to the notary practice.

Simultaneously, with the worry of making each type of notary act, individually considered, more swift and more simple, exempting him from certain requirements, respecting however, the certainty and rigor of justice technicians, it is hoped with the present law decree, to supply the majority of the notary acts of a more simple technique, transforming them into more accessible and simple realities to the citizens. It is therefore hoped, to obtain better results of efficiency and efficacy of everyday notary activities, with benefit to its users, and also for the services themselves.

In these terms, the Government declares, by coverage of the line b) of the n. 1 and the n. 3 of the 115<sup>th</sup> Article of the Republic's Constitution, to be of legal value, the following:

**I TITLE**  
**NOTARIES**

**CHAPTER I**  
**THE NOTARIES, THE NOTARY FUNCTION AND APPOINTMENT TO EXERCISE**  
**THE NOTARY FUNCTIONS**

**1<sup>st</sup> Article**  
**Public Notary**

A public notary is a staff of the notary function, a person trained by the State to write out and authorize by its signature all the acts and contracts which must be celebrated with his intervention, between individuals or between these and all types of collective people.

## **2nd Article**

### **Notary Function**

1. The notary function is destined to turn legal and give public faith to the extrajudicial acts.
2. For the effects expected in the previous article, the notary can give assistance to the parties in the expression of their business willingness.

## **3<sup>rd</sup> Article**

### **Body of the Notary function**

1. The body of the notary function is the notary.
2. The remaining notary workers can solely practice the acts which are to them given by an expressed legal disposition.
3. They can exceptionally carry out notary functions:
  - a. The Timorese consul agents
  - b. The entities that the law supplies, in relation to certain acts, notary competency.
4. The acts practiced from the competency that the special organs of the notary function have, must obey what is expected in this diploma, in the part to which it applies.

## **4th Article**

### **Competent Organ to nominate**

It is up to the Minister of Justice to nominate the notaries for the fulfillment of the notary function, under proposal from the National Directorate of Registry and Notary.

## **5th Article**

### **Demands for nomination**

These are the necessary pre -requisites for nomination as a notary:

- a) Honors in Law
- b) Conclusion of the specific course administered by the Judicial Training center
- c) Minimum age of 23 years
- d) No criminal record
- e) Not affected by the incapacibilities or incompatibilities mentioned in this diploma
- f) Timorese nationality

## **6<sup>th</sup> Article**

### **Notary Oath**

The National directorate for Registry and Notary will set the day and time in which the newly appointed officer will give such oath.

**7<sup>th</sup> Article**  
**Solemn Act of oath**

The Minister of Justice will receive the notary's oath which is as follows "I Swear in God's name and by my honor to properly and faithfully fulfill the job to which I was invested, respect and honor the Constitution and the laws of the Democratic Republic of Timor-Leste, and will never deserve mistrust due to character in my profession".

**8<sup>th</sup> Article**  
**Registry Signature of the Notary**

After taking the oath, the new notary will register in the book for registration of notary signatures at the National Directorate for Registry and Notary, the manual signature will be used in the fulfillment of his role as notary, thereby becoming authorized to carry out his profession.

**9<sup>th</sup> Article**  
**Secret Signature**

1. The notary can use a particular password so as to avoid the risk of any adulteration or falsification.
2. For this to take effect he must communicate it to the National Directorate for registry and Notary, which will add it in a special book which is kept for this reason and that, is guarded under strict vigilance, together with a note that contains the communication of such.

**10<sup>th</sup> Article**  
**Functional Competency**

1. The notary has autonomy and technical independence in the exercising of his function, and once nominated, is considered from an administrative point of view, a staff member of the Justice Ministry, under the National directorate for Registry and Notary.
2. The salary of the notaries will be fixed under a joint diploma by the Finance, Justice, and State Administration Ministries.

**11th Article**  
**Technical Competency**

1. It is up to the notary in general, to manage the public instrument according to the will of the parties, to which he must inquire, interpret, and adequate the judicial fee, clarifying to them the value and reach.
2. Specially it is up to the notary, to do:
  - a. Draw up public testaments
  - b. Draw up any other public document
  - c. Draw up minutes
  - d. Register terms of authentication in particular documents, or of simple recognitions of the ownership in which those documents are written or the signatures put in them
  - e. Pass birth and identity certificates, and the evaluation of public posts, of management or administration of collective persons and partnerships.
  - f. Pass certificates of other facts which have been verified
  - g. Certify, or have it certified, translations of documents written in a foreign language
  - h. Pass the first copies of public instruments and of other archived documents
  - i. Pass photocopies of instruments and of other documents, or confirm with the respective originals the photocopies of the interested parties.
  - j. Authenticate photocopies
  - k. Transmit via fax, in a certified manner, the content of public instruments, registers and other documents which are archived in the notary office, to other public services that have to receive under faith what is transmitted to them, by these services in the same conditions.
  - l. Intervene in extrajudicial acts, in which the interested parties pretend to supply special guarantees of truthfulness and authenticity
  - m. Conserve the documents that by law must stay in the archive of the notary office and those entrusted to him for this reason.
3. On request from the interested parties, the notary can request, in any way, from other public services, documents that may be necessary for the instruction of the acts of his competency.
4. The notary can by decree, under his responsibility and in accordance to the necessity of services, authorize one or various workers of the notary office with adequate training, to practice determined acts or certain categories of the acts.
5. The signature of the staff authorized to practice notary acts is subject to be registered in the book of signatures and in the legal communications.
6. The authorization referred to in the n. 4 cannot include the practice of acts entitled by public scripture, public testaments, minutes of approval, of opening and of depositing of closed testaments, or of international testaments and the respective registration, minutes of any nature, and in a general way, all acts which necessitate the interpretation of the willingness of the interested or to clarify them judicially.

