



NOTARIES PUBLIC ACT, 2023: NEW PROVISIONS ANTICIPATED TO ENHANCE ACCESS TO NOTARIAL SERVICES



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INTRODUCTION

A Notary Public in Nigeria is authorised to carry out certain official acts including attesting to or certifying the authenticity of a deed or other legal documents such as birth certificates, school certificates, biodata pages of international passports, marriage certificates, etc. He also carries out the functions of administering oaths and witnessing the execution of local and international agreements. As these acts are undertaken in official capacity, they are recognised internationally as a means of deterring fraud.

Until recently, the Notaries Public Act, LFN 2004 governed the appointment, roles, and responsibilities of notaries public in Nigeria. On 12 June 2023, President Bola Ahmed Tinubu signed into law, the Notaries Public Act, 2023 (the “2023 Act”) which repealed the Notaries Public Act, LFN 2004 (the “Repealed Act”). Significantly, in line with technological advancements, the 2023 Act provides for digital and remote notarisation of documents.

NOTABLE PROVISIONS

Duties and functions of a Notary Public now clearly set out

Unlike the Repealed Act which simply states that a Notary Public shall perform the same duties and exercise the same functions as a Notary Public in England, thereby requiring that recourse be made to England to determine a Notary Public’s duties and functions, the 2023 Act now expressly sets out the duties and functions of a Notary Public.¹

The 2023 Act also lists documents that may be notarised by a Notary Public to include birth certificate, school certificate, police clearance certificate, biodata page of international passport, marriage certificate, drivers’ license, foreign documents required to be notarised in Nigeria and affidavits.

Introduction of electronic register of Notaries Public

The Chief Registrar of the Supreme Court is now required under the 2023 Act to maintain an electronic register of Notaries Public in addition to the physical register in existence. Additional information to be included in the register are the (a) phone numbers and (b) email addresses of every Notary Public. The Repealed Act only provided for the name, address, date of appointment and admission of a Notary Public. The Register under the 2023 Act is to be made available to the public.

Digital notarisation allowed

Notaries Public where the situation arises, can now discharge their duties via electronic means and all electronically notarised documents shall be recognised as valid in all Courts within Nigeria. A Notary Public who intends to take advantage of this provision must however register his intention and capability to notarise documents digitally with the Chief Registrar of the Supreme Court and shall be required to register his official digital signature and the form of electronic technology to be used in attaching or associating the electronic notarial signature. The Chief Registrar shall then issue a digital seal to the Notary Public and the digital signature and seal shall be used exclusively for electronic notarial acts.

¹ Section 2 of the 2023 Act sets these out to include (a) witnessing the execution of local and international documents such as sale and purchase agreements, assignments of intellectual property, powers of attorney, deeds, company resolutions, etc., (b) preparing notarial certificate of law and good standing, (c) administering oaths for giving evidence, (d) taking affidavits, declarations and depositions, (e) notarising bills of exchange, (f) obtaining authentication from the Ministry responsible for foreign affairs, (g) noting or certifying transactions relating to bills of exchange and other negotiable instruments, (h) verifying company documents, (i) verifying identity and signature and, (j) performing digital notarisation through electronic means.

Since the Chief Registrar will be in custody of digital signatures and seals of notaries public, he qualifies as a data controller under the Nigerian Data Protection Act (NDPA), 2023 and will be required to comply with data protection obligations.²

Electronic notarisation of electronic documents

A Notary Public may now perform electronic notarial acts on electronic documents by audio-visual communication for persons in the same or different states as the Notary Public or outside Nigeria. Where electronic notarisation is performed, the Notary Public is also required to prepare and execute an electronic notarial certificate which shall be attached to the notarised document.

The electronic notarisation system used to perform such notarisation (a) must be of sufficient clear audio and video quality to enable the notary and individual to see, hear and speak to each other in real-time via live transmission, (b) should include a means of authentication that reasonably ensures only the proper parties have access to the audio-visual communication, (c) should enable the Notary Public to confirm the identity of the individual through two-factor identification methods and (d) must be capable of recording, storing and accessing electronic recordings and documents on the audio-visual communication.³ The Notary Public is required to take reasonable steps to ensure that the tangible or electronic record that he notarises is the same record in which the individual made a statement or on which the individual executed a signature.

Further, where a document has been notarised digitally, the digital signature and seal of the Notary Public shall serve as prima facie evidence in any court in Nigeria that the signature and seal are genuine.

Creation of Notaries Public ex Officio

Section 21 of the 2023 Act expands the pool of persons that may act as Notaries Public in Nigeria to include all Magistrates across the country and the collectors of customs and excise at the ports in Nigeria. For collectors of customs and excise, it should be noted however, that (i) the scope of their duty is limited to minuting or noting or extending ships' protests at the ports, (ii) their seals must carry the words "Notary Public ex officio", and (iii) they cannot carry out this duty at any part in which an appointed Notary Public is available.

There is no longer a special exemption for notaries appointed by the Master of Faculties in England

The 2023 Act no longer grants exemption to persons who by virtue of a faculty grant of the Master of Faculties in England, were authorised to act as Notaries Public in Nigeria without being so appointed in Nigeria. The effect is that (other than collectors of customs and excise at the ports and Magistrates who are now recognised as Notaries Public ex officio), only a legal practitioner qualified to practice in Nigeria can be appointed as or carry out the functions/duties of a Notary Public in Nigeria.

Miscellaneous

Section 25 of the 2023 Act authorises the Chief Justice of Nigeria to make regulations that will give effect to the provisions of the 2023 Act. There was no provision on powers to make regulations under the Repealed Act.

² Sections 29, 30(1), 34, 39 and 40 of the NDPA set out the obligations of a data controller.

³ Section 6(3) of the 2023 Act.



CONCLUSION

The introduction of digital and electronic notarisation is a huge step in the integration of technology with the Nigerian legal system and will ensure that more stakeholders within the legal system embrace technological advancements. A similar thing was done with the Evidence (Amendment) Act, 2023 which now allows persons to swear to affidavits from foreign jurisdictions before a Commissioner for Oaths in Nigeria through audio-visual means.

Expanding the pool of persons who can act as Notaries Public in Nigeria to include collectors of customs and excise, also enhances the availability of notarial services for customs purposes, especially as Notaries Public who are legal practitioners are generally unlikely to primarily operate within the port areas. However, as the collector of customs and excise can only exercise his notarial power where there is no appointed notary public available within the port, an appointed Notary Public enjoys priority over a Notary Public ex officio.

The enactment of the 2023 Act was long overdue and it is expected that its implementation will significantly improve the practices of Notaries Public across the country.

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