

English text : see below

Questionnaire à l'attention des notaires - Formation continue

FORMATION CONTINUE : OBLIGATIONS DU NOTAIRE, CONTROLE ET SANCTIONS

CAE Session 2011-2013

Le notaire est astreint à un certain nombre d'obligations. Ces obligations sont répertoriées dans la loi sur le notariat national. Il s'agit du secret professionnel, de l'obligation d'instrumenter, de l'obligation d'annoncer des clients "douteux" au sens du blanchiment de participer à la lutte contre l'argent sale, des devoirs relevant de la morale publique, etc.

Pour accéder à la profession, le candidat-notaire doit faire preuve de capacités techniques telles que formation académique et de qualités humaines telles qu'aptitudes psychologiques et probité.

Dans un monde qui évolue de manière rapide, et dans des pays qui connaissent des mutations économiques et/ou légales fréquentes, le notaire en fonction doit s'adapter à ces modifications.

Le but du présent questionnaire est de déterminer comment votre législation tient compte d'une manière ou d'une autre de ce devoir "d'adaptation" du notaire au sens large et comment il est sanctionné.

QUESTIONNAIRE

1. La loi sur le notariat de votre pays oblige-t-elle les notaires "en fonction" à suivre une formation continue ? Selon quelles modalités : points, contrôle des connaissances, autres...

a) Si tel est le cas, votre loi prévoit-elle des sanctions disciplinaires pour les notaires qui ne suivent pas de formation continue ? Si oui quelles sont ces sanctions et sont-elles réellement appliquées et de quelle manière ?

b) Si tel est le cas, votre loi régleme-t-elle le type ou les types de formation continue possibles (par exemple : juridique, fiscale, psychologique, nouvelles technologies ou d'autres) ?

2. Comment ces formations continues sont-elles organisées? Comment sont-elles validées par les Chambres nationale ou régionale ?

3. Si votre législation n'impose pas de formation continue au notaire "en fonction" comme une obligation, votre loi prévoit-elle au moins des mesures incitatives à la formation continue ? Si oui, quelles sont-elles?

4. Si votre législation ne connaît ni règles obligatoires ni règles incitatives, comment les notaires de votre pays mettent-ils à jour leurs connaissances relatives aux domaines d'activité du notaire ?

5. A votre avis, l'instauration de la formation continue en une obligation du notaire constitue-t-elle une bonne idée ?

(Veuillez argumenter votre réponse positive ou négative).

6. Existe-t-il dans votre pays un système spécifique de formation des collaborateurs ?

English version

Questionnaire to all notaries regarding continuing education

CONTINUING EDUCATION: DUTIES FOR THE NOTARY, CHECKING MECHANISMS AND SANCTIONS

CAE Session 2011-2013

The notary has certain duties. These duties are recorded in the national law that governs notarial activities. This concerns for instance secrecy, the obligation to instrument, the obligation to report any 'dubious' client in connection with money laundering to the state authority, duties that concern public morality.

The candidate must have certain technical skills (higher education, psychological aptitude, etc.) in order to be granted access to the profession of notary.

In a fast evolving world and in countries in constant economical and/or legal flux, the notary has to adapt to these changes.

The goal of this questionnaire is to determine how your legislation regulates, in one form or another, this necessity for the notary to 'adapt' in a loose sense of the word and how he is sanctioned.

QUESTIONNAIRE

1. Does the law regulating notaries' activities require that active notaries attend some form of continuing education? How exactly: points, knowledge tests, others...

Yes, in the Laws on Notaries of the both entities in Bosnia and Herzegovina is required that active notaries attend continuing education in the form of professional development courses. Costs of seminars are borne by the respective Notary Chamber (e.g. Notary Chamber of the Republika Srpska or Notary Chamber of the Federation of Bosnia and Herzegovina).

- a. If this is the case, is there an article in the law that establishes disciplinary actions for notaries who don't follow a continuing education? If yes, which are these disciplinary actions and are they really applied and how are they applied?

In the Laws on Notaries¹ is prescribed that notary could be released from service if she/he does not fulfil his/her obligation to attend aforementioned courses (if she/he has not attended at least two courses for professional development of notaries per year, which courses are recognized by the Federation Ministry).

In practice these measures have not been applied mainly because notaries recognize importance of the continuing education and voluntarily attend more courses than it is prescribed as minimum of continuing professional education.

- b. In the affirmative, does the law regulate the type(s) of continuing education that can be attended (juridical, fiscal, psychological, new technologies or others)?

Laws do not regulate concrete topics of the courses.

2. How is this continuing education organized? How is it validated by your national or regional chamber ?

Upon proposal by the Notary Chambers the Ministries of Justice determine conditions under which seminars for professional education of notaries are deemed as the seminars in sense of the provisions of the Laws on Notaries (minimum of continuing professional education).

3. If there is no legal obligation to do so, is there an article in the law that establishes some incentives to follow continuing education courses? If yes, what are these incentives measures?

See answer 1.

4. If there are no such rules or incentives in your legislation, how do the notaries of your country actively update their knowledge linked with a notary's activity?

Having in mind aforesaid and the interest expressed by notaries the practice so far has shown that they have significantly exceeded minimum days required for continuing education. Beside minimum of continuing professional education Notary Chambers occasionally organize courses in different areas of notarial activities. Notaries also participate in educational activities organized by others (Judicial Training Centres, different associations of legal professionals, etc). Costs of notary's education in cases of exceeding minimum number of days are mainly born by themselves.

5. In your opinion, is the requirement to attend continuing education courses a good idea or not? (Can you please argue for your answer either way)

¹ Article 20 of the Law on Notaries („Official Gazette of the Republika Srpska“ no 86/04, 2/05, 74/05, 91/06, 37/07, 50/10, 78/11) and Article 26 of the Law on Notaries („Official Gazette of the Federation of Bosnia and Herzegovina“ no 45/02)

Continuing professional education is important factor not only to maintain and broad knowledge about existing or changing laws and regulations but also to increase a professional skill level.

6. In your country is there a specific system of employees training?

No.