## **12th Article**

### **Place of work of the notary**

1. The Justice Ministry, by proposal from the National directorate of registry and Notary, will indicate to the notary the registry where he will normally and mainly carry out his work
2. Except with a legal disposition stating otherwise, the notary can practice, inside his area of jurisdiction in which notary office is located, all acts under his competency which are requested to him, even if they are about persons or goods located outside of this area.
3. The notaries are competent with regards to their jurisdiction, so as to give public faith to all acts, facts, and declarations which authorize with such character and that in accordance with the laws should be authorized by them.

### **13rd Article**

#### **Notary's Inscription**

Once the above as been fulfilled, the National directorate for Registry and Notary should:

- a) Register the notary in the registry, supplying him with an indicative number;
- b) Communicate to all the courts and especially the ones in the same judicial district as the notary, the respective nomination, accompanied by the seal and signature of the new notary.
- c) Publish upon notice of nomination, in one of the local newspapers and annex it to the process of the nominated, the justification that confirms such publication.

## **CHAPTER II**

### **INCAPACITIES, SUSPENSIONS, INCOMPATIBILITIES AND RESTRICTIONS**

#### **14<sup>th</sup> Article**

##### **Incapacities**

Notaries cannot be nominated

- a) If blind
- b) If deaf and cannot speak even if they can write and read by a special system
- c) If they have a criminal record
- d) Those convicted of giving false declaration either written or verbally

#### **15<sup>th</sup> Article**

##### **Administrative management of the notary**

The National Directorate of Registry and Notary, in the exercising of the authority of supervision, and in the defense of the trust given to the Notary, can suspend and administratively destitute the processed or condemned notary for any intended or non-intended crime when in their judgment the illicit act corrupts his work.

#### **16<sup>th</sup> Article**

## **Incompatibilities**

The following cannot be notaries

- a) Military in active service, ministers of religious cults and heads of political parties.
- b) President of the Republic
- c) Members of Government
- d) Deputies
- e) Any other person that by law is forbidden from fulfilling notary activities.

### **17<sup>th</sup> Article**

#### **Restrictions, Prohibitions to the exercise of notary activities**

Taking into account the content of the acts, the notaries cannot authorize:

- a) Acts in which they constitute, recognize, modify, transmit, or extinguish rights in their favor or against them, of their spouse, of their relatives up to the fourth degree of blood, or until the second degree by affinity;
- b) Public testaments that contain dispositions in their favor, of their spouse or of any of their relatives up to the fourth degree;
- c) Authorize acts or businesses relative to collective persons or entities for which are relatives by blood or affinity mentioned in line a), and for those who have exercised or exercise functions such as directors, managers, administrators or legal representatives;
- d) The many cases that the law establishes.

### **17<sup>th</sup> Article – A**

#### **Exceptions**

1. The disposed in n. 1 of the previous article does not apply to the notary recognitions placed in documents which do not imply acts of a contractual nature, except if the one being represented, representative or author of the document is the notary himself.
2. The authorized workers, within the limit of their competencies, can practice the acts to which the previous number refers to, even if the one represented, representative or author of the document is the notary himself.

### **17<sup>th</sup> Article – B**

#### **Extension of the impediments**

1. The impediment of the notary applies equally to the staff authorized to practice acts in the notary to which the notary belongs to.
2. The impediment is extensive to acts which parts or beneficiaries have as a lawyer or legal representative, some persons exemplified in the line a) of the n. 1 of 17<sup>th</sup> article.

## **TITLE II**



## **OF THE NOTARY REGISTRY**

### **CHAPTER I OF NOTARY BOOKS**

#### **18<sup>th</sup> Article Books**

1. The notary acts, in accordance with their nature, are drawn up in the following two books: Protocol Book, and the Book of Document Registration.
2. No notary can draw up acts or register documents in other books which are not the ones indicated in the previous number, except when a legal disposition expresses otherwise.
3. The Books are opened on the first day of January of each year and are closed on the thirty first day of December of that same year.

### **CHAPTER II OF PROTOCOL, COMPOSITION, OPENING AND CLOSING**

#### **19<sup>th</sup> Article Protocol**

The Protocol Book is utilized by the notaries, consuls and other workers, in accordance with the 3<sup>rd</sup> article, to draw up, by order of respective dates, the scriptures which ought to be noted in them.

#### **20<sup>th</sup> Article Protocol System**

1. The protocol book is made by the system of books from loose pages and scripture made by machine or mechanographic.
2. Each book contains ten pages, all numbered and signed by the Inspector of Registry and Notary.
3. In the beginning of the notary activity, and in the beginning of each civil year, which extends itself from the first day of January until the thirty first day of December, it is given to them ten numbered and signed books, and a quantity of sufficient notary paper for the exercise of their functions.
4. The notary must request with enough time, to the Inspector of Registry and Notary, numbered and signed protocol books, in such case that the ten they were given are not enough.

#### **21<sup>st</sup> Article Notary paper**

All notary activity must be done in simple numbered and signed paper, and with the seals of security which the Inspector of Notary and Registry determines.

## **22<sup>nd</sup> Article**

### **Regulation of the system of drawing up protocol**

The system of drawing up protocol, the system of annual closing and archive, and the returning of remaining protocol books is the responsibility of notary regulation.

## **23<sup>rd</sup> Article**

### **Judicial act of incorporation of documents**

To incorporate a document is the judicial act of drawing up or registering documents in the book of document registration, with the formalities that the present law and the respective regulations determine.

## **24<sup>th</sup> Article**

### **Book of document registration**

1. The Book of Document Registration is the one destined to the registration of documents, drawing up of notary minutes and other documents requested by the parties, during the civil year, by the notary that keeps it, by force of law, regulation or decision of the judicial authority or administrative or by request of the interested party, with the objective of authenticating, conservation, and reproduction.
2. The Book of Document Registration follows the terms applicable to the protocol book, with the exception of the formalities non-compatible with its nature and composition.
3. The voluntary incorporations of documents are the ones solicited in the context of drawing up a public instrument or notary minute.
4. The testimonials, certificates, and minutes in reference of closed testaments, when not incorporated in the Book of Document Registration, that the notary authorizes, are chronologically noted in monthly, in a special minute, with an indication of the precise number of the intervention, the name of the petitioner, a summary of the matter or content, the date, the number of pages utilized, and the fee charged for the act.
5. The omission of registry of any type of document in the referred special minutes in the previous number, the lack of incorporation of the same in the Book of Document Registration, or the alteration of the data it must contain, are sanctioned in due to the circumstances, in accordance with what is expected in law.
6. It is compulsory to incorporate the following documents:
  - a. The diligent minutes of protest
  - b. Notary minutes, whatever their nature may be
  - c. The general proxy or special granters overseas, previous or simultaneous to its use in the country;

- d. The many documents authorized by the notary whose registry is not made in special minutes, in the Protocol Book, or whose incorporation in the Book of Document Registration is determined by law or regulation for effects of authenticity.

#### **25<sup>th</sup> Article**

##### **Competency of the national authorities to decree the incorporation of documents**

The judges and the administrative authorities, in the context of their competencies, can decree the incorporation of documents when they consider it convenient.

#### **26<sup>th</sup> Article**

##### **Voluntary incorporations**

The voluntary incorporation of documents can be requested by the interested party in the incorporation of the document at issue.

#### **27<sup>th</sup> Article**

##### **Content of the Book of Document Registration**

The Book of Document Registry is formed by:

- a) By the public and private documents which are incorporated, in terms of the previous articles
- b) By the notary minutes
- c) (revoked)

#### **28<sup>th</sup> Article**

##### **Incorporation of documents not written in the official languages**

1. To incorporate documents not written in the official languages of the Democratic Republic of Timor-Leste, it is necessary that these are previously translated by the notary or a sworn translator, authorized by the Minister of Justice.
2. In the lack of a professional translator, the written translation is made by an interpreter that comes to the notary office for the act or request of document incorporation, and signs the respective minutes, taking responsibility for the translation.

#### **29<sup>th</sup> Article**

##### **System of document registry**

The book-keeping system of the Book of Document Registration is responsibility of notary regulation.

#### **30<sup>th</sup> Article**

## **Removal of incorporated documents**

1. Incorporated documents cannot be removed without a previous judicial mandate and previous perusal by the Public Ministry, and only if evidently necessary, in case of error or unnecessary incorporation of documents.
2. The process of removal is responsibility of notary regulation.

## **CHAPTER III**

### **SECRET, CONSERVATION AND ARCHIVE OF NOTARY REGISTRIES**

#### **31<sup>st</sup> Article**

#### **Confidentiality of registries**

The notaries' registries are in general secret, solely able to be examined by:

- a) Judicial magistrates and from the Public Ministry, in fulfillment of judicial decision
- b) Notary inspectors in virtue of extraordinary visits and mandatory inspections
- c) The parties, their heirs and solicitors with faculty for such
- d) The authorized staff by the National Directorate of Registry and Notary, and for control of payment of due fees.

#### **32<sup>nd</sup> Article**

#### **Exhibition of the registrations**

The exhibition is made by the notary himself and it solely includes the acts or parts of interest.

#### **33<sup>rd</sup> Article**

#### **Refusal of exhibition**

If the notary refuses to exhibit the registries, the interested can resort to the National Director of Registry and Notary, in the expected terms of the notary regulation.

#### **34<sup>th</sup> Article**

#### **Conservation and integrity of the registrations**

It is the duty of the notary to take all necessary precautions for the conservation and integrity of the registrations that remain in its power and is responsible, administratively and civilly in cases of prejudice to the particulars, or to the State, such cases are without prejudice of the penal actions that may occur.

#### **35<sup>th</sup> Article**

#### **Management of the notary archives**

The notary archives are under the management of the National Directorate of registry and Notary with a specialized dependency denominated by the Inspector of Registry and Notary, who's organic and competency will be the responsibility of their own regulation.

**36<sup>th</sup> Article**  
**Relation of the authorized testaments**

The notaries must submit to the Central Archive, in the three days subsequent to the month in respect, a copy of the authorized testaments, which must contain the following:

- a) The nature of the act
- b) The complete names, nationality, civil status, residential address, and the profession of the granter, and if possible the place and date of birth;
- c) The place and date of the grant
- d) The complete name and residential address of the notary and their witnesses.

**TITLE III**  
**OF THE NOTARY DOCUMENTS**

**CHAPTER I**  
**PUBLIC SCRIPTURES**

**SECTION I**  
**OBJECTIVE AND FORMALITIES**

**37<sup>th</sup> Article**  
**Objective of the public scripture**

1. Public scripture is the notary instrument in which declarations of willingness are noted, judicial acts that imply giving consent, contracts and judicial business of all types, in the Protocol Book, in the legal terms, and authorized by the notary.
2. They are celebrated by public scripture, besides others, especially expected by law:
  - a. The acts that need recognition, constitution, acquisition, modification, division or extinction of the rights of property, usufruct, use and inhabitation, emphyteusis, surface, or of servitude about unmovable things.
  - b. The acts that need to be revoked, rectified, or alteration of business that by force of the law or by will of the parties has been celebrated by public scripture;
  - c. The acts of constitution, modification, and cancelling of voluntary mortgage or of income consignment, and of fixation or of alteration of monthly installment of nourishment, when charging unmovable things;
  - d. The alienation acts or rejection of heritage, or of legacy as long as they are part of unmovable things.
  - e. Ceasing of mortgage or of the level of priority of its registration, the extinction of mortgage guarantee and the ceasing of mortgage credits.

- f. The business of property transmission of commercial or industrial establishments;
- g. The perpetual rent contract, and the one of lifetime rent if the thing or transferred right of an immovable
- h. Notary habilitation
- i. The sharing of unmovable things or of partnership quotas of which unmovable things are part of;
- j. Notary justification

### **38<sup>th</sup> Article**

#### **Composition of public scriptures**

1. Public scriptures are composed in the Portuguese language and with a clear and precise style.
2. The notary can translate the scriptures to the local language, if it is requested by the interested parties, and insert them in the Protocol Book, right after the Portuguese version, making a note that it is a faithful translation.

### **39<sup>th</sup> Article**

#### **Interpreter Assistance**

1. When public scriptures are granted by people that do not know the Portuguese language, they must be assisted by an interpreter of their choice, who must verbally transmit the translation of the instrument, except if the notary knows the language of the parties.
2. When the notary knows the language of the parties, he must orally transmit the translation of the instrument, making a note in the document that he did an oral translation and the interest of the parties is faithfully reflected in the same.
3. If there is more than one granter and it is not possible to find a language that all the intervenients understand, the necessary interpreters must intervene.

### **40<sup>th</sup> Article**

#### **Numbering of the scriptures**

The scriptures must be numbered in a sequential way and be titled.

### **41<sup>st</sup> Article**

#### **Wrong scriptures and without effect**

1. The wrong scriptures can be without a title and in case they have one, their numbering is repeated in the immediately followed scripture.
2. The scriptures without effect have a title and its numbering is not repeated in the one immediately following.

3. The wrong scripture is the one that is not finished, unused with the word “WRONG”, it is not signed by the notary, and no fee is charged for it.
4. The scripture without effect is the one that the notary finishes and the parties voluntary do not sign, but making the notary take note that it became without effect, and for it the parties pay the respective fees.

#### **42<sup>nd</sup> Article**

##### **Basic data of the public scripture**

1. Any public scripture must contain at least:
  - a. The place and date in which it was drawn;
  - b. The complete names of the granters, the witnesses and accidental intervenient when it is the case, as well as the names by which the people are known in their private lives when applicable, their identity document number.
  - c. The nationality, civil status, age and complete residential address with a detailed mention of the same, of any person that is present at the scripture, whether being granter or witness, accidental intervenient, legal representative or volunteer;
  - d. In the acts subject to registration, if the granter or representative is married, the matrimonial regime must be mentioned as well as the complete name of the spouse;
  - e. (revoked)
  - f. The proposed in line d) is applied to the scriptures of notary qualification relative to the candidate;
  - g. The mention of the proxies and of the documents relative to the instruments that justify the authenticity of the lawyer and representatives, with an expressed mention of the verification of all necessary powers for the act.
2. The notary regulation establishes the formalities of the proxies.

#### **42<sup>nd</sup> Article**

##### **Verification of identity**

1. The notary must always verify the identity of the granters and other intervenient in the act and the same must be done in one of the following ways:
  - a. By presenting an identity document or other equivalent document of the resident citizen, issued by the Timorese authorities;
  - b. By presenting a passport whether or not the owners reside in Timor-Leste or not;
  - c. By the declaration of two knowledgeable witnesses, whose identities the notary as verified exclusively by one of the ways mentioned in the previous lines.
2. It can only be accepted, for identity verification, documents whose data coincides with the elements of identity supplied by the interested and whose validity as not yet

- expired, accepting the alteration of residence and civil status, when for these a corroborative document of its alteration did not occur within the last six months.
3. In the notary acts it must be mentioned the number and the date of the documents presented for the identification of each granter, as well as the issuing service.
  4. The instrumental witnesses can serve as trustees.

### **43<sup>rd</sup> Article**

#### **Reading, granting, signature and authorization of public scriptures**

1. The notary regulation establishes:
  - a. The way that must address the reading, granter, signature and authorization of public scriptures;
  - b. The way in which the passing of the page must be done
  - c. (revoked)
  - d. The mentions that the notary can make in a scripture after it is written, and before it is signed.
2. The reading, granting, and signature of a scripture must be done in principle in one single act with the exceptions that the notary regulations establish.

## **SECTION II**

### **Accidental intervenient**

#### **44<sup>th</sup> Article**

#### **Knowledge witnesses**

Are knowledgeable witnesses those persons that intervene in the act with the objective of identifying granters.

#### **45<sup>th</sup> Article**

#### **Instrumental Witnesses**

1. The instrumental witnesses must intervene in the following cases:
  - a. Public testaments, approving minutes, deposits, opening of closed and international testaments, and in the instruments of reversal of testaments.
  - b. When one of the granters does not know how, or cannot sign, and it is not possible place a fingerprint;
  - c. When one of the granters requests it, except in the minutes of diligent protest;
  - d. Whenever the notary considers it convenient, except in the minutes of diligent protest;
  - e. In the many cases established by the law or regulations.
2. The notary regulation establishes the requisites which the knowledge and instrumental witnesses must obey.

#### **45<sup>th</sup> Article**



## **Intervention of translators, readers, interpreters and experts**

1. Interpreters must intervene in the act when the granters do not understand the Portuguese language, or are deaf, cannot talk, or both.
2. A reader can intervene in the act when the granter is blind.
3. Experts can intervene in the act to guarantee the mental sanity of granters, or any other fact which needs the intervention of a specialist, by request of one of the parties or notary.
4. The identity verification of the translators, readers, interpreters and experts can only be done by one of the ways expected in the lines a) and b) of the 42<sup>nd</sup> article – B.
5. The notary can solicit evidence of the alleged translator and expert qualities.
6. The notary regulation establishes the requisites that the accidental intervenient must obey, including the trustees, and the reason for which intervention is destined.

## **CHAPTER II NOTARY MINUTES**

### **46<sup>TH</sup> Article Notary Minutes**

The notaries authorize the drawn up minutes relative to facts or things, declarations that they receive, with the established formality for public scriptures, in what is compatible with the nature of these acts and without prejudice of the foreseen modifications in the previous article.

### **47<sup>th</sup> Article Formulation of the notary minutes**

1. In the formulation of the notary minutes, the following criteria must be taken into account:
  - a. The identity of the people that sign the minutes must be verified by the notary utilizing one of the means foreseen in the 42<sup>nd</sup> Article – A;
  - b. The declarant or the notary can request the intervention of an instrumental witness or accidental intervenient, in accordance with the case, except if the declarant does not know or cannot sign, in which an instrumental witness must intervene, or if blind, in such case must designate a person that proceeds with the reading of the document, except if a legal disposition expresses otherwise.
  - c. Not necessary act of unity or of context.
2. Except with legal disposition that expresses the contrary, the minutes are incorporated in the Book of Documents Registration.

### **48<sup>th</sup> Article Finality of the notary minutes**

1. The minutes in accordance with its finality, can be:
  - a. Minutes of notification and petition, by request of the party or by legal or judicial determination;
  - b. Incorporation of drawn up minutes outside of the notary books, that consists in the registry of the respective minutes in the Book of Document Registration, namely the authentication of documents, the registration of the minutes in reference to the closed testaments, translations, and notary certificates, subject to registration in the referred minutes of n. 4 of the 24<sup>th</sup> article of the present diploma;
  - c. Incorporation of other public and private documents;
  - d. Verification, with the objective of proving occurred facts or situations that occur in the presence of the notary;
  - e. Incorporation of legally predetermined documents
  - f. Diligent protest
2. The notary regulation establishes the content and the way that the minutes referred to in the previous number must be addressed.

#### **49<sup>th</sup> Article**

#### **Minutes of document incorporation**

1. The minutes in which it is stated the incorporation of documents must contain:
  - a. The title, with the specification of the number in reference to the incorporation in the Book of Document Registration;
  - b. The place and date in which the incorporation is done
  - c. The character of the same, if it is perceptive, indicating the legal disposition, if it is administrative or judicial , expressing the determination that imposes it, and the resource from which it was drawn, if it is voluntary, making a note of a solicitation from the interested;
  - d. The numeration of the documents that are incorporated in the registration;
  - e. The pages that occupy the incorporated document, in conformity with the case;
  - f. The former reference;
  - g. The signature and stamp of the notary.
2. It can be incorporated in a single notary minutes, the petition and the incorporation as such, with the content and formalities which the present regulation and law establishes.

### **CHAPTER III**

### **COPIES, TESTIMONIAL AND CERTIFICATES**

#### **SECTION I**

#### **COPY AND TESTIMONIAL OF DOCUMENT INCORPORATION**

#### **50<sup>th</sup> Article**

### **First copy of the public scriptures and testimonial**

1. The notaries deliver to the parties, whichever may be the nature of the act, a copy of the public scriptures or testimonial of the incorporations made.
2. The delivery is made up to the third day, counting from the date of signing the scripture or the incorporation of the document.
3. The fulfillment of the obligation of issuing the first copy or testimonial is not subordinate to the request from the parties.
4. The copy and testimonial, in the terms of this article, must be issued as a rule, in favor of the petitioner, beneficiary or respective representatives, dully mandated for the effect.
5. At any moment the others or the other party can request a copy of the scripture or testimonial of the incorporation to the document registry.

### **51<sup>st</sup> Article**

#### **Formalities of issuing copies**

The notary regulation establishes the formalities and the pertinence of issuing copies as well as the regulation in such case that the first copy of the scriptures or testaments of incorporation are lost, and the issuing of second or more copies.

### **52<sup>nd</sup> Article**

#### **Side notes**

(Revoked).

## **SECTION II**

### **TESTAMENTS FOR EXHIBITION**

### **53<sup>rd</sup> Article**

#### **Objective of the testaments for exhibition**

1. Besides the testaments mentioned in the previous articles, the notaries can issue testaments for the presentation of public and private documents, by request of the interested party and with the objective of certifying the existence, nature, or content of the reproduced document, without this affecting its efficacy and effect.
2. In the authenticated copy, which is the one that is reproduced from a document by a photocopy process, electrostatic or in a similar manner, its conformity is declared with the testament by exhibition and not by certification.

### **54<sup>th</sup> Article**

#### **Format and content of the testaments for exhibition**

The notary regulation establishes the format and content of the testaments for exhibition.

## **SECTION III CERTIFICATES**

### **55<sup>th</sup> Article Objective of certificates**

The notaries can issue certificates that have as an objective:

- a) Declare the existence of judicial situations, acts or facts, known by the notary, or that he assures by the exhibition of private or public documents;
- b) Recognize the signature and letter, or just the signature put in public or private documents.

### **55<sup>th</sup> Article – A Types of recognitions**

1. The notary recognitions can be simple or with special mentions, in person or by similarity.
2. They are simple recognitions that respect the letter and signature, or just the signature, of the document signee.
3. The recognition of special mentions is what includes, by demand from the law or as a request from the interested, the mentioning of any special circumstance which refers to these, to the signees and trustees, and that is known by the notary or by him verified from the documents that were presented to him.
4. The recognition of the letter and signature is done in person, or just the signature in the presence of the notary, or of any authorized staff, the recognition is done in the presence of the signee.

### **55<sup>th</sup> Article – B Recognition by similarity**

1. It is by similarity the recognition that is done by the simple confrontation of:
  - a. Identification documents referred to in the 42<sup>nd</sup> article – A, in which there is the signature of the signee;
  - b. Authenticated copy of the documents referred to in the previous line;
  - c. Document that for the effect is archived in the notary office, where there is the signature to be recognized.
2. The demand, in legal disposition, of recognitions by similarity can be substituted by the showing of the identity document of the resident, of an equivalent document or the passport, or authenticated copy of the same, whose nature, number, date and imminent entity of the staff of the receiving service must take note in the respective document.
3. The staffs that demand the legalization of documents via the recognition by similarity may incur disciplinary responsibility when it is shown that the previous point as not been followed up on.

4. The notary recognitions are by similarity, except when the law specifically demands the recognition in person.

**56st Article**  
**Elements of the certificate**

(Revoked)

**56st Article – A**  
**Signature by request**

1. The signature by request can only be recognized as such way of recognition in person, and as long as the petitioner cannot or does not know how to sign.
2. The request must be given or confirmed in front of the notary, in the act itself of recognition of signature, and after the document is read to the petitioner.
3. The trustee signs the document declaring that they do it as per request from the petitioner.
4. The notary can demand that the petitioner put in the document, in the space reserved for signatures, the fingerprint of the right hand index finger, in the absence of such; it shall be done in the indicated way by the notary, making reference of the same in this case.
5. The recognition of signatures by request must still make mention of the circumstances that legitimize it.

**57<sup>th</sup> Article**  
**General requisites of the certificates**

1. Any notary certificate must contain:
  - a. The act or facts of the certificate
  - b. The complete name of the person that requested its issuing, when this data does not result from the certification of its own modality, in terms of the previous articles;
  - c. The mentioning of the way in which the notary verified the identity of the granter, signee or petitioner and accidental witnesses, in accordance to the case.
  - d. The specific mentioning of the act in terms with the previous articles, by way of clearly demonstrating the following legal requisites for each type of intervention;
  - e. The mentioning that the law or regulations demand, in accordance with the intervention in question;
  - f. The designation of the issuing service, the place and the date in which they were passed, the stamp, the notary's signature or of the staff authorized by law, being that when there is place for witness intervention, trustee or

accidental intervenient, this information must be put before the signature of the competent staff.

2. It is applicable the identity verification of the signee or petitioner, as well as the identity verification and intervention of any accidental intervenient, the noted in the present diploma for the notary documents.
3. The recognition of signatures with special mention of the authenticity of the signees representative can be done by a simple confrontation of the signature in the documents with the signature, put in any of the documents referred to in n. 4 of the 55<sup>th</sup> article – A.

### **57<sup>th</sup> Article – A**

#### **Special requisites of certificates**

1. In the birth and identity certificates there must be a mention of the identification elements of the petitioner, the way in which his identity was verified, his signature or the declaration that he does not know or cannot sign, being in this case mandatory the impression of the fingerprint of the right index finger, or if not possible, of any indicated by the notary, with specific mention of this circumstance.
2. In the performance certificate of public posts of administration or management of commercial partnerships, or of collective persons it must be declared the type of public or private document shown to prove the authenticity which is pretended to certify.
3. In the certificates of other facts it must be consigned with precision the certificated fact and the way in which it came to be known by the notary.
4. In the documents sent by fax, in the terms of line k) of n. 2 of the 11<sup>th</sup> article, besides the mentions made in the previous number, the reference to the means utilized to send the documents.
5. In the documents received by fax, all the pages must be numbered and signed, with a note of receipt that must be drawn up with an indication of the number of pages effectively received, place, date, category and signature of the competent staff of the service that received it.
6. The recognitions of signature must contain:
  - a. Besides the documents of line b) of n. 1 of the 57<sup>th</sup> article, the mentions that the law and regulations demand, in accordance with the intervention in cause, if it is with special mentions.
  - b. The expressed mention of the circumstances that legitimize the recognition, and the way that the identity of the petitioner was verified, by one of the ways foreseen in the n. 4 of 55<sup>th</sup> article, if it is by request.

### **58<sup>th</sup> Article**

#### **Refusal of recognition**

1. The notary must refuse the recognition of the letters or signatures with material that do not offer guarantees of fixation used, and, as well as letters and signatures in documents that contain lines or spaces in white unused.
2. It must still be refused the recognition of signatures in white paper or in documents whose reading is not made to the notary.
3. If the document was written in a language that the notary does not speak, the recognition can only be done if the same is translated, even if verbally, by an interpreter of their choice, who should be properly identified as an intervenient in the act.
4. The recognition of documents, acts or contracts that are subject to fiscal obligation should not be done without it being proven that the obligation was fulfilled, except with an expressed legal disposition that concedes, and an exemption in such case the legal disposition that concedes it must be mentioned.

**TITLE IV**  
**ADMINISTRATION AND NOTARY DISCIPLINE**

**CHAPTER I**  
**ADMINISTRATION**

**59<sup>th</sup> Article**  
**Notary Management**

It is exclusively the job of the National directorate of Registry and Notary to manage the notary, through the exercises of powers of control, disciplinarians, and regulation of function.

**CHAPTER II**  
**VISIT TO NOTARY SERVICES**

**60<sup>th</sup> Article**  
**Presentation of the books**

The notaries are obligated to present, wherever the place where the notary is installed, the protocol and Document Registration Books to the Inspector of Registry and Notary.

**61<sup>st</sup> Article**  
**Annual visit**

1. The visit will be annually within the first two months of the year.
2. The presentation of the Inspection of Registry and Notary is done without necessity of a written informant, after previous consultation to the division of Administration, Finance and Logistics, the National Directorate of Registry and Notary, for verification of the charge and payment of the due fees.

**62<sup>nd</sup> Article**  
**Extraordinary visit**

1. The Inspector of Registry and Notary can at any moment, without need of justification, demand a presentation of all or part of the notary registrations.
2. The visit is done by an assigned staff of the National Directorate of Registry and Notary, to occupy the post of Inspector of registry and Notary.

**63<sup>rd</sup> Article**  
**Competent staff to carry out the visit**

The competent staff of the Inspection of Registry and Notary with the task of carrying out the visits puts on the last page of each protocol and Document Registration Book, a note of revision which must have:

- a) The expression “VISITED”
- b) The date, month, and year of the visit
- c) The signature of the staff that did the visit

**CHAPTER III**  
**NOTARY’S DISCIPLINE**

**64<sup>th</sup> Article**  
**Competency**

1. It is up to the National Directorate of Registry and Notary to carry out the disciplinary regime of the notaries, in conformity with the dispositions of the present chapter and with other applicable legislations for public workers.
2. For the effect the National director of Notary and Registry can appoint a disciplinary commission.

**65<sup>th</sup> Article**  
**Disciplinary Procedure**

The disciplinary regime applicable to workers of the National Directorate of Registry and Notary follows the applicable regime of other public workers, without prejudice to civil and criminal responsibility.

**TITLE V**  
**SPECIAL SCRIPTURES**

**CHAPTER I**  
**NOTARY COMPETENCE**

**66<sup>th</sup> Article**



## **Heir competence**

1. The heir competence can be obtained via the notary.
2. Heir competence cannot be obtained via the notary when one of the heirs is under aged.

## **67<sup>th</sup> Article Competence Scripture**

1. The notary competence consists in the declaration done in public scripture, by three people, whom the notary considers credible, who the competent are heirs of the deceased, and there is not anyone that follows them in the succession or that runs with them.
2. The declaration must contain the mentioning of the full name, civil status, place of birth, and the latest residential address of the author of the will and of the competent.

## **68<sup>th</sup> Article Acceptable declarant**

1. Are not accepted as declarant, for effects of n.1 of the previous article, those that cannot be witnesses, or the successive relatives of the competent, nor the spouse of any of them.
2. The notary should advert the declarant that they incur to all applicable penalties, the crime of false declarations in the presence of a public official if consciously, and in prejudice to whether another has given false declarations.

## **69<sup>th</sup> Article Documents to include**

1. The scripture of competence must be included with the following documents:
  - a. Narrative certificate of death of the author of the will
  - b. Justified documents of legitimate succession, when the authenticity of heir is noted as competent;
  - c. Certificate of meaning of testament or scripture of donation by death, even if the succession is not founded in some of these acts.
2. When the regulatory law of succession is not Timorese, and the notary does not know it, the scripture must be included with the original faithful document of the original law.

## **70<sup>th</sup> Article Effects**

1. The notary competence as the same effect as the judicial competence, and is title enough for them to do the following acts conjointly in favor of all the heirs and the surviving spouse:
  - a. Registrations in the notary offices of the property notary
  - b. Registrations in the notary offices of commercial registration and of automotive property
  - c. Registration of credit titles
  - d. Registration of transference of rights of literary, scientific, artistic, or industrial property.
  - e. Raising money or other values
2. The acts referred to in the lines a) and d) of the previous number, it can be requested by any of the competent heirs or by the surviving spouse.

### **71<sup>st</sup> Article Contestation**

The lawful heir that intends to request the competency of the notary, besides proposing the act in terms of the civil law process, must request to the court the immediate communication of the opening of the process to the respective notary office.

### **72<sup>nd</sup> Article Competence of heirs**

The disposed in the previous articles is applicable to the competence of the legatee, when these are undetermined or generically selected, or when the inheritance is all distributed in legacies.

## **CHAPTER II Notary Justification**

### **72<sup>nd</sup> Article – A Objective of the notary justification**

1. The interested that pretends to justify his right by lack of title that proves either with original acquisition or right of usucaption, can obtain it by scripture of notary justification.
2. The notary justification, for the reason of property or commercial registration, consists in the declaration done by the justifier, in front of three petitioners, in which this affirms, with exclusion of another holder of the right in cause, specifying the cause of the acquisition and referring the reasons that stop him from proving by normal means.
3. The requisites and the content of the scripture of notary justification, for the effects of the establishment, or removal of the successive treaty, and for the establishment of the new successive treaty, are defined in the notary regulation.

**72<sup>nd</sup> Article – B**  
**Appreciation of the invoked reasons**

It is up to the notary to decide if the reasons invoked by the interested are able to prove, by the normal extrajudicial ways, the facts that they pretend to justify.

**TITLE VI**  
**OF THE REFUSALS AND RESOURCES**

**CHAPTER I**  
**REFUSALS**

**73<sup>rd</sup> Article**  
**Refusal to practice the act**

1. The notary must refuse the practice of acts that are requested, in the following cases:
  - a. If the act is null
  - b. If the act is not within his competency or he is personally incapable to practice it.
  - c. If he has doubts about the integrity of the mental faculties of the intervenient
  - d. If the parties do not carry out the necessary preparations, except if a legal disposition expresses otherwise.
2. He doubts the integrity of the mental faculties of the intervenient, stopped fundamental of refusal, if the act goes together with a medical document that guarantees their mental sanity.
3. When it is a case of testament, lack of preparation does not constitute fundament for refusal.
4. The intervention of the notary cannot be refused with fundament of the act being null or inefficient.
5. In the cases foreseen in the previous numbers, the notary must advert the parts of the tendency, and consign in the instrument where the advert has been made.

**73<sup>rd</sup> Article – A**  
**Nullity of the notary acts**

1. The notary act is null, by tendency of format, without prejudice to the nullities that occur in law when:
  - a. It was drawn up outside of the notary books, except with legal disposition expressing otherwise;
  - b. Lacks mention of the date, month, and year or the place in which it was drawn up;
  - c. Lacks the signature of the interpreter, expert, reader, trustee or witness;

- d. Lacks the signature of any of the petitioners that knows and can sign, or the imprint of the fingerprint when applicable.
  - e. Lacks the declaration of the fulfillment of the formalities foreseen in the 45<sup>th</sup> and 45 – A articles;
  - f. Lacks the signature of the notary
2. It is also null the notary instrument drawn up by a staff which is incompetent in the matter, the place, or is legally unable, without prejudice to the disposed in civil law with regards to the probatory of the documents.
  3. It is still null the instrument I, which it had intervened an incapacitated or unqualified accidental intervenient.
  4. The notary regulation establishes the procedures and the admissibility of the revalidation and the maturing of the notary acts.

## **CHAPTER II**

### **Resources**

#### **74<sup>th</sup> Article**

### **Resources**

1. When the notary refuses to practice the act, the interested can appeal to the National Director of Registry and Notary.
2. The interested can, at its choice, appeal his choice in front of the competent courts.

#### **75<sup>th</sup> Article**

### **Refused act whose realization is determined in recourse**

The implementation of the present law decree initiates on the date fixed by Ministry of Justice diploma, according to the special chronogram.

#### **76<sup>th</sup> Article – A**

### **International notary**

1. For the performance of the public notary's function, when necessary, the Ministry of Justice can select, by curricular contest, non-Timorese notaries, with at least five years experience, which are from countries with civil system to provisionally integrate the Timor-Leste notary.
2. The exercise of the notary function by the international notary will always be of a technical nature, not being allowed to manage the notary office.
3. The disposition of the present law applies, with the necessary adaptations, to the international notary's which exercise functions in Timor-Leste.

## **CHAPTER II**

### **FINAL DISPOSITIONS**

**77<sup>th</sup> Article**  
**Elements**

The elements, taxes, and fees to charge by the notary function are established by Law Decree

**78<sup>th</sup> Article**  
**Notary Regulation**

The notary regulation is approved by Law Decree.

**79<sup>th</sup> Article**  
**Entrance**

The present diploma shall take effect 30 days after its publication